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HOUSE BILL 2340

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State of Washington                      62nd Legislature                      2012 Regular Session

By Representatives Moeller, Appleton, Armstrong, Ryu, Zeiger, Springer, Tharinger, Dammeier, Darneille, and Hunt

Read first time 01/11/12. Referred to Committee on State Government & Tribal Affairs.

1            AN ACT Relating to clarifying restrictions on the use of the public  
2 records act for the purpose of obtaining records for commercial or  
3 profit-making purposes; amending RCW 42.56.030 and 42.56.070; and  
4 creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.**    The legislature finds that the public  
7 records act is intended to allow the citizens of Washington full access  
8 to the records of the governmental agencies that serve them. The  
9 fundamental purpose of such access is to ensure that the activities and  
10 processes of state government are conducted in an open and transparent  
11 manner and that citizens can obtain the information necessary for  
12 meaningful participation in the democratic process. However, the  
13 legislature has also recognized that in order to safeguard against  
14 records requests that are unduly burdensome, or where the records are  
15 sought for commercial or other purposes unrelated to the goals of the  
16 act, reasonable restrictions may be placed on the number and types of  
17 records that may be obtained.

18            The legislature also finds that there are an increasing number of  
19 records requests whose sole purpose is to seek information for

1 commercial or other profit-making purposes and that do not serve to  
2 promote the goals of transparency and openness in the operation of our  
3 state and local governments. Specifically, the legislature finds that  
4 some commercial entities and individuals have been misusing the act by  
5 making extensive and burdensome records requests in order to obtain  
6 data that is used solely for competitive advantage or for later resale.  
7 Such "data mining" is wholly unrelated to the purposes of the public  
8 records act and, in fact, serves to undermine the act by overburdening  
9 affected public agencies and thus impede the ability of such agencies  
10 to respond to legitimate requests for public records.

11 The intent of this act is to strengthen and clarify existing  
12 restrictions on the use of public records requests for commercial and  
13 profit-making purposes, so as to reduce the misuse of the public  
14 records act and ensure that the act can continue to be focused on the  
15 goal of promoting governmental transparency and openness.

16 **Sec. 2.** RCW 42.56.030 and 2007 c 197 s 2 are each amended to read  
17 as follows:

18 The people of this state do not yield their sovereignty to the  
19 agencies that serve them. The people, in delegating authority, do not  
20 give their public servants the right to decide what is good for the  
21 people to know and what is not good for them to know. The people  
22 insist on remaining informed so that they may maintain control over the  
23 instruments that they have created. This chapter shall be liberally  
24 construed and its exemptions narrowly construed to promote this public  
25 policy and to assure that the public interest will be fully protected.  
26 In the event of conflict between the provisions of this chapter and any  
27 other act, the provisions of this chapter shall govern.

28 The provisions of this chapter are not intended to facilitate the  
29 gathering of information for purely commercial or profit-making  
30 purposes unrelated to the promotion of transparency and openness in the  
31 operation of state and local governments.

32 **Sec. 3.** RCW 42.56.070 and 2005 c 274 s 284 are each amended to  
33 read as follows:

34 (1) Each agency, in accordance with published rules, shall make  
35 available for public inspection and copying all public records, unless  
36 the record falls within the specific exemptions of subsection ((+6+))

1 (9) of this section, this chapter, or other statute which exempts or  
2 prohibits disclosure of specific information or records. To the extent  
3 required to prevent an unreasonable invasion of personal privacy  
4 interests protected by this chapter, an agency shall delete identifying  
5 details in a manner consistent with this chapter when it makes  
6 available or publishes any public record; however, in each case, the  
7 justification for the deletion shall be explained fully in writing.

8 (2) For informational purposes, each agency shall publish and  
9 maintain a current list containing every law, other than those listed  
10 in this chapter, that the agency believes exempts or prohibits  
11 disclosure of specific information or records of the agency. An  
12 agency's failure to list an exemption shall not affect the efficacy of  
13 any exemption.

14 (3) Each local agency shall maintain and make available for public  
15 inspection and copying a current index providing identifying  
16 information as to the following records issued, adopted, or promulgated  
17 after January 1, 1973:

18 (a) Final opinions, including concurring and dissenting opinions,  
19 as well as orders, made in the adjudication of cases;

20 (b) Those statements of policy and interpretations of policy,  
21 statute, and the Constitution which have been adopted by the agency;

22 (c) Administrative staff manuals and instructions to staff that  
23 affect a member of the public;

24 (d) Planning policies and goals, and interim and final planning  
25 decisions;

26 (e) Factual staff reports and studies, factual consultant's reports  
27 and studies, scientific reports and studies, and any other factual  
28 information derived from tests, studies, reports, or surveys, whether  
29 conducted by public employees or others; and

30 (f) Correspondence, and materials referred to therein, by and with  
31 the agency relating to any regulatory, supervisory, or enforcement  
32 responsibilities of the agency, whereby the agency determines, or  
33 opines upon, or is asked to determine or opine upon, the rights of the  
34 state, the public, a subdivision of state government, or of any private  
35 party.

36 (4) A local agency need not maintain such an index, if to do so  
37 would be unduly burdensome, but it shall in that event:

1 (a) Issue and publish a formal order specifying the reasons why and  
2 the extent to which compliance would unduly burden or interfere with  
3 agency operations; and

4 (b) Make available for public inspection and copying all indexes  
5 maintained for agency use.

6 (5) Each state agency shall, by rule, establish and implement a  
7 system of indexing for the identification and location of the following  
8 records:

9 (a) All records issued before July 1, 1990, for which the agency  
10 has maintained an index;

11 (b) Final orders entered after June 30, 1990, that are issued in  
12 adjudicative proceedings as defined in RCW 34.05.010 and that contain  
13 an analysis or decision of substantial importance to the agency in  
14 carrying out its duties;

15 (c) Declaratory orders entered after June 30, 1990, that are issued  
16 pursuant to RCW 34.05.240 and that contain an analysis or decision of  
17 substantial importance to the agency in carrying out its duties;

18 (d) Interpretive statements as defined in RCW 34.05.010 that were  
19 entered after June 30, 1990; and

20 (e) Policy statements as defined in RCW 34.05.010 that were entered  
21 after June 30, 1990.

22 Rules establishing systems of indexing shall include, but not be  
23 limited to, requirements for the form and content of the index, its  
24 location and availability to the public, and the schedule for revising  
25 or updating the index. State agencies that have maintained indexes for  
26 records issued before July 1, 1990, shall continue to make such indexes  
27 available for public inspection and copying. Information in such  
28 indexes may be incorporated into indexes prepared pursuant to this  
29 subsection. State agencies may satisfy the requirements of this  
30 subsection by making available to the public indexes prepared by other  
31 parties but actually used by the agency in its operations. State  
32 agencies shall make indexes available for public inspection and  
33 copying. State agencies may charge a fee to cover the actual costs of  
34 providing individual mailed copies of indexes.

35 (6) A public record may be relied on, used, or cited as precedent  
36 by an agency against a party other than an agency and it may be invoked  
37 by the agency for any other purpose only if:

38 (a) It has been indexed in an index available to the public; or

1 (b) Parties affected have timely notice (actual or constructive) of  
2 the terms thereof.

3 (7) Each agency shall establish, maintain, and make available for  
4 public inspection and copying a statement of the actual per page cost  
5 or other costs, if any, that it charges for providing photocopies of  
6 public records and a statement of the factors and manner used to  
7 determine the actual per page cost or other costs, if any.

8 (a) In determining the actual per page cost for providing  
9 photocopies of public records, an agency may include all costs directly  
10 incident to copying such public records including the actual cost of  
11 the paper and the per page cost for use of agency copying equipment.  
12 In determining other actual costs for providing photocopies of public  
13 records, an agency may include all costs directly incident to shipping  
14 such public records, including the cost of postage or delivery charges  
15 and the cost of any container or envelope used.

16 (b) In determining the actual per page cost or other costs for  
17 providing copies of public records, an agency may not include staff  
18 salaries, benefits, or other general administrative or overhead  
19 charges, unless those costs are directly related to the actual cost of  
20 copying the public records. Staff time to copy and mail the requested  
21 public records may be included in an agency's costs.

22 (8) An agency need not calculate the actual per page cost or other  
23 costs it charges for providing photocopies of public records if to do  
24 so would be unduly burdensome, but in that event: The agency may not  
25 charge in excess of fifteen cents per page for photocopies of public  
26 records or for the use of agency equipment to photocopy public records  
27 and the actual postage or delivery charge and the cost of any container  
28 or envelope used to mail the public records to the requestor.

29 (9) This chapter shall not be construed as giving authority to any  
30 agency, the office of the secretary of the senate, or the office of the  
31 chief clerk of the house of representatives to give, sell or provide  
32 access to (~~lists of~~) information about individuals or entities  
33 requested for commercial purposes, and agencies, the office of the  
34 secretary of the senate, and the office of the chief clerk of the house  
35 of representatives shall not do so unless specifically authorized or  
36 directed by law: PROVIDED, HOWEVER, That lists of applicants for  
37 professional licenses and of professional licensees shall be made  
38 available to those professional associations or educational

1 organizations recognized by their professional licensing or examination  
2 board, upon payment of a reasonable charge therefor: PROVIDED FURTHER,  
3 That such recognition may be refused only for a good cause pursuant to  
4 a hearing under the provisions of chapter 34.05 RCW, the administrative  
5 procedure act.

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