

**March 13, 1998**

**Advisory Opinion 1998 - No. 1  
Confidential bill drafts**

**QUESTION**

The Board has received the following question regarding confidentiality of bill and amendment drafting, paraphrased for brevity: "would it be a violation of the ethics law if a staff person informed his or her staff administrative supervisor, the committee chair, or caucus leadership about a specific drafting request that the requesting member has not approved for circulation to the general public?"

Would the answer be different if the staff person is asked for the confidential information by a supervisor, chair or member of legislative leadership, or if the staff person is an attorney?

**OPINION**

Unauthorized disclosure of the substance of a confidential drafting request or the identity of the requester is a violation of the State Ethics Act. Disclosure of otherwise confidential drafting requests is permissible to persons entitled by law or formal written legislative policy to receive information about confidential drafting requests. Limited disclosure to co-workers and administrative supervisors is permissible, subject to the limitations set forth in this opinion.

**ANALYSIS**

Unauthorized disclosure of confidential information by a legislator or legislative employee is a violation of the State Ethics Act. The relevant portions of the statute are:

*RCW 42.52.010(6) Definitions* "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

*RCW 42.52.050(3)* No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

**A. DRAFTING REQUESTS ARE CONFIDENTIAL.**

It is apparent from the legislative and public records statutes that bill and amendment language in draft form is not "available to the general public on request." The definition of public record in RCW 42.17.010(36)<sup>1</sup> incorporates all "legislative records" as defined by RCW 40.14.100. That statute

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<sup>1</sup> (36) "Public record" includes 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. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

defines amendments which have been submitted to a committee or subcommittee as public records, but excludes bills on the basis that they are otherwise available. Clearly that reference is only to bills which have been printed and are available generally, not bills in draft form.

This interpretation is supported by RCW 42.17.310(1)(i), which exempts from public disclosure "preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action." Therefore, bill and amendment drafts are confidential until such drafts have been approved by the requester for circulation to the general public, or submitted by the requester for committee or floor consideration

## B. AUTHORIZATION TO DISCLOSE CONFIDENTIAL INFORMATION

Although drafting requests and bill and amendment drafts and other staff work related to the drafting request are confidential, RCW 42.52.050(3) permits disclosure to any person "entitled or authorized to receive the information." There are three categories of persons who fall within this provision.

*(1) Persons designated by law or official policy.* Disclosure of confidential drafting requests is authorized to any persons or categories of persons specifically designated by law. Disclosure would also be permissible to persons designated by formal written rules or policies of the House of Representatives, Senate, or legislative agencies. No such statutes, rules or policies have been discovered by, or cited to, the Board in this opinion request.

*(2) Administrative supervisors.* To respond to the question asked in this opinion, the Board must determine whether the staff person's administrative supervisor, committee chair, or members of legislative leadership are entitled or authorized persons. The Board recognizes that for proper supervision and workload decisions, it is necessary for administrative supervisors to be aware of the activities of the employees under their supervision. Additionally, it may be necessary for employees to consult with supervisors regarding a confidential drafting request. Administrative supervisors are thus considered entitled or authorized persons, but only to the extent necessary to accomplish these limited purposes.

The Board finds that these considerations do not apply to the relationship between legislators and staff. Furthermore, it appears that the purpose of requiring confidentiality about legislative proposals is to encourage unlimited exploration of public policy ideas. Therefore, it is not appropriate to extend this authorization for supervisor disclosure to chairs, members of legislative leadership, or other legislators, unless authorization for disclosure to these legislators has been specifically granted by formal written policy.

*(3) Other persons needed to effectively perform the task.* Employees may also find it necessary to disclose some aspects of a confidential drafting requests to co-workers within their work group in order to provide a thorough and accurate draft. In these cases, the drafter should disclose only the information necessary to obtain the needed assistance, and only to those co-workers with relevant expertise.

When confidential information regarding a drafting request is disclosed as permitted under (2) or (3) above, the duty to maintain confidentiality extends to the recipient of the information, who is subject to the same confidentiality requirements as the party who originally received the confidential drafting request.

On occasion it may be necessary for the drafter to seek additional sources of information outside the

legislature. The drafter does not violate the confidentiality requirements by conducting general research. If it is necessary for the drafter to disclose the fact that he or she is working on a confidential drafting request, the identity of the requester, or the objectives of the request, the drafter must first seek permission from the requester to disclose such information.

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The opinion request also asks whether the confidentiality duty is different for a legislative employee who is an attorney. The Board does not believe that the State Ethics Act establishes confidentiality requirements for attorneys drafting bills and amendments that are any different than those specified for other legislative employees. In any case, such requirements would be established and enforced by the Washington State Supreme Court and the State Bar Association rather than the Board.