

FINAL BILL REPORT

2SHB 1758

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Synopsis as Enacted

Brief Description: Revising public disclosure law.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Kessler, Nixon, Haigh, Chandler, Clements, Schindler, Hunt, Hunter, Hinkle, Takko, B. Sullivan, Miloscia, Buck and Shabro; by request of Attorney General).

House Committee on State Government Operations & Accountability
House Committee on Appropriations
Senate Committee on Government Operations & Elections

Background:

The Public Disclosure Act (PDA) requires all state and local government agencies to make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exceptions narrowly in order to effectuate a general policy favoring disclosure.

For example, records that are relevant to a controversy to which a state or local agency is a party, but would not be available to another party under the superior court rules of pretrial discovery, are exempt from public disclosure. The Washington Supreme Court has defined "relevant to a controversy" as "completed, existing, or reasonably anticipated litigation." *Dawson v. Daly*, 120 Wn.2d 782, 791 (1993).

I. Requirements for Maintaining Records

Public records must be made available for inspection and copying during normal office hours. State and local agencies may make reasonable rules and regulations to provide full access to public records, to protect public records from damage, and to prevent excessive interference with other essential functions of the agencies.

State and local agencies are required to maintain indexes providing identifying information regarding certain records. Local agencies do not have to provide an index if doing so would be unduly burdensome. However, such local agencies must issue and publish a formal order specifying the reasons maintaining an index would be unduly burdensome and make available any indexes maintained for agency use.

II. Responding to Requests

An agency must respond to requests for public records promptly. Within five business days of a request, an agency must:

- provide the record;
- acknowledge receipt of the request and provide a reasonable estimate of the time that is required to respond to the request. The agency may take additional time to clarify the intent of the request, to locate the requested information, to notify third persons or agencies affected by the request, or to determine whether the requested information is protected by an exemption; or
- deny the request.

The Washington Supreme Court recently ruled that a public agency does not have to comply with an overbroad request. *Hangartner v. City of Seattle*, 151 Wn.2d 439, 448 (2004). According to the court, a proper request for public records "must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting *all* of an agency's documents" (emphasis original). *Id.*

III. Copying Public Records

An agency must allow the public to use its facilities for copying public records unless to do so would unreasonably disrupt the operation of the agency. An agency may not charge for locating public documents and making them available for copying. However, an agency may impose a reasonable charge for providing copies of public records and for the use of agency equipment. Charges for photocopying may not exceed the actual per page cost published by the agency. If the agency has not published a per page costs for copying, the costs may not exceed 15 cents per page.

IV. Judicial Remedies

A person who is denied a public record or who believes an agency's time estimate is unreasonable may appeal the agency decision in the superior court of the county in which the record is maintained. In such court actions, the agency has the burden to prove, by a preponderance of the evidence, that the agency action was valid. If the person prevails in the action, he or she must be awarded all costs of maintaining the action, including reasonable attorney fees.

Summary:

I. Requirements for Maintaining Records

By February 1, 2006, the Attorney General must adopt an advisory model rule for state and local agencies addressing:

- providing fullest assistance to requesters;
- fulfilling large requests in the most timely manner;
- fulfilling requests for electronic records; and
- any other issues pertaining to public disclosure as determined by the Attorney General.

II. Responding to Requests

An agency may not reject or ignore requests to inspect or copy public records solely on the grounds that the request is overly broad. The agency may make records available on a partial

or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure.

Every state and local agency must appoint and publicly identify an individual whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of the PDA. An agency's public records officer may appoint an employee or official of another agency as its public records officer. State agencies must publish contact information regarding the public records officer in the state register. Local agencies must publish the contact information in a manner reasonably calculated to give notice to the public.

III. Copying Public Records

An agency may require a deposit not to exceed 10 percent of the estimated cost of providing copies of a request and may charge a person per installment. An agency may cease fulfilling a request if an installment is not claimed or received.

IV. Judicial Remedies

An action against a county involving a person who is denied a public record or who believes an agency's time estimate is unreasonable may be brought in the superior court of the county or in either of the two judicial districts nearest to the county. Any action involving a person who is denied a public record or believes an agency's time estimate is unreasonable must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

Votes on Final Passage:

House	89	6	
Senate	42	4	(Senate amended)
House			(House refused to concur)
Senate			(Senate receded)
Senate	47	0	(Senate amended)
House	97	0	(House concurred)

Effective: July 24, 2005