JAY INSLEE
Governor

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PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05

20-64
Public Records Act – Contact Tracing -- Personal Information

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-53 and 20-55 through 20-63, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, an effective response to the COVID-19 epidemic requires public health professionals and others working with them to interview those infected with COVID-19 and trace their close contacts in order to provide guidance to, quarantine, and test those individuals for infection to prevent further spread of the COVID-19 disease, and this must be done by collecting the names and personal information of these individuals; and

WHEREAS, the success of the response to the COVID-19 epidemic depends in large part on the free flow of information and individuals' willingness to share information and cooperate with public health authorities, which would be significantly hindered if this personal information was required to be disclosed to the general public; and

WHEREAS, under RCW 42.56.360(2) and RCW 70.02.050(2)(a), any health care information that health care providers are required to report to the government, including information about individuals with confirmed or suspected COVID-19, is plainly exempt from disclosure; and

WHEREAS, while there are specific express exemptions for other case investigation and contact tracing information, including RCW 70.02.220(7) and RCW 70.24.022(3), which specifically, and broadly, exempt all information gathered in the course of a contact investigation related to sexually transmitted diseases that are reported to public health agencies, there is no express exemption from disclosure for case investigation and contact tracing information generally; and

WHEREAS, while RCW 42.56.230(1) provides reasonable grounds for withholding from disclosure case investigation, contact tracing, and visitor and customer log information as personal information in files maintained for "patients or clients" of "public health agencies," the courts have not interpreted the meaning of the term "client" or ruled on the application of this exemption to case investigation, contact tracing, or visitor, customer log, and employee log information, and the Public Records Act is liberally construed in favor of disclosure, and its exemptions are narrowly construed, to promote open government policies; and

WHEREAS, RCW 42.56.270(1), and, as an "other statute" in RCW 42.56.070(1), chapter 19.108 RCW, the Uniform Trade Secrets Act, provide reasonable grounds for withholding from disclosure visitor and customer log information that is collected by businesses and provided to a public health agency for contact tracing following a new case of infection as proprietary information and research data, the courts have not ruled on the application of these exemptions to visitor and customer log information, and the Public Records Act is liberally construed in favor of disclosure, and its exemptions are narrowly construed, to promote open government policies; and

WHEREAS, although the Public Records Act and related "other statutes" strongly suggest the intent to exempt the personally identifying information of persons contacted by COVID-19 case investigators and contact tracers, and also exempt visitor or customer log information that a business might share with contact tracers, whether this information is exempt remains uncertain in the absence of specific statutory definitions or exemptions; and

WHEREAS, while there are arguments that support the position that COVID-19 case investigation and contact tracing information, and the personally identifiable information that is gathered as a part of that work, is already exempt under the Public Records Act, ensuring the protection of a person's personally identifiable information may determine whether that person will fully cooperate with COVID-19 case investigators and contact tracers; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people,

property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under RCW 38.08, 38.52 and 43.06, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that Proclamation 20-05, is amended to waive and suspend RCW 42.56.070(1) until 11:59 p.m. on August 29, 2020, as described below.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

FURTHERMORE, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h) and 43.06.220(2)(g), I find that (a) chapter 42.56 RCW, as applied to all public agencies statewide, involves the conduct of state business; and (b) strict compliance with the following statutory and regulatory obligations or limitations will prevent, hinder, or delay necessary action for coping with the COVID-19 State of Emergency in responding to public records requests by preventing and hindering the collection of information to assist in the response to the COVID-19 State of Emergency. Accordingly, I hereby waive and suspend RCW 42.56.070(1) in its entirety, except as otherwise provided herein, pursuant to RCW 43.06.220(2)(g), until 11:59 p.m. on August 29, 2020.

ADDITIONALLY, pursuant to RCW 43.06.220(1)(h), I prohibit any public agency from applying this waiver and suspension to any record requested except to the records listed below and from disclosing any of the records below for any discretionary purposes not related to public health:

- The names, month, day, and year of birth, photographs, all telephone numbers, all street or mailing addresses or other location information, all email addresses, and any other contact information of any individual, including, but not limited to, any such information found in any customer, visitor, or employee log, that is used or intended to be used for contact tracing, case investigation, or other public health purposes related to the COVID-19 emergency; and,

- Any information that identifies or could be used to identify individuals that is obtained by public agencies and their employees and volunteers while doing contact tracing, case investigations, or related public health outreach in response to the COVID-19 emergency,

including, but not limited to, names, month, day, and year of birth, photographs, all telephone numbers, all street or mailing addresses or other location information, all email addresses, any other contact information, and any information about physical characteristics.

ADDITIONALLY, nothing in this proclamation exempts from disclosure the name or location of a business or entity that is part of a contact tracing investigation.

ADDITIONALLY, in furtherance of these prohibitions and for general awareness:

- It is a crime to intimidate a public servant and violators may be subject to criminal penalties pursuant to RCW 9A.76.180.
- Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 30th day of July, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State