
**State Government & Tribal
Affairs Committee**

HB 3231

Brief Description: Regarding public disclosure of records relevant to a controversy to which an agency is a party.

Sponsors: Representatives Williams, Wood, Rodne and Simpson.

Brief Summary of Bill

- Prohibits records relating to an on-going controversy to which the agency is a party from being disclosed under the Public Records Act.
- Provides that documents created prior to the filing of litigation or notice of a legal claim are subject to public disclosure.

Hearing Date: 1/29/08

Staff: Tracey Taylor (786-7196).

Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to the request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under the PRA. The Washington Supreme Court has defined a "controversy" as completed, existing or reasonably anticipated litigation and has recognized this protection is triggered prior to the official initiation of litigation and extends beyond the official termination of litigation.

This exemption was the subject of a recent Washington Supreme Court (Court) case, *Soter v. Cowles Publishing Co.* (No. 78574-1). The Spokane Spokesman-Review Newspaper sought all Spokane School District (school district) documents related to a student's death. The school district refused to produce 75 documents on the grounds that the records were exempt from public disclosure based on attorney-client privilege and the attorney work product doctrine. The Court held that the vast majority of the documents were protected from disclosure because they were handwritten notes or memoranda about witness interviews by the legal team, making them protected work product. Even three documents created by the legal team, but not handwritten, were found to be protected work product. Other documents involved privileged communications between the attorneys and their clients.

Summary of Bill:

The current Public Records Act exemption for records relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery is narrowed to apply only in cases of an on-going controversy. In addition, any records created prior to the filing of litigation or a notice of legal claim are subject to disclosure.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.