
HOUSE BILL 1350

State of Washington

59th Legislature

2005 Regular Session

By Representatives Nixon, Miloscia and Anderson

Read first time 01/20/2005. Referred to Committee on State Government Operations & Accountability.

1 AN ACT Relating to public disclosure; amending RCW 42.17.260,
2 42.17.250, 42.17.330, 42.17.020, 42.17.340, 42.17.320, and 42.17.270;
3 reenacting and amending RCW 42.17.300; adding a new section to chapter
4 42.17 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to restore the law
7 relating to the release of public records largely to that which existed
8 before the Washington supreme court decision in *Hangartner v. City of*
9 *Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004). The intent of this act is
10 to make clear that: (1) Agencies possessing records must take every
11 available step to assist and facilitate the identification and
12 disclosure of requested records to the public and may not simply ignore
13 or reject requests for disclosure on the basis they are "overly broad,"
14 and (2) agencies having public records and seeking to exempt disclosure
15 on the basis of the attorney-client privilege may rely only on the
16 exemption in RCW 42.17.310(1)(j) and not the testimonial privilege in
17 RCW 5.60.060(2). Further, the legislature intends to clarify certain
18 public records provisions to assist agencies in discharging their duty

1 to maintain open governance and to assist citizens in exercising their
2 right to request and examine the recorded workings of their government.

3 **Sec. 2.** RCW 42.17.260 and 1997 c 409 s 601 are each amended to
4 read as follows:

5 (1) Each agency, in accordance with published rules, shall make
6 available for public inspection and copying all public records, unless
7 the record falls within the specific exemptions of subsection (~~(+6+)~~)
8 (7) of this section, RCW 42.17.310, 42.17.315, or other statute which
9 exempts or prohibits disclosure of specific information or records.
10 The testimonial privilege of RCW 5.60.060(2) does not apply to this
11 section, and there is no general attorney-client privilege that exempts
12 information or records from disclosure beyond what is exempt from
13 disclosure under RCW 42.17.310(1)(j). To the extent required to
14 prevent an unreasonable invasion of personal privacy interests
15 protected by RCW 42.17.310 and 42.17.315, an agency shall delete
16 identifying details in a manner consistent with RCW 42.17.310 and
17 42.17.315 when it makes available or publishes any public record;
18 however, in each case, the justification for the deletion shall be
19 explained fully in writing.

20 (2) In complying with the requirements of this section, agencies
21 may not reject or ignore requests to inspect or copy public records on
22 the grounds the request is overly broad. Rather, agencies must provide
23 full assistance to requestors in order to identify and, if reasonable,
24 narrow the scope and definition of requested records.

25 (3) For informational purposes, each agency shall publish and
26 maintain a current list containing every law, other than those listed
27 in this chapter, that the agency believes exempts or prohibits
28 disclosure of specific information or records of the agency. An
29 agency's failure to list an exemption shall not affect the efficacy of
30 any exemption.

31 (~~(+3+)~~) (4) Each local agency shall maintain and make available for
32 public inspection and copying a current index providing identifying
33 information as to the following records issued, adopted, or promulgated
34 after January 1, 1973:

35 (a) Final opinions, including concurring and dissenting opinions,
36 as well as orders, made in the adjudication of cases;

1 (b) Those statements of policy and interpretations of policy,
2 statute, and the Constitution which have been adopted by the agency;

3 (c) Administrative staff manuals and instructions to staff that
4 affect a member of the public;

5 (d) Planning policies and goals, and interim and final planning
6 decisions;

7 (e) Factual staff reports and studies, factual consultant's reports
8 and studies, scientific reports and studies, and any other factual
9 information derived from tests, studies, reports, or surveys, whether
10 conducted by public employees or others; and

11 (f) Correspondence, and materials referred to therein, by and with
12 the agency relating to any regulatory, supervisory, or enforcement
13 responsibilities of the agency, whereby the agency determines, or
14 opines upon, or is asked to determine or opine upon, the rights of the
15 state, the public, a subdivision of state government, or of any private
16 party.

17 ~~((4))~~ (5) For records written, created, adopted, or issued before
18 July 1, 2005, a local agency need not maintain such an index, if to do
19 so would be unduly burdensome, but it shall in that event:

20 (a) Issue and publish a formal order specifying the reasons why and
21 the extent to which compliance would unduly burden or interfere with
22 agency operations; and

23 (b) Make available for public inspection and copying all indexes
24 maintained for agency use.

25 ~~((5))~~ (6) Each state agency shall, by rule, establish and
26 implement a system of indexing for the identification and location of
27 the following records:

28 (a) All records issued before July 1, 1990, for which the agency
29 has maintained an index;

30 (b) Final orders entered after June 30, 1990, that are issued in
31 adjudicative proceedings as defined in RCW 34.05.010 and that contain
32 an analysis or decision of substantial importance to the agency in
33 carrying out its duties;

34 (c) Declaratory orders entered after June 30, 1990, that are issued
35 pursuant to RCW 34.05.240 and that contain an analysis or decision of
36 substantial importance to the agency in carrying out its duties;

37 (d) Interpretive statements as defined in RCW 34.05.010 that were
38 entered after June 30, 1990; and

1 (e) Policy statements as defined in RCW 34.05.010 that were entered
2 after June 30, 1990.

3 Rules establishing systems of indexing shall include, but not be
4 limited to, requirements for the form and content of the index, its
5 location and availability to the public, and the schedule for revising
6 or updating the index. State agencies that have maintained indexes for
7 records issued before July 1, 1990, shall continue to make such indexes
8 available for public inspection and copying. Information in such
9 indexes may be incorporated into indexes prepared pursuant to this
10 subsection. State agencies may satisfy the requirements of this
11 subsection by making available to the public indexes prepared by other
12 parties but actually used by the agency in its operations. State
13 agencies shall make indexes available for public inspection and
14 copying. State agencies may charge a fee to cover the actual costs of
15 providing individual mailed copies of indexes.

16 ~~((6))~~ (7) A public record may be relied on, used, or cited as
17 precedent by an agency against a party other than an agency and it may
18 be invoked by the agency for any other purpose only if~~((—))~~:

19 (a) It has been indexed in an index available to the public; or

20 (b) Parties affected have timely notice (actual or constructive) of
21 the terms thereof.

22 ~~((7))~~ (8) Each agency shall establish, maintain, and make
23 available for public inspection and copying a statement of the actual
24 per page cost or other costs, if any, that it charges for providing
25 photocopies of public records and a statement of the factors and manner
26 used to determine the actual per page cost or other costs, if any.

27 (a) In determining the actual per page cost for providing
28 photocopies of public records, an agency may include all costs directly
29 incident to copying such public records including the actual cost of
30 the paper and the per page cost for use of agency copying equipment.
31 In determining other actual costs for providing photocopies of public
32 records, an agency may include all costs directly incident to shipping
33 such public records, including the cost of postage or delivery charges
34 and the cost of any container or envelope used.

35 (b) In determining the actual per page cost or other costs for
36 providing copies of public records, an agency may not include staff
37 salaries, benefits, or other general administrative or overhead

1 charges, unless those costs are directly related to the actual cost of
2 copying the public records. Staff time to copy and mail the requested
3 public records may be included in an agency's costs.

4 ~~((+8))~~ (9) An agency need not calculate the actual per page cost
5 or other costs it charges for providing photocopies of public records
6 if to do so would be unduly burdensome, but in that event: The agency
7 may not charge in excess of fifteen cents per page for photocopies of
8 public records or for the use of agency equipment to photocopy public
9 records and the actual postage or delivery charge and the cost of any
10 container or envelope used to mail the public records to the requestor.

11 ~~((+9))~~ (10) This chapter shall not be construed as giving
12 authority to any agency, the office of the secretary of the senate, or
13 the office of the chief clerk of the house of representatives to give,
14 sell or provide access to lists of individuals requested for commercial
15 purposes, and agencies, the office of the secretary of the senate, and
16 the office of the chief clerk of the house of representatives shall not
17 do so unless specifically authorized or directed by law: PROVIDED,
18 HOWEVER, That lists of applicants for professional licenses and of
19 professional licensees shall be made available to those professional
20 associations or educational organizations recognized by their
21 professional licensing or examination board, upon payment of a
22 reasonable charge therefor: PROVIDED FURTHER, That such recognition
23 may be refused only for a good cause pursuant to a hearing under the
24 provisions of chapter 34.05 RCW, the Administrative Procedure Act.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17 RCW
26 to read as follows:

27 Each state and local agency shall separately appoint and maintain
28 an individual whose responsibility is to serve as a point of contact
29 for members of the public in requesting disclosure of public records
30 and to oversee the agency's compliance with the public records
31 disclosure requirements of this chapter.

32 **Sec. 4.** RCW 42.17.250 and 1973 c 1 s 25 are each amended to read
33 as follows:

34 (1) Each state agency shall separately state and currently publish
35 in the Washington Administrative Code and each local agency shall

1 prominently display and make available for inspection and copying at
2 the central office of such local agency, for guidance of the public:

3 (a) Descriptions of its central and field organization and the
4 established places at which, the employees from whom, and the methods
5 whereby, the public may obtain information, make submittals or
6 requests, or obtain copies of agency decisions;

7 (b) Statements of the general course and method by which its
8 operations are channeled and determined, including the nature and
9 requirements of all formal and informal procedures available;

10 (c) Rules of procedure;

11 (d) Substantive rules of general applicability adopted as
12 authorized by law, and statements of general policy or interpretations
13 of general applicability formulated and adopted by the agency; ~~((and))~~

14 (e) Each amendment or revision to, or repeal of any of the
15 ~~((foregoing))~~ documents in this subsection (1); and

16 (f) The identity of the agency's appointed individual to whom
17 members of the public may be directed to submit requests for disclosure
18 or inspection of public records and who is responsible for overseeing
19 the disclosure or inspection of such records.

20 (2) Except to the extent that he has actual and timely notice of
21 the terms thereof, a person may not in any manner be required to resort
22 to, or be adversely affected by, a matter required to be published or
23 displayed and not so published or displayed.

24 **Sec. 5.** RCW 42.17.330 and 1992 c 139 s 7 are each amended to read
25 as follows:

26 (1) The examination of any specific public record may be enjoined
27 if, upon motion and affidavit by ~~((an agency or its representative or))~~
28 a person who is named in the record or to whom the record specifically
29 pertains, the superior court for the county in which the movant resides
30 or in which the record is maintained, finds that the movant has
31 demonstrated clear, cogent, and convincing evidence that such
32 examination would clearly not be in the public interest and would
33 substantially and irreparably damage any person, or would substantially
34 and irreparably damage vital governmental functions. An agency has the
35 option of notifying persons named in the record or to whom a record
36 specifically pertains, that release of a record has been requested.

1 However, this option does not exist where the agency is required by law
2 to provide such notice.

3 (2) An agency may not bring a suit or motion against a person who
4 requests disclosure of public records in order to enjoin or prohibit
5 the disclosure of such records, nor may an agency seek a declaratory
6 judgment regarding the application of alleged exemptions to disclosure.

7 **Sec. 6.** RCW 42.17.020 and 2002 c 75 s 1 are each amended to read
8 as follows:

9 (1) "Agency" includes all state agencies and all local agencies.
10 "State agency" includes every state office, department, division,
11 bureau, board, commission, or other state agency. "Local agency"
12 includes every county, city, town, municipal corporation, quasi-
13 municipal corporation, or special purpose district, or any office,
14 department, division, bureau, board, commission, or agency thereof, or
15 other local public agency.

16 (2) "Authorized committee" means the political committee authorized
17 by a candidate, or by the public official against whom recall charges
18 have been filed, to accept contributions or make expenditures on behalf
19 of the candidate or public official.

20 (3) "Ballot proposition" means any "measure" as defined by RCW
21 (~~((29.01.110))~~) 29A.04.091, or any initiative, recall, or referendum
22 proposition proposed to be submitted to the voters of the state or any
23 municipal corporation, political subdivision, or other voting
24 constituency from and after the time when the proposition has been
25 initially filed with the appropriate election officer of that
26 constituency prior to its circulation for signatures.

27 (4) "Benefit" means a commercial, proprietary, financial, economic,
28 or monetary advantage, or the avoidance of a commercial, proprietary,
29 financial, economic, or monetary disadvantage.

30 (5) "Bona fide political party" means:

31 (a) An organization that has filed a valid certificate of
32 nomination with the secretary of state under chapter (~~((29.24))~~) 29A.20
33 RCW;

34 (b) The governing body of the state organization of a major
35 political party, as defined in RCW 29.01.090, that is the body
36 authorized by the charter or bylaws of the party to exercise authority
37 on behalf of the state party; or

1 (c) The county central committee or legislative district committee
2 of a major political party. There may be only one legislative district
3 committee for each party in each legislative district.

4 (6) "Depository" means a bank designated by a candidate or
5 political committee pursuant to RCW 42.17.050.

6 (7) "Treasurer" and "deputy treasurer" mean the individuals
7 appointed by a candidate or political committee, pursuant to RCW
8 42.17.050, to perform the duties specified in that section.

9 (8) "Candidate" means any individual who seeks nomination for
10 election or election to public office. An individual seeks nomination
11 or election when he or she first:

12 (a) Receives contributions or makes expenditures or reserves space
13 or facilities with intent to promote his or her candidacy for office;

14 (b) Announces publicly or files for office;

15 (c) Purchases commercial advertising space or broadcast time to
16 promote his or her candidacy; or

17 (d) Gives his or her consent to another person to take on behalf of
18 the individual any of the actions in (a) or (c) of this subsection.

19 (9) "Caucus political committee" means a political committee
20 organized and maintained by the members of a major political party in
21 the state senate or state house of representatives.

22 (10) "Commercial advertiser" means any person who sells the service
23 of communicating messages or producing printed material for broadcast
24 or distribution to the general public or segments of the general public
25 whether through the use of newspapers, magazines, television and radio
26 stations, billboard companies, direct mail advertising companies,
27 printing companies, or otherwise.

28 (11) "Commission" means the agency established under RCW 42.17.350.

29 (12) "Compensation" unless the context requires a narrower meaning,
30 includes payment in any form for real or personal property or services
31 of any kind: PROVIDED, That for the purpose of compliance with RCW
32 42.17.241, the term "compensation" shall not include per diem
33 allowances or other payments made by a governmental entity to reimburse
34 a public official for expenses incurred while the official is engaged
35 in the official business of the governmental entity.

36 (13) "Continuing political committee" means a political committee
37 that is an organization of continuing existence not established in
38 anticipation of any particular election campaign.

1 (14)(a) "Contribution" includes:

2 (i) A loan, gift, deposit, subscription, forgiveness of
3 indebtedness, donation, advance, pledge, payment, transfer of funds
4 between political committees, or anything of value, including personal
5 and professional services for less than full consideration;

6 (ii) An expenditure made by a person in cooperation, consultation,
7 or concert with, or at the request or suggestion of, a candidate, a
8 political committee, or their agents;

9 (iii) The financing by a person of the dissemination, distribution,
10 or republication, in whole or in part, of broadcast, written, graphic,
11 or other form of political advertising prepared by a candidate, a
12 political committee, or its authorized agent;

13 (iv) Sums paid for tickets to fund-raising events such as dinners
14 and parties, except for the actual cost of the consumables furnished at
15 the event.

16 (b) "Contribution" does not include:

17 (i) Standard interest on money deposited in a political committee's
18 account;

19 (ii) Ordinary home hospitality;

20 (iii) A contribution received by a candidate or political committee
21 that is returned to the contributor within five business days of the
22 date on which it is received by the candidate or political committee;

23 (iv) A news item, feature, commentary, or editorial in a regularly
24 scheduled news medium that is of primary interest to the general
25 public, that is in a news medium controlled by a person whose business
26 is that news medium, and that is not controlled by a candidate or a
27 political committee;

28 (v) An internal political communication primarily limited to the
29 members of or contributors to a political party organization or
30 political committee, or to the officers, management staff, or
31 stockholders of a corporation or similar enterprise, or to the members
32 of a labor organization or other membership organization;

33 (vi) The rendering of personal services of the sort commonly
34 performed by volunteer campaign workers, or incidental expenses
35 personally incurred by volunteer campaign workers not in excess of
36 fifty dollars personally paid for by the worker. "Volunteer services,"
37 for the purposes of this section, means services or labor for which the
38 individual is not compensated by any person;

1 (vii) Messages in the form of reader boards, banners, or yard or
2 window signs displayed on a person's own property or property occupied
3 by a person. However, a facility used for such political advertising
4 for which a rental charge is normally made must be reported as an in-
5 kind contribution and counts towards any applicable contribution limit
6 of the person providing the facility;

7 (viii) Legal or accounting services rendered to or on behalf of:

8 (A) A political party or caucus political committee if the person
9 paying for the services is the regular employer of the person rendering
10 such services; or

11 (B) A candidate or an authorized committee if the person paying for
12 the services is the regular employer of the individual rendering the
13 services and if the services are solely for the purpose of ensuring
14 compliance with state election or public disclosure laws.

15 (c) Contributions other than money or its equivalent are deemed to
16 have a monetary value equivalent to the fair market value of the
17 contribution. Services or property or rights furnished at less than
18 their fair market value for the purpose of assisting any candidate or
19 political committee are deemed a contribution. Such a contribution
20 must be reported as an in-kind contribution at its fair market value
21 and counts towards any applicable contribution limit of the provider.

22 (15) "Elected official" means any person elected at a general or
23 special election to any public office, and any person appointed to fill
24 a vacancy in any such office.

25 (16) "Election" includes any primary, general, or special election
26 for public office and any election in which a ballot proposition is
27 submitted to the voters: PROVIDED, That an election in which the
28 qualifications for voting include other than those requirements set
29 forth in Article VI, section 1 (Amendment 63) of the Constitution of
30 the state of Washington shall not be considered an election for
31 purposes of this chapter.

32 (17) "Election campaign" means any campaign in support of or in
33 opposition to a candidate for election to public office and any
34 campaign in support of, or in opposition to, a ballot proposition.

35 (18) "Election cycle" means the period beginning on the first day
36 of December after the date of the last previous general election for
37 the office that the candidate seeks and ending on November 30th after
38 the next election for the office. In the case of a special election to

1 fill a vacancy in an office, "election cycle" means the period
2 beginning on the day the vacancy occurs and ending on November 30th
3 after the special election.

4 (19) "Expenditure" includes a payment, contribution, subscription,
5 distribution, loan, advance, deposit, or gift of money or anything of
6 value, and includes a contract, promise, or agreement, whether or not
7 legally enforceable, to make an expenditure. The term "expenditure"
8 also includes a promise to pay, a payment, or a transfer of anything of
9 value in exchange for goods, services, property, facilities, or
10 anything of value for the purpose of assisting, benefiting, or honoring
11 any public official or candidate, or assisting in furthering or
12 opposing any election campaign. For the purposes of this chapter,
13 agreements to make expenditures, contracts, and promises to pay may be
14 reported as estimated obligations until actual payment is made. The
15 term "expenditure" shall not include the partial or complete repayment
16 by a candidate or political committee of the principal of a loan, the
17 receipt of which loan has been properly reported.

18 (20) "Final report" means the report described as a final report in
19 RCW 42.17.080(2).

20 (21) "General election" for the purposes of RCW 42.17.640 means the
21 election that results in the election of a person to a state office.
22 It does not include a primary.

23 (22) "Gift," is as defined in RCW 42.52.010.

24 (23) "Immediate family" includes the spouse, dependent children,
25 and other dependent relatives, if living in the household. For the
26 purposes of RCW 42.17.640 through 42.17.790, "immediate family" means
27 an individual's spouse, and child, stepchild, grandchild, parent,
28 stepparent, grandparent, brother, half brother, sister, or half sister
29 of the individual and the spouse of any such person and a child,
30 stepchild, grandchild, parent, stepparent, grandparent, brother, half
31 brother, sister, or half sister of the individual's spouse and the
32 spouse of any such person.

33 (24) "Independent expenditure" means an expenditure that has each
34 of the following elements:

35 (a) It is made in support of or in opposition to a candidate for
36 office by a person who is not (i) a candidate for that office, (ii) an
37 authorized committee of that candidate for that office, (iii) a person
38 who has received the candidate's encouragement or approval to make the

1 expenditure, if the expenditure pays in whole or in part for political
2 advertising supporting that candidate or promoting the defeat of any
3 other candidate or candidates for that office, or (iv) a person with
4 whom the candidate has collaborated for the purpose of making the
5 expenditure, if the expenditure pays in whole or in part for political
6 advertising supporting that candidate or promoting the defeat of any
7 other candidate or candidates for that office;

8 (b) The expenditure pays in whole or in part for political
9 advertising that either specifically names the candidate supported or
10 opposed, or clearly and beyond any doubt identifies the candidate
11 without using the candidate's name; and

12 (c) The expenditure, alone or in conjunction with another
13 expenditure or other expenditures of the same person in support of or
14 opposition to that candidate, has a value of five hundred dollars or
15 more. A series of expenditures, each of which is under five hundred
16 dollars, constitutes one independent expenditure if their cumulative
17 value is five hundred dollars or more.

18 (25)(a) "Intermediary" means an individual who transmits a
19 contribution to a candidate or committee from another person unless the
20 contribution is from the individual's employer, immediate family as
21 defined for purposes of RCW 42.17.640 through 42.17.790, or an
22 association to which the individual belongs.

23 (b) A treasurer or a candidate is not an intermediary for purposes
24 of the committee that the treasurer or candidate serves.

25 (c) A professional fund-raiser is not an intermediary if the fund-
26 raiser is compensated for fund-raising services at the usual and
27 customary rate.

28 (d) A volunteer hosting a fund-raising event at the individual's
29 home is not an intermediary for purposes of that event.

30 (26) "Legislation" means bills, resolutions, motions, amendments,
31 nominations, and other matters pending or proposed in either house of
32 the state legislature, and includes any other matter that may be the
33 subject of action by either house or any committee of the legislature
34 and all bills and resolutions that, having passed both houses, are
35 pending approval by the governor.

36 (27) "Lobby" and "lobbying" each mean attempting to influence the
37 passage or defeat of any legislation by the legislature of the state of
38 Washington, or the adoption or rejection of any rule, standard, rate,

1 or other legislative enactment of any state agency under the state
2 Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor
3 "lobbying" includes an association's or other organization's act of
4 communicating with the members of that association or organization.

5 (28) "Lobbyist" includes any person who lobbies either in his or
6 her own or another's behalf.

7 (29) "Lobbyist's employer" means the person or persons by whom a
8 lobbyist is employed and all persons by whom he or she is compensated
9 for acting as a lobbyist.

10 (30) "Person" includes an individual, partnership, joint venture,
11 public or private corporation, association, federal, state, or local
12 governmental entity or agency however constituted, candidate,
13 committee, political committee, political party, executive committee
14 thereof, or any other organization or group of persons, however
15 organized.

16 (31) "Person in interest" means the person who is the subject of a
17 record or any representative designated by that person, except that if
18 that person is under a legal disability, the term "person in interest"
19 means and includes the parent or duly appointed legal representative.

20 (32) "Political advertising" includes any advertising displays,
21 newspaper ads, billboards, signs, brochures, articles, tabloids,
22 flyers, letters, radio or television presentations, or other means of
23 mass communication, used for the purpose of appealing, directly or
24 indirectly, for votes or for financial or other support in any election
25 campaign.

26 (33) "Political committee" means any person (except a candidate or
27 an individual dealing with his or her own funds or property) having the
28 expectation of receiving contributions or making expenditures in
29 support of, or opposition to, any candidate or any ballot proposition.

30 (34) "Primary" for the purposes of RCW 42.17.640 means the
31 procedure for nominating a candidate to state office under chapter
32 (~~((29.18 or 29.21))~~) 29A.52 RCW or any other primary for an election that
33 uses, in large measure, the procedures established in chapter (~~((29.18~~
34 ~~or 29.21))~~) 29A.52 RCW.

35 (35) "Public office" means any federal, state, county, city, town,
36 school district, port district, special district, or other state
37 political subdivision elective office.

1 (36) "Public record" includes any writing containing information
2 relating to the conduct of government or the performance of any
3 governmental or proprietary function prepared, owned, used, or retained
4 by any state or local agency regardless of physical form or
5 characteristics. For the office of the secretary of the senate and the
6 office of the chief clerk of the house of representatives, public
7 records means legislative records as defined in RCW 40.14.100 and also
8 means the following: All budget and financial records; personnel
9 leave, travel, and payroll records; records of legislative sessions;
10 reports submitted to the legislature; and any other record designated
11 a public record by any official action of the senate or the house of
12 representatives.

13 (37) "Recall campaign" means the period of time beginning on the
14 date of the filing of recall charges under RCW ((~~29.82.015~~)) 29A.56.120
15 and ending thirty days after the recall election.

16 (38) "State legislative office" means the office of a member of the
17 state house of representatives or the office of a member of the state
18 senate.

19 (39) "State office" means state legislative office or the office of
20 governor, lieutenant governor, secretary of state, attorney general,
21 commissioner of public lands, insurance commissioner, superintendent of
22 public instruction, state auditor, or state treasurer.

23 (40) "State official" means a person who holds a state office.

24 (41) "Surplus funds" mean, in the case of a political committee or
25 candidate, the balance of contributions that remain in the possession
26 or control of that committee or candidate subsequent to the election
27 for which the contributions were received, and that are in excess of
28 the amount necessary to pay remaining debts incurred by the committee
29 or candidate prior to that election. In the case of a continuing
30 political committee, "surplus funds" mean those contributions remaining
31 in the possession or control of the committee that are in excess of the
32 amount necessary to pay all remaining debts when it makes its final
33 report under RCW 42.17.065.

34 (42) "Writing" means handwriting, typewriting, printing,
35 photostating, photographing, and every other means of recording any
36 form of communication or representation, including, but not limited to,
37 letters, words, pictures, sounds, or symbols, or combination thereof,
38 and all papers, maps, magnetic or paper tapes, photographic films and

1 prints, motion picture, film and video recordings, magnetic or punched
2 cards, discs, drums, diskettes, sound recordings, and other documents
3 including existing data compilations from which information may be
4 obtained or translated. Writings that are compiled or stored in
5 electronic formats must be legible or usable to the public regardless
6 of whether rendering such writings legible or usable requires the
7 requestor's use of licensed or proprietary software or other means of
8 data storage, compilation, management, or output.

9 As used in this chapter, the singular shall take the plural and any
10 gender, the other, as the context requires.

11 **Sec. 7.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
12 each reenacted and amended to read as follows:

13 No fee shall be charged for the inspection of public records. No
14 fee shall be charged for locating public documents and making them
15 available for copying. A reasonable charge may be imposed for
16 providing copies of public records and for the use by any person of
17 agency equipment or equipment of the office of the secretary of the
18 senate or the office of the chief clerk of the house of representatives
19 to copy public records, which charges shall not exceed the amount
20 necessary to reimburse the agency, the office of the secretary of the
21 senate, or the office of the chief clerk of the house of
22 representatives for its actual costs directly incident to such copying.
23 Agency charges for photocopies shall be imposed in accordance with the
24 actual per page cost or other costs established and published by the
25 agency. In no event may an agency charge a per page cost greater than
26 the actual per page cost as established and published by the agency.
27 To the extent the agency has not determined the actual per page cost
28 for photocopies of public records, the agency may not charge in excess
29 of fifteen cents per page. Agency documentation of its actual costs
30 for copies, including photocopies, shall be subject to audit for
31 accuracy by the office of the state auditor.

32 **Sec. 8.** RCW 42.17.340 and 1992 c 139 s 8 are each amended to read
33 as follows:

34 (1) Upon the motion of any person having been denied an opportunity
35 to inspect or copy a public record by an agency, the superior court in
36 the county in which the person resides or in which a record is

1 maintained may require the responsible agency to show cause why it has
2 refused to allow inspection or copying of a specific public record or
3 class of records. When the agency that has refused to allow inspection
4 or copying of a specific public record is a county, the person may
5 bring such a motion in the superior court of the county where the
6 person resides or where the record is maintained, or in the superior
7 court of either of the two nearest judicial districts as provided in
8 RCW 36.01.050. The burden of proof shall be on the agency to establish
9 by clear, cogent, and convincing evidence that refusal to permit public
10 inspection and copying is in accordance with a statute that exempts or
11 prohibits disclosure in whole or in part of specific information or
12 records.

13 (2) Upon the motion of any person who believes that an agency has
14 not made a reasonable estimate of the time that the agency requires to
15 respond to a public record request, the superior court in the county in
16 which the person resides or in which a record is maintained may require
17 the responsible agency to show that the estimate it provided is
18 reasonable. When the agency that has estimated the time required to
19 respond to a public records request is a county, the person may bring
20 such a motion in the superior court of the county where the person
21 resides or where the record is maintained, or in the superior court of
22 either of the two nearest judicial districts as provided in RCW
23 36.01.050. The burden of proof shall be on the agency to show that the
24 estimate it provided is reasonable.

25 (3) Upon the motion of any person who is aggrieved by an agency's
26 failure to comply with any substantive obligation imposed upon it by
27 RCW 42.17.250 through 42.17.320, the superior court of the county in
28 which the person resides or in which the agency is located, may require
29 the agency to comply with the obligations of these sections. When the
30 agency alleged to have violated its obligations under RCW 42.17.250
31 through 42.17.320 is a county, the moving party may seek relief in the
32 superior court of that county, of the county in which the person
33 resides, or of either of the two nearest judicial districts as provided
34 in RCW 36.01.050. The burden of proof is on the agency to show by
35 clear, cogent, and convincing evidence that it has complied with the
36 requirements or obligations it is alleged to have violated.

37 (4) Judicial review of all agency actions taken or challenged under
38 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take

1 into account the policy of this chapter that free and open examination
2 of public records is in the public interest, even though such
3 examination may cause inconvenience or embarrassment to public
4 officials or others. Courts may examine any record in camera in any
5 proceeding brought under this section. The court may conduct a hearing
6 based solely on affidavits.

7 ~~((4))~~ (5) Any person who prevails against an agency in any action
8 in the courts seeking the right to inspect or copy any public record
9 ~~((e))~~, the right to receive a response to a public record request
10 within a reasonable amount of time, or the right to enforce any of the
11 requirements of RCW 42.17.250 through 42.17.320 shall be awarded all
12 costs, including reasonable attorney fees, incurred in connection with
13 such legal action. In addition, it shall be within the discretion of
14 the court to award such person an amount not less than five dollars and
15 not to exceed one hundred dollars for each day that he was denied the
16 right to inspect or copy said public record.

17 **Sec. 9.** RCW 42.17.320 and 1995 c 397 s 15 are each amended to read
18 as follows:

19 Responses to requests for public records shall be made promptly by
20 agencies, the office of the secretary of the senate, and the office of
21 the chief clerk of the house of representatives. Within five business
22 days of receiving a public record request, an agency, the office of the
23 secretary of the senate, or the office of the chief clerk of the house
24 of representatives must respond by either (1) providing the record; (2)
25 acknowledging that the agency, the office of the secretary of the
26 senate, or the office of the chief clerk of the house of
27 representatives has received the request and providing a reasonable
28 estimate of the time the agency, the office of the secretary of the
29 senate, or the office of the chief clerk of the house of
30 representatives will require to respond to the request; or (3) denying
31 the public record request. Additional time required to respond to a
32 request may be based upon the need to clarify the intent of the
33 request, to locate and assemble the information requested, to notify
34 third persons or agencies affected by the request, or to determine
35 whether any of the information requested is exempt and that a denial
36 should be made as to all or part of the request, but in no event may an
37 agency fail to provide requested records subject to disclosure within

1 thirty days of receiving a public records request. In acknowledging
2 receipt of a public record request that is unclear, an agency, the
3 office of the secretary of the senate, or the office of the chief clerk
4 of the house of representatives may ask the requestor to clarify what
5 information the requestor is seeking. If the requestor fails to
6 clarify the request, the agency, the office of the secretary of the
7 senate, or the office of the chief clerk of the house of
8 representatives need not respond to it. Denials of requests must be
9 accompanied by a written statement of the specific reasons therefor.
10 Agencies, the office of the secretary of the senate, and the office of
11 the chief clerk of the house of representatives shall establish
12 mechanisms for the most prompt possible review of decisions denying
13 inspection, and such review shall be deemed completed at the end of the
14 second business day following the denial of inspection and shall
15 constitute final agency action or final action by the office of the
16 secretary of the senate or the office of the chief clerk of the house
17 of representatives for the purposes of judicial review.

18 **Sec. 10.** RCW 42.17.270 and 1987 c 403 s 4 are each amended to read
19 as follows:

20 Public records shall be available for inspection and copying, and
21 agencies shall, upon request for identifiable public records, make them
22 promptly available to any person including, if applicable, on a rolling
23 basis as records that are part of a larger set of requested records
24 become available and ready for inspection. Agencies shall not
25 distinguish among persons requesting records, and such persons shall
26 not be required to provide information as to the purpose for the
27 request except to establish whether inspection and copying would
28 violate RCW 42.17.260(~~(+5)~~) (9) or other statute which exempts or
29 prohibits disclosure of specific information or records to certain
30 persons. Agency facilities shall be made available to any person for
31 the copying of public records except when and to the extent that this
32 would unreasonably disrupt the operations of the agency. Agencies
33 shall honor requests received by mail for identifiable public records
34 unless exempted by provisions of this chapter.

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