

SENATE BILL REPORT

SB 6428

As Reported by Senate Committee On:
Government Operations & Elections, February 2, 2010

Title: An act relating to personal information used to identify a person filing a complaint with an agency.

Brief Description: Exempting from disclosure personal information used to identify a person filing a complaint with an agency.

Sponsors: Senators Kline, Swecker and Fairley.

Brief History:

Committee Activity: Government Operations & Elections: 1/19/10, 2/02/10 [DPS, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6428 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott, Pridemore and Swecker.

Minority Report: That it be referred without recommendation.

Signed by Senators Roach, Ranking Minority Member; Benton.

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.

Certain investigative, law enforcement, and crime victim information is exempt from public inspection and copying, such as information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, and penology agencies.

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 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. 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 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.

Summary of Bill (Recommended Substitute): An investigative agency includes any department in an agency whose official duties include investigating complaints and taking steps to remedy the issue raised if the investigation shows a remedy is warranted.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Investigative agency is clarified.

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: While there is a value to openness, there are times when a complaint to an agency needs to be done anonymously especially if the complaint wouldn't otherwise be made. Also personal information to be withheld doesn't protect the record so information would still be disclosed and you could obtain personal information through discovery in litigation.

CON: It has already been established in case law that if you make a complaint to an agency and the agency takes enforcement actions, then under the public records act, you could request to have your information exempt from public disclosure.

OTHER: When citizens come before the government and make complaints it should be known. When the Declaration of Independence was signed, the signatures were not hidden.

Persons Testifying: PRO: Senator Kline, prime sponsor; Ramsey Ramerman, City of Everett.

CON: Roland Thompson, Allied Daily Newspapers.

OTHER: Arthur West, citizen.