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**SUBSTITUTE HOUSE BILL 1684**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House State Government (originally sponsored by Representatives Takko, Nealey, Springer, S. Hunt, Gregerson, Walsh, Manweller, Fagan, Moeller, Wylie, Tharinger, and Jinkins)

AN ACT Relating to charges for the cost of providing public records in response to public records requests; amending RCW 42.56.070 and 42.56.120; and creating a new section.

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

NEW SECTION. **Sec.**  As a result of the growing use of electronic documents, many people who make requests for public records ask agencies to provide electronic copies of documents in lieu of paper copies. In recognition of the trend towards electronic document retention, and in recognition that there are costs associated with producing electronic copies of records in response to public records requests, the legislature finds that it is appropriate for agencies to charge a reasonable fee for copying and transmitting electronic public records.

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

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection ((~~(6)~~)) (9) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion ((~~shall~~)) must be explained fully in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In determining the actual per page or electronic transmission cost for providing ((~~photocopies~~)) copies of public records, an agency may include all costs directly incident to copying, scanning, or otherwise electronically reproducing such public records, including the actual cost of the paper or electronic data storage device and the per page or electronic transmission cost for use of agency ((~~copying~~)) equipment. In determining other actual costs for providing ((~~photocopies~~)) copies of public records, an agency may include all costs directly incident to shipping or sending such public records, including the cost of postage ((~~or~~)), delivery ((~~charges~~)), or transmission and the cost of any container ((~~or~~)), envelope, or storage device used.

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

(8) An agency need not calculate the actual per page or electronic transmission cost or other costs it charges for providing ((~~photocopies~~)) copies of public records if to do so would be unduly burdensome, but in that event:

(a) The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records ((~~and the actual postage or delivery charge and the cost of any container or envelope used to mail~~));

(b) The agency may not charge in excess of two cents per page to scan paper records or for the use of agency equipment to make scanned electronic copies;

(c) The agency may not charge for the first ten megabytes of electronic data copied or transmitted in response to a request, but may charge, for each megabyte of data copied or transmitted in excess of the first ten, fifteen cents per megabyte except as provided in (d) and (e) of this subsection;

(d) If an agency is responding to a request by providing records in installments, it may not charge more than fifty dollars for the first installment regardless of the size of the electronic transmission and may not charge more than one hundred dollars per installment for subsequent installments via electronic transmission regardless of the size of the electronic transmission;

(e) The agency may not charge for the first five minutes of video data transmitted electronically in response to a request, but may charge, for each minute of video data copied or transmitted in excess of the first five minutes, ten cents per minute; and

(f) The agency may not charge in excess of the actual postage or delivery charge or the cost of any container, envelope, or storage device used to mail or send the public records to the requestor.

(9) This chapter ((~~shall~~)) may not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell, or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives ((~~shall~~)) may not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees ((~~shall~~)) must be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act.

**Sec.**  RCW 42.56.120 and 2005 c 483 s 2 are each amended to read as follows:

(1) No fee ((~~shall~~)) may be charged for the inspection of public records.

(2) No fee ((~~shall~~)) may be charged for locating public documents and making them available for copying.

(3)(a) A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges ((~~shall~~)) may not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying.

(b) Agency charges for ((~~photocopies shall~~)) copies must be imposed in accordance with the actual per page or electronic transmission cost or other costs established and published by the agency in accordance with RCW 42.56.070 (7) and (8). In no event may an agency charge a per page or electronic transmission cost greater than the actual per page or electronic transmission cost as established and published by the agency.

(c) To the extent the agency has not determined the actual per page or electronic transmission cost for ((~~photocopies~~)) copies of public records, the agency may not charge in excess of ((~~fifteen cents per page~~)) the amounts established in RCW 42.56.070(8).

(4)(a) An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request.

(b) If an agency determines, based on a reasonable estimate, that more than ten percent of the agency's records are responsive to a public records request, the agency may, before proceeding to process the request, require a deposit in an amount not to exceed the estimated cost of providing ten percent of all agency records.

(c) If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed ((~~or~~)), reviewed, or paid as charged, the agency is not obligated to fulfill the balance of the request.

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