
SENATE BILL 5062

State of Washington

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By Senators Pridemore, Swecker, Hatfield, Becker, Kastama, White, Tom, Parlette, Shin, Chase, Pflug, and Holmquist Newbry; by request of Attorney General

Read first time 01/12/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to providing agencies notice of a dispute under the
2 public records act and an opportunity to cure error in the production
3 of public records; reenacting and amending RCW 42.56.550; adding a new
4 section to chapter 42.56 RCW; creating a new section; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature declares that the purpose of
8 the public records act is to make public records available to the
9 people of this state so that they remain informed about the conduct and
10 performance of government. Although penalties may be assessed in favor
11 of a person who files a court action under the act, the payment of
12 penalties diverts funds provided by tax and fee payers from programs
13 and services that benefit all the people. The legislature finds that
14 some requesters do not inform an agency of a disagreement or possible
15 mistake in the production of records until after a court action is
16 filed, leaving the agency with no opportunity to correct an error and
17 thereby maximizing the agency's potential liability for penalties. In
18 order to ensure that public records are made available without an
19 unnecessary diversion of public funds, the legislature finds that an

1 agency should be given an opportunity to cure an error and provide the
2 public record that may have been previously withheld or not located.
3 This will strengthen the purpose of the act and reduce the loss of
4 public funds through the assessment of penalties.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.56 RCW
6 to read as follows:

7 (1) A person who may file an action under RCW 42.56.550, referred
8 to in this section as the "requester," may present a public records
9 claim to the agency that previously denied the request by following the
10 procedures in this section. A claim is deemed presented when the
11 completed claim is received by the agency after the agency has denied
12 the requester an opportunity to inspect or copy a public record and
13 before the date an action is filed by the requester under RCW
14 42.56.550.

15 (2) A public records claim shall be presented to the agency and
16 addressed to the public records officer. The claim shall be in
17 writing, state that it is a public records claim, and contain the
18 information listed in subsection (3) of this section. The attorney
19 general's office shall provide a claim form on its web site that
20 requesters may choose to use.

21 (3) The requester shall provide the following information on or
22 with the claim:

23 (a) The name of the agency to which the request for public records
24 was submitted, and any tracking number the agency assigned to the
25 request;

26 (b) A copy of the public records request at issue;

27 (c) The name of the requester;

28 (d) A mailing address and, at the option of the requester, an
29 electronic mail address to which the agency should send its response to
30 the claim;

31 (e) The date the claim was completed;

32 (f) A description or list that specifies which record or records,
33 or portions thereof, the requester asserts have been improperly
34 withheld, redacted, or otherwise denied, together with a brief
35 explanation as to why the record or records, or portions thereof,
36 should be produced;

1 (g) If the requester believes the agency has failed to produce
2 records or respond to a request, any other information the requester
3 can provide to assist the agency in identifying and locating the
4 requested records; and

5 (h) Any other information the requester wants the agency to
6 consider.

7 (4) The agency must send a response to the requester no later than
8 twenty-one calendar days after delivery of the public records claim to
9 the agency. The response must be sent by United States mail or, if the
10 requester has so requested, by electronic mail. A response is deemed
11 sent on the date it is deposited in the United States mail, first-class
12 postage prepaid. A response transmitted by electronic mail is deemed
13 to have been sent on the date indicated on the face of the electronic
14 mail.

15 (5) The agency may respond to the claim by:

16 (a) Granting all or part of the claim by producing some or all of
17 the records, or portions of records, that the requester asserted had
18 been withheld, redacted, or otherwise denied improperly or not
19 produced; and

20 (b) Rejecting all or part of the claim in writing, with or without
21 explanation. A failure to send a response within the time specified in
22 subsection (4) of this section is deemed to be a rejection of the
23 claim.

24 (6) The applicable period of limitations within which an action
25 must be commenced under this chapter shall be tolled during the twenty-
26 one calendar day period. For the purposes of the applicable period of
27 limitations, an action commenced within seven court days after the
28 twenty-one calendar day period has elapsed is deemed to have been filed
29 timely.

30 (7) The presentation of a public records claim to the agency is not
31 a prerequisite for filing an action in court under RCW 42.56.550.
32 However, if a requester does not present a public records claim in
33 accordance with this section before the date an action is filed in
34 court, the agency has until thirty calendar days from the date of
35 service of the action on the agency to produce for inspection or
36 copying the records that previously had been denied.

37 (8) A penalty under RCW 42.56.550(4) shall not be awarded regarding

1 any record or portion thereof that the agency produces to the
2 requester:

3 (a) In response to a public records claim presented in accordance
4 with this section; or

5 (b) Within the time period provided in subsection (7) of this
6 section after the filing of an action in court under RCW 42.56.550, if
7 a public records claim was not presented before the date of the filing
8 of the action.

9 **Sec. 3.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are
10 each reenacted and amended to read as follows:

11 (1) Upon the motion of any person having been denied an opportunity
12 to inspect or copy a public record by an agency, the superior court in
13 the county in which a record is maintained may require the responsible
14 agency to show cause why it has refused to allow inspection or copying
15 of a specific public record or class of records. The burden of proof
16 shall be on the agency to establish that refusal to permit public
17 inspection and copying is in accordance with a statute that exempts or
18 prohibits disclosure in whole or in part of specific information or
19 records.

20 (2) Upon the motion of any person who believes that an agency has
21 not made a reasonable estimate of the time that the agency requires to
22 respond to a public record request, the superior court in the county in
23 which a record is maintained may require the responsible agency to show
24 that the estimate it provided is reasonable. The burden of proof shall
25 be on the agency to show that the estimate it provided is reasonable.

26 (3) Judicial review of all agency actions taken or challenged under
27 RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take
28 into account the policy of this chapter that free and open examination
29 of public records is in the public interest, even though such
30 examination may cause inconvenience or embarrassment to public
31 officials or others. Courts may examine any record in camera in any
32 proceeding brought under this section. The court may conduct a hearing
33 based solely on affidavits.

34 (4) Any person who prevails against an agency in any action in the
35 courts seeking the right to inspect or copy any public record or the
36 right to receive a response to a public record request within a
37 reasonable amount of time shall be awarded all costs, including

1 reasonable attorney fees, incurred in connection with such legal
2 action. In addition, it shall be within the discretion of the court to
3 award such person an amount not less than five dollars and not to
4 exceed one hundred dollars for each day that he or she was denied the
5 right to inspect or copy said public record. However, a court shall
6 not award any penalty regarding any record or portion thereof that the
7 agency produces pursuant to section 2 of this act.

8 (5) For actions under this section against counties, the venue
9 provisions of RCW 36.01.050 apply.

10 (6) Actions under this section must be filed within one year of the
11 agency's claim of exemption or the last production of a record on a
12 partial or installment basis.

13 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 immediately.

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