
SENATE BILL 5089

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hatfield, Swecker, Harper, Nelson, Parlette, and Chase

Read first time 01/13/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to conferences regarding public records requests
2 disputes; and reenacting and amending RCW 42.56.550.

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

4 **Sec. 1.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are
5 each reenacted and amended to read as follows:

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

15 (2) Upon the motion of any person who believes that an agency has
16 not made a reasonable estimate of the time that the agency requires to
17 respond to a public record request, the superior court in the county in
18 which a record is maintained may require the responsible agency to show

1 that the estimate it provided is reasonable. The burden of proof shall
2 be on the agency to show that the estimate it provided is reasonable.

3 (3)(a) Before filing any court action alleging a violation of this
4 chapter pursuant to subsection (1) or (2) of this section, the
5 requester and agency may first confer in person or by telephone
6 regarding any dispute. For claims filed pursuant to subsection (1) of
7 this section, no action should be commenced until fifteen days have
8 elapsed after the conference occurs. The one-year statute of
9 limitation shall be stayed and daily penalties shall not accrue during
10 the fifteen-day period.

11 (b) The requester or agency filing suit shall also file a
12 certification that it has conferred, or if it has not conferred, that
13 it has not conferred. This section does not require a requester to
14 explain any purpose or reason for requesting the records. This section
15 does not require a conference, or create a right to file an action in
16 court based on the denial of a request for a conference.

17 (4) Judicial review of all agency actions taken or challenged under
18 RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take
19 into account the policy of this chapter that free and open examination
20 of public records is in the public interest, even though such
21 examination may cause inconvenience or embarrassment to public
22 officials or others. Courts may examine any record in camera in any
23 proceeding brought under this section. The court may conduct a hearing
24 based solely on affidavits.

25 ~~((+4))~~ (5)(a) Any person who prevails against an agency in any
26 action in the courts seeking the right to inspect or copy any public
27 record or the right to receive a response to a public record request
28 within a reasonable amount of time shall be awarded all costs,
29 including reasonable attorneys' fees, incurred in connection with such
30 legal action. In addition, it shall be within the discretion of the
31 court to award such person an amount not less than five dollars and not
32 to exceed one hundred dollars for each day that he or she was denied
33 the right to inspect or copy said public record.

34 (b) The award of daily penalties and costs is mandatory unless a
35 requester or agency elects to file suit without conducting the
36 conference pursuant to subsection (3) of this section in good faith, or
37 if the requester or agency files a lawsuit pursuant to subsection (1)
38 of this section without waiting the full fifteen days after the

1 conference, in which case the award is discretionary. In exercising
2 this discretion, the court may consider the following nonexclusive
3 factors:

4 (i) Whether the requester had need to obtain the records in fewer
5 than fifteen days;

6 (ii) Whether a conference would have been futile;

7 (iii) Whether the agency's initial response was in bad faith; and

8 (iv) Whether the request serves the public interest.

9 ~~((+5))~~ (6) For actions under this section against counties, the
10 venue provisions of RCW 36.01.050 apply.

11 ~~((+6))~~ (7) Actions under this section must be filed within one
12 year of the agency's claim of exemption or the last production of a
13 record on a partial or installment basis.

14 (8) As used in this section, "conference" means an in-person
15 meeting or telephone conversation between the agency and the person
16 requesting records to resolve any issues to avoid litigation.

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