

FINAL BILL REPORT

ESHB 2876

C 139 L 92
Synopsis As Enacted

Brief Description: Making changes in public disclosure laws.

By House Committee on State Government (originally sponsored by Representatives Anderson, McLean, R. Fisher, Pruitt, Bowman and Basich).

House Committee on State Government
Senate Committee on Governmental Operations

Background: Agency Responsibilities Under Current Law:
Current law requires agencies to respond "promptly" to a public record request but does not specify what constitutes a prompt response.

Statutes allowing agencies to exempt certain records from public inspection and copying appear in the public disclosure section of the law as well as throughout the code.

Agencies have schedules in place regarding the maintenance and eventual destruction of their records. At times a public record that is the subject of a request may be scheduled for destruction as part of this routine schedule.

Review of an Agency's Public Records Decisions: Existing law provides that a person who has been denied access to a record may have the agency's decision reviewed in Superior Court. If the person prevails against the agency, the person is awarded court costs, including attorney fees. The court also has the option of awarding the person up to \$25 per day for each day that the person was denied access to the record.

Liability for Release of Records: There is some concern among state officials and employees that they would be personally liable for accidentally releasing information that was, in fact, exempt from disclosure.

Summary: Public Records Laws To Be Liberally Construed:
Public records statutes are to be liberally construed and record exemptions are to be narrowly construed to promote the public policy of openness.

Changes in Agency Responsibilities: Agencies must respond to a public record request within five business days, in one of three ways: (1) by providing the record; (2) by acknowledging receipt of the request and providing a reasonable estimate of the time the agency will require to respond to the request; or (3) by denying the public record request. In acknowledging receipt of a record request, an agency may ask the requestor to clarify what information that person is seeking. If the requestor fails to clarify the request, the agency is not required to respond.

For informational purposes, agencies must publish and maintain a current list of laws other than those in the public records statutes which the agency believes exempts any of the agency's records from disclosure. Also, the Office of the Attorney General is to publish a pamphlet explaining the provisions of the public records subdivision of the state's disclosure laws.

If a public record request is made at a time when a record exists but is scheduled for destruction in the near future, an agency is to retain the record until the request is resolved.

Review of an Agency's Public Records Decisions: A court's review of an agency decision to deny access to a record may be based only on affidavits. The court has the discretion to make an award within a new dollar range to a person who prevails against an agency. The range is no less than \$5 per day and no greater than \$100 per day for each day that the person was denied access to the record.

In addition to judicial review, a second avenue is provided for a person whose public record request has been denied by a state agency. The person may ask the attorney general to review a state agency's determination that a record is exempt from disclosure. The attorney general is to provide the person with a written opinion on whether the record in question is exempt. Making such a request does not establish an attorney-client relationship between the person requesting the opinion and the attorney general.

A person may also take a case to Superior Court if the person believes that an agency has not made a reasonable estimate of the time the agency requires to respond to a public record request. In such a situation, the burden of proof is on the agency to show that the estimate it provided is reasonable.

Public Records Exemptions: An existing public record exemption is modified to expressly exempt information revealing the identity of persons who are witnesses to or

victims of crime. A new exemption is added which protects information about an agency employee who is seeking advice or information about employee rights in connection with sexual harassment or other unfair practices.

Joint Select Committee on Open Government: The Joint Select Committee on Open Government, created by resolution, will address several issues during the remainder of 1992: electronic data and records, treatment of information under existing disclosure laws, treatment of investigatory records, and a number of issues related to open public meetings. The committee is to report back to the Legislature by January 1993.

Immunity: A public agency, official, employee, or custodian may not be held liable for loss or damage based on the release of a public record, as long as the agency or person was acting in good faith in releasing the information.

Votes on Final Passage:

House	98	0	
Senate	49	0	(Senate amended)
House	97	0	(House concurred)

Effective: June 11, 1992