
HOUSE BILL 1595

State of Washington

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By Representatives Nealey, McBride, Senn, Springer, Koster, Klippert, Dye, Schmick, J. Walsh, Haler, Manweller, Harris, Dent, Peterson, Bergquist, Gregerson, Clibborn, Fey, Fitzgibbon, Dolan, Wilcox, Lytton, Griffey, Hayes, Muri, Goodman, Robinson, Sells, Steele, Kraft, Smith, Tharinger, Stanford, Kloba, Jenkins, Hargrove, Slatter, and Kagi

Read first time 01/25/17. Referred to Committee on State Government.

1 AN ACT Relating to costs associated with responding to public
2 records requests; and amending RCW 42.56.070, 42.56.080, and
3 42.56.120.

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

5 **Sec. 1.** RCW 42.56.070 and 2005 c 274 s 284 are each amended to
6 read as follows:

7 (1) Each agency, in accordance with published rules, shall make
8 available for public inspection and copying all public records,
9 unless the record falls within the specific exemptions of subsection
10 (~~((6))~~) (8) of this section, this chapter, or other statute which
11 exempts or prohibits disclosure of specific information or records.
12 To the extent required to prevent an unreasonable invasion of
13 personal privacy interests protected by this chapter, an agency shall
14 delete identifying details in a manner consistent with this chapter
15 when it makes available or publishes any public record; however, in
16 each case, the justification for the deletion shall be explained
17 fully in writing.

18 (2) For informational purposes, each agency shall publish and
19 maintain a current list containing every law, other than those listed
20 in this chapter, that the agency believes exempts or prohibits
21 disclosure of specific information or records of the agency. An

1 agency's failure to list an exemption shall not affect the efficacy
2 of any exemption.

3 (3) Each local agency shall maintain and make available for
4 public inspection and copying a current index providing identifying
5 information as to the following records issued, adopted, or
6 promulgated after January 1, 1973:

7 (a) Final opinions, including concurring and dissenting opinions,
8 as well as orders, made in the adjudication of cases;

9 (b) Those statements of policy and interpretations of policy,
10 statute, and the Constitution which have been adopted by the agency;

11 (c) Administrative staff manuals and instructions to staff that
12 affect a member of the public;

13 (d) Planning policies and goals, and interim and final planning
14 decisions;

15 (e) Factual staff reports and studies, factual consultant's
16 reports and studies, scientific reports and studies, and any other
17 factual information derived from tests, studies, reports, or surveys,
18 whether conducted by public employees or others; and

19 (f) Correspondence, and materials referred to therein, by and
20 with the agency relating to any regulatory, supervisory, or
21 enforcement responsibilities of the agency, whereby the agency
22 determines, or opines upon, or is asked to determine or opine upon,
23 the rights of the state, the public, a subdivision of state
24 government, or of any private party.

25 (4) A local agency need not maintain such an index, if to do so
26 would be unduly burdensome, but it shall in that event:

27 (a) Issue and publish a formal order specifying the reasons why
28 and the extent to which compliance would unduly burden or interfere
29 with agency operations; and

30 (b) Make available for public inspection and copying all indexes
31 maintained for agency use.

32 (5) Each state agency shall, by rule, establish and implement a
33 system of indexing for the identification and location of the
34 following records:

35 (a) All records issued before July 1, 1990, for which the agency
36 has maintained an index;

37 (b) Final orders entered after June 30, 1990, that are issued in
38 adjudicative proceedings as defined in RCW 34.05.010 and that contain
39 an analysis or decision of substantial importance to the agency in
40 carrying out its duties;

1 (c) Declaratory orders entered after June 30, 1990, that are
2 issued pursuant to RCW 34.05.240 and that contain an analysis or
3 decision of substantial importance to the agency in carrying out its
4 duties;

5 (d) Interpretive statements as defined in RCW 34.05.010 that were
6 entered after June 30, 1990; and

7 (e) Policy statements as defined in RCW 34.05.010 that were
8 entered after June 30, 1990.

9 Rules establishing systems of indexing shall include, but not be
10 limited to, requirements for the form and content of the index, its
11 location and availability to the public, and the schedule for
12 revising or updating the index. State agencies that have maintained
13 indexes for records issued before July 1, 1990, shall continue to
14 make such indexes available for public inspection and copying.
15 Information in such indexes may be incorporated into indexes prepared
16 pursuant to this subsection. State agencies may satisfy the
17 requirements of this subsection by making available to the public
18 indexes prepared by other parties but actually used by the agency in
19 its operations. State agencies shall make indexes available for
20 public inspection and copying. State agencies may charge a fee to
21 cover the actual costs of providing individual mailed copies of
22 indexes.

23 (6) A public record may be relied on, used, or cited as precedent
24 by an agency against a party other than an agency and it may be
25 invoked by the agency for any other purpose only if:

26 (a) It has been indexed in an index available to the public; or

27 (b) Parties affected have timely notice (actual or constructive)
28 of the terms thereof.

29 (7) Each agency (~~shall~~) may establish, maintain, and make
30 available for public inspection and copying a statement of the actual
31 (~~per page cost or other costs, if any,~~) costs that it charges for
32 providing photocopies or electronically produced copies, of public
33 records and a statement of the factors and manner used to determine
34 the actual (~~per page cost or other costs, if any~~) costs. Any
35 statement of costs may be adopted by an agency only after providing
36 notice and public hearing.

37 (a)(i) In determining the actual (~~per page~~) cost for providing
38 (~~photocopies~~) copies of public records, an agency may include all
39 costs directly incident to copying such public records including:

1 (A) The actual cost of the paper and the per page cost for use of
2 agency copying equipment; and

3 (B) The actual cost of the electronic production or file transfer
4 of the record and the use of any cloud-based data storage and
5 processing service.

6 (ii) In determining other actual costs for providing
7 ~~((photocopies))~~ copies of public records, an agency may include all
8 costs directly incident to:

9 (A) Shipping such public records, including the cost of postage
10 or delivery charges and the cost of any container or envelope used;
11 and

12 (B) Transmitting such records in an electronic format, including
13 the cost of any transmission charge and use of any physical media
14 device.

15 (b) In determining the actual ~~((per page cost or other))~~ costs
16 for providing copies of public records, an agency may not include
17 staff salaries, benefits, or other general administrative or overhead
18 charges, unless those costs are directly related to the actual cost
19 of copying the public records. Staff time to copy and ~~((mail))~~ send
20 the requested public records may be included in an agency's costs.

21 ~~((An agency need not calculate the actual per page cost or~~
22 ~~other costs it charges for providing photocopies of public records if~~
23 ~~to do so would be unduly burdensome, but in that event: The agency~~
24 ~~may not charge in excess of fifteen cents per page for photocopies of~~
25 ~~public records or for the use of agency equipment to photocopy public~~
26 ~~records and the actual postage or delivery charge and the cost of any~~
27 ~~container or envelope used to mail the public records to the~~
28 ~~requestor.~~

29 ~~(9))~~ This chapter shall not be construed as giving authority to
30 any agency, the office of the secretary of the senate, or the office
31 of the chief clerk of the house of representatives to give, sell or
32 provide access to lists of individuals requested for commercial
33 purposes, and agencies, the office of the secretary of the senate,
34 and the office of the chief clerk of the house of representatives
35 shall not do so unless specifically authorized or directed by law:
36 PROVIDED, HOWEVER, That lists of applicants for professional licenses
37 and of professional licensees shall be made available to those
38 professional associations or educational organizations recognized by
39 their professional licensing or examination board, upon payment of a
40 reasonable charge therefor: PROVIDED FURTHER, That such recognition

1 may be refused only for a good cause pursuant to a hearing under the
2 provisions of chapter 34.05 RCW, the administrative procedure act.

3 **Sec. 2.** RCW 42.56.080 and 2016 c 163 s 3 are each amended to
4 read as follows:

5 (1) A public records request must be for an identifiable record.
6 A request for all or substantially all records prepared, owned, used,
7 or retained by an agency is not a valid request for identifiable
8 records under this chapter.

9 (2) Public records shall be available for inspection and copying,
10 and agencies shall, upon request for identifiable public records,
11 make them promptly available to any person including, if applicable,
12 on a partial or installment basis as records that are part of a
13 larger set of requested records are assembled or made ready for
14 inspection or disclosure. Agencies shall not deny a request for
15 identifiable public records solely on the basis that the request is
16 overbroad. Agencies shall not distinguish among persons requesting
17 records, and such persons shall not be required to provide
18 information as to the purpose for the request except to establish
19 whether inspection and copying would violate RCW 42.56.070(~~(+9)~~) (8)
20 or 42.56.240(14), or other statute which exempts or prohibits
21 disclosure of specific information or records to certain persons.
22 Agency facilities shall be made available to any person for the
23 copying of public records except when and to the extent that this
24 would unreasonably disrupt the operations of the agency. Agencies
25 shall honor requests received by mail for identifiable public records
26 unless exempted by provisions of this chapter.

27 (3) An agency may deny a bot request that is one of multiple
28 requests from the same source to the same agency within a twenty-four
29 hour period of time, if it causes excessive interference with other
30 essential functions of the agency.

31 (4) For purposes of this section, "bot request" means a request
32 for public records that is automatically generated by a computer
33 program, software technology, remote administration tool, or network.

34 **Sec. 3.** RCW 42.56.120 and 2016 c 163 s 4 are each amended to
35 read as follows:

36 (1) No fee shall be charged for the inspection of public records
37 or locating public documents and making them available for copying,
38 except as provided in RCW 42.56.240(14) and subsection (3) of this

1 section. A reasonable charge may be imposed for providing copies of
2 public records and for the use by any person of agency equipment or
3 equipment of the office of the secretary of the senate or the office
4 of the chief clerk of the house of representatives to copy public
5 records, which charges shall not exceed the amount necessary to
6 reimburse the agency, the office of the secretary of the senate, or
7 the office of the chief clerk of the house of representatives for its
8 actual costs directly incident to such copying.

9 (2)(a) Agency charges for ((~~photocopies shall~~)) actual costs may
10 only be imposed in accordance with the ((~~actual per page cost or~~
11 ~~ether~~)) costs established and published by the agency pursuant to RCW
12 42.56.070(7), and in accordance with the statement of factors and
13 manner used to determine the actual costs. In no event may an agency
14 charge a per page cost greater than the actual ((~~per page~~)) cost as
15 established and published by the agency.

16 (b) An agency need not calculate the actual costs it charges for
17 providing public records if to do so would be unduly burdensome. To
18 the extent the agency has not determined the actual ((~~per page cost~~
19 ~~for photocopies of~~)) costs of copying public records, the agency may
20 not charge in excess of:

21 (i) Fifteen cents per page for photocopies of public records or
22 for the use of agency equipment to photocopy public records and the
23 actual postage or delivery charge and the cost of any container or
24 envelope used to mail the public records to the requestor;

25 (ii) Ten cents per page for public records scanned into an
26 electronic format or for the use of agency equipment to scan the
27 records;

28 (iii) Ten cents per minute of audio or video recording copied or
29 for the use of agency equipment to copy the recording;

30 (iv) Forty cents per each twenty-five electronic attachments
31 uploaded to email, cloud-based data storage service, or other means
32 of electronic delivery; and

33 (v) Ten cents per gigabyte for the transmission of public records
34 in an electronic format or for the use of agency equipment to send
35 the records electronically.

36 (c) An agency may charge a flat fee of five dollars for any
37 request as an alternative to fees authorized under (a) or (b) of this
38 subsection.

39 (3)(a) In addition to the charge imposed for providing copies of
40 public records and for the use by any person of agency equipment

1 copying costs, an agency may include a customized service charge for
2 exceptionally complex requests for records that require staffing,
3 resources, or expertise not normally available to an agency in
4 regards to the size and scope of the agency function.

5 (b) A customized service charge may only be imposed if the agency
6 estimates that the request would require:

7 (i) Extensive use of information technology resources to identify
8 or locate a record, format or translate an electronic record, prepare
9 data compilations, or provide customized electronic access services;
10 or

11 (ii) Specialized analytical, research, or supervisory assistance
12 to identify, locate, compile, or transfer records.

13 (c) The customized service charge authorized in this subsection
14 (3) may reimburse the agency up to the actual cost of providing the
15 services listed in (b) of this subsection.

16 (d) An agency may not assess a customized service charge unless
17 the agency has notified the requestor of the charge to be applied to
18 the request, including an explanation of why the charge applies and a
19 reasonable estimate cost of the charge. The notice also must provide
20 the requestor the opportunity to amend his or her request in order to
21 avoid or reduce the cost of a customized service charge.

22 (4) An agency may require a deposit in an amount not to exceed
23 ten percent of the estimated cost of providing copies for a request,
24 including a customized service charge. If an agency makes a request
25 available on a partial or installment basis, the agency may charge
26 for each part of the request as it is provided. If an installment of
27 a records request is not claimed or reviewed, the agency is not
28 obligated to fulfill the balance of the request. An agency may waive
29 any charge assessed for a request if it determines that the charge is
30 not warranted. An agency may enter into any contract, memorandum of
31 understanding, or other agreement with a requestor that provides an
32 alternative fee arrangement to the charges authorized in this
33 section, or in response to a voluminous or frequently occurring
34 request.

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