
SUBSTITUTE HOUSE BILL 1086

State of Washington 64th Legislature 2015 Regular Session

By House State Government (originally sponsored by Representatives Moeller, Gregerson, Springer, S. Hunt, and Fey)

READ FIRST TIME 02/19/15.

1 AN ACT Relating to establishing a cost recovery mechanism for
2 public records sought for commercial purposes; amending RCW 42.56.120
3 and 42.56.550; reenacting and amending RCW 42.56.080; creating a new
4 section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that public agencies
7 must remain capable of adequately informing the public of their
8 activities through timely disclosure of public records. However,
9 public agencies are increasingly burdened by broad record requests
10 from commercial entities, including data miners, whose purpose is to
11 sell or resell the public records for a private profit. Public
12 agencies expend taxpayer dollars to locate, assemble, redact, review,
13 and provide the requested public records. Under existing law, except
14 for copying and mailing costs, public agencies may not recover the
15 true costs of providing this service. As a result, the taxpayers of
16 this state effectively subsidize commercial requestors. Accordingly,
17 it is the intent of the legislature to protect the public interest
18 and prevent diversion of scarce agency resources by authorizing
19 public agencies to recover their costs through charging a reasonable
20 fee when records are requested for the purpose of sale or resale. It
21 is the intent of the legislature to authorize agencies to establish

1 such fees, without in any manner limiting public inspection of
2 records or delaying public access to records.

3 **Sec. 2.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285
4 are each reenacted and amended to read as follows:

5 (1) Public records shall be available for inspection and copying,
6 and agencies shall, upon request for identifiable public records,
7 make them promptly available to any person ((including, if
8 applicable,)). Public records may be made available on a partial or
9 installment basis as records that are part of a larger set of
10 requested records are assembled or made ready for inspection or
11 disclosure.

12 (2) Agencies shall not deny a request for identifiable public
13 records solely on the basis that the request is overbroad.

14 (3) Agencies shall not distinguish among persons requesting
15 records, and such persons shall not be required to provide
16 information as to the purpose for the request, except to establish
17 whether:

18 (a) Inspection and copying would violate RCW 42.56.070(9) or
19 other statute which exempts or prohibits disclosure of specific
20 information or records to certain persons; or

21 (b) The request is subject to the fee authorized under RCW
22 42.56.120(3).

23 (4) Agency facilities shall be made available to any person for
24 the copying of public records except when and to the extent that this
25 would unreasonably disrupt the operations of the agency. Agencies
26 shall honor requests received by mail for identifiable public records
27 unless exempted by provisions of this chapter.

28 **Sec. 3.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to
29 read as follows:

30 (1) Except as provided in this section, no fee shall be charged
31 for ((the inspection of)) inspecting, locating, copying, disclosing
32 the existence of, or producing public records. ((No fee shall be
33 charged for locating public documents and making them available for
34 copying)) The public's right to disclosure and provision of records
35 may not be delayed by the provisions of this section that authorize
36 an agency to determine, based on evidence, that a request is
37 primarily for a commercial purpose, as defined in this section.

1 (2) A reasonable charge may be imposed for providing copies of
2 public records and for the use by any person of agency equipment or
3 equipment of the office of the secretary of the senate or the office
4 of the chief clerk of the house of representatives to copy public
5 records, which charges shall not exceed the amount necessary to
6 reimburse the agency, the office of the secretary of the senate, or
7 the office of the chief clerk of the house of representatives for its
8 actual costs directly incident to such copying. Agency charges for
9 photocopies shall be imposed in accordance with the actual per page
10 cost or other costs established and published by the agency. In no
11 event may an agency charge a per page cost greater than the actual
12 per page cost as established and published by the agency. To the
13 extent the agency has not determined the actual per page cost for
14 photocopies of public records, the agency may not charge in excess of
15 fifteen cents per page. An agency may require a deposit in an amount
16 not to exceed ten percent of the estimated cost of providing copies
17 for a request. If an agency makes a request available on a partial or
18 installment basis, the agency may charge for each part of the request
19 as it is provided. If an installment of a records request is not
20 claimed or reviewed, the agency is not obligated to fulfill the
21 balance of the request.

22 (3) When a request for records is made primarily for a commercial
23 purpose, unless an exemption as provided in subsection (9) of this
24 section is applicable, an agency may charge a fee to recover its
25 actual costs in responding to the request. The fee may be a flat fee,
26 a fee per record, or other type of fee, but the fee shall not exceed
27 a reasonable estimate of the actual cost to provide the records. The
28 actual cost may include, but is not limited to, the cost of locating,
29 assembling, reviewing, redacting, copying, and providing the record
30 to the requestor.

31 (4) Where, as authorized in RCW 42.56.080(3)(b), an agency has
32 required a person to provide information about whether the purpose of
33 a request is primarily a commercial purpose and the person has denied
34 such a purpose, no cost recovery fee may ordinarily be assessed under
35 subsection (3) of this section. However, if the agency has reason to
36 believe that the purpose of the request has been misrepresented and
37 the request is made primarily for a commercial purpose, the agency
38 may require the requestor to sign a statement under penalty of
39 perjury, attesting that the purpose of the record request is not
40 primarily a commercial purpose.

1 (5) Before charging the fee authorized in subsection (3) of this
2 section, an agency must develop and adopt, with notice and public
3 hearing, a fee schedule. The agency shall publish the fee schedule
4 along with the methodology by which the fees were established.

5 (6) The agency must also establish an appeals process by which a
6 requestor may appeal the amount, or application, of a fee authorized
7 in subsection (3) of this section, in writing to the director or
8 chief executive officer of the agency. The requestor may bring such
9 an appeal within thirty days of the agency's assessment of the
10 fee. Use of the agency appeals process provided under this section is
11 at the option of the requestor, who is not required to follow this
12 process as a condition of obtaining judicial review as provided in
13 RCW 42.56.550.

14 (7) When an agency charges a cost recovery fee pursuant to
15 subsection (3) of this section, it must provide to the requestor a
16 written basis for its determination that the request is primarily for
17 a commercial purpose and no exemption from subsection (9) of this
18 section applies.

19 (8) An agency may require a requestor to post a deposit in an
20 amount not to exceed ten percent of the estimated actual cost of
21 providing the records in response to a commercial purpose request. If
22 an agency makes the request available on a partial or installment
23 basis, the agency may require a deposit in an amount not to exceed
24 ten percent of the estimated actual cost of providing the
25 installment.

26 (9) The fee authorized in subsection (3) of this section may not
27 be assessed if one or more of the following circumstances exists:

28 (a) The principal purpose of the request is not deemed a
29 commercial purpose because:

30 (i) The principal purpose of the request is to access and
31 disseminate information concerning news and current or passing
32 events, for articles of opinion or features of interest to the
33 public, for the purpose of academic, scientific, or public research
34 or education, or for the purpose of commenting to, or petitioning,
35 the government;

36 (ii) The principal purpose of the request is public dissemination
37 or disclosure of information in order to contribute to public
38 understanding of the operations or activities of the government; or

39 (iii) The requestor is a representative of a religious,
40 charitable, educational, or other nonprofit organization or

1 association and the request is made in furtherance of the
2 organization's or association's nonprofit purpose and not for a
3 different purpose;

4 (b) Even if the purpose of the request would otherwise be
5 considered a commercial purpose, the fee is not applicable because:

6 (i) The requestor is entitled to obtain the requested records
7 pursuant to a contract, memorandum of understanding, or other binding
8 agreement with the agency or under authority of law other than this
9 chapter;

10 (ii) The requestor can demonstrate that the requested records
11 will be used to comply with governmental permitting requirements or
12 other regulations;

13 (iii) The requestor is a title insurer licensed by the insurance
14 commissioner, an agent of such a title insurer, or an entity that
15 collects and provides data to such a title insurer or agent, as
16 reasonably required to insure titles, to act as an escrow closing
17 agent or, as allowed by the office of the insurance commissioner by
18 rule, to provide related customer services; or

19 (iv) The requestor is a person licensed under chapter 18.85 RCW,
20 a prospective developer of real property, or a person seeking
21 information about real property or buildings owned by that person, or
22 the request is for the purpose of evaluating the viability of
23 developing a specific parcel of real property for a particular use,
24 and not for a different purpose.

25 (10) A person or other legal entity that avoids paying the fee
26 authorized in subsection (3) of this section, by intentionally
27 misrepresenting the purpose for which the request is made or the
28 requestor's eligibility for an exemption under subsection (9) of this
29 section, or by intentionally inducing another person to knowingly or
30 unknowingly make such a misrepresentation, is liable for a civil
31 penalty at least equivalent to what the agency would have charged for
32 the records. The civil penalty under this section is in addition to
33 any other civil or criminal penalties and remedies available under
34 any other law of this state.

35 (11) Nothing in this section or RCW 42.56.070 may be construed to
36 create an obligation or authorization for an agency to create or
37 provide access to lists of individuals requested for commercial
38 purposes.

39 (12) Nothing in this section prohibits an agency from charging a
40 copying fee as authorized under subsection (2) of this section where

1 the cost recovery fee authorized under subsection (3) of this section
2 does not apply.

3 (13) For purposes of this section, "commercial purpose" means any
4 record, or information derived from a record:

5 (a) Requested for purposes of data mining for any profit realized
6 by any party; or

7 (b) Sold, exchanged, or transferred:

8 (i) By the requestor, or the requestor's designee, agency, proxy,
9 or by any other person or entity;

10 (ii) Within six months after the record was received by the
11 requestor; and

12 (iii) For any present or future profit realized by any party to
13 the sale, exchange, or transfer.

14 **Sec. 4.** RCW 42.56.550 and 2011 c 273 s 1 are each amended to
15 read as follows:

16 (1) Upon the motion of any person having been denied an
17 opportunity to inspect or copy a public record by an agency, the
18 superior court in the county in which a record is maintained may
19 require the responsible agency to show cause why it has refused to
20 allow inspection or copying of a specific public record or class of
21 records. The burden of proof shall be on the agency to establish that
22 refusal to permit public inspection and copying is in accordance with
23 a statute that exempts or prohibits disclosure in whole or in part of
24 specific information or records.

25 (2) Upon the motion of any person who believes that an agency has
26 not made a reasonable estimate of the time that the agency requires
27 to respond to a public record request, the superior court in the
28 county in which a record is maintained may require the responsible
29 agency to show that the estimate it provided is reasonable. The
30 burden of proof shall be on the agency to show that the estimate it
31 provided is reasonable.

32 (3) Upon the motion of any person who believes that an agency has
33 required payment of a cost recovery fee in an amount not authorized
34 by RCW 42.56.120(3) or has applied a fee for a request that is exempt
35 under RCW 42.56.120(9), the superior court in the county in which a
36 record is maintained may require the responsible agency to show by a
37 preponderance of the evidence that the request was primarily for a
38 commercial purpose and that no exemption was applicable.

1 (4) Judicial review of all agency actions taken or challenged
2 under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall
3 take into account the policy of this chapter that free and open
4 examination of public records is in the public interest, even though
5 such examination may cause inconvenience or embarrassment to public
6 officials or others. Courts may examine any record in camera in any
7 proceeding brought under this section. The court may conduct a
8 hearing based solely on affidavits.

9 ~~((+4))~~ (5) Any person who prevails against an agency in any
10 action in the courts seeking the right to inspect or copy any public
11 record or the right to receive a response to a public record request
12 within a reasonable amount of time shall be awarded all costs,
13 including reasonable attorney fees, incurred in connection with such
14 legal action. In addition, it shall be within the discretion of the
15 court to award such person an amount not to exceed one hundred
16 dollars for each day that he or she was denied the right to inspect
17 or copy said public record.

18 ~~((+5))~~ (6) For actions under this section against counties, the
19 venue provisions of RCW 36.01.050 apply.

20 ~~((+6))~~ (7) Actions under this section must be filed within one
21 year of the agency's claim of exemption or the last production of a
22 record on a partial or installment basis.

--- END ---