
**State Government & Tribal
Affairs Committee**

HB 2839

Brief Description: Removing the ability of agencies to enjoin the examination of a specific public record.

Sponsors: Representatives Williams, Rodne, Hunt, Wood and Sells.

Brief Summary of Bill

- Prohibits agencies and their representatives from seeking a judicial determination in superior court as to whether an exemption to the Public Records Act applies to a records request.

Hearing Date: 1/29/08

Staff: Tracey Taylor (786-7196).

Background:

The Public Records Act (PRA) requires that all state and local government agencies 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 exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency 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 no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

An agency or its representative or a person who is named in the record or to whom the record specifically pertains may file a motion or affidavit asking Superior Court to enjoin disclosure of the public record. The court may issue an injunction if it finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions.

The ability for an agency to seek a determination from Superior Court as to whether an exemption applies to a public records request was the subject of a recent Washington Supreme Court case, *Soter v. Cowles Publishing Co.* (No. 78574-1). The Court held that agencies, as well as those persons named in the record, may seek such judicial determination as to whether the exemption applies and obtain an injunction if applicable.

Summary of Bill:

Agencies and their representatives are prohibited from seeking a determination in Superior Court as to whether an exemption to the PRA applies to a specific records request.

Appropriation: None.

Fiscal Note: Not requested.

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