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HOUSE BILL 3219

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State of Washington

60th Legislature

2008 Regular Session

By Representatives Chandler, Hunt, Rodne, Miloscia, Kessler, McIntire, and Kretz; by request of Attorney General

Read first time 01/24/08. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to public records; and reenacting and amending RCW  
2 42.56.550.

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

4 **Sec. 1.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are  
5 each reenacted and amended to read as follows:

6 (1) Upon the motion of any person having been denied an opportunity  
7 to inspect or copy a public record by an agency, the superior court in  
8 the county in which a record is maintained may require the responsible  
9 agency to show cause why it has refused to allow inspection or copying  
10 of a specific public record or class of records. The burden of proof  
11 shall be on the agency to establish that refusal to permit public  
12 inspection and copying is in accordance with a statute that exempts or  
13 prohibits disclosure in whole or in part of specific information or  
14 records.

15 (2) Upon the motion of any person who believes that an agency has  
16 not made a reasonable estimate of the time that the agency requires to  
17 respond to a public record request, the superior court in the county in  
18 which a record is maintained may require the responsible agency to show

1 that the estimate it provided is reasonable. The burden of proof shall  
2 be on the agency to show that the estimate it provided is reasonable.

3 (3) Judicial review of all agency actions taken or challenged under  
4 RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take  
5 into account the policy of this chapter that free and open examination  
6 of public records is in the public interest, even though such  
7 examination may cause inconvenience or embarrassment to public  
8 officials or others. Courts may examine any record in camera in any  
9 proceeding brought under this section. The court may conduct a hearing  
10 based solely on affidavits.

11 (4)(a) Except as provided in (b) of this subsection, any person who  
12 prevails against an agency in any action in the courts seeking the  
13 right to inspect or copy any public record or the right to receive a  
14 response to a public record request within a reasonable amount of time  
15 shall be awarded all costs, including reasonable attorney fees,  
16 incurred in connection with such legal action. In addition, it shall  
17 be within the discretion of the court to award such person an amount  
18 not less than five dollars and not to exceed one hundred dollars for  
19 each day that he or she was denied the right to inspect or copy said  
20 public record.

21 (b) A person requesting public records while incarcerated, detained  
22 in, or committed to any state, local, or federal correctional facility,  
23 secure facility as defined in RCW 71.09.020, or any private facility  
24 contracting with any governmental entity shall not be entitled to any  
25 penalty award for each day he or she was denied requested public  
26 records. Rather, penalties shall be awarded to the crime victims'  
27 compensation program, as outlined in chapter 7.68 RCW, in an amount not  
28 less than five dollars and not to exceed one hundred dollars for each  
29 day that an incarcerated, detained, or committed requester was  
30 wrongfully denied requested public records. An incarcerated, detained,  
31 or committed requester prevailing against an agency in any action under  
32 this chapter shall be awarded all costs, including reasonable attorney  
33 fees, incurred with such action. This provision applies retroactively  
34 to all cases where a penalty award is not a final judgment.

35 (5) For actions under this section against counties, the venue  
36 provisions of RCW 36.01.050 apply.

37 (6) Actions under this section must be filed within one year of the

1 agency's claim of exemption or the last production of a record on a  
2 partial or installment basis.

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