

SENATE BILL REPORT

SB 6146

As of February 3, 2012

Title: An act relating to clarifying restrictions on the use of the public records act for the purpose of obtaining records for commercial or profit-making purposes.

Brief Description: Clarifying restrictions on the use of the public records act for the purpose of obtaining records for commercial or profit-making purposes.

Sponsors: Senators Prentice, Swecker, Tom and Hobbs.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/31/12.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Staff: Sharon Swanson (786-7447)

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.

Lists of information about individuals required for commercial purposes may not be disclosed under the act. However, for a reasonable charge, such information consisting of either lists of applicants for professional licenses or lists of professional licenses may be disclosed to those professional associations or educational organizations recognized by their professional licensing or examination board.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): For commercial requests, an agency may also charge reasonable costs incurred in searching for records, reviewing those records to determine whether the records are responsive and whether any exemption applies, and to make redactions, if necessary.

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.

Search and review costs must be based on the average hourly salary of staff responsible for searching for and reviewing of records, but must not include any costs incurred by or for legal counsel. An agency must list the hourly costs in its public records act policy and provide an estimate of the cost to the commercial requester before incurring the search costs.

Commercial request means any public records request pertaining to records or information requested for the purpose of resale or for financial gain.

The following are not considered commercial requests:

- requests by the media;
- requests by nonprofit academic institutions;
- requests made to investigation alleged government misuse of tax dollars; or
- requests made by a person or a person's representative seeking to defend against potential fines, claims, or charges made by the responding agency.

Appropriation: None.

Fiscal Note: Not requested.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The proponents of this bill believe in transparency and open government. What we want to get to is the people who use the PRA for profit. A request for 19 years of building records uses staff time and is financed by the tax payers. Many of these requests come from out-of-state businesses. This bill is an attempt to get at actual areas of public interest rather than voluminous requests from businesses. The state payers are subsidizing out-of-state businesses who seek these records for profit. Public agencies need protection from these types of data miners who seek massive amounts of information. Once a public agency asks if the records are sought for commercial gain and are told no, the agency has no recourse but to comply with the requests. The goal is not to cut off legitimate requests but to try to create some cost shifting mechanisms. The bill isn't perfected yet, we continue to work it.

CON: This bill changes the act to mean that any money making proposition has a commercial purpose. This is a radical change to the purpose of the PRA. People want commercial records for commercial purposes. How will you decide on who gets the records and why they want the records? If you get a request over the internet, how will you know where the requestor is? A good faith attempt is a defense under the act. Trying to change the act so radically when really the problem that you are trying to fix is so small does not make sense. This version of the bill is better than the original but were are still not there. Perhaps a third party can keep the records and, like Westlaw, can disperse for a fee. What about law enforcement who rely on public records to solve crimes and find people? How would they be treated under this definition of commercial? Who gets to decide what is or is not a commercial use?

Persons Testifying: PRO: Doug Levy, Cities of Everett, Redmond; Kevin Yamamoto, City of Puyallup.

CON: Tom McBride, Reed Elsevier; Bill Will, WA Newspaper Publishers; Larry Shannon, WA State Assn. for Justice; Cliff Webster, Consumer Data Industry Assn.; Rowland Thompson, Allied Daily Newspapers.