H-3089.1

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**HOUSE BILL 2290**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives MacEwen, Caldier, Zeiger, Haler, Muri, Buys, Magendanz, Van De Wege, and Griffey

AN ACT Relating to limiting out-of-state requests for public records; amending RCW 42.56.010, 42.56.520, and 42.56.550; reenacting and amending RCW 42.56.080; and creating new sections.

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

NEW SECTION. **Sec.**  The legislature finds that public agencies are increasingly burdened by broad public records requests from individuals and organizations located outside of Washington state. These activities by out-of-state requestors create a growing fiscal strain on public agencies that must respond to these requests. The legislature also finds that the news media plays an important role in informing and educating the public. Therefore, it is the intent of the legislature to authorize agencies to limit responses to public records requests to requestors who reside in Washington, represent a Washington business, or represent the news media.

**Sec.**  RCW 42.56.010 and 2010 c 204 s 1005 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "News media" means an entity that is in the regular business of news gathering and disseminating news or information to the public with circulation in or broadcasting into Washington state and includes:

(a) Newspapers;

(b) Magazines or other periodicals;

(c) Book publishers;

(d) News agencies;

(e) Wire services;

(f) Radio or television stations or networks;

(e) Cable or satellite stations or networks;

(g) Online news web sites; and

(h) Audio or audiovisual production companies.

(3) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

((~~(3)~~)) (4) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

((~~(4)~~)) (5) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

**Sec.**  RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285 are each reenacted and amended to read as follows:

(1) Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to ((~~any person including,~~)) residents of the state, representatives of businesses licensed and physically located in the state, and representatives of the news media. If applicable, agencies shall provide records on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. ((~~Agencies shall not distinguish among persons requesting records, and such~~))

(2) Persons requesting records shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons, and to establish:

(a) The residential address of the requestor;

(b) The name and location of the business represented by the requestor; or

(c) The name and circulation area or broadcast area of the news media represented by the requestor.

(3) Agency facilities shall be made available ((~~to any person~~)) for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

**Sec.**  RCW 42.56.520 and 2010 c 69 s 2 are each amended to read as follows:

Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (4) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request((~~,~~)); the place of residence of the requestor, the name and location of the business represented by the requestor, or the name and circulation area or broadcast area of the news media represented by the requestor; to locate and assemble the information requested((~~,~~)); to notify third persons or agencies affected by the request((~~,~~)); or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to ((~~clarify the request~~)) provide clarifying information requested by the agency, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

**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 is a resident of the state, represents a business licensed and physically located in the state, or represents news media and is acting in his or her official capacity for the purpose of the public records request, 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 attorney 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.

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

(6) 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.

NEW SECTION. **Sec.**  This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**