

POLICY NUMBER: 2.00.250**EFFECTIVE DATE:** 11/19/15**TITLE:** Public Records**SUPERSEDES:** 6/18/15**BOARD ADOPTION:** 9/17/15**APPROVED:** 

PURPOSE

Because the Washington State Investment Board (WSIB) is an office of state government, Washington's Public Records Act (PRA) requires it to make available non-exempt public records for inspection and copying upon request. At the same time, the WSIB has a prevailing fiduciary duty to invest and manage the funds entrusted to it to maximize returns at a prudent level of risk for the exclusive benefit of the beneficiaries of the funds. In processing public records requests, the WSIB must balance these sometimes competing requirements. This policy explains how the WSIB will respond to requests to inspect or copy public records.

POLICY

The WSIB will operate with transparency to make as much information as possible available to the public. To facilitate this goal, the WSIB will publish on its website Board governance documents, investment partner rosters, asset allocation information, general goals and strategies for trust funds under management, general trust fund performance, and market value by asset class along with select WSIB financial reports.

The WSIB has determined that internal investment rate of return reports would not result in a loss to the funds or the beneficiaries of the funds managed by the WSIB. Therefore, the WSIB will make this information readily and consistently available through the WSIB website or in hard copy upon request.

Pursuant to the PRA, as well as the growing body of case law interpreting the PRA, some content in WSIB public records may be exempt from disclosure in order to protect particular privacy, trade secret, proprietary, or confidentiality interests. The appropriate application of relevant exemptions assists the WSIB in meeting its fiduciary obligations by enabling it to compete successfully in markets where disclosure of justifiably exempt records would be used to the detriment of the funds entrusted to the WSIB, or to the provider of the information, or to both.

The WSIB will exercise good faith in responding to requests for public records. For these purposes, a "public record" is any existing writing, document, or record containing information relating to the conduct or performance of any governmental or proprietary function prepared, owned, used, or retained by the WSIB, regardless of physical form or characteristics. The WSIB will disclose every public record requested unless the record, or portions of it, is exempt from disclosure. Whenever possible, the WSIB will disclose records in the format in which they then exist and are held by the WSIB.

The WSIB will not discriminate between persons requesting records. The WSIB will acknowledge receipt of requests within five business days of receiving a public disclosure request. The WSIB may need additional time to respond to a request in order to clarify the intent of the request, to locate and assemble the information requested, to notify third parties or agencies affected by the request, or to determine whether any of the information requested is exempt. Additional time may also be required if the scope of the request is large. Regardless of the identity of the requester, requests will be processed in the order in which they are received by the WSIB to the extent feasible.

Where the PRA provides for an exemption from disclosure, the WSIB will protect legitimate privacy, trade secret, proprietary, or confidentiality interests. The law provides several exemptions from disclosure, including exemptions applicable to commercial or financial information provided to the WSIB. Although the WSIB may utilize any applicable exemption, the following exemptions are often relevant to public records requests received by the WSIB:

Personal information RCW 42.56.230(3) applies to disclosure of "Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;"

Employment and licensing RCW 42.56.250(2), (3), (6) applies to "all applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant." Employee and Board member residential addresses, personal telephone numbers, personal email addresses, social security numbers, driver's license numbers and emergency contact information are exempt from disclosure.

Real estate appraisals RCW 42.56.260 applies to "[d]ocuments prepared for the purpose of considering the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price" and "documents prepared for the purpose of considering the minimum price of real estate that will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price." The exemption extends to records prepared for executive session and is subject to the time limitations in RCW 42.56.260(2).

Financial, commercial, and proprietary information RCW 42.56.270(1) applies to "Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;"

Financial, commercial, and proprietary information RCW 42.56.270(6) applies to "Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;"

Pursuant to this exemption, when records submitted to the WSIB, or its agents, relating to actual or proposed investments contain financial, proprietary or confidential information, disclosure of which would result in private loss to the providers of this information and/or in public loss, and such information is not otherwise public, the WSIB will withhold from disclosure those records, or to the extent feasible, redact such information from those records. Loss of competitive advantage or loss of the WSIB's ability to secure top-tier investment opportunities in an increasingly competitive global investment marketplace are factors in determining public loss.

To the extent records are not otherwise public and cannot be redacted, examples of records exempt from disclosure under this WSIB-specific exemption include, but are not limited to, the following:

1. Proprietary technologies, research, trade secrets and competitive strategies, decision-making theories, methodologies
2. Due diligence materials to the extent that the information is proprietary to a public or private investment
3. Financial statements, valuations and financing alternatives of an investment

4. Buy and sell data as it pertains to a specific investment manager
5. Meeting materials of an investment, an asset ownership or their respective investment vehicles
6. Records containing information regarding the portfolio positions of an investment, an asset ownership or their respective investment vehicles
7. Distribution notices from an investment fund which would negatively affect the WSIB's ability to realize a maximal return on the distributed assets
8. Limited partnership agreements, amendments thereto, and related documents.

As RCW 42.56.270(6) pertains to public market investments, the WSIB considers as exempt from disclosure records including, but not limited to, investment manager research, information regarding proprietary technologies, competitive strategies, investment decision-making theories, and investment methodologies including public market portfolio composition decisions.

Given that public institutional investing is continuously evolving, this listing of financial, proprietary, and confidential record examples cannot be all-inclusive nor should it be construed to be. Assignment of new trust funds to be managed by the WSIB, as well as new investment approaches and new investment vehicles which might emerge in the coming years, challenge the concept of a comprehensive and static listing. This policy is intended to guide staff and does not commit the WSIB to any particular course of action.

The Public Disclosure Act provides a number of other exemptions which include by illustration the following:

Preliminary drafts, notes, recommendations, intra-agency memorandums RCW 42.56.280 applies to "Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended...except that a specific record is not exempt when publicly cited by an agency in connection with any agency action."

Agency party to controversy RCW 42.56.290 applies to "Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts."

Uniform Trade Secrets Act Chapter 19.108 RCW In addition to the exemptions contained within the PRA, other statutes may exempt certain records from disclosure. For example, the Washington Supreme Court has ruled that documents containing trade secrets are exempt from disclosure and that "the Public Records Act is simply an improper means to acquire knowledge of a trade secret." Documents containing trade secrets generally include but are not limited to business plans, customer lists and product development information, and are examples of trade secrets that will usually be deemed by providers of the information to the WSIB as exempt from disclosure. Where WSIB determines that the Trade Secret Act may apply to a requested record, it will notify the provider of the information as set forth below.

Privileged communications, RCW 5.60.060(2)(a), exempts from disclosure communications between an attorney and client for the purpose of obtaining or providing legal advice, gathering information and communicating regarding litigation.

Gramm-Leach-Bliley Act 15 U.S.C § 1601 *et. seq.* These statutes prevent the disclosure of nonpublic personal financial information received from a financial institution on behalf of a Board member or employee.

Notification to Providers of Records to WSIB

In processing a public records request, the WSIB will make the initial determination whether an exemption from disclosure applies to a requested record and if so, to what extent. However, in some instances, the party best able to raise and assert the application of an exemption from disclosure will be the party providing the records to the WSIB. In those instances and in accord with provisions of the PRA, the WSIB will notify the provider of a requested record of a public records request pertaining to the record and of any time limitations imposed by Washington law for responding to such notification.

Notification to a provider of a record may be required by a binding legal agreement between the WSIB and the provider of a record.

Due Diligence and Other Materials and Open Public Meetings

The WSIB will make available to the public any document or information presented at an open session of a public meeting. In advance of open public meetings, certain documents or information may be provided to the Board by staff, by counsel, by consultants and advisors, or by parties with agreements, contracts, or other affiliations with the Board, which are otherwise subject to exemptions under the PRA.

WSIB staff will identify all confidential documents that are supplied to the Board. The WSIB does not view any inadvertent or unintentional disclosure of any documents or information handled in an open public meeting as any waiver of its ability to rely on an available exemption in response to a public disclosure request.

POLICY REVIEW

The Board shall review this policy at least once every three (3) years to ensure that it remains relevant and appropriate.

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