S-0943.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5710**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Kuderer and Palumbo

AN ACT Relating to penalties awarded for violations of the public records act; and amending RCW 42.56.550.

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

**Sec.**  RCW 42.56.550 and 2011 c 273 s 1 are each amended to read as follows:

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

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

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

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record, subject to the limitation in subsection (5) of this section.

(5) If the court determines that the agency acted in good faith in denying the person the right to inspect or copy a record or the right to receive a response to a public record request within a reasonable amount of time, the maximum penalty that may be awarded is five thousand dollars. In determining whether an agency acted in good faith, the court shall consider, at a minimum, the following factors:

(a) A lack of clarity in the request;

(b) The agency's prompt response or legitimate follow-up inquiry for clarification;

(c) The agency's honest, timely, and strict compliance with all statutory procedural requirements and exceptions;

(d) Proper training and supervision of the agency's personnel;

(e) The reasonableness of any explanation for noncompliance by the agency;

(f) The helpfulness of the agency to the requestor;

(g) The supplemental and unprompted provision by an agency of responsive records that had inadvertently not been provided previously; and

(h) The existence of agency systems to track and retrieve public records.

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

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

**--- END ---**