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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)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to charges for the cost of providing public  
2 records in response to public records requests; amending RCW  
3 42.56.070 and 42.56.120; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** As a result of the growing use of  
6 electronic documents, many people who make requests for public  
7 records ask agencies to provide electronic copies of documents in  
8 lieu of paper copies. In recognition of the trend towards electronic  
9 document retention, and in recognition that there are costs  
10 associated with producing electronic copies of records in response to  
11 public records requests, the legislature finds that it is appropriate  
12 for agencies to charge a reasonable fee for copying and transmitting  
13 electronic public records.

14 **Sec. 2.** RCW 42.56.070 and 2005 c 274 s 284 are each amended to  
15 read as follows:

16 (1) Each agency, in accordance with published rules, shall make  
17 available for public inspection and copying all public records,  
18 unless the record falls within the specific exemptions of subsection  
19 ((+6+)) (9) of this section, this chapter, or other statute which  
20 exempts or prohibits disclosure of specific information or records.

1 To the extent required to prevent an unreasonable invasion of  
2 personal privacy interests protected by this chapter, an agency shall  
3 delete identifying details in a manner consistent with this chapter  
4 when it makes available or publishes any public record; however, in  
5 each case, the justification for the deletion (~~shall~~) must be  
6 explained fully in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) In determining the actual per page or electronic transmission  
9 cost for providing ~~((photocopies))~~ copies of public records, an  
10 agency may include all costs directly incident to copying, scanning,  
11 or otherwise electronically reproducing such public records,  
12 including the actual cost of the paper or electronic data storage  
13 device and the per page or electronic transmission cost for use of  
14 agency ~~((copying))~~ equipment. In determining other actual costs for  
15 providing ~~((photocopies))~~ copies of public records, an agency may  
16 include all costs directly incident to shipping or sending such  
17 public records, including the cost of postage ~~(( $\text{\$}$ ))~~, delivery  
18 ~~((charges))~~, or transmission and the cost of any container ~~(( $\text{\$}$ ))~~,  
19 envelope, or storage device used.

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

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

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

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

38 (c) The agency may not charge for the first ten megabytes of  
39 electronic data copied or transmitted in response to a request, but  
40 may charge, for each megabyte of data copied or transmitted in excess

1 of the first ten, fifteen cents per megabyte except as provided in  
2 (d) and (e) of this subsection;

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

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

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

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

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

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

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

37 (3)(a) A reasonable charge may be imposed for providing copies of  
38 public records and for the use by any person of agency equipment or  
39 equipment of the office of the secretary of the senate or the office

1 of the chief clerk of the house of representatives to copy public  
2 records, which charges (~~shall~~) may not exceed the amount necessary  
3 to reimburse the agency, the office of the secretary of the senate,  
4 or the office of the chief clerk of the house of representatives for  
5 its actual costs directly incident to such copying.

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

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

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

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

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

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