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HOUSE BILL 1128

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Takko, Rodne, Appleton, Johnson, Klippert, Fitzgibbon, Sullivan, Green, Clibborn, Nealey, Ryu, Walsh, Jenkins, Wylie, Moscoso, Sells, Angel, Sequist, Hunt, Springer, Maxwell, Riccelli, Morrell, Hudgins, Bergquist, and Fey

Read first time 01/16/13. Referred to Committee on Local Government.

1 AN ACT Relating to public record request response actions by  
2 counties, cities, towns, special purpose districts, and other local  
3 agency entities; and adding new sections to chapter 42.56 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 42.56 RCW  
6 to read as follows:

7 (1) In addition to other provisions in this chapter for enjoining  
8 the inspection or copying of public records, the inspection or copying  
9 of any public record may be enjoined pursuant to this section. The  
10 injunction may be requested by: A local agency or its representative;  
11 a person named in the record or the person's representative; or a  
12 person to whom the request specifically pertains to or the person's  
13 representative.

14 (2) In order to issue the injunction, the court must find that:

15 (a) The request was made to harass or intimidate the local agency  
16 or its employees;

17 (b) The request was made in retaliation or to punish the local  
18 agency for an action or actions the local agency took or proposed to  
19 take;

1 (c) The public record request creates an undue burden on the local  
2 agency;

3 (d) Fulfilling the public record request would likely threaten the  
4 safety or security of staff, family members of staff, or the security  
5 of the local agency's facilities; or

6 (e) Fulfilling the public record request would likely assist  
7 criminal activity.

8 (3) In deciding whether to enjoin a public record request under  
9 this section, the court may consider all relevant factors including,  
10 but not limited to:

11 (a) Other public record requests by the requestor;

12 (b) The type of public record or records sought;

13 (c) Statements offered by the requestor concerning the purpose for  
14 the public record request;

15 (d) Whether disclosure of the requested public records would likely  
16 harm any person or vital government interest;

17 (e) Whether the public record request seeks a significant and  
18 burdensome number of documents, however an injunction may not be issued  
19 under this section based solely on the number of records requested;

20 (f) The local agency's effort to accommodate the requestor;

21 (g) The resources necessary to fulfill the request, taking into  
22 account the resources of the local agency as a whole and the local  
23 agency's other essential functions;

24 (h) The impact of disclosure on the safety or security of the local  
25 agency staff, facilities, or others; and

26 (i) The deterrence of criminal activity.

27 (4) The motion proceeding described in this section shall be a  
28 summary proceeding based on affidavits or declarations, unless the  
29 court orders otherwise. Upon a showing by a preponderance of the  
30 evidence, the court may enjoin all or any part of a request or  
31 requests. The court may also approve a plan submitted by the local  
32 agency for fulfilling all or part of the request or requests. Based on  
33 the evidence, the court may also enjoin, for a period of time the court  
34 deems reasonable, future requests by the same requestor, or an entity  
35 owned or controlled, in whole or in part, by the same requestor.

36 (5) Before filing a request for an injunction, a local agency must  
37 notify the public record requestor that it intends to seek an  
38 injunction. The requestor has fifteen days to revise its public record

1 request. If the requestor submits a revised public record request, the  
2 local agency may still seek judicial review without allowing the  
3 requestor to subsequently revise the request.

4 (6) Unless the court orders a temporary restraining order enjoining  
5 its responsibility to fulfill the request, the local agency must  
6 continue to fulfill the request in a manner consistent with this  
7 chapter until the court issues a decision on the injunction request.

8 (7) A local agency is not liable for penalties under RCW  
9 42.56.550(4) for any period during which an order under this section is  
10 in effect, including during an appeal of an order under this section,  
11 regardless of the outcome of the appeal.

12 (8) The party seeking an injunction under this section may file the  
13 injunction action in rem naming the request itself as the subject of  
14 the lawsuit, and notice must be provided to the requestor at whatever  
15 contact information was provided to the local agency at the time of the  
16 request.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.56 RCW  
18 to read as follows:

19 (1)(a) In order to prevent excessive interference with other  
20 essential functions, a local agency may adopt a policy limiting the  
21 number of hours it devotes to responding to public records requests.  
22 This policy may only be adopted if the local agency makes the following  
23 documents publicly available:

- 24 (i) Budgets for the ongoing and three previous fiscal years;
- 25 (ii) Agendas and minutes for all public meetings of the local  
26 agency's governing body for the three previous fiscal years;
- 27 (iii) The salary schedule for all current positions and the names  
28 of all employees;
- 29 (iv) Resolutions and ordinances; and
- 30 (v) Contracts exceeding thirty-five thousand dollars that are  
31 ongoing or have been terminated in the three previous fiscal years.

32 (b) The policy may include rules for establishing priorities as to  
33 the order in which requests will be fulfilled. Prioritizations may be  
34 based on the size of the request and the number of requests the  
35 requestor has made in the preceding twelve months.

36 (c) Local agencies choosing to adopt the policy authorized by this  
37 subsection (1) must do so in the form of adopted legislation.

1 (2) Tasks subject to the limit authorized by this section include  
2 the time it takes to search for responsive records and review and  
3 redact responsive records. Tasks subject to the limit authorized by  
4 this section do not include time spent in litigation or time spent by  
5 an attorney providing legal advice regarding records.

6 (3)(a) If a local agency adopts rules authorized by this section,  
7 the local agency must inform the requestor of the factors that will  
8 determine a response time estimate, including a list of all other  
9 pending requests, if the local agency anticipates that it will take  
10 more than sixty calendar days to fulfill a request.

11 (b) The local agency's time estimate is subject to court challenge  
12 pursuant to RCW 42.56.550(2).

13 (4) For any legislation or rule adopted under this section, the  
14 value of the time allotted is presumed reasonable if it equals one  
15 percent of the local agency's annual operations and maintenance budget,  
16 or a lesser amount provided that it is reasonable in light of the local  
17 agency's resources and other essential functions. The allocated amount  
18 must be based on the average salary of the person or persons primarily  
19 assigned to process requests. In no case may a local agency adopt a  
20 rule that allows it to spend fewer than five hours per month responding  
21 to requests.

22 (5) For local agencies with a general fund budget equaling or  
23 exceeding one million dollars, documents are publicly available if they  
24 are accessible through a central web site. For local agencies with  
25 budgets that are less than one million dollars, documents are publicly  
26 available if they are produced for inspection within five business days  
27 of being requested or accessible through the local agency's web site.

28 (6) A local agency is deemed to have complied with the disclosure  
29 requirement under this chapter if the requested information is  
30 available on the agency's web site and the local agency informs the  
31 requestor, who is entitled to notice, of its web site availability. If  
32 the requestor expressly requests the information in paper, the local  
33 agency must provide it in that format.

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