
State Government & Tribal Affairs
Committee

HB 1181

Brief Description: Regarding prisoner access to public records.

Sponsors: Representatives Ross, Lias, Johnson, Ericks, VanDeWege, Hurst, O'Brien, Hunt, Parker, Kessler, Simpson, Hinkle and Kelley; by request of Attorney General.

Brief Summary of Bill

- Limits access the access of incarcerated persons to public records under certain circumstances.

Hearing Date: 1/20/09

Staff: Tracey O'Brien (786-7196)

Background:

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 and 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.

In 2008, the Washington Supreme Court issued a ruling in *Livingston v. Ceden*, 164 Wn.2d 46 (2008). In *Livingston*, a prison inmate requested the training records of a corrections officer from the Department of Corrections (DOC) under the PRA. After giving the correction officer the opportunity to file a privacy injunction under the PRA (which the corrections officer chose not to do), the DOC public disclosure officer copied and mailed the requested records to the prison inmate. When the records arrived at the prison, the mail was screened and withheld pursuant to RCW 72.09.530, which allows the DOC to inspect and read all mail to prevent offenders from receiving material that threatens the security and order of the facility. The inmate received a mail rejection slip explaining that the superintendent did not allow DOC employee records to be released to inmates; however, the inmate could forward the mail to a nonincarcerated person.

The inmate sued, arguing that the DOC's use of its mail policy to restrict access to public records violates the PRA's requirement that it not distinguish among persons requesting records. The Washington Supreme Court held that the DOC did not deny a PRA request based on the requestor's status as an inmate and the decision to deny the inmate's possession of the materials was not based on his status. The denial was an exercise of the DOC's discretionary authority to apply a mail policy designed to protect the institution, the inmates, department personnel and the visitors to the institution. As both the PRA (Chapter 42.56 RCW) and the mail policy (RCW 72.09.530) both serve different legislative purposes, there is no conflict.

Summary of Bill:

The inspection or copying of any nonexempt public record by persons serving criminal sentences in any state, local or privately operated correctional facilities may be enjoined upon the motion by an agency or its representative or by a person named in the record or to whom it specifically pertains. The motion must be filed with the superior court for the county where the movant resides or the record is maintained.

If the superior court finds that the request was made to harass or intimidate the agency, its employees or any person or that the disclosure would likely undermine a legitimate penological interest, the injunction may be granted. Legitimate penological interests include the secure and orderly operation of the correctional facility, the safety and security of the staff, inmates or others, or the deterrence of criminal activity.

In deciding whether to grant an injunction, the court may consider all relevant factors. These factors include, but are not limited to: other requests by the requestors; the type of record or records sought; statements offered by the requestor concerning the request's purpose; whether the disclosure of the requested records would likely harm any person or vital government interest; whether the request seeks a significant and burdensome number of documents; and the impact of disclosure on the correctional facility security and order, the safety or security of the facility staff, inmates or others, and the deterrence of criminal activity.

The motion proceeding shall be a summary proceeding based upon affidavits or declarations, unless the court order otherwise.

The court may enjoin all or any part of the request or requests. The court may also enjoin future requests by the same requestor, or by another person or entity on behalf of the requestors for such period of time as the court deems reasonable.

An agency will not be liable for penalties for any period during which an order under this act is in effect, including an appeal of an order, regardless of the appeal's outcome.

Appropriation: None.

Fiscal Note: Requested on January 16, 2009.

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