
State Government & Tribal Relations Committee

HB 2307

Brief Description: Limiting vexatious claims by modifying administrative and judicial review processes for public records requests and responses.

Sponsors: Representatives Schmick and Jacobsen.

Brief Summary of Bill

- Directs agencies and offices to establish an administrative review process for persons to appeal the denial or closure of a public records request.
- Requires persons to exhaust all administrative remedies before filing for judicial review of agency or office actions under the Public Records Act.
- Makes changes to the costs awarded by courts in judicial review of agency or office actions under the Public Records Act.

Hearing Date: 1/24/24

Staff: Connor Schiff (786-7093).

Background:

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information is exempt from disclosure in the PRA or as otherwise provided in law. Agencies governed by the PRA include all state offices, departments, divisions, bureaus, boards, and commissions, and every county, city, town, or special purpose district, as well as their associated offices, departments, divisions, bureaus, boards, and commissions. The stated policy of the PRA favors disclosure and

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requires narrow application of the listed exemptions.

Within five days of receiving a request, an agency, the Office of the Secretary of the Senate, and the Office of the Chief Clerk of the House of Representatives (agencies and offices) must respond to the request by:

- providing the records;
- providing an internet address and link on the agency's website to the specific records requested;
- acknowledging the request and providing a reasonable estimate of the time it will take to respond to the request;
- acknowledging the request, asking the requestor to provide clarification on the request, and providing a reasonable estimate of the time it will take to respond to the request if it is not clarified; or
- denying the request.

A denial of a request must be accompanied by a written statement of the specific reasons for the denial. Agencies and offices must establish mechanisms for review of denials. Review must be completed by the second business day following the denial of inspection. The review decision constitutes a final action for the purposes of judicial review.

When a state agency denies a request, the requester may ask the Attorney General to review the matter. The Attorney General must provide the requestor with a written opinion on whether the record is exempt.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency or office has refused access to the record. The burden of proof rests with the agency or office to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency or office decision is de novo. Any person who prevails against an agency or office in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person up to \$100 for each day the person was denied the right to inspect or copy the public record.

Summary of Bill:

Review of a denial of a public records request under the Public Records Act (PRA) must be completed by the tenth, rather than the second, business day following the denial of inspection. The review decision constitutes a final action for the purposes of judicial review unless a requester petitions for administrative review under the new processes described below.

Agencies, the Office of the Secretary of Senate, and the Office of the Chief Clerk of the House of Representatives (agencies and offices) must establish an administrative review process for a requester to appeal a denial of a records request or make a claim that the response to the request is incomplete. A petitioner has 30 days from the denial or closure of a request to petition for

review. If the agency or office's determination in the administrative review process is that records were improperly withheld, the agency or office must provide the records. The agency or office's determination in the administrative review process constitutes a final action for the purposes of judicial review.

A party must exhaust all administrative remedies prior to seeking judicial review of an agency or office's final action under the PRA.

A court is no longer required to reward all costs to a person who prevails against an agency or office in an action in the courts seeking the right to inspect or copy a public record. A court may award all reasonable costs, including reasonable attorney fees to a person who prevails against an agency or office in an action in the courts seeking the right to inspect or copy a public record. In determining an award, the court must consider whether the agency or office is in substantial compliance with the PRA and acted reasonably and in good faith. The court may consider whether the party requested records or participated in the civil action for an improper purpose in determining an award. "Improper purpose" means to harass, cause an unreasonable or frivolous increase in the cost of government operations or delay in government action, in pursuit of a monetary award, to cause a violation of the PRA, or for any other frivolous purpose.

Appropriation: None.

Fiscal Note: Requested on January 16, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.