
Government Operations & Elections Committee

HB 1019

Brief Description: Regarding identification of requestors of public records.

Sponsors: Representatives Haler, Tharinger and Reykdal.

Brief Summary of Bill

- Requires agencies to make public records available promptly to any identified person.
- Authorizes agencies to require requestors to identify themselves.

Hearing Date: 1/23/13

Staff: Jasmine Vasavada (786-7301).

Background:

Public Records Act

The Public Records Act (PRA) requires that all state and local government agencies make available for public inspection and copying all public records, unless the requested records fall within certain statutory exemptions. In order to effectuate a general policy favoring disclosure, the disclosure requirements in the PRA must be interpreted liberally and the exemptions narrowly.

Agencies may not deny a request solely on the basis that the request is overbroad. If a large request for records is made, agencies may supply the records on a partial or installment basis. If an agency makes a request available on a partial or installment basis, it may charge for each part of the request as it is provided.

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.

An agency is generally prohibited from distinguishing among persons requesting records, and may not require requestors to provide information about the purpose of the request except to establish whether disclosure of all or part of the record is prohibited by statute or otherwise exempt from disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Failure to timely respond or denial of the request where no exemption is applicable may subject the agency to penalties. 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.

Superior Court proceedings

A person who has been denied the opportunity to inspect or copy a public record may file a motion to show cause in Superior Court. In the court proceeding, the burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Any person who prevails against an agency in court shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record.

Exemption for certain requests made by incarcerated individuals

A statutory exemption exists when an agency denies a request to a person who, on the date the public record request was made, was serving a criminal sentence in a state, local, or privately-operated correctional facility. The court is prohibited from awarding a penalty under the Public Records Act if the request for public records was made by an inmate in a correctional facility, unless the court finds that the public agency acted in bad faith.

If the request for public records was made by an inmate in a correctional facility, the court can also issue an injunction preventing the copying or inspection of the record. The injunction may be requested by an agency, a person named in the public record, or a person to whom the request otherwise specifically pertains. The court must find one of four things before issuing such an injunction:

- The request was intended to harass or intimidate the agency or its employees;
- Fulfilling the request would likely threaten the security of correctional facilities;
- Fulfilling the request would likely threaten the safety or security of staff, inmates, or any other person; or
- Fulfilling the request may assist criminal activity.

No current provision specifically authorizes an agency to demand information about whether a requestor is incarcerated, in order to assist the agency's determination of whether the exemption for requests by inmates in a correctional facility, described above, is applicable.

Summary of Bill:

The prohibition against an agency distinguishing among persons requesting records, except to establish whether there is an applicable prohibition against or exemption from disclosure, is modified. An agency is only required to make records available for inspection and copying to an

identified person. The agency may require persons making public record requests to identify themselves. The agency may also require that an agent or representative of a person disclose the identity of the person on whose behalf the request is made.

The stated intent of these requirements is to make it easier for agencies to notify potentially affected individuals of pending disclosure of records, where such notification is otherwise authorized or required by statute. The statute is also intended to assist agencies in preventing disclosure of records to incarcerated individuals, where such individuals have the intent to threaten the safety and security of others.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.