
Privacy & Disclosure:

What Unions/Employers Must Produce & May Withhold



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Getting Info From the Boss



Information Requests – *employer's duty*

- Arises from the duty to bargain.
- Union is entitled to information needed for negotiating and administering contracts (e.g., grievances).
- Withholding relevant information = failure to bargain ULP.
 - *Inadvertent or harmless error is not a defense.*
- But employer is not obligated to create a document it does not maintain or give the union something it did not ask for.



Grievance Info An Employer Must Provide

“Relevant information”

- In other words: reasonably necessary to perform union's function.
- “[T]he union only needs to show that the requested information is probably relevant.” *Seattle School District*, Decision 5542-C (PECB, 1997).
- Information about bargaining unit members is presumptively relevant.
- Includes information to determine whether a grievance has merit.

“Collective bargaining is a process of communication, not a game of hide and seek.”

- Duty extends to preparation for interest arbitration.
- Must answer timely and specific request for relevant information, e.g., comp data. *City of Bellevue v. IAFF Local 1604*, 119 Wn.2d 373 (1992).

Picture this scenario...

Does the Employer have to produce:

- Eye-witness statements
- Internal communications
- Private investigator report
- Private investigator notes

Can delay be a ULP?



Information Requests

Type of Issue	Documents to Request
Discharge/discipline	All documents relating to the incident; all prior discipline; employer's investigation records (including witness statements); employee's personnel file; all policies, rules violated; discipline records of others for same conduct; instances of same conduct that did not result in discipline
Interest arbitration	Comparable wage + salary analysis <u>and underlying data</u> ; A/V, population, and other data to support comps; Employer financial data - <i>if "inability to pay"</i>
Contract	Tailor request to the issue. Ask yourself: <ul style="list-style-type: none">• What documents does employer maintain on the issue?• What documents will establish past practice?• Relevant bargaining history (proposals, notes)?

*****Employer must provide the info or bargain about objections***

Info Requests re: Negotiations

Is the requested information reasonably necessary for the performance of the union's function as bargaining representative?

Sound familiar??

Negotiations Info Parties Must Provide:

- An explanation of proposals made or the positions taken in bargaining.
- Requested information that is reasonably necessary to prepare for collective bargaining.
- Information about comps, information offered to justify proposals, etc.
- *City of Seattle*, Decision 4844 (PECB, 1994).

When Employers Have An Issue



- They must say so then!
 - Scope objections
 - Relevance objections
 - Retaliation fears
 - Confidentiality concerns
 - employer confidential financial data or trade secrets
 - employee confidential medical information
 - work product or privilege issues
- Remember: Information requests are understood as part of the bargaining process

Public Records Act v. Info Requests

- The duty to provide info to the Union is separate from an employer's obligations under the Public Records Act.
- Employers must provide info to the Union because of its duty to bargain under RCW 41.56.
- Employers must provide documents to the public because of its duty under the PRA, RCW 42.56.



Public Records Act

The Public Records Act covers "public records." ("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

The request must be for "identifiable records." RCW 42.56.080. A requestor satisfies the "identifiable record" requirement when he or she provides a "reasonable description" of the record "enabling the government employee to locate the requested records." *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998), *rev. denied*, 137 Wn.2d 1012, 978 P.2d 1099 (1999)

Public Records Act Exemptions

- There are many statutory exemptions to disclosure, though they are to be narrowly construed in favor of disclosure.
- Examples:
 - Investigative records
 - Applications for public employment
 - Performance appraisals that do not contain incidents of misconduct
 - Personal information about public employees such as their address, cell phone numbers, and social security numbers.



Public Records Act – Employer Duties

Prompt responses are required. RCW 42.56.520.

Within five days of the request, the agency must either:

- 1. Provide the record;**
- 2. Acknowledge receipt of the request and provide a reasonable estimate of the time the agency will respond; or**
- 3. Deny the request.**

Public Records Act Enforcement

- “Any person who prevails against an agency” in court action
- Right to inspect or receive timely response
- Costs and attorneys’ fees
- Plus up to \$100 daily penalty

-RCW 42.56.550(4).

PRA v. Info Requests



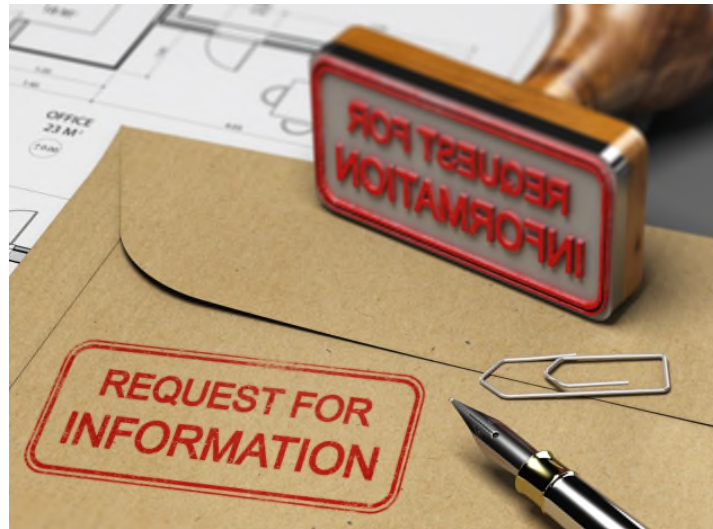
Info requests

- Need not be documents – can ask questions too
- Must show relevance to role as bargaining rep.
- No exemptions
- Usually faster
- Delay/refusal can constitute a ULP

PRA requests

- Only documents that already exist.
- No need to show relevance – can obtain any record unless exempt.
- Usually slower
- Delay/refusal enforceable in court with penalties.

Employer Requests for Info From the Union



Duty is Symmetrical

- Is it probably relevant?
- Is it confidential?
 - Member-union communications
- Is it timely?
- Is it reasonably necessary to avoid surprise in arbitration?



King Fire District 36 (IAFF, Local 2950), Decision 11302 (PECB, 2012)

Snohomish County PUD, Decision 7656-A (PECB, 2003)

Member Requests for Info From the Union



Union's Duty to Provide Info to Members

- Unjustified refusal to provide info to members upon request can constitute a DFR.
- While unions have “a wide range of reasonableness in serving the unit employees,” refusal to provide documents can rise to the level of being irrational if not justified.

Factors considered:

1. The documents pertained to a grievance filed by the member;
2. The member had a legitimate interest in obtaining the documents;
3. This interest was communicated to the union;
4. The union raised no substantial countervailing interest in refusing to provide documents;
5. The union had the ability to provide copies of the documents;
6. The relative ease with which the union could have complied with the request (only 1.5 pages requested).

-East Valley School District, Decision 13114 (PECB, 2019), citing Letter Carriers Branch 529, 319 NLRB 879 (1995).

Member Info Request - Takeaways

- At the very least, unions should generally provide members with all grievance documents exchanged with the employer.
- Requests beyond this should be assessed on a on a case-by-case basis.
- There may be times when the union is justified in refusing to provide (such as other members' privacy interests).
- Decision will be judged on a reasonableness standard.



Union Privilege Bill

ESB 1187*

***Pending in Senate, information to be updated**



What It Does



Union Privilege Bill – *what it does*

- **Prohibits testimony or disclosure**
- **By union or employee**
- **Of communications between**
 - **Employee and union rep**
 - **Two union reps**
- **Made in the course of union representation**

Union Privilege Bill – *what it does*

- The new law applies to:
 - Public and private sector unions
 - Members and non-members
 - Court, arbitrations, and ULPs (with some exceptions)




**What It Does
Not Do**

Union Privilege Bill – *what it does not do*

- Exceptions to the privilege:
 - To prevent certain crimes
 - Admission/intent to commit a crime
 - Actions against employees accused of a crime, assault, or battery


Union Privilege Bill – *what it does not do*

- More exceptions to the privilege:
 - Employee's own statement in a suit involving the employee
 - Suits against the Union
 - The law does not create a new PRA exemption
- 

The background of the slide is a dense, overlapping collage of numerous small, rectangular sticky notes. These notes are in various colors including shades of blue, purple, teal, and green. Each sticky note features a large, dark-colored question mark. The notes are scattered across the entire frame, creating a textured, busy appearance. The overall color palette is cool and muted.

Why It Matters

Union Privilege Bill – *why it matters*

- Current protections are limited
 - Abusive discovery and subpoenas for union-privileged info
 - Union's fiduciary duties
 - Truth and honesty
 - Chilling effect on union-member communications
 - Weaponization of union conversations
- 

DV Victims PRA Exemption Bill ESHB 1583



What It Does

- **Provides protection to DV victims by adding a PRA exemption**
- **Would apply to anyone who:**
 - A. Submits a sworn statement that:**
 - 1) they are a survivor of DV, sexual abuse, stalking, or harassment and**
 - 2) that they have a reasonable basis to believe that the risk continues to exist.**

OR
 - B. Provide proof that they are a participant in the address confidentiality program for victims of DV, sexual assault, and stalking.**

What It Does

The following information would be exempt for such employees:

- Name or other personally identifying information, including but not limited to birth date, job title, addresses of work stations and locations, work email address, work phone number, bargaining unit, or similar info maintained by employer in records.**

Questions?

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