
HOUSE BILL 1037

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Moeller, Fitzgibbon, Appleton, Hudgins, Morrell, and Bergquist

Prefiled 01/04/13. Read first time 01/14/13. Referred to Committee on Govt Ops & Elections.

1 AN ACT Relating to establishing a cost-recovery mechanism for
2 public records sought for commercial purposes; amending RCW 42.56.120;
3 reenacting and amending RCW 42.56.080; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** Under the public records act, the people of
6 Washington state are entitled to remain informed and maintain control
7 over the records that their public agencies have created. The public
8 records act must be construed to promote this policy and assure that
9 the public interest will be fully protected.

10 Pursuant to the mandate to assure that the public interest will be
11 fully protected, the legislature finds that public agencies are
12 increasingly receiving broad requests for records from commercial
13 requestors, many of which are out-of-state requestors. These
14 commercial requestors use the public records to make profit.

15 In order to fill public record requests for commercial purposes,
16 public agencies expend significant resources to locate, assemble, copy,
17 and provide the requested public records. However, under existing law,
18 except for copying costs, public agencies may not recover costs by
19 charging a fee to locate, assemble, and produce the records, including,

1 and especially, electronic records. As a result, the taxpayers of this
2 state effectively subsidize commercial requestors through the
3 production of records without charge. Subsidizing private entities
4 does nothing to help the people maintain control of government and in
5 fact interferes with that effort by diverting resources that could
6 otherwise be expending providing access to the public.

7 Accordingly, the purpose of this act is to protect the true intent
8 of the public records act and authorize public agencies to recover
9 their costs by charging reasonable fees for the production of public
10 records that are requested for commercial purposes.

11 **Sec. 2.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285 are
12 each reenacted and amended to read as follows:

13 (1) Public records shall be available for inspection and copying,
14 and agencies shall, upon request for identifiable public records, make
15 them promptly available to any person including, if applicable, on a
16 partial or installment basis as records that are part of a larger set
17 of requested records are assembled or made ready for inspection or
18 disclosure. Agencies shall not deny a request for identifiable public
19 records solely on the basis that the request is overbroad.

20 (2) Agencies shall not distinguish among persons requesting
21 records, and such persons shall not be required to provide information
22 as to the purpose for the request except to (~~establish~~) determine
23 whether:

24 (a) Inspection and copying would violate RCW 42.56.070(9) or other
25 statute which exempts or prohibits disclosure of specific information
26 or records to certain persons;

27 (b) A request is for the purpose of sale or resale;

28 (c) A request is for the purpose of producing a document or
29 database containing all or part of the public record; or

30 (d) A request is for the purpose of obtaining names and addresses
31 from such public records for the purpose of solicitation.

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

1 **Sec. 3.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (2) of this section, no fee
4 shall be charged for the inspection of public records. No fee shall be
5 charged for locating public documents and making them available for
6 copying. A reasonable charge may be imposed for providing copies of
7 public records and for the use by any person of agency equipment or
8 equipment of the office of the secretary of the senate or the office of
9 the chief clerk of the house of representatives to copy public records,
10 which charges shall not exceed the amount necessary to reimburse the
11 agency, the office of the secretary of the senate, or the office of the
12 chief clerk of the house of representatives for its actual costs
13 directly incident to such copying. Agency charges for photocopies
14 shall be imposed in accordance with the actual per page cost or other
15 costs established and published by the agency. In no event may an
16 agency charge a per page cost greater than the actual per page cost as
17 established and published by the agency. To the extent the agency has
18 not determined the actual per page cost for photocopies of public
19 records, the agency may not charge in excess of fifteen cents per page.
20 An agency may require a deposit in an amount not to exceed ten percent
21 of the estimated cost of providing copies for a request. If an agency
22 makes a request available on a partial or installment basis, the agency
23 may charge for each part of the request as it is provided. If an
24 installment of a records request is not claimed or reviewed, the agency
25 is not obligated to fulfill the balance of the request.

26 (2) Notwithstanding subsection (1) of this section, an agency may
27 charge a fee to a requestor who requests a public record for the
28 purpose of either: (a) Sale or resale; (b) producing a document or
29 database containing all or part of the public record; or (c) obtaining
30 names and addresses from such public record for the purpose of
31 solicitation. The fee may be a flat fee, a fee per record, or other
32 type of fee, but the fee may not exceed the actual cost to locate,
33 assemble, copy, and provide the records. If an agency adopts a
34 reasonable fee as defined in RCW 70.02.010, the fee may not exceed the
35 amount listed in the definition, or as adjusted in WAC 246-08-400. In
36 order to charge a fee, the agency must first develop a fee schedule
37 with notice and public hearing, and adopt and publish the schedule by

1 applicable law. An agency shall consider other fee amounts that have
2 been adopted in statute and rule. The agency shall publish the
3 methodology by which its fees have been established.

4 (3)(a) An agency that charges fees for providing records for the
5 purpose of sale or resale, producing a document or database containing
6 all or part of the public records, or obtaining names and addresses
7 from such public records for the purpose of solicitation, as authorized
8 under subsection (2) of this section, must provide an estimate of the
9 cost to provide the requested records. An agency may require a deposit
10 in an amount not to exceed ten percent of the estimated cost of
11 providing records for the purposes identified in subsection (2) of this
12 section.

13 (b) An agency that charges fees for providing records as authorized
14 in subsection (2) of this section must establish a process that allows
15 a requestor to appeal the amount of a fee or an agency determination
16 that a requestor is seeking records for such purposes, and must provide
17 notice of the appeal process to requestors that request public records
18 under subsection (2) of this section. An agency may establish an
19 appeal process by contracting with another agency or pursuant to
20 chapter 39.34 RCW.

21 (c) An agency may not charge the fee authorized in subsection (2)
22 of this section if the requestor is:

23 (i) A member of the news media as defined in RCW 5.68.010;

24 (ii) A nonprofit organization;

25 (iii) An education institution, including a K-12 school or public
26 or private institution of higher education;

27 (iv) A person or entity that is entitled to obtain the requested
28 records pursuant to a contract with the agency; or

29 (v) A person or entity that is entitled to obtain the requested
30 records under authority of law other than through the public records
31 act.

32 (d) An agency may not charge the fee authorized in subsection (2)
33 of this section if the requested record:

34 (i) Is posted online and therefore available through an internet
35 web site; or

36 (ii) Is needed by the requestor for the purpose of permitting or

1 regulatory compliance.

--- END ---