
SENATE BILL 6368

State of Washington

61st Legislature

2010 Regular Session

By Senators Hatfield and Regala

Read first time 01/13/10. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to conferences regarding public records requests
2 violations; 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) Prior to filing any court action alleging a violation of
4 this chapter, the requester and agency may first confer in person or by
5 telephone regarding any dispute. For claims filed pursuant to
6 subsection (1) of this section, no action should be commenced until
7 fifteen days have elapsed after this conference occurs. The one-year
8 statute of limitation and daily penalties shall be tolled during this
9 fifteen-day period.

10 (b) The requester or agency filing suit shall include a
11 certification that they have met, or if they have not met, why they
12 have not met. Nothing in this section requires a requester to explain
13 any purpose or reason for requesting the records.

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

22 ~~((+4))~~ (5) Any person who prevails against an agency in any action
23 in the courts seeking the right to inspect or copy any public record or
24 the right to receive a response to a public record request within a
25 reasonable amount of time shall be awarded all costs, including
26 reasonable attorney fees, incurred in connection with such legal
27 action. In addition, it shall be within the discretion of the court to
28 award such person an amount not less than five dollars and not to
29 exceed one hundred dollars for each day that he or she was denied the
30 right to inspect or copy said public record. If a requester or agency
31 elects to file suit without conducting the conference in good faith
32 pursuant to subsection (3) of this section, or if the requester or
33 agency files a lawsuit pursuant to subsection (1) of this section
34 without waiting the full fifteen days after that conference, the court
35 shall have the discretion to reduce or eliminate any award for costs,
36 including daily penalties. In exercising this discretion, the court
37 may consider the following nonexclusive factors:

1 (a) Whether the requester had need to obtain the records in less
2 than fifteen days; and

3 (b) Whether a conference would have been futile.

4 ~~((+5))~~ (6) For actions under this section against counties, the
5 venue provisions of RCW 36.01.050 apply.

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

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