

SENATE BILL REPORT

SB 6367

As Reported by Senate Committee On:
Government Operations & Elections, January 28, 2010

Title: An act relating to responses to public records requests.

Brief Description: Allowing agencies to direct requesters to their web site for public records.

Sponsors: Senators Hatfield, Regala, Fairley, Fraser, Kohl-Welles and Roach.

Brief History:

Committee Activity: Government Operations & Elections: 1/19/10, 1/28/10 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6367 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; McDermott, Pridemore and Swecker.

Staff: Alison Mendiola (786-7483)

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 (1) provide the records, (2) provide a reasonable estimate of the time the agency will take to respond to this request, or (3) 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. 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.

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.

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 must be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 and no more than \$100 for each day that person 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.

Summary of Bill (Recommended Substitute): In addition to providing a record in response to a public records request, the agency may provide an Internet address and link on the agency's website to the specific records requested.

If the requester informs the agency that he or she cannot access records through the Internet, the agency must provide hard copies or allow the requester to view copies on the agency computer.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Clarifies that in addition to providing a record in response to a public records request, the agency may provide an Internet address and link on the agency's website to the specific records requested.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill will increase access to public records, and viewing the records online will be quicker and cheaper for everyone. The intent is for the agency's response to include a site specific address, not just the agency's website. The goal of agencies is to be transparent not translucent.

OTHER: The website information needs to be site specific - as drafted the language is fairly broad. It would be helpful if the online content would be indexed and organized, as some agencies have a lot of content and it could be hard to find the information.

Persons Testifying: PRO: Dan Steele, Washington State School Directors Association; Brian Enslow, Washington State Association of Counties; Ramsey Ramerman, City of Everett.

OTHER: Roland Thompson, Allied Daily Newspapers; Arthur West, citizen.