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**SUBSTITUTE HOUSE BILL 1128**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Local Government (originally sponsored by Representatives Takko, Rodne, Appleton, Johnson, Klippert, Fitzgibbon, Sullivan, Green, Clibborn, Nealey, Ryu, Walsh, Jinkins, Wylie, Moscoso, Sells, Angel, Seaquist, Hunt, Springer, Maxwell, Riccelli, Morrell, Hudgins, Bergquist, and Fey)

READ FIRST TIME 02/12/13.

1       AN ACT Relating to public record request response actions by  
2 counties, cities, towns, special purpose districts, and other local  
3 agency entities; and adding new sections to chapter 42.56 RCW.

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

5       NEW SECTION. **Sec. 1.** A new section is added to chapter 42.56 RCW  
6 to read as follows:

7       (1) In addition to other provisions in this chapter for enjoining  
8 the inspection or copying of public records, the inspection or copying  
9 of any public record may be enjoined pursuant to this section. The  
10 injunction may be requested by: A local agency or its representative;  
11 or a person named in the record or the person's representative.  
12 Requests made by news media for the inspection or copying of any public  
13 record may not be enjoined under this section.

14       (2) In order to issue the injunction, the court must find that:

15       (a) The request was made to harass or intimidate the local agency  
16 or its employees;

17       (b) Upon a showing by clear and convincing evidence, the public  
18 record request will materially interfere with the work of the local  
19 agency;

1 (c) Fulfilling the public record request would likely threaten the  
2 safety or security of any person named in the record, any person to  
3 whom the request specifically pertains, employees, family members of  
4 employees, or the security of the local agency's facilities; or

5 (d) Fulfilling the public record request would likely assist  
6 criminal activity.

7 (3) In deciding whether to enjoin a public record request under  
8 this section, the court may consider all relevant factors including,  
9 but not limited to:

10 (a) Other public record requests by the requestor;

11 (b) The type of public record or records sought;

12 (c) Statements offered by the requestor concerning the purpose for  
13 the public record request;

14 (d) Whether disclosure of the requested public records would likely  
15 harm any person or vital government interest;

16 (e) Whether the public record request seeks a significant and  
17 burdensome number of documents, however an injunction may not be issued  
18 under this section based solely on the number of records requested;

19 (f) The local agency's effort to accommodate the requestor;

20 (g) The resources necessary to fulfill the request, taking into  
21 account the resources of the local agency as a whole and the local  
22 agency's other essential functions;

23 (h) The impact of disclosure on the safety or security of the local  
24 agency staff, facilities, or others; and

25 (i) The deterrence of criminal activity.

26 (4) The motion proceeding described in this section shall be a  
27 summary proceeding based on affidavits or declarations, unless the  
28 court orders otherwise. Requestors must be given an opportunity to  
29 respond to the motion and notice of the date and time of any motion  
30 hearing. Upon a showing by a preponderance of the evidence, the court  
31 may enjoin all or any part of a request or requests. However,  
32 injunctive relief authorized by this section is an extraordinary  
33 remedy, not to be granted lightly. The court may also approve a plan  
34 submitted by the local agency for fulfilling all or part of the request  
35 or requests. Based on the evidence, the court may also enjoin, for a  
36 period of time the court deems reasonable, future requests by the same  
37 requestor, or an entity owned or controlled, in whole or in part, by  
38 the same requestor.

1 (5) Before filing a request for an injunction, a local agency must  
2 notify the public record requestor that it intends to seek an  
3 injunction. The requestor has fifteen days to revise its public record  
4 request. If the requestor submits a revised public record request, the  
5 local agency may still seek judicial review without allowing the  
6 requestor to subsequently revise the request.

7 (6) Unless the court orders a temporary restraining order enjoining  
8 its responsibility to fulfill the request, the local agency must  
9 continue to fulfill the request in a manner consistent with this  
10 chapter until the court issues a decision on the injunction request.

11 (7) A local agency is not liable for penalties under RCW  
12 42.56.550(4) for any period during which an order under this section is  
13 in effect, including during an appeal of an order under this section,  
14 regardless of the outcome of the appeal.

15 (8) The party seeking an injunction under this section may file the  
16 injunction action in rem naming the request itself as the subject of  
17 the lawsuit, and notice must be provided to the requestor at whatever  
18 contact information was provided to the local agency at the time of the  
19 request.

20 (9) If the court finds that the local agency filed the request for  
21 an injunction in bad faith or that the request for an injunction is  
22 frivolous, the court may award reasonable attorneys' fees, not to  
23 exceed fifteen thousand dollars, to the public record requestor.

24 (10) As used in this section, the term "news media" means:

25 (a) Any newspaper, magazine or other periodical, book publisher,  
26 news agency, wire service, radio or television station or network,  
27 cable or satellite station or network, or audio or audiovisual  
28 production company, or any entity that is in the regular business of  
29 news gathering and disseminating news or information to the public by  
30 any means, including, but not limited to, print, broadcast,  
31 photographic, mechanical, internet, or electronic distribution;

32 (b) Any person who is or has been an employee, agent, or  
33 independent contractor of any entity listed in (a) of this subsection,  
34 who is or has been engaged in bona fide news gathering for such entity,  
35 and who obtained or prepared the news or information that is sought  
36 while serving in that capacity; or

37 (c) Any parent, subsidiary, or affiliate of the entities listed in  
38 (a) or (b) of this subsection.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 42.56 RCW  
2 to read as follows:

3        (1)(a) In order to prevent excessive interference with other  
4 essential functions, a local agency may adopt a policy limiting the  
5 number of hours it devotes to responding to public records requests.  
6 This policy may only be adopted if the local agency makes the following  
7 documents publicly available:

8            (i) Budgets for the ongoing and three previous fiscal years;

9            (ii) Agendas and minutes for all public meetings of the local  
10 agency's governing body for the three previous fiscal years;

11            (iii) Resolutions and ordinances; and

12            (iv) Contracts exceeding thirty-five thousand dollars that are  
13 ongoing or have been terminated in the three previous fiscal years.

14        (b) The policy may include rules for establishing priorities as to  
15 the order in which requests will be fulfilled. Prioritizations may be  
16 based on the size of the request and the number of requests the  
17 requestor has made in the preceding twelve months.

18        (c) Local agencies choosing to adopt the policy authorized by this  
19 subsection (1) must do so in the form of adopted legislation.

20        (2) Tasks subject to the limit authorized by this section include  
21 the time it takes to search for responsive records and review and  
22 redact responsive records. Tasks subject to the limit authorized by  
23 this section do not include time spent in litigation or time spent by  
24 an attorney providing legal advice regarding records.

25        (3)(a) If a local agency adopts rules authorized by this section,  
26 the local agency must inform the requestor of the factors that will  
27 determine a response time estimate, including a list of all other  
28 pending requests, that may be provided on the local agency web site, if  
29 the local agency anticipates that it will take more than sixty calendar  
30 days to fulfill a request.

31        (b) The local agency's time estimate is subject to court challenge  
32 pursuant to RCW 42.56.550(2).

33        (4) For any legislation or rule adopted under this section, the  
34 value of the time allotted is presumed reasonable if it equals one  
35 percent of the local agency's annual operations and maintenance budget,  
36 or a lesser amount provided that it is reasonable in light of the local  
37 agency's resources and other essential functions. The allocated amount  
38 must be based on the average salary of the person or persons primarily

1 assigned to process requests. In no case may a local agency adopt a  
2 rule that allows it to spend fewer than twelve hours per month  
3 responding to requests, except if the local agency has no full-time  
4 staff, the local agency may adopt a rule allowing it to spend no fewer  
5 than five hours per month responding to requests.

6 (5) For local agencies with a general fund budget equaling or  
7 exceeding one million dollars, documents are publicly available if they  
8 are accessible through a central web site. For local agencies with  
9 budgets that are less than one million dollars, documents are publicly  
10 available if they are produced for inspection within five business days  
11 of being requested or accessible through the local agency's web site.

12 (6) A local agency is deemed to have complied with the disclosure  
13 requirement under this chapter if the requested information is  
14 available on the agency's web site and the local agency informs the  
15 requestor, who is entitled to notice, of its web site availability. If  
16 the requestor expressly requests the information in paper, the local  
17 agency must provide it in that format.

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