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HOUSE BILL 1650

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State of Washington

53rd Legislature

1993 Regular Session

By Representatives Romero, Campbell, Rayburn, Chappell, Ludwig,  
Jacobsen, Veloria and Pruitt

Read first time 02/05/93. Referred to Committee on State Government.

1 AN ACT Relating to public records; and amending RCW 42.17.360,  
2 42.17.325, and 42.17.340.

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

4 **Sec. 1.** RCW 42.17.360 and 1973 c 1 s 36 are each amended to read  
5 as follows:

6 The commission shall:

7 (1) Develop and provide forms for the reports and statements  
8 required to be made under this chapter((÷));

9 (2) Prepare and publish a manual setting forth recommended uniform  
10 methods of bookkeeping and reporting for use by persons required to  
11 make reports and statements under this chapter;

12 (3) Compile and maintain a current list of all filed reports and  
13 statements;

14 (4) Investigate whether properly completed statements and reports  
15 have been filed within the times required by this chapter;

16 (5) Adopt rules governing the public's access to public records  
17 held by state agencies including, but not limited to, rules regarding  
18 reasonable charges by state agencies for copying records under RCW  
19 42.17.300;

1       (6) Upon complaint or upon its own motion, investigate and report  
2 apparent violations of this chapter to the appropriate law enforcement  
3 authorities;

4       (~~((6))~~) (7) Prepare and publish an annual report to the governor as  
5 to the effectiveness of this chapter and its enforcement by appropriate  
6 law enforcement authorities; and

7       (~~((7))~~) (8) Enforce this chapter according to the powers granted it  
8 by law.

9       **Sec. 2.** RCW 42.17.325 and 1992 c 139 s 10 are each amended to read  
10 as follows:

11       (1) Whenever a state agency concludes that a public record is  
12 exempt from disclosure and denies a person opportunity to inspect or  
13 copy a public record for that reason, the person may request the  
14 (~~(attorney general)~~) public disclosure commission to review the matter.  
15 (~~(The attorney general shall provide the person with his or her written~~  
16 ~~opinion on whether the record is exempt.~~)

17       ~~Nothing in this section shall be deemed to establish an attorney-~~  
18 ~~client relationship between the attorney general and a person making a~~  
19 ~~request under this section.))~~

20       Whenever a state agency other than the commission has provided a  
21 person requesting a public record with an estimate of the time that the  
22 agency requires to respond to the request and the person believes that  
23 the agency has not made a reasonable estimate of that time, the person  
24 may request the commission to review the estimate.

25       (2) The commission shall promptly conduct a review of the issue or  
26 issues involved in each request filed with it under this section. The  
27 commission's review of such issues shall be de novo and its decision  
28 regarding public access to a record or the length of time an agency has  
29 for considering a request for such access is binding on the state  
30 agency involved. However, the state agency may appeal a decision of  
31 the commission to the superior court in the county in which the record  
32 is maintained. The court's review of such a decision shall be de novo.

33       **Sec. 3.** RCW 42.17.340 and 1992 c 139 s 8 are each amended to read  
34 as follows:

35       (1)(a) Upon the motion of any person having been denied an  
36 opportunity to inspect or copy a public record by (~~(an)~~) a local  
37 agency, the superior court in the county in which a record is

1 maintained may require the responsible agency to show cause why it has  
2 refused to allow inspection or copying of a specific public record or  
3 class of records. The burden of proof shall be on the agency to  
4 establish that refusal to permit public inspection and copying is in  
5 accordance with a statute that exempts or prohibits disclosure in whole  
6 or in part of specific information or records.

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

14 (2)(a) If a person has been denied an opportunity to inspect or  
15 copy a public record by a state agency other than the commission, the  
16 person has requested the commission to review the agency's action, and  
17 the commission has upheld the agency's action, the person may file an  
18 appeal regarding the agency's action in the superior court in the  
19 county in which the record is maintained. If the commission has denied  
20 a person an opportunity to inspect or copy a record maintained by the  
21 commission, the person may file an appeal regarding the commission's  
22 action in the superior court of Thurston county. The court may require  
23 the responsible agency to show cause why it has refused to allow  
24 inspection or copying of a specific public record or class of records.  
25 The burden of proof shall be on the agency to establish that refusal to  
26 permit public inspection and copying is in accordance with a statute  
27 that exempts or prohibits disclosure in whole or in part of specific  
28 information or records.

29 (b) If a person believes that a state agency other than the  
30 commission has not made a reasonable estimate of the time that the  
31 agency requires to respond to a public record request, the person has  
32 requested the commission to review the estimate, and the commission has  
33 concurred with the agency's estimate or has provided an estimate which  
34 the person believes is not reasonable, the person may file an appeal  
35 regarding the estimate with the superior court in the county in which  
36 the record is maintained. If a person believes that the commission has  
37 not made a reasonable estimate of the time that the commission requires  
38 to respond to a request to inspect or copy a record maintained by the  
39 commission, the person may file an appeal regarding the estimate with

1 the superior court of Thurston county. The court may require the  
2 responsible agency to show that the estimate it provided is reasonable.  
3 The burden of proof shall be on the agency to show that the estimate it  
4 provided is reasonable.

5 (c) As used in (a) and (b) of this subsection, the "responsible  
6 agency" is the state agency which originally made the decision to deny  
7 access to the record or originally made the estimate regarding the time  
8 the agency requires to respond to a request for a public record.

9 (3) Judicial review of all agency actions taken or challenged under  
10 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take  
11 into account the policy of this chapter that free and open examination  
12 of public records is in the public interest, even though such  
13 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 hearing  
16 based solely on affidavits.

17 (4) Any person who prevails against an agency in any action in the  
18 courts seeking the right to inspect or copy any public record or the  
19 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 to  
23 award such person an amount not less than five dollars and not to  
24 exceed one hundred dollars for each day that he was denied the right to  
25 inspect or copy said public record.

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