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Re: Proposed Legislation Consult

Gentlemen:

I have been asked to review a proposed amendment to RCW 42.56.070 and present my views on whether the proposed language: (1) is consistent with the intent of that statute and RCW 42.56.250, the latter statute enacted by the Legislature in 2005, exempting from public inspection and copying certain information personal to public employees; and (2) strikes the proper balance between disclosure and privacy in this new age of “big data”.

After having reviewed the aforementioned statutes, I am satisfied that the proposed amendment is consistent with what appears to have been the Legislature’s underlying intent to preclude persons and organizations from acquiring personal information, such as residence addresses and telephone numbers, of public employees. Although a requester of records is entitled to obtain records from a public agency that list the names of employees, the position the named person has at the agency, and their salary, it seems readily apparent that the Legislature was of the view that the public’s interest in obtaining personal information, which may be contained in personnel records, is far outweighed by the employee’s right to privacy.

An obvious deficiency in the current statutory regime, though, is the absence of any mechanism to inhibit a record requester from using non-exempt information (an employee’s name) to obtain personal information (residence or personal email address) that is exempt from disclosure. The proposed amendment addresses this problem by providing a means by which an aggrieved party may, through the exercise of self help, seek a court imposed penalty on an individual or organization that uses non-exempt information to obtain exempt information. The proposed provision is, in my judgment, entirely consistent with the letter and spirit of the current statutes.

Although the proposed amendment would, if adopted, revise RCW 42.56.070, one could reasonably advance the notion that it fits better as an amendment to RCW 42.56.250. I say that because it is that statute which sets forth the exemptions from public inspection for personal information. It might, therefore, make sense to add the following language to RCW 42.56.250(3): “No party obtaining the identity of employees or volunteers from a public records request to any agency may use that information for the purpose of obtaining information that is exempted under this provision, and in any suit brought regarding such a use, an aggrieved party

shall also recover \$500 for each item of exempt information obtained thereby, plus costs and reasonable attorney fees.” In fairness to requesters it would be helpful to add the following additional language: “Before obtaining the identity of employees or volunteers from any agency, the requester shall swear under oath never to use the identity of employees or volunteers for the purpose of obtaining information that is exempted under this provision or for commercial purposes.

If you have any questions, do not hesitate to contact me.

Yours very truly,

BEAN, GENTRY, WHEELER & PETERNELL, PLLC

A handwritten signature in cursive script, appearing to read "Gerry E. Alexander".

Gerry E. Alexander
Of Counsel

GLA:slc