

SENATE BILL REPORT

SB 6351

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 2, 2012

Title: An act relating to the inspection and copying of any public record.

Brief Description: Regarding inspection and copying of any public record.

Sponsors: Senators Prentice, Swecker and Haugen.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/31/12, 2/02/12 [DPS, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6351 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Vice Chair; Swecker, Ranking Minority Member; Chase and Nelson.

Minority Report: Do not pass.

Signed by Senators Pridemore, Chair; Benton.

Staff: Sharon Swanson (786-7447)

Background: The Public Records Act 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.

Current law provides that a court must not award penalties to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date a request for a public record was made, unless the court finds that the agency acted in bad faith in denying the request. Additionally, the inspection or copying of any nonexempt public record by persons serving a criminal sentence in state, local, or privately operated

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.

correctional facility may be enjoined. A court may issue an injunction if the court makes a finding from an enumerated list.

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

Summary of Bill (Recommended Substitute): The inspection or copying of any public record may be enjoined. Before filing a request for an injunction, an agency must notify the public record requestor that it intends to seek an injunction. The requestor is allowed 15 days to revise its public record request. If the requestor submits a revised public record request, the agency may still seek judicial review without allowing the requestor to further revise the request. The agency continues to fulfill the request in a manner consistent with the public records act until the court issues a decision on the injunction request, unless the court orders otherwise.

An agency may adopt a policy limiting the number of hours than an agency must devote to responding to public records requests to prevent excessive interference with its other essential functions if it makes the following documents publicly available:

- agency budgets for the current and past three fiscal years;
- agendas and minutes for all public meetings for the past three fiscal years;
- salary schedule for all current positions and the names of all employees;
- resolutions and ordinances; and
- contracts that exceed \$35,000 that are currently in place or that terminated in the past three fiscal years.

The policy may include rules on setting priorities on what requests will be fulfilled in what order based on the size of the request and the number of other requests from that requester made in the preceding 12 months.

Any time an agency anticipates that it will take more than 60 calendar days to fulfill a request, the agency must inform the requester of the factors that go into this time estimate, including a list of all other pending requests. The agency's time estimate is subject to a court challenge.

In no case may an agency adopt a rule that allows it to spend fewer than five hours per month responding to requests.

For agencies with a General Fund budget that exceeds \$1 million, documents are publicly available if they are accessible through a central website. For agencies with a General Fund budget of less than \$1 million, documents are publicly available if they are produced for inspection within five business days of being requested.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute as Passed the Committee): Removes provision that stated that if an agency can demonstrate that it faces a significant burden in fulfilling a public record request a court can issue an injunction against the request.

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 as Heard in Committee: PRO: Cities believe strongly in transparency and we want to provide information to our citizens. There are case though were citizens harass their local government by asking for extremely broad requests for information and seek volume after volume of materials that occupy our staff and frustrate our efforts to serve in other capacities. Over six months we have received a request for 22 thousand emails from our agency. We have received emails in yellow in 9 font and we can't do anything about it. Our agency does not have the budget to go line by line through 22 thousand emails to redact protected information. We have bad actors who will not narrow their requests and will not work with us to determine what information the person is after. These requests are clearly designed to harass our staff and keep us from serving the public. We have no option to say no or to say enough. Currently, legitimate requests are being delayed because of requests designed only to harass and debilitate local governments.

CON: This bill is bad public policy. Can an official now decide that because they don't like the records requested that they are being harassed and can seek an injunction to stop the request. The public needs to be able to get records to keep tabs on public officials and public agencies. This bill is too broad and over reaching. This bill could deprive people with proper requests of access to information they need to hold public officials accountable. The trick for the Legislature is finding a balance between an open government and provisions to prevent harassment. It's reasonable for the government to prioritize requests but it is too much for an agency to take a person to court to seek an injunction. The protections exist for agencies in the law, the agencies are not utilizing those protections. Before we add requirements and penalties for the public seeking records, shouldn't you ensure that the tools currently available are being utilized? Currently, an agency doesn't have to fill a request if a person doesn't respond; currently requests can be combined in batches. This bill penalizes people for simply asking their government for records. This bill says an agency can take a citizen to court simply for asking for documents that the citizen has a legal right to have.

Persons Testifying: CON: Cliff Webster, Consumer Data Industry Association; Rowland Thompson, Allied Newspapers; Joan Mell, Self; Shankar Narayan, ACLU; Cynthia B. Jones, Washington Association of Criminal Defense Lawyers; John Woodring, Rental Housing Association Manufacturing.

PRO: Matt Watkins, City of Pasco; Allyson Brooks, Department of Archeology and Historic Preservation; Joe Beavers, City of Gold Bar; David S. McEncham, Whatcom County Prosecuting Attorney; Kevin Bouchey, Commissioner Yakima County; Doug Richardson, City of Lakewood;