

OSPI COMMON EXEMPTIONS CITED WITH THE RELEASE OF PUBLIC RECORDS

Type of Item	RCW
Teacher Information - privacy	
<ul style="list-style-type: none"> • Home address of teacher 	42.56.050(1)(2); 42.56.230(2); 42.56.250(3)
<ul style="list-style-type: none"> • Personal e-mail address of teacher 	
<ul style="list-style-type: none"> • Personal home phone number of teacher 	
<ul style="list-style-type: none"> • Personal cell phone of teacher 	
<ul style="list-style-type: none"> • SSN of teacher 	42.56.050(1)(2); 42.56.250(3); 42.56.230(3); 26.23.150
<ul style="list-style-type: none"> • Drivers License Number 	42.56.050(1)(2); 42.56.210(2); 42.56.230(2)(5); Title 18, Part1, Chapter 123

Student information – privacy/identifiable	
<ul style="list-style-type: none"> • Student name (first/last if needed to protect identify) 	42.56.050(1)(2); 42.56.230(1); FERPA 20 U.S.C. 1232g
<ul style="list-style-type: none"> • Name of student's parent, if the same 	
<ul style="list-style-type: none"> • Student/parent home address 	
<ul style="list-style-type: none"> • Student/parent home phone number 	
<ul style="list-style-type: none"> • Student/parent personal cell 	
<ul style="list-style-type: none"> • DOB (Redact the year only. MM/DD would be redacted only if to protect identify. 	
<ul style="list-style-type: none"> • Other identifiers – see notes below 	

Public Employee, Appointees, Elected Officials-privacy	
<ul style="list-style-type: none"> • SSN 	42.56.050 (1)(2); 42.56.230(3); 26.23.150; 42.56.250(3)
<ul style="list-style-type: none"> • Personnel number 	
<ul style="list-style-type: none"> • Home address of public employee 	
<ul style="list-style-type: none"> • Home phone number or 	42.56.050(1)(2); 42.56.210(2); 26.23.150; 42.56.250(3)
<ul style="list-style-type: none"> • Personal cell number of public employee 	
<ul style="list-style-type: none"> • Routine evaluation 	Contact public disclosure office
<ul style="list-style-type: none"> • Resumes (including all other related materials submitted with respect to an applicant) ** All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant. (<u>This does not include proposals and/or contractors</u>) 	42.56.250(2)
<ul style="list-style-type: none"> • Employment Applications including names of applicants 	

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Miscellaneous	
<ul style="list-style-type: none"> The general public's information (unknown or known) 	Not Exempt from disclosure
<ul style="list-style-type: none"> Medical Records 	42.56.230(1)(2); 70.02.005(1)(2) 70.02.005(1)
<ul style="list-style-type: none"> Draft documents, notes or inter-agency memos when not publicly cited in policy or agency action; Recommendations and intra-agency memorandums. Once document is finalized or made publically available, drafts must be disclosed 	42.56.280
<ul style="list-style-type: none"> Sexually explicit material (including photographs stored on computer) 	42.56.050(1)(2); 42.56.230(2)
<ul style="list-style-type: none"> Third Party – seek injunction against disclosure – see notes below 	42.56.540
<ul style="list-style-type: none"> Valuable formulae; Trade Secret Exemptions; 	42.56.270(1)(7)(11)
<ul style="list-style-type: none"> Copyright 	See notes below
<ul style="list-style-type: none"> Prohibit use of directory lists for commercial purposes 	42.56.070(9); WAC 392-105-055
<ul style="list-style-type: none"> Test Questions and Score Sheets 	42.56.250(1)
<ul style="list-style-type: none"> IT Password/data security 	42.56.420
<ul style="list-style-type: none"> Drivers License 	42.56.210(2); 42.56.230(5); WAC308-10-050; 18 U.S.C. §§ 2725(3)
<ul style="list-style-type: none"> Credit card 	42.56.230(4)
<ul style="list-style-type: none"> Agency not required to “create” a record that does not exist to respond to a public records request- See notes below and/or contact Public Disclosure Office. 	WAC 44-14-0400(3)(5) and <i>Smith v. Okanogan County</i> , 100 Wash. App. 7, 12, 994 P.2d 857 (2000), for the proposition that the law does not require an agency to create a non-existent record in response to a public records request.
<ul style="list-style-type: none"> SSN 	26.23.150; 42.56.230(6)
<ul style="list-style-type: none"> Taxpayer information 	42.56.230(3); 42 U.S.C. 405 (c)(2)(vii)(1)
<ul style="list-style-type: none"> Emergency Contact 	42.56.250(3)
<ul style="list-style-type: none"> Fingerprint Results 	42.56.050(1)(2); 42.56.210(2); Title 28, Code of Federal Regulations (CRF), Section 50.12
<ul style="list-style-type: none"> Security (plans, drawings, response) 	42.56.420(2)
<ul style="list-style-type: none"> Safe School Plans 	42.56.420(3)
<ul style="list-style-type: none"> Computer/Networks/Telecommunication 	42.56.420(4)
<ul style="list-style-type: none"> OSPI must protect records from destruction 	42.56.100
<ul style="list-style-type: none"> Unsubstantiated allegations (sexual) not when associated with position/job *** new ruling that unsubstantiated must be disclosed when associated with position/job 	Bellevue John Does 1-11 v. Bellevue School District No. 405 Wn. 2d (July 2008) <i>Bainbridge Island Police Guild v. City of Puyallup</i> (2011) - Supreme Court
<ul style="list-style-type: none"> Filed w/OSPI – intent for child to receive home-based instruction 	28A.200.010; 42.56.320
<ul style="list-style-type: none"> Student data count – less than 10 	28A.655.090(7)

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Attorney/Client – legal issues	
<ul style="list-style-type: none"> Attorney/Client Privilege 	<i>Hangartner v. City of Seattle</i> , 151 Wash.2d 439, 90 P.3d 26 (2004)
<ul style="list-style-type: none"> Relevant to a controversy if not available to other party under rules of discovery... – see below 	42.56.290
<ul style="list-style-type: none"> Creation & scope of privilege 	5.60.060
Investigative	
<ul style="list-style-type: none"> Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy; 	42.560.240 (1)
<ul style="list-style-type: none"> Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, <u>if disclosure would endanger any person's life, physical safety, or property.</u> – See entire RCW 	42.56.240(2)
<ul style="list-style-type: none"> Information revealing the identity of child victims of sexual assault who are under age eighteen. 	42.56.240(5)
<ul style="list-style-type: none"> Privacy of criminal records, including criminal history information on arrests, detention, indictment, information or other formal criminal charges made after 12/31/77 <u>unless dispositions are included.</u> 	10.97
<ul style="list-style-type: none"> Non-Conviction information (only the identifying information of the non-convicted can be redacted from copies of police reports. See OPP 	10.97.080 *** <i>Bainbridge Island Police Guild v. City of Puyallup</i> (2011) – unredacted reports must still be available for inspection (subject to other possible exemptions (clarifies/overrules, in part, <i>Hudgens v. City of Renton</i> , 49 Wn. App. 842 (1987)
<ul style="list-style-type: none"> Sexually explicit material (including photographs stored on computer) 	42.56.050(1)(2)

Additional links and information:

No need for agency to create record when one does not exist: WAC 44-14-0400(3)(5) *Smith v. Okanogan County*, 100 Wn. App 7,14,994 P.2d 857 (2001) (Be mindful of data. Each entry is a record and does exist. You need to provide the data in whatever format it is in or easiest for all).

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Fees/Charges (RCW 42.56.120):

- No fee for inspection at agency or staff time to locate or redact records.
- \$.15 per impression (2 sided the same cost). Program choice to waive cost for first 100 pages.**
- No fee for electronic delivery – e-mail or CD. OSPI may charge for CD costs/ mailing costs.**
- OSPI may require a 10% deposit prior to copying and the remainder due prior to sending or receiving records.
- If agency makes records available on a partial or installment basis, agency may charge for each part of the request as provided.
- If an installment of records is not claimed or reviewed, agency is not obligated to fulfill balance of request. Agency must send 30 day notice of closing of request.

** It is expensive to process an invoice. See Public Disclosure Office for more information.

42.56.050(1)(2) A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: **(1)** Would be highly offensive to a reasonable person and **(2)** is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records. ****This is not a stand-alone exemption and must be paired with a court case and/or another statute.**

42.56.070(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes,... PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefore: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter **34.05** RCW, the Administrative Procedure Act.

42.56.230(5) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

42.56.250(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

42.56.250 (2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant (This does not include employee files held in HR)** new court cases on "executive level/management" job opportunities/applicants. See Public Disclosure Office.

42.56.250(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment

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related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

42.56.540 Third party affected notification. It is the OSPI procedure to notify in writing all persons/companies who may be affected by disclosure of records (i.e. vendor proposals, personnel files, investigative records, etc.). OSPI considers it appropriate to give the third party or another agency an opportunity to seek a court injunction prohibiting OSPI from disclosing all or part of the records. The affected party will have 14 calendar days to seek a temporary restraining order (TRO). (The RCW states that the injunction is sought in superior court of the county where the records are held or Thurston county if out of state.)

42.56.210(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

***** FERPA – Juvenile names and any identifying information is required pursuant to the Family Education Rights and Privacy Act (20. U.S.C. 123g). Each instance of redaction should be marked “for the protection of personal (student/juvenile) privacy.”**

*****Student/other identifiers** –When used these are used alone or in conjunction with other public information. Note reason to redact as “identifiable factor/privacy.”

- Student and/or others initials are not redacted unless it would lead to the identification of a student/juvenile.
- Date of Birth is not redacted unless it would lead to identification. At that point, leave off the year and disclosure month/date.
- Ethnicity/disability/gender – is not redacted unless a student could be identified.

***** Student's/ Minors – investigative files:** Redactions/exemptions are handled using the age the person was when the incident occurred. Example: If a student victim was 17, OSPI would redact the personally identifiable and that of any other minors from at that time.

*****Student Count – data files:** Results less than 10 (FERPA) will not be shown.

***** Citizen's** name and contact information cannot be redacted.

***** Copy right material:** An agency may hold records that are copyrighted or are otherwise the intellectual property of a third party. It is a case by case situation based on “fair use” as to whether we allow copying. (Viewing is permissible in most cases.) Downloading, copying, duplicating and distributing software, music, sound files, movies, images or other copyrighted materials without the specific written permission of the copyright owner is generally prohibited. However, the duplication and distribution of materials for educational purposes are permitted when such duplication and distribution fall within the Fair Use Doctrine of the United States Copyright Law (Title 17, USC) and content is cited appropriately.

EXEMPTION LOG REQUIRED: The exemptions outlined above are only a sampling of possible information that may be withheld under the Revised Code of Washington. If information is withheld from a request, OSPI must provide a log detailing what information was removed, why it is exempt, and include the citation of the RCW allowing exemption. The most recent version of the log is available on the Public Disclosure intranet site or through contacting the Public Disclosure Office at (360) 725-6372.