

## OSPI COMMON EXEMPTIONS CITED WITH THE RELEASE OF PUBLIC RECORDS

Type of Item	RCW or other exemption
<b>Student information – privacy/identifiable</b>	RCW 42.56.050(1)(2); 42.56.230(1) (2) and FERPA 20 U.S.C. § 1232g(b)(1); 34 CFR 99.3 and 99.30.
<ul style="list-style-type: none"> <li>• Student name (first and last if needed to protect identify)</li> </ul>	FERPA protects student records by the exemption of <u>name identifiers</u> and “ <i>other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.</i> ” Small schools and communities require careful examination of records and exemptions to ensure privacy.
<ul style="list-style-type: none"> <li>• Name of student’s parent, if the same or identifiable</li> </ul>	
<ul style="list-style-type: none"> <li>• Student/parent home address</li> </ul>	
<ul style="list-style-type: none"> <li>• Student/parent home phone number</li> </ul>	
<ul style="list-style-type: none"> <li>• Student/parent personal cell</li> <li>• Student/parent home email address</li> </ul>	
<ul style="list-style-type: none"> <li>• DOB</li> <li>• Student ID number (district, state, and college) – Personal Identifying information</li> </ul>	
<ul style="list-style-type: none"> <li>• Student data count – less than 10</li> </ul>	28A.655.090(7); FERPA 20 U.S.C. § 1232g(b)(1); 34 CFR 99.3, 99.30, and 99.31(b)(1)
<b>Public Employee information (employees, elected officials, teachers, volunteers) - privacy</b>	
<ul style="list-style-type: none"> <li>• Home address</li> </ul>	RCW 42.56.050(1) (2); 42.56.230(3); 42.56.250(3)
<ul style="list-style-type: none"> <li>• Personal e-mail address</li> </ul>	
<ul style="list-style-type: none"> <li>• Personal home phone number</li> </ul>	
<ul style="list-style-type: none"> <li>• Personal cell phone</li> </ul>	
<ul style="list-style-type: none"> <li>• SSN</li> </ul>	RCW 42.56.050(1)(2); 42.56.250(3); 42.56.230(3) and (5)
<ul style="list-style-type: none"> <li>• Financial information (account numbers, transaction information, codes, driver’s license number) held for purposes of transaction initiation</li> </ul>	RCW 42.56.230(3) and (5)
<ul style="list-style-type: none"> <li>• Driver’s license number in personnel records</li> </ul>	RCW 42.56.250(3); RCW 42.56.050(1)(2); 42.56.230(3);
<ul style="list-style-type: none"> <li>• Personnel ID number</li> </ul>	RCW 42.56.050(1)(2); 42.56.210(2) & 42.56.230(3); 42.56.250(3)
<ul style="list-style-type: none"> <li>• Routine employee evaluations</li> </ul>	RCW 42.56.230(3)
<ul style="list-style-type: none"> <li>• Resumes and employment applications including names of applicants (including all other related materials submitted with respect to an applicant)</li> </ul>	42.56.250(2)
<ul style="list-style-type: none"> <li>• Emergency Contact</li> </ul>	42.56.250(3)
<ul style="list-style-type: none"> <li>• Insurance benefit info</li> </ul>	RCW 42.56.050(1)(2) & 42.56.230(3)
<ul style="list-style-type: none"> <li>• I-9 Homeland Security form (HR) and supporting documentation</li> </ul>	RCW 42.56.070(1) and 8 USC § 1324a(b)(5). Per 8 USC § 1324a(b)(5), the purpose and use of the Form I-9 and any information contained in or appended to such form is limited to law enforcement. (See last pages of this doc for full information).

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<b>Miscellaneous</b>	
<ul style="list-style-type: none"> <li>General public's name/personal contact information (unknown or known)</li> </ul>	<b>Not Exempt from disclosure</b>
<ul style="list-style-type: none"> <li>Test Questions and Score Sheets</li> </ul>	42.56.250(1)
<ul style="list-style-type: none"> <li>Credit card</li> </ul>	42.56.230(5)
<ul style="list-style-type: none"> <li>Taxpayer information, such as TIN, EIN, FEIN as related to business and/or corporations</li> </ul>	RCW 42.56.230(4); 42 U.S.C. 405 (c)(2)(C)(viii)(II)
<ul style="list-style-type: none"> <li>Driver's License when used for a financial transaction</li> </ul>	42.56.210(2); 42.56.230(5) and 9.35.005
<ul style="list-style-type: none"> <li>Abstract of driving record from DOL</li> </ul>	46.52.130(3) – release to 3rd party prohibited
<ul style="list-style-type: none"> <li>SSN</li> </ul>	42.56.230(5)
<ul style="list-style-type: none"> <li>Fingerprint Results</li> </ul>	42.56.050(1)(2); Title 28 Code of Federal Regulations (CFR) Section 50.12(b)
<ul style="list-style-type: none"> <li><u>Draft documents</u>, notes or inter-agency memos when <b>not</b> publicly cited in policy or agency action; recommendations and intra-agency memoranda. <i>Once document is finalized or made publically available, drafts are not exempt from disclosure.</i></li> </ul>	42.56.280
<ul style="list-style-type: none"> <li>Agency not required to "create" a record that does not exist to respond to a public records request- See notes below and/or contact Public Disclosure Office.</li> </ul>	WAC 44-14-04003(5) and <i>Smith v. Okanogan County</i> , 100 Wash. App. 7, 12, 994 P.2d 857 (2000), for the proposition that the law does not require an agency to create a <b>non-existent</b> record in response to a public records request.
<ul style="list-style-type: none"> <li>Third Party affected: Right to seek court injunction against disclosure – see notes below</li> </ul>	42.56.540
<ul style="list-style-type: none"> <li>Valuable formulae; Trade Secret Exemptions;</li> </ul>	42.56.270(1)(7) or (11)
<ul style="list-style-type: none"> <li>Copyright material</li> </ul>	See notes below
<ul style="list-style-type: none"> <li>Prohibit use of agency directory lists for commercial purposes</li> </ul>	42.56.070(9); WAC 392-105-055
<ul style="list-style-type: none"> <li>IT Password/data security</li> </ul>	42.56.420
<ul style="list-style-type: none"> <li>Security (plans, drawings, response)</li> </ul>	42.56.420(2)
<ul style="list-style-type: none"> <li>Safe School Plans</li> </ul>	42.56.420(3)
<ul style="list-style-type: none"> <li>Computer/Networks/Telecommunication</li> </ul>	42.56.420(4)
<ul style="list-style-type: none"> <li>Filed w/OSPI – intent for child to receive home-based instruction</li> </ul>	28A.200.010; 42.56.320(5)
<b>Attorney/Client – legal issues</b>	
<ul style="list-style-type: none"> <li>Attorney/Client Privilege applies to communications between attorneys and agency staff for the purpose of seeking legal advice or discussing litigation to which the State is a party.</li> </ul>	RCW 5.60.060(2)(a), RCW 42.56.070(1)H
<ul style="list-style-type: none"> <li>Attorney work product is the work of attorneys in litigation or anticipation of litigation. Attorney work product is not available to other party under rules of discovery... – see below</li> </ul>	42.56.290

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<b>OPP/ Investigative</b>	
Student information – child victim of sexual assault Redactions/exemptions are handled using the child’s age when the incident occurred. Example: If a student victim was 17 or younger, OSPI would redact the personally identifiable information and that of any other minors even 15 years later. Other student identifying information is exempt as described above.	42.56.240(5)
<ul style="list-style-type: none"> <li>Sexually explicit material (including photographs stored on computer)</li> </ul>	42.56.050(1)(2); 42.56.230(3)
<ul style="list-style-type: none"> <li>Unsubstantiated allegations (sexual) of misconduct. After investigation is complete, allegations relating to misconduct while on duty are disclosable.</li> </ul>	RCW 42.56.230(3), 42.56.050  Bellevue John Does 1-11 v. Bellevue School District No. 164 Wn. 2d (July 2008)  Bainbridge Island Police Guild v. City of Puyallup 172 Wn.2d (2011)
<ul style="list-style-type: none"> <li>Open investigations: Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline educators, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy</li> </ul>	42.56.240 (1)
<ul style="list-style-type: none"> <li>Information revealing the identity of persons who file complaints with OSPI <u>if disclosure would endanger any person's life, physical safety, or property.</u> Need written proof or request not to disclose/why to withhold adult witness information.</li> </ul>	42.56.240(2)
<ul style="list-style-type: none"> <li>Sexually explicit material (including photographs stored on computer)</li> </ul>	42.56.050(1)(2)
<ul style="list-style-type: none"> <li>Medical records</li> </ul>	42.56.230(1)(2) & 42.56.050(1)(2); 70.02.020, 70.02.005(1)
<ul style="list-style-type: none"> <li>FBI Rap sheet/Background Info</li> </ul>	<ul style="list-style-type: none"> <li>Title 28 CFR, 50.12 (b).</li> </ul>

### ADDITIONAL LINKS AND INFORMATION:

#### **I-9 Homeland Security form (held in HR)**

Under RCW 42.56.070(1), certain information or records may be exempt or disclosure prohibited if they covered by another statute. The Form I-9 and attached copies of supporting documentation are exempt based on 8 USC § 1324a(b)(4) and (5). Per 8 USC § 1324a(b)(5), the purpose and use of the Form I-9 and any information contained in or appended to such form is limited to law enforcement under that chapter (8 U.S. Code Chapter 12 – Immigration and Nationality) and in connection with enforcing certain

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federal crimes." Under 8 USC § 1324a(b)(5), *Limitation on use of attestation form*, "A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of title 18." (emphasis added) The form referred to is the Form I-9. Title 18 addresses federal crimes.

**No need for agency to create record when one does not exist:** WAC 44-14-0400(3) (5) and *Smith v. Okanogan County*, 100 Wn. App 7, 14, 994 P.2d 857 (2001). This also exempts OSPI having to hold open a request based on future records that may or may not exist. (e.g. request in 2013 for a 2015 Legislative Report).

### **Right to Privacy—42.56.050(1) (2):**

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

### **Directory information—42.56.070(9):**

This chapter shall not be construed as giving authority to any agency, to give, sell or provide access to lists of individuals requested for commercial purposes, PROVIDED, HOWEVER, that lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board (see entire citation).

### **Test Questions—42.56.250(1):**

Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

### **Applications/resume—42.56.250 (2):**

All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant. **State employee and volunteers-Personal**

### **information: 42.56.250(3)**

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

**Identification of an agency employee-42.56.250(4):** (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 (Discrimination/Human Rights Commission) against the person; and (b) requests his or her identity or any identifying information not be disclosed;

**Investigative records 42.56.250(5) (for discrimination/Human Rights Commission)** compiled by an employing agency conducting an active and ongoing 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;

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**Courtesy notification of people affected by a request for records—42.56.540:** It is the OSPI process to notify in writing persons/companies who may be affected by disclosure of records (i.e. vendor proposals, personnel files, investigative records, etc.). This provides those affected an opportunity to seek a court injunction prohibiting OSPI from disclosing all or part of the records. The affected party will have 14 calendar days (10 business days) to seek a temporary restraining order (TRO) from the courts.

**Court release of records—42.56.210(2):**

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

**Family Education Rights and Privacy Act (FERPA) - 20 U.S.C. § 1232g(b)(1) and 34 CFR 99.3, definition of personally identifiable information:** Protects student records by the exemption of name identifiers and *“other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”*

**Note:** Small schools and communities require careful examination of records and exemptions to ensure privacy. There are often interconnections and students can more easily be identified by a community or school member.

- **Student/parent’s names; contact information: Other student identifiers:** An item, such as race; disability; school club; or other descriptor when used alone or in conjunction with other public information could easily identify the student.
- **“Student” and/or others initials:** These are not redacted unless it would lead to the identification of a student/juvenile.
- **Date of Birth:** Do not redact unless it would lead to identification.
- **Ethnicity/disability/gender:** Not redacted unless a student could be identified.

**Copy right material:** An agency may hold records that are copyrighted or are otherwise the intellectual property of a third party. It is a case by case situation based on “fair use” as to whether we allow copying. (VIEWING IS PERMISSIBLE IN MOST CASES.) Downloading, copying, duplicating and distributing software, music, sound files, movies, images or other copyrighted materials without the specific written permission of the copyright owner is generally prohibited under 17 U.S.C. sections 102, 106, and 301. However, the duplication and distribution of materials for educational purposes are permitted when such duplication and distribution fall within the Fair Use Doctrine of the United States Copyright Law (Title 17, USC) and content is cited appropriately.

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