

**POLICY NUMBER:** 2.00.250**EFFECTIVE DATE:** 12/12/24**TITLE:** Public Records**SUPERSEDES:** 12/16/21**BOARD ADOPTION:** 12/12/24**REVIEWED:**

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**PURPOSE**

The Washington State Investment Board (WSIB) is a state agency subject to the Washington's Public Records Act (PRA), which requires it to make available non-exempt public records for inspection and copying, upon request. The WSIB also has a 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. As such, this policy explains how the WSIB will respond to requests for public records.

**POLICY**

The WSIB is committed to its fiduciary duties including its requirement to maximize returns at a prudent level of risk for the exclusive benefit of beneficiaries. This includes an obligation to protect confidential information. The WSIB is also committed to transparency and accountability in its actions. It must therefore balance its fiduciary duties and obligations to protect confidential information with the critical need to maintain a high level of transparency and accountability.

The WSIB publishes Board governance documents, investment partner rosters, asset allocation information, general goals and strategies for trust funds under management, general trust fund performance, market value by asset class, and select financial reports on its website.

An integral part of the WSIB's manager selection, investment due diligence and monitoring processes is the receipt, generation, and/or analysis of trade secrets and proprietary and/or confidential information. The WSIB is committed to protecting such information to the fullest extent permitted by law. To the extent such information is not protected by federal law, the Washington PRA provides for several exemptions, most relevantly including an exemption permitting withholding financial and commercial information relating to the investment of public trust or retirement funds, that if released, would result in loss to those funds or in private loss to the providers of the information. Judiciously applying relevant exemptions is necessary for the WSIB to fully access and compete successfully in markets where disclosure of information would be used to the detriment of the funds entrusted to the WSIB, the provider of the information, or both.

The WSIB will exercise good faith in responding to requests for public records. 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 form or characteristics. The WSIB will disclose public records if requested, unless the record, or portions of it, is exempt from disclosure. The WSIB will disclose records in the format in which they then exist and are held. If the record was provided by a third party or agency, as discussed below, the WSIB's general practice is to notify that party prior to release, unless otherwise prohibited by law.

The WSIB will not discriminate among persons requesting records. The WSIB will acknowledge requests within five (5) business days of receiving a public records request (PRR) and, to the extent possible, provide the requested records. However, the WSIB may need additional time to respond to a PRR in order to clarify which records are requested, locate and assemble those records, notify any affected third parties or agencies, or determine whether any of the information requested is exempt. Additional time may also be required if the scope of the PRR is large or complicated. To the extent reasonably possible, WSIB staff will process requests in the order received. If a PRR cannot be completed in one installment, the WSIB will process additional installments as efficiently as possible without causing unreasonable delay to subsequently received requests.

#### **Notification to Providers of Records to the WSIB**

In processing a PRR, the WSIB will make the initial determination of 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 identify, raise, and/or assert the application of an exemption from disclosure, will be the party that provided the record or information to the WSIB. In those instances, the WSIB will generally notify the provider that a PRR has been received and the response deadline under Washington law. This prior notification may also be required under a legal agreement between the WSIB and the provider of the record and/or information.

#### **Due Diligence and Other Materials and Open Public Meetings**

In advance of open public meetings, certain documents or information may be provided to the Board by staff, counsel, consultants, advisors, and parties with agreements, contracts, or other affiliations with the Board, which are generally exempt from disclosure and not provided to the public.

Generally, the WSIB will make available to the public any document or information presented at an open session of a public meeting. However, any inadvertent or unintentional disclosure of any documents or information is not a waiver of its ability to rely on an available exemption in response to a PRR. Upon receipt of a PRR, WSIB staff will identify and redact or withhold all exempt records.

#### **Common Exemptions**

The law provides several exemptions from disclosure, including exemptions for commercial or financial information provided to the WSIB. Although the WSIB may utilize any applicable exemption, the following are most relevant to PRRs received by the WSIB:

***Personal information RCW 42.56.230(3)*** applies to "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, the WSIB will redact or, if not feasible, withhold, such information contained in its records. Records containing such information include, but are not limited to:

1. Proprietary technologies, research (including investment and investment manager research), trade secrets and competitive strategies, decision-making theories, methodologies, and public market portfolio composition.
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, investment manager, asset ownership, or their respective investment vehicles.
6. Records containing information regarding the portfolio positions of an investment, asset ownership, or their respective investment vehicles.
7. Distribution notices from an investment fund that 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.

Disclosure of such information will cause loss to public funds because the WSIB will be unable to maintain access to return maximizing investment opportunities and/or weaken the WSIB’s competitive advantage.

This list is not all-inclusive, comprehensive, or static. Assignment of new trust funds to be managed by the WSIB, as well as new investment approaches and vehicles may emerge in the coming years. This policy is intended to guide staff and does not constrain the WSIB to any particular course of action.

The PRA provides several other exemptions that might be relevant to the WSIB, including the following:

**The Uniform Trade Secrets Act Chapter RCW 19.108 and RCW 42.56.070(1)** applies to documents containing trade secrets including, but not limited to, business plans, customer lists, and product development information. Providers of such documents usually deem the information exempt from disclosure as trade secrets. Where the WSIB determines that the Trade Secret Act may apply to a requested record, it will notify the provider of the information as set forth above.

***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.

***The Gramm-Leach-Bliley Act, 15 U.S.C § 1601 et. seq.*** prevents the disclosure of nonpublic personal financial information received by a financial institution.

**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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