
**State Government & Tribal Affairs
Committee**

HB 1316

Brief Description: Providing a court procedure to enjoin the production of public records the court deems were made for the purpose of harassment.

Sponsors: Representatives Kessler, Rodne, Simpson, O'Brien, Hunt, Hurst, Ormsby, Morrell, Chase and Roberts.

Brief Summary of Bill

- Authorizes a court injunction for the production of public records if the court finds the request or requests were made for the purpose of harassment.

Hearing Date: 1/30/09

Staff: Tracey O'Brien (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.

Summary of Bill:

The examination and disclosure of any public record may be enjoined upon the motion by an agency or its representative or by a person named in the record or to whom the request specifically pertains. The court must find that the request, or series of requests, was made for the purpose of harassing the agency, its employees, the person named in the record or to whom the request specifically pertains. Harassment means requesting public documents with the intent to cause an interruption or impairment of government service or with the intent of annoying, tormenting, or terrorizing any current or former government employee.

In deciding whether to grant an injunction, the court may consider all relevant factors. These factors include, but are not limited to: any prior requests by the same requestor; the types of record being sought by the requestor; any statements by the requestor concerning the purpose of the request or series of requests; whether the request or series of request would substantially damage any person or would substantially damage vital governmental functions; and whether the request or series of requests seeks the production of a significant and burdensome number of documents, except that the repetitious nature of a request, without more, is not a sufficient basis for an injunction.

The motion must be filed with the superior court for the county the record is maintained or in Thurston County Superior Court. The motion proceeding may be a summary proceeding based upon affidavits or declarations, unless the court orders otherwise.

The court may enjoin all or any part of the request or requests. The court may retain jurisdiction for future requests by the same requestor for such period of time as the court deems reasonable.

The time period between a request to enjoin access to a public record for harassment and the court's ruling on that request is exempt from penalties, attorneys' fees or the calculation of a daily fine.

Appropriation: None.

Fiscal Note: Available.

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