

A. Exemptions of General Applicability

1. Deliberative Process and Drafts: [RCW 42.56.280](#)

Preliminary drafts or recommendations, notes and intra-agency communications may be withheld by an agency if they pertain to the agency's deliberative process and show the exchange of opinions within an agency before it reaches a decision or takes an action. The purpose of this exemption limits its scope. [Progressive Animal Welfare Soc'y v. University of Wash.](#) (1994)(“PAWS II”); [Hearst Corp. v. Hoppe](#) (1978). Its purpose is to "protect the give and take of deliberations necessary to formulation of agency policy." [Hearst Corp. v. Hoppe](#) (1978); [Progressive Animal Welfare Soc'y v. University of Wash.](#) (1994) (“PAWS II”). This exemption only protects records during a limited window of time while the action is “pending,” and the withheld records are no longer exempt after final action is taken.

The test to determine whether a record is covered by this exemption has been summarized by the Washington Supreme Court as follows:

In order to rely on this exemption, an agency must show that the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy recommendations and opinions and not raw factual data on which a decision is based. *PAWS II*. It is not, however, required that documents be prepared by subordinates to be exempt.

[ACLU v. City of Seattle](#) (2004).

The exemption applies only to documents that are part of the deliberative or policy-making process; records about implementing policy are not covered. [Cowles Publishing v. City of Spokane](#) (1993). For this reason, inter-agency (as opposed to intra-agency) discussions probably are not covered by this exemption. [Columbian Publishing Co. v. City of Vancouver](#) (1983).

Matters that are factual, or that are assumed to be factual for discussion purposes, must be disclosed. [Brouillet v. Cowles Publishing Co](#)(1990); [Hearst Corp. v. Hoppe](#) (1978) (description of a taxpayer's home by a field assessor treated as fact by agency appraisers). Thus, unless disclosure of the records would reveal or expose the deliberative process, as distinct from the facts used to make a decision, the exemption does not apply. [Hearst Corp. v. Hoppe](#) (1978).

Additionally, under this statute, records are not exempt if “publicly cited in connection with an agency action.” Therefore, an evaluation of a real property site requested by a city attorney was not exempt from disclosure under the deliberative process exemption where it was cited as the basis for a final action. [Overlake Fund v. City of Bellevue](#) (1991). Subjective evaluations are not exempt under this exemption if they are treated as raw factual data and not subject to further deliberation and consideration. [Progressive Animal Welfare Soc'y v. University of Wash](#) (1994)(“PAWS II”); [Hearst Corp. v. Hoppe](#) (1978).

Importantly, once the policies or recommendations are implemented, those recommendations, drafts, and opinions cease to be protected under this exemption. [Progressive Animal Welfare Soc'y v. University of Wash.](#) (1994) (“PAWS II”).

2. Litigation and Legal Information

a. “Controversy” Exemption: [RCW 42.56.290](#)

This provision exempts records related to a controversy involving the agency as a party in a lawsuit where records would not be available to other parties under the court rules. A “controversy” covered by this exemption includes threatened, actual, or completed litigation. [Dawson v. Daly](#) (1993).

If an agency is a party to a controversy, the agency may withhold records that normally would be privileged under litigation discovery rules (commonly called the “work product” doctrine). A document is work product if an attorney prepares it in confidence and in anticipation of litigation or it is prepared by another at the attorney’s request. For example, a study of the economic viability of hotels of various sizes, commissioned by a city attorney's office to determine the city's potential liability for a constitutional takings claim, qualified as work product and was insulated from disclosure. [Overlake Fund v. City of Bellevue](#) (1993). Notes of interviews conducted by an investigator at the attorney’s direction are protected if the records are relevant to and reasonably connected to an anticipated lawsuit even if the controversy is not identified in the records and the lawsuit has not yet been filed. See [Soter v. Cowles Publishing Co.](#) (2007) and see generally [Public Records: The Attorney-Client Privilege and Work Product Doctrine – Guidance on Recurring Issues](#)(Washington State Attorney General’s Office) (Dec. 1, 2004).

b. Attorney/Client Privileged Records:[RCW 5.60.060\(2\)](#)

In addition to the PRA exemption for records related to a controversy, information in records may be exempt from production if it constitutes privileged attorney-client communications. The Washington Supreme Court in [Hangartner v. City of Seattle](#) (2004) ruled that [RCW 5.60.060\(2\)](#), the statute codifying the common law attorney-client privilege, is an “other statute” exemption under [RCW 42.56.070\(1\)](#). Accordingly, records or portions of records covered by the attorney-client privilege are exempt under the PRA. See generally [WAC 44-14-06002\(3\)](#). This privilege protects communications and advice between attorneys and their clients but not records prepared for reasons other than communicating with an attorney. See [Morgan v. City of Federal Way](#) (2009) and [Sanders v. State](#)(2010).

c. Mediation Communications: [RCW 42.56.600](#)

Communications in the context of mediation that are privileged under [chapter 7.07 RCW](#) are exempt from production. [RCW 7.07.070](#)states that mediation communications are confidential as agreed by the parties or as covered by other laws.

3. Security and Terrorism: [RCW 42.56.420](#)

[RCW 42.56.420](#) exempts records based on the impact disclosure may have on physical or information security. This statute exempts the following categories of records:

- (1) Records designed to respond to criminal terrorist acts, when release could significantly disrupt the conduct of government and are substantially likely to threaten public safety including vulnerability assessments and plans and records exempt under federal law
- (2) Vulnerability assessments and emergency or escape response plans at correctional facilities or secure treatment facilities for civilly committed sexually violent predators
- (3) Comprehensive safe school plans
- (4) Information about the infrastructure and security of computer and telecommunications networks that, if released, would increase risk to their confidentiality, integrity or availability
- (5) System security and emergency preparedness plans for transportation systems
- (6) Personally identifiable and security information of employees of private cloud service providers which have entered into Criminal Justice Information Systems (CJIS) agreements (added in 2016).

In *Northwest Gas Association v. Washington Utilities and Transportation Commission* (2007), the Court of Appeals interpreted subsection (1) of this statute to exempt pipeline shapefile data because the information was initially collected and then maintained to prevent, mitigate or respond to criminal terrorist acts. However, in *Does v. King County* (2015), the Court of Appeals rejected a claim of exemption for campus surveillance videos under the same subsection because the university did not meet the burden of showing a substantial likelihood of threatening public safety. The university had alleged that disclosure would allow others to evade its security system or commit similar crimes in the future.

B. Personal Information

"Personal information" is information that is "peculiar or proper to private concerns." *Lindeman v. Kelso School Dist. No. 458* (2007). Although the PRA is intended to enable citizens to retain sovereignty over government and to demand full access to information relating to our government's activities, the PRA was "not intended to make it easier for the public to obtain personal information about individuals who have become subject to government action due to personal factors.... Such personal information generally has no bearing on how our government operates." *Lindeman; DeLong v. Parmelee* (2010). "Personal information" has a different meaning than "privacy." *Lindeman*. Some exemptions list what is "personal information" and some exemptions also include invasion of "privacy" as a required element. The discussion of "invasion of privacy" is in [Chapter 2.1B](#).

1. Student, Institutional Residents, and Public Assistance Records: [RCW 42.56.230\(1\)](#)

This exemption covers "personal information" held by agencies in files kept for public assistance or public health clients, students, and residents of public institutions. Although a record may include information about such persons, the information might not satisfy all the provisions of the exemption and thus that information would not be exempt from production. For example, a surveillance video recorded on a school bus was not considered to be "personal information" maintained in a student file and was found to not be exempt under this provision. *Lindeman v.*

Kelso School Dist. No. 458 (2007). As an exception to this exemption, in *Oliver v. Harborview Med. Ctr.* (1980), a patient was allowed copies of her own medical records. (Note that since the decision in *Oliver*, disclosure of health care records is now addressed in specific statutes at [RCW 42.56.360](#) and the statutes listed there include [chapter 70.02 RCW](#). See more detailed discussion of health care records in [Chapter 2.2F](#)).

2. Child Information: [RCW 42.56.230\(2\)](#)

Personal information of children is exempt from production when held in licensed child care files of the Department of Early Learning and by any other public or nonprofit program serving or applying to children or students, including parks and recreation and after-school programs, except that emergency contact information can be produced in emergency situations. For family members or guardians of these children, their personal information is exempt if they have the same last name as the child or if they live at the same address and the disclosure would reveal exempt personal information of the child. For exemptions applying to other records of children, see [Chapter 2.2G1](#) below.

3. Personal Information of Public Employees: [RCW 42.56.230\(3\)](#) (See [Chapter 2.2C](#) below)

4. Taxpayer Information: [RCW 42.56.230\(4\)](#)

This exemption applies to various categories of information about taxpayers, including property, sales and excise tax, and incorporates the prohibitions in [RCW 84.08.210](#), [RCW 82.32.330](#), [RCW 84.40.020](#), [RCW 84.40.340](#), or a city B&O tax ordinance authorized under [RCW 35.102.145](#). The most common prohibition applied here is [RCW 82.32.330](#), which provides that tax returns (filed with the Department of Revenue) and other tax information about a specific or identifiable taxpayer are confidential and may not be disclosed, subject to specific exceptions. In [RCW 42.56.210\(1\)](#), the PRA provides that information exempt under these laws is not subject to redaction, meaning that the information can be withheld in its entirety. *The law in [RCW 82.32.330\(3\)\(k\)](#) also prohibits the Department of Revenue from disclosing lists of tax payers for a commercial purpose.*

In addition, information is exempt if it would violate the taxpayer's right to privacy or cause unfair competitive disadvantage. See *Van Buren v. Miller* (1979) (information relied upon by the assessor to make valuation is not private); *Hearst Corp. v. Hoppe* (1978). In *Hoppe v. King County* (2011), the Court of Appeals affirmed that, when these tax exemptions apply, redaction of identifying information from these records cannot make these documents disclosable and would not prevent the competitive disadvantage to taxpayers if the records were released. Significant potential penalties apply to the improper release of taxpayer information in [RCW 82.32.330\(6\)](#), including loss of ability to hold public employment in Washington state for two years.

5. Financial Information: [RCW 42.56.230\(5\)](#)

This exemption for banking and financial information is designed to limit the risk of identity theft and protects account numbers and information such as social security numbers, taxpayer identification numbers, drivers' license numbers and other information listed in the definition of financial information in [RCW 9.35.005\(1\)](#). Disclosure can occur if required by other law. Note that

unauthorized release of some of these identifiers by an agency is considered a security breach under [RCW 42.56.590](#), imposing notification and other obligations on an agency.

6. Small Loan Information: [RCW 42.56.230\(6\)](#)

This exemption protects personal and financial information about borrowers held in the Department of Financial Institutions database that licensed lenders consult to determine if they are eligible to receive a small loan.

7. Vehicle Licensing Applications: [RCW 42.56.230\(7\)](#)

Records provided by applicants for driver's licenses or state identicards to prove identity and other factors is protected from disclosure, as is information that shows a person failed to register with the selective service. Vehicle and boat registration or licensing records are exempt if they reveal that a person serves as an undercover law enforcement officer or conducts other types of confidential investigations.

8. Industrial Insurance Structured Settlements: [RCW 42.56.230\(8\)](#)

All information related to these agreements is exempt from production under the PRA, except for final orders from the Board of Industrial Insurance Appeals.

9. Emergency Systems: [RCW 42.56.230\(9\)](#)

In 2015, the Legislature added a provision to exempt database information voluntarily submitted by individuals that becomes part of enhanced 911 emergency communication or notification databases. Use and disclosure of this information is permitted as provided in [RCW 38.52.575](#) and [RCW 38.52.577](#) for various listed operational purposes. Subjects of the information or their authorized representatives may be given access to or copies of their own information.

C. Public Employee Records

1. Exemption of Personal Information: [RCW 42.56.230\(3\)](#)

Personal information of employees is exempt if it violates their right to privacy as defined in [RCW 42.56.050](#). What is determined to be personal information of public employees continues to evolve through case law. The test to determine if the right to privacy is violated requires a showing that the information about an employee would be "highly offensive" if disclosed **and** is not of "legitimate" public concern. Therefore, the application of this exemption can vary depending on the circumstances involved. See *Predisik v. Spokane School District No. 81* (2015) (privacy right under PRA depends upon the types of facts disclosed and is not amenable to a bright-line rule). The exemption includes records in files for current and former employees, whether held by an employing agency or other agency, such as a retirement system. *Seattle Fire Fighters Union, Local No. 27 v. Hollister* (1987); *Belenski v. Jefferson County* (2015)(former employee records). Courts have analyzed what is "personal information" of public employees in the following areas:

a. Employees' Public Conduct: Disclosure of police officer's involvement at a bachelor party/strip show at a private club was not highly offensive because the conduct occurred in

front of more than 40 people. *Spokane Police Guild v. State Liquor Control Bd.* (1989). Misconduct on the job and off-duty actions that “bear on ability to perform” public office are “not private, intimate, personal details” of a state patrol officer’s life, but are of public concern. *Cowles Publ’g Co. v. State Patrol* (1988).

b. Employees’ Emails and Text Messages: Emails and text messages involving public agency business clearly are public records subject to disclosure. However, the “personal information exemption” may apply to information within those emails that would be highly offensive and of no legitimate public interest if released. Even if the content of some employee emails is exempt because it is personal and unrelated to government operations and solely related to the employee’s personal life, information about the number of personal emails sent and the time spent transmitting them is of public concern and should be disclosed. *Tiberino v. Spokane County* (2000). Text messages sent and received from a government employee’s private cell phone are public records if they satisfy the definition of “public record” at RCW 42.56.010(3). *Nissen v. Pierce County* (2015).

c. Employee Performance Evaluations: Courts have held disclosure of an employee’s performance evaluations with no discussion of specific incidents of misconduct is presumed to be highly offensive and of no legitimate concern to the public. *Dawson v. Daly* (1993); *Brown v. Seattle Public Schools* (1993). Disclosure of this information between a public employee and supervisor normally serves no legitimate public interest and would impair the candidness of evaluations and employee morale if made public to anyone upon request. However, the performance evaluation of a city manager - the city’s chief executive officer, its leader, and a public figure - was not exempt because it was of legitimate concern to the public. *Spokane Research & Defense Fund v. City of Spokane* (2000).

d. Personnel Complaints and Investigations: Multiple court opinions have addressed the disclosure of personnel investigations. If the misconduct is substantiated or disciplinary action has been taken, these records are to be disclosed because they are of legitimate interest to the public, even if embarrassing to the employee. See *Brouillet v. Cowles Publishing Co* (1990) (records of teacher certificate revocation records are of legitimate public interest); *Morgan v. Federal Way* (2009) (investigated and substantiated allegations of inappropriate behavior by a municipal court judge in dealing with others are of “substantial” public interest). In *Bellevue John Does 1-11 v. Bellevue Sch. Dist.* (2008), the Washington Supreme Court confirmed that teachers have no right to privacy in complaints of sexual misconduct that are substantiated or when disciplinary action is taken. The *Bellevue John Does* decision also held that disclosing “letters of direction” discussing alleged misconduct that was not substantiated is not “highly offensive” to the employee if identifying information is redacted. Unsubstantiated allegations are considered “personal information” that can be exempt from production if the standard of the “right to privacy” in RCW 42.56.050 is met.

The Washington Supreme Court further addressed the issue of the extent to which Unsubstantiated allegations can be disclosed in *Bainbridge Island Police Guild v. City of Puyallup* (2011). In that case, the requester asked for the records regarding an investigation of sexual misconduct by a police officer by name. The court held that the Unsubstantiated

allegation of such misconduct was “personal information” and release would be “highly offensive” if released, but that the public’s legitimate concern in the investigation would be satisfied by redacting the identity of the officer. The Washington Supreme Court has also held that records showing employees on administrative leave while their employer investigates allegations of misconduct, but which do not describe the allegations, do not implicate the privacy rights of the employees and must be disclosed. *Predisik v. Spokane Sch. Dist. No. 81* (2015). In *West v. Port of Olympia* (2014), the Court of Appeals held that Unsubstantiated allegations concerning accounting procedures, disposal of environmentally sensitive materials, and violation of port policies regarding working on holidays would not be highly offensive to the reasonable person and thus would be disclosed. Identities of high-ranking police officials was found to be of greater interest to the public and of legitimate public concern with fewer privacy rights attached even when misconduct was not established in *City of Fife v. Hicks* (2015).

e. Employee Whistleblowers: The identity of state employees filing complaints with an ethics board or making a whistleblower complaint to the state auditor or other public official is protected from disclosure under [RCW 42.56.240\(11\)](#)

f. Other Types of Employee Information:

Settlement Agreements. Settlement agreements between employees and their employer are of legitimate public concern and must be disclosed, even if they were intended to be confidential. But information in a settlement agreement is exempt from production under a public records request based on the right to privacy, if it concerns intimate details of employee’s personal and/or private life. *Yakima Newspapers, Inc. v. City of Yakima* (1995).

Salary and Benefit Information. Salary and benefit information of public employees is normally open to the public, *Tacoma Pub. Library v. Woessner* (1998), except that salary survey information collected from private employers used for state ferry employees is exempt under [RCW 42.56.250\(7\)](#).

Other Information. The extent to which information about employees can be considered to be private and of no legitimate concern to the public has not been fully defined but has been addressed as applying to intimate details of personal life that a person “does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or close personal friends.” *Bellevue John Does 1-11 v. Bellevue Sch. Dist.* (2008). The discussion of “invasion of privacy” is in [Chapter 2.1B](#). Information that could be protected includes health information, marital status, disability, and reasonable accommodations. However, the ability to use a list of the names and ranks of law enforcement officers to locate other publicly available information that could reveal private information about the officers was not accepted as a basis to exempt that list under the PRA. *King County v. Sheehan* (2002).

2. Test and Exam Questions: [RCW 42.56.250\(1\)](#)

“Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination” are exempt because disclosure would give an undue advantage to applicants for licenses or jobs.

3. Applicants for Public Employment: [RCW 42.56.250\(2\)](#)

Names of applicants and their job applications and accompanying materials are exempt. See *Beltran v. Dep't Social & Health Services*(1999).

If an applicant is hired, some agencies do not consider this exemption to apply to that applicant's records. Instead, the agencies look to exemptions such as [RCW 42.56.230\(3\)](#) and [RCW 42.56.250\(3\)](#) to decide whether or not to redact personal information from these records.

4. Public Employees' Home Information and Identification: [RCW 42.56.250\(3\)](#) and [\(8\)](#)

For public employees, volunteers, and individual home health care workers, this section exempts their home addresses and telephone numbers, personal cell phone numbers and email addresses, social security and driver's licenses or state identicaid numbers, and emergency contact information. For their dependents, similar information is exempt except that dates of birth are added as exempt and driver's license and identicaid numbers are not listed as exempt. For employees of criminal justice agencies, their photographs and month and year of birth are also exempt, except if requested by the news media. This section is intended to protect these employees from the offender population, as shown by the exclusion from the definition of news media of persons held in custody of these agencies.

The statute provides that this exemption applies to information held in personnel and employment-related records. However, personal email addresses of city councilmembers used to conduct city business were found not to be exempt, because they were not part of personnel records or employment-related records. *Mechling v. City of Monroe* (2009).

5. Discrimination and Unfair Labor Practice Investigations: [RCW 42.56.250\(4\)](#) and [\(5\)](#)

Identification of employees seeking advice to determine their rights about possible claims of discrimination against them is exempt when employees ask that their names be withheld; no showing of a risk of harm is required as is required for criminal investigations. [RCW 42.56.250\(4\)](#). Additionally, all records compiled during investigations by employers into unfair labor practices or employment discrimination claims are specifically stated to be exempt while those investigations are in process. [RCW 42.56.250\(5\)](#).

D. Several Exemptions Relate to Law Enforcement Information

1. Investigative Records: [RCW 42.56.240\(1\)](#)

The PRA exempts “intelligence information” and “specific investigative records” compiled by investigative, law enforcement, penology, and professional disciplinary agencies if the information is “essential to effective law enforcement” or needed to protect a person's privacy rights. "Specific . . . investigative records" are the result of an investigation focusing on a particular person, *Laborers Int'l Union of North America, Local No. 374 v. City of Aberdeen* (1982), or an investigation to ferret

out criminal activity or to shed light on specific misconduct. *Dawson v. Daly* (1993); *Columbian Publishing v. City of Vancouver* (1983); *City of Fife v. Hicks* (2015). If a law enforcement agency maintains reports as part of a routine administrative procedure, and not as the result of a specific complaint or allegation of misconduct, the reports are not investigative records within the terms of this exemption. For example, "Use of Force Administrative Reports" prepared by police whenever there is contact between a K-9 unit dog and a person were held not within the investigative information exemption. *Cowles Publishing v. City of Spokane* (1993).

"Investigative, law enforcement, and penology agencies" are agencies having authority to investigate and penalize, such as the police, the police internal affairs investigation unit, the Public Disclosure Commission, medical disciplinary boards, or a local health department. An investigative agency may exempt only those records made in its investigative function. *Columbian Publishing v. City of Vancouver* (1983) (a general inquiry into agency personnel matters is not an "investigation" as contemplated by the PRA, even if it's performed by law enforcement officers).

Case law under this section has focused more on criminal and law enforcement agencies and less on professional disciplinary agencies. A personnel investigation by a criminal justice agency that is not acting in its law enforcement capacity will be scrutinized to determine the impact on any law enforcement activities of the agency. For example, Department of Corrections' investigations of its medical staff's conduct were held not to be "essential to effective law enforcement" and could not be exempted under the narrow application of [RCW 42.56.240\(1\)](#). *Prison Legal News, Inc. v. Dep't of Corrections* (2005). However, while records of allegations involving "purely a personnel matter" would not be subject to the investigative exemption in [RCW 42.56.240\(1\)](#), allegations against police officials that go further in claiming malfeasance or violations of law qualify as investigative records under this exemption. *City of Fife v. Hicks* (2015).

For a civil law enforcement agency investigating violations of safety laws, the Washington Supreme Court found that the same risks of disclosing sensitive information in a criminal context does not exist in the civil context. *Wade's Eastside Gun Shop v. Department of Labor and Industries* (2016). While the exemption may be able to be claimed under some circumstances, the Court found the agency could not rely on a categorical exemption for records of civil law enforcement activities such as safety violations under [RCW 42.56.240\(1\)](#). The employers knew that they were being investigated so the nondisclosure could not be claimed to be essential to effective law enforcement. See also *Brouillet v. Cowles Publishing Co.* (1990) (revocation of teacher certificates was not exempt).

The contents of an open, ongoing criminal investigation are generally exempt from production under a public records request because premature disclosure could jeopardize the investigation. *Newman v. King County* (1997); *Ashley v. Washington State Public Disclosure Comm'n* (1977). Because the categorical exemption applies only to open investigations, once the investigation is completed, available records must be produced unless another exemption applies. *Sargent v. Seattle Police Department* (2013). If an agency claims a categorical exemption to deny the records of a criminal investigation, the PRA statute of limitations may not be tolled if it is found that the investigation was not active and ongoing at the time of the denial. *White v. City of Lakewood* (2016). For more information on the application of the statute of limitations, see [Chapter 1.8D](#) above.

Once an investigation is complete, the records are no longer categorically exempt. After a criminal case is referred to a prosecutor for a charging decision, the investigation is considered complete and the records of the investigation are no longer categorically exempt even if the matter is later referred back for additional investigation. *Sargent v. Seattle Police Department* (2013). Instead, if the investigation is complete, the records cannot be withheld in their entirety under RCW 42.56.240(1) unless the law enforcement agency can prove that nondisclosure of the particular record is essential to effective law enforcement, or disclosure would violate a person's right to privacy or another exemption applies. *Id.* Additionally, the exemption does not apply categorically to criminal investigation records that are part of a related internal investigation; the agency has the burden of proving any withheld parts of internal files are essential to effective law enforcement. *Id.*

An agency may withhold specific records of completed investigations if their disclosure would jeopardize witnesses or discourage potential sources of information from coming forward in the future. *Cowles Publ'g Co. v. State Patrol* (1988); *Tacoma News, Inc. v. Tacoma-Pierce County Health Dep't* (1989). The names of complainants, witnesses, and officers contained in police internal investigation unit (IIU) files of sustained complaints are exempt because the IIU process is vital to law enforcement, and officers would be reluctant to be candid if they thought their identities would be disclosed. *Cowles Publ'g Co. v. State Patrol* (1988). In *City of Fife v. Hicks* (2015), Court of Appeals found that a generalized statement that future witnesses may be reluctant to come forward is not sufficient to protect the identities of witnesses in the investigation. Instead, the agency must provide specifics about how disclosing these identities would impact effective law enforcement. However, identifying information of a witness who is requesting the records should not be redacted.

The substance of the completed investigative files is, however, not categorically exempt if another exemption does not apply. *Cowles Publ'g Co. v. State Patrol* (1988). When the identity of the officer who was the subject of the investigation is well known through other sources, exemption of the name is not essential to effective law enforcement. *Ames v. City of Fircrest* (1993). The *Cowles* court held that the redaction of officers' names in the IIU files was not necessary to protect their privacy. In *City of Fife v. Hicks* (2015), the court held that the identity of high-ranking police officials who were the subject of an investigation is inherently a matter of greater interest to the public and that the names should be released even if the allegations were not substantiated.

Some agencies may have an investigative records exemption outside the PRA. See, for example, the exemption for investigative records of the Office of the Developmental Disabilities Ombuds, RCW 43.382.040; and of the Long Term Care Ombuds Program in RCW 43.190.110.

2. Identity of Complainants, Witnesses, and Victims: RCW 42.56.240(2) and RCW 42.56.240(5)

The identity of victims and witnesses is potentially protected by different provisions in this part of the PRA. *Sargent v. Seattle Police Department* (2013). Under RCW 42.56.240(1), addressed above, disclosure can be prevented due to the chilling effect on other witnesses if their identity will be disclosed which would impair effective law enforcement. Also in RCW 42.56.240(1), there is a "privacy prong" when nondisclosure is "essential for the protection of any person's right to privacy" which may allow an agency to exempt information about witnesses or victims when disclosure

would be highly offensive and of no legitimate public interest as defined in [RCW 42.56.050](#). *Does v. King County* (2015). Under [RCW 42.56.240\(2\)](#), witness and victim identities can be protected if “disclosure would endanger any person’s life, physical safety, or property.” Further, if the witness or victim requests nondisclosure of his or her identity, the identity can presumptively be withheld. Note, however, that when victims and witnesses request their identity be protected under [RCW 42.56.240\(2\)](#), the entire surveillance video cannot be withheld but only that information identifying the victim or witness can be redacted as held in *Does v. King County* (2015). Also in that case, the Court upheld the finding that redacting by “black boxes” overly obscured the non-exempt part of the videos and that pixelating faces was sufficient to prevent disclosure of identity.

The agency has the burden of showing that the requirements of these exemptions are met, and it cannot assert a categorical exemption for this information. A general allegation of the potential chilling effect on witnesses is not sufficient to support an exemption under [RCW 42.56.240\(1\)](#) based on the potential impact on effective law enforcement. To support an exemption under [RCW 42.56.240\(2\)](#), the agency must “make an affirmative showing that disclosure entails a potential threat to safety or property” or, alternatively, that there was a “specific request from a witness for nondisclosure of personal information.” *Sargent v. Seattle Police Department* (2013).

For child victims of sexual assault, [RCW 42.56.240\(5\)](#) lists specific items of identifying information that are to be redacted from records, including the relationship with the alleged perpetrator. In *Koenig v. City of Des Moines* (2006), the court held that this statute requires disclosure of victim information with redaction only of the specified identifiers, even if the requester knows the identity of the child victim and requests the record by the victim’s name. Personal details of the assault cannot be redacted on the basis of embarrassment or violation of right to privacy.

3. Sex Offender Records: [RCW 4.24.550](#), [RCW 42.56.240\(3\)](#), [RCW 42.56.240\(8\)](#), [RCW 71.09.080](#)

Law enforcement investigative reports on sex offenders that are transferred to the Washington Association of Sheriffs and Police Chiefs are exempt under [RCW 42.56.240\(3\)](#). The Association must refer requesters to local law enforcement agencies when it receives a request for these reports but has no further obligation to respond. Information submitted to the statewide sex offender and notification program by persons asking to be notified about the release of a registered sex offender is exempt under [RCW 42.56.240\(8\)](#).

In response to a class action by sex offenders, the Washington Supreme Court held that the community protection act in [RCW 4.24.550](#) does not qualify as an “other statute” to prohibit disclosure of this information. *Doe v. Washington State Patrol* (2016). While this statute outlines what information agencies may or must disclose to notify the public about these offenders to promote community safety, the Court held that the statute did not create an exemption and did not explicitly prohibit release of other information about the offenders. The Court further found no legislative intent to protect confidentiality of the identities of these offenders. In [RCW 70.48.100\(4\)](#), booking photos and information in jail registers of persons convicted of sex offenders are also subject to disclosure, referencing what is permitted under [RCW 4.24.550](#).

In *Koenig v. Thurston County* (2012), the Washington Supreme Court held that special sex offender sentencing alternative (SSOSA) evaluations and impact statements from victims of sex offenders

were not exempt under the PRA as investigative records under [RCW 42.56.240\(1\)](#). Not all records held by a prosecutor are protected by this exemption. Victim impact statements and SSOSA evaluations are not designed or intended to uncover or investigate criminal activity but instead are used to determine an appropriate penalty for an offender and thus cannot be exempted under this statute.

The medical and treatment records of sexually violent predators who have been civilly confined to secure facilities at the end of criminal sentences are protected from disclosure except to the committed persons, their attorneys, and others involved in the system who have a need for the records. [RCW 71.09.080\(3\)](#). Additionally, these individuals are considered to be residents of state institutions whose personal information is subject to the exemption in [RCW 42.56.230\(1\)](#).

4. Criminal Records Privacy Act ([Chapter 10.97 RCW](#))

This act deals with disclosure of "criminal history record information," which is defined as information contained in records collected on individuals by criminal justice agencies, other than courts. [RCW 10.97.030\(1\)](#). These documents include identifiable descriptions and records of arrests, detentions, indictments, and criminal charges, and any dispositions, including sentences, correctional supervision, and release. The definition of "criminal history record information" excludes "intelligence, analytical or investigative reports and files," which are covered by the exemptions in [RCW 42.56.240\(1\)](#), discussed in [Chapter 2.2D1](#). [RCW 10.97.030\(1\)\(h\)](#). An agency may freely disclose criminal history record information which pertains to an incident that occurred within the last twelve months for which a person is currently being processed by the criminal justice system. [RCW 10.97.050\(2\)](#). Also, "conviction data" may be disseminated freely at any time. [RCW 10.97.050\(1\)](#). "Nonconviction data" may not be copied by the public, but may be inspected without copying if it is not subject to any PRA disclosure exemption. *Bainbridge Island Police Guild v. City of Puyallup* (2011).

Additionally, the subject of the records can inspect and review the records and can obtain a copy of personal nonconviction data if the criminal justice agency has verified the person's identity. [RCW 10.97.080](#). This statute provides that the PRA must not be construed to allow any other copying of nonconviction data.

The Court of Appeals found an agency violated the PRA by denying an inmate copies of that inmate's FBI and Washington State Patrol "rap sheets." *Adams v. Department of Corrections* (2015). Denial to the inmate, the subject of the record, was not supported by [RCW 10.97.050](#) and federal law including 28 U.S.C. § 534 and the agency erred in relying on its agreements with law enforcement agencies and past practices.

5.Video and Sound Recordings: [RCW 9.73.090](#), [RCW 42.56.240\(14\)](#)

In *Fisher Broadcasting Co. v. Seattle* (2014), the Washington Supreme Court found [RCW 9.73.090\(1\)\(c\)](#) to be an "other statute" which temporarily exempts some dashboard camera recordings from production. The Court held that the law prohibited duplication of sound or video recordings until final resolution of any criminal or civil litigation arising from the recorded events.

In 2016, the Legislature acted to address the multiple issues arising out of the use of and the disclosure of the recordings of body worn cameras by law enforcement and correction agencies in [RCW 42.56.240\(14\)](#). For those agencies that have started a body camera program as of June 9, 2016, recordings are exempt from production under the PRA if nondisclosure is essential to protect any person's right to privacy. If an agency has not deployed a body camera program by June 9, 2016, the new body camera exemption cannot be used.

Recordings are presumed to be highly offensive if they depict:

- Medical or counseling facilities where patients are treated or health care information is shared
- Health care information protected by state or federal laws
- Interiors of residences
- Intimate images
- Minors
- Bodies of deceased individuals
- Communications from and identifies of witnesses or victims of domestic violence or sexual assault
- Location of domestic violence programs or emergency shelters.

Note that, even if a recording is presumed to be highly offensive, the agency must still meet the second prong of the privacy test and show that the recording is not of legitimate concern to the public.

Public records requests for these recordings must:

- Identify the name of an individual involved in the incident
- Give the incident or case number
- State the date, time and location of the incident or
- Identify a law enforcement or correction officer involved in the incident.

Requesters must pay for the costs of redacting or obscuring the recording as needed to apply exemptions, with exceptions for persons involved in the incident, their attorneys, or where the recording is relevant to a criminal case or claim of denial of civil rights or if the request is made by certain Washington state commissions. Recoverable costs include time spent redacting but agencies must use the least costly available technology to the extent reasonable and possible. Requesters who sue a law enforcement agency under the PRA cannot receive fees, costs or penalties unless the agency acted in bad faith or with gross negligence.

6. Jail Register: [RCW 70.48.100](#)

The register containing the names of persons confined in jail, the reason for confinement, and dates of confinement, is open to the public, but other records of a person confined in jail are confidential. These records are to be made available only to criminal justice agencies or the courts, for

inspections, in jail certification proceedings, to certain listed agencies for research, to government agencies to determine eligibility for and to provide medical treatment or veterans' services, or with the written permission of the confined individual. Booking photographs of an arrested person or person confined in jail, while confidential, may be used by law enforcement to assist in investigating crimes. [RCW 70.48.100\(3\)](#); *Cowles Publ'g Co. v. Spokane Police Dep't* (1999).

7. Miscellaneous Law Enforcement-Related Exemptions

- a. Concealed pistol licenses: [RCW 42.56.240\(4\)](#)
- b. Statewide, local or regional gang database: [RCW 42.56.240\(6\)](#)
- c. Electronic sales tracking system for ephedrine and related products: [RCW 42.56.240\(7\)](#)
- d. Security alarm system and vacation crime watch program participants: [RCW 42.56.240\(9\)](#)
- e. Felony firearm conviction database: [RCW 42.56.240\(10\)](#)
- f. Security threat group information at DOC: [RCW 42.56.240\(12\)](#)
- g. Global positioning data showing location of residence of criminal justice agency employees and workers: [RCW 42.56.240\(13\)](#)
- h. Data and records in the statewide sexual assault kit tracking system: [RCW 42.56.240\(15\)](#)

E. Certain Business-Related Information is Exempt

1. Real Estate Appraisals and Certain Other Real Estate Lease or Purchase Records: [RCW 42.56.260](#)

Real estate appraisals for or by an agency to buy or sell real property are exempt under the PRA for no more than three years. Also exempt are: documents prepared for considering the selection of a site when public knowledge would cause a likelihood of increased price, and documents prepared for considering the minimum price for sale or lease of real estate when public knowledge would cause a likelihood of decreased price, unless disclosure is mandated under another statute, or certain other actions with respect to the property have occurred.

2. Research, Intellectual Property, and Proprietary Information; [RCW 42.56.270](#), Other Laws

a. Valuable Formula, Designs, Drawings, Research: [RCW 42.56.270\(1\)](#)

As a general provision applying to any agency, this statute protects “valuable formulae, designs, drawings, and research” data for five years after obtained by the agency. However, withholding the records is permitted only if disclosure would “produce private gain and public loss.” The purpose of this exemption is to prevent the taking of potentially valuable intellectual property held by an agency. *Progressive Animal Welfare Soc'y v. University of Wash.* (1994) (*PAWS II*).

Valuable formula or research data may include, for example, material in an unfunded grant proposal, including raw data and guiding hypotheses that structure data (*id.*), and a cash flow analysis prepared by a consultant to assist an agency to negotiate lease rates for potential developers of agency properties. *Servais v. Port of Bellingham* (1995). In *Servais*, the court held the cash flow analysis to be exempt because private developers would benefit by insight into the port's negotiating position to the detriment of the public if the record was disclosed.

Research data, which is not limited to scientific or technical information, means facts and information collected for a specific purpose and derived from close study or from scholarly or scientific investigation or inquiry. This information is exempt from production under the PRA, if the disclosure would result in private gain and public loss. *Id.*, see also *Evergreen Freedom Fdn. v. Locke* (2005) (holding that release of designs needed to facilitate Boeing's 787 project would allow private parties to benefit and interfere with the agency's agreement with Boeing).

b. [Trade Secrets](#): [Ch. 19.108 RCW](#)

Intellectual and proprietary information may be exempt under the Washington [Trade Secrets](#) Act, [chapter 19.108 RCW](#). *Servais v. Port of Bellingham* (1995). This Act qualifies as an "other statute" that may exempt or prohibit disclosure under [RCW 42.56.070\(1\)](#). *Progressive Animal Welfare Soc'y v. UW* (1994) (*PAWS II*). Information submitted by a law firm in response to the request for qualifications and quotations from the Washington State Investment Board was held not to be exempt as a trade secret under [RCW 19.108.010\(4\)](#) because it was not shown to be unique, innovative or novel. Further, the fee and costs proposal was not subject to protection as financial and commercial proprietary information under [RCW 42.56.270\(1\), \(6\), or \(11\)](#). *Robbins, Geller, Rudman & Dowd, LLP v. Office of Attorney General* (2014).

c. [Copyrighted Materials](#): [17 U.S.C. § 106](#)

Agencies may need to consider federal copyright laws when providing copies of materials that are subject to copyright protection under [17 U.S.C. § 106](#). This issue may arise where private entities have copyrighted their work, such as building plans provided under contract. But there are exceptions for "fair use" of copyrighted material to allow it to be reproduced or inspected without consent of the copyright holder under [17 U.S.C. 106](#). An agency may notify the holder of the copyright of the request. [RCW 42.56.540](#). See, for example, *Lindberg v. Kitsap Cy.* (1996) for a discussion of this issue.

3. [Financial and Proprietary Information Supplied to Specific Agencies](#): [RCW 42.56.270\(2\) – \(27\)](#)

Other subsections within [RCW 42.56.270](#) apply to financial and commercial information in records submitted to agencies for specific purposes. Each exemption is worded slightly differently, and little case law interprets these exemptions. The kinds of records or agencies affected are listed below by subsection. The language of the specific subsection should be consulted for the scope of the exemption.

(2) Ferry and highway construction

- (3) Export services and projects
- (4) Economic development loans
- (5) Business and industrial development corporations
- (6) State Investment Board
- (7) Department of Labor and Industries medical aid contractors
- (8) Clean Washington Center programs
- (9) Public stadium authority
- (10) Applications for licenses for horse racing, gambling, liquor, lottery retail, or marijuana producer, processor, or retailer (See: [Dragonslayer, Inc. v. Washington State Gambling Commission](#) (2007)).
- (11) State purchased health care
- (12) Department of Commerce siting decisions
- (13) Department of Ecology electronic product recycling program
- (14) Life Sciences Discovery Fund Authority grants
- (15) Department of Licensing special fuel license applications
- (16) Department of Natural Resources mining permit applications
- (17) Conservation district farm plans
- (18) Health sciences and services authority grants
- (19) Identifiable small business impact statements
- (20) University of Washington endowment funds
- (21) Market share data on electronic product recycling
- (22) Registration of small securities offerings
- (23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information submitted to the Department of Ecology
- (26) Financial investment information of city retirement boards
- (24) (25) & (27) Marijuana information of the Liquor and Cannabis Board (see [Chapter 2.2E7](#)).

4. Public Utilities and Transportation Records: [RCW 42.56.330](#); [RCW 42.56.335](#)

As summarized below, [RCW 42.56.330](#) provides exemptions for:

- (1) Commercial information filed with the Utilities and Transportation Commission or Attorney General – but these records may be disclosed after notice is provided to the subject and if they fail to obtain a court order to protect the records under [RCW 80.04.095](#) or [RCW 81.77.210](#);
- (2) Addresses, telephone numbers, electronic contact information and billing information for less than a billing cycle held by a public utility;
- (3) Individually identifiable records of members of a vanpool, carpool, or other ride-sharing program;
- (4) Identifying information of participants or applicants in a paratransit or other transit service operated for persons with disabilities or the elderly;
- (5) Identifying information of persons using transit passes or other fare payment media, except to an entity responsible for payment of any of the cost;
- (6) Information collected by use of motor carrier intelligent transportation system or equipment;
- (7) Identifying information of person using transponders to pay tolls; and
- (8) Identifying information of users of driver's licenses or identicards including radio frequency identification chip or similar technology for border crossing ("enhanced" licenses).

In [RCW 42.56.335](#), law enforcement is restricted from obtaining records of customers of public utility districts or city utilities unless a written statement is provided stating the customer is suspected of committing a crime and that the records would help determine whether the suspicion is true. This exemption only applies to a specific requester, namely, a law enforcement agency. It was passed in response to the decision in *In re Rosier* (1986), which limited the ability of law enforcement to engage in "fishing expeditions" through utility records while investigating marijuana growing operations. A telephone request is not sufficient. *State v. Maxwell* (1990). Voluntary production of information about power consumption does not violate the statute. *State v. Maxfield* (1994). See also *State v. Cole* (1995).

5. Agriculture and Livestock Records: [RCW 42.56.380](#); [RCW 42.56.610](#)

[RCW 42.56.380](#) exempts various kinds of commercial and proprietary information gathered by regulatory agencies for: (1) organic products; (2) fertilizers and minerals; (3) various agriculture products and livestock commissions and boards; (4) phytosanitary (plant disease) certificates; (5) – (7) marketing activities; (8) financial statements of public livestock markets; (9) herd inventory management; (10) testing for animal diseases; and (11) – (12) import information of livestock exempt under homeland security or other federal law.

In addition, [RCW 42.56.610](#) provides that records obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations about discharge elimination system permits can be disclosed only to provide meaningful information to the public, while ensuring confidentiality of business information.

6. Insurance and Financial Institution Records: [RCW 42.56.400](#)

[RCW 42.56.400](#) exempts from production records to include the following records:

- (1) Board of Industrial Insurance Appeals records related to appeals of crime victims' compensation claims;
- (2) Health Care Authority records under [RCW 41.05.026](#) transferred to another state purchased health care program, to a technical review committee created to acquire state purchased health care;
- (3) Identification of all owners or insureds received by the Insurance Commissioner under [chapter 48.102 RCW](#);
- (4), (5) and (7) - (24) Information provided to the Insurance Commissioner under various legal requirements;
- (6) Examination reports and information obtained from regulated institutions by the Department of Financial Institutions;

Various other exemptions exist in this section for records filed with the Insurance Commissioner under the various regulated programs. This section and the cited references in the subsections should be consulted for more detailed information on these exemptions.

7. Marijuana and Industrial Hemp Information: [RCW 42.56.270](#); [RCW 42.56.620](#); [RCW 42.56.625](#); [RCW 42.56.630](#)

The following information concerning the marijuana industry held by the Liquor and Cannabis Board has been categorized as exempt under the Public Records Act:

- [RCW 42.56.270\(24\)](#): Information submitted by licensees or applicants to produce, process, transport or sell marijuana that identifies financial institution, retirement account and building security plans.
- [RCW 42.56.270\(25\)](#): Information submitted for tracing of marijuana products consisting of transport information, vehicle and driver identification and account or unique access identifiers.
- [RCW 42.56.620](#) and [RCW 42.56.270\(27\)](#): Data in applications and reports by licensed marijuana researchers containing proprietary information.
- [RCW 42.56.625](#): Database records of names and personally identifiable information of medical marijuana patients and designated providers.

- [RCW 42.56.630](#): Registration information including names and locations of members of medical marijuana cooperatives.

Applications and accompanying information for licenses to grow industrial hemp as part of the research program adopted to determine the feasibility and desirability of industrial hemp production are made exempt under [RCW 15.120.050](#), adopted in 2016.

8. Business Licensing Information: [RCW 19.02.115](#)

Licensing information created or obtained by the Department of Revenue in the business licensing process is confidential, privileged and exempt under [RCW 19.02.115\(2\)](#). As with tax information addressed in [Chapter 2.2B4](#), the information is not subject to redaction and is withheld in its entirety. Exceptions apply to allow production of records to the licensee and authorized representative, provide statistical information, and sharing with other agencies and law enforcement. Information is made public on the Department of Revenue website and otherwise, identifying information not associated with protected information consisting of the name of licensee, entity type, trade name, business and mailing address, unified business identifier and list of license held with dates of opening, issuance and expiration dates.

F. Health Information Exemptions

1. Public Health and Health Professional Records: [RCW 42.56.350](#); [RCW 42.56.360](#)

[RCW 42.56.350](#) exempts from production under the PRA the following records of the Department of Health for licensed health care providers:

- (1) The federal Social Security number; and,
- (2) The residential address and telephone number if the provider requests the information be withheld and provides a business address and business telephone number unless the provider requests the information be released or as allowed by [RCW 42.56.070\(9\)](#).

[RCW 42.56.360\(1\)](#) contains numerous exemptions affecting health care providers and data collected by the Department of Health. Categories of exempt records include:

- (a) and (b) Information about drug samples, legend drugs, or nonresident pharmacies obtained by the pharmacy quality assurance commission.
- (c) Records created for or collected and maintained by a hospital quality improvement, or peer review or quality improvement committee and reports of adverse health events. See the referenced statutes for more information on what is exempt and the opinions in [Cornu-Labat v. Hospital Dist. No. 2 Grant County](#) (2013) and [Lowy v. PeaceHealth](#) (2012) for judicial interpretation of and limits on this exemption.
- (d) Proprietary financial and commercial information provided to the Department of Health with an application for an antitrust exemption sought by the entity. This subsection also contains procedures on notifying the affected entity and actions to compel disclosure.

- (e) Records of a provider obtained in an action under the impaired physician program.
- (f) Complaints filed under the Uniform Disciplinary Act for providers under [chapter 18.130 RCW](#).
- Exemptions are also provided for records collected by the Department of Health under (g) prescription monitoring program, (h) Washington Death with Dignity Act, (i) cardiac and stroke system performance, and (k) state wide health care claims data reporting in [chapter 43.371 RCW](#).
- For all public agencies, employee wellness program records except for statistics that do not identify individuals are exempted under [RCW 42.56.360\(1\)\(j\)](#).

Records of child mortality reviews by local health departments are exempted under [RCW 42.56.350\(3\)](#) and [RCW 70.05.170\(3\)](#). In 2016, an exemption was added as [RCW 42.56.360\(4\)](#) to protect records of maternal mortality reviews conducted by panels appointed by the Department of Health.

2. Health Care Records of Individuals: [RCW 42.56.360\(2\)](#); [Chapter 70.02 RCW](#); [Chapter 70.96A RCW](#); [Chapter 68.50 RCW](#); Federal Laws and Rules

In [RCW 42.56.360\(2\)](#), the PRA provides that [chapter 70.02 RCW](#) applies to the inspection and copying of health care information of individuals, incorporating that law as an “other statute” exemption to the PRA. [Chapter 70.02 RCW](#) is the state Health Care Information Act (HCIA), adopted in 1991. That law provides standards for when entities and individuals can access medical records of patients when held by providers or facilities and establishes that health care information is “personal and sensitive information” that can harm individuals if improperly disclosed. *Planned Parenthood v. Bloedow* (2015).

The HCIA mirrors in many aspects the federal HIPAA Privacy Rule, [45 C.F.R. 160 – 164](#), adopted by authority of the [Health Insurance Portability and Accountability Act \(HIPAA\)](#), [42 USC §1320d](#), which applies in all states. That law applies to government agencies that provide or pay for health care and those entities that obtain health information when doing business with covered agencies.

The HCIA establishes standards and obligations for government entities that serve as health care providers, facilities or payors to protect records and to disclose as authorized. In addition, it requires that all agencies that are not health care facilities or providers but obtain health care information under the exceptions to confidentiality in that chapter must have rules and policies for the acquisition, retention, destruction, and security of health care records, consistent with the HCIA. [RCW 70.02.290](#). Entities which receive records to provide services must not disclose records in violation of the HCIA. [RCW 70.02.270](#).

As an exception to the confidentiality of these records, [RCW 70.02.060](#) creates a process to allow disclosure of health care information, without authorization, in court proceedings. The attorney seeking access to individual health care information must give the health care provider and the patient or his or her attorney at least 14 days’ notice before service of a discovery request or compulsory process. The patient can seek a protective order to prohibit or restrict the provider from producing these records. However, the HCIA does not restrict providers, payors or insurers

from complying with obligations imposed by federal or state health care payment programs or federal or state laws. [RCW 70.02.900\(1\)](#). In addition, the HCIA does not modify disclosure under laws applying to worker's compensation, juvenile records, and chemical dependency provisions. [RCW 70.02.900\(2\)](#).

Special standards are provided in the HCIA for records of mental health treatment and services for adults and minors. [RCW 70.02.230-.260](#). Restrictions on the disclosure of records of sexually transmitted diseases are also contained in the HCIA in [RCW 70.02.220](#) and [70.02.300](#). Records of persons treated for chemical dependence issues are strictly protected by [RCW 70.96A.150](#) and by federal regulations contained at [42 C.F.R. Part 2](#).

Information in the medical marijuana authorization database containing names and other personally identifiable information of patients and providers is exempted under [RCW 42.56.625](#). Reports from autopsies or postmortems are confidential except to personal representatives, family members, attending physicians, and others involved in investigations. [RCW 68.50.105](#). However, a coroner or medical examiner is not prohibited from publicly discussing findings on deaths caused by a law enforcement or corrections officers. [RCW 68.50.105\(2\)](#). Records of child mortality reviews by local health departments are exempted under [RCW 70.05.170\(3\)](#).

G. Government Services and Benefits

1. Juvenile Offender and Child Welfare Records: [Chapter 13.50 RCW](#)

Records relating to the offenses committed by juveniles are governed by [RCW 13.50.050](#), [13.50.260](#), and [13.50.270](#). The official juvenile court file is open to the public unless sealed under [RCW 13.50.260](#). Juvenile Court judges must hold sealing hearings to address whether the records should be sealed from public inspection. Records are presumed to be sealed unless they relate to the commission of a more serious offense, a later offense is committed, or an objection is filed. If the court records are sealed, those records, along with the social file and other related records, are confidential wherever held. If any agency holds these records, it can only respond that the records are confidential and the agency can not reveal the existence of any records. [RCW 13.50.260\(6\)](#). Agencies holding such sealed records can communicate with the juvenile respondent. [RCW 13.50.260\(11\)](#).

Child welfare records are made confidential and exempted from the PRA under [RCW 13.50.100](#). The records can only be disclosed to the individuals authorized under that statute, which include the child and his or her parents, and their attorneys. In a line of cases arising under [chapter 13.50 RCW](#), appellate courts have held that, although these records meet the definition of public records under the PRA, these laws are "other statute" exemptions that exempt or prohibit disclosure. The courts determined that these statutes supplement the PRA unless they conflict, and that the process set by these statutes is the "exclusive means" of obtaining these records and for challenging any denial of records. See *Deer v. Dep't of Social & Health Servs.* (2004), and *Wright v. State* (2013).

As an exception to confidentiality of child welfare records, the Department of Social and Health Services must, under [RCW 74.13.500](#), disclose information about the abuse or neglect of a child, investigations of abuse or neglect, and services provided with regard to the abuse or neglect, if

there is a child death or near fatality as a result of the abuse or neglect or if the child was receiving services within 12 months before the death. Identifying information can be redacted from these records if determined not to be in the best interest of the child or is medical information of others under the standards in [RCW 74.13.515](#) and [.520](#).

2. Adoption Records: [Chapter 26.33 RCW](#)

Adoption records are confidential. Information that does not identify the parties can be provided to others involved in the process. [RCW 26.33.340](#). A confidential intermediary may be appointed by the court to determine if the identity can be revealed if requested by birth parents or adopted children to find each other. [RCW 26.33.343](#). Adults adopted after October 1, 1993, can receive noncertified copies of their original birth certificates unless the birth parents have filed an affidavit of nondisclosure or a contact preference form.

3. Public Assistance Records: [RCW 74.04.060](#)

In addition to the PRA exemption in [RCW 42.56.230\(1\)](#), the contents of records and communications for public assistance programs under [Title 74 RCW](#) are deemed privileged and confidential and exempted by [RCW 74.04.060\(1\)\(a\)](#). Information may be disclosed for purposes related to the administration of these programs. As a general exception to confidentiality, any person can ask whether someone is a current recipient of public assistance and receive a “yes or no” answer. Other entities receiving public assistance information to administer, regulate, or investigate the public assistance program must maintain the same degree of confidentiality. [RCW 74.04.060\(3\)](#). It is a gross misdemeanor to use a list of names for commercial or political purposes. [RCW 74.04.060\(4\)](#).

4. Child Support Records: [RCW 26.23.120](#)

Child support enforcement records are confidential and may only be released with authorization of the parties or for defined program purposes, except that information can be disclosed to the parents about each other as needed to conduct the support enforcement action. A request for address information of the other parent is subject to limitations designed to protect the safety of that parent.

5. Domestic Violence and Rape Crisis Center Records: [RCW 42.56.370](#); [RCW 26.04.175](#)

Client records held by agency domestic violence or sexual assault programs are exempt from production under the PRA by [RCW 42.56.370](#). In addition, [chapter 40.24 RCW](#) establishes an address confidentiality program at the office of the Secretary of State to protect the residential information of victims of domestic violence, sexual assault, and stalking, with this program’s records exempted from production under [RCW 40.24.070](#). Victim address information is also protected in applications for marriage licenses under [RCW 26.04.175](#).

6. Employment Security Department Records: [RCW 42.56.410](#) and [Chapter 50.13 RCW](#)

Under the PRA, records of the Department of Employment Security that are confidential under [chapter 50.13 RCW](#) remain exempt under the PRA when provided to another individual or organization for operational, research, or evaluation purposes. [RCW 42.56.410](#).

Under [RCW 50.13.020](#), information or records concerning an individual or employing unit obtained by the Department of Employment Security pursuant to the administration of its unemployment compensation program are private and confidential. [Chapter 50.13 RCW](#) contains exceptions to that confidentiality for various purposes. Individuals and employers have access to their own information and those related to the awarding of benefits. [RCW 50.13.040](#). Decisions entered by the commissioner appeal process are public. [RCW 50.13.050](#). Other government agencies that obtain records due to their need for official purposes must maintain the confidentiality of the records received. [RCW 50.13.060](#).

7. Workers' Compensation Records: [Title 51 RCW](#)

Several laws make various records in the industrial insurance program exempt. Records about individual claims resolution structural settlement agreements provided to the Board of Industrial Insurance Appeals are exempt under [RCW 51.04.063](#) and in the PRA under [RCW 42.56.230\(8\)](#). Information obtained from employers records by the Department of Labor and Industries is exempt under [RCW 51.16.070\(2\)](#). Claim files of workers are exempt by [RCW 51.28.070](#). For health care providers involved in workers compensation cases, records of audits are exempt under [RCW 51.36.110](#) and their proprietary information is exempt under [RCW 51.36.120](#). Records of crime victims' compensation claimants held by the Department of Labor and Industries are also confidential under [RCW 7.68.140](#).

8. Educational Records: [RCW 42.56.230](#); Other Laws and Rules

Exemptions for some student information are found in [RCW 42.56.230\(1\)](#), the child program exemption in [RCW 42.56.230\(2\)](#), and [the Federal Education Rights and Privacy Act \(FERPA, 20 U.S.C. § 1232g\)](#). [RCW 42.56.320](#) also applies in this area to exempt: (1) financial disclosures by private vocational schools; (2) financial and commercial information relating to purchase and sale of tuition units; (3) identifiable information received for research or evaluation by the workforce training and education coordinating board; (4) nonpublic records received relating to gifts and grants; and (5) annual declarations of intent by parents who home-school children. Student education records may also be addressed in other laws, for example, records of students in common schools are also addressed in Title 28A RCW. See, for example, [RCW 28A.605.030](#) (parental or guardian access to records).

9. Library Records: [RCW 42.56.310](#)

The PRA in [RCW 42.56.310](#) protects from disclosure library records kept to track use of libraries and their resources and that identify or could be used to identify a library user.

H. Miscellaneous Exemptions

1. Emergency or Transitional Housing: [RCW 42.56.390](#)

2. Traffic Accident Reports: [RCW 46.52.080](#)

3. Communications Made to a Public Officer in Official Confidence, When the Public Interest Would Suffer by Disclosure: [RCW 5.60.060\(5\)](#)

4. Timeshare and Condominium Owners Lists: [RCW 42.56.340](#)
5. Archaeological Sites: [RCW 42.56.300](#)
6. Fish and Wildlife: [RCW 42.56.430](#)
7. Veterans' Discharge Papers: [RCW 42.56.440](#)
8. Check Cashers and Sellers Licensing Applications: [RCW 42.56.450](#)
9. Fireworks: [RCW 42.56.460](#)
10. Enumeration Data used by the Office of Financial Management for Population Estimates: [RCW 42.56.615](#)
11. Correctional Industry Workers: [RCW 42.56.470](#)