

EHB 1595 - S COMM AMD
By Committee on State Government

ADOPTED 04/07/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 42.56.070 and 2005 c 274 s 284 are each amended to
4 read as follows:

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

16 (2) For informational purposes, each agency shall publish and
17 maintain a current list containing every law, other than those listed
18 in this chapter, that the agency believes exempts or prohibits
19 disclosure of specific information or records of the agency. An
20 agency's failure to list an exemption shall not affect the efficacy
21 of any exemption.

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

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

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

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

1 (d) Planning policies and goals, and interim and final planning
2 decisions;

3 (e) Factual staff reports and studies, factual consultant's
4 reports and studies, scientific reports and studies, and any other
5 factual information derived from tests, studies, reports, or surveys,
6 whether conducted by public employees or others; and

7 (f) Correspondence, and materials referred to therein, by and
8 with the agency relating to any regulatory, supervisory, or
9 enforcement responsibilities of the agency, whereby the agency
10 determines, or opines upon, or is asked to determine or opine upon,
11 the rights of the state, the public, a subdivision of state
12 government, or of any private party.

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

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

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

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

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

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

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

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

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

37 Rules establishing systems of indexing shall include, but not be
38 limited to, requirements for the form and content of the index, its
39 location and availability to the public, and the schedule for
40 revising or updating the index. State agencies that have maintained

1 indexes for records issued before July 1, 1990, shall continue to
2 make such indexes available for public inspection and copying.
3 Information in such indexes may be incorporated into indexes prepared
4 pursuant to this subsection. State agencies may satisfy the
5 requirements of this subsection by making available to the public
6 indexes prepared by other parties but actually used by the agency in
7 its operations. State agencies shall make indexes available for
8 public inspection and copying. State agencies may charge a fee to
9 cover the actual costs of providing individual mailed copies of
10 indexes.

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

- 14 (a) It has been indexed in an index available to the public; or
15 (b) Parties affected have timely notice (actual or constructive)
16 of the terms thereof.

17 (7) Each agency (~~shall~~) may establish, maintain, and make
18 available for public inspection and copying a statement of the actual
19 (~~per page cost or other costs, if any,~~) costs that it charges for
20 providing photocopies or electronically produced copies, of public
21 records and a statement of the factors and manner used to determine
22 the actual (~~per page cost or other costs, if any~~) costs. Any
23 statement of costs may be adopted by an agency only after providing
24 notice and public hearing.

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

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

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

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

36 (A) Shipping such public records, including the cost of postage
37 or delivery charges and the cost of any container or envelope used;
38 and

1 (B) Transmitting such records in an electronic format, including
2 the cost of any transmission charge and use of any physical media
3 device provided by the agency.

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

10 ~~(8) (An agency need not calculate the actual per page cost or~~
11 ~~other costs it charges for providing photocopies of public records if~~
12 ~~to do so would be unduly burdensome, but in that event: The agency~~
13 ~~may not charge in excess of fifteen cents per page for photocopies of~~
14 ~~public records or for the use of agency equipment to photocopy public~~
15 ~~records and the actual postage or delivery charge and the cost of any~~
16 ~~container or envelope used to mail the public records to the~~
17 ~~requestor.~~

18 ~~(9))~~ This chapter shall not be construed as giving authority to
19 any agency, the office of the secretary of the senate, or the office
20 of the chief clerk of the house of representatives to give, sell or
21 provide access to lists of individuals requested for commercial
22 purposes, and agencies, the office of the secretary of the senate,
23 and the office of the chief clerk of the house of representatives
24 shall not do so unless specifically authorized or directed by law:
25 PROVIDED, HOWEVER, That lists of applicants for professional licenses
26 and of professional licensees shall be made available to those
27 professional associations or educational organizations recognized by
28 their professional licensing or examination board, upon payment of a
29 reasonable charge therefor: PROVIDED FURTHER, That such recognition
30 may be refused only for a good cause pursuant to a hearing under the
31 provisions of chapter 34.05 RCW, the administrative procedure act.

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

34 (1) A public records request must be for identifiable records. A
35 request for all or substantially all records prepared, owned, used,
36 or retained by an agency is not a valid request for identifiable
37 records under this chapter, provided that a request for all records
38 regarding a particular topic or containing a particular keyword or

1 name shall not be considered a request for all of an agency's
2 records.

3 (2) Public records shall be available for inspection and copying,
4 and agencies shall, upon request for identifiable public records,
5 make them promptly available to any person including, if applicable,
6 on a partial or installment basis as records that are part of a
7 larger set of requested records are assembled or made ready for
8 inspection or disclosure. Agencies shall not deny a request for
9 identifiable public records solely on the basis that the request is
10 overbroad. Agencies shall not distinguish among persons requesting
11 records, and such persons shall not be required to provide
12 information as to the purpose for the request except to establish
13 whether inspection and copying would violate RCW 42.56.070(~~(+9)~~) (8)
14 or 42.56.240(14), or other statute which exempts or prohibits
15 disclosure of specific information or records to certain persons.
16 Agency facilities shall be made available to any person for the
17 copying of public records except when and to the extent that this
18 would unreasonably disrupt the operations of the agency. Agencies
19 shall honor requests received in person during an agency's normal
20 office hours, or by mail or email, for identifiable public records
21 unless exempted by provisions of this chapter. No official format is
22 required for making a records request; however, agencies may
23 recommend that requestors submit requests using an agency provided
24 form or web page.

25 (3) An agency may deny a bot request that is one of multiple
26 requests from the requestor to the agency within a twenty-four hour
27 period, if the agency establishes that responding to the multiple
28 requests would cause excessive interference with other essential
29 functions of the agency. For purposes of this subsection, "bot
30 request" means a request for public records that an agency reasonably
31 believes was automatically generated by a computer program or script.

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

34 (1) No fee shall be charged for the inspection of public records
35 or locating public documents and making them available for copying,
36 except as provided in RCW 42.56.240(14) and subsection (3) of this
37 section. A reasonable charge may be imposed for providing copies of
38 public records and for the use by any person of agency equipment or
39 equipment of the office of the secretary of the senate or the office

1 of the chief clerk of the house of representatives to copy public
2 records, which charges shall not exceed the amount necessary to
3 reimburse the agency, the office of the secretary of the senate, or
4 the office of the chief clerk of the house of representatives for its
5 actual costs directly incident to such copying. When calculating any
6 fees authorized under this section, an agency shall use the most
7 reasonable cost-efficient method available to the agency as part of
8 its normal operations. If any agency translates a record into an
9 alternative electronic format at the request of a requestor, the copy
10 created does not constitute a new public record for purposes of this
11 chapter. Scanning paper records to make electronic copies of such
12 records is a method of copying paper records and does not amount to
13 the creation of a new public record.

14 (2)(a) Agency charges for ((~~photocopies shall~~)) actual costs may
15 only be imposed in accordance with the ((~~actual per page cost or~~
16 ~~ether~~)) costs established and published by the agency pursuant to RCW
17 42.56.070(7), and in accordance with the statement of factors and
18 manner used to determine the actual costs. In no event may an agency
19 charge a per page cost greater than the actual ((~~per page~~)) cost as
20 established and published by the agency.

21 (b) An agency need not calculate the actual costs it charges for
22 providing public records if it has rules or regulations declaring the
23 reasons doing so would be unduly burdensome. To the extent the agency
24 has not determined the actual ((~~per page cost for photocopies of~~))
25 costs of copying public records, the agency may not charge in excess
26 of:

27 (i) Fifteen cents per page for photocopies of public records,
28 printed copies of electronic public records when requested by the
29 person requesting records, or for the use of agency equipment to
30 photocopy public records;

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

34 (iii) Five cents per each four electronic files or attachment
35 uploaded to email, cloud-based data storage service, or other means
36 of electronic delivery; and

37 (iv) Ten cents per gigabyte for the transmission of public
38 records in an electronic format or for the use of agency equipment to
39 send the records electronically. The agency shall take reasonable

1 steps to provide the records in the most efficient manner available
2 to the agency in its normal operations; and

3 (v) The actual cost of any digital storage media or device
4 provided by the agency, the actual cost of any container or envelope
5 used to mail the copies to the requestor, and the actual postage or
6 delivery charge.

7 (c) The charges in (b) of this subsection may be combined to the
8 extent that more than one type of charge applies to copies produced
9 in response to a particular request.

10 (d) An agency may charge a flat fee of up to two dollars for any
11 request as an alternative to fees authorized under (a) or (b) of this
12 subsection when the agency reasonably estimates and documents that
13 the costs allowed under this subsection are clearly equal to or more
14 than two dollars. An additional flat fee shall not be charged for any
15 installment after the first installment of a request produced in
16 installments. An agency that has elected to charge the flat fee in
17 this subsection for an initial installment may not charge the fees
18 authorized under (a) or (b) of this subsection on subsequent
19 installments.

20 (e) An agency shall not impose copying charges under this section
21 for access to or downloading of records that the agency routinely
22 posts on its public internet web site prior to receipt of a request
23 unless the requestor has specifically requested that the agency
24 provide copies of such records through other means.

25 (f) A requestor may ask an agency to provide, and if requested an
26 agency shall provide, a summary of the applicable charges before any
27 copies are made and the requestor may revise the request to reduce
28 the number of copies to be made and reduce the applicable charges.

29 (3)(a)(i) In addition to the charge imposed for providing copies
30 of public records and for the use by any person of agency equipment
31 copying costs, an agency may include a customized service charge. A
32 customized service charge may only be imposed if the agency estimates
33 that the request would require the use of information technology
34 expertise to prepare data compilations, or provide customized
35 electronic access services when such compilations and customized
36 access services are not used by the agency for other agency purposes.

37 (ii) The customized service charge may reimburse the agency up to
38 the actual cost of providing the services in this subsection.

39 (b) An agency may not assess a customized service charge unless
40 the agency has notified the requestor of the customized service

1 charge to be applied to the request, including an explanation of why
2 the customized service charge applies, a description of the specific
3 expertise, and a reasonable estimate cost of the charge. The notice
4 also must provide the requestor the opportunity to amend his or her
5 request in order to avoid or reduce the cost of a customized service
6 charge.

7 (4) An agency may require a deposit in an amount not to exceed
8 ten percent of the estimated cost of providing copies for a request,
9 including a customized service charge. If an agency makes a request
10 available on a partial or installment basis, the agency may charge
11 for each part of the request as it is provided. If an installment of
12 a records request is not claimed or reviewed, the agency is not
13 obligated to fulfill the balance of the request. An agency may waive
14 any charge assessed for a request pursuant to agency rules and
15 regulations. An agency may enter into any contract, memorandum of
16 understanding, or other agreement with a requestor that provides an
17 alternative fee arrangement to the charges authorized in this
18 section, or in response to a voluminous or frequently occurring
19 request.

20 **Sec. 4.** RCW 42.56.130 and 2005 c 274 s 286 are each amended to
21 read as follows:

22 The provisions of RCW 42.56.070(7) and (8) and 42.56.120 that
23 establish or allow agencies to establish the costs charged for
24 photocopies or electronically produced copies of public records do
25 not supersede other statutory provisions, other than in this chapter,
26 authorizing or governing fees for copying public records.

27 **Sec. 5.** RCW 42.56.550 and 2011 c 273 s 1 are each amended to
28 read as follows:

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

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

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

17 (4) Any person who prevails against an agency in any action in
18 the courts seeking the right to inspect or copy any public record or
19 the right to receive a response to a public record request within a
20 reasonable amount of time shall be awarded all costs, including
21 reasonable attorney fees, incurred in connection with such legal
22 action. In addition, it shall be within the discretion of the court
23 to award such person an amount not to exceed one hundred dollars for
24 each day that he or she was denied the right to inspect or copy said
25 public record.

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

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

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31 On page 1, line 2 of the title, after "requests;" strike the
32 remainder of the title and insert "and amending RCW 42.56.070,
33 42.56.080, 42.56.120, 42.56.130, and 42.56.550."

EFFECT: (1) Requires that agencies charging a flat fee for electronic records requests document an estimate of the costs and that the costs must be clearly equal to or more than two dollars prior to charging the flat fee.

(2) Requires agencies to provide an estimate of charges to fulfill a records request before any copies are made, and allows requestors to modify a request to reduce the number of copies made.

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