
HOUSE BILL 1086

State of Washington

64th Legislature

2015 Regular Session

By Representatives Moeller, Gregerson, Springer, S. Hunt, and Fey

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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 primary purpose of the request is the sale or resale of
22 all or part of the record, including the sale or resale of a document
23 or database containing all or part of the record.

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

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

31 (1) No fee shall be charged for the inspection of public
32 records((. No fee shall be charged for locating public documents and
33 making them available for copying)), nor shall the public's right to
34 disclosure and provision of records be delayed by the provisions of
35 this section that authorize an agency to determine, based on
36 evidence, that a request is primarily for sale or resale. Except as
37 provided in subsection (2) of this section, no fee shall be charged
38 for locating, disclosing the existence of, or producing copies of

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

22 (2) When a request for records is made for the primary purpose of
23 sale or resale of all or part of the record, unless an exemption as
24 provided in subsection (8) of this section is applicable, an agency
25 may charge a fee to recover its actual costs in responding to the
26 request. The fee may be a flat fee, a fee per record, or other type
27 of fee, but the fee shall not exceed a reasonable estimate of the
28 actual cost to provide the records. The actual cost may include, but
29 is not limited to, the cost of locating, assembling, reviewing,
30 redacting, copying, and providing the record to the requestor.

31 (3) Where, as authorized in RCW 42.56.080(3)(b), an agency has
32 required a person to provide information about whether the primary
33 purpose of a request is the sale or resale of the requested records
34 and the person has denied such a purpose, no cost recovery fee may
35 ordinarily be assessed under subsection (2) of this section. However,
36 if the agency has reason to believe that the purpose of the request
37 has been misrepresented and the request is made primarily for the
38 purpose of sale or resale, the agency may require the requestor to
39 sign a statement under penalty of perjury, attesting that the primary

1 purpose of the record request is not sale or resale of all or part of
2 the record.

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

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

15 (6) When an agency charges a cost recovery fee pursuant to
16 subsection (2) of this section, it must provide to the requestor a
17 written basis for its determination that the request is primarily for
18 the purpose of sale or resale and no exemption from subsection (8) of
19 this section applies.

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

26 (8) The fee authorized in subsection (2) of this section is
27 applicable to a record request where the primary intended use of any
28 part of a public record or records, or information derived from
29 public records, in any form, is for the commercial purpose of sale or
30 resale. The fee authorized in subsection (2) of this section may not
31 be assessed if one or more of the following circumstances exists:

32 (a) The principal purpose of the request is not deemed a
33 "commercial purpose" because:

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

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

4 (iii) The requestor is a representative of a religious,
5 charitable, educational, or other nonprofit organization or
6 association and the request is made in furtherance of the
7 organization's or association's nonprofit purpose and not for a
8 different commercial purpose;

9 (b) Even if the request is for a commercial purpose, the fee is
10 not applicable because:

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

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

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

24 (iv) The requestor is a person licensed under chapter 18.85 RCW,
25 a prospective developer of real property, or a person seeking
26 information about real property or buildings owned by that person,
27 and the request is for the purpose of evaluating the viability of
28 developing a specific parcel of real property for a particular use,
29 and not for a different commercial purpose.

30 (9) A person or other legal entity that avoids paying the fee
31 authorized in subsection (2) of this section, by intentionally
32 misrepresenting the purpose for which the request is made or the
33 requestor's eligibility for an exemption under subsection (8) of this
34 section, or by intentionally inducing another person to knowingly or
35 unknowingly make such a misrepresentation, is liable for a civil
36 penalty at least equivalent to what the agency would have charged for
37 the records. The civil penalty under this section is in addition to
38 any other civil or criminal penalties and remedies available under
39 any other law of this state.

1 (10) Nothing in this section or RCW 42.56.080 may be construed to
2 create an obligation or authorization for an agency to create or
3 provide access to lists of individuals requested for commercial
4 purposes.

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

7 (1) Upon the motion of any person having been denied an
8 opportunity to inspect or copy a public record by an agency, the
9 superior court in the county in which a record is maintained may
10 require the responsible agency to show cause why it has refused to
11 allow inspection or copying of a specific public record or class of
12 records. The burden of proof shall be on the agency to establish that
13 refusal to permit public inspection and copying is in accordance with
14 a statute that exempts or prohibits disclosure in whole or in part of
15 specific information or records.

16 (2) Upon the motion of any person who believes that an agency has
17 not made a reasonable estimate of the time that the agency requires
18 to respond to a public record request, the superior court in the
19 county in which a record is maintained may require the responsible
20 agency to show that the estimate it provided is reasonable. The
21 burden of proof shall be on the agency to show that the estimate it
22 provided is reasonable.

23 (3) Upon the motion of any person who believes that an agency has
24 required payment of a cost recovery fee in an amount not authorized
25 by RCW 42.56.080, for a request that is exempt, or of a requestor who
26 is exempt from the fee under RCW 42.56.120(8), the superior court in
27 the county in which a record is maintained may require the
28 responsible agency to show by a preponderance of the evidence that
29 the request was primarily for the purpose of sale or resale and that
30 no exemption was applicable.

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

1 (~~(4)~~) (5) Any person who prevails against an agency in any
2 action in the courts seeking the right to inspect or copy any public
3 record or the right to receive a response to a public record request
4 within a reasonable amount of time shall be awarded all costs,
5 including reasonable attorney fees, incurred in connection with such
6 legal action. In addition, it shall be within the discretion of the
7 court to award such person an amount not to exceed one hundred
8 dollars for each day that he or she was denied the right to inspect
9 or copy said public record.

10 (~~(5)~~) (6) For actions under this section against counties, the
11 venue provisions of RCW 36.01.050 apply.

12 (~~(6)~~) (7) Actions under this section must be filed within one
13 year of the agency's claim of exemption or the last production of a
14 record on a partial or installment basis.

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