No. _____

IN THE

Supreme Court of the United States

JOHN DOES 1, 2, 4, AND 5,
Applicants,

v.

SEATTLE POLICE DEPARTMENT AND SAM SUEOKA,
Respondents.

Orders of the Lower Courts

Appended hereto are the four Orders and opinions of the lower courts.

April 10, 2025

/s/ Joel B. Ard
Joel B. Ard

Table of Contents

THE SUPREME COURT OF WASHINGTON

JOHN DOES 1, 2, 4, and 5,

Respondents,

JANE DOE 1 and JOHN DOE 3,

Plaintiffs,

v.

SEATTLE POLICE DEPARTMENT and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

Cross-Petitioners,

and

SAM SUEOKA,

Petitioner,

JEROME DRESCHER, ANNE BLOCK, and CHRISTI LANDES,

Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

No. 102182-8

The Court considered the Respondents' "DOE OFFICERS' 1, 2, 4 AND 5 MOTION FOR RECONSIDERATION".

It is hereby

ORDERED:

That the motion for reconsideration is denied.

DATED at Olympia, Washington this 9th day of April, 2025.

For the Court

CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4, and 5, Respondents, JANE DOE 1 and JOHN DOE 3, Plaintiffs, v. SEATTLE POLICE DEPARTMENT and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY, Cross-Petitioners, and SAM SUEOKA, Petitioner, JEROME DRESCHER, ANNE BLOCK, and CHRISTI LANDES, Defendants.	No. 102182-8 EN BANC Filed: February 13, 2023

MONTOYA-LEWIS, J.— The Public Records Act (PRA)[1] "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*,

[1] Ch. 42.56 RCW.

90 Wn.2d 123, 127, 580 P.2d 246 (1978). Enacted by initiative in 1972, the PRA reflects the policy of Washington State that full public access to information about government conduct is critical to "the sound governance of a free society." LAWS OF 1973, ch. 1, §1(11); *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 33, 769 P.2d 283 (1989). This case involves requests for public records regarding the actions of public employees at a public event: Seattle Police Department (SPD) officers who attended a rally in Washington, DC, referred to as "the January 6th rally." The strong presumption for the release of public records is not without limits, and this case exists at the junction between the PRA, the public's right to governmental records, and the SPD officers' interests.

The PRA exempts some public records from disclosure, balancing the imperative that the people remain informed against narrow privacy rights or government interests that may, at times, outweigh the PRA's broad policy in favor of disclosure. RCW 42.56.030; *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 432, 327 P.3d 600 (2013). It also provides mechanisms for agencies to withhold exempt public records and for the subjects of those records to raise objections to release on the basis of those exemptions. *E.g.*, RCW 42.56.070(1), .080(2), .540. However, PRA exemptions "are '*narrowly tailored to specific situations* in which privacy rights or vital governmental interests require

protection.'" *City of Lakewood v. Koenig*, 182 Wn.2d 87, 93, 343 P.3d 335 (2014) (quoting *Resident Action Council*, 177 Wn.2d at 434); *see also* RCW 42.56.030 ("This chapter shall be liberally construed and its exemptions narrowly construed.").

Here, several members of the public made records requests to the SPD regarding police officers who were present in Washington, DC, on January 6, 2021, and their activities there that day. The officers anonymously sued SPD, the Office of Police Accountability (OPA), and the requestors to prevent the release of their identities within those public records. The officers sought a preliminary injunction, arguing their identities should be exempt from disclosure based on statutory and constitutional privacy rights. However, the requested records relate to their activities at a highly publicized and public event. On this limited record, it appears that the officers have not demonstrated a likely privacy interest in such information under either theory, so they have not shown a likelihood of success on the merits that the information falls under any exemption to the release of public records under the PRA. However, the trial court proceedings occurred without clear guidance from this court on these issues, so we provide that guidance here. It appears that the trial court did not err in denying the preliminary injunction, but we remand for further proceedings based on this opinion. For similar reasons, the officers have not shown a need to proceed anonymously under pseudonym. We reverse the Court of Appeals.

FACTUAL BACKGROUND

This case involves requests for public records regarding public employees' involvement in events that took place in Washington, DC, on January 6, 2021, relating to the results of the 2020 presidential election. We provide the historical context here.

Joseph R. Biden was elected President of the United States in November 2020, receiving the majority of both the popular and electoral vote. Clerk's Papers (CP) at 534; *see also* U.S. FED. ELECTION COMM'N, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE, AND THE U.S. HOUSE OF REPRESENTATIVES 5-7 (2022).[2] After then president Donald J. Trump lost the election, he did not concede but, instead, disputed the election results, repeatedly claiming to news outlets and on social media the election was "stolen" from him. CP at 534-35; *see also* H.R. REP. NO. 117-663, at 5, 195-231 (2022) (SELECT COMMITTEE FINAL REPORT).[3] As the time for Congress to certify the Electoral College results (as required by law) on January 6, 2021 approached, Trump planned a rally in Washington, DC—dubbed "Stop the Steal" and "Save America Rally"—

[2] https://www.fec.gov/resources/cms-content/documents/federalelections2020.pdf [https://perma.cc/59V2-3WKV]

[3] https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf [https://perma.cc/3DZ7-C7V6]

which he promised his supporters would be "'wild.'" CP at 535 (quoting Dan Barry & Sheera Frenkel, *'Be There. Will Be Wild!': Trump All but Circled the Date*, N.Y. TIMES (Jan. 6, 2021)[4]); *see also* SELECT COMMITTEE FINAL REPORT at 55. Members of extremist groups, such as the Proud Boys, Oath Keepers, and Three Percenters, heard this call to action and shared on social media their intent to attend the rally and to overturn the election. CP at 537; SELECT COMMITTEE FINAL REPORT at 55-60.

Approximately 45,000 people from around the country gathered at Trump's rally at the National Mall on January 6, 2021, where he reiterated his claims that the election was "stolen" and urged that Congress should not finalize Biden's presidential victory by certifying the election. CP at 535; *see also, e.g.*, SELECT COMMITTEE FINAL REPORT at 71; *Transcript of Trump's Speech at Rally before U.S. Capitol Riot*, ASSOCIATED PRESS (Jan. 13, 2021, 6:11 PM).[5] Trump encouraged everyone at the rally to march to the Capitol building to confront Congress. CP at 535-36 (citing Julia Jacobo, *This Is What Trump Told Supporters before Many*

[4] https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html
[5] https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27

Stormed Capitol Hill, ABC NEWS (Jan. 7, 2021, 10:03 AM)[6]); *see also, e.g.*, SELECT COMMITTEE FINAL REPORT at 231-33, 499-502.

Thousands of demonstrators did so. CP at 536; *see also, e.g.*, SELECT COMMITTEE FINAL REPORT at 637-50. Though they first gathered in front of fenced off areas following the rally, a group of demonstrators soon breached the outermost barriers to the Capitol grounds and, over the next few hours, broke into the Capitol building in an increasingly violent mob that law enforcement declared a "riot." CP at 536 (citing Lauren Leatherby et al., *Visual Investigations: How a Presidential Rally Turned into a Capitol Rampage*, N.Y. TIMES (Jan. 12, 2021)[7]); *see also, e.g.*, SELECT COMMITTEE FINAL REPORT at 50-66, 77-78.

In the aftermath, the FBI issued a public call for tips and digital media to help identify those involved in the riot. CP at 537 (citing Tom Jackman, *FBI Appeals for Information from Public on Capitol Rioters*, WASH. POST (Jan. 7, 2021, 12:40 AM)[8]). More than 1000 people have been charged with crimes for their actions that day, ranging from seditious conspiracy to trespass and assault. *E.g.*, *id.* (citing Clare Hymes et al., *What We Know about the "Unprecedented" Capitol Riot*

[6] https://abcnews.go.com/Politics/trump-told-supporters-stormed-capitol-hill/story?id=75110558 [https://perma.cc/Z5GW-Y7JQ]
[7] https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html
[8] https://www.washingtonpost.com/dc-md-va/2021/01/06/dc-protests-trump-rally-live-updates/#link-2U3TQIWLN5BTLMYGPJ6AFD3SRQ

Arrests, CBS NEWS (Aug. 11, 2021, 6:36 PM)[9]); SELECT COMMITTEE FINAL REPORT at 56; *The Jan. 6 Attack: The Cases behind the Biggest Criminal Investigation in U.S. History*, NAT'L PUB. RADIO (Feb. 9, 2021, last updated Oct. 4, 2024, 9:47 PM).[10] Many of those charged with crimes or otherwise known to have participated in the riot are affiliated with white supremacist, antigovernment, and other extremist groups and militias. *E.g.*, CP at 537; SELECT COMMITTEE FINAL REPORT at 66, 507-16, 519-21, 653-55.

Some of the people who participated in these events worked as active law enforcement officers. CP at 537. At least 29 current and former police officers attended the rally, with some proceeding to the Capitol. *E.g.*, Hymes et al., *supra;* Kimberly Kindy et al., *Off-Duty Police Were Part of the Capitol Mob. Now Police Are Turning in Their Own*, WASH. POST (Jan. 16, 2021);[11] Eric Westervelt, *Off-Duty Police Officers Investigated, Charged with Participating in Capitol Riot*, NPR (Jan. 15, 2021, 1:07 PM).[12] At least 15 of those arrested were either former or active law enforcement officers. *E.g.*, CP at 537; Hymes et al., *supra*.

[9] https://www.cbsnews.com/news/us-capitol-riot-arrests-latest/ [https://perma.cc/5Q34-9KZX]

[10] https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories

[11] https://www.washingtonpost.com/politics/police-trump-capitol-mob/2021/01/16/160ace1e-567d-11eb-a08b-f1381ef3d207_story.html

[12] https://www.npr.org/2021/01/15/956896923/police-officers-across-nation-face-federal-charges-for-involvement-in-capitol-riot

SPD learned that two SPD officers had posted photographs of themselves at the demonstration in Washington, DC, on Facebook on January 7, 2021. This prompted OPA to investigate whether any SPD officers violated the law or SPD policies by their actions on January 6th. Four additional SPD officers later self-reported to OPA that they attended portions of the demonstration, and OPA investigated all six officers.

In January and February 2021, SPD received several requests for public records related to any SPD officers who participated in the events in Washington, DC, on January 6th. The city did not identify any clearly applicable exemption requiring redaction of any information. SPD notified the six officers that it intended to produce public records including their names in response to the requests.

PROCEDURAL HISTORY

The six officers filed suit in King County Superior Court against SPD, OPA, and the requestors to prevent the production of the public records. In the complaint, the officers alleged the requested records fall under PRA exemptions for investigative records or private personal information of public employees. CP at 7-12 (citing RCW 42.56.240(1); former RCW 42.56.250(6) (2020), *recodified as* RCW 42.56.250(1)(f) (LAWS OF 2023, ch. 458, § 1); RCW 42.56.230(3)). They also

asserted disclosure would violate their constitutional rights because the records relate to constitutionally protected activities under the First Amendment. U.S. CONST. amend. I. The officers requested injunctive relief under RCW 42.56.540 and declaratory judgment that the information "is exempt from disclosure under the PRA." *Id*. at 14-15.

The superior court granted the SPD officers' motion for a temporary restraining order (TRO) enjoining the city from producing responsive records and granted their motion to proceed in pseudonym as Jane and John Does 1-6.

The officers then filed their first motion for a preliminary injunction, which the court denied. The TRO was extended and the release of the records stayed to permit the officers to seek an emergency appeal.

1. The First Appeal and the OPA Findings

The officers appealed the denial of the first motion for preliminary injunction, and the appeal was transferred to this court as *Does 1-6 v. Seattle Police Department*, No. 99901-5 (*Does* I). At that time, the officers primarily argued the records should not be released while OPA's investigation was ongoing.

But on June 28, 2021, OPA concluded its investigation and publicly released its closed case summary detailing its findings. OPA had consulted federal law enforcement officials and reviewed video and photographic evidence collected by

federal law enforcement. OPA also interviewed each of the six officers and asked to review their e-mails, receipts, text messages, and photographs. One officer claimed he may have texted people on January 6th, but he deleted his texts daily. Two officers provided photographs, which OPA found were largely irrelevant. One officer refused to provide any documents to OPA.

Without identifying any of the officers by name, the OPA report found that all six officers attended Trump's rally together on the morning of January 6, 2021, and two of the officers went on to trespass on the grounds of the U.S. Capitol.

OPA concluded that the allegations of misconduct were sustained as to the two police officers who trespassed at the Capitol. Those officers went to the Capitol after the rally and were caught on camera in restricted areas of the grounds, outside of the buildings. OPA concluded those officers violated the law, engaged in unprofessional behavior that undermined public trust in the SPD, and failed to report their misconduct of criminally trespassing. They were subsequently terminated.

As to the other four officers who attended the rally with them, OPA found the allegations of misconduct were not sustained and were labeled either unfounded or inconclusive. For three officers, OPA found no evidence they committed illegal acts. They traveled to Washington, DC, and attended the rally, but they denied going to the Capitol afterward and denied association with anyone involved in the violence

there; other evidence corroborated their claims that they had gone to a restaurant and then to their hotel after the rally, during the time of the riot.

For one officer, OPA's findings were inconclusive because he went to the vicinity of the Capitol after the rally and may have entered a restricted area on the grounds like the first two officers, but no evidence confirmed or disproved that he trespassed.

OPA did not recommend finding those four officers violated SPD standards of professionalism because their attendance at the rally, "absent any acts on their part that were illegal," was protected by the Constitution and would not be cause for adverse employment action. CP at 552.

These findings were all made public in OPA's closed case summary in June 2021, while the officers' first appeal in *Does* I was pending. This court determined review of the first denied preliminary injunction was moot in light of the changed circumstances of the release of the OPA report. *Id*. at 561 (Ord. Dismissing Rev., *Does* I, No. 99901-5, at 1 (Wash. Nov. 17, 2021)). We dismissed the case and remanded to the trial court for further proceedings. *Id.* The superior court extended the TRO until the motion for preliminary injunction would be decided.

2. The Instant Motions and Rulings

Back in superior court, PRA requestor Sam Sueoka moved to change the case title and bar the use of pseudonyms. He also sought leave to file several exhibits he believes should be part of the public court file (the "disputed exhibits"), which, he argues, show that the officers who attended the January 6th events have been publicly identified online and have not received the kind of harassment they expected. CP at 454, 469; CP (Sealed) at 1625-72 (ex. 16-22, 24).

Respondents/plaintiffs John Does 1, 2, 4, and 5 are the four officers who attended the rally but whose misconduct allegations were not sustained by OPD.[13] Also, four SPD officers identified as John Does 7-10 attempted to intervene to oppose Sueoka's motion to file the disputed exhibits unsealed; they claimed to be the officers identified in the disputed exhibits. CP at 1245-56. Does 7-10 were represented by different attorneys from Does 1, 2, 4, and 5, and counsel claimed they did not know if they represent the same people. 2 Rep. of Proc. (RP) (Jan. 28, 2022) at 78-84. The court denied the motion to intervene without prejudice because it is possible the intervenors are already parties to the case, and a party cannot intervene

[13] The two officers about whom the allegations of misconduct were sustained, Jane Doe and John Doe 3, have been terminated from SPD and are no longer part of this appeal.

in a case where they are already a plaintiff. *Id*. at 84-85; CP at 1441. The disputed exhibits were filed under seal.

The officers filed a second motion for a preliminary injunction, this time asserting a statutory exemption and an alternative constitutional argument for exempting the records. They primarily argued they likely have a right to privacy under the PRA because OPA found no substantiated misconduct and their political activities are private. They argued in the alternative that they have a right to privacy in their attendance at the rally as an exercise of First Amendment rights. Specifically, they requested an injunction protecting their identities from disclosure under the PRA.

The superior court again denied the preliminary injunction. The court determined the officers failed to make the first required showing for a preliminary injunction—that information in the public records is likely exempt—because information about "[w]hether a person attended a public rally is not the type of intimate detail" protected by the right to privacy, as "[a]ttending a public rally is not an act that is inherently cloaked in privacy." 2 RP at 90; CP at 1440. The court also noted the officers had not introduced any evidence that the requested public records contain explicit information about their political beliefs or associations, and

disclosing their identities "does not prevent them or anyone else from exercising their First Amendment rights and attending a rally." 2 RP at 93.

The court also denied the motion to change the case title and prohibit the officers from proceeding in pseudonym, reasoning that it would effectively prevent the officers from obtaining the relief they ultimately seek.

3. The Second Appeal

The officers appealed and Sueoka cross appealed on the pseudonym issue. The Court of Appeals reversed the denial of the preliminary injunction. *John Doe I v. Seattle Police Dep't*, 27 Wn. App. 2d 295, 304, 531 P.3d 821 (2023) (*Does* II), *review granted*, 2 Wn.3d 1001 (2023). It concluded the First Amendment alone prohibits disclosure of the officers' identities. *Id*. at 304-06. The Court of Appeals did not evaluate whether disclosure would violate the officers' statutory right to privacy under the PRA but considered only whether the officers have a right to anonymity in political belief or association under the First Amendment. *Id*. at 321-61. It also rejected the two-part PRA injunction standard set forth in RCW 42.56.540 and *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018), reasoning that "establishment of the [First Amendment] right itself mandates the issuance of an injunction." *Does* II, 27 Wn. App. 2d at 356. Further, it held that the city, as the agency responsible for responding to public records requests, must

refuse to disclose records when it is clear a third party's constitutional rights are implicated and must defend any challenge to that action. *Id*. at 359 n.43. It affirmed the denial of Sueoka's motion to preclude the officers' use of pseudonyms. *Id*. at 367-68.

Sueoka petitioned for review, raising both the pseudonym issue and the PRA issues. The city raised the issues relating to agencies' responsibilities in its answer. We granted Sueoka's petition for review and granted review of all the issues raised. Amici briefs have been filed by the State of Washington; Washington State Association of Municipal Attorneys; Washington Coalition for Open Government; and the American Civil Liberties Union of Washington, Fred T. Korematsu Center for Law and Equality, Unidos, the Washington Coalition for Police Accountability, and the Clark County Justice Group.

ANALYSIS

This is a PRA case. Members of the public requested certain public records, and the city determined it would produce whatever nonexempt responsive public records it held, in accordance with its obligation under the PRA. RCW 42.56.070(1). The officers' complaint requested declaratory relief that the officers' personal identifying information "is exempt from disclosure *under the PRA*" and an injunction under RCW 42.56.540. CP at 2, 14-15 (emphasis added). The case is

now before us on a motion for a preliminary injunction, where the officers argue their rights to privacy under both the PRA and the First Amendment provide exemptions to the PRA's broad presumption of disclosure. They do not seek to prevent the disclosure of the public records in their entirety; they argue only that their identities and personally identifying information should be redacted. This case remains in a preliminary stage, and the requested records have not yet been made part of the case file or been reviewed in camera by any court.

The provisions of the PRA "shall be liberally construed and its exemptions narrowly construed" to promote the policy of free and open examination of public records. RCW 42.56.030; *see also, e.g.*, *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 209, 189 P.3d 139 (2008). Upon receiving a PRA request, government agencies "shall make available for public inspection and copying all public records, unless the record falls within" a specific exemption under the PRA "or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). "'Public record' includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." RCW 42.56.010(3). All agree that the documents and information requested in this

case, including the officers' names, are public records. We review decisions under the PRA and issues of statutory construction de novo. *Bellevue John Does*, 164 Wn.2d at 208-09.

I. Injunction Standard

The officers seek a court order enjoining the city from disclosing their identities within the requested public records. A court may enjoin examination of a specific exempt record if "such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions." RCW 42.56.540. "An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested," so that person may take steps to enjoin release of the record, when appropriate. *Id*.

First of all, we address the city's concern that it is not expected or required to raise a third party's constitutional rights. We agree. *Contra Does* II, 27 Wn. App. 2d at 359 n.43. The person who is the subject of the public record is in the best position to identify what interest, if any, they hold that could be invaded as a result of disclosure of the public records. This third party notice provision under RCW 42.56.540 provides a mechanism for the agency to inform the subject of the

public record that the record has been requested, so that the third party may seek an injunction on that basis. That is precisely what occurred in this case, and we find no error.

The party seeking to prevent disclosure of public records bears the burden of proof. *Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hr'g Loss*, 194 Wn.2d 484, 492, 450 P.3d 601 (2019) (*WPEA*); *Spokane Police Guild*, 112 Wn.2d at 35. "A decision granting or denying an injunction under the PRA is reviewed de novo." *Lyft*, 190 Wn.2d at 791; *John Doe A. v. Wash. State Patrol*, 185 Wn.2d 363, 370-71, 374 P.3d 63 (2016).

RCW 42.56.540 creates the injunctive remedy "which allows a superior court to enjoin the release of specific public records if they fall within specific exemptions found elsewhere in the Act." *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 257, 884 P.2d 592 (1994) (*PAWS*) (emphasis omitted) (citing former RCW 42.17.330 (1992), *recodified as* RCW 42.56.540 (LAWS OF 2005, ch. 274, §103)). Obtaining an injunction under RCW 42.56.540 requires two steps: "First, the court must determine whether the records are exempt under the PRA or an 'other statute' that provides an exemption in the individual case. Second, it must determine whether the PRA injunction standard is met." *Lyft*, 190 Wn.2d at 789-90 (the two-step injunction inquiry "applies regardless of whether

the exemption at issue is expressly set out in the PRA or incorporated via an 'other statute'" (citing *PAWS*, 125 Wn.2d at 258; *Spokane Police Guild*, 112 Wn.2d at 36, 39)); *see also Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 757, 174 P.3d 60 (2007) (plurality opinion). An injunction will not issue unless the proponent establishes *both* that an exemption applies *and* release would clearly not be in the public interest and would cause substantial and irreparable damage under RCW 42.56.540. *Lyft*, 190 Wn.2d at 790.

"In general, a party in a PRA case can obtain a TRO or a preliminary injunction before establishing a right to a permanent injunction." *SEIU Healthcare 775NW v. Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, 392, 377 P.3d 214 (2016). For a preliminary injunction, "the trial court does not need to resolve the merits of the issues for permanent injunctive relief. Instead, the trial court considers only the *likelihood* that the moving party ultimately will prevail at trial on the merits." *Id.* at 392-93 (citation omitted) (citing *Nw. Gas Ass'n v. Wash. Utils. & Transp. Comm'n,* 141 Wn. App. 98, 116, 168 P.3d 443 (2007)). On the merits, a party must satisfy both parts of the PRA injunction standard—that an exemption applies *and* RCW 42.56.540 is satisfied—to obtain permanent injunctive relief in a PRA case. *Lyft*, 190 Wn.2d at 790. Thus, to obtain a *preliminary* injunction in this case, the officers must demonstrate a likelihood that they will

prevail on the merits as to both steps of the PRA injunction standard. *Id*.; *SEIU Healthcare*, 193 Wn. App. at 393.

In this case, the Court of Appeals rejected this two-part PRA injunction standard under the circumstances where the officers asserted their First Amendment rights are implicated. *Does* II, 27 Wn. App. 2d at 356-61. Instead, the Court of Appeals concluded that if disclosure would invade a constitutional right, "it is entirely unnecessary for the citizen to establish an *additional* entitlement to an injunction in order to preclude disclosure." *Id*. at 340. That novel analysis has no application here where the officers requested injunctive relief under RCW 42.56.540 and therefore must satisfy its requirements in order to obtain an injunction pursuant to that statute. CP at 495, 499; *Lyft*, 190 Wn.2d at 790 ("Given the broad range of 'other statutes' courts consider in connection with the PRA, consistent application of the PRA requires the consistent procedural operation of the PRA injunction standard regardless of the exemption or 'other statute' asserted. After all, PRA exemptions are recognized through the operation of the PRA, not outside it.").

"[O]ur case law interpreting the PRA injunction statute makes clear that finding an exemption applies under the PRA does not ipso facto support issuing an injunction." *Lyft*, 190 Wn.2d at 786 (citing *Spokane Police Guild*, 112 Wn.2d at 36; *Soter*, 162 Wn.2d at 757; *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57,

213 P.3d 596 (2009); *Belo Mgmt. Servs., Inc. v. Click! Network*, 184 Wn. App. 649, 661, 343 P.3d 370 (2014); WASH. STATE BAR ASS'N, PUBLIC RECORDS ACT DESKBOOK: WASHINGTON'S PUBLIC DISCLOSURE AND OPEN PUBLIC MEETINGS LAWS § 17.3, at 17-11 (2d ed. 2014)). In a PRA case such as this, the party seeking an injunction must satisfy the two-part analysis—first, that the records are exempt, *and* second, that disclosure would clearly not be in the public interest and would substantially and irreparably damage a person or governmental function. *Id*. at 786-91; RCW 42.56.540. To the extent the Court of Appeals held that the second step is not required, we reverse. The two-part PRA injunction standard continues to apply to cases seeking such relief under the PRA.

II. Likelihood of Success on the Merits

To determine whether the officers have demonstrated a likelihood of success under the two-part PRA injunction standard, we consider first, whether they have shown the records are likely exempt, and second, whether they have shown disclosure likely should be enjoined under RCW 42.56.540. *Lyft*, 190 Wn.2d at 790-91, 779-80 (if the information is exempt, "then 'judicial inquiry commences' with the court applying the PRA injunction standard" (quoting *Spokane Police Guild*, 112 Wn.2d at 36)); *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 408, 259 P.3d 190 (2011) (plurality opinion). We acknowledge the

limited record in this case; given that we are analyzing the standard used to assess whether preliminary injunctive relief is appropriate, we proceed on this analysis, recognizing that additional facts may be adduced at the trial court that might result in a different outcome.

The PRA requires government agencies to disclose all public records unless the record falls within a specific exemption under the PRA or other statute that prohibits disclosure of specific information or records. RCW 42.56.070(1). The officers argue their identities associated with public records of their participation on January 6th should be exempt either under a specific PRA exemption—private personal information exempt under RCW 42.56.230(3)—or because the First Amendment is an "other statute" that prohibits disclosure under RCW 42.56.070(1). CP at 500-08.

In the public records context, courts must first consider the PRA's exemptions before reaching a constitutional argument: "we believe it is appropriate to begin our review with the statute's provisions, as we have previously concluded in the PRA context that reviewing courts 'should not pass on constitutional issues unless absolutely necessary to the determination of the case.'" *WPEA*, 194 Wn.2d at 493 (considering privacy rights based on specific PRA exemptions, rather than article I, section 7) (internal quotation marks omitted) (quoting *Bellevue John Does*,

164 Wn.2d at 208 n.10); *see also Wash. Fed'n of State Emps. v. State*, 2 Wn.3d 1, 14, 534 P.3d 320 (2023) (*WFSE*) (considering whether a specific PRA provision exempted public records, rather than a constitutional liberty interest). Additionally, "[t]he PRA's express grounds for exemptions should be examined first before considering whether an 'other statute' exemption applies." *WFSE*, 2 Wn.3d at 26 (quoting RCW 42.56.070(1)). Therefore, the exemption analysis must begin with the officers' claim that their identities associated with these public records likely fall under the specific PRA exemption for privacy in personal information.

A. Statutory Privacy Exemption

The officers argue their identities are likely exempt based on the PRA's specific exemption for privacy in personal information. RCW 42.56.230(3), .050. Some exemptions under the PRA are conditional, exempting certain information or public records "in furtherance of only certain identified interests, and only insofar as those identified interests are demonstrably threatened in a given case." *Resident Action Council*, 177 Wn.2d at 434. The personal information exemption is conditional: "personal information" regarding public employees is exempt only "to the extent that disclosure would violate their right to privacy." RCW 42.56.230(3). "A person's 'right to privacy[]' . . . is invaded or violated only if disclosure of information about the person: (1) [w]ould be highly offensive to a reasonable person,

and (2) is not of legitimate concern to the public." RCW 42.56.050. Stated differently, to determine whether public records fall under this exemption, courts must ask a series of four questions: First, do the records contain personal information? Second, if so, do the subjects of the records have a right to privacy in that information? Third, if so, would disclosure be highly offensive to a reasonable person? And fourth, is disclosure not of legitimate concern to the public? The records are exempt only if the answer to all four questions is "yes." *E.g.*, *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 903-08, 346 P.3d 737 (2015) (requiring existence of personal information, right to privacy, and violation of privacy through disclosure to find an exemption); *Bainbridge Island Police Guild*, 172 Wn.2d at 411 (same).

The officers bear the burden of demonstrating the records are likely exempt; they must show the answer to each of those four questions is "yes." *WPEA*, 194 Wn.2d at 492. We conclude they have not met that burden because they have not shown they have a privacy right in public records about their attendance at a highly public event (the second question). We therefore do not reach the additional questions of whether disclosure would be highly offensive to a reasonable person and not of legitimate concern to the public, as they have not demonstrated a right to

privacy under the PRA that could be invaded by disclosure. *See Predisik*, 182 Wn.2d at 904.

1. *Personal Information*

First, this exemption applies only to "personal information." RCW 42.56.230. Though the requested public records have not yet been made part of the case file or reviewed by any court, it appears they contain photographs, video, text messages, and possibly other documentation relating to the officers' activities on January 6, 2021; the officers argue the information that should be exempt from disclosure is their identities and identifying information within those records.

Though the PRA does not define "personal information", we have previously looked to the ordinary dictionary definition. *Bellevue John Does*, 164 Wn.2d at 211. "Personal" means "of or relating to a particular person **:** affecting one individual or each of many individuals **:** peculiar or proper to private concerns **:** not public or general." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1686 (2002). Under this definition, identities of particular people are considered "personal information" because they relate to particular people. *Bellevue John Does*, 164 Wn.2d at 211; *see also Predisik*, 182 Wn.2d at 904. The officers' identities qualify as personal information; therefore, we must next inquire whether the officers have demonstrated

a right privacy in that information that could be invaded by disclosure. RCW 42.56.230(3); *see Bellevue John Does*, 164 Wn.2d at 212.

2. *Right to Privacy*

Second, personal information falls within this exemption only if the public employee can "also demonstrate that they have a right to privacy in personal information contained in a record *and if such a right exists* that disclosure would violate it." *Predisik*, 182 Wn.2d at 904. In other words, *before* considering whether disclosure would invade the officers' right to privacy, we must first determine whether they *have* a right to privacy in the requested records. *See Bellevue John Does*, 164 Wn.2d at 212-17.

"The right of privacy is commonly understood to pertain only to the intimate details of one's personal and private life." *Spokane Police Guild*, 112 Wn.2d at 38 (citing RESTATEMENT (SECOND) OF TORTS § 652D at 386 (AM. L. INST. 1977); *Hearst*, 90 Wn.2d at 138; *Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 726, 748 P.2d 597 (1988) (plurality opinion)); *see also Bellevue John Does*, 164 Wn.2d at 212. This court first recognized this definition of privacy for purposes of the PRA in *Hearst*, where we looked to the common law definition of a privacy right expressed in tort law:

> "Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye,

> but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest."

90 Wn.2d at 136 (quoting RESTATEMENT (SECOND) OF TORTS § 652D cmt. b at 386). This definition has since been expressly adopted by the legislature. RCW 42.56.050; LAWS OF 1987 ch. 403, § 1. "[T]he PRA will not protect everything that an individual would prefer to keep private. The PRA's 'right to privacy' is narrower. Individuals have a privacy right under the PRA only in the types of 'private' facts fairly comparable to those shown in the *Restatement*." *Predisik*, 182 Wn.2d at 905.

Public employees generally do not have a privacy interest in activities that are widely attended and do not occur in private. For example, *Spokane Police Guild* involved a public records request for a Liquor Control Board investigative report, which was not exempt based on any right to privacy. 112 Wn.2d at 38-39. The report found that a dance performance at a bachelor party, attended by many public employees and held at the Spokane Police Guild Club premises, violated Liquor Board regulations. *Id*. at 31. We concluded the report was *not* exempt under the PRA because there were 40 or more people on premises licensed by the Liquor

Board, so the unedited report should be released under the PRA—including the names of the attendees. *Id*. at 37-40. The number of people and location indicated there was "no personal intimacy involved in one's presence or conduct at such a well attended and staged event which would be either lost or diminished by being made public." *Id*. at 38.

Like in *Spokane Police Guild*, the public records requested here relate to public employees' presence and actions at a highly attended public event. Records regarding events with many people in a public setting are less likely to implicate the PRA right to privacy because public activities are facts about a person they "'expose to the public eye,'" not the intimate details of their private life. *Hearst*, 90 Wn.2d at 136 (quoting RESTATEMENT (SECOND) OF TORTS § 652D cmt. b at 386). The officers do not point to any evidence that shows they took steps to conceal their identities so they could attend the event anonymously; instead, they made the choice to attend a public event where they could expect to be seen by others. At this stage of the proceeding, the officers have not shown any meaningful difference between their public conduct giving rise to the public records in this case and the public conduct in *Spokane Police Guild*. These records relate to their participation at a public rally at the National Mall along with 45,000 other attendees, at a highly publicized event they could expect would be documented by news media. Like in *Spokane Police*

Guild, the officers have shown "no personal intimacy" in their presence "at such a well attended and staged event." 112 Wn.2d at 38. We acknowledge that additional facts may arise from the trial court's application of this case as proceedings continue.

Rather than addressing *Spokane Police Guild*, the officers emphasize that they attended the January 6th events while off duty and that the OPA did not sustain allegations of misconduct as to the four officers who remain as plaintiffs/respondents. Neither fact is dispositive here. *Spokane Police Guild* involved a "social event" the public employees attended "on their own time," and yet this court found that they did not have a right to privacy in their identities as attendees at the event, as documented in the public record. *Id*. at 39. Further, off-duty acts of a police officer can be disclosable if their actions "bear upon [their] fitness to perform public duty" because "privacy considerations are overwhelmed by public accountability." *Cowles*, 109 Wn.2d at 726-27. The officers must do more than show that the public records relate to their off-duty conduct in order to demonstrate a privacy interest under the PRA.

Instead, the officers urge for a broad rule that public records related to unsustained[14] misconduct allegations are categorically private under *Bellevue John*

[14] As noted, OPA's findings were "[i]nconclusive" as to one of the plaintiff/respondent officers because he may have entered a restricted area on the Capitol grounds. CP at 550-51.

Does. But that decision reached a narrower holding than what the officers urge: "the identities of public school teachers who are subjects of unsubstantiated allegations of sexual misconduct are exempt from disclosure" under the PRA. *Bellevue John Does*, 164 Wn.2d at 205 (footnote omitted); *see also Predisik*, 182 Wn.2d at 907 ("We do not read *Bellevue John Does* to create a sweeping rule that exempts an employee's identity from disclosure any time it is mentioned in a record with some tangential relation to misconduct allegations."). On the other hand, "a law enforcement officer's actions while performing [their] public duties or improper off duty actions in public which bear upon [their] ability to perform [their] public office do not fall within the activities to be protected" by the PRA's right to privacy. *Cowles*, 109 Wn.2d at 727.

As the requested records in this case have not been made part of the case file or the record on review, this court cannot assess whether they resemble false allegations of sexual misconduct by a teacher against a student like in *Bellevue John Does*, or something more akin to improper off-duty actions in public, which are not entitled to the protection of personal privacy under *Cowles*. That analysis needs to occur at the trial court, which has records not part of this appeal and is capable of reviewing records in camera, if necessary. At this point, our record on appeal shows, and the officers do not dispute, that all of them attended the rally

on January 6th and one of the plaintiff/respondent officers went with the crowd to the Capitol afterward. We know that the public records requests sought not just information about OPA's investigation into possible misconduct but more broadly requested any information related to the officers who were present in Washington, DC, that day, regardless if they engaged in actions amounting to professional misconduct by the standards of their employer. And we know that the plaintiffs/respondents admit that they are the officers who traveled to Washington, DC, and attended the rally there on January 6th, in public, with thousands of other people and members of the news media there to witness their presence, and they reported as much to their public employer.

The actions a person takes in public are not the kind of information typically considered the sort of intimate details in one's personal life that one "'does not expose to the public eye.'" *Hearst*, 90 Wn.2d at 136 (quoting RESTATEMENT (SECOND) OF TORTS § 652D cmt. b at 386). As PRA exemptions must be narrowly construed, we conclude that a public employee must do more to establish a privacy interest in the fact of their attendance at events in a public setting with many other people present. RCW 42.56.030; *Spokane Police Guild*, 112 Wn.2d at 38. As the officers have not shown they likely have a right to privacy under the PRA, we do not reach the additional questions whether disclosure of the public

records would violate such a right. *Predisik*, 182 Wn.2d at 907 (citing RCW 42.56.050). At this stage of the proceeding, on these limited facts, the officers have not satisfied the requirements for a preliminary injunction because they have not carried their burden to show that this narrow exemption applies to the fact of their identities as the public employees who attended the January 6th events, as documented in public records, as a matter of law. RCW 42.56.030; *WPEA*, 194 Wn.2d at 492. Further proceedings may conclude otherwise.

The Court of Appeals erred in declining to analyze the officers' claim of a statutory exemption first, and the trial court correctly denied the preliminary injunction on the basis that the officers failed to demonstrate they likely have a statutory right to privacy exempting disclosure under the PRA. The officers have not shown a likelihood of success on the merits of the first step of the injunction test on this basis.

B. Constitutional Privacy Exemption

The officers argue in the alternative that even if their identities are not exempted by a statutory right to privacy, they should be exempted by a constitutional right to privacy emanating from the First Amendment. Neither their complaint nor their motion for a preliminary injunction included prayer for relief that the PRA be declared unconstitutional; rather, the officers raised the First Amendment as an

additional basis to object to the presumption of release under the PRA, as an "other statute" under RCW 42.56.070(1).

Agencies must release all requested public records unless the record falls within a specific exemption under the PRA "or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). "The 'other statutes' exemption incorporates into the Act other statutes which exempt or prohibit disclosure of specific information or records." *PAWS*, 125 Wn.2d at 261-62 (citing former RCW 42.17.260(1) (1992), *recodified as* RCW 42.56.070(1) (LAWS OF 2005, ch. 274, § 284)). Consistent with our prior decisions, we agree the catchall "other statutes" provision allows a person to object to disclosure of public records based on constitutional principles. *See Freedom Found. v. Gregoire*, 178 Wn.2d 686, 696-98, 310 P.3d 1252 (2013) (constitutional separation of powers creates an executive communications privilege that exempts certain public records from disclosure under the PRA); *see also Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) (acknowledging in dictum that the argument that the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution provide exemptions under the "other statutes" provision "has force"). Like the analysis for specific PRA statutory exemptions, we begin our analysis with the question of whether the record or information is private before considering

whether disclosure would invade privacy or whether such an invasion would be permissible. *See Predisik*, 182 Wn.2d at 904; *Bainbridge Island Police Guild*, 172 Wn.2d at 411.

The value of privacy has been recognized not only in the actions of the legislature but also in constitutional text and penumbras. *See, e.g.*, WASH. CONST. art. I, § 7; *Griswold v. Connecticut*, 381 U.S. 479, 484, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) (citing U.S. CONST. amends. I, III, IV, V, IX); *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 91, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982) (citing U.S. CONST. amend. I). Here, the officers argue the First Amendment provides a privacy right in their identities within these public records.[15] They contend their attendance at the January 6th rally was an exercise of their First Amendment right to attend a political demonstration, they had a right to do so anonymously, and revealing their identities is compelled speech that could have an impermissible chilling effect on the exercise of those rights. Taking these arguments in turn, we conclude that for similar reasons that the officers failed to show a likely statutory privacy interest, they do not show a likely

[15] They do not assert any other provision of the United States or Washington Constitution. CP at 507-08.

constitutional privacy interest in their identities as the subjects of these public records.

No one disputes that the officers had a constitutional right to attend the rally—but that is not the issue in this case. This is not a case about whether public employees had a right to attend a rally in Washington, DC. This is not a case involving government action conditioning or prohibiting exercise of such a right: the officers were not prohibited from attending a political rally. Indeed, their public employer concluded that absent any illegal conduct, the officers had a right to attend the rally and doing so would not be grounds for adverse employment action. Though no one disputes the officers could engage in political expression and attend the rally, it does not necessarily follow that the fact of their attendance at such an event is private under the First Amendment.

Moreover, the officers do not point to any evidence demonstrating they took measures to attend the rally anonymously or to exercise their political beliefs in private. As discussed, both the rally and its purpose were widely publicized, the officers did nothing to hide their identities while attending the rally, and they were there among thousands of other people and members of the news media documenting it. And while political beliefs may be closely and personally held *in general*, these public employees made the choice to attend a highly publicized political event

in public. *Contra, e.g.*, *Nat'l Ass'n for Advancement of Colored People v. Ala. ex rel. Patterson*, 357 U.S. 449, 466, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958) (the Fourteenth Amendment protects a *private* association's membership list from compelled disclosure in discovery to preserve the members' right "to pursue their lawful private interests *privately* and to associate freely with others" (emphasis added)); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 343, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995) (the tradition of anonymity in political advocacy is "best exemplified by the *secret* ballot" (emphasis added)).[16] We come to this conclusion without asserting these public employees' political beliefs; those are not in this record and we draw no conclusions about them. Rather, our analysis turns on the public nature of the event, not its political meaning or the officers' beliefs. Again, as the officers have raised the First Amendment as a basis for exemption under the PRA—under which exemptions must be construed narrowly, RCW 42.56.030—rather than as a challenge to the constitutionality of the PRA, we must view this proposed exemption narrowly. *Lyft*, 190 Wn.2d at 790 ("After all, PRA exemptions are recognized through operation of the PRA, not outside it."). As

[16] To the extent the officers argue disclosure of their identities is compelled, such compulsion, if any, would have occurred at the time of the OPA investigation, not the release of public records now already in existence. Moreover, this lawsuit does not challenge whether the OPA improperly required the officers to participate in the investigation.

with the statutory privacy exemption, the officers have not shown they likely have a privacy interest under the First Amendment that would reach the fact of their identities as the public employees who attended these public events documented in public records.

As the officers have not shown a likely privacy interest in this information under the First Amendment theory, we do not reach the additional questions of whether disclosure would have a chilling effect or would otherwise invade such a right, or whether disclosure would nevertheless be justified. At this stage in the proceedings, the officers have not met their burden of showing their identities are likely exempt under either their statutory or constitutional theories of a privacy interest. Therefore, they have not shown a likelihood of success on the first step of the PRA injunction standard—exemption—and so we do not reach the second step of whether disclosure would cause substantial and irreparable damage justifying an injunction under RCW 42.56.540. *Id.*; *PAWS*, 125 Wn.2d at 257-58; *Spokane Police Guild*, 112 Wn.2d at 36. The trial court properly denied the motion for preliminary injunction; we reverse.

III. Pseudonyms

Last, Sueoka argues the lower courts erred in permitting the officers to proceed under pseudonyms in this litigation. We agree. The Washington

Constitution requires that "[j]ustice in all cases shall be administered openly." WASH. CONST. art. I, § 10. A court record may be redacted upon a court's written finding that doing so "is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2). We have held that names in court pleadings are subject to article I, section 10 and GR 15. *John Doe G. v. Dep't of Corr.*, 190 Wn.2d 185, 201, 410 P.3d 1156 (2018). Therefore, the use of pseudonyms must satisfy the five-step framework set forth in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982):

> *Ishikawa* requires the court to (1) identify the need to seal court records, (2) allow anyone present in the courtroom an opportunity to object, (3) determine whether the requested method is the least restrictive means of protecting the interests threatened, (4) weigh the competing interests and consider alternative methods, and (5) issue an order no broader than necessary.

John Doe G., 190 Wn. 2d at 199 (citing *Ishikawa*, 97 Wn.2d at 37-39). Decisions regarding sealing records are reviewed for abuse of discretion. *State v. Richardson*, 177 Wn.2d 351, 357, 302 P.3d 156 (2013). "Because court records are presumptively open, the burden of persuasion rests on the proponent of continued sealing." *Id*. at 359-60.

Here, the superior court initially granted the officers permission to proceed in pseudonym after conducting a written analysis of the *Ishikawa* factors, as required. As to the first factor, the court concluded the officers had a demonstrated need to

proceed anonymously because proceeding under their given names in this action would deprive them of a meaningful opportunity for a fair disposition of the merits of their substantive claims to prevent disclosure of their identities. Sueoka later moved to change the case title and disallow pseudonyms, arguing that the calculus has since changed because the officers have been named publicly, as demonstrated in the disputed exhibits. Though we disagree with Sueoka on that point, we nevertheless agree that the officers have not shown a need to seal the court records. *See John Doe G.*, 190 Wn.2d at 200 (requiring "a showing that pseudonymity was necessary" under *Ishikawa* in order to redact names in pleadings).

When the trial court considered the disputed exhibits and the motion to intervene, counsel for the plaintiffs/respondents and counsel for the intervenors could not answer the question of whether they represented the same people, and counsel never confirmed nor denied that the plaintiff/respondent officers are in fact the people identified in the disputed exhibits. We cannot say, on this record, that the officers' identities have been confirmed in public or on the record in court.

Nevertheless, the officers have not made the required showing to proceed under pseudonyms. The "need" the officers advance in favor of anonymity is to prevent the harm of an invasion of their statutory or constitutional privacy rights. As explained above, the officers have not shown they likely have a privacy interest in

their identities within these public records of their participation in public events. Without demonstrating such a privacy interest that could be invaded by disclosure of their identities within public records, the officers cannot show a compelling privacy concern "that outweigh[s] the public interest in access to the court record." GR 15(c)(2); *John Doe G.*, 190 Wn.2d at 200. We conclude they have not satisfied the first requirement of a need to litigate anonymously under *Ishikawa* in order to overcome the presumption of open court records. *Richardson*, 177 Wn.2d at 359-60. We reverse the trial court's order permitting pseudonyms.

CONCLUSION

We reverse the Court of Appeals and hold that the officers have not shown a likelihood of success on the merits that their identities are exempt based on either a statutory or constitutional right to privacy. The trial court therefore correctly denied the preliminary injunction because the officers did not satisfy the first part of the two-part PRA injunction test. Nor have the officers demonstrated a need to litigate under pseudonym. We reverse and remand to the trial court for further proceedings consistent with this opinion.

Montoya-Lewis, J.

WE CONCUR:

Johnson, J.

Yu, J.

González, J.

Owens, J.P.T.

No. 102182-8

STEPHENS, C.J. (concurring in part, dissenting in part)—I concur in the majority's decision to reverse the Court of Appeals and reinstate the trial court order denying a preliminary injunction. The result is to remand the case to the trial court to consider the records at issue based on current circumstances, which the parties acknowledge have changed in the years since the initial motions were considered.

I write separately because I believe the trial court must also have an opportunity to address the pseudonym issue on remand based on current circumstances. As the majority notes, a trial court's decision to allow a party to litigate anonymously using a pseudonym constitutes a partial "closure" of court proceedings implicating article I, section 10. *John Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 201, 410 P.3d 1156 (2018). It must therefore be supported by findings pursuant to the multifactored analysis in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). And appellate review of the trial court's decision is solely for abuse of discretion, without invoking the benefit of hindsight to second-guess that decision. *State v. Richardson*, 177 Wn.2d 351, 357, 302 P.3d 156 (2013).

This case is before us, for a second time, with *unchallenged* findings entered by Judge Cahan supporting the order to allow the Does to litigate in this action under pseudonyms. Clerk's Papers (CP) at 247-48. Sam Sueoka does not argue that the court abused its discretion, nor does the majority find any abuse of discretion. Indeed, the majority, like Judge Widlan below, rejects Sueoka's only argument: that the apparent disclosure of the Does' identities requires reversing the pseudonym order. Majority at 36-37; 2 Verbatim Rep. of Proc. (Jan. 28, 2022) (VRP) at 85-86.

Given this procedural posture and the deferential standard of review, I cannot join the majority's decision to reverse the trial court's order on the ground that it was never justified. The majority concludes that the Does never demonstrated any need to litigate using pseudonyms because they cannot show a likelihood of success on the merits of their privacy claims. More precisely, their claims likely fail because they were participating in public events. Majority at 37.

I have two concerns with this holding. First, it does not align with abuse of discretion review, which requires us to stand in the shoes of the trial court and consider the known circumstances at the time of the action in question. As the trial court noted, the Does' asserted need to avoid disclosure of their identities while they sought to redact their names from public records reflected potential concerns

about collateral consequences. CP at 247. While these concerns may seem less weighty today than four years ago, we cannot rely on subsequent facts and hindsight—particularly because we do not make factual findings and we have no basis to reject the trial court's factual findings, which have not been challenged.

Second, and more fundamentally, I worry that the majority's conclusion is too categorical, resting entirely on the analysis of the Does' asserted privacy rights under the preliminary injunction standard. The majority reasons that if the Does are unlikely to sustain a statutory or constitutional privacy claim for their participation in public events, then they have no need to protect their identities while litigating in a PRA action. This line of reasoning seems to erase any practical concerns with the scope of disclosure of one's identity, which is adjacent to but distinct from the legal standards for proving privacy claims. And as Judge Widlan recognized, lifting the pseudonym order in the context of ongoing litigation over a PRA injunction could deny the Does the benefit of potential success in the litigation, effectively ending the case. VRP at 85-86.

To be clear, I am not suggesting that a party seeking to avoid disclosure of public records need only assert a privacy interest in order to litigate anonymously. Every motion for use of a pseudonym in court documents must be evaluated on its individual merits. That was done here, and the *Ishikawa* findings supporting the

pseudonym order have not been challenged. The case will now return to the trial court, and I would allow the trial court to pick up exactly where it left off. I would uphold both of the trial court's orders—denying the preliminary injunction and allowing the use of pseudonyms at this juncture. Any reconsideration of the pseudonym issue should be left to the trial court, based on the facts and circumstances that can be determined only in that court.

With these observations, I join the majority in reversing the Court of Appeals with respect to the preliminary injunction and dissent in part to affirm the Court of Appeals with respect to the use of pseudonyms.

Stephens, C.J.

Madsen, J.

No. 102182-8

GORDON McCLOUD, J. (concurring in part/dissenting in part)—I agree with the majority's holding that the records requested by petitioner Sam Sueoka concern public, not private, activity and, hence, that they must be disclosed under the Public Records Act (PRA), chapter 42.56 RCW. Majority at 3 ("However, the requested records relate to their activities at a highly publicized and public event. On this limited record, it appears that the officers have not demonstrated a likely privacy interest in such information . . . .").

But I disagree with its characterization of the privacy rights exempt from PRA disclosure as "narrow" or as limited to those contained in a legislatively enacted statute. *E.g.*, majority at 2 ("The PRA exempts some public records from disclosure, balancing the imperative that the people remain informed against narrow privacy rights or government interests that may, at times, outweigh the PRA's broad policy in favor of disclosure."), 34 ("Again, as the officers have raised the First Amendment [to the United States Constitution] as a basis for exemption under the PRA—under which exemptions must be construed narrowly, RCW 42.56.030—rather than as a challenge to the constitutionality of the PRA, we

must view this proposed exemption narrowly."). We should, instead, acknowledge that both the United States Constitution (which the Does[1] argued) and the Washington Constitution (which they did not argue) provide broad protection of privacy rights and that neither the United States Supreme Court nor this court has ever ruled that its constitution's protection of the right to privacy must be interpreted "narrowly."

I therefore also disagree with the majority's choice of the procedure to be used when a party seeks to enjoin disclosure of material that purportedly invades that party's constitutional right to privacy. It is true that we have, in the recent past, ruled that "[i]n a PRA case such as this, the party seeking an injunction must satisfy the two-part analysis—first, that the records are exempt, *and* second, that disclosure would clearly not be in the public interest and would substantially and irreparably damage a person or governmental function." Majority at 20 (citing *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 786-91, 418 P.3d 102 (2018); RCW 42.56.540). But as I explained in the *Lyft* case, that two-part standard eviscerates the foundational right to privacy guaranteed to Washingtonians. *Id.* at 803-05 (Gordon McCloud, J., concurring in concurrence/dissent). As applied to this case, it means that the majority is using a statutory/court rule standard that authorizes a

[1] Respondents John Does 1, 2, 4, and 5.

judge to take documents that the United States Constitution considers "private" and yet disclose them anyway. When a statutory/court rule standard like that (here, compelling disclosure) and a constitutional protection of individual rights (here, protecting the right to privacy) conflict, then the constitutional protection must control—not the contrary statutory/court rule standard.

However, in this case, I agree with the majority's ultimate conclusion that the Does did not establish a right to privacy, even under the United States Constitution, in their voluntary decision to appear in a classic public forum (the National Mall) at a large, well-publicized, media-attractive demonstration. I therefore concur in the majority's decision to reverse the Court of Appeals' decision to the contrary.

But I do not agree with the majority's resolution of the other issue in this case—that is, the issue of whether the officers could proceed via pseudonyms while litigating this case until the trial court makes its final decision on whether disclosure of the documents sought would violate the officers' right to privacy. Majority at 35-38. Instead, I agree with the concurrence-in-part's resolution of that issue: plaintiffs seeking to enjoin disclosure of private information in response to a PRA request should have the opportunity to litigate in a way that enables them to reap the fruits of their victory, if they win. Concurring in part, dissenting in part (Stephens, C.J.) at 2-4. That means litigating via pseudonym.

I therefore respectfully concur in the majority's resolution of the injunctive relief issue, dissent from its resolution of the pseudonym issue, and instead agree fully with the concurrence-in-part's resolution of that pseudonym issue.

Gordon McCloud, J.

Whitener, J.

FILED
6/26/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4, 5,

Appellants/Cross Respondents,

JANE DOE 1 and JOHN DOE 3,

Plaintiffs,

v.

SEATTLE POLICE DEPARTMENT and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

Respondents,

and

SAM SUEOKA,

Respondent/Cross Appellant,

JEROME DRESCHER, ANNE BLOCK, and CHRISTI LANDES,

Respondents.

DIVISION ONE

No. 83700-1-I

PUBLISHED OPINION

DWYER, J. — "There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price." Garrity v. State of New Jersey, 385 U.S. 493, 500, 87 S. Ct. 616, 17 L. Ed. 2d 562 (1967). Among these are the rights guaranteed by the First Amendment to our federal constitution. Garrity, 385 U.S. at 500. Police officers "are not relegated to a watered-down version of [such] rights." Garrity, 385 U.S. at 500.

In this Public Records Act litigation, the trial court failed to heed this pronouncement. Accordingly, we reverse the trial court's order requiring disclosure of certain unredacted records. We affirm the ancillary orders of the trial court and remand the matter for further proceedings.

I

Soon after the United States Supreme Court pronounced that police officers are not condemned to a "watered-down version" of core constitutional rights, the voters of our state passed by popular initiative the predecessor to Washington's Public Records Act[1] (PRA). See Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 250-52, 884 P.2d 592 (1994) (PAWS) (noting approval of the public disclosure act in November 1972). Thus, since the day of the enactment of our state's public records law, police officers in Washington have been entitled to the same federal constitutional protections as are all other Washingtonians. It is by adherence to this principle that we decide this case.

We are presented today with the question of whether the Seattle Police Department (SPD) and the City of Seattle (the City) may disclose in investigatory records the identities of current or former Seattle police officers who were investigated regarding potential unlawful or unprofessional conduct during the events of January 6, 2021, in Washington, D.C. John Does 1, 2, 4, and 5 (the Does) sought judicial declaratory and injunctive relief after being informed that SPD, their employer, intended to publicly disclose the unredacted investigatory

[1] Ch. 42.56 RCW.

records in response to several PRA requests. Investigators have determined that allegations against the Does of unlawful or unprofessional conduct were "not sustained." The Does contend that their identities should thus not be disclosed in the requested records, which include transcripts of interviews in which they were compelled to disclose and discuss their political beliefs and affiliations.

The trial court denied the Does' motion for a preliminary injunction, concluding that the exceptions to permitted disclosure set forth in the PRA are inapplicable. The Does appealed from the trial court's order. In addition, Sam Sueoka, a member of the public who filed a records request to obtain copies of the investigatory records, cross appealed, asserting that the trial court erred by permitting the Does to proceed pseudonymously in this litigation.

The United States Supreme Court has recognized a First Amendment right to privacy that protects against state action compelling disclosure of political beliefs and associations. Thus, only if the state actor (here, the City) demonstrates a compelling interest in disclosure, and that interest is sufficiently related to the disclosure, can the state actor lawfully disclose the Does' identities in the investigatory records. Because there is here established no compelling state interest in disclosing the Does' identities, the trial court erred by denying the Does' motion for a preliminary injunction.

The trial court properly concluded, however, that the Does should be permitted to use pseudonyms in litigating this action. Because the Does assert a First Amendment privacy right, it is federal constitutional law—not state law—that controls their request to litigate pseudonymously. Pursuant to federal First

Amendment open courts jurisprudence, plaintiffs may litigate using pseudonyms in circumstances wherein the injury sought to be prevented by prevailing in the lawsuit would necessarily be incurred as a result of the compelled disclosure of the plaintiffs' identities, required as a condition of commencing the very lawsuit in which vindication of the constitutional right is sought. Accordingly, the Does may remain anonymous in this action.

II

The Does are current or former SPD officers[2] who attended former President Donald Trump's "Stop the Steal" political rally on January 6, 2021 in Washington, D.C. Upon returning to Washington State, the Does received complaints from SPD's Office of Police Accountability (the OPA) alleging that they might have violated the law or SPD policies during their attendance at the rally.

The Does thereafter submitted to OPA interviews in which they were "ordered to answer all questions asked, truthfully and completely," and informed that "failure to do so may result in discipline up to and including termination." In addition to inquiring regarding the Does' whereabouts and activities on January 6, the OPA also inquired regarding their political beliefs and associations, including whether they attended the rally "to articulate [their] political views," whether they were "affiliated with any political groups," and "[their] impressions of, and reactions to, the content of the Rally." Because the Does were under

[2] John Doe 1 resigned from SPD in December 2021 "as a direct result of the pressure" from the investigation and "public backlash arising" therefrom, as well as his concern "over retribution" from the incident.

standing orders to do so, they answered these questions "truthfully and as completely as possible."

Sueoka and other members of the public submitted records requests pursuant to the PRA, chapter 42.56 RCW, seeking disclosure of the investigatory records pertaining to police officers who participated in the events of January 6, 2021, in our nation's capital. In response to the records requests, SPD informed the Does that it intended to disclose both records regarding its ongoing investigation and the Does' personnel files.

On February 23, 2021, the Does filed a complaint for declaratory relief and preliminary and permanent injunction in the trial court.[3] They concurrently filed a motion for permission to proceed pseudonymously and a motion for a temporary restraining order (TRO) and order to show cause why the preliminary injunction should not issue.

On February 24, 2021, the trial court granted the Does' motion for a TRO, enjoining production of the requested records until a show cause hearing was held. On March 9, 2021, the trial court granted the Does' motion to proceed pseudonymously, ruling that the order would "remain in effect at least until the merits of Plaintiffs' PRA claims are resolved."

Following the show cause hearing, held on March 10, 2021, the trial court denied the Does' motion for a preliminary injunction. The Does sought review of the trial court's ruling in this court, and review was granted. Sueoka thereafter

[3] The complaint was filed by Jane and John Does, 1 through 6. Jane Doe 1 and John Doe 3 are not parties in this appeal. While litigation was ongoing in the trial court, the OPA determined that Jane Doe 1 and John Doe 3 had violated both the law and SPD policies on January 6, 2021, and their employment by SPD was terminated.

moved to transfer the cause to our Supreme Court. Then, on June 28, 2021, the OPA concluded its investigation. The OPA determined that allegations that the presently-litigating Does had violated the law or SPD policies or had engaged in unprofessional conduct were "not sustained."

On August 4, 2021, our Supreme Court granted Sueoka's motion to transfer the cause to that court. However, following oral argument on November 9, 2021, the court determined that, "in light of changed circumstances," review of the preliminary injunction was moot. The court dismissed review of the matter and remanded the cause to the trial court for further proceedings.

The trial court proceedings at issue herein then commenced. On January 5, 2022, Sueoka filed a "motion to change the case title and bar the use of pseudonyms." On January 12, 2022, the Does filed an additional motion for a preliminary injunction, again requesting that the trial court redact their identities in any disclosed records.[4]

Following a January 28, 2022 hearing, the trial court again denied the Does' motion for a preliminary injunction, ruling that the Does had not "met their burden of proof that they have a privacy right that falls within an exemption under the [PRA]." The court additionally concluded that the record contains "insufficient evidence" that disclosure will cause the Does to "experience a level of harassment that will result in a chilling effect on their First Amendment rights."

[4] Jane Doe 1 and John Doe 3 were no longer parties at that point in the litigation. Accordingly, the motion was filed by the "Represented Doe Plaintiffs," who are the same individuals as the Does in this appeal.

The trial court also denied Sueoka's motion to preclude the Does from proceeding in pseudonym.

The Does appeal from the trial court's order denying their motion for a preliminary injunction. Sueoka cross appeals, asserting that the trial court erred by denying his "motion to change the case title and bar the use of pseudonyms." Sueoka also requests that we change the case title and bar the use of pseudonyms in this appeal.

III

The Does assert that the trial court erred by determining that they were unlikely to succeed on the merits of their claim that their identities are exempt from disclosure in the requested records and, accordingly, denying their motion for a preliminary injunction precluding such disclosure. We agree. The First Amendment, made applicable to the states though the due process clause of the Fourteenth Amendment, Gitlow v. New York, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925), confers a right to privacy in one's political beliefs and associations that may be impinged only on the basis of a subordinating state interest that is compelling.

Our Supreme Court's decisional authority, the profusion of legislatively enacted exceptions to disclosure, and the policy underlying the PRA indicate that there is no compelling state interest in disclosing to the public the identities of public employees against whom unsustained allegations of wrongdoing have been made. Therefore, we hold that the trial court erred by denying the Does'

request for a preliminary injunction precluding disclosure of their names and other identifying information in the requested records.

A

1

The party seeking an injunction pursuant to the PRA has the burden of proof. Lyft, Inc. v. City of Seattle, 190 Wn.2d 769, 791, 418 P.3d 102 (2018). When a party seeks a preliminary injunction or a TRO, "the trial court need not resolve the merits of the issues." Seattle Children's Hosp. v. King County, 16 Wn. App. 2d 365, 373, 483 P.3d 785 (2020). "Instead, the trial court considers only the *likelihood* that the moving party ultimately will prevail at a trial on the merits." SEIU Healthcare 775NW v. Dep't of Soc. & Health Servs., 193 Wn. App. 377, 392-93, 377 P.3d 214 (2016).

We stand in the same position as the trial court when, as here, "the record consists of only affidavits, memoranda of law, and other documentary evidence, and where the trial court has not seen or heard testimony requiring it to assess the witnesses' credibility or competency." Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, 407, 259 P.3d 190 (2011). "Whether requested records are exempt from disclosure presents a legal question that is reviewed de novo." Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss, 194 Wn.2d 484, 493, 450 P.3d 601 (2019).

2

"The PRA ensures the sovereignty of the people and the accountability of the governmental agencies that serve them by providing full access to

information concerning the conduct of government." Predisik v. Spokane Sch. Dist. No. 81, 182 Wn.2d 896, 903, 346 P.3d 737 (2015). Its basic purpose "is to provide a mechanism by which the public can be assured that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co. v. State Patrol, 109 Wn.2d 712, 719, 748 P.2d 597 (1988). To that end, the act requires state and local agencies to "make available for public inspection and copying all public records," unless the record falls within a specific exemption in the PRA or an "other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1).

We have interpreted the "other statute" provision to incorporate exemptions set forth not only in other legislative enactments, but also those deriving from the state or federal constitutions. Wash. Fed'n of State Emps., Council 28 v. State, 22 Wn. App. 2d 392, 511 P.3d 119 (2022), review granted, 200 Wn.2d 1012, 519 P.3d 585 (2022); see also White v. Clark County, 188 Wn. App. 622, 354 P.3d 38 (2015). Although our Supreme Court has not directly held that RCW 42.56.070(1)'s "other statute" provision incorporates constitutional protections against disclosure, the court has acknowledged that such an argument "has force." Yakima County v. Yakima Herald-Republic, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) (addressing the argument that provisions of the United States Constitution qualify as "other statutes").

Moreover, the high court has recognized that, even absent legislative incorporation of constitutional guarantees in the PRA, Washington courts must nevertheless protect such rights. Seattle Times Co. v. Serko, 170 Wn.2d 581,

594-96, 243 P.3d 919 (2010). In the context of fair trial rights, the court explained that while "[t]here is no specific exemption under the PRA that mentions the protection of an individual's constitutional fair trial rights, . . . courts have an independent obligation to secure such rights." Seattle Times Co., 170 Wn.2d at 595. Indeed, because "the constitution supersedes contrary statutory laws, even those enacted by initiative," "the PRA must give way to constitutional mandates." Freedom Found. v. Gregoire, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013).

In addition to setting forth exemptions to the mandate for disclosure of public records, the PRA includes an injunction provision stating that disclosure may be enjoined only when "examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions." RCW 42.56.540. Based on this statutory provision, our Supreme Court has held that "finding an exemption applies under the PRA does not ipso facto support issuing an injunction." Lyft, 190 Wn.2d at 786. Rather, for the disclosure of records to be precluded *due to a statutory exemption*, the court has held that the PRA's standard for injunctive relief must also be met. Morgan v. City of Federal Way, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009); see also Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 757, 174 P.3d 60 (2007) (plurality opinion) ("[T]o impose the injunction contemplated by RCW 42.56.540, the trial court must find that a specific exemption applies *and* that disclosure would not be in the public interest

and would substantially and irreparably damage a person or a vital government interest.").

3

Our analysis of the issues presented relies on the holdings of our nation's highest court establishing that the First Amendment to the United States Constitution confers a privacy right in an individual's political beliefs and associations. Accordingly, we must explore the decisional authority establishing the contours of that right.

The United States Supreme Court has recognized "political freedom of the individual" to be "a fundamental principle of a democratic society." Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957). "Our form of government," the Court explained, "is built on the premise that every citizen shall have the right to engage in political expression and association," a right "enshrined in the First Amendment." Sweezy, 354 U.S. at 250. Indeed, "[i]n the political realm . . . thought and action are presumptively immune from inquisition by political authority." Sweezy, 354 U.S. at 266.[5] Thus, the federal constitution protects not only the right of individuals to engage in political expression and association, but also to maintain their privacy in so doing.

Indeed, the Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by

[5] See also Gibson v. Florida Legis. Investigation Comm., 372 U.S. 539, 570, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963) (Douglas, J., concurring) ("'The First Amendment in its respect for the conscience of the individual honors the sanctity of thought and belief. To think as one chooses, to believe what one wishes are important aspects of the constitutional right to be let alone.'" (quoting Pub. Utils. Comm'n of Dist. of Columbia v. Pollak, 343 U.S. 451, 468, 72 S. Ct. 813, 96 L. Ed. 1068 (1952) (Douglas, J., dissenting))).

the First Amendment." Buckley v. Valeo, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (citing Gibson v. Florida Legis. Investigation Comm., 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); Nat'l Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963); Bates v. City of Little Rock, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); Shelton v. Tucker, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960); Nat'l Ass'n for Advancement of Colored People v. Alabama, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958) (NAACP)); see also Doe v. Reed, 561 U.S. 186, 232, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) (Thomas, J., dissenting) ("This Court has long recognized the 'vital relationship between' political association 'and privacy in one's associations,' and held that '[t]he Constitution protects against the compelled disclosure of political associations and beliefs.'" (alteration in original) (citation omitted) (quoting NAACP, 357 U.S. at 462; Brown v. Socialist Workers '74 Campaign Comm. (Ohio), 459 U.S. 87, 91, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982))). Thus, the Court has recognized a "pervasive right of privacy against government intrusion" that is "implicit in the First Amendment." Gibson, 372 U.S. at 569-70 (Douglas, J., concurring). This "tradition of anonymity in the advocacy of political causes . . . is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 343, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995); see also Sweezy, 354 U.S. at 266 ("It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election.").

The Supreme Court's jurisprudence regarding this constitutional right to privacy evolved in response to legislative investigations seeking to compel the disclosure of individuals' political beliefs. In the 1950s, the Court considered the constitutional limits of legislatures' authority to inquire into belief and activity deemed to be subversive to federal or state governments. Uphaus v. Wyman, 360 U.S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090 (1959); Watkins v. United States, 354 U.S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273 (1957); Sweezy, 354 U.S. 234; Wieman v. Updegraff, 344 U.S. 183, 73 S. Ct. 215, 97 L. Ed. 216 (1952). This "new kind of [legislative] inquiry unknown in prior periods of American history . . . involved a broad-scale intrusion into the lives and affairs of private citizens," Watkins, 354 U.S. at 195, thus requiring the Court to ensure that such inquiry did not "unjustifiably encroach upon an individual's right to privacy." Watkins, 354 U.S. at 198-99. In considering this "collision of the investigatory function with constitutionally protected rights of speech and assembly," Uphaus, 360 U.S. at 83 (Brennan, J., dissenting), the Court recognized the state interest in "self-preservation, 'the ultimate value of any society.'" Uphaus, 360 U.S. at 80 (quoting Dennis v. United States, 341 U.S. 494, 509, 71 S. Ct. 857, 95 L. Ed. 1137 (1951)). However, the Court rejected any notion that exposure itself was a valid state interest:

> We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

Watkins, 354 U.S. at 200 (footnote omitted); see also Uphaus, 360 U.S. at 82 (Brennan, J., dissenting) (recognizing the "investigatory objective" therein to be "the impermissible one of exposure for exposure's sake").

The Watkins Court recognized the governmental intrusion resulting from such legislative inquiry, as well as the "disastrous" consequences that may ensue as a result of compelled disclosure of the individual's political beliefs.

> The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous.

354 U.S. at 197; see also Uphaus, 360 U.S. at 84 (Brennan, J., dissenting) ("[I]n an era of mass communications and mass opinion, and of international tensions and domestic anxiety, exposure and group identification by the state of those holding unpopular and dissident views are fraught with such serious consequences for the individual as inevitably to inhibit seriously the expression of views which the Constitution intended to make free.").

However, it is not only those individuals compelled to disclose their beliefs who may be impacted. To the contrary, the Court recognized an additional "more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time." Watkins, 354 U.S. at 197-98. Moreover, that the injury was not inflicted solely by government actors did not nullify the constitutional infirmity; rather, that the "impact [was] partly the result of non-governmental

activity by private persons [could not] relieve the investigators of their responsibility for initiating the reaction." Watkins, 354 U.S. at 198.

The Supreme Court further defined this constitutional privacy interest in response to legislative action seeking to compel the disclosure of organizational membership. NAACP, 357 U.S. 449; Bates, 361 U.S. 516; Shelton, 364 U.S. 479; Gibson, 372 U.S. 539. In 1958, the Court considered whether Alabama could, consistent with our federal constitution, compel the NAACP to disclose its membership list to the Alabama Attorney General. NAACP, 357 U.S. at 451. "It is beyond debate," the Court held, "that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP, 357 U.S. at 460. Although the state itself had "taken no direct action" in the challenged contempt judgment, the Court recognized that "abridgement of [First Amendment] rights, even though unintended, may inevitably follow from varied forms of governmental action." NAACP, 357 U.S. at 461. Indeed, "[t]he governmental action challenged may appear to be totally unrelated to protected liberties." NAACP, 357 U.S. at 461. Nevertheless, the Court held, the State could require disclosure of the membership lists only if there existed a "'subordinating interest of the State [that is] compelling.'" NAACP, 357 U.S. at 463 (quoting Sweezy, 354 U.S. at 265); see also Bates, 361 U.S. at 524 ("Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating

interest which is compelling."). The Court concluded that it discerned no such state interest. NAACP, 357 U.S. at 464.

The Court again considered whether the First Amendment, incorporated through the due process clause, precluded the compelled disclosure of NAACP membership lists in Bates, 361 U.S. 516. There, the organization asserted the rights of its "'members and contributors to participate in the activities of the NAACP, anonymously, a right which has been recognized as the basic right of every American citizen since the founding of this country.'" Bates, 361 U.S. at 521. Again, the Court recognized that it was not simply a "heavy-handed frontal attack" against which First Amendment freedoms are protected, but "also from being stifled by more subtle governmental interference." Bates, 361 U.S. at 523. In concurrence, Justices Black and Douglas recognized that mere exposure by the government can impinge these constitutional protections. Bates, 361 U.S. at 528 (Black & Douglas, JJ., concurring). "First Amendment rights," the Justices recognized, "are beyond abridgement either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, *or exposure by government*." Bates, 361 U.S. at 528 (Black & Douglas, JJ., concurring) (emphasis added). As in NAACP, the Bates Court discerned no sufficient state interest to compel the disclosure of the membership lists. 361 U.S. at 525.

That same year, the Court addressed the constitutionality of an Arkansas statute requiring public school teachers to disclose, as a condition of employment, all organizations with which they had been associated in the

previous five years. Shelton, 364 U.S. 479. Recognizing the State's undoubtedly legitimate interest in investigating the fitness and competency of its teachers, the Court nevertheless observed that the statute's "scope of inquiry" was "completely unlimited." Shelton, 364 U.S. at 485, 488. Significantly, the statute would have required "a teacher to reveal the church to which he belongs, or to which he has given financial support. It [would have required] him to disclose his political party, and every political organization to which he may have contributed over a five-year period." Shelton, 364 U.S. at 488. This "comprehensive interference with associational freedom," the Court held, "goes far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness and competency of its teachers." Shelton, 364 U.S. at 490.

As in NAACP, the Supreme Court in Shelton again recognized that exposure by the State could impinge constitutional privacy rights. Because the Arkansas statute nowhere required confidentiality of the information involuntarily disclosed to the government, the Court considered that the teachers' religious, political, and other associational ties could additionally be disclosed to the public. Shelton, 364 U.S. at 486-87. The Court was clear that such an intrusion into the teachers' privacy would further impinge their constitutional rights. Such "[p]ublic exposure, bringing with it the possibility of public pressures upon school boards to discharge teachers who belong to unpopular or minority organizations, would simply operate to widen and aggravate the impairment of constitutional liberty." Shelton, 364 U.S. at 486-87.

Four Justices dissented in Shelton, disagreeing with the majority's holding that, under the circumstances presented, the extent of constitutional infringement resulting from compelled disclosure was sufficient to override the countervailing legitimate state interest.[6] Nevertheless, even the dissenting opinions in Shelton recognized both the existence of a constitutional privacy interest and the potential for public exposure of associational ties to impinge upon those rights. For instance, Justice Frankfurter, distinguishing NAACP and Bates due to the absence of a legitimate state interest presented in those cases, recognized "that an interest in privacy, in non-disclosure, may under appropriate circumstances claim constitutional protection." Shelton, 364 U.S. at 490 (Frankfurter, J., dissenting). Similarly, Justice Harlan suggested that public disclosure of the teachers' associational ties, beyond simply the compelled disclosure to their school boards, might impinge their liberty rights: "I need hardly say that if it turns out that this statute is abused, either by an unwarranted publicizing of the required associational disclosures or otherwise, we would have a different kind of case than those presently before us." Shelton, 364 U.S. at 499 (Harlan, J., dissenting).

Three years later, the Court was "called upon once again to resolve a conflict between individual rights of free speech and association and governmental interest in conducting legislative investigations." Gibson, 372 U.S.

[6] See Shelton, 364 U.S. at 496 (Frankfurter, J., dissenting) (concluding that "the disclosure of teachers' associations to their school boards" is not "without more, such a restriction upon their liberty . . . as to overbalance the State's interest in asking the question"); Shelton, 364 U.S. at 497 (Harlan, J., dissenting) (concluding that the statute's disclosure requirement "cannot be said to transgress the constitutional limits of a State's conceded authority to determine the qualifications of those serving it as teachers").

at 543. There, a Florida legislative committee sought to subpoena NAACP membership lists, presumably to investigate suspected communist involvement. Gibson, 372 U.S. at 540-41. The Supreme Court again affirmed that such an investigation, "which intrudes into the area of constitutionally protected rights of speech, press, association and petition," is lawful only when the State can "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." Gibson, 372 U.S. at 546. The Court held that "all legitimate organizations are the beneficiaries of these protections," but noted that the protections "are all the more essential . . . where the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors." Gibson, 372 U.S. at 556-57. In such circumstances, "the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association is consequently the more immediate and substantial." Gibson, 372 U.S. at 557.

In the decades that have followed, the Supreme Court has continued to hold that First Amendment rights may be impinged when the government compels disclosure of political beliefs and associations. In 1982, the Court again affirmed that "[t]he Constitution protects against the compelled disclosure of political associations and beliefs." Brown, 459 U.S. at 91. "Such disclosures," the Court recognized, "'can seriously infringe on privacy of association and belief guaranteed by the First Amendment.'" Brown, 459 U.S. at 91 (quoting Buckley, 424 U.S. at 64). Again, the Court held that only by demonstrating a compelling interest can the State lawfully impinge such rights:

> The right to privacy in one's political associations and beliefs will yield only to a "'subordinating interest of the State [that is] compelling,'" NAACP[, 357 U.S. at 463] (quoting Sweezy[, 354 U.S. at 265]) (opinion concurring in result), and then only if there is a "substantial relation between the information sought and [an] overriding and compelling state interest." Gibson[, 372 U.S. at 546].

Brown, 459 U.S. at 91-92 (some alterations in original).

Over a decade later, in declaring unconstitutional an Ohio statute prohibiting the distribution of anonymous campaign literature, the Supreme Court once again "embraced [the] respected tradition of anonymity in the advocacy of political causes." McIntyre, 514 U.S. at 343 (citing Talley v. California, 362 U.S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960)); see also Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton, 536 U.S. 150, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002) (recognizing a right to anonymity in declaring unconstitutional an ordinance requiring individuals to obtain and display a permit to engage in door-to-door advocacy). In McIntyre, the Court recognized the constitutional significance of "core political speech," describing the speech involved therein—the "handing out [of] leaflets in the advocacy of a politically controversial viewpoint"—as "the essence of First Amendment expression." 514 U.S. at 347. Acknowledging that the reasons for anonymity could be many,[7,8] the Court held that the freedom to remain anonymous, whether in "the literary realm" or "in the field of political rhetoric," "is an aspect of the freedom of speech protected by the

[7] "The decision in favor of anonymity," the Court noted, "may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." McIntyre, 514 U.S. at 341-42.

[8] "Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes." Talley, 362 U.S. at 65.

First Amendment." McIntyre, 514 U.S. at 342-43. For Justice Stevens, writing in McIntyre, the value of anonymity in political speech could not be overstated:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. See generally J. Mill, On Liberty and Considerations on Representative Government 1, 3-4 (R. McCallum ed. 1947). It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.

514 U.S. at 357.

For nearly a century, the rights afforded by the First Amendment have been protected against intrusion by the States as an "inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP, 357 U.S. at 460; see Gitlow, 268 U.S. 652. During this time, the Supreme Court has repeatedly recognized that encompassed within this liberty interest is the right of individuals to privacy in their political beliefs and associations, wherein "thought and action are presumptively immune from inquisition by political authority." Sweezy, 354 U.S. at 266 (Frankfurter, J., concurring). This privacy interest "yield[s] only to a 'subordinating interest of the State [that is] compelling,' and then only if there is a 'substantial relation between the information sought and [an] overriding and compelling state interest.'" Brown, 459 U.S. at 91-92 (second and third alterations in original) (citation and internal quotation marks omitted) (quoting Sweezy, 354 U.S. at 265; Gibson, 372 U.S. at 546).

It is with cognizance of these principles that we consider whether SPD and the City may disclose the Does' identities in the investigatory records at issue.

B

The Does assert that the disclosure of their identities in the requested records will violate their First Amendment right to political anonymity.[9] They contend that the trial court erred by determining that no constitutional privacy interest is implicated in this situation. We agree.

Both the Does' attendance at the January 6 rally and their compelled statements to investigators implicate the First Amendment. Exposure by the government of this information, through disclosure of the unredacted requested records, would impinge the Does' constitutional right to anonymity in their political beliefs and associations.

Pursuant to United States Supreme Court decisional authority, the State must demonstrate that disclosure of the unredacted requested records would further a compelling state interest and that such disclosure is narrowly tailored to achieve that state interest. Because no compelling state interest exists to justify disclosure of the unredacted records, the Does are entitled to an injunction prohibiting exposure by the government of their identities.

[9] The parties' initial appellate briefing primarily concerns whether the Does are entitled to a preliminary injunction pursuant to statutory exemptions set forth in the PRA. However, the Does additionally contended that disclosure would violate their First Amendment rights. Following oral argument, the parties submitted supplemental briefing addressing this issue more thoroughly. Because the answer to the Does' request for a remedy is found in First Amendment jurisprudence, we need not address the parties' arguments regarding PRA statutory exemptions to disclosure.

1

The Does assert that disclosure of their identities in the requested records, both with regard to their attendance at the January 6 rally and their statements made to investigators concerning their political views and affiliations, will violate their First Amendment right to privacy. They aver that the trial court erred in two respects. First, the Does contend that the trial court erroneously concluded that, because the January 6 rally was a public event, the Does had no right to privacy in attending that event. Second, they argue that the trial court erred by concluding that they had not demonstrated a sufficient probability of a "chilling effect" on their constitutional rights to be entitled to the relief sought.

Sueoka contends, on the other hand, that the Does' attendance at the January 6 rally is not protected by a constitutional privacy right. He further contends that, even if disclosure of the Does' identities in the requested records implicates a First Amendment right, the Does relinquished that right by cooperating with the OPA's investigation. Finally, Sueoka asserts that the trial court properly determined that the Does have not shown a sufficient probability of harm to establish a constitutional right to privacy.

The Does' contentions, consistent as they are with United States Supreme Court decisional authority, are the more persuasive. We conclude that the Does have a First Amendment privacy right in their identities in the requested records.

(a)

The First Amendment to the United States Constitution, as incorporated through the due process clause of the Fourteenth Amendment, "protects against

the compelled disclosure of political associations and beliefs." Brown, 459 U.S. at 91; see also Buckley, 424 U.S. at 64 (noting that the Court had "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment"). Even when the State takes "no direct action" to abridge an individual's First Amendment rights, those rights may be impinged by "varied forms of governmental action" that "may appear to be totally unrelated to protected liberties." NAACP, 357 U.S. at 461. In other words, it is not solely a "heavy-handed frontal attack" by government that may abridge an individual's First Amendment rights; such constitutional transgression may also arise from "more subtle governmental interference." Bates, 361 U.S. at 523. Indeed, simple "exposure by government" may be sufficient to impinge such rights. Bates, 361 U.S. at 528.

Here, the trial court concluded, and Sueoka presently asserts, that the Does have no right to privacy in having attended a public political rally. The trial court reasoned:

> Whether a person attended a public rally is not the type of intimate detail that courts in Washington have said should remain private. Washington courts have not previously found an inherent right to privacy in attendance at a public political rally. Attending a public rally is not an act that is inherently cloaked in privacy.

In so ruling, the court was clearly referring to Washington law concerning whether an individual has a *statutory right to privacy* pursuant to the PRA.[10] We

[10] Because the PRA does not define "right to privacy," our Supreme Court adopted the common law tort definition of the term, which provides, in part, that the privacy right is implicated when the "'intimate details of [a person's] life are spread before the public gaze in a manner highly offensive to the ordinary reasonable [person].'" Hearst Corp. v. Hoppe, 90 Wn.2d 123, 136, 580 P.2d 246 (1978) (quoting RESTATEMENT (SECOND) OF TORTS § 652D, at 386 (AM. LAW INST. 1977)). The trial court referenced this language in ruling that the Does' attendance at the January 6 rally does not implicate a privacy right.

do not evaluate, however, whether disclosure of the Does' identities is precluded by a statutory right to privacy.

Rather, we conclude that, pursuant to United States Supreme Court decisional authority, the disclosure by the government of the Does' identities in the requested records would violate their federal constitutional right to anonymity in political belief and association. See, e.g., Watchtower Bible, 536 U.S. 150; McIntyre, 514 U.S. 334; Brown, 459 U.S. 87; Buckley, 424 U.S. 1; Gibson, 372 U.S. 539; Shelton, 364 U.S. 479; Talley, 362 U.S. 60; Bates, 361 U.S. 516; Uphaus, 360 U.S. 72; NAACP, 357 U.S. 449; Watkins, 354 U.S. 178; Sweezy, 354 U.S. 234; Wieman, 344 U.S. 183. Such governmental action would expose to the public not only records evidencing the Does' attendance at the January 6 rally, but also the transcripts of interviews in which the Does were compelled to "articulate [their] political views," discuss whether they were "affiliated with any political groups," and describe "[their] impressions of, and reactions to, the content of the Rally." The requested records thus implicate the Does' personal political views and their affiliations, if any, with political organizations.[11] "It cannot

---

Because, at common law, sovereign immunity precluded actions against the government, it comes as little surprise that in this case—wherein the actions of government are directly at issue—the answer is found not in the common law but in the First and Fourteenth Amendments—which are each solely directed at governmental action.

[11] The trial court did not consider whether the Does' statements regarding their political beliefs and associations, compelled to be disclosed during the OPA investigation, implicated either a statutory or constitutional right to privacy. Instead, the court found that there was "no evidence . . . indicating whether the requested records sought contain explicit information about the Does' political beliefs or associations."

The record does not support this finding. The Does' declarations state that each was "ordered to answer all questions asked, truthfully and completely, and that failure to do so may result in discipline up to and including termination." These questions included "why [they] attended" the rally, whether they attended "to articulate [their] political views," whether they were "showing support for a political group" or were "affiliated with any political groups," and what were their "impressions of, and reactions to, the content" of the rally. In their declarations, each of the Does stated: "Because I believed I was under a standing order to answer these personal

require argument," the United States Supreme Court has stated, "that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election." Sweezy, 354 U.S. at 266. If such direct governmental action would impinge the Does' constitutional privacy interests, then so, too, does exposure by the government of that same information pursuant to a records request. See Bates, 361 U.S. at 523; NAACP, 357 U.S. at 461.

Sueoka nevertheless contends that our Supreme Court's decision in Spokane Police Guild v. Liquor Control Board, 112 Wn.2d 30, 769 P.2d 283 (1989), "puts to rest any claim" that the Does' attendance at the January 6 rally is protected by a constitutional privacy right.[12] In that case, the court considered whether a statutory exemption precluded disclosure of an investigatory report that identified police officers who had attended a party on Spokane Police Guild Club premises. Spokane Police Guild, 112 Wn.2d at 31. The party, "variously referred to as a bachelor party, stag show and strip show," had been determined to violate regulations of the liquor board. Spokane Police Guild, 112 Wn.2d at 31. Our Supreme Court held that disclosure of the report would not violate the statutory right to privacy conferred by the statutory predecessor of the PRA. Spokane Police Guild, 112 Wn.2d at 37-38. Recognizing that this privacy right pertains "only to the intimate details of one's personal and private life," the court reasoned that there was "no personal intimacy involved in one's presence or

questions, I did so truthfully and as completely as possible." These declarations are themselves evidence that the requested records contain statements regarding the Does' political beliefs and affiliations.

[12] Br. of Resp't/Cross Appellant at 31.

conduct at such a well attended and staged event which would be either lost or diminished by being made public." Spokane Police Guild, 112 Wn.2d at 38.

According to Sueoka, this holding compels the conclusion herein that the Does' attendance at the January 6 rally—occurring, as it did, in a public location[13]—does not implicate a right to privacy. However, in so asserting, Sueoka confuses the *statutory privacy right* bestowed by the PRA with the *constitutional privacy right* deriving from the First Amendment. In Spokane Police Guild, the disclosure of the officers' political beliefs and associations was not at issue; accordingly, the court considered only whether a statutory exemption prohibited disclosure of the investigative report. 112 Wn.2d at 37-38. Moreover, in focusing solely on the Does' attendance at a public event, Sueoka disregards that disclosure of the requested records would additionally expose the Does' statements regarding their political beliefs and associations, which the Does were compelled to disclose during the OPA investigation. In short, Sueoka asserts that Washington Supreme Court decisional authority concerning a statutory right to privacy stemming from the common law of torts precludes a determination that a federal constitutional right prohibits disclosure by a government. This contention is wholly unavailing.

Sueoka additionally contends that the United States Supreme Court's decisional authority regarding the First Amendment right to political anonymity is

[13] The Capitol Police issued six permits authorizing gatherings on January 6, 2021 on property under its control. Jason Leopold, *The Capitol Police Granted Permits For Jan. 6 Protests Despite Signs That Organizers Weren't Who They Said They Were*, BUZZFEED NEWS (Sept. 17, 2021), https://www.buzzfeednews.com/article/jasonleopold/the-capitol-police-said-jan-6-unrest-on-capitol-grounds [https://perma.cc/LWM5-P3MN].

inapposite because, he argues, the Does "cannot be compared to members of small and powerless political or religious groups," and are not "seeking anonymity from the government itself."[14] Again, we disagree.

Contrary to Sueoka's assertion, the United States Supreme Court has not limited the applicability of the First Amendment's privacy right to members of "small and powerless political or religious groups." To the contrary, the Court has recognized that "the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association" is "the more immediate and substantial" when "the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors." Gibson, 372 U.S. at 556-57. Nevertheless, the Court was clear that, "of course, all legitimate organizations are the beneficiaries of these protections." Gibson, 372 U.S. at 556.[15] Moreover, the question is not whether an individual is a member of a "small and powerless" group, as Sueoka asserts, but whether the individual "espous[es] beliefs . . . unpopular with their neighbors," Gibson, 372 U.S. at 557, such that exposure of those beliefs could discourage the exercise of constitutional rights.

Thus, it is the opprobrium that the community has for the individual's beliefs that is material to any "chilling effect" on constitutional rights.[16] We are

[14] Br. of Resp't/Cross Appellant at 32.

[15] In Gibson, a Florida legislative committee sought to subpoena NAACP membership lists, 372 U.S. at 540-41, hence the Court's reference to "organizations." However, it was the constitutional rights of the individuals whose identities would be disclosed in the membership lists that was at issue. In any event, we see no reason to distinguish between "organizations" and individuals on this point.

[16] As discussed infra, case law does not support Sueoka's assertion that the Does were required to demonstrate a more substantial "chilling effect" to establish a First Amendment privacy right in the requested records.

cognizant that, in the Seattle community, the Does would likely face opprobrium were their identities disclosed.[17] This is likely notwithstanding the fact that the OPA investigation determined that any allegations of unlawful or unprofessional conduct against the Does were unsustained. We reach this conclusion with an awareness of the events of recent years, including the Department of Justice finding of the systemic use of excessive force by SPD officers (necessitating the federal district court's imposition of a consent decree), the horrific killing of George Floyd and other unarmed Black individuals throughout our country, and the eruption of protests, including in Seattle, in response to those incidents.[18] Whether correctly or not, as Sueoka's briefing demonstrates, the Seattle community is likely to presume that the Does' attendance at the January 6 rally indicates that they are white supremacists who sought to undermine our nation's democracy. But whatever various individuals might infer, it remains true that all

[17] In 2016, Donald Trump received 8 percent of the vote in Seattle precincts. *Here's How Seattle Voters' Support for Trump Compared to Other Cities'*, SEATTLE TIMES (Nov. 17, 2016), https://www.seattletimes.com/seattle-news/politics/heres-how-seattle-voters-support-for-trump-stacks-up-to-other-u-s-cities/ [https://perma.cc/4PNL-G68W]. In 2020, he again received 8 percent of the vote in Seattle. Danny Westneat, *Don't Look Now, but Trump Did Better in Blue King County Than He Did the Last Time*, SEATTLE TIMES (Nov. 11, 2020), https://www.seattletimes.com/seattle-news/politics/dont-look-now-but-trump-did-better-in-blue-king-county-than-he-did-the-last-time/ [https://perma.cc/N8F8-TFHL].

[18] Whether records are subject to disclosure must be determined without regard to the motivation of the records requestor. RCW 42.56.080 ("Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons."); see also Livingston v. Cedeno, 164 Wn.2d 46, 53, 186 P.3d 1055 (2008) (holding that the Department of Corrections, in "its capacity as an agency subject to" the PRA, "must respond to all public disclosure requests without regard to the status or motivation of the requester"). However, when the impingement of constitutional protections for speech and association are at issue, it is clear that courts may consider the pertinent political and cultural atmosphere in determining whether exposure could discourage the exercise of First Amendment rights.

citizens, including public employees, may benefit from the constitutional right to privacy in their political beliefs espoused by our nation's highest court.[19]

As the Court has held, the mere compelling of an individual to disclose "beliefs, expressions or associations is a measure of governmental interference." Watkins, 354 U.S. at 197. When these "forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of [that individual] may be disastrous." Watkins, 354 U.S. at 197; see also Uphaus, 360 U.S. at 84 (Brennan, J., dissenting) ("[E]xposure and group identification by the state of those holding unpopular and dissident views are fraught with such serious consequences for the individual as to inevitably inhibit seriously the expression of views which the Constitution intended to make free."). While we have no sympathy for those who sought to undermine our democracy on January 6, 2021, the fact here is that the allegations that the Does were engaged in unlawful or unprofessional conduct were not sustained. They did not forfeit their First Amendment rights.

As our nation's highest court long-ago made clear,

> [a] final observation is in order. Because our disposition is rested on the First Amendment as absorbed in the Fourteenth . . . our decisions in the First Amendment area make[] plain that its protections would apply as fully to those who would arouse our society against the objectives of the petitioner. See, e.g., Near v. Minnesota, 283 U.S. 697[, 51 S. Ct. 625, 75 L. Ed. 1357 (1931)]; Terminiello v. Chicago, 337 U.S. 1[, 69 S. Ct. 894, 93 L. Ed. 1131

[19] Concurring in Wieman, 344 U.S. at 193, Justice Black recognized the importance of ensuring that First Amendment protections are secured for all individuals:

> Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost.

> (1949)]; Kunz v. New York, 340 U.S. 290[, 71 S. Ct. 312, 95 L. Ed. 280 (1951)]. For the Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered.

Button, 371 U.S. at 444-45.

Returning to Sueoka's contentions, we are similarly unpersuaded by his assertion that the Does cannot establish a First Amendment right to privacy because, according to him, they are not "seeking anonymity from the government itself."[20] In fact, as Sueoka notes, the Does have already been compelled to disclose their political beliefs and associations to SPD and the City. However, the government need not take "direct action" in order to unlawfully impinge an individual's constitutional privacy right. NAACP, 357 U.S. at 461. Rather, "abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action," including action that "may appear to be wholly unrelated to protected liberties." NAACP, 357 U.S. at 461.

Indeed, the United States Supreme Court has held that "First Amendment rights are beyond abridgement either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, or *exposure by government*." Bates, 361 U.S. at 528 (Black & Douglas, JJ., concurring) (emphasis added); see also Shelton, 364 U.S. at 486-87 ("Public exposure, bringing with it the possibility of public pressures upon school boards to discharge teachers who belong to unpopular or minority organizations, would simply operate to widen and aggravate the impairment of constitutional liberty.").

[20] Br. of Resp't/Cross Appellant at 32.

Here, the state action challenged is the government's exposure, pursuant to state statute, of the Does' identities in the requested records, which implicate their political beliefs and associations. Sueoka's insinuation that the City's disclosure of the Does' identities would not constitute governmental action is simply wrong.

(b)

Sueoka additionally asserts that, even if disclosure of the Does' identities would impinge their constitutional rights, the Does willingly relinquished their right to privacy. This is so, Sueoka contends, because the Does "had a right to keep their political opinions private," knew that their employer was subject to the PRA, but nevertheless attended the January 6 rally and "then informed their employer of their activities."[21] We disagree. Contrary to Sueoka's assertion, the Does did not relinquish their constitutional rights.

The facts are these. The Does submitted to interviews during an investigation in which they were alleged to have violated the law or SPD policies during their attendance at the January 6 rally. They were "ordered to answer all questions asked, truthfully and completely." They were informed that "failure to do so may result in discipline up to and including termination." They were then questioned regarding their reasons for attending the January 6 rally, their political beliefs and affiliations with political groups, if any, and their impressions of the content of the rally. The Does answered these questions "truthfully and as completely as possible" because they were under standing orders to do so.

[21] Br. of Resp't/Cross Appellant at 27-28.

In other words, the Does did not "ha[ve] a right to keep their political opinions private." Nor, contrary to Sueoka's assertion, did the Does voluntarily "inform[] their employer of their activities." Rather, the Does were placed in the untenable position of either refusing to answer investigators' questions, thus risking their livelihoods, or cooperating with the investigation, thereby compromising their constitutional rights.[22]

Nearly a century ago, the United States Supreme Court rejected the notion that an indirect assault on constitutional protections due to a purported "choice" is less insidious than is direct impingement of such rights. Frost v. RR Comm'n of State of Cal., 271 U.S. 583, 593, 46 S. Ct. 605, 70 L. Ed. 2d 1101 (1926). There, a California statute precluded private carriers from the privilege of using public highways for "transacting private business thereon" unless they submitted to regulation lawfully imposed on common carriers. Frost, 271 U.S. at 591. The Supreme Court struck down the statute, which, it concluded, was intended to protect the business of common carriers by controlling competition. Frost, 271 U.S. at 591, 593. In so doing, the Court held that a state may not require the relinquishment of a constitutional right as the basis to confer a privilege. Frost, 271 U.S. at 593. Were it otherwise, "constitutional guaranties, so carefully safeguarded against direct assault, [would be] open to destruction by the indirect but no less effective process of requiring a surrender, which, though in form voluntary, in fact lacks none of the elements of compulsion." Frost, 271

[22] Adopting Sueoka's assertion that the Does' cooperation in the investigation was voluntary would also lead to the problematic conclusion that police officers need not cooperate in such investigations. Little public good would flow from such a holding.

U.S. at 593. To be given only "a choice between the rock and the whirlpool," wherein the option is to forego one's livelihood or "submit to a requirement which may constitute an intolerable burden," is in reality, the Court announced, no choice at all. Frost, 271 U.S. at 593.

Four decades later, the Supreme Court explicitly rejected the proposition advanced by Sueoka herein—that statements obtained from police officers as a result of those officers cooperating (in compliance with a lawful request to do so) in investigations conducted by their employer or at their employer's direction are deemed voluntary. Garrity, 385 U.S. 493. In Garrity, police officers were ordered to cooperate in an investigation by the New Jersey Attorney General regarding "alleged irregularities in handling cases in the municipal courts" of certain New Jersey boroughs. 385 U.S. at 494. Prior to questioning, each officer was warned "(1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office." Garrity, 385 U.S. at 494. After cooperating in the investigation, the officers were convicted of conspiracy to obstruct the administration of the traffic laws, and "their convictions were sustained over their protests that their statements were coerced, by reason of the fact that, if they refused to answer, they could lose their positions with the police department." Garrity, 385 U.S. at 495 (footnote omitted).

The Supreme Court held that, where the officers were given the choice between self-incrimination and losing their livelihoods, their statements were not voluntary:

> The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in Miranda v. Arizona, 384 U.S. 436, 464-65[, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)], is "likely to exert such pressure upon an individual as to disable him from making a free and rational choice." We think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary under our prior decisions.

Garrity, 385 U.S. at 497-98 (footnote omitted). Police officers, the Court concluded, "are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500. Moreover, the Court therein confirmed that the rights secured by the First Amendment are among those "rights of constitutional stature whose exercise a State may not condition by the exaction of a price." Garrity, 385 U.S. at 500.

As in Garrity, the Does here were informed by SPD, their employer, that their continued employment could be contingent on their cooperation with the investigation. The answers elicited from the Does during interviews directly implicate speech protected by the First Amendment. The Does, as with the police officers in Garrity, were afforded a choice "'between the rock and the whirlpool,'" 385 U.S. at 496 (quoting Stevens v. Marks, 383 U.S. 234, 243, 86 S. Ct. 788, 15 L. Ed. 2d 724 (1966)), whereby only by relinquishing their constitutional privacy interests could the Does ensure their continued

employment. "[D]uress is inherent" when statements are thusly obtained. Garrity, 385 U.S. at 498.

As the precedent of our nation's highest court makes clear, the Does' statements to investigators were not voluntary. We reject Sueoka's assertion that the Does relinquished their constitutional rights by cooperating with the OPA's investigation.

(c)

Sueoka next contends that the Does have not set forth sufficient evidence that harm would result from disclosure of their identities in the requested records, such that they should be entitled to an injunction precluding such disclosure. He asserts that the Does must demonstrate that disclosure would create a "chilling effect" on their constitutional rights and that they have not done so. Again, we disagree. Adhering to precedent from our Supreme Court, and cognizant that federal courts have determined that a "chilling effect" may, at times, be assumed, we hold that the evidence submitted by the Does is sufficient to meet the necessary showing of potential harm.

In Doe v. Reed, the United States Supreme Court considered whether, pursuant to Washington's PRA, the disclosure of referendum petitions, and thereby of the identities of the petition signers, would violate the First Amendment. 561 U.S. 186. The Court therein concluded that disclosure would not violate the First Amendment with respect to referendum petitions in general. Reed, 561 U.S. at 202. However, the Court articulated the standard it had applied "in related contexts," that "those resisting disclosure can prevail under the

First Amendment if they can show 'a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" Reed, 561 U.S. at 200 (alteration in original) (quoting Buckley, 424 U.S. at 74).

Our Supreme Court applied this standard in evaluating the constitutionality of a discovery order compelling the disclosure of meeting minutes of the Freedom Socialist Party. See Snedigar v. Hoddersen, 114 Wn.2d 153, 156, 786 P.2d 781 (1990). In that case, the court reversed a decision of this court, in which we had held that the party resisting the discovery order was required to make "an initial showing of *actual* infringement on First Amendment rights." Snedigar, 114 Wn.2d at 158. This was wrong, our Supreme Court explained, because "[t]he party asserting the First Amendment associational privilege is only required to show *some probability* that the requested disclosure will harm its First Amendment rights." Snedigar, 114 Wn.2d at 158. And, indeed, in that case, the Party's national secretary submitted affidavits stating that (1) "Party members and supporters had been subjected to acts of reprisal and harassment in the past," and (2) that "the expectation of confidentiality in internal discussions [was] essential to the Party's survival." Snedigar, 114 Wn.2d at 163. These affidavits, our Supreme Court held, were sufficient to demonstrate that disclosure would "chill" the Party's constitutional rights. Snedigar, 114 Wn.2d at 164.

In evaluating whether sufficient probability of harm was shown, our Supreme Court in Snedigar recognized that some courts have explicitly held that "a concrete showing of 'chill' is unnecessary" to determine that disclosure would

impinge First Amendment rights. 114 Wn.2d at 162 (citing Black Panther Party v. Smith, 661 F.2d 1243, 1267-68, (D.C. Cir. 1981); Britt v. Superior Court, 20 Cal. 3d 844, 855, 574 P.2d 766, 143 Cal. Rptr. 695 (1978)). Indeed, the court noted, some courts "have overlooked the absence of a factual record of past harassment and . . . assumed that disclosure of information" would chill such rights. Snedigar, 114 Wn.2d at 162 (citing Shelton, 364 U.S. at 485-86; Talley, 362 U.S. at 64; Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. Waterfront Comm'n of New York, 667 F.2d 267, 272 (2d Cir.1981); Pollard v. Roberts, 283 F. Supp. 248, 258 (E.D. Ark. 1968), aff'd, 393 U.S. 14, 89 S. Ct. 47, 21 L. Ed. 2d 14 (1968)).

Moreover, as the Second Circuit has recognized, "a factual record of past harassment is not the only situation in which courts have upheld a First Amendment right of non-disclosure." Int'l Longshoremen's Ass'n, 667 F.2d at 271. Rather,

> [t]he underlying inquiry must always be whether a compelling governmental interest justifies any governmental action that has "the practical effect 'of discouraging' the exercise of constitutionally protected political rights," "even if any deterrent effect . . . arises . . . as an unintended but inevitable result of the government's conduct in requiring disclosure."

Int'l Longshoremen's Ass'n, 667 F.2d at 271 (citation omitted) (quoting NAACP, 357 U.S. at 461; Buckley, 424 U.S. at 65). Based on this principle, courts, including the United States Supreme Court, have in various circumstances "adopted a commonsense approach [that] recognized that a chilling effect was

inevitable." Int'l Longshoremen's Ass'n, 667 F.2d at 272 (citing Shelton, 364 U.S. at 486; Pollard, 283 F. Supp. at 258).[23]

Here, the Does' declarations state that they have "a significant fear that disclosure of [their] attendance at the January 6 Rally would result in significant jeopardy to [their] personal safety and [their] ability to provide effective law enforcement to the community." Two of the Does described their fears for the safety and well-being of their families were their identities disclosed, one noting "the extreme volatility that has gone hand in hand with politics in this region over the last year regarding law enforcement." The Does additionally submitted the declarations of other SPD officers who stated that they had endured harassment and threats made against them and their families from members of the public.

[23] Such a "commonsense approach"—which assumes a "chilling effect" on speech and associational rights—has been utilized when disclosure was required to be made to a public employer and when the individuals seeking anonymity espoused beliefs unpopular in their communities.

For instance, in Shelton, the Supreme Court recognized that impingement of teachers' rights to free association "is conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made." 364 U.S. at 486. "[T]he pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy." Shelton, 364 U.S. at 486; see also Int'l Longshoremen's Ass'n, 667 F.2d at 272 (recognizing that the investigatory body had "pervasive control over the economic livelihood" of those seeking anonymity).

Likewise, in Pollard, there was "no evidence" that the individuals seeking anonymity had "been subjected to reprisals on account of" their contributions to the Arkansas Republican Party. 283 F. Supp. at 258. Nevertheless, given the unpopularity of the party in the state at that time, the court held that "it would be naïve not to recognize" that disclosure would subject the contributors to "potential economic or political reprisals," thus discouraging the exercise of constitutional rights. Pollard, 283 F. Supp. at 258. The court described the constitutional injury thereby inflicted thusly:

> To the extent that a public agency or officer unreasonably inhibits or discourages the exercise by individuals of their right to associate with others of the same political persuasion in the advocacy of principles and candidates of which and of whom they approve, and to support those principles and candidates with their money if they choose to do so, that agency or officer violates private rights protected by the First Amendment.

Pollard, 283 F. Supp. at 258.

Consistent with the cases cited above, we conclude that the Does have submitted sufficient evidence that disclosure of their identities would discourage the exercise of political speech and associational rights.[24] In so holding, we are mindful that it is not only the Does' constitutional rights that may be "chilled" by disclosure here, but also those of other public employees whose employers are subject to the PRA. Indeed, as the United States Supreme Court has recognized, in addition to the impact on the exercise of rights by those seeking anonymity, there is a "more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time." Watkins, 354 U.S. at 197-98.

We conclude that disclosure of the Does' identities in the requested records constitutes governmental action that would impinge their First Amendment rights. This is so despite the public nature of the January 6 rally. We find unmeritorious Sueoka's contentions that the Does relinquished their constitutional rights by cooperating with the OPA's investigation or that they failed to demonstrate that disclosure would discourage the exercise of such rights. Having so concluded, we must determine whether the State's interest in impinging those rights is sufficient to nevertheless mandate disclosure.

[24] We reach this conclusion notwithstanding Sueoka's assertion, in supplemental briefing, that the identities of the Does are already publicly known. As our Supreme Court has held, an individual's statutory right to privacy is not nullified because some members of the public may already know that individual's identity. Bainbridge Island Police Guild, 172 Wn.2d at 414 ("[J]ust because some members of the public may already know the identity of the person in the report does not mean that an agency does not violate the person's right to privacy by confirming that knowledge through its production."). The same is certainly true of the right to privacy inhering in the First Amendment to the United States Constitution.

(d)

Before we do so, however, we must address a related contention. In a statement of additional authorities submitted following oral argument, Sueoka asserts that, because the Does did not notify the attorney general of any intent to challenge the constitutionality of the PRA, we cannot consider whether the PRA violates the federal constitution if it is construed so as to require disclosure of unredacted records in this case.

This ground has been previously trod. Indeed, the District Court of the Western District of Washington considered this very issue in Roe v. Anderson, 2015 WL 4724739 (W.D. Wash. 2015), which we cite as evidence of our state attorney general's official position on this aspect of PRA analysis. In the cited case, certain erotic dancers and managers of an erotic dance studio sought to enjoin the disclosure of their personal information pursuant to a PRA request. Anderson, 2015 WL 4724739, at *1. They asserted that disclosure would violate their constitutional rights to privacy and free expression and sought a declaration that the PRA, as applied to them, was unconstitutional. Anderson, 2015 WL 4724739, at *1.

At the court's invitation, the Washington attorney general filed an amicus brief asserting that the PRA "does not require the disclosure of information protected from disclosure by the Constitution" because "*its exemptions incorporate any constitutionally-required limitation on such disclosures*." Anderson, 2015 WL 4724739, at *1 (emphasis added). The "other statute[s]" provision, RCW 42.56.070(1), the attorney general explained, is a "'catch all'

saving clause" that "*does not require a disclosure that would violate the Constitution*." Anderson, 2015 WL 4724739, at *2 (emphasis added). Citing decisional authority from our Supreme Court, the attorney general clarified that

> "[i]f the requested records are constitutionally protected from public disclosure, *that protection exists without any need of statutory permission*, and may constitute an exemption under the PRA even if not implemented through an explicit statutory exemption."
>
> "In other words, it is not necessary to read the PRA in conflict with the Constitution when the Act itself recognizes and respects other laws (including constitutional provisions) that mandate privacy or confidentiality."

Anderson, 2015 WL 4724739, at *2-3 (emphasis added).

The district court held that "[t]he State is correct." Anderson, 2015 WL 4724739, at *3. "The PRA, by design, cannot violate the Constitution, and constitutional protections (such as freedom of expression) are necessarily incorporated as exemptions, just like any other express exemption enumerated in the PRA." Anderson, 2015 WL 4724739, at *3.

We agree with and adopt this analysis. Thus, once the constitutional right is established and the constitutional injury that disclosure would cause is shown, it is entirely unnecessary for the citizen to establish an *additional* entitlement to an injunction in order to preclude disclosure. The law is clear and the principle simple—the government may not violate a person's First Amendment rights, even in the absence of an injunction specifically forbidding it from doing so.[25]

2

The United States Supreme Court has repeatedly affirmed that

[25] See discussion infra § III C.

> [t]he right to privacy in one's political associations and beliefs will yield only to a "'subordinating interest of the State [that is] compelling,'" NAACP[, 357 U.S.] at 463 (quoting Sweezy, 354 U.S. [at 265] (opinion concurring in result)), and then only if there is a "substantial relation between the information sought and [an] overriding and compelling state interest." Gibson[, 372 U.S. at 546].

Brown, 459 U.S. at 91-92 (some alterations in original). Thus, having concluded that disclosure of the Does' identities in the requested records would impinge their First Amendment rights, we must determine whether an overriding and compelling state interest nevertheless requires such disclosure.

For its part, the City contends that a less stringent standard should apply because, according to the City, "public employees have diminished First Amendment rights, even for purely private speech."[26] Not so. Police officers, such as the Does, "are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500. The City's assertion to the contrary, reliant as it is on inapposite decisional authority, is unpersuasive.

We conclude that the State has no compelling interest in disclosing the Does' identities in the requested records. The state interest in disclosing the entirety of a particular public record is illuminated by the purpose of the PRA and its scope, as determined by our legislature and Supreme Court. Such considerations demonstrate that the state interest here falls short of the standard required to impinge the Does' First Amendment rights. We thus hold that the State has no compelling interest in disclosing the Does' identities in the requested records.

[26] City of Seattle, Suppl. Mem. at 2.

(a)

We first address the City's argument, set forth in supplemental briefing, that the state actor need not demonstrate a compelling interest in order to impinge the Does' constitutional rights. The City, itself an employer of vast numbers of public employees, asserts that "public employees have diminished First Amendment rights, even for purely private speech."[27] Hence, the City contends, the constitutional rights of public employees, unlike those of other citizens, can be impinged absent the demonstration of a compelling state interest. We disagree.

When the State seeks to compel disclosure of an individual's political beliefs and associations, it can do so only by demonstrating a compelling state interest with sufficient relation to the information sought to be disclosed. See, e.g., Brown, 459 U.S. at 91-92; Gibson, 372 U.S. at 546; NAACP, 357 U.S. at 463; Sweezy, 354 U.S. at 265. That the State's interest must be compelling reflects the United States Supreme Court's recognition that "political freedom of the individual" is a "fundamental principle of a democratic society," Sweezy, 354 U.S. at 250, and that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley, 424 U.S. at 64.

Moreover, as we have discussed, our nation's highest Court has rejected the notion that public employees are not entitled to the same stature of constitutional rights as are other citizens. In 1967, the Court in Garrity

[27] City of Seattle, Suppl. Mem. at 2.

considered whether police officers, by virtue of being compelled to cooperate in an investigation by the New Jersey Attorney General, relinquished the constitutional right against self-incrimination. 385 U.S. at 494-98. The Court determined that the statements of the police officers, who were given the choice between self-incrimination and losing their livelihoods, were not voluntary. Garrity, 385 U.S. at 497-98. In so holding, the Court "conclude[d] that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500.

In asserting to the contrary—that the Does are, indeed, condemned to a diluted version of First Amendment rights—the City urges us to apply the "balancing test" set forth by the Supreme Court in Pickering v. Board of Education of Township High School District 205, Will County, Ill., 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).[28] The City's reliance on Pickering is misplaced.

In Pickering, a public school teacher submitted to a local newspaper a letter regarding a proposed tax increase that was critical of the manner in which the school board and superintendent had "handled past proposals to raise new revenue for the schools." 391 U.S. at 564. The teacher was dismissed from his position pursuant to an Illinois statute that permitted such dismissal for actions detrimental to the interests of the school system. Pickering, 391 U.S. at 564-65. He thereafter filed suit, asserting that the Illinois statute was unconstitutional as

[28] See City of Seattle, Suppl. Mem. at 6 ("It is this balancing test, not strict scrutiny, that applies to disclosure of the public records containing employees' speech.").

applied pursuant to the First and Fourteenth Amendments. Pickering, 391 U.S. at 565.

In considering the constitutionality of the Illinois statute, the Court recognized that "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." Pickering, 391 U.S. at 568. Thus, the Court announced what has come to be known as the "Pickering balancing test,"[29] which seeks to "arrive at a balance between the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering, 391 U.S. at 568.

However, the teacher's statements in Pickering were "neither shown nor [could] be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally." 391 U.S. at 572-73 (footnote omitted). The Court held that, in such circumstances, "the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public." Pickering, 391 U.S. at 573. In other words, the "Pickering balancing test," which the City urges us to apply here, is applicable

[29] See, e.g., Garcetti v. Ceballos, 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) (describing the "two inquiries to guide interpretation of the constitutional protections accorded to public employee speech" as set forth in "Pickering and the cases decided in its wake"); Moser v. Las Vegas Metro. Police Dep't, 984 F.3d 900, 904-05 (9th Cir. 2021) (describing the "Pickering balancing test"). Neither of these opinions, both of which are cited by the City, is apposite to the circumstances presented in this case.

only when a public employee's speech may affect the employer's operations. See also Garcetti v. Ceballos, 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) ("A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes *must be directed at speech that has some potential to affect the entity's operations*." (emphasis added)). Only then may a government employer have "an adequate justification for treating the employee differently from any other member of the general public," thus permitting it to restrict the public employee's speech. Garcetti, 547 U.S. at 418.

Indeed, in Pickering, the United States Supreme Court explicitly rejected the proposition that public employees are entitled to lesser constitutional protections simply by virtue of their public employment:

> To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. E.g., Wieman v. Updegraff, 344 U.S. 183[, 73 S. Ct. 215, 97 L. Ed. 2d 216] (1952); Shelton v. Tucker, 364 U.S. 479[, 81 S. Ct. 247, 5 L. Ed. 2d 231] (1960); Keyishian v. Board of Regents, 385 U.S. 589[, 87 S. Ct. 675, 17 L. Ed. 2d 629] (1967). "[T]he theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." Keyishian[, 385 U.S.] at 605-06.

391 U.S. at 568 (some alterations in original).

Put simply, the notion that the Does, as public employees, "have curtailed First Amendment rights," as the City brazenly asserts,[30] is directly contradicted

[30] City of Seattle. Suppl. Mem. at 5.

by United States Supreme Court decisional authority. Unlike this case, each of the cases cited by the City involves an adverse employment action based on a speech restriction that precluded public employees from engaging in speech alleged to injuriously impact their employer's operations.[31] Indeed, it is only when a public employee's speech "has some potential to affect [the employer's] operations" that the employer may have "an adequate justification for treating the employee differently from any other member of the general public." Garcetti, 547 U.S. at 418. This rule is premised on the recognition that the government possesses a "legitimate purpose in 'promot[ing] efficiency and integrity in the discharge of official duties, and . . . maintain[ing] proper discipline in the public service.'" Connick v. Myers, 461 U.S. 138, 150-51, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983) (some alterations in original) (quoting Ex parte Curtis, 106 U.S. 371, 373, 1 S. Ct. 381, 27 L. Ed. 232 (1882)).[32] Such principles do not apply to the facts of this case.[33]

---

[31] See Progressive Democrats for Soc. Just. v. Bonta, 588 F. Supp. 3d 960 (N.D. Cal. 2022); Garcetti, 547 U.S. 410; City of San Diego, Cal. v. Roe, 543 U.S. 77, 125 S. Ct. 521, 160 L. Ed. 2d 410 (2004); Waters v. Churchill, 511 U.S. 661, 114 S. Ct. 1878, 128 L. Ed. 2d 686 (1994); Pickering, 391 U.S. 563; Hernandez v. City of Phoenix, 43 F. 4th 966 (9th Cir. 2022); Moser, 984 F.3d 900; Berry v. Dep'. of Soc. Servs., 447 F.3d 642 (9th Cir. 2006). For the reasons described above, each of these cases is inapposite here.

[32] In Connick, Justice Brennan disagreed with the majority's balancing of the competing considerations set forth in Pickering. 461 U.S. at 157-58 (Brennan, J., dissenting). However, as pertinent here, he adeptly explained that the government, as a public employer, has an interest in regulating employee speech only when such speech may impact the government's ability to perform its duties. He wrote:

> The balancing test articulated in Pickering comes into play only when a public employee's speech implicates the government's interests as an employer. When public employees engage in expression unrelated to their employment while away from the workplace, their First Amendment rights are, of course, no different from those of the general public.

Connick, 461 U.S. at 157 (Brennan, J., dissenting) (citing Pickering, 391 U.S. at 574).

[33] The City also asserts that our Supreme Court's decision in Service Employees International Union Local 925 v. University of Washington, 193 Wn.2d 860, 447 P.3d 534 (2019) (SEIU), indicates that "disclosure of public records is mandated by the PRA notwithstanding any speech rights or a chilling effect thereon." City of Seattle, Suppl. Mem. at 3. We disagree.

Here, the Does' employer, SPD, did not impose a restriction on the Does' speech. Nor does the speech at issue—the Does' attendance at a political rally and their statements regarding their political views and affiliations—have any impact on their employer's operations. Indeed, any allegation that the Does engaged in conduct contrary to their employer's policies was found to be unsustained.

We decline the City's invitation to contravene United States Supreme Court decisional authority in order to restrict public employee speech in circumstances beyond those in which such speech may interfere with the public employer's operations. Instead, we take the United States Supreme Court at its word that police officers "are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500; see also Pickering, 391 U.S. at 568. Similarly, we recognize the Supreme Court's repeated affirmations that "[t]he right to privacy in one's political associations and beliefs will yield only to a 'subordinating interest of the State [that is] compelling,' and then only if there is a 'substantial relation between the information sought and [an] overriding and compelling state interest.'" Brown, 459 U.S. at 91-92 (second and third

---

In that decision, our Supreme Court addressed only whether particular faculty e-mails relating to union organizing constitute "public records" pursuant to the PRA. SEIU, 193 Wn.2d at 867-76. Although the labor union seeking to enjoin disclosure of the requested e-mails asserted that "their release would chill union organizing efforts, restrain speech, and violate individuals' privacy rights," SEIU, 193 Wn.2d at 865, our Supreme Court explicitly stated that its "holding on the 'scope of employment' test does not dispose of" the labor union's other arguments, including "assertions of statutory and constitutional exemptions from PRA coverage." SEIU, 193 Wn.2d at 876.

Contrary to the City's assertion, our Supreme Court did not suggest in that decision that the constitutional rights of our state's citizens can be summarily dismissed on the basis of a legislative enactment. While we agree with the City that the PRA is an important statute, it nevertheless remains merely a statute. See Freedom Found., 178 Wn.2d at 695.

alterations in original) (citation and internal quotations marks omitted) (quoting Sweezy, 354 U.S. at 265; Gibson, 372 U.S. at 546). Accordingly, only if an overriding and compelling state interest exists to impinge the Does' constitutional rights may their identities be disclosed in the requested records. As discussed below, we determine that no such compelling interest exists.

(b)

The scope of the State's interest in public record disclosure—and, thus, whether the City, as a state actor, has a compelling interest in disclosing the Does' identities—is illuminated by the purpose of the PRA's disclosure mandate. "The basic purpose of the [PRA] is to provide a mechanism by which the public can be assured that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co., 109 Wn.2d at 719. The statute "ensures the sovereignty of the people and the accountability of the governmental agencies that serve them by providing full access to information concerning the conduct of government." Predisik, 182 Wn.2d at 903. Similarly, our legislature has defined the policy of the PRA as such: "That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society." RCW 42.17A.001(11); see also In re Request of Rosier, 105 Wn.2d 606, 611, 717 P.2d 1353 (1986) (recognizing the policy underlying the statute as "allow[ing] public scrutiny of government, rather

than . . . promot[ing] scrutiny of particular individuals who are unrelated to any governmental operation").

To this end, while the PRA contains a broad mandate for disclosure, our legislature also included in the statute an exemption whereby "[p]ersonal information in files maintained for employees . . . of any public agency" are not subject to disclosure "to the extent that disclosure would violate their right to privacy." RCW 42.56.230(3). This "right to privacy" is "invaded or violated," such that the statutory exemption applies, when disclosure of the information would be "highly offensive to a reasonable person" and is "not of legitimate concern to the public."[34] RCW 42.56.050.

The PRA does not define the "right to privacy." Our Supreme Court thus sought to "'fill [this] definitional void'" by adopting the common law tort definition set forth in the Restatement. Cowles Publ'g Co., 109 Wn.2d at 721 (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 136, 580 P.2d 246 (1978)); see RESTATEMENT (SECOND) OF TORTS §652D (AM. LAW INST. 1977). Employing this definition, and consistent with the purpose of the PRA, our Supreme Court has deemed significant to the question of privacy whether a public employee's conduct "occurred in the course of public service." Cowles Publ'g Co., 109 Wn.2d at 726. "Instances of misconduct of a police officer while on the job are not private, intimate, personal details of the officer's life," but rather, "are matters

[34] We do not hold that the personal information exemption, RCW 42.56.230(3), a statutory exemption set forth within the PRA, precludes disclosure of the Does' identities in the requested records. Rather, as discussed supra, it is the First Amendment to the United States Constitution that precludes such disclosure, absent an overriding and compelling state interest. Nevertheless, the purpose of the PRA and the scope of its disclosure mandate, as set forth by our legislature and decisional authority interpreting the act, illuminates the state interest here at issue.

with which the public has a right to concern itself." Cowles Publ'g Co., 109 Wn.2d at 726. Premised on this principle, the court held that "a law enforcement officer's actions while performing his public duties or improper off duty actions in public which bear upon his ability to perform his public office" are not within the ambit of conduct exempt from disclosure due to statutory "personal privacy." Cowles Publ'g Co., 109 Wn.2d at 727.

In addition, in determining whether a public employee's statutory right to privacy is implicated, the court has distinguished between "substantiated" and "unsubstantiated" allegations. "[W]hen a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint." Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405, 164 Wn.2d 199, 215, 189 P.3d 139 (2008). However, the court has held that public employees have a statutory right to privacy in their identities in connection with unsubstantiated allegations of sexual misconduct, "because the unsubstantiated allegations are matters concerning [the employees'] private lives." Bainbridge Island Police Guild, 172 Wn.2d at 413; see also Bellevue John Does, 164 Wn.2d at 215-16. "An unsubstantiated or false accusation," the court reasoned, "is not an action taken by an employee in the course of performing public duties." Bellevue John Does, 164 Wn.2d at 215.

Similarly, our Supreme Court has concluded that whether allegations against a public employee are substantiated bears on whether disclosure of the employee's identity is a matter of "legitimate" public concern. Bainbridge Island

Police Guild, 172 Wn.2d at 416; Bellevue John Does, 164 Wn.2d at 221. Thus, consistent with the PRA's purpose to enable the public to oversee governmental agencies, the court determined that the public has no legitimate interest in the identities of public employees against whom unsubstantiated allegations of misconduct were asserted. Bellevue John Does, 164 Wn.2d at 220. This is because, when the allegations are unsubstantiated, precluding disclosure of the employee's identity would "not impede the public's ability to oversee" government investigations into alleged employee misconduct. Bellevue John Does, 164 Wn.2d at 220. Rather, disclosure in such circumstances, the court reasoned, "'serve[s] no interest other than gossip and sensation.'" Bellevue John Does, 164 Wn.2d at 221 (quoting Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405, 129 Wn. App. 832, 854, 120 P.3d 616 (2005)).

The state interest in disclosure pursuant to the PRA is to uphold the purpose of the statute—that is, to enable the public to ensure "that its public officials are honest and impartial *in the conduct of their public offices*." Cowles Publ'g Co., 109 Wn.2d at 719 (emphasis added); see also RCW 42.56.030 ("The people insist on remaining informed so that they may maintain control over the instruments that they have created."). To that end, in the context of defining the scope of statutory exemptions to disclosure, our Supreme Court has determined that disclosure of the identities of public employees is not permitted when (1) the allegations asserted against the employees are unsubstantiated and (2) the conduct did not occur in the course of public service or occur off-duty and impact the performance of public duties. Bainbridge Island Police Guild, 172 Wn.2d at

413; Bellevue John Does, 164 Wn.2d at 213-16, 221; Cowles Publ'g Co., 109 Wn.2d at 726. In other words, in such circumstances, the State does not have an interest in disclosing the employees' identities.

Significantly, in those cases, whether disclosure of the public officials' identities was precluded was determined pursuant to statutory exemptions, not premised upon the disclosure's impingement on constitutional First Amendment rights. Thus, the public officials' interests at issue in those cases, not being of constitutional import, were less significant than those presented here, where the Does' First Amendment rights are implicated. Nevertheless, here, as in those cases, the Does' alleged misconduct did not occur in the course of their public duties, and the allegations against the Does were determined to be unsustained.[35] Even when constitutional rights were not implicated by disclosure, those same circumstances have been deemed by our legislature and Supreme Court to fall outside the ambit of the state interest in such disclosure. Thus, here, where the Does' constitutional rights would be impinged by disclosure, the state interest cannot be said to be compelling, such that disclosure would nevertheless be permitted.[36]

---

[35] We note that, while some of the OPA's findings were "not sustained" because the allegations were determined to be "unfounded," others were unsustained because the investigation as to those findings was deemed to be "inconclusive." However, an "inconclusive" finding remains a finding that the allegations were unsustained; it neither constitutes a finding against the officer nor authorizes disciplinary action. Accordingly, we treat the "inconclusive" unsustained findings in the same manner as the "unfounded" unsustained findings.

[36] Sueoka asserts that the trial court properly determined that the public has a legitimate interest in disclosure of the Does' identities in the requested records because OPA Director Andrew Myerberg may have previously represented one of the Does in a civil rights case. This purported conflict, Sueoka contends, may have undermined the investigation.

However, even when only a statutory privacy interest is implicated, Washington courts have held that complete records need not be disclosed for the public interest of government oversight to be achieved. See, e.g., Bainbridge Island Police Guild, 172 Wn.2d at 416 ("Although lacking a legitimate interest in the name of a police officer who is the subject of an

The United States Supreme Court has recognized that "[t]he public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." Watkins, 354 U.S. at 200 (footnote omitted). Here, disclosure of the Does' identities would fulfill only the "impermissible [objective] of exposure for exposure's sake." Uphaus, 360 U.S. at 82 (Brennan, J., dissenting).

Based on our legislature's and Supreme Court's delineation of the purpose of the PRA's disclosure mandate, we conclude that the State has no compelling interest in disclosure of the Does' identities in the requested records. Accordingly, because the Does have established a constitutional privacy right that would be impinged by disclosure, the superior court erred by denying the Does' motion for a preliminary injunction precluding such disclosure.[37]

---

unsubstantiated allegation of sexual misconduct, the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer."); Bellevue John Does, 164 Wn.2d at 220 ("Precluding disclosure of the identities of teachers who are subjects of unsubstantiated allegations will not impede the public's ability to oversee school districts' investigations of alleged teacher misconduct."). Indeed, our Supreme Court has made plain that a public employee's "right to privacy does not depend on the quality of the [public employer's] investigations." Bellevue John Does, 164 Wn.2d at 223. Here, given the constitutional right at stake, we hold that the State has no compelling interest in disclosure of the Does' identities for this purpose.

Moreover, "[a]n agency should look to the contents of the document and not the knowledge of third parties when deciding if the subject of a report has a right to privacy in their identity." Bainbridge Island Police Guild, 172 Wn.2d at 414. In Bainbridge Island Police Guild, our Supreme Court held that notwithstanding the fact that some members of the public might know the identity of the individual identified in the records, the agency must nevertheless refuse to disclose those records if an exemption exists. 172 Wn.2d at 414. Otherwise, agencies would be required to "engage in an analysis of not just the contents of the report" but also of outside knowledge regarding the incident described therein. Bainbridge Island Police Guild, 172 Wn.2d at 414. The same logic applies here. Additionally, the City, in evaluating a records request, cannot be charged with presuming the need to disclose individuals' identities in investigative records on the chance of potential conflict of interest of the investigator that is not established in the records themselves. Such a presumption would gut the disclosure exemptions of the PRA.

[37] The Does sought a preliminary injunction precluding the disclosure of their identities in the requested records. They did not seek to prevent disclosure of redacted versions of those

(c)

We recognize that much of the United States Supreme Court's jurisprudence establishing a constitutional privacy right to anonymity in political belief and association, which is grounded in the First Amendment to the United States Constitution, predates the Court's modern formulation of the strict scrutiny standard applicable to governmental action impinging such rights. See Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 167, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015) (recognizing that the Court's decision in Button, 371 U.S. 415, "predated [its] more recent formulations of strict scrutiny").[38] However, even applying these "more recent formulations" of the standard, Town of Gilbert, 576 U.S. at 167, the result herein remains unchanged.

---

records. Thus, we do not consider whether the redacted records are subject to disclosure pursuant to the PRA. We do note, however, that once the Does' identities and other identifying information are redacted from the requested records, their constitutional rights are no longer implicated. Accordingly, it is the PRA, not federal constitutional principles, that dictate whether the redacted records may be disclosed. As no party seeks to preclude such disclosure, that issue is not before us.

However, we note that, when a constitutional right would not thereby be infringed, the State has an interest in permitting disclosure of public records to enable government oversight, thus fulfilling the purpose of the PRA. See, e.g., Bainbridge Island Police Guild, 172 Wn.2d at 416 ("Although lacking a legitimate interest in the name of a police officer who is the subject of an unsubstantiated allegation of sexual misconduct, the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer."); Bellevue John Does, 164 Wn.2d at 220 ("Precluding disclosure of the identities of teachers who are subjects of unsubstantiated allegations will not impede the public's ability to oversee school districts' investigations of alleged teacher misconduct."). See also RCW 42.56.210 (requiring disclosure of records when exempted information can be redacted therefrom).

"[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton, 364 U.S. at 488. Here, the purposes of the PRA are achieved through disclosure of the redacted records.

[38] The Court in Button held that a Virginia state law purporting to regulate the legal profession unconstitutionally infringed on "the [First Amendment] right of the NAACP and its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed and other rights." 371 U.S. at 428. This decision is among those cited by the Court for the proposition that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley, 424 U.S. at 64 (citing Gibson, 372 U.S. 539; Button, 371 U.S. 415; Bates, 361 U.S. 516; Shelton, 364 U.S. 479; NAACP, 357 U.S. 449).

As demonstrated by the profusion of legislatively enacted exceptions to our state's public records law, there is no compelling government interest in disclosure of the unredacted requested records. Rather, the constitutionally mandated narrow tailoring here requires precisely the remedy sought by the Does—the redaction of their names and personal identifying information from the requested records prior to disclosure. Thus, we hold that, applying the United States Supreme Court's modern formulation of the strict scrutiny standard, disclosure of the requested records in redacted form serves to protect the First Amendment interests at stake while allowing for the attainment of the government's legitimate interest in disclosure.

The Supreme Court's modern formulation of the strict scrutiny standard, as pertinent here, is articulated in Citizens United v. Federal Election Commission, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), in which the Court pronounced:

> Speech is an essential mechanism for democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. . . .
>
> For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest."

Citizens United, 558 U.S. at 339-40 (citation omitted) (quoting Fed. Election Comm'n v. Wisconsin Right to Life, Inc., 551 U.S. 449, 464, 127 S. Ct. 2652, 168

L. Ed. 2d 329 (2007)).[39] Thus, the Supreme Court's more recent formulations of the strict scrutiny standard require that government restrictions on protected speech be "narrowly tailored" to achieving the government's compelling interest, a mandate that was not explicitly articulated in the Court's previous jurisprudence establishing a First Amendment privacy right in political belief and association. See, e.g., Brown, 459 U.S. 87; Gibson, 372 U.S. 539; Bates, 361 U.S. 516; Shelton, 364 U.S. 479; NAACP, 357 U.S. 449.

The Citizens United explication of the modern formulation is grounded in the Court's historical jurisprudence and finds its genesis in the Court's statement in McIntyre that "[w]hen a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." 514 U.S. at 347.

As discussed above, our Supreme Court's decisional authority and the policies animating the PRA lead to the inexorable conclusion that, here, the government has no compelling interest in disclosure of the Does' identities in the requested records. Rather, the government's interest in the disclosure of public records is to uphold the PRA's purpose of enabling the public to ensure "that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co., 109 Wn.2d at 719. Further evidencing the absence of a

[39] We acknowledge that differing levels of scrutiny apply to various claims of infringement on federal constitutional rights. See, e.g., Town of Gilbert, 576 U.S. at 172 (in the context of federal free speech guarantees, distinguishing between those laws subject to strict scrutiny analysis and those "subject to lesser scrutiny"); Progressive Democrats for Soc. Just., 588 F. Supp. 3d at 975-76 (describing differing levels of scrutiny in the context of the First and Fourteenth Amendments, including rational basis review and strict scrutiny). However, no party credibly seeks to establish that other such constructs are applicable in this case. We take the United States Supreme Court at its word in Citizens United, 558 U.S. at 340, that the strict scrutiny standard applies in cases such as this.

compelling state interest in total disclosure of all records, our legislature has enacted a plethora of exceptions to the PRA's disclosure mandate—in fact, as of March 2022, there were *632* such legislatively enacted exceptions.[40] Without question, this proliferation of exceptions to the PRA's disclosure mandate renders implausible any argument that a compelling state interest in disclosure of the Does' identities exists here. Rather, the government's interest in disclosure of the requested records inheres only in making public a redacted version of those records.

When applying the modern strict scrutiny standard, we must ensure that the government's application of the PRA—the state action at issue here—is narrowly tailored to serve its legitimate interest in the disclosure of public records. See Citizens United, 558 U.S. at 340. Such narrow tailoring compels us to identify the "least restrictive alternative" that will achieve the pertinent state interest. Ashcroft v. Am. Civ. Liberties Union, 542 U.S. 656, 666, 124 S. Ct. 2783, 159 L. Ed. 2d 690 (2004). "The purpose of [this] test is to ensure that speech is restricted no further than necessary to achieve the [government's] goal, for it is important to ensure that legitimate speech is not chilled or punished." Ashcroft, 542 U.S. at 666.

Here, the very remedy sought by the Does—redaction of their names and identifying information from the requested records—is precisely the narrow

[40] See Appendix A ("Public Records Exemptions Accountability Committee – Sunshine Committee," Schedule of Review, updated March 2022). Original available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Schedule%20of%20Review%20Update%20March%202022.pdf.

tailoring that serves to protect the First Amendment rights at stake while simultaneously allowing for the attainment of the government's legitimate interest in public records disclosure. Thus, applying the United States Supreme Court's more recent formulations of strict scrutiny, which require that governmental action impinging on speech rights be narrowly tailored to serve a compelling state interest, we reach the same conclusion as when applying the Court's earlier jurisprudence. In both circumstances, we conclude that disclosure of the unredacted requested records would unconstitutionally impinge on the Does' federal privacy rights—rights that are grounded in First Amendment guarantees. The government's sole legitimate interest in disclosure here is in making public a redacted version of the requested records that excludes the Does' names and other identifying information.[41]

C

Sueoka and the City next assert that, even if the requested records are exempt from disclosure, the Does are nevertheless entitled to a preliminary injunction only if they can additionally demonstrate that they are likely to succeed on the merits of meeting the statutory injunction standard set forth in the PRA. We disagree.

When the disclosure of an individual's identity in public records would impinge a First Amendment right to privacy, the State may not place on that individual an additional burden to vindicate that right. In such a circumstance,

[41] An appropriate grant of such relief, as articulated by the Ninth Circuit Court of Appeals, would preclude the disclosure of "'all personally identifying information or information from which a person's identity could be derived with reasonable certainty.'" Does 1-10 v. Univ. of Wash., 798 F. App'x 1009, 1010 (9th Cir. 2020).

the establishment of the right itself mandates the issuance of an injunction. This is consistent with our Supreme Court's jurisprudence establishing that, when a statutory right precludes disclosure, the individual seeking to vindicate that right must demonstrate not only that an exemption to disclosure applies, but also that the PRA's injunctive relief standard is satisfied. Mindful as we are that we must, when possible, read statutes to avoid constitutional infirmity, we hold that the PRA does not require that its statutory injunctive relief standard be met when a First Amendment right to privacy precludes the disclosure of public records.

The PRA provides that "[t]he examination of any specific public record may be enjoined if . . . the superior court . . . finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions." RCW 42.56.540. This two-part injunctive relief provision "'governs access to a remedy' when records are found to fall within an exemption" to the PRA's disclosure mandate. Lyft, 190 Wn.2d at 789 (quoting PAWS, 125 Wn.2d at 258). Thus, when a statutory exemption to disclosure is asserted, the trial court may impose an injunction pursuant to RCW 42.56.540 only if the court finds that "a specific exemption applies *and* that disclosure would not be in the public interest and would substantially and irreparably damage a person or a vital government interest." Soter, 162 Wn.2d at 757.

Our Supreme Court so held in Lyft, 190 Wn.2d 769, wherein the court addressed whether the disclosure of certain public records could be enjoined pursuant to a statutory exemption to the PRA's disclosure mandate. There, the

parties seeking to enjoin disclosure asserted that the records at issue contained trade secrets protected by the federal Uniform Trade Secrets Act (UTSA), chapter 19.108 RCW. Lyft, 190 Wn.2d at 773. Our Supreme Court determined that portions of the public records likely met "the definition of 'trade secrets' under the UTSA." Lyft, 190 Wn.2d at 777, 780-84. The court nevertheless held that disclosure of the records could be enjoined only if the PRA's injunctive relief standard, set forth in RCW 42.56.540, was also satisfied. Lyft, 190 Wn.2d at 773. Thus, our Supreme Court held that "finding an exemption applies under the PRA does not ipso facto support issuing an injunction." Lyft, 190 Wn.2d at 786.

It is on the basis of this decisional authority that Sueoka and the City contend that, in order to obtain the relief that they seek, the Does must demonstrate that they are likely to succeed on the merits of meeting the PRA's two-part *statutory* injunctive relief standard. However, because disclosure of the Does' identities in the requested records would impinge their First Amendment right to privacy, the argument advanced by Sueoka and the City is untenable. Requiring that parties seeking to vindicate such rights establish not only the First Amendment right itself, but also the requirements of the PRA's injunctive relief standard, would run afoul of the Supremacy Clause of our federal constitution, which mandates that courts "'shall' regard the 'Constitution,' and all laws 'made in Pursuance thereof,' as 'the supreme Law of the Land.'" Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 324, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015) (quoting U.S. CONST. art. VI, cl. 2).[42] We cannot interpret the PRA in a manner

[42] The Supremacy Clause provides:

that would render it unconstitutional. Utter ex rel. State v. Bldg. Indus. Ass'n of Wash., 182 Wn.2d 398, 434, 341 P.3d 953 (2015) ("We construe statutes to avoid constitutional doubt."). Nor does this resolution of the issue do so.

Rather, we read the PRA as consistent with the federal constitution simply by recognizing the distinction between a legislatively created statutory right and a federal constitutional right. When the state legislature creates a right, such as a statutory exemption from the PRA's disclosure mandate, the legislature may impose conditions on the exercise of that right. This is precisely what the legislature has done in enacting the PRA's injunctive relief standard, RCW 42.56.540. Thus, as our Supreme Court has held, when a statutory right is implicated, a finding that an exemption applies "does not ipso facto support issuing an injunction." Lyft, 190 Wn.2d at 786. Rather, the two-part standard set forth in RCW 42.56.540 must also be satisfied, as the legislature has imposed this statutory condition on the exercise of the statutory right against disclosure.

However, here, the Does' claim of right does not depend upon a statutory exemption, and the disclosure of the unredacted records would not merely impinge a statutory right. Rather, the Does' First Amendment right to privacy in their political beliefs and associations would be impinged. The significance of this distinction is readily apparent. Our state legislature can impose a condition on the exercise of a right created by the legislature itself. However, the

---

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

legislature, having created neither the First nor Fourteenth Amendments, cannot condition the exercise of this federal constitutional right on whether the Does can satisfy the statutory injunctive relief standard. Put simply, such a requirement would authorize a state or local government to violate citizens' constitutional rights when they establish the impingement of such rights but are unable to also demonstrate satisfaction of an additional statutory requirement to obtain injunctive relief.[43] The PRA injunction standard cannot serve as a bar to the City's obligation under the Fourteenth Amendment to safeguard the First Amendment rights of Washington citizens in its application of state law. See, e.g., Seattle Times Co., 170 Wn.2d 581 (discussed infra at 9-10).

Again, this analysis does not suggest a constitutional infirmity of the PRA. Rather, recognizing the distinction between legislatively created statutory rights and the First Amendment constitutional right implicated here, we note that the

[43] This very absurdity appears to be consistent with the City's understanding of its duty to Washington's citizens. In supplemental briefing, the City asserts that it has no "freestanding obligation to honor" the constitutional rights of our state's citizens. Specifically, the City contends that the third party notice provision set forth in the PRA is the proper means for it to address exceptions to disclosure premised on a constitutional right. The City argues, in other words, that it has no obligation to independently honor the constitutional rights of third parties in response to records requests. We do not so hold.

When, after receiving notice, an individual seeks injunctive relief premised on a constitutional right, and thereafter establishes both that the right would be impinged by disclosure and that no sufficient interest of the state permits disclosure, the City plainly has an obligation under the Fourteenth Amendment not to violate the individual's constitutional right, notwithstanding the PRA's injunction standard. In other words, here, once the constitutional right is established, the City does not have unfettered discretion to either refuse to disclose the records, pursuant to the PRA, or to permit disclosure premised upon the RCW 42.56.540's standard not being met. Such unfettered discretion of government actors to either honor citizens' constitutional rights or refuse to honor such rights is anathema to the constitutional rule of law.

The City need not serve as the lawyer for every individual mentioned in requested public records. However, when the constitutional right implicated by disclosure of particular requested records is clear, the City must refuse to disclose the records (or the relevant portions thereof). The City must then defend against any challenge to the action by the records requestor, unless, following notice, the individual whose rights are implicated does not object to disclosure. The City's supreme obligation is to the federal constitution, not to the state statute. See U.S. CONST. art. VI, cl.2.

application of RCW 42.56.540 would necessarily mandate the issuance of an injunction. Given the State's paramount interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Does' First Amendment right to privacy "would clearly not be in the public interest." RCW 42.56.540. Moreover, because the Does' constitutional rights would be impinged by disclosure of the unredacted records, such disclosure would of necessity "substantially and irreparably damage" the Does. RCW 42.56.540.

Thus, when disclosure is precluded by a First Amendment right to privacy, rather than a statutory exemption, the establishment of that constitutional right does, indeed, ipso facto mandate the issuance of an injunction. The State has no lawful authority to impose an additional requirement on parties seeking to vindicate their constitutional rights in order to trigger its obligations pursuant to the Fourteenth Amendment. Because disclosure of the unredacted records would impinge their First Amendment rights, the Does cannot be required to additionally demonstrate satisfaction of an injunctive relief standard in order to obtain the relief they seek, unless that standard is one that is ipso facto satisfied by virtue of the establishment of the First Amendment right. Because the PRA standard is one such standard, the Does have met their burden.[44]

IV

In his cross appeal, Sueoka contends that the trial court erred by denying his motion to "change the case title and bar the use of pseudonyms" in this

[44] We acknowledge the existence of case law, primarily from lower federal courts, that occasionally applies non-PRA injunctive relief standards. Our Supreme Court has determined that PRA disclosure is regulated by only the PRA injunctive relief standard. Lyft, 190 Wn.2d at 784-85.

litigation. According to Sueoka, Washington's open courts principles, emanating from article I, section 10 of our state constitution, require that the Does litigate this matter using their actual names. We disagree.

In seeking to preclude the disclosure of their identities in the requested records, the Does assert a First Amendment right. Thus, it is federal open courts jurisprudence, which itself derives from the First Amendment, that here applies. Such jurisprudence permits litigants to proceed pseudonymously when the injury litigated against would be incurred as a result of the disclosure of their identities. Herein, that precise outcome would occur were the Does not permitted to litigate using pseudonyms.

Accordingly, we conclude that the trial court did not err in ruling that the Does could proceed in pseudonym in this litigation. For the same reason, we decline to grant Sueoka's request to preclude the use of pseudonyms on appeal.

A

In these proceedings, both the trial court and our commissioner have repeatedly entertained Sueoka's argument that the Does should not be permitted to litigate pseudonymously. In each instance, they have rejected that argument. First, Sueoka objected to the Does' motion to proceed in pseudonym filed concurrent with their initial complaint for declaratory and injunctive relief. On March 9, 2021, Judge Cahan granted the Does' motion. Prior to so doing, Judge Cahan considered the factors for redaction set forth in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982), and made the findings required therein. Judge Cahan also determined that the Does had complied with the

relevant court rules, including General Rule (GR) 15. Three days later, on March 12, 2021, Judge Widlan denied the Does' complaint for injunctive relief, and the Does sought discretionary review.

Sueoka then filed a "motion to change the case title and bar the use of pseudonyms" in this court. He subsequently filed a notice of cross appeal, challenging Judge Cahan's order permitting the Does to litigate in pseudonym. Our commissioner denied Sueoka's motion to change the case title on April 9, 2021. The commissioner explained that there "appear[ed] to be no dispute that Judge Cahan evaluated the Ishikawa factors in reaching the March 9, 2021 decision and that no party asked Judge Widlan to revisit [that] order." The commissioner further reasoned that the "substance of Sueoka's motion to change the case title is inextricably tangled up with the merits of his appeal" and concluded that "maintaining the case name adopted by the trial court . . . appears to be necessary to allowing [this court] to reach the merits of this case."

Following transfer of the appeal from Division One to our Supreme Court, and that court's subsequent dismissal of review and remand to the superior court, Sueoka again filed a "motion to change the case title and bar the use of pseudonyms." Sueoka did not therein challenge Judge Cahan's order granting the Does' motion to proceed in pseudonym. Judge Widlan denied Sueoka's motion, reasoning that "the purpose of [the Does'] lawsuit is to procure an injunction to prevent disclosure of their names" and, thus, requiring use of their names in court filings "would effectively prevent them from seeking any relief."

B

Washington's open courts jurisprudence derives from article I, section 10 of our state constitution, which requires that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." WASH. CONST. art. I, § 10. Because "[t]he openness of our courts 'is of utmost public importance,'" Washington courts begin "with the presumption of openness when determining whether a court record may be sealed from the public." Hundtofte v. Encarnacion, 181 Wn.2d 1, 7, 330 P.3d 168 (2014) (quoting Dreiling v. Jain, 151 Wn.2d 900, 903, 93 P.3d 861 (2004)). Whether redaction implicates article I, section 10's mandate of open access to courts and court documents "depends on application of the experience and logic test." State v. S.J.C., 183 Wn.2d 408, 412, 352 P.3d 749 (2015). When article I, section 10 applies, redaction is permitted only after consideration of the factors set forth in Ishikawa, 97 Wn.2d 30. When our state constitution is not implicated, GR 15 permits the redaction of names in pleadings if the court "enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2).

In a recent opinion, our Supreme Court reversed a decision of this court wherein we had determined that allowing the plaintiffs to litigate using pseudonyms did not implicate article I, section 10. John Doe G v. Dep't of Corr.,190 Wn.2d 185, 191, 410 P.3d 1156 (2018) (citing John Doe G v. Dep't of Corr., 197 Wn. App. 609, 627-28, 391 P.3d 496 (2017)). The Supreme Court therein addressed a privacy right arising from a state statute. The questions

presented were (1) whether special sex offender sentencing alternative evaluations are exempt from disclosure pursuant to statutory exemptions, and (2) whether "pseudonymous litigation was proper in [that] action." Doe G, 190 Wn.2d at 189.

On appeal before this court, we had looked to federal open courts jurisprudence for "guidance," recognizing the "parallel rights [to those derived from article I, section 10] under the First Amendment." Doe G, 197 Wn. App. at 627. We noted federal court holdings that the use of pseudonyms is appropriate when "'the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity.'" Doe G, 197 Wn. App. at 627 (quoting Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992)). Based, in part, on this reasoning, we held that "[e]xperience and logic" demonstrated "that allowing [the] plaintiffs to proceed under pseudonyms [did] not implicate article I, section 10 where the public's interest in the plaintiffs' names is minimal and use of those names would chill their ability to seek relief." Doe G, 197 Wn. App. at 628. Thus, we affirmed the trial court's ruling permitting the plaintiffs to litigate using pseudonyms, notwithstanding that the trial court had not applied the Ishikawa factors. Doe G, 197 Wn. App. at 624.

Our Supreme Court reversed our decision, holding that "pseudonymous litigation was improper . . . because the trial court did not adhere to the requirements of article I, section 10 . . . and [GR] 15." Doe G, 190 Wn.2d at 189. In so holding, the court explained that it had "never used [the] analysis" set forth in the federal appellate court decisions on which we had relied for guidance. Doe

G, 190 Wn.2d at 198. Instead, the court held, Washington courts "rely on GR 15 and Ishikawa." Doe G, 190 Wn.2d at 198.

C

Citing our Supreme Court's decision in Doe G, 190 Wn.2d 185, Sueoka contends that Judge Widlan "used the wrong legal standard" in denying his motion to preclude the Does from litigating pseudonymously.[45] However, in so asserting, Sueoka misperceives the issue as one of Washington law.[46] It is not. Accordingly, his argument fails.

Unlike in Doe G, in this case, the Does assert that disclosure of their identities would impinge a federal constitutional First Amendment right. Preventing the Does from proceeding in pseudonym would preclude their ability to obtain the relief that they seek in this action. In other words, requiring the Does to use their actual names in the case caption would undermine their ability to assert the First Amendment right that they seek to vindicate herein. Such a result would violate the Supremacy Clause, U.S. CONST. art. VI, cl. 2, which mandates that we must not "give effect to state laws that conflict with federal laws." Armstrong, 575 U.S. at 324. When parties who assert that disclosure of their identities would violate a federal constitutional right seek to litigate

[45] Br. of Resp't/Cross Appellant at 69-71.

[46] We note that, if Washington law did apply here, Sueoka's contention would nevertheless be unavailing. As discussed above, Judge Cahan *did* apply GR 15 and the Ishikawa factors in ruling that the Does could proceed in pseudonym. Sueoka does not challenge Judge Cahan's findings, which are, therefore, verities on appeal. In re Welfare of A.W., 182 Wn.2d 689, 711, 344 P.3d 1186 (2015); see also Doe AA v. King County, 15 Wn. App. 2d 710, 717, 476 P.3d 1055 (2020) (accepting as true the trial court's Ishikawa findings that were unchallenged on appeal). Following Sueoka's subsequent motion seeking, once again, to preclude the Does from litigating in pseudonym, Judge Widlan simply declined to revisit Judge Cahan's earlier ruling.

pseudonymously, it is federal open courts jurisprudence, arising from the First Amendment itself, that we must apply.

This holding is consistent with our Supreme Court's decision in Doe G, 190 Wn.2d 185. There, the litigants seeking to use pseudonyms asserted that disclosure of their identities in the requested records was precluded by *statutory rights* arising from *statutory exemptions*, including an exemption enumerated within the PRA itself. Doe G, 190 Wn.2d at 189. Thus, our Supreme Court properly held that Washington's open courts jurisprudence applied and that we had erred by importing federal case law into Washington law. Doe G, 190 Wn.2d at 189, 198.

Here, however, the Supremacy Clause requires that First Amendment jurisprudence be applied, both as to the constitutional right at issue—whether disclosure of the Does' identities in the requested records would violate a constitutional privacy right—and as to the question of whether the Does may use pseudonyms in seeking to vindicate that right. Accordingly, because the Does assert an exemption from disclosure premised on a federal constitutional right, rather than a statutory exemption, the application of federal open courts jurisprudence does not conflict with our Supreme Court's decision in Doe G but does comport with the requirements of the Supremacy Clause.

Federal courts have made clear that "[p]ublic access [to plaintiffs' names in a lawsuit] is more than a customary procedural formality; First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings." Doe v. Stegall, 653 F.2d 180, 185 (5th Cir. 1981); see also

Roe II v. Aware Woman Ctr. for Choice, Inc., 253 F.3d 678, 688 (11th Cir. 2001) (Hill, J., concurrence in part). When federal law applies, "[t]he ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings.'" Frank, 951 F.2d at 323 (quoting Stegall, 653 F.2d at 186). "A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or *where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity*." Frank, 951 F.2d at 324 (emphasis added).

Thus, the First Amendment both confers privacy rights in political speech and also, in the standard regulating when a party can proceed in pseudonym, provides that these substantive rights cannot be extinguished merely because a party seeks to vindicate them. In other words, it provides that concerns about public access to the courts cannot be applied to the detriment of First Amendment rights under federal law, such that the vindication of constitutional rights would be improperly conditioned on disclosure.[47] In this action, the "injury

[47] In NAACP, 357 U.S. at 459-60, the United States Supreme Court relied on this principle—that federal law not be applied in a manner that precludes the vindication of individuals' constitutional rights to privacy—in holding that the plaintiff organization had standing to assert the rights of its members. The Court held that the general principle that parties must assert only those constitutional rights "which are personal to themselves" is "not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court." NAACP, 357 U.S. at 459.

There, the NAACP challenged a court order mandating disclosure of its membership lists to the Alabama Attorney General, asserting that such disclosure would violate its members' constitutional privacy rights. NAACP, 357 U.S. at 451, 458. The Court held that the "right [was] properly assertable by the [NAACP]," reasoning that "[t]o require that [the constitutional right] be claimed by the [NAACP's] members themselves would result in nullification of the right at the very moment of its assertion." NAACP, 357 U.S. at 459. See also Pollard, 283 F. Supp. at 256

litigated against" is disclosure of the Does' identities in the requested records. Were the Does not permitted to litigate pseudonymously, the very injury they seek to litigate against would be incurred. Pursuant to federal open courts jurisprudence, in this circumstance, "the almost universal practice of disclosure must give way . . . to the privacy interests at stake." Stegall, 653 F.2d at 186.

In summary, the Supremacy Clause prohibits the application of state open courts jurisprudence to a pending First Amendment claim when such application would cause the injury litigated against to be incurred, as federal open courts principles, arising as they do from the First Amendment itself, would not mandate the disclosure of the parties' names in that circumstance. If the Does ultimately prevail, they would be entitled to full protection of their First Amendment rights against the government—here, protection against disclosure of their identities within the requested records. State constitutional open courts provisions cannot be applied in contravention of First Amendment jurisprudence in a manner that frustrates protection of the citizen's federal constitutional rights.

Accordingly, we hold that the Does must be permitted to use pseudonyms in this action. The trial court did not err by so ruling. We additionally deny Sueoka's request that we change the case title in this appeal to require it to include the Does' actual names.

(recognizing "recent Supreme Court decisions establish[ing] that an organization made up of private individuals has standing to protect those individuals from unwarranted invasions of government of their rights of association and privacy guaranteed by the First and Fourteenth Amendments").

Similarly, here, the Does would be precluded from vindicating their constitutional rights were they unable to litigate pseudonymously. First Amendment open courts jurisprudence prohibits disclosure in such circumstances. Frank, 951 F.2d at 324.

D

The Does seek herein to vindicate rights enshrined in the federal constitution. Thus, applying the open courts principles arising from article I, section 10 of our state constitution to determine whether the Does may be permitted to litigate in pseudonym would contravene the Supremacy Clause's mandate of state law supersession. Accordingly, as discussed above, we must apply federal law to this question. We nevertheless note that application of Washington open courts law would dictate the same resolution of this issue.

Again, this is due to the Supremacy Clause's mandate that we not give effect to state laws that conflict with federal laws. Precluding the Does from litigating in pseudonym pursuant to article I, section 10 would itself be a state action that would compel the disclosure of the Does' individual political beliefs and associations. Indeed, application by Washington courts of our state constitution is itself a state action. Thus, only by demonstrating that the disclosure of the Does' identities "'furthers a compelling interest and is narrowly tailored to achieve that interest,'" Citizens United, 558 U.S. at 340 (quoting Fed. Election Comm'n, 551 U.S. at 464), could a Washington court require such disclosure when a party seeking to litigate in pseudonym asserts a federal First Amendment claim. Washington courts, too, are subject to the Supremacy Clause's mandate.

Here, as we have discussed, there is no compelling state interest in the disclosure of the Does' identities in the requested records. Similarly, there is no compelling state interest in requiring that the Does litigate using their actual

names. Given the profusion of exceptions to the disclosure mandate, this conclusion is inescapable. Our state law currently includes 632 legislatively created exceptions to the PRA's disclosure mandate. See Appendix A. This proliferation of exceptions undoubtedly demonstrates the absence of a compelling state interest in the disclosure of the Does' identities here.

Moreover, neither our legislature nor our Supreme Court, in permitting broad categories of persons to retain their anonymity in court records, has engaged in the particularized analysis that would be required if the disclosure of those persons' identities implicated a compelling state interest. For instance, our legislature has determined that individuals are automatically entitled to anonymity in certain court records, including records regarding adoptions, RCW 26.33.330; confidential name changes, RCW 4.24.130(5); child victims of sexual assault, RCW 10.52.100; juvenile nonoffender records, such as juvenile dependencies, parental terminations, and truancy, at risk youth, and child in need of services cases, RCW 13.50.100; juvenile offender records, RCW 13.50.050; mental illness commitments, RCW 71.05.620; and mental illness commitments of minors, RCW 71.34.335.

Similarly, by both court rule and order, Washington courts have deemed certain categories of persons to be exempt from the general mandate that court records include the actual names of the litigants. Washington court rule General Rule 15, consistent with article I, section 10 of our state constitution, "preserves a long-established principle that the complete names of parties are to be listed with the actions to which they are parties," subject to "carefully delimited" exceptions.

Hundtofte, 181 Wn.2d at 16 (Madsen, C.J., concurring). These exceptions, however, are not based on a particularized analysis of each case. Rather, like the legislative enactments discussed above, they exempt litigants in broad categories of cases from the disclosure mandate. For instance, in adopting Rule of Appellate Procedure (RAP) 3.4, our Supreme Court has determined that all juvenile offenders are entitled to anonymity in court records.[48] By order, the Washington Court of Appeals has similarly required that case titles in certain appeals—including those regarding adoption, civil commitment, dependency, termination of parental rights, truancy, at risk youth, child in need of services, and juvenile offender—use the parties' initials rather than their full names. Gen. Ord. for the Ct. of Appeals, In re Changes to Case Title (Wash. Ct. App. Aug. 22, 2018) (effective Sept. 1, 2018).

Thus, neither our state legislature nor Washington courts, in adopting exceptions to our state open courts law, have deemed it necessary to conduct a particularized case-by-case analysis prior to permitting the redaction of parties' names in court records. Instead, whether by legislative enactment, court rule, or court order, our state has exempted broad categories of persons from the general disclosure requirement. Certainly, such broad exemptions do not indicate the narrow tailoring that would be necessary were the state interest in the disclosure of litigants' actual names compelling. Thus, by exempting broad

[48] RAP 3.4 provides:
In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by his or her initials throughout all briefing and pleadings filed in the appellate court, and shall refer to any related individuals in such a way as to not disclose the juvenile's identity. However, the trial court record need not be redacted to eliminate references to the juvenile's identity.

swaths of persons from article I, section 10's open courts mandate, both the Washington legislature and Washington courts have impliedly indicated that the state interest in disclosure of litigants' actual names is not a compelling one.

The Supremacy Clause prohibits the application of state open courts jurisprudence when, as here, the right asserted is established by the federal First Amendment. Nevertheless, even were we to apply Washington law to the question of whether the Does may litigate in pseudonym, we would reach the same conclusion—that not only "may" they so litigate, but that the federal constitution demands they be permitted to do so. Such a determination by a Washington court is, itself, state action. The broad exemptions to the open courts mandate, both enacted by our legislature and adopted by our courts, demonstrate that the state interest in the disclosure of individuals' actual names in court records is not a compelling one. Absent such an interest, and given the Does' First Amendment right to anonymity in political belief and association, we cannot require the Does to litigate using their actual names here.

V

A

All members of the panel have taken an oath to "'support the Constitution of the United States.'" RCW 2.06.085. Each panel member views the methods of analyses employed herein and the decisions reached as being in accord with this oath.

Nevertheless, we are aware of the cultural and political tenor of our times. This includes an awareness that many Americans despair that judicial decisions

have become result-oriented to achieve political ends. To disabuse those so inclined from defaulting to such a judgment concerning this opinion, and to assure the general public that its appellate court exists in a reality-based environment, we choose to acknowledge several of the pertinent facts that underlie the dispute at issue.

1

The 2020 Presidential Election

1. Joseph R. Biden, Jr. won the 2020 presidential election, receiving 81,283,501 popular votes.[49] Donald J. Trump lost the 2020 presidential election, receiving 74,223,975 popular votes.[50] Biden received 7,059,526 more votes than did Trump.

2. Biden's popular vote total was the largest ever received by a candidate for President of the United States.[51]

3. Biden received 51.3 percent of the popular vote.[52] This was the highest percentage of the popular vote attained by a challenger to a sitting president since 1932, when Franklin Roosevelt defeated Herbert Hoover.[53]

---

[49] U.S. FED. ELECTION COMM'N, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE, AND THE U.S. HOUSE OF REPRESENTATIVES 5 (Oct. 2022), at 5, https://www.fec.gov/resources/cms-content/documents/federalelections2020.pdf [https://perma.cc/5XDB-2XJA]

[50] FEDERAL ELECTIONS 2020, supra, at 5.

[51] Domenico Montanaro, *President-Elect Joe Biden Hits 80 Million Votes in Year Of Record Turnout*, NAT'L PUB. RADIO (Nov. 25, 2020), https://www.npr.org/2020/11/25/937248659/president-elect-biden-hits-80-million-votes-in-year-of-record-turnout [https://perma.cc/4FZS-AWKK].

[52] FEDERAL ELECTIONS 2020, supra, at 5.

[53] *Presidential Election Margin of Victory*, AM. PRESIDENCY PROJECT (Mar. 7, 2020), https://www.presidency.ucsb.edu/statistics/data/presidential-election-mandates [https://perma.cc/9MJG-RAHE]; *Share of Electoral College and Popular Votes from Each Winning Candidate, in All United States Presidential Elections from 1789 to 2020*, STATISTA (Dec. 2020), https://www.statista.com/statistics/1034688/share-electoral-popular-votes-each-president-since-1789 [https://perma.cc/B5SE-NLLY].

4. Biden earned 306 electoral votes. Trump earned 232.[54] In 2016, Trump earned 306 electoral votes, while Hillary Clinton earned 232.[55] Thus, Biden defeated Trump by the same Electoral College margin as Trump defeated Clinton.

2

The Rally on January 6, 2021

1. A "Stop the Steal" rally was held on January 6, 2021 on public property in the District of Columbia. Various permits were sought and obtained, authorizing use of the public property.[56]

2. The theme of the rally was that the election had been "stolen" from Donald Trump. Thus, Trump and rally organizers urged, Congress should not finalize Biden's victory by certifying the Electoral College results (as the law required).[57]

3. Trump, the sitting president, spoke at the rally.[58]

3

The Insurrection at the Capitol

1. As the rally ended, a civil disturbance began at the Capitol. Hundreds of persons illegally broke through security lines and eventually into the Capitol

[54] FEDERAL ELECTIONS 2020, supra, at 7.
[55] *2016 Presidential Election Results*, N.Y. TIMES (Aug. 19, 2017, 9:00 AM), www.nytimes.com/elections/2016/results/president.
[56] See note 13, *supra*.
[57] H.R. REP. NO. 117-663, at 231-33, 499-502 (2022), https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf [https://perma.cc/UH8B-ZQ7D].
[58] H.R. REP. NO. 117-663, at 231-33.

Building.[59]

2. Both the House of Representatives and the Senate were forced to adjourn and flee to safety.[60]

3. In the riotous melee that ensued over 140 law enforcement officers were injured.[61] According to a U.S. Senate report, seven deaths were attributed to the violence that took place.[62]

4. The common goal of the rioters was to keep Congress from performing its lawful function—certification of Biden's presidential election victory.[63] Some rioters, including those who chanted "Hang Mike Pence," had other goals, such as the killing or kidnapping of members of Congress.[64]

5. For the first time since the War of 1812, the United States government lost physical control of the Capitol Building to a group of attackers.[65]

---

[59] Audrey Kurth Cronin, *The Capitol Has Been Breached Before: This Time It Was Different*, AM. UNIV. SCH. OF INT'L SERV. (Feb. 9, 2021), https://www.american.edu/sis/centers/security-technology/the-capitol-has-been-attacked-before-this-time-it-was-different.cfm [https://perma.cc/Y4NJ-7GE3]. See discussion H.R. REP. NO. 117-663, at 637-88.

[60] H.R. REP. NO. 117-663, at 664-66.

[61] COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS & COMM. ON RULES & ADMIN., U.S. SENATE, EXAMINING THE U.S. CAPITOL ATTACK: A REVIEW OF THE SECURITY, PLANNING, AND RESPONSE FAILURES ON JANUARY 6, at 33 (June 2021), https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf [https://perma.cc/DL5Q-5XT3].

[62] EXAMINING THE U.S. CAPITOL ATTACK, supra, at 1.

[63] EXAMINING THE U.S. CAPITOL ATTACK, supra, at 1.

[64] H.R. REP. NO. 117-663, at 37-39; Cronin, supra.

[65] Cronin, supra; Amanda Holpuch, *US Capitol's Last Breach Was More Than 200 Years Ago*, GUARDIAN (Jan. 6, 2021, 7:59 PM), https://www.theguardian.com/us-news/2021/jan/06/us-capitol-building-washington-history-breach [https://perma.cc/RU25-E3LP]; Amy Sherman, *A History of Breaches and Violence at the US Capitol*, POLITIFACT (Jan. 6, 2021), https://www.politifact.com/article/2021/jan/07/history-breaches-and-violence-us-capitol/ [https://perma.cc/8A7C-5L2H].

6. Over 1,000 persons have been charged with crimes premised on actions occurring at the Capitol on January 6, 2021.[66] Over 630 have, to date, pleaded guilty or been found guilty after trial.[67]

7. Many of the insurrectionists belonged to groups espousing white supremacist views. Others of the rioters, while not group members, were shown to possess such views.[68]

Given all of these facts, it is easy to understand the concerns motivating the City and the requesters. Nevertheless, our duty to the United States Constitution, and the Constitution's embrace and protection of a right to anonymity in political activity, lead us to the decisions we announce today.

B

The trial court's denial of the Does' motion for a preliminary injunction is reversed and remanded.

The trial court's issuance of a temporary restraining order is affirmed.

The trial court's order denying Sueoka's motion to preclude the Does' use of pseudonyms is affirmed.

---

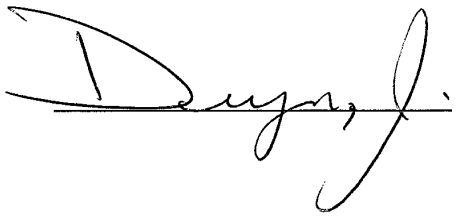
[66] *The Jan. 6 Attack: The Cases Behind the Biggest Criminal Investigation in U.S. History*, NAT'L PUB. RADIO (May 12, 2023, 5:25 PM), https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories [https://perma.cc/S38K-B8DK].

[67] *The Jan. 6 Attack: The Cases Behind the Biggest Criminal Investigation in U.S. History*, supra.

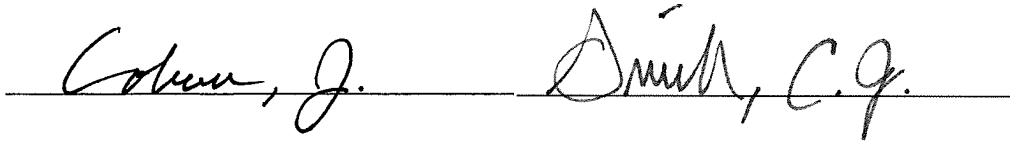
[68] See discussion H.R. REP. NO. 117-663, at 499-576; Sabrina Tavernise & Matthew Rosenberg, *These Are the Rioters Who Stormed the Nation's Capitol*, N.Y. TIMES (May 12, 2021), https://www.nytimes.com/2021/01/07/us/names-of-rioters-capitol.html; Deena Zaru, *The Symbols of Hate and Far-Right Extremism on Display in Pro-Trump Capitol Siege*, ABC NEWS (Jan. 14, 2021, 2:01 AM), https://www.abcnewsgo.com/us/symbols-hate-extremism-display-pro-trump-captiol-siege/story?id=75177671 [https://perma.cc/3T4R-2JRL]; Matthew Rosenberg & Ainara Tiefenthäler, *Decoding the Far-Right Symbols at the Capitol Riot*, N.Y. TIMES (Jan. 13, 2021), https://www.nytimes.com/2021/01/13/video/extremist-signs-symbols-capitol-riot.html.

Sueoka's motion to change the case title is denied.

Affirmed in part, reversed in part, and remanded.



WE CONCUR:



APPENDIX A

Public Records Exemptions Accountability Committee - Sunshine Committee

Schedule of Review - Updated March 2022

"Legislation" = bills with Committee recommendations + other bills related to Committee recommendations (+ some related bills where the Legislature independently introduced legislation)

	Category	RCW (thru 2012)	Description	Date * Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
1	Agriculture	42.56.380(6)	Information on individual American ginseng growers or dealers	1996	Oct. 2007	June 2008	SB 5295 (Ch. 128, 2010 Laws)
2	Personal Information - Research Data/Health Care	42.56.360(1)(f); [now (3)(a)]	Information relating to infant mortality pursuant to RCW 70.05.170	1992	Oct. 2007	Mar. 2008	SB 5295 (Ch. 128, 2010 Laws)
3	Personal Information - Research Data/Health Care	70.05.170	Medical records collected by a local department of health in the course of conducting a child mortality review	1992	Oct. 2007	Mar. 2008	SB 5295 (Ch. 128, 2010 Laws); SB 5049 (2011, 2012)
4	Legislative Records	42.56.010(2); [now (3)]	Definition of "public records" for the senate and the house are limited to definition of legislative records in RCW 40.14.100 and budget, personnel, travel records and certain reports. [Definition]	1995	Oct. 2007	Aug. 2009	
5	Personal Information - Public Employment	42.56.250(2)	Applications for public employment, including names, resumes	1987	Oct. 2007; March 2008; Sept. 2008; Feb. 2017; May 2017	Mar. 2008; September 2008; May 2017	SB 5294 (2009); SB 5049 (2011, 2012); HB 1298 (2013); SB 5169 (2013); HB 1537 (Ch. 229, 2019 Laws); SB 5246 (2019)
6	Agriculture	42.56.380(1); 15.86.110	Business records the department of agriculture obtains regarding organic food products	1992	Nov. 2007 Jan. 2008	June 2008	
7	Agriculture	42.56.380(2); 15.54.362	Information regarding business operations contained in reports on commercial fertilizer	1987	Nov. 2007 Jan. 2008	June 2008	
8	Agriculture	42.56.380(3)	Production or sales records required to determine payments to various agricultural commodity boards and commissions (Relates to exemptions in 10 commission statutes)	1996	Nov. 2007 Jan. 2008	June 2008	
9	Agriculture	42.56.380(4)	Consignment information contained on phytosanitary certificates issued by the department of agriculture	1996	Nov. 2007 Jan. 2008	June 2008	
10	Agriculture	42.56.380(5)	Financial and commercial information and records held by the department of agriculture for potential establishment of a commodity board or commission regarding domestic or export marketing activities or individual production information	1996	Nov. 2007 Jan. 2008	June 2008; November 2012	
11	Agriculture	42.56.380(7)	Identifiable information collected by department of agriculture regarding packers and shippers of fruits and vegetables for purposes of inspections and certification	1996	Nov. 2007 Jan. 2008	June 2008	
12	Agriculture	42.56.380(8)	Financial statements provided to the department of agriculture for purposes of obtaining public livestock market license	2003	Nov. 2007 Jan. 2008	June 2008	
13	Agriculture	42.56.380(9)	(Voluntary) National animal identification systems - herd inventory mgmt., animal disease	2006	Nov. 2007 Jan. 2008	June 2008	

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
14	Agriculture	42.56.380(10);16.36	Animal disease reporting	2006	Nov. 2007 Jan. 2008	June 2008	
15	Agriculture	42.56.270(17)	Farm plans that are voluntary and developed with conservation district assistance	2006	Jan. 2008; *See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets	June 2008; November 2012; *See also Oct. 2016 - 42.56.270 & trade secrets	2017: HB 1160/SB 5418
16	Agriculture	42.56.610	Livestock nutrient management information: Certain information obtained by state and local agencies from dairies, animal feeding operations not required to apply for a national pollutant discharge elimination system permit disclosable only in ranges that provide meaningful information to public	2005 (c510s5)	Nov. 2007 Jan. 2008	June 2008	;
17	Agriculture	15.49.370(8)	Seeds: operations and production information	1969	Nov. 2007 Jan. 2008	June 2008	
18	Agriculture	15.53.9018	Commercial Feed required reports	1975	Nov. 2007 Jan. 2008	June 2008	
19	Agriculture	15.58.060(1)(c)	Washington Pesticide Control Act: Business information of a proprietary nature regarding pesticide formulas	1971	Nov. 2007 Jan. 2008	June 2008	
20	Agriculture	15.58.065(2)	Washington Pesticide Control Act: Privileged or confidential commercial or financial information, trade secrets re: pesticides	1971	Nov. 2007 Jan. 2008	June 2008	
21	Agriculture	15.65.510	Information regarding agricultural marketing agreements (including info from noncompliance hearings)	1961	Feb. 2008	June 2008	
22	Agriculture	15.86.110	Business related information obtained by the department of agriculture regarding entities certified to handle and process organic or transitional food, or entities applying for such certification	1992	Nov. 2007 Jan. 2008	June 2008	
23	Agriculture	17.24.061(2)	Insect Pests & Plant Diseases (including: trade secrets or commercial or financial information obtained by department of agriculture regarding insect pests, noxious weeds, or organisms affecting plant life	1991	Nov. 2007 Jan. 2008	June 2008	
24	Agriculture	22.09.040(9)	Financial information provided by applicants for a warehouse license to the department of agriculture	1987	Feb. 2008	June 2008	
25	Agriculture	22.09.045(7)	Financial information provided by applicants for a grain dealer license to the department of agriculture	1987	Feb. 2008	June 2008	
26	Agriculture	43.23.270	Financial and commercial information obtained by the department of agriculture for export market development projects	1996	Nov. 2007 Feb. 2008	June 2008	
27	Personal Information	28C.18.020	List of nominees for director of work force training & education board [Later eliminated]	1991	Feb. 2008	Sept. 2008	SB 5295 (Ch. 128 Laws of 2010)
28	Personal Information	79A.25.150	Names of candidates for director of interagency committee for outdoor recreation [Later eliminated]	1989	Feb. 2008	Sept. 2008	SB 5295 (Ch. 128 Laws of 2010)

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
29	Personal Information	43.33A.025(2)	State investment board criminal history record checks of finalists for board positions	1999	May 2008	June 2008	
30	Personal Information: Employment and Licensing	42.56.250(4)	Address, phone numbers, email addresses, SSNs, drivers' license numbers, identicard numbers, payroll deductions, and emergency contact information of public employees or volunteers held by public	1987; 2020	May 2008; Feb. 2016; May 2016	May 2016	2017: HB 1160/SB 5418; HB 1538 (2019)
31	Personal Information	42.56.230(1)&(2)	Personal information in files for students in public schools, patients or clients of public institutions or public health agencies, or welfare programs (1); children in listed programs (2)	1973 (I-276); Re (2): 2011 c 173 s 1, 2013 c 220 s 1, 2015 c 47 s 1	Nov. 2008; May 2014; Feb. 2016; May 2016	May 2016 (re consent)	2017: HB 1160/SB 5418. See also HB 1293 (2011); SB 5314 (2011), HB 2646 (2011); HB 1203 (Ch. 220, 2013 Laws); SB 5198 (2013); SB 5098 (Ch. 173, 2011 Laws); HB 1538 (2019); SB 5246 (2019)
32	Public Utilities & Transportation	42.56.330(3)	Personal information in vanpool, carpool, ride-share programs	1997	May 2008	Nov. 2008; November 2012	SB 5294 (2009); SB 5049 (2011, 2012); HB 1298 (2013); SB 5169 (2013); HB 1980 (2015); SB 6020 (2015) HB 1554 (2015) (re (2))
33	Public Utilities & Transportation	42.56.330(4)	Personal information of current or former participants or applicants in transit services operated for those with disabilities or elderly persons	1999	May 2008	Oct. 2008	
34	Personal Information	~~41.04.364~~ (repealed) - 41.04.362 - also see 42.56.360(1)(j) (same)	Personally identifiable information in state employee wellness program	1987; 2010 c. 128 s 3	May 2008 (2008 law)	July 2008 (2008 law)	SB 5295 (Ch. 128, 2010 Laws)
35	Public Utilities & Transportation	42.56.330(5)	Personal information of persons who use transit passes and other fare payment media	1999; 2012	May 2008	Oct. 2008	SB 5294 (2009); SB 5295 (Ch. 129, 2010 Laws); SB 5049 (2011); SB 2552 (Ch. 68, 2012 Laws); HB 1298 (2013); SB 5169 (2013); HB 1980 (2015); SB 6020 (2015)
36	Misc. Government Functions	42.56.290	Agency records relevant to a controversy but which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts	1973 (I-276)	June 2008	Nov. 2008	SB 5294 (2009)
37	Personal Information	42.56.250(6)	Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed	1992	Sept. 2008	Oct. 2008	HB 1538 (2019)

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
38	Personal Information	42.56.250(5)	Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.	1994	Sept. 2008; Feb. 2016; May 2016	Oct. 2008; May 2016	SB 5295 (Ch. 128, 2010 Laws) ; see also HB 2761 (2012) (employer investigations); 2017: HB 1160/SB 5418
39	Personal Information	42.56.250(8)	Employee salary and benefit information collected from private employers for salary survey information for marine employees	1999	Sept. 2008	Oct. 2008	SB 5295 (Ch. 128, 2010 Laws)
40	Personal Information	42.56.230(3) (formerly (2))	Personal information in files on employees, appointees, or elected officials if disclosure would violate their right to privacy	1973 (I-276)	Nov. 2008; Jan. 2012; March 2012; Feb. 2014; Aug. 2014; Oct. 2014; Feb. 2015; May 2016 (re consent)	Nov. 2012; May 2016 (re consent)	2017: HB 1160/SB 5418 (re consent)
41	Court Proceedings	13.34.100	Background information regarding a court appointed guardian ad litem.	1993	Oct. 2008	May-10	SB 5049 (2011); HB 1297 (2013); SB 5170 (2013) HB 1298 (2013), HB 1980 (2015); SB 6020 (2015)
42	Public Utilities & Transportation	42.56.330(7)	Personally identifying information of persons who use transponders and other technology to facilitate payment of tolls	2005	Mar. 2009	May 2009	
43	Public Utilities & Transportation	42.56.330(8)	Personally identifying information on an ID card that contains a chip to facilitate border crossing.	2008	Mar. 2009	May 2009	
44	Public Utilities & Transportation	42.56.330(2)	Residential addresses and phone numbers in public utility records	1987; 2014 c 33 s 1	Mar. 2009; Nov. 2013	Oct. 2009; Nov. 2013	HB 2114 (2014); SB 6007 (Ch. 33, 2014 Laws)
45	Public Utilities & Transportation	42.56.330(6)	Information obtained by governmental agencies and collected by the use of a motor carrier intelligent transportation system or comparable information equipment	1999	Mar. 2009	May 2009	
46	Public Utilities & Transportation	42.56.335	Records of any person belonging to a public utility district or municipality owned electrical utility	2007	Mar. 2009	May 2009	
47	Public Utilities & Transportation	42.56.330(1)	Valuable commercial information, trade secrets, etc. supplied to the utilities and transportation commission	1987	Mar. 2009	Mar. 2009	
48	Public Utilities & Transportation	80.04.095	Utility records filed with utilities and transportation commission containing valuable commercial information	1987	Mar. 2009	Oct. 2009	
49	Insurance & Financial Inst.	42.56.400(2)	Information obtained and exempted by the health care authority that is transferred to facilitate development, acquisition, or implementation of state purchased health care	2003	May 2009; May 2010	May 2010	
50	Insurance & Financial Inst.	42.56.400(3)	Names of individuals in life insurance policy settlements	1995	May 2009; May 2010	May 2010	
51	Insurance & Financial Inst.	48.102.030	Insurance viatical settlement broker records which may be required and examined by the insurance commissioner [later repealed]	1995	May 2009; May 2010	May 2010	

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
52	Insurance & Financial Inst.	42.56.400(4)	Insurance antifraud plans	1995	May 2009; May 2010	May 2010	
53	Insurance & Financial Inst.	48.30A.060	Insurance company antifraud plans submitted to the insurance commissioner	1995	May 2009; May 2010	May 2010	
54	Insurance & Financial Inst.	42.56.400(5)	Insurers' reports on material acquisitions and disposition of assets, etc. filed with the insurance commission	1995	May 2009; May 2010	May 2010	
55	Insurance & Financial Inst.	42.56.400(7)	Information provided to the insurance commissioner regarding service contract providers	1997	May 2009; May 2010	May 2010	
56	Insurance & Financial Inst.	48.110.040(3)	Monthly financial reports made by service contract providers to the insurance commissioner	2005	May 2009; May 2010	May 2010	
57	Insurance & Financial Inst.	42.56.400(8)	Information obtained by the insurance commissioner relating to market conduct examinations	2001	May 2009; May 2010	May 2010	
58	Insurance & Financial Inst.	42.56.400(12)	Documents obtained by the insurance commissioner to perform market conduct examinations. Report is disclosable under RCW 48.37.060.	2007	May 2009; May 2010	May 2010	SB 5049 (2012); HB 1298 (2013); SB 5169 (2013) re RCW 48.37.060
59	Insurance & Financial Inst.	42.56.400(13)	Confidential and privileged documents obtained in market conduct examination	2007	May 2009; May 2010	May 2010	
60	Insurance & Financial Inst.	42.56.400(14)	Information provided to the insurance commissioner by insurance company employees asserting market conduct violations	2007	May 2009; May 2010	May 2010	
61	Insurance & Financial Inst.	48.37.080	Documents related to insurance commissioner's market conduct examination	2007	May 2009; May 2010	May 2010	
62	Insurance & Financial Inst.	42.56.400(9)	Proprietary information provided to the insurance commissioner regarding health carrier holding companies	2001; 2015 c 122 ss 13 & 14	May 2009; May 2010	May 2010	
63	Insurance & Financial Inst.	42.56.400(10)	Data filed with the insurance commissioner that reveals identity of claimant, provider, or insurer	2001	May 2009; Aug. 2010		SB 5049 (2012); HB 1299 (2013); SB 5171 (2013)
64	Insurance & Financial Inst.	42.56.400(11)	Documents obtained by insurance commissioner relating to insurance fraud	2006	May 2009; Aug. 2010	Aug. 2010	
65	Insurance & Financial Inst.	48.135.060	Documents obtained by insurance commissioner relating to insurance fraud	2006	May 2009; Aug. 2010	Aug. 2010	
66	Insurance & Financial Inst.	42.56.400(15)	Documents obtained by insurance commissioner regarding misconduct by agent/broker	2007 Eff. 1/1/09	May 2009; Aug. 2010	Aug. 2010	
67	Insurance & Financial Inst.	48.17.595(6)	Information obtained by insurance commissioner in investigation of misconduct by agent/broker	2007	May 2009; Aug. 2010	Aug. 2010	
68	Insurance & Financial Inst.	42.56.403	Documents that provide background for actuarial opinion filed with insurance commissioner	2006	May 2009; Aug. 2010	Aug. 2010	
69	Insurance & Financial Inst.	48.02.120	Formulas, statistics, assumptions, etc. used by insurance companies to create rates; such information that is submitted to the insurance commissioner	1985	May 2009; Aug. 2010	Aug. 2010	
70	Insurance & Financial Inst.	48.05.385(2)	Statement of actuarial opinion is a public record. Documents that provide background for statement of actuarial opinion filed with insurance commissioner are exempt	2006	May 2009; Aug. 2010	Aug. 2010	

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
71	Insurance & Financial Inst.	48.03.040(6)(a)	Examinations and investigations by state insurance commissioner	1937	May 2009; Aug 2010	Aug. 2010	
72	Insurance & Financial Inst.	48.03.050	Examinations and investigations by state insurance commissioner	1937	May 2009	Oct. 2009	SB 5049 (2011)
73	Insurance & Financial Inst.	48.05.465	Insurance companies risk based capital (RBC) reports and plans	1995	May 2009; Aug. 2010	Aug. 2010	
74	Insurance & Financial Inst.	48.43.335(1)	Insurance companies risk based capital (RBC) reports and plans (should not be used to compare insurance companies and are therefore confidential)	1998	May 2009; Aug. 2010	Aug. 2010	
75	Insurance & Financial Inst.	48.20.530	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
76	Insurance & Financial Inst.	48.21.330	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
77	Insurance & Financial Inst.	48.44.470	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
78	Insurance & Financial Inst.	48.46.540	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
79	Insurance & Financial Inst.	48.31B.015(2)(b)	Source of consideration (identity of the lender) for loan associated with acquiring an insurance company	1993	May 2009; Aug. 2010	Aug. 2010	
80	Insurance & Financial Inst.	48.62.101(2)	Local government self-insurance liability reserve funds	1991	May 2009; Aug. 2010	Aug. 2010	
81	Placeholder						
82	Insurance & Financial Inst.	48.94.010(5)	Summary of reasoning for insurance commissioner's refusal to issue reinsurance intermediary license	1993	May 2009; Aug. 2010	Aug. 2010	
83	Insurance & Financial Inst.	48.130.070	Records of the interstate insurance product regulation compact involving privacy of individuals and insurers' trade secrets	2005	May 2009; Aug. 2010	Aug. 2010	
84	Insurance & Financial Inst.	70.148.060(1)	Examination and proprietary records of potential insurers obtained by the director of the Washington state pollution liability insurance agency when soliciting bids to provide reinsurance for owners of underground storage tanks	1989; 2015 c224 s 5	May 2009; Aug. 2010	Aug. 2010-modify	SB 5049 (2011, 2012); HB1298 (2013); SB 5169 (2013); HB 1980 (2015); SB 6020 (2015)
85	Insurance & Financial Inst.	70.149.090	Business and proprietary information of insurers obtained by the director of the Washington state pollution liability insurance agency, to provide insurance to owners of heating oil tanks	1995	May 2009; Aug. 2010	Aug. 2010	
86	Insurance & Financial Inst.	42.56.400(6)	Examination reports and information obtained by the department of financial institutions from banking institutions	1997	Oct. 2010	Sept. 2011	
87	Insurance & Financial Inst.	21.20.855	Reports and information from department of financial services examinations	1988	Oct. 2010	Sept. 2011	
88	Insurance & Financial Inst.	30.04.075(1)	Information obtained by the director of financial institutions when examining banks and trust companies	1977	Oct. 2010	Sept. 2011	
89	Insurance & Financial Inst.	30.04.230(4)(a)	Information obtained during investigations of out of state banks	1983	Oct. 2010	Sept. 2011	

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
90	Insurance & Financial Inst.	31.12.565(1)	Examination reports and information obtained by the director of financial institutions while examining credit unions	1984	Oct. 2010	Sept. 2011	
91	Insurance & Financial Inst.	32.04.220(1)	Information from examinations of mutual savings banks	1977	Oct. 2010	Sept. 2011	
92	Insurance & Financial Inst.	33.04.110(1)	Information from examinations of savings and loan associations	1977	Oct. 2010	Sept. 2011	
93	Insurance & Financial Inst.	32.32.228(3)	Findings disapproving conversion from mutual savings bank to capital stock savings bank	1989	Oct. 2010	Sept. 2011	
94	Insurance & Financial Inst.	32.32.275	Information applicants deem confidential relating to conversion of mutual savings bank to capital stock savings bank	1981	Oct. 2010	Sept. 2011	
95	Insurance & Financial Inst.	7.88.020	Financial institution compliance review documents	1997	Oct. 2010	Sept. 2011	
96	Insurance & Financial Inst.	9A.82.170	Information obtained from a financial institution's records pursuant to subpoena under the criminal profiteering act	1984	Oct. 2010	Sept. 2011	
97	Insurance & Financial Inst.	21.30.855	Reports and information from department of financial services examinations	1988	Oct. 2010	Sept. 2011	
98	Insurance & Financial Inst.	30.04.410(3)	Findings related to disapprovals of bank acquisitions	1989	Oct. 2010	Sept. 2011	
99	Insurance & Financial Inst.	33.24.360(1)(d)	Name of lender financing the acquisition of a savings and loan, if requested by the applicant	1973	Oct. 2010	Sept. 2011	
100	Insurance & Financial Inst.	42.56.450	Personal information on check cashers and sellers licensing applications and small loan endorsements	1991; 1995	Oct. 2010	Sept. 2011	
101	Insurance & Financial Inst.	31.35.070	Reports on examinations of agricultural lenders	1990	Oct. 2010	Sept. 2011	
102	Insurance & Financial Inst.	31.45.030(3)	Addresses and phone numbers and trade secrets of applicants of a check casher or seller license	1991	Oct. 2010	Sept. 2011	
103	Insurance & Financial Inst.	31.45.077(2)	Addresses, phone numbers and trade secrets of applicants for a small loan endorsement to a check cashers or sellers license	1995	Oct. 2010	Sept. 2011	
104	Insurance & Financial Inst.	31.45.090	Trade secrets supplied by licensed check cashers and sellers as part of the annual report to director of financial institutions	2003	Oct. 2010	Sept. 2011	
105	L&I-Injured workers	51.16.070(2)	Information in employer's records obtained by labor & industries under industrial insurance	1957	Oct. 2010	Aug.2011	
106	L&I-Injured workers	51.28.070	Information and records of injured workers contained in industrial insurance claim files	1957	Oct. 2010	Aug.2011	
107	L&I-Injured workers	51.36.110(1)	Information (including patients' confidential information) obtained in audits of health care providers under industrial insurance	1994	Oct. 2010	Aug. 2011	
108	Personal Information	42.56.230(5) (formerly (3))	Credit card numbers, debit card numbers, electronic check numbers, and other financial information, except when disclosure is required by other law		Aug. 2010	Aug.2010; November 2012	SB 5049 (2011); HB 1298 (2013); SB 5169 (2013); HB 1980 (2015); HB 1980 (2015)
109	Personal Information	42.56.230(4)	Certain taxpayer information if it would violate taxpayers right of privacy	1973	Feb., May, Aug. 2016	May 2016 (re consent)	

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
110	Personal Information	42.56.230(5)	Personal and financial information related to a small loan or any system of authorizing a small loan in section 6 of this act (RCW 31.45.---)	2009	May 2016 (re consent)	May 2016 (re consent)	
111	Personal Information	42.56.230(6)	Personal information required to apply for a driver's license or identicard	2008	May 2016 (re consent)	May 2016 (re consent)	
112	L&I-Injured workers	49.17.080(1)	Name of employee of company seeking industrial safety & health act	1973	Aug. 2011	Aug. 2011	
113	L&I-Injured workers	49.17.200	Trade secrets reported to labor & industries under Washington industrial safety & health act	1973	Aug. 2011	Aug. 2011	
114	L&I-Injured workers	49.17.210	Identification of employer or employee in labor & industries studies	1973	Aug. 2011	Aug. 2011	
115	L&I-Injured workers	49.17.250(3)	Info obtained by labor & industries from employer-requested consultation re. industrial safety & health act	1991	Aug. 2011	Aug. 2011	
116	L&I-Injured workers	49.17.260	Labor & industries investigative reports on industrial catastrophes	1973	Aug. 2011	Aug. 2011	
117	L&I-Injured workers	51.36.120	Financial or valuable trade info from health care providers	1989	Aug. 2011	Aug. 2011	
118	L&I-Injured workers	42.56.400(1)	Board of industrial insurance records pertaining to appeals of crime victims' compensation claims		Aug. 2011	Aug. 2011	
119	Fish & Wildlife	42.56.430 (1)	Commercial fishing catch data provided to the department of fish and wildlife that would result in unfair competitive disadvantage		May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
120	Fish & Wildlife	42.56.430 (2)	Sensitive wildlife data obtained by the department of fish and wildlife		May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
121	Fish & Wildlife	42.56.430 (3)	Personally identifying information of persons who acquire recreational or commercial licenses		May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
122	Fish & Wildlife	42.56.430(4)	Information subject to confidentiality requirements of Magnuson-Stevens fishery conservation and management reauthorization act of 2006	2008 c 252 s 1	May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
123	Employment and Licensing	42.56.250(1)	Test questions, scoring keys, and other exam information used on licenses, employment or academics	1973	May 2021; Aug. 2021; Oct. 2021		
124	Personal Information	66.16.090	Records of LCB showing individual purchases of liquor-confidential	1933	Jun. 2013	Jun. 2013	HB 2764 (2013); HB 2663 (Ch. 182, 2016 Laws) - Repealed
125	Investigative, law enforcement and crime victims	42.56.240(9)	Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs	2012 c 288 s 1			
126	Investigative, law enforcement and crime victims	42.56.240(11)	Identity of state employee or officer who files a complaint with an ethics board under RCW 42.52.420 or reports improper governmental action to the auditor or other official	2013 c 190 s 7			
127	Employment and Licensing	42.56.250(7)	Criminal history record checks for investment board finalist candidates	2010			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
128	Employment and Licensing	42.56.250(7)	Employee salary and benefit information collected from private employers for salary survey information for maritime employees	1999			
129	Employment and Licensing	42.56.250(8)	Photographs, month/year of birth in personnel files of public employees; news media has access	2010; 2020			HB 2447 (2010); See also HB 2259 (criminal justice agency/employee info) and HB 1317 (Ch. 257, 2010 Laws) (amending .230);
130	Real estate Appraisals	42.56.260	Real estate appraisals for agency acquisition or sale until project or sale abandoned, but no longer than 3 years in all cases	1973; 2015 c 150 s 1	Aug. 2014; Oct. 2014	Oct. 2014	HB 1431 (Ch. 150, 2015 Laws); SB 5395
131	Investigative, law enforcement and crime victims	42.56.240(1)	Specific intelligence and investigative information completed by investigative, law enforcement, and penology agencies, and state agencies that discipline members of professions, if essential to law enforcement or a person's right to privacy*	1973	Jan. 2012; March 2012; May 2012; March 2013; June 2013; Feb. 2014; Oct. 2014; Oct. 2019	Oct .2019	Burglar alarm info - HB 2896 (2010); HB 1243 (Ch. 88, 2012 Laws); SB 5244 (2011); SB 5344 (2011). Traffic stop info - SB 6186 (2009)
132	Investigative, law enforcement and crime victims	42.56.240(2)	Identity of witnesses, victims of crime, or persons who file complaints, if they timely request nondisclosure and disclosure would endanger their life, personal safety, or property—does not apply to PDC complaints		Jan. 2012; March 2012; March 2013; June 2013; Sept. 2013; May 2014; August 2014		HB 2764 (2013); see also HB 2610 (2010), SB 6428 (2010) (to amend .230))
133	Investigative, law enforcement and crime victims	42.56.240(3)	Records of investigative reports prepared by any law enforcement agency pertaining to sex offenses or sexually violent offenses which have been transferred to WASPC		Jan. 2012; March 2012; June 2013		
134	Investigative, law enforcement and crime victims	42.56.240(4)	Information in applications for concealed pistol licenses	1988	May 2011; March 2013	May, 2011	
135	Investigative, law enforcement and crime victims	42.56.240(5)	Identifying information regarding child victims of sexual assault	1992	May 2011; Feb. 2015; May 2015; Aug. 2015; Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019	Sept. 2011; August 2015	SB 5049 (2012); HB 1299 (2013); SB 5171 (2013); HB 1980 (2015); SB 6020 (2015)
136	Investigative, law enforcement and crime victims	42.56.240(6)	Statewide gang database in RCW 43.43.762	2008	May, 2011	Sept. 2011; November 2012	SB 5049 (2012); HB 1299 (2013); SB 5171 (2013); HB 1980 (2015); SB 6020 (2015)
137	Investigative, law enforcement and crime victims	42.56.240(7)	Data from electronic sales tracking system (pseudoephedrine)	2010	May, 2011	May, 2011	
138	Investigative, law enforcement and crime victims	42.56.240(8)	Person's identifying info submitted to sex offender notification and registration system to receive notice regarding registered sex offenders	2010	May, 2011	May, 2011	
139	Personal Information/proprietary and tax information	82.36.450(3)	Information filed with department of licensing or open to department of licensing inspection under agreement is personal information under RCW 42.56.230(3) (b) and exempt from public inspection and copying	2007	Sept. 2011		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
140	Personal Information/proprietary and tax information	82.38.310(3)	Information filed with department of licensing or open to department of licensing inspection under agreement is personal information under RCW 42.56.230(3) (b) and exempt from public inspection and copying	2007	Sept. 2011		
141	Lists of Individuals	42.56.070(9)	Lists of individuals for commercial purposes.	1973	Feb. 2017; May 2017		
142	Juries	2.36.072(4)	Information provided to court for preliminary determination of statutory qualification for jury duty	1993			
143	Personal Information	42.56.230 (7)(a)	Personal information required to apply for a driver's license or identicard	2008 c 200 s 5	Nov. 2013; Dec. 2013; May 2016 (re consent)	Feb. 2014; May 2016 (re consent)	2017: HB 1160/SB 5418
144	Personal Information	42.56.230 (7)(b)	Persons who decline to register for selective service under RCW 46.20.111	2011 c 350 s 2	May 2016 (re consent)	May 2016 (re consent)	2017: HB 1160/SB 5418
145	Financial, Commercial, and Proprietary Information	42.56.270(1)	Valuable formulae, designs, drawings and research obtained by agency within 5 years of request for disclosure if disclosure would produce private gain and public loss	1973 (I-276)	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
146	Financial, Commercial, and Proprietary Information	42.56.270(2)	Financial information supplied by a bidder on ferry work or highway construction	1983	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
147	Financial, Commercial, and Proprietary Information	42.56.270(3)	Financial information and records filed by persons pertaining to export services	1986	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
148	Financial, Commercial, and Proprietary Information	42.56.270(4)	Financial information in economic development loan applications	1987	*May 2016; Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
149	Financial, Commercial, and Proprietary Information	42.56.270(5)	Financial information obtained from business and industrial development corporations	1989	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
150	Financial, Commercial, and Proprietary Information	42.56.270(6)	Financial information on investment of retirement moneys and public trust investments	1989	May 2015; Aug. 2015; *May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	Aug. 2015; see also *Oct. 2016 - 42.56.270 & trade secrets/proprietary info	SB 6170 (Chap. 8, 2016 Laws 1st Sp. Sess.); 2017: HB 1160/SB 5418
151	Financial, Commercial, and Proprietary Information	42.56.270(7)	Financial and trade information supplied by and under industrial insurance coverage	1989	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
152	Financial, Commercial, and Proprietary Information	42.56.270(8)	Financial information obtained by the clean Washington center for services related to marketing recycled products	1994	May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
153	Financial, Commercial, and Proprietary Information	42.56.270(9)	Financial and commercial information requested by public stadium authority from leaser	1997	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
154	Financial, Commercial, and Proprietary Information	42.56.270(10)	Financial information supplied for application for a liquor, gambling, lottery retail or various marijuana licenses	2014 c 192 s 6	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
155	Financial, Commercial, and Proprietary Information	42.56.270(11)	Proprietary data, trade secrets, or other information submitted by any vendor to department of social and health services for purposes of state purchased health care		*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
156	Financial, Commercial, and Proprietary Information	42.56.270(12)(a)(i)	Financial or proprietary information supplied to DCTED in furtherance of the state's economic and community development efforts	1993, 1989	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
157	Financial, Commercial, and Proprietary Information	42.56.270(12)(a)(ii)	Financial or proprietary information provided to the DCTED regarding businesses proposing to locate in the state	1999	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
158	Financial, Commercial, and Proprietary Information	42.56.270(14)	Financial, commercial, operations, and technical and research information obtained by the life sciences discovery fund authority	2005 (c424s6)7/25/2006	May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
159	Financial, Commercial, and Proprietary Information	42.56.270(20)	Financial and commercial information submitted to or obtained by the University of Washington relating to investments in private funds	2009 c 384 s 3	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
160	Financial, Commercial, and Proprietary Information	42.56.270(21)	Market share data submitted by a manufacturer under RCW 70.95N.190(4)	2013 c 305 s 14	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
161	Preliminary records containing opinions or policy formulations	42.56.280	Preliminary drafts, notes, recommendations, and intra-agency memos where opinions are expressed or policies formulated or recommended, unless cited by an agency	1973 (I-276)	May 2021; Oct. 2021		
162	Archaeological sites	42.56.300(3)	Information identifying the location of archaeological sites	1976; 2014 c 165 s 1			
163	Library records	42.56.310	Library records disclosing the identity of a library user	1982			
164	Educational Information	42.56.320(1)	Financial disclosures filed by private vocational schools	1986			
165	Educational Information	42.56.320(2)	Financial and commercial information relating to the purchase or sale of tuition units				
166	Educational Information	42.56.320(3)	Individually identifiable information received by the WFTECB for research or evaluation purposes				
167	Educational Information	42.56.320(4)	Information on gifts, grants, or bequests to institutions of higher education (1975)	1975	May 2021; Oct. 2021		
168	Educational Information	42.56.320(5)	The annual declaration of intent filed by parents for a child to receive home-based instruction	2009 c 191 s 1			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
169	Timeshare, condominium owner lists	42.56.340	Membership lists and lists of owners of interests in timeshare projects, condominiums, land developments, or common-interest communities, regulated by the department of licensing	1987	Feb. 2017; May 2017; Aug.2017	Aug. 2017	2019: HB 1537 (repealed exemption) (Ch. 229, 2019 laws)
170	Health Professionals	42.56.350(1)	SSNs of health care professionals maintained in files of the department of health	1993			
171	Health Professionals	42.56.350(2)	Residential address and telephone numbers of health care providers maintained in files of the department of health	1993			
172	Investigative, law enforcement and crime victims	42.56.230(7)(c)	Records pertaining to license plates, drivers' licenses or identicards that may reveal undercover work, confidential public health work, public assistance fraud, or child support investigations	2013 c 336 s 3			
173	Employment and Licensing	42.56.240(13)	Criminal justice agency employee/worker residence GPS data	2015 c 91 s 1			
174	Health Care	42.56.360(1)(c)	Information and documents created, collected, and maintained by the health care services quality improvement program and medical malpractice prevention program	1995			
175	Health Care	42.56.360(1)(d)	Proprietary financial and commercial information provided to department of health relating to an antitrust exemption	1997	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
176	Health Care	42.56.360 (1) (e)	Physicians in the impaired physicians program	1987, 1994, 2001			
177	Health Care	RCW 70.05.170(3) - see also 42.56.360(3)	Information relating to infant mortality pursuant to former RCW 70.05.170/RCW 42.56.360 - See 184 and 185	1992; Amended 2010 c 128 s 3	2008 (2008 law)	March 2008 (2008 law)	
178	Financial, Commercial, and Proprietary Information	42.56.270(23)	Notice of crude oil transfers	2015 c 274 s 24	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
179	Health Care	42.56.360(1)(f)	Complaints filed under the health care professions uniform disciplinary act	1997			
180	Financial, Commercial, and Proprietary Information	42.56.270(24)	Certain information supplied to the liquor and cannabis board per RCW 69.50.325, 9.50.331, 69.50.342 and 69.50.345	2015 c 178 s 2	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
181	Health Care	42.56.360(1)(i)	Information collected by the department of health under chapter 70.245 RCW.	2009 c 1 s 1			
182	Health Care	42.56.360(1)(k)	Claims data and information provided to the statewide all-payer health care claims database that is exempt under RCW 43.373.040	2014 c 223 s 17			
183	Health Care	42.56.360(2) and 70.02	Health care information disclosed to health care provider without patients permission	1991			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
184	Financial, Commercial, and Proprietary Information	42.56.270(24)	Certain information and data submitted to or obtained by the liquor and cannabis board re applications for licenses or reports required under RCW 69.50.372	2016 1st sp.s. c 9 s 3	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
185	Health Care; Marijuana	42.56.625	Records in medical marijuana authorization database I RCW 69.51A.230	2015 c 70 s 22			
186	Domestic Violence	42.56.370	Client records of community sexual assault program or services for underserved populations [amended 2012]	1991; 2012 c 29 s 13	*Check*	*Check*	
187	Agriculture and Livestock	42.56.380(10)	Results of animal testing from samples submitted by the animal owner	2012 c 168 s 1(10)	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
188	Agriculture and Livestock	42.56.380(11)	Records of international livestock importation that are not disclosable by the U.S.D.A. under federal law.	2012 c 168 s 1(11)	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
189	Agriculture and Livestock	42.56.380(12)	Records related to entry of prohibited agricultural products imported into Washington that are not disclosable by the U.S.D.A. under federal law	2012 c 168 s 1(12)	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
190	Emergency or Transitional Housing	42.56.390	Names of individuals residing in emergency or transitional housing furnished to the department of revenue or a county assessor	1997			
191	Insurance & Financial Inst.	42.56.400(16)	Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.-051 (1) and 48.102.-140 (3) and (7)(a)(ii))	2009 c 104 s 37			
192	Insurance & Financial Inst.	42.52.400(17)	Documents, materials, or information obtained by the insurance commissioner under RCW 48.31.025 and 48.99.025	2010 c 97 s 3			
193	Insurance & Financial Inst.	42.56.400(18)	Documents, material, or information relating to investment policies obtained by the insurance commissioner under RCW 48.13.151	2011 c 188 s 21			
194	Insurance & Financial Inst.	42.56.400(19)	Data from (temporary) study on small group health plan market	2010 c 172 s 2			
195	Insurance & Financial Inst.	42.56.400(20); 48.19.040(5)(b)	Information in a filing of usage-based component of the rate pursuant to RCW 48.19.040(5)(b)	2012 c 222 s 1			
196	Insurance & Financial Inst.	42.56.400(21); 42.56.400(22); 42.56.400(23); 42.56.400(24); 42.56.400(25)	Data, information, and documents submitted to or obtained by the insurance commissioner	2012 2nd sp. s. c 3 s 8; 2013 c 65 s 5; 2013 c 277 s 5; 205 c 17 ss 10 & 11			
197	Employment Security	42.56.410	Most records and information supplied to the employment security department				
198	Security	42.56.420(1)	Records relating to criminal terrorist acts				
199	Security	42.56.420(2)	Records containing specific and unique vulnerability assessments and emergency and escape response plans – adds civil commitment facilities	2009 c 67 s 1			
200	Security	42.56.420(3)	Comprehensive safe school plans that identify specific vulnerabilities				

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
201	Security	42.56.420(4)	Information regarding infrastructure and security of computer and telecommunications networks to the extent that they identify specific system vulnerabilities	1999	Feb. 2014	Feb. 2014	
202	Security	42.56.420(5)	Security sections of transportation security plans for fixed guideway systems				
203	Personal Information	42.56.230(8)	Information regarding individual claim resolution settlement agreements submitted to the board of industrial insurance appeals	2014 c 142 s 1			
204	Veterans' discharge papers	42.56.440	Veterans' discharge papers				
205	Fireworks, Explosives	42.56.460	Records and reports produced under state fireworks law, chapter 70.77 RCW and the Washington state explosives act, chapter 70.74 RCW	1995			
206	Correctional industries workers	42.56.470	Records pertaining to correctional industries class I work programs	2004			
207	Inactive programs	42.56.480(1)	Contracts files by railroad companies with the utilities & transportation commission prior to 7/28/91	1984	Jun. 2013	Jun. 2013	HB 2764 (2013); HB 2663 (Chap. 282, 2016 Laws) (repealed)
208	Inactive programs	42.56.480(2)	Personal information in international contact data base	1996 c 253 s 502	Jun. 2013	Jun. 2013	HB 2663 (Chap. 282, 2016 Laws) (repealed)
209	Inactive programs	42.56.480(3)	Data collected by department of social and health services pertaining to payment systems for licensed boarding homes	2003	Jun. 2013	Jun. 2013	HB 2764 (2013); HB 2663 (Chap. 282, 2016 Laws) (repealed)
210	Enumeration Data	42.56.615	Enumeration data used by office of financial management for population estimates per RCW 43.43.435	2014 c 14 s 1			
211	Financial, Commercial, and Proprietary Information; Marijuana	42.56.620	Reports submitted by marijuana research licensees that contain proprietary information	2015 c. 71 s 4	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
212	Mediation Communication	42.56.600	Records of mediation communications that are privileged under the uniform mediation act	2005 c 424 s 16			
213	Code Reviser	1.08.027	Code Reviser drafting services	1951	Feb. 2015	Feb. 2015	
214	Judicial - Investigative	2.64.111	Judicial conduct commission investigations and initial proceedings	1989			
215	Health Care Professions	4.24.250	Hospital review committee records on professional staff	1971	Sept. 2020; Oct. 2020		
216	Financial, Commercial, and Proprietary Information	4.24.601	Trade secrets and confidential research, development or commercial information	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
217	Financial, Commercial, and Proprietary Information	4.24.611	Trade secrets, confidential research, development or commercial information concerning products or business methods	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
218	Claims	4.92.210	Information in centralized risk management claim tracking system	1989			
219	Privileges	5.60.060	General statements of privileged communications between persons & various professionals, e.g., attorneys or physicians – presumably applies to records (see also # 276)	1954 & later dates			
220	Mediation Communication	5.60.070	Materials used in any court ordered mediation	1991	Feb. 2017; May 2017;		
221	Mediation Communication	7.07.050(5)	Mediation communications	2005	Feb. 2017; May 2017		
222	Mediation Communication	7.07.070	Mediation communications	2005	Feb. 2017; May 2017		
223	Health Care Records	7.68.080(9)(a)	The director may examine records of health care provider notwithstanding any statute that makes the records privileged or confidential	2011 c 346 s 501			
224	Financial, Commercial, and Proprietary Information	7.68.080(10)	At the request of health care contractor, department must keep financial and trade information confidential	2011 c 346 s 501	See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
225	Crime Victims and Witnesses	7.68.140	Records re. Victims of crimes confidential & not open to inspection	1973	May 2021		
226	Crime Victims and Witnesses	7.69.A.030(4)	Name, address, or photograph of child victim or child witness	1985	Feb. 2015; May 2015; Aug. 2015; Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019	Oct. 2019	HB 2485 (2019)
227	Mediation Communication	7.75.050	County or city dispute resolution center records	1984			
228	Financial, Commercial, and Proprietary Information	7.88.020 & .30	Financial institution compliance review documents	1997			
229	Health Care	9.02.100	General statement of fundamental right to reproductive privacy – could apply to records	1991			
230	Health Care - Concealed Pistols	9.41.097(2)	Mental health info provided on persons buying pistols or applying for concealed pistol licenses	1994			
231	Concealed Pistols	9.41.129	Concealed pistol license applications	1994			
232	Crime Victims and Witnesses	9.73.230	Name of confidential informants in written report on wire tapping	1989			
233	Crime Victims and Witnesses	72.09.710 (recod eff 8/1/09) (See also # 451)	Names of witnesses notified when drug offenders released (formerly 9.94A.610)	1991 - Recod 2008 c 231 s 26, 56 (See dispositions table)			
234	Placeholder						
235	Crime Victims and Witnesses	72.09.712 (recod eff 8/1/09) (See also # 451)	Names of victims, next of kin, or witnesses who are notified when prisoner escapes, on parole, or released (formerly 9.94A.610)	1985 - Recod 2008 c 231 s 27, 56 (see dispositions table)			
236	Privileges	5.60.060	Alcohol or drug addiction sponsor privilege	2016 st sp. ss. c 24 s 1			
237	Offender Information	9.94A.745	Records of the interstate commission for adult offender supervision that would adversely affect personal privacy rights or proprietary interests	2002	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
238	Crime Victims and Witnesses	9.94A.885	Information regarding victims, survivors of victims, or witnesses that are sent clemency hearing notices may not be released to offender	1999			
239	Offender Information	9A.44.138	Sex offender registration information given to high school or institution of higher education regarding an employee or student is confidential	2011 c 337 s 4			
240	Criminal Proceedings - Investigative	10.27.090	Grand jury testimony	1971	Sept. 2020; Oct. 2020		
241	Criminal Proceedings - Investigative	10.27.160	Grand jury reports	1971	Sept. 2020; Oct. 2020; Feb. 2021; May 2021; Aug. 2021; Oct. 2021		
242	Public Utilities & Transportation	19.29A.100	Electric utilities may not disclose private or proprietary customer information	2015 3rd sp. S. c 21 s 1	*Check on any prior Committee discussion re utilities*		
243	Insurance & Financial Inst.	48.31B.015(1)(b)	Filing by controlling person of insurer seeking to divest its controlling interest is confidential until conclusion of transaction	2015 c 122 s 3			
244	Investigative, law enforcement and crime victims	42.56.240(14)	Body worn camera recordings	2016 c 163 s 2			
245	Investigative, law enforcement and crime victims	42.56.240(14)	Records and info in the statewide sexual assault kit tracking system under RCW 43.43.	2016 c. 173 s 8			
246	Crime Victims and Witnesses	10.52.100	Identity of child victims of sexual assault	1992	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019		
247	Crime Victims and Witnesses	10.77.205	Information about victims, next of kin, or witnesses requesting notice of release of convicted sex or violent offenders	1990			
248	Offender Information	10.77.210	Records of persons committed for criminal insanity	1973	May 2021		
249	Crime Victims and Witnesses	10.97	Privacy of criminal records, including criminal history information on arrests, detention, indictment, information, or other formal criminal charges made after 12/31/77 unless dispositions are included	1977			
250	Crime Victims and Witnesses	10.97.130	Names of victims of sexual assaults who are 18 years of age or younger	1992	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019	2018	HB 1505 (Ch.300, 2019 Laws); HB 2484 (2019)
251	Judicial - Indigent Defense	10.101.020	Information given by persons to determine eligibility for indigent defense	1989			
252	Crime Victims and Witnesses - Juvenile	13.40.150	Sources of confidential information in dispositional hearings on juvenile offenses	1977	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019		
253	Crime Victims and Witnesses - Juvenile	13.40.215 and .217	Information about victims, next of kin, or witnesses requesting notice of release of juvenile convicted of violent sex offense or stalking	1990	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
254	Juvenile Records	13.50.010(12)	Electronic research copy of juvenile records maintains same level of confidentiality and anonymity as juvenile records in judicial information system	2009 c 440 s 1; 2014 c 117 s 5			
255	Juvenile Records	13.50.010(13)	Information in records released to the Washington state office of public defense retain confidential nature	2009 c 440 s 1; 2014 c 117 s 5; 2016 c 72 s 109			
256	Juvenile Records	13.50.050(3)	Records on commission of juvenile crimes	1979; Oct. 2019		Oct. 2019	HB 2484 (2019)
257	Juvenile Records	13.50.010(14)(b)	Records of juveniles who receive a pardon are confidential, including the existence or nonexistence of the record	2011 c 338 s 4			
258	Juvenile Records	13.50.100(2)	Juvenile justice or care agency records not relating to commission of juvenile crimes	1979	Re 42.56.380(6) - Oct. 2007; May 2019; Aug. 2019; Oct. 2019	Re. 42.56.380(6) - Jun. 2008	
259	Agriculture and Livestock	15.19.080	Information on purchases, sales, or production of ginseng by individual growers or dealers (see also 42.56.380 (6))	1998	See # 1 on Schedule of Review; Aug. 2017; Oct. 2017; May 2018; Aug. 2018	See # 1 on Schedule of Review Aug. 2018	See # 1 on Schedule of Review
260	Agriculture and Livestock	16.65.030(1)(d)	Financial statement info in public livestock market license applications	2003	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
261	Health Care Professions	18.130.095(1)(a)	Complaints filed under uniform disciplinary act for health professionals	1997			
262	Health Care Professions	18.130.172(1)	Summary and stipulations in complaints against health care professionals	1993			
263	Health Care Professions	18.130.175(4)	Voluntary substance abuse records on health care professionals	1988			
264	Health Care Professions	18.130.057 (c 157 s 1(2)(b)	Disciplining authority may not disclose information in a file that contains confidential or privileged information regarding a patient other than the person making the complaint or report	2011 c 157 s 1			
265	Counselors	18.19.180	Information counselors acquire and acknowledgement of practice disclosure statements	1987			
266	Boarding Homes	18.20.120	Identity of individual or name of boarding homes from boarding home licensing records	1959	Sept. 2020; Oct. 2020		
267	Health Care Professions	18.20.390	Information and documents created, collected and maintained by a quality assurance committee	2004			
268	Health Care Professions	18.32.040	Implication that information in dentistry registration records is only accessible by the registered person unless disclosure would compromise the examination process	1937	Sept. 2020; Oct. 2020; Oct. 2021		
269	Placeholder						
270	Health Care Professions	18.44.031(2)	Personal information in applications for escrow agent licenses	1999			
271	Health Care Professions	18.46.090	Information on maternity homes received by department of health identifying individuals or maternity homes	1951	Sept. 2020; Oct. 2020; Feb. 2021; May 2021; Aug. 2021		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
272	Health Care Professions	18.53.200	Information and records of optometrists	1975	May 2021; Aug. 2021; Oct. 2021		
273	Health Care Professions	18.64.420	Records obtained by department of health regarding various insurance companies	1991			
274	Health Care Professions	18.71.0195	Contents of physician disciplinary report	1979			
275	Health Care Professions	18.71.340	Entry records under impaired physician program	1987			
276	Privileges	18.83.110 - also 5.60.060 (# 219)	Communications between client and psychologist—could apply to records	1955	Sept. 2020; Oct. 2020		
277	Other Professions - Plumbers	18.106.320(2)	Info obtained from contractors on plumbing trainee hours	2002			
278	Health Care Professions	18.130.095(1)(a)	Complaints filed under uniform disciplinary act for health professionals	1997			
279	Health Care Professions	18.130.172(1)	Summary and stipulations in complaints against health care professionals	1993			
280	Health Care Professions	18.130.095(1)(a) (Repealed 2019)	Complaint of unprofessional conduct against health profession licensee	1997			
281	Health Care Professions	18.130.175(4)	Voluntary substance abuse records on health care professionals	1988			
282	Health Care Professions	18.130.175(4)	Substance abuse treatment records of licensed health professionals				
283	Elderly Adults - Referrals	18.330.050(2)(f)	On referral disclosure statement, must include statement that agency will need client authorization to obtain or disclose confidential information	2011 c 357 s 6			
284	Other Professions - Business Licenses	19.02.115	Master license service program licensing information is confidential and privileged except as provided in this section	2011 c 298 s 12			
285	Financial, Commercial and Proprietary	19.16.245	Collection agency financial statements	1973	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
286	Other Professions - Electrical	19.28.171	Info obtained from electrical contractors on electrical trainee hours	1996			
287	Other Professions - Electrical	19.28.171	Information obtained from electrical contractor by department of licenses	1996			
288	Security - Electronic Keys	19.34.240	Private keys under the electronic authentication act	1996			
289	Security - Electronic Keys	19.34.420	Electronic authentication info	1998			
290	Financial, Commercial and Proprietary Information	19.108	Trade Secrets Act	1981	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
291	Juvenile Records	13.50.010(14)	Records released by the court to the state office of civil legal aid	2015 c 262 s 1			
292	Financial, Commercial and Proprietary - Mortgages	19.146.370(4)	Chapter 42.56 RCW relating to supervisory information or information subject to subsection (1) of this section is superseded by this section	2009 c 528 s 15	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
293	Other Professions - Money Transfer Co's.	19.230.190	Money transfer licensing information	2003			
294	Financial, Commercial and Proprietary Information	19.330.080(5)	Confidential technology information used in manufacturing products sold in state is subject to a protective order	2011 c 98 s 8	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
295	Investigative Records	21.20.480	Security act investigations	1959	Sept. 2020; Oct. 2020; Feb. 2021		
296	Financial, Commercial and Proprietary information - Investigations	21.30.170	Some information obtained by the department of financial institutions	1986	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
297	Placeholder						
298	Financial, Commercial and Proprietary information - Nonprofits & Mutuals	24.06.480	Information in interrogatories of nonprofit miscellaneous and mutual corporations by secretary of state	1969; Feb 2021	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Sept. 2020; Oct. 2020; Feb. 2021; May 2021		
299	Crime Victims and Witnesses	26.04.175	Marriage applications and records about participants in address confidentiality program	1991			
300	Mediation Communications	26.09.015	Divorce mediation proceedings—may apply to records of the proceedings	1986			
301	Judicial - Court Files	26.12.080	Superior court may order family court files closed to protect privacy	1949	Sept. 2020; Oct. 2020; Feb. 2021		
302	Child Support Records	26.23.120(1)	Records concerning persons owing child support	1987			
303	Child Support Records	26.23.150	Social security numbers collected by licensing agencies not to be disclosed	1998			
304	Adoption Records	26.33.330 & .340 & .345	Adoption records (except by order of the court under showing of good cause); adoption contact preference form and parent medical history	1984; 2013 c 321 s 1			
305	Archaeological Records	27.53.070 (42.56.300)	Communications on location of archaeological sites not public records	1975	May 2021; Oct. 2021		
306	Financial, Commercial and Proprietary Information	28B.85.020(2)	Financial disclosures provided to HEC Board by private vocational schools	1996	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
307	Financial, Commercial and Proprietary Information	28C.10.050(2)(a)	Financial disclosures by private vocational schools	1986	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
308	Voter and Election Information	29A.08.710	Original voter registration forms or their images	1991	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
309	Voter and Election Information	29A.08.720	The department of licensing office at which any particular individual registers to vote	1994	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		
310	Voter and Election Information	29A.20.191; recod to 29A.56.670	Minor party and independent candidate nominating petitions	2004; 2013 c 11 s 93(4)	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		
311	Voter and Election Information	29A.32.100	Argument or statement submitted to secretary of state for voters' pamphlet	1999	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		
312	Financial, Commercial and Proprietary Information - Mortgages	31.04.274(4)	Chapter 42.56 RCW relating to disclosure of supervisory information or any information described in subsection (1) of this section is superseded by this section	2009 c 120 s 26	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
313	Security	35.21.228(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
314	Security	35A.21.300(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
315	Security	36.01.210(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
316	Placeholder						
317	Security	36.57.120(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
318	Security	36.57A.170(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
319	Financial, Commercial and Proprietary Information	36.102.200	Financial info on master tenant, concessioners, team affiliate, or sublease of a public stadium authority's facilities	1997	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
320	Financial, Commercial and Proprietary Information	39.10.100 (2) recod. as 39.10.470 (2); 39.10.470(3)	Trade secrets & proprietary information from contractors under alternative public works; proposals from design-build finalists for alternative public works until selection is made or terminated	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
321	Financial, Commercial and Proprietary Information - Bids	39.26.030(2)	Competitive bids subject to chapter 42.56 RCW except exempt from disclosure until apparent successful bidder announced	2012 c 224 s 4	Aug. 2016; Oct. 2016	Oct. 2016	2017: HB 1160/SB 5418
322	Archive Records	40.14.030 (2)	Records transferred to state archives	2003	May 2012; August 2012; June 2013	Aug. 2012	
323	Offender Records	40.14.070 (2)(c)	Sex offender records transferred to Washington association of sheriffs and police chiefs	1999			
324	Bill Drafting Records	40.14.180	Bill drafting records of the code reviser's office	1971	Feb. 2015	Feb. 2015	
325	Crime Victims and Witnesses	40.24.070	Names of persons in domestic violence or sexual assault programs; and records in address confidentiality program	1999; 1991; 2015 c 190 s 2			
326	Public Employment Information	41.06.160	Salary and fringe benefit info identifying private employer from department of personnel salary survey	1981			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
327	Public Employment Information	41.06.167	Salary and fringe benefit rate info collected from private employers	1980			
328	Collective Bargaining	41.56.029(2)	Collective bargaining authorization cards of adult family home provider workers	2007			
329	Personal Information - Research	42.48.020 & .040	Personally identifiable public records used in scientific research	1985			
330	Health Care Records	43.01.425	Crisis referral services communications and information are confidential	2009 c 19 s 2			
331	Investigative Records	43.06A.050	Investigative records of office of family and children's ombudsman	1996			
332	Financial, Proprietary and Commercial Information	43.07.100	Info from businesses deemed confidential held by bureau of statistics in secretary of state	1895	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
333	Investigative Records - Whistleblower	43.09.186(4)	Identity of person and documents in report to toll-free efficiency hotline - state auditor	2007			
334	Financial, Proprietary and Commercial Information	42.56.270(22)	Certain financial information supplied to department of financial institutions or a portal to obtain an exemption from state securities registration	2014 c 144 s 6			
335	Juvenile Records	13.50.010(15)	Child welfare records that may assist in meeting the educational needs of foster youth	2016 c 71 s 2	May 2019; Aug. 2019		
336	Placeholder						
337	Personal Information - Printing Vendors	43.19.736	Print jobs contracted with private vendors must require vendor to enter into a confidentiality agreement if materials contain sensitive or personally identifiable information	2011 c 43 1st sp. s. s 309			
338	Claims	43.41.350 Recod 43.19.781	Risk management loss history information	1989; 2011 1st sp. s. c 43 s 535			
339	Financial, Proprietary and Commercial Information - Marijuana	42.56.270(25)	Marijuana transport, vehicle and driver ID data and account numbers or unique access identifiers issued for traceability system access per RCW 69.50.325, 9.50.331, 69.50.342, 69.50.345	2016 c 178 s 2			
340	Financial, Commercial and Proprietary Information	43.21A.160	Information on unique production processes given to the DOE	1970	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Sept. 2020; Oct. 2020; Feb. 2021		
341	Financial, Commercial and Proprietary Information	43.21F.060(1)	Proprietary information received by the state energy office	1976	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
342	Employer - Labor Statistics	43.22.290	Employer labor statistics reports provided to the department of labor & industries	1901	Sept. 2020; Oct. 2020		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
343	Financial, Commercial and Proprietary Information	43.22.434	Info obtained from contractors through an audit	2002	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
344	Deliberative Process - Records Provided to Governor	43.41.100	Confidential reports made to the governor by director of office of financial management	1969	Sept. 2020; Oct. 2020; Feb. 2021; May 2021		
345	Investigative Records	43.43.710	Washington state patrol information in records relating to the commission of any crime by any person	1972	May 2021; Aug. 2021		
346	Investigative Records	43.43.762 – referenced in 42.56.240(6)	Information in criminal street gang database	2008 c 276 s 201			
347	Investigative Records	43.43.856	Washington state patrol organized crime Investigative information	1973	May 2021		
348	Financial, Commercial and Proprietary Information	43.52.612	Financial information provided to operating agencies in bid forms and experience provided by a contractor to a joint operating agency regarding bids on constructing a nuclear project	1982	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
349	Health Care	43.70.050(2)	Health care related data identifying patients or providers obtained by state agencies	1989			
350	Health Care	43.70.052	American Indian health data	1995; 2014 c 220 s 2			
351	Health Care	43.70.056(2)(e)(ii)	Hospital reports and information on health care-associated infections	2007			
352	Health Care	42.56.360(4); 70.54	Info and documents relating to maternal mortality reviews per RCW 70.54	2016 c 238 s 2			
353	Health Care Professions - Whistleblower	43.70.075	Identity of whistleblower who makes a complaint to the department of health re: improper care	1995			
354	Health Care Professions	43.70.510	Information and documents created, collected and maintained by a quality assurance committee	2005			
355	Health Care Professions	43.70.695(5)	Healthcare workforce surveys identifying individual providers	2006			
356	Investigative Records	43.190.110	Complaint and investigation records of long-term care ombudsman	1983			
357	Employment Records, Investigative Records	43.101.400	Criminal justice training commission records from initial background investigations	2001; 2021			
358	Investigative Records - Fatality Review	43.235.040(1)	Domestic violence fatality review info	2000			
359	Financial, Commercial and Proprietary Information	43.330.062	Protocols may not require release of information that associate development organization client company has requested remain confidential	2011 c 286 s 1	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
360	Health Care	43.370.050(2)	Individual identification in released health care data for studies and analysis	2007			
361	Motor Vehicle/Driver Records	46.12.380(1) Recod 46.12.635	Names and addresses of motor vehicle owners except for "business" & other purposes	1984; 2016 c 80 s 2			
362	Placeholder		*Check codified citation*	2010 c 161 s 1210			
363	Motor Vehicle/Driver Records	46.20.041	Info on physically or mentally disabled person demonstrating ability to drive	1965	Sept. 2020; Oct. 2020; Feb. 2021		
364	Motor Vehicle/Driver Records	46.20.118	Photos on drivers' licenses & identicards	1981			
365	Motor Vehicle/Driver Records	46.52.065	Blood sample analyses done by state toxicology	1971	May 2021; Aug. 2021; Oct. 2021		
366	Motor Vehicle/Driver Records	46.52.080 & .083	Most info in police accident reports	1937	Feb. 2021		
367	Motor Vehicle/Driver Records	46.52.120	Individual motor vehicle driver records	1937	Feb. 2021; May 2021; Aug. 2021		
368	Motor Vehicle/Driver Records	46.52.130	Abstracts of motor vehicle driver records				
369	Motor Vehicle/Driver Records	46.70.042	Application for vehicle dealer licenses, for 3 years	1967	Feb. 2021; May 2021; Aug. 2021; Oct. 2021		
370	Motor Vehicle/Driver Records	46.35.030(1)(a)	Information obtained by a court order pursuant to discovery is not subject to public disclosure	2009 c 485 s 3			
371	Financial, Commercial and Proprietary Information	47.28.075	Info supplied to department of transportation to qualify contractors for highway construction	1981	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
372	Financial, Commercial and Proprietary Information	47.60.760	Financial info submitted to qualify to submit bid for ferry construction contracts	1983	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; and RCW39.26.030 (bid information)		
373	Personal Information	42.56.420(6)	Personally identifiable info of employees and other security info of a private cloud service provider that has entered into a criminal justice information services agreement	2016 c 152 s 1			
374	Insurance Information	48.02.065(1)	Information provided in the course of an insurance commissioner examination	2007			
375	Insurance Information	48.05.510(4)	Insurer's reports to insurance commissioner	1995			
376	Insurance Information	48.13.151	Information related to investment policies provided to the insurance commissioner is confidential and not a public record	2011 c 188 s 16 (eff 7/1/12)			
377	Insurance Information	48.31.405(1)	Commissioner info relating to supervision of any insurer	2005			
378	Insurance Information	48.74. __(6)	Information obtained in the course of an actuarial examination/investigation	2016 c 142 s 6			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
379	Insurance Information	48.32.110(2)	Request for examination into insurer's financial condition	1971	May 2021; Oct. 2021		
380	Insurance Information	48.43.200(4)	Reports of material transactions by certified health plans	1995			
381	Insurance Information	48.44.530(4)	Reports of material transactions by health care service contractors	1995			
382	Insurance Information	48.46.540	Current licensure of nonresident pharmacies through which an insurer provides coverage	1991			
383	Insurance Information	48.46.600(4)	Reports of material transactions by health maintenance organizations	1995			
384	Insurance Information - Investigations	48.102.140(5)(a)	Documents and evidence provided regarding life settlement act fraud investigations are confidential and not public records	2009 c 104 s 17			
385	Insurance Information	48.104.050(1)	Holocaust insurance company registry records	1999			
386	Workers Compensation Records	49.17.260	Labor & industries investigative reports on industrial catastrophes	1973	May 2021; Aug. 2021; Oct. 2021		
387	Investigative Records	49.60.240	Option for human rights commission complaints not to be made public	1993			
388	Agriculture and Livestock	49.70.119(6)(a)	Name of employee seeking records of agricultural pesticide applications	1973	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
389	Crime Victims and Witnesses	49.76.040	Employee's information regarding domestic violence is confidential	2008 c 286 s 4			
390	Crime Victims and Witnesses	49.76.090	Domestic violence leave information in files and records of employees is confidential and not open to public inspection	2008 c 286 s 10			
391	Employment Security Records	50.13.060(8)	Welfare reform info in WorkFirst program	2000			
392	Financial, Commercial and Proprietary Information	53.31.050	Financial & commercial info & records supplied to port district export trading company	1986	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
393	Financial, Commercial and Proprietary Information	63.29.380	Info relating to unclaimed property that is furnished to the department of revenue	1983	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
394	Insurance Information	48.43.730	Provider compensation agreements are confidential	2013 c 277 s 1			
395	Financial, Commercial and Proprietary Information	63.29.300(4)	Material obtained during an examination under RCW 63.29 is confidential and may not be disclosed except per RCW 63.29.380	2015 3rd sp s c 6 s 2107			
396	Health Care; Investigative Records	68.50.105	Records of autopsies and post mortems	1953; 2013 c 295 s 1			
397	Health Care	68.64.190	Certain information released to tissue or organ procurement organization is confidential	2008 c 139 s 21			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
398	Financial, Commercial and Proprietary Information; Health Professions; Health Care	69.41.044; 42.56.360(1)(a); 42.56.360(1)(b); 69.45.090	Records and information supplied by drug manufacturers, and pharmaceutical manufacturer info obtained by the pharmacy quality assurance commission	1987; 1989; 2013 c 19 s 47	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
399	Health Care	69.41.280	Info on legend drugs obtained by the pharmacy quality assurance commission	1989			
400	Insurance Information	48.74.--(1)(a)	Opinion and memo submitted to the insurance commissioner under RCW 48.74.025	2016 c 142 s 7			
401	Health Care	69.51.050	Names of persons participating in controlled substances therapeutic research programs	1979			
402	Health Care	70.02.020, .050, et. al.	Health care info disclosed to heath care provider w/o patients permission	1991			
403	Health Care	70.24.022	Info gathered by health care workers from interviews re. sexually transmitted diseases	1988			
404	Placeholder						
405	Health Care	70.24.034	Records on hearings on dangerous sexual behavior of sexually transmitted disease carriers	1988			
406	Placeholder						
407	Health Care	70.28.020	Tuberculosis records	1899	Feb. 2021		
408	Health Care	70.41.150	Department of health info on inspections of hospitals	1955	Feb. 2021; May 2021		
409	Health Care Professions	70.41.200(3)	Info maintained by a health care services quality improvement committee	1986			
410	Health Care Professions	70.41.220	Hospital records restricting practitioner's privileges in possession of medical disciplinary board	1986			
411	Health Care	70.42.210	Identity of person from whom specimens of material were taken at a medical test site	1989			
412	Health Care	70.47.150	Records of medical treatment	1990			
413	Law Enforcement	70.48.100	Jail register records	1977			
414	Health Care	70.54.250	Cancer registry program	1990			
415	Health Care	70.58.055(2)	Info on birth & manner of delivery kept in birth certificate records	1991			
416	Fireworks	70.77.455	Fireworks license records	1995			
417	Financial, Commercial and Proprietary Information	70.94.205	Info provided to DOE on processes or if may affect competitive position relating to air quality	1967	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; May 2021; Oct. 2021		
418	Financial, Commercial and Proprietary Information	70.95.280	Guidelines for proprietary info on solid waste management practices in possession of DOE [Since this addresses guidelines, not clear if it is an exemption.]	1989	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
419	Financial, Commercial and Proprietary Information	70.95C.040(4)	Proprietary info re. waste reduction in possession of DOE	1988	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
420	Financial, Commercial and Proprietary Information	70.95C.220(2)	Waste reduction plans	1990	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
421	Financial, Commercial and Proprietary Information	70.95C.240(1)	Some info in executive summaries of waste reduction efforts	1990	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
422	Financial, Commercial and Proprietary Information	70.95N.140(4)	Proprietary info in electronic product recycling reports	2006	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
423	Placeholder						
424	Health Care	70.104.055	Reports on pesticide poisoning	1989			
425	Financial, Commercial and Proprietary Information	70.105.170	Manufacturing or business info re: Hazardous waste management in possession of DOE	1983	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
426	Financial, Commercial and Proprietary Information	70.118.070	Trade secret info re: On-site sewage disposal in possession of DOE	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
427	Investigative Records - Whistleblower	70.124.100	Name of whistleblower in nursing home or state hospital	1997			
428	Crime Victims and Witnesses	70.125.065	By implication records of community sexual assault program or underserved populations provider	1981; 2012 c 29 s 11			
429	Placeholder						
430	Health Care	70.127.190	Hospice records	1988			
431	Health Care	70.129.050	Personal and clinical records of long-term care residents	1994			
432	Financial, Commercial and Proprietary Information	70.158.050	Tobacco product manufacturers' information required to comply with chapter 70.58 RCW is confidential and shall not be disclosed	2003	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
433	Health Care	70.168.070	Limitations on disclosure of reports made by hospital trauma care on-site review teams	1990			
434	Health Care	70.168.090	Patient records and quality assurance records associated with trauma care facilities	1990			
435	Health Care	70.170.090	Charity care information in hospitals	1989			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
436	Health Care	70.230.110	Ambulatory surgical facilities data related to the quality of patient care	2007			
437	Health Care	70.230.170	Information received by department of health regarding ambulatory surgical facilities	2007			
438	Health Care	71.05.425	Persons receiving notice and the notice of release or transfer of a person committed following dismissal of offense	2013 c 289 s 6			
439	Health Care	71.05.620	Records on mental health treatment	1989; 2013 c 200 s 34			
440	Investigative Records; Attorney Client Privilege	74.34.035(10); 74.34.067	Investigation relating to vulnerable adult; attorney client privilege	2013 c 263 s 2			
441	Crime Victims and Witnesses	71.09.140(2)	Names of victims, next of kin, or witnesses who are notified when sexually violent predator escapes, on parole, or released	1995			
442	Health Care	71.24.035(5)(g)	Mental retardation records	1982			
443	Health Care	71.34.340	Records on mental treatment of minors	1985			
444	Health Care	71.34.335	Mental health court records are confidential	1985			
445	Health Care; Investigative Records	74.66.030; 74.66.120	Information furnished pursuant to the Medicaid fraud false claims act is exempt until final disposition and all seals are lifted; records and testimony provided under civil investigative demand	2012 c 241 s 203, 212			
446	Health Care	71A.14.070	Confidential info re. developmentally disabled persons	1988	May 2019		
447	Health Care	72.05.130(1)	Reports regarding children with behavioral problems	1951	Feb. 2021; May 2021		
448	Offender Records	72.09.116	Info from correctional industries work program participant or applicant	2004			
449	Offender Records	72.09.345(4)	Certain info on sex offenders held in custody	1997; 2011 c 338 s 5			
450	Personal Information	70.39A.--	Personally identifiable info used to develop quarterly expenditure reports for certain long term care services	2016 1st sp s. c 30 s 3			
451	Investigative, law enforcement and crime victims	[Former 9.94A.610(1)(b)] 72.09.710 (recod eff 8/1/09) (see also ## 233 and 235)	Names of witnesses notified when drug offenders released	1991; Recod 2008 c 231 s 26 9 (see dispositions table)			
452	Placeholder						
453	Investigative, law enforcement and crime victims	[Former 9.94A.612(1)] 72.09.712 (recod eff 8/1/09)	Names of victims, next of kin, or witnesses who are notified when prisoner escapes, on parole, or released	1995; Recod 2008 c 231 s 27			
454	Placeholder						
455	Public Assistance	74.04.060 & .062	Limited access to information in department of social and health services registry concerning parents of dependent children	1941	Feb. 2021		
456	Public Assistance	74.20.280	Child support records	1963	Feb. 2021		
457	Public Assistance	74.04.520	Names of recipients of food stamps	1969	Feb. 2021		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
458	Health Care	74.09.290(1)	Medical records of persons on public assistance	1979			
459	Juvenile Records	74.13.075(5)	A juvenile's status as a sexually aggressive youth and related information are confidential and not subject to public disclosure by department of social and health services	2009 c 250 s 2			
460	Juvenile Records	74.13.640	Child fatality reports are subject to disclosure but confidential information may be redacted	2011 c 61 s 2	May 2019; Aug. 2019		
461	Juvenile Records	[Former 74.13.121] 74.13A.045 (recod)	Info from adoptive parents of kids receiving public assistance	1971; 2009 c 520 s 95	May 2019; Aug. 2019		
462	Placeholder						
463	Juvenile Records	[Former 74.13.133] 74.13A.065 (recod)	Adoption support records	1971; 2009 c 520 s 95	May 2019; Aug. 2019		
464	Placeholder						
465	Juvenile Records	74.13.280(2)	Info on child in foster care & child's family	1990	May 2019; Aug. 2019		
466	Juvenile Records; Public Assistance	74.13.500 - .525	Disclosure of child welfare records	1997	May 2019; Aug. 2019; Oct. 2019; Feb. 2020		
467	Personal information - clients	74.18.127(1)	Personal info maintained by the department of services for the blind	2003			
468	Juvenile Records; Public Assistance	74.20A.360 & .370	Certain records in division of child support	1997	May 2019; Aug. 2019		
469	Whistleblower; Investigative, law enforcement and crime victims	74.34.040	Identity of person making report on abuse of vulnerable adult	1984			
470	Investigative, law enforcement and crime victims	74.34.090	Identity of persons in records of abused vulnerable adults	1984			
471	Investigative, law enforcement and crime victims	74.34.095(1)	Info concerning the abuse of vulnerable adults	1999			
472	Whistleblower	74.34.180(1)	Name of whistleblower reporting abuse of vulnerable adults in various facilities	1997			
473	Investigative, law enforcement and crime victims	74.34.300	Files, etc. used or developed for vulnerable adult fatality reviews	2008 c 146 s 10			
474	Health Care	74.42.080	Records on nursing home residents	1979			
475	Health Professions	74.42.640	Information and documents created, collected and maintained by a quality assurance committee	2005			
476	Financial, Commercial and Proprietary Information	78.44.085(5)	Surface mining info	2006	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
477	Financial, Commercial and Proprietary Information	78.52.260	Well logs on oil capable of being produced from a "wildcat" well	1951	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Feb. 2021; May 2021		
478	Financial, Commercial and Proprietary Information	[Former 79.76.230] - recodified as 78.60.230	Geothermal records filed w. department of natural resources	1974 - Recodified 2003	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
479	Investigative, law enforcement and crime victims	79A.60.210	Certain boating accident reports provided to the parks & recreation commission	1984			
480	Investigative, law enforcement and crime victims	79A.60.220	Boating accident reports/coroner	1987			
481	Security	81.104.115(4)	Rail fixed guideway system security and emergency preparedness plan	1999; 2016 c 33 s 8			
482	Security	81.112.180(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
483	Financial, Commercial and Proprietary Information - Tax Info	82.32.330(2)	Certain tax return and tax information	At least 1935	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Feb. 2021; Aug. 2021		
484	Financial, Commercial and Proprietary Information - Tax Info	82.32.585	Taxpayer info supplied for survey is not disclosable. Amt of tax deferral is not subject to 82.32.330 confidentiality provisions	2010 c 114 s 102(4)	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
485	Placeholder						
486	Financial, Commercial and Proprietary Information - Tax Info	82.38.310(4)	Info from tribes or tribal retailers received by the state under a special fuel taxes agreement	2007	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
487	Financial, Commercial and Proprietary Information - Tax Info		Taxpayer info supplied for survey is not disclosable. Amt of tax deferral is not subject to 82.32.330 confidentiality provisions	2008 c 15 s 2	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
488	Financial, Commercial and Proprietary Information - Tax Info	82.32.808	Amounts less than $10,00 claimed in a tax preference; exceptions	2012 snd sp s. c 13 s 1702			
489	Financial, Commercial and Proprietary Information - Tax Info	84.08.210	Tax info obtained by department of revenue if highly offensive to a reasonable person and not a legitimate concern to public or would result in unfair competitive disadvantage	1997	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
490	Financial, Commercial and Proprietary Information - Tax Info	84.36.389	Income data for retired or disabled persons seeking property tax exemptions	1974	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
491	Financial, Commercial and Proprietary Information - Tax Info	84.40.020	Confidential income data in property tax listings	1973	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
492	Financial, Commercial and Proprietary Information	84.40.340	Utilities & transportation commission records containing commercial info a court determines confidential	1961	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; May 2021; Oct. 2021		
493	Agriculture and Livestock	90.64.190	Livestock producer info	2005	Aug. 2017; Oct. 2017; Feb. 2018; May 2018		
494	Financial, Commercial and Proprietary Information	2007 c 522 § 149 (3) (uncodified)	Names and identification data from participants in survey to identify factors preventing the widespread availability and use of broadband technologies	2007	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
495	Health Care	70.02.220 - .260	Health care information	2013 sp. S c 200 ss 6-10			
496	Health Care	42.56.360(1)(f)	Information relating to infant mortality pursuant to RCW 70.05.170	1992			
497	Dairies, Animal Feeding Operations	42.56.610	Certain information obtained by state and local agencies from dairies, animal feeding operations not required to apply for a national pollutant discharge elimination system permit disclosable only in ranges that provide meaningful information to public	2005 (c510s5)	Aug. 2017; Oct. 2017; Feb. 2018; May 2018		
498	Investigative, law enforcement and crime victims	9.95.260	Information regarding victims, survivors of victims, or witnesses that are sent pardon hearing notices may not be released to offender	1999			
499	Financial, Commercial and Proprietary Information - Trusts	11.110.075	Instrument creating a charitable trust, possibly only if the instrument creates a trust for both charitable and non-charitable purposes	1971	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Feb. 2021; May 2021		
500	Juvenile Records	13.04.155; 28A.320.163(5)	Information on juvenile conviction by adult criminal court given to school principal and received by school district staff	1997; 2020			
501	Juvenile Records	13.24.011	Records of the interstate compact for juveniles that would adversely affect personal privacy rights or proprietary interests	2003			
502	Boarding Homes	13.40.150	Sources of confidential information in dispositional hearings on juvenile offenses	1977			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
503	Placeholder						
504	Employment Security	50.13.015; .020; .040, .050, .100 & 110	Most info supplied to employment security department	1977			
505	Financial, Commercial and Proprietary Information	51.36.120	Financial or valuable trade info from health care providers, if request	1989			
506	Health Care	70.05.170	Medical records re. Child morality review	1992			
507	Juvenile Records	13.34.046	Information regarding a youth subject to RCW 13.34 is confidential except as required under lawful court order	2013 c 182 s 5	May 2019; Aug. 2019		
508	Placeholder						
509	Investigative, law enforcement and crime victims	79A.60.210 79A.60.220	Certain boating accident reports provided to the parks & recreation commission	1984			
510	Investigative, law enforcement and crime victims	42.56.240(10)	Felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822	2013 c 183 s 1			
511	Investigative, law enforcement and crime victims	42.56.240(12)	Security threat group information collected and maintained by department of corrections	2013 c 315 s. 2			
512	Legal proceedings; Privilege	7.77.140; 7.77.150; 7.77.160; 7.77.170	Confidentiality of collaborative law proceedings; privilege	2013 c 119ss 15 - 18			
513	Emergency Information	38.32; 42.56.230(9); 38.52.575; 38.52.577	Enhanced 911 Call information	2015 c 224 s 2, 6	Feb. 2014; Feb. 2015	Feb. 2015	SB 1980 (2015); Ch. 224, 2015 Laws
514	Investigative, law enforcement and crime victims	42.56.240(16)	Campus sexual assault/domestic violence communications and records	2017 c 72 s 3			
515	Investigative, law enforcement and crime victims	42.56.240(17)	Law enforcement information from firearms dealers	2016 c 261 s 7			
516	Employment and Licensing	42.56.250(3)	Professional growth plans	2017 c 16 s 1			
517	Employment and Licensing	42.56.250(10)	GPS data of public employees or volunteers using GPS system recording device	2017 c 38 s 1			
518	Financial, Commercial and Proprietary Information	42.56.270(28)	Trade secrets etc. re to licensed marijuana business, submitted to LCB	2017 c 317 s 7			
519	Public Utilities and Transportation	42.56.330(9)	Personally identifying information in safety complaints submitted under ch. 81-61 RCW	2017 c 333 s 7			
520	Insurance & Financial Inst.	42.56.400(26)	Non public personal health information obtained by, discussed to, or in custody of the insurance commissioner	2017 c 193 s 2			
521	Insurance & Financial Inst.	42.56.400(27)	Data, information, documents obtained by insurance commissioner under RCW 48.02	2017 3rd sp. sess. c 30 s 2			
522	Fish & Wildlife	42.56.430(3); 77.12.885	Damage prevention agreement, non lethal preventative/measures to minimize wolf interactions	2017 c 246 s 1	May 2017; Aug. 2017; Oct. 2017; May 2018; Aug. 2018; Feb. 2019; Aug. 2020; Feb. 2021; May 2021; Aug. 2021; Oct. 2021; Nov. 2021		

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
523	Fish & Wildlife	42.56.430(4); 77.12.885	Reported depredation by wolves on pets or livestock	2017 c 246 s 1	May 2017; Aug. 2017; Oct. 2017; May 2018; Aug. 2018; Feb. 2019; Aug. 2020; Feb. 2021; May 2021; Aug. 2021; Oct. 2021; Nov. 2021		
524	Fish & Wildlife	42.56.430(7)	Tribal fish & shellfish harvest information - department of fish & wildlife	2017 c 71 s 1	May 2017; Aug. 2017; Oct. 2017		
525	Fish & Wildlife	42.56.430(8)	Commercial shellfish harvest information - department of fish & wildlife	2017 c 71 s 1	Aug. 2017; Oct. 2017		
526	Juvenile Records	13.50.010(16)	Health/safety information from DYF to department of commerce re youth in foster care admitted to CRCs/HOPE centers	2017 c 272 s 1	May 2019; Aug. 2019		
527	Juvenile Records	13.50.010(17)	DYF disclosures re child abuse/neglect, and for health care coordination	2017 3rd sp. s. c 6 5312	May 2019; Aug. 2019		
528	Personal Information	40.26.020	Biometric identifiers	2017 c 306 s 2; 2017 2nd sp. s. c 1 s 1			
529	Insurance Information	48.02.230	Information used to develop an individual health insurance market stability program	2017 3rd sp. s. c 30 s 1			
530	Health Care	50A.04.195(4)&(5)	Family/medical leave	2017 3rd sp. s. c 5 s 29			
531	Health Care	50A.04.080(2)(b)	Family/medical leave from employer records	2017 3rd sp. s. c 5 s 33			
532	Health Care	50A.04.205	Family/medical leave ombuds surveys	2017 3rd sp. sess. c 5 s 88			
533	Voter and Election Information - Personal Information	42.56.230(10)	Personally Identifiable voter registration information for individuals under 18	2018			
534	Religious Beliefs; Personal Information	42.56.235	Personal identifying information about an individual's religious beliefs	2018	Oct. 2018; Feb. 2019; May 2019; Aug. 2019	Aug. 2019	
535	Investigative, law enforcement, crime victims; Juvenile Records	42.56.240(18)	Audio and video recordings of child interviews regarding child abuse or neglect	2018			
536	Voter and Election Information - Employment and Licensing; Personal Information	42.56.250(11)	Personally Identifiable voter registration information for individuals under 18	2018			
537	Financial, Commercial and Proprietary Information	42.56.270(29)	Financial, commercial, operations, technical, and research information submitted to the Andy Hill cancer research endowment program pertaining to grants under chapter 43.348 RCW, that if revealed would result in private loss	2018			
538	Financial, Commercial and Proprietary Information; Health Care	42.56.270(30)	Proprietary information filed with the department of health	2018			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
539	Agriculture and Livestock	42.56.380(13)	Information obtained from the federal government if exempt from disclosure under federal law and personal financial information or proprietary data obtained by the department of agriculture	2018			
540	Agriculture and Livestock	42.56.380(14)	Hop grower lot numbers and lab results	2018			
541	Insurance & Financial Inst.	42.56.400(28)	An insurer's corporate governance annual disclosure and related information obtained by the insurance commissioner	2018			
542	Insurance & Financial Inst.; Health Care	42.56.400(28)	Claims, health care, and financial information submitted by school districts to the office of the insurance commissioner and health care authority	2018			
543	Firearms	9.41.350(6)	Records regarding a person's voluntary waiver of firearm rights	2018			
544	Agriculture and Livestock	15.135.100(1)	Information obtained from the federal government if exempt from disclosure under federal law	2018			
545	Agriculture and Livestock; Personal Information; Financial, Commercial, and Proprietary Information	15.135.100(2)	Personal financial information or proprietary data obtained by the department of agriculture	2018			
546	Child Abuse; Juvenile Records; Investigative Records	26.44.187	Recorded child interviews regarding child abuse or neglect	2018			
547	Parentage; Personal Information	26.26A.050	Personally identifiable information of the child and others in parentage proceedings	2018			
548	Elections; Personal Information	29A.08.720(2)(b)	The personally identifiable voter registration information of individuals under 18	2018			
549	Elections; Personal Information	29A.08.770	The personally identifiable voter registration information of individuals under 18 maintained by the secretary of state and county auditors	2018			
550	Elections; Personal Information	29A.08.359	Personal information supplied to obtain a driver's license or identicard and used to certify registered voters	2018			
551	Elections	29A.92.100(3)	A plaintiff's filing of an action regarding equal voting rights under the Washington voting rights act of 2018	2018			
552	School District Insurance	41.05.890(2)	Claims, health care, and financial information submitted by school districts to the office of the insurance commissioner and health care authority	2018			
553	State Government	43.216.015(15)	Oversight board for children, youth, and families records, only the information if otherwise confidential under state or federal law	2018			
554	State Government; Investigative Records	43.06C.060(3)	Information regarding investigations exchange between the office of the corrections ombuds and the department of corrections	2018			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
555	Insurance Information	48.195.040(1)	An insurer's corporate governance annual disclosure and related information submitted to the insurance commissioner	2018			
556	Unwanted Medication Disposal; Financial, Commercial and Proprietary Information	69.48.170	Proprietary information submitted to the department of health regarding unwanted medication disposal	2018			
557	Financial, Commercial, and Proprietary Information	42.56.270(13)	Financial and proprietary information submitted to or obtained by the department of ecology				
558	Financial, Commercial, and Proprietary Information	42.56.270(15)	Financial and commercial information provided as evidence to the department of licensing from special fuel licensees or motor vehicle fuel licensees				
559	Financial, Commercial, and Proprietary Information	42.56.270(18)	Financial, commercial, operations, and technical and research information submitted to health sciences and services authorities if private loss would result				
560	Financial, Commercial, and Proprietary Information	42.56.270(19)	Information that can be identified to a particular business that was gathered as part of agency rule making				
561	Health Care Professionals; Health Care	42.56.355	Information distributed to a health profession board or commission by an interstate health professions licensure compact	2017			
562	Marijuana	42.56.630	Registration information of members of medical marijuana cooperatives submitted to the liquor and cannabis board	2015			
563	Health Professionals; Personal Information	42.56.640	Personal identifying information of vulnerable individuals and in-home caregivers	2017			
564	Health Care	71.05.445(4)	Court-ordered mental health treatment records received by the department of corrections	2000			
565	Health Care Professionals; Whistleblower	74.09.315(2)	Identity of whistleblower				
566	Personal Information; Public Assistance	43.185C.030	Personal information collected in homeless census				
567	Juvenile Records	26.44.125(6)	Child abuse or neglect review hearings	2012			
568	Juvenile Records	74.13.285(4)	Information on a child in foster care or child's family	2007			
569	Health Professionals; Personal Information	74.39A.275(5)	Personal information of vulnerable adults and in-home care providers	2016			
570	Health Professionals; Personal Information	43.17.410	Personal information of vulnerable individuals and in-home caregivers	2017			
571	Health Care; Personal Information; Investigative Records	74.39A.060(6)	Personal identifying information of complainant and residents in a complaint against a long-term care facility				
572	Health Care; Financial, Commercial, and Proprietary Information; Trade Secret	41.05.026	Health care contractor proprietary information				

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
573	Collective Bargaining	41.56.510	Collective bargaining authorization cards of public employees	2010			
574	Personal Information	42.56.230(11)	Information submitted to state regarding people self-excluding themselves from gambling activities under RCW 9.46.071 and 67.70.040	2019			
575	Personal Information; Firearms	42.56.230(12)	Personal information of individuals who participated in the bump-fire stock buy- back program under RCW 43.43.920	2019			
576	Financial Commercial, and Proprietary Information	42.56.270(31)	Confidential, valuable, commercial information filed with the Department of Ecology regarding the architectural paint stewardship program	2019			
577	Agriculture and Livestock; Financial, Commercial, and Proprietary Information; Trade Secret	42.56.380(15)	Trade secrets, commercial information, and other confidential information obtained by the federal Food and Drug Administration by contract	2019			
578	Agriculture and Livestock; Financial, Commercial, and Proprietary Information; Trade Secret	15.130.150	Trade secrets, commercial information, and other confidential information obtained by the federal Food and Drug Administration by contract	2019			
579	Insurance & Financial Inst.	42.56.400(29)	Findings and orders that disapprove the acquisition of a state trust company	2019			
580	Personal Information; Employment and Licensing	42.56.660 (effective 7/1/2020)	Agency employee records if the requester sexually harassed the agency employee	2019			
581	Personal Information; Employment and Licensing	42.56.675 (effective 7/1/2020)	Lists of agency employees compiled by agencies to administer RCW 42.56.660	2019			
582	Health Care	42.56.650, 41.05.410(3)(b)	Data submitted by health carriers to the Health Benefit Exchange and Health Care Authority	2019			
583	Court Proceedings; Guardian	11.130.300(3) (effective 1/1/21)	Visitor report and professional evaluation regarding appointment of guardian for an adult	2019			
584	Court Proceedings; Conservator	11.130.410(3) (effective 1/1/21)	Visitor report and professional evaluation regarding conservatorship of a minor	2019			
585	Health Care	19.390.070	Information submitted to the attorney general regarding potential anticompetitive conduct in the health care market	2019			
586	Placeholder						
587	Personal Information; Investigative, law enforcement, and crime victims	26.44.175(5)	Information provided to multidisciplinary child protection team members in the course of a child abuse or neglect investigation	2019			
588	Insurance and Financial Institutions; Financial Commercial and Proprietary	30B.44B.170	Department of Financial Institutions' records in connection to involuntary liquidation of a state trust company	2019			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
589	Insurance and Financial Institutions; Financial Commercial and Proprietary	30B.53.100(3)	Department of Financial Institutions' findings and order on the disapproval of a proposed acquisition of a state trust company	2019			
590	State Government; Financial Commercial, and Proprietary Information	43.155.160(6)(g)	Broadband service provider confidential business and financial information submitted as part of an objection to an application for a grant to expand access to broadband service	2019			
591	State Government	42.17A.120(3)	Modification hearing information on the suspension or modification of campaign finance reporting requirements under 42.17A.710	2019			
592	State Government; Health Care	43.71C.030(2)	Pharmacy benefit manager information reported to the Health Care Authority	2019			
593	State Government; Health Care	43.71C.050(7); 060(5); 070(3)	Prescription drug manufacturer information reported to the Health Care Authority	2019			
594	State Government; Health Care	43.71C.100	Health Care Authority prescription drug data	2019			
595	Insurance; Health Care; Personal Information	48.43.505(4)	Nonpublic personal health information held by health carriers and insurers	2019			
596	Financial, Commercial, and Proprietary Information; Marijuana	69.50.561(6)	Licensed marijuana business's financial and proprietary information supplied during consultative services by the Washington State Liquor and Cannabis Board	2019			
597	State Government; Health Care	70.225.040(1)	Information submitted to the prescription monitoring program	2019			
598	State Government; Financial Commercial, and Proprietary Information	70.375.130	Confidential, valuable, commercial information filed with the Department of Ecology regarding the architectural paint stewardship program	2019			
599	State Government; Health Care	70.58A.400(5) (effective 1/1/21)	Sealed birth records with adoption decrees under chapter 26.33 RCW	2019			
600	State Government; Health Care	70.58A.500(3) (effective 1/1/21)	Sealed live birth records	2019			
601	State Government; Health Care	70.58A.530(15), (16)	Certification of birth or fetal death, including certification of birth resulting in stillbirth, that includes information from the confidential section of the birth or fetal death record	2019			
602	State Government; Health Care	70.58A.540 (effective 1/1/21)	Vital records, reports, statistics, and data	2019			
603	Employment and Licensing; Personal Information	42.56.250(11)	Personal demographic details voluntarily submitted by state employees	2020			
604	Financial, Commercial, and Proprietary Information	42.56.270(32)	Commercial information obtained by the Liquor and Cannabis Board in connection with distiller licensing	2020			
605	Educational Information	42.56.315	Certain student information received by school districts	2020			
606	Health Care	42.56.360(1)(l); 41.04.830	Medical information about members of retirement plans	2020			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
607	Health Care	70.390.030(7)	Health care information held by the Health Care Cost Transparency Board that could identify a patient	2020			
608	Educational Information; Crime Victim and Witnesses	42.56.375; 28B.112.060(3); 28B.112.070(2); 28B.112.080(5)	Identifying information regarding sexual misconduct complainants and witnesses	2020			
609	Insurance and Financial Information; Health Care	42.56.400(31); 48.200.040; 48.43.731	Contracts with health care benefit managers filed with the Insurance Commissioner	2020			
610	Firearms; Health Care	9.41.111(1)(c)	Mental health information received in connection with a firearm frame or receiver purchase or transfer application	2020			
611	Juvenile Records; Investigative, law enforcement and crime victims	13.50.260(12)	Confidential information and sealed records accessed through the Washington state identification system by criminal justice agencies	2020			
612	Juvenile Records; Public Assistance	74.13.730(7)	Reports, reviews, and hearings involving certificates of parental improvement	2020			
613	Education Information	28B.96.020(8)	Data collected by the Undocumented Student Support Loan Program	2020			
614	Motor Vehicle/Driver Records	43.59.156(6)(a)	Confidential information obtained by the Cooper Jones Active Transportation Safety Council	2020			
615	Motor Vehicle/Driver Records	46.20.117(6); 46.20.161(6)	Self-attestations and data provided for identicard and driver's license designations	2020			
616	Juvenile Records	28A.300.544(6)	Confidential information received by the work group on students in foster care and/or experiencing homelessness	2020			
617	Public Utilities and Transportation	81.88.160(7)	Gas pipeline company reports submitted to the UTC that contain proprietary data or where disclosure would affect public safety	2020			
618	Financial, Commercial, and Proprietary Information	42.56.270(12)(a)(iii)	Financial and proprietary information provided to the Department of Commerce in connection with the industrial waste coordination program	2021			
619	State Government; Public Health	42.56.380(16)	Certain information obtained from the federal Food and Drug Administration by Department of Health public health laboratories for monitoring food supplies for contaminants	2021			
620	Elections	42.56.420(7)	Certain election security information	2021			
621	Personal Information	42.56.680	Personal information obtained by the Department of Commerce from residential real property notices of default	2021 c 151 s 12			
622	Security	42.56.422; 43.105.450(7)(d)	State agency information technology security reports and information compiled in connection with the Office of Cybersecurity	2021 c 291 s 8; 2021 c 291 s 1			

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
623	Personal information; Crime Victims	7.105.105(2)	Confidential party information forms accompanying petitions for civil protection orders	2021 c 215 s 14			
624	Financial, Commercial, and Proprietary Information; Trade Secret	36.32.234(7)(a)	Trade secrets and proprietary information submitted by bidders, offerors, and contractors in connection with electric ferry design and procurement, when requested and county concurs	2021 c 224 s 1			
625	State Government; Financial, Commercial, and Proprietary Information	36.32.234(7)(b)	Electric ferry procurement documents, until notification of finalist made or selection terminated	2021 c 244 s 1			
626	Personal Information; Motor Vehicle/Driver Records	46.22.010	Information and records containing personal and identity information obtained by the Department of Licensing to administer driver and vehicle records	2021 c 93 s 4			
627	Personal Information; Health Care	49.17.062(3)	During public health emergencies, certain personally identifiable information regarding employees of the Department of Labor and Industries	2021 c 252 s 2			
628	Health Care	70.14.065(4)	Records obtained or created relating to partnership agreements for production, distributing, and purchasing generic prescription drugs and insulin	2021 c 274 s 1			
629	Health Care	71.40.140; 71.40.120(3)	Communications, records, and files of the Office of Behavioral Health Consumer Advocacy, and related organizations and advocates	2021 c 202 s 12; 2021 c 202 s 14			
630	State Government	70A.245.030(2)	Reports and information submitted to the Department of Ecology by producers of certain plastic products, when requested	2021 c 313 s 4			
631	Security; State Government	42.56.422	The report detailing the Office of Cybersecurity's independent security assessment of state agency information technology security program audits	2021			
632	Industrial Insurance; Injured Worker	51.04.063(13)	Information relating to individual claim resolution settlement agreements submitted to the board of industrial insurance appeals	2014			

*For subsequent legislative history, see statutes online on the state legislative's website; see also Code Reviser's Office list ("Exemptions from Public Records Disclosure and Confidential Records") available on Sunshine Committee web page.

The Hon. Sandra Widlan

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

JANE and JOHN DOES, 1 through 6,

Plaintiffs,

and

SEATTLE POLICE DEPARTMENT, and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

Relief Defendants,

and

JEROME DRESCHER, ANNE BLOCK, SAM SUEOKA, and CRISTI LANDES,

Requestor Defendants.

CAUSE NO. 21-2-02468-4 SEA

ORDER REGARDING MOTIONS DECIDED ON 1/28/22

THIS MATTER having come on for hearing before the above-entitled judge (1) upon the motion of John Doe #1, John Doe # 2, John Doe # 4 and John Doe #5 for a preliminary injunction, (2) upon the motion of Requestor Defendant Sam Sueoka to change the case title and bar the use of pseudonyms, (3) upon the motion of Requestor

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440

Sam Sueoka to strike the declaration of Prof. Amy Sanders, (4) upon the motion of Requestor Sam Sueoka to not seal documents, (5) upon the motion of Requestor Sam Sueoka to require disclosure of client identities, (6) upon the motions of Does 7-10 to intervene and continue and to proceed in pseudonym, and (7) upon the oral motion of Does 1, 2, 4 and 5 for a temporary stay pending the seeking of appellate review.

In addition to the records and pleadings on file in this matter and the arguments of counsel for Does 1, 2, 4 and 5, counsel for the City of Seattle, counsel for Mr. Sueoka, and counsel for Does 7-10, the Court has reviewed and considered the following:

Sub. 69, Sueoka Motion to Change the Case Title and Bar the Use of Pseudonyms

Sub. 71, Declaration of Neil Fox

Sub. 77, Sueoka Motion to Require Disclosure of Client Identities

Sub. 79, Sueoka Motion Not to Seal Documents

Sub. 81, Supplemental Declaration of Neil Fox

Sub. 86, Does' 1, 2, 4 & 5 Motion for Preliminary Injunction

Sub. 87, Declaration of Blair Russ

Sub. 88, Declaration of Officer Jamison Maehler

Sub. 89, Declaration of Steven McNew

Sub. 90, Declaration of Jared Campbell

Sub. 91, Declaration of Dan Auderer

Sub. 92, Declaration of Mike Solan

Sub. 93, Declaration of Amy Sanders

Sub. 94, Declaration of Doe 1

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440

Sub. 95, Declaration of Doe 2

Sub. 96, Declaration of Doe 4

Sub. 97, Declaration of Doe 5

Sub. 100, Does' 1, 2, 4 & 5 Praecipe (re: 87, 90, 94, 95, 96, 97)

Sub. 103, City's Response re: Preliminary Injunction

Sub. 104, Sueoka Response re: Preliminary Injunction

Sub. 106, Second Supplemental Declaration of Neil Fox

Sub. 108, Sueoka Motion to Strike Amy Sanders

Sub. 110, Declaration of Janet Thoman

Sub. 112, Does' 1, 2, 4 & 5 Opposition to Sueoka's Motion to Change Title

Sub. 113, Declaration of Aric Bomsztyk

Sub. 114, Does' 1, 2, 4 & 5 Objection to Disclosure

Sub. 115, Declaration of Blair Russ

Sub. 119, Does' 1, 2, 4 & 5 Response to Motion Not to Seal

Sub. 121, Does 7-10 Motion to Intervene

Sub. 122, Declaration of Sarah Turner

Sub. 125, Sueoka Reply on Pseudonyms

Sub. 127, Sueoka Reply re: Motion Not to Seal

Sub. 129, Sueoka Response to Motion to Intervene/pseudonym

Sub. 131, Sueoka Reply on Client Identities

Sub. 133, Supplemental Declaration of Neil Fox [Third]

Sub. 135, Does' 1, 2, 4 & 5 Reply to Sueoka's Response

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440

Sub. 136, Does' 1, 2, 4 & 5 Reply to City's Response

Sub. 137, Does' 1, 2, 4 & 5, Joinder

Sub. 140, Does' 1, 2, 4 & 5 Response to Motion to Strike

Sub. 141, Supplemental Declaration of Amy Sanders

Sub. 143, Sueoka Reply to Motion to Strike

Sub. 145, Fourth Supplemental Declaration of Neil Fox

Sub. 148, Does 7-10 Motion for Pseudonym (Praecipe re: Sub. 123)

Further, the Court has considered the "Exhibits Subject to Dispute" which were provided to the court in a sealed envelope on 1/11/22 per LGR 15, but not filed with clerk and whose status is subject to continued motions (*see,* No. 4 below).

Further, Plaintiffs John Doe 3 and Jane Doe 1 have been given notice of these proceedings either by their withdrawing counsels' direction that pleadings be left for them at the Court Clerk's Office or through email service of some documents on John Doe 3 and Jane Doe 1. Neither John Doe 3 nor Jane Doe 1 have filed any pleadings in this matter since the issuance of the Supreme Court's Mandate.

Now, therefore, based upon the Court's oral ruling in open court on January 28, 2022, which is incorporated by reference into this written order:

1. The Court DENIES Does 1, 2, 4 and 5 motion for a preliminary injunction for the reasons set forth in the Court's oral ruling.

2. The Court DENIES Mr. Sueoka's motion to change the case title and to bar the use of pseudonyms for the reasons set forth in the Court's oral ruling.

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440

3. The Court DENIES Mr. Sueoka's motion to strike the declaration of Professor Amy Sanders for the reasons set forth in the Court's oral ruling.

4. The Court RESERVES ruling on Mr. Sueoka's Motion Not to Seal. If a party wishes to file a motion for a protective order regarding the "Exhibits Subject to Dispute," the party's counsel should file such a motion by or on February 4, 2022. If no motion for a protective order is filed by or on February 4, 2022, Mr. Sueoka's counsel may file the "Exhibits Subject to Dispute" in the public superior court file. If such motion is timely filed, the documents should not be filed in the superior court file until the Court issues a ruling.

5. The Court does not rule on Mr. Sueoka's motion to disclose client identities at this time.

6. The Court DENIES the motion of Does 7-10 to intervene in this matter without prejudice for the reasons set forth in the Court's oral ruling, and therefore does not reach the Does' 7-10 motion to proceed in pseudonym.

7. Regarding the oral motion of Does 1, 2, 4 and 5 for a temporary stay to permit appellate review, the Court GRANTS the motion. The Temporary Order entered by this Court on March 12, 2021, and extended by the appellate courts and by this Court on January 20, 2022, is hereby extended for seven (7) days after entry of this Order. If an appeal or motion for discretionary review is filed, whether this temporary order should be

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440

further extended and the terms and scope of such extension are issues that the parties should address to the appropriate appellate court pursuant to RAP 8.3.

ORDERED this 1st day of February 2022.

SANDRA WIDLAN
KING COUNTY SUPERIOR COURT JUDGE

Presented by (preserving objections):

Neil M. Fox
WSBA No. 15277

Janet Thoman
WSBA No. 37985
Attorneys for Defendant Sueoka

Copy Received/Approved for Entry:
(Preserving Objections)

s/ Blair M. Russ
WSBA No. 40374

s/ Aric S. Bomsztyk
WSBA No. 38020
Attorneys for Does, 1, 2, 4 and 5

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440

s/ Ghazal Sharifi
WSBA No. 47750
Attorney for City of Seattle

s/ Sarah N. Turner
WSBA No. 37748

s/ Michael C. Tracy
WSBA No. 51226
Attorneys for Does 7-10

Law Office of Neil Fox PLLC
2125 Western Ave. Ste. 330
Seattle, WA, 98121
Phone: 206-728-5440