
INTEROFFICE MEMORANDUM

TO: COMMISSION
FROM: K. FLACK
SUBJECT: WN. STATE LEGISLATIVE AGENDA
DATE: JUNE 25, 2015

Issue:

Should the City's 2016 Washington State Legislative agenda include seeking an amendment to RCW 42.56, the Public Records Act, to give City employees the same level of confidentiality as State employees who report improper governmental action?

Discussion:

State employees' identities are protected under two state statutes: State employee whistleblower protection, RCW 42.40; and, the Public Records Act, RCW 42.56.

In 1982 the State legislature passed the State employee whistleblower protection statute. From its inception, the statute required the reporting employee's identity "shall be kept confidential." In 2008, the legislature strengthened the confidentiality provision adding, "the identity or identifying characteristics of a whistleblower is confidential at all times ..."

In 2013, the legislature specifically exempted from disclosure under the Washington State Public Records Act ("the Act") the identity of a state Whistleblower. The Act exempts from disclosure:

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, *or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020*

RCW 42.56.240(11) [emphasis added].

In 1992, the State legislature passed the Local Government Whistleblower Protection statute. In contrast to the protections afforded to State employee whistleblowers, State law only affords local government whistleblowers confidentiality "to the extent allowed by law." The City's Whistleblower Protection Code mirrors this language.

The policy behind RCW 42.40, RCW 42.41, and SMC 4.20.800, is the same. Both the City and State share the same goal of encouraging employees to report concerns in good faith and to protect those employees who step forward.

A possible proposal – an amendment to exclude the disclosure of a local whistleblower’s identity could read:

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020 ((, or a local government employee or officer who has in good faith reported improper governmental action pursuant to RCW 42.41, or a local employee or officer who has reported improper governmental action under a program meeting the intent of chapter RCW 42.41. and exempted from the chapter pursuant to RCW 42.41.050.)))