
SECOND SUBSTITUTE HOUSE BILL 2576

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By House General Government & Information Technology (originally sponsored by Representatives McBride, Nealey, Ryu, Tarleton, Springer, S. Hunt, Johnson, Zeiger, Rossetti, Clibborn, Peterson, Haler, Hargrove, Jinkins, Gregerson, Senn, and Hickel)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to public records act requests to local agencies;
2 amending RCW 42.56.520; reenacting and amending RCW 42.56.240; adding
3 new sections to chapter 42.56 RCW; creating new sections; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the right of
7 citizens to observe the actions of local agencies and to have timely
8 access to public records are essential to democracy and allow for
9 meaningful participation in the democratic process. The legislature
10 reaffirms the importance of transparent and open government while
11 recognizing that local agencies face unique challenges in responding
12 to requests for public records and must balance their
13 responsibilities under the public records act, chapter 42.56 RCW,
14 with the effective operation of the agency.

15 **PART I**
16 **POLICIES FOR RESPONDING TO REQUESTS**

17 NEW SECTION. **Sec. 101.** A new section is added to chapter 42.56
18 RCW to read as follows:

1 (1) In order to prevent excessive interference with other
2 essential functions of the local agency, a local agency may adopt
3 procedures that limit the number of hours it devotes on a monthly
4 basis to responding to public records requests, and that prioritize
5 requests according to criteria established by the local agency.
6 Procedures adopted by local agencies:

7 (a) Must address the need to provide the fullest assistance
8 possible to requestors while avoiding excessive interference with
9 other essential functions;

10 (b) Must provide that unfilled requests or installments will roll
11 over into the following month and will continue to be fulfilled in
12 installments based on available time under the policy; and

13 (c) Must be adopted by the local agency in the form of adopted
14 legislation subject to public hearing. The procedures must be
15 reviewed and amended, as necessary, by the governing body of the
16 local agency not less than once every other year.

17 (2)(a) Prior to adopting procedures, a local agency must make
18 available and accessible to the public in accordance with (b) of this
19 subsection:

20 (i) Budgets for the ongoing and three previous fiscal years and,
21 when available, any proposed budget for the upcoming fiscal year; and

22 (ii) Agendas and minutes for all public meetings of the local
23 agency's governing body for the three previous fiscal years.

24 (b) A local agency may not adopt or implement procedures under
25 this section unless:

26 (i) For local agencies with a web site and employing ten or more
27 full-time equivalent employees, documents listed in (a) of this
28 subsection are accessible through a central web site; or

29 (ii) For local agencies without a web site or employing fewer
30 than ten full-time equivalent employees, the local agency produces
31 for inspection any document listed in (a) of this subsection within
32 five business days of a request, or the documents are accessible
33 through the local agency's web site.

34 (3)(a) In developing procedures and establishing resources
35 available to respond to requests on a monthly basis, local agencies
36 are encouraged to consider the average time spent responding to
37 requests over the prior two-year period. In limiting the number of
38 hours a local agency devotes on a monthly basis to responding to
39 requests:

1 (i) The number of hours allotted by the local agency for
2 responding to requests each month must be reasonable in light of the
3 local agency's resources and other essential functions; and

4 (ii) The local agency must establish a minimum amount of time
5 each month, not fewer than ten hours, it will devote to responding to
6 requests that is reasonable in light of the local agency's resources
7 and other essential functions.

8 (b) Tasks subject to a limit authorized by this section may
9 include the time it takes to search for responsive records and review
10 and redact responsive records. Tasks subject to a limit authorized by
11 this section may not include time spent in litigation or time spent
12 by an attorney providing legal advice regarding records.

13 (4) Procedures adopted by a local agency may prioritize the order
14 in which public records requests will be fulfilled. If a local agency
15 chooses to prioritize requests, the local agency must adopt rules
16 establishing the criteria governing prioritization in accordance with
17 this subsection (4).

18 (a) A local agency may prioritize requests based on the size and
19 complexity of the request and the number of requests the requestor
20 has made in the preceding twelve months.

21 (b) To the extent possible, local agencies should give priority
22 to requests in which any of the conditions listed in (b)(i), (ii), or
23 (iii) of this subsection apply. To determine whether one of these
24 conditions exist, the public records officer of a local agency may
25 ask the requestor for clarifying information. If the requestor does
26 not provide information necessary to determine whether one or more of
27 the conditions apply, then the local agency may assume that the
28 condition does not apply. Priority should be given to:

29 (i) Requests involving an imminent threat to public safety or a
30 loss of substantial due process rights;

31 (ii) Requests concerning imminent legislative, administrative, or
32 judicial action; and

33 (iii) Requests that are routine, may be readily fulfilled, or are
34 immediately accessible.

35 (5) In an effort to better understand a request, provide all
36 responsive records, and appropriately prioritize a request, if
37 procedures providing for prioritization have been adopted by a local
38 agency, a local agency's procedures must encourage public records
39 officers to contact requestors to inquire about the purpose for a
40 request. Requestors are not obligated to answer the inquiry of a

1 public records officer regarding the purpose of a request, except to
2 establish whether inspection and copying of records would violate RCW
3 42.56.070(9) or other law that exempts or prohibits production of
4 specific information or records to certain persons.

5 (6) When a local agency that has adopted procedures authorized by
6 this section anticipates that fulfilling a public records request
7 will take more than sixty calendar days, the local agency must inform
8 the requestor in writing of the factors determining a response time
9 estimate, including providing a list of all other pending requests.
10 Response time estimates of local agencies are subject to review by
11 the public records commission established in section 201 of this act
12 and to court challenges pursuant to RCW 42.56.550.

13 (7) If a court holds that records have been withheld by a local
14 agency from disclosure or production for an unreasonable period of
15 time as a result of the local agency devoting an inadequate amount of
16 time to responding to requests under procedures authorized by this
17 section, the agency must revise the procedures.

18 **Sec. 102.** RCW 42.56.520 and 2010 c 69 s 2 are each amended to
19 read as follows:

20 (1) Responses to requests for public records shall be made
21 promptly by agencies, the office of the secretary of the senate, and
22 the office of the chief clerk of the house of representatives.

23 (2) Within five business days of receiving a public record
24 request, an agency, the office of the secretary of the senate, or the
25 office of the chief clerk of the house of representatives must
26 respond by ~~((either(1)))~~:

27 (a) Providing the record;

28 ~~((+2))~~ (b) Providing an internet address and link on the
29 agency's web site to the specific records requested, except that if
30 the requester notifies the agency that he or she cannot access the
31 records through the internet, then the agency must provide copies of
32 the record or allow the requester to view copies using an agency
33 computer;

34 ~~((+3))~~ (c) Acknowledging that the agency, the office of the
35 secretary of the senate, or the office of the chief clerk of the
36 house of representatives has received the request and providing a
37 reasonable estimate of the time the agency, the office of the
38 secretary of the senate, or the office of the chief clerk of the
39 house of representatives will require to respond to the request; or

1 ((4)) (d) Denying the public record request.
2 (3) Additional time required to respond to a request may be based
3 upon:
4 (a) The need to clarify the intent of the request((τ));
5 (b) The need to locate and assemble the information
6 requested((τ));
7 (c) The need to notify third persons or agencies affected by the
8 request((τ));
9 (d) A policy adopted by a local agency in accordance with section
10 101 of this act; or
11 (e) The need to determine whether any of the information
12 requested is exempt and that a denial should be made as to all or
13 part of the request.
14 (4) In acknowledging receipt of a public record request that is
15 unclear, an agency, the office of the secretary of the senate, or the
16 office of the chief clerk of the house of representatives may ask the
17 requestor to clarify what information the requestor is seeking. If
18 the requestor fails to clarify the request, the agency, the office of
19 the secretary of the senate, or the office of the chief clerk of the
20 house of representatives need not respond to it.
21 (5) Denials of requests must be accompanied by a written
22 statement of the specific reasons ((therefor)) for the denial.
23 Agencies, the office of the secretary of the senate, and the office
24 of the chief clerk of the house of representatives shall establish
25 mechanisms for the most prompt possible review of decisions denying
26 inspection, and such review shall be deemed completed at the end of
27 the second business day following the denial of inspection and shall
28 constitute final agency action or final action by the office of the
29 secretary of the senate or the office of the chief clerk of the house
30 of representatives for the purposes of judicial review.

31 **PART II**

32 **PUBLIC RECORDS COMMISSION**

33 NEW SECTION. **Sec. 201.** A new section is added to chapter 42.56
34 RCW to read as follows:

35 (1) A public records commission is created to administer the
36 provisions of this chapter, and comprises five Washington members as
37 provided in this subsection.

1 (a) The governor, with the advice and consent of the senate,
2 shall appoint five citizens to the public records commission:

3 (i) One member representing the news media;

4 (ii) One member representing local government interests;

5 (iii) One member representing public interest organizations
6 advising or advocating on behalf of citizens who make public records
7 requests under this chapter;

8 (iv) In consultation with the attorney general, one member
9 representing the state office of the attorney general; and

10 (v) In consultation with the state auditor, one member
11 representing the office of the state auditor.

12 (b) Members appointed to the public records commission must be
13 knowledgeable of the public records act, chapter 42.56 RCW, and
14 policy and legal issues related to public records in the state.

15 (c) The governor must designate one member to serve as chair of
16 the public records commission.

17 (d) Members of the public records commission may be reappointed
18 to the commission.

19 (2) Members of the public records commission shall be appointed
20 to staggered terms: One of the initial members shall be appointed to
21 a term of two years; two of the initial members shall each be
22 appointed to a term of three years; and two of the initial members
23 shall each be appointed to a term of four years. When the term of an
24 initial member expires, members subsequently appointed to that
25 position shall be appointed to terms of four years.

26 (3) The members serve at the pleasure of the governor.

27 (4) If a vacancy in a position on the public records commission
28 occurs, the governor shall appoint a person to serve the remainder of
29 the expired term in accordance with the requirements of subsection
30 (1) of this section.

31 (5) Three members of the public records commission shall, at all
32 times, constitute a quorum of the commission. A vacancy on the public
33 records commission does not impair the right of the remaining members
34 to exercise all powers of the commission.

35 (6) Members of the public records commission are not eligible for
36 state retirement under chapter 41.40 RCW by virtue of their service
37 on the commission.

38 (7) The office of the state auditor shall provide administrative
39 and clerical assistance to the public records commission. The public
40 records commission may appoint officers and employees as necessary

1 for the proper performance of the commission's duties under this
2 chapter.

3 (8) The dedicated open records account is created in the custody
4 of the state treasurer. Twenty percent of any amount awarded at the
5 discretion of the court to persons who prevail against agencies under
6 RCW 42.56.550 must be deposited into the dedicated open records
7 account. Expenditures from the account may be used only for the
8 administration, operation, and support of the public records
9 commission. Only the state auditor, or the state auditor's designee,
10 may authorize expenditures from the account. The account is subject
11 to allotment procedures under chapter 43.88 RCW, but an appropriation
12 is not required for expenditures.

13 (9) Annually by July 1st, the public records commission must
14 submit a written report to the legislature and the governor setting
15 forth: All cases the commission heard during the fiscal year; the
16 decision rendered in each case; the names, salaries, and duties of
17 all employees and officers of the commission; and an accounting of
18 all moneys received and disbursed by the office of the state auditor
19 on behalf of the commission. Reports to the legislature and the
20 governor must be submitted in compliance with RCW 43.01.036.

21 NEW SECTION. **Sec. 202.** A new section is added to chapter 42.56
22 RCW to read as follows:

23 (1) Each member of the public records commission must be
24 compensated in accordance with RCW 43.03.250. Each member of the
25 public records commission must be reimbursed for travel expenses
26 incurred in the discharge of the member's official duties as provided
27 in RCW 43.03.050 and 43.03.060.

28 (2) Payment of expenses of the public records commission,
29 including travel expenses incurred by employees or officers of the
30 commission, must be made in accordance with RCW 43.03.050 and
31 43.03.060.

32 NEW SECTION. **Sec. 203.** A new section is added to chapter 42.56
33 RCW to read as follows:

34 (1) The public records commission shall have jurisdiction over
35 disputes arising under this chapter between local agencies and
36 persons making public records requests to assist the parties in
37 resolving those disputes, determine any violation of this chapter,
38 and assess penalties for violations of this chapter.

1 (2)(a) When a dispute arises under this chapter between a local
2 agency and a requestor, the local agency and the requestor may submit
3 a request to the public records commission for resolution of the
4 dispute through speedy voluntary arbitration or voluntary mediation.
5 If either the local agency or the requestor does not agree to resolve
6 the dispute by voluntary arbitration or voluntary mediation, the
7 local agency or the requestor may submit a request to the public
8 records commission for an adjudicative proceeding, conducted in
9 accordance with chapter 34.05 RCW.

10 (b) The public records commission, within its discretion, may
11 accept or decline any requests submitted under (a) of this subsection
12 and accept only those requests that the commission determines most
13 appropriate for resolution under this section. The commission may
14 limit the number of requests it accepts based on the availability of
15 appropriated funds. Adjudication or resolution of a dispute under
16 this section does not limit the ability of any party to seek other
17 remedies available under this chapter.

18 (3) The public records commission may establish a reasonable
19 filing fee in an amount not exceeding fifty dollars for parties who
20 submit requests to the commission under this section. All funds
21 collected from the filing fee must be deposited into the dedicated
22 open records account created in section 201 of this act.

23 (4)(a) The public records commission shall establish a roster of
24 qualified arbitrators to conduct voluntary arbitrations of requests
25 submitted to the commission under subsection (2) of this section.
26 Parties to a dispute may stipulate to using a specific arbitrator
27 from the roster established by the commission or, if the parties
28 cannot agree, the commission may appoint an arbitrator. Voluntary
29 arbitrations shall be conducted in accordance with rules adopted by
30 the public records commission.

31 (b) The public records commission shall establish a roster of
32 neutral mediators to resolve requests submitted to the commission for
33 voluntary mediation under subsection (2) of this section. Parties to
34 a dispute may stipulate to using a specific mediator from the roster
35 established by the commission or, if the parties cannot agree, the
36 commission may appoint a mediator. Voluntary mediations shall be
37 conducted in accordance with rules adopted by the public records
38 commission.

39 (c) The commission shall establish rules for voluntary
40 arbitrations and mediations. Arbitrators and mediators on the roster

1 established by the commission must be knowledgeable regarding the
2 public records act, court holdings interpreting and applying the
3 public records act, and the procedures of agencies pursuant to the
4 public records act. The commission may provide assurances that
5 agreements reached through mediation or decisions of an arbitrator
6 are carried out.

7 (d) The commission must establish a fee schedule for mediators
8 and arbitrators on the roster, which may be paid per hour or per
9 case, or another appropriate mechanism, as determined by the
10 commission. Fees for services performed by mediators and arbitrators
11 on the roster must be paid by the commission from funds in the
12 dedicated open records account created in section 201 of this act.

13 (5) Adjudicative proceedings conducted by the public records
14 commission are governed by chapter 34.05 RCW. In addition, the
15 commission is authorized to hold hearings, make findings of fact,
16 decide the law, assess penalties for actual violations of this
17 chapter, subpoena witnesses, compel the attendance of witnesses,
18 administer oaths, hear the testimony of any person under oath, and
19 require the production for examination of books or papers relating to
20 a matter under investigation or in question before the commission.
21 The public records commission may adopt rules regarding the issuance
22 of subpoenas by individual members of the commission, and service of
23 complaints, decisions, orders, recommendations, and other papers of
24 the commission, a member or agent of the commission, or an agency.

25 (6) The public records commission shall employ and assign an
26 attorney to advise, represent, or advise and represent individual
27 citizens who do not have their own legal representation in any
28 proceedings authorized by the commission.

29 (7) The public records commission shall strive to resolve
30 disputes submitted to the commission in the most timely and cost-
31 efficient manner for all parties.

32 (8) Except for conducting rule making in accordance with this
33 section, the commission may not exercise the powers, duties, and
34 functions authorized in this section before July 1, 2017. During this
35 rule-making period, from the effective date of this section until
36 July 1, 2017, the commission must make every effort to engage
37 interested stakeholders in the rule-making process. Beginning July 1,
38 2017, the commission may fully exercise all powers, duties, and
39 functions authorized in this section, subject to the availability of
40 appropriated funds.

1 NEW SECTION. **Sec. 204.** A new section is added to chapter 42.56
2 RCW to read as follows:

3 The principal office and place of business of the public records
4 commission shall be in Thurston county, but the commission may meet
5 and exercise any or all of its powers at any other place in the
6 state.

7 NEW SECTION. **Sec. 205.** A new section is added to chapter 42.56
8 RCW to read as follows:

9 The public records commission must adopt rules to implement
10 sections 201 through 204 of this act. The public records commission
11 may from time to time make, amend, and rescind, in accordance with
12 the administrative procedure act, chapter 34.05 RCW, rules necessary
13 to carry out the provisions of this chapter.

14 **Sec. 206.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are
15 each reenacted and amended to read as follows:

16 The following investigative, law enforcement, and crime victim
17 information is exempt from public inspection and copying under this
18 chapter:

19 (1) Specific intelligence information and specific investigative
20 records compiled by investigative, law enforcement, and penology
21 agencies, and state agencies vested with the responsibility to
22 discipline members of any profession, the nondisclosure of which is
23 essential to effective law enforcement or for the protection of any
24 person's right to privacy;

25 (2) Information revealing the identity of persons who are
26 witnesses to or victims of crime or who file complaints with
27 investigative, law enforcement, or penology agencies, other than the
28 public disclosure commission, if disclosure would endanger any
29 person's life, physical safety, or property. If at the time a
30 complaint is filed the complainant, victim, or witness indicates a
31 desire for disclosure or nondisclosure, such desire shall govern.
32 However, all complaints filed with the public disclosure commission
33 about any elected official or candidate for public office must be
34 made in writing and signed by the complainant under oath;

35 (3) Any records of investigative reports prepared by any state,
36 county, municipal, or other law enforcement agency pertaining to sex
37 offenses contained in chapter 9A.44 RCW or sexually violent offenses
38 as defined in RCW 71.09.020, which have been transferred to the

1 Washington association of sheriffs and police chiefs for permanent
2 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

3 (4) License applications under RCW 9.41.070; copies of license
4 applications or information on the applications may be released to
5 law enforcement or corrections agencies;

6 (5) Information revealing the identity of child victims of sexual
7 assault who are under age eighteen. Identifying information means the
8 child victim's name, address, location, photograph, and in cases in
9 which the child victim is a relative or stepchild of the alleged
10 perpetrator, identification of the relationship between the child and
11 the alleged perpetrator;

12 (6) Information contained in a local or regionally maintained
13 gang database as well as the statewide gang database referenced in
14 RCW 43.43.762;

15 (7) Data from the electronic sales tracking system established in
16 RCW 69.43.165;

17 (8) Information submitted to the statewide unified sex offender
18 notification and registration program under RCW 36.28A.040(6) by a
19 person for the purpose of receiving notification regarding a
20 registered sex offender, including the person's name, residential
21 address, and email address;

22 (9) Personally identifying information collected by law
23 enforcement agencies pursuant to local security alarm system programs
24 and vacation crime watch programs. Nothing in this subsection shall
25 be interpreted so as to prohibit the legal owner of a residence or
26 business from accessing information regarding his or her residence or
27 business;

28 (10) The felony firearm offense conviction database of felony
29 firearm offenders established in RCW 43.43.822;

30 (11) The identity of a state employee or officer who has in good
31 faith filed a complaint with an ethics board, as provided in RCW
32 42.52.410, or who has in good faith reported improper governmental
33 action, as defined in RCW 42.40.020, to the auditor or other public
34 official, as defined in RCW 42.40.020;

35 (12) The following security threat group information collected
36 and maintained by the department of corrections pursuant to RCW
37 72.09.745: (a) Information that could lead to the identification of a
38 person's security threat group status, affiliation, or activities;
39 (b) information that reveals specific security threats associated
40 with the operation and activities of security threat groups; and (c)

1 information that identifies the number of security threat group
2 members, affiliates, or associates; and

3 (13) The global positioning system data that would indicate the
4 location of the residence of an employee or worker of a criminal
5 justice agency as defined in RCW 10.97.030.

6 **PART III**

7 **LOCAL GOVERNMENT ARCHIVES ACCOUNT**

8 NEW SECTION. **Sec. 301.** Under RCW 36.22.175, 40.14.024, and
9 40.14.027 purposes for which funds in the local government archives
10 account are supposed to be used include local government services,
11 such as: Records management training for local government agencies;
12 providing records scheduling, security microfilm inspection, and
13 storage; archival preservation; cataloging; indexing for local
14 government records and digital data; and access to local government
15 records and data through the regional branch archives of the division
16 of archives and records management.

17 It is the intent of the legislature that expenditures from the
18 local government archives account be used for these purposes. It is
19 also the intent of the legislature that the local government archives
20 account be fully funded through appropriations in the 2017-2019
21 omnibus appropriations act.

22 NEW SECTION. **Sec. 401.** NULL AND VOID. If specific funding for
23 purposes of this act, referencing this act by bill or chapter number,
24 is not provided by June 30, 2016, in the supplemental omnibus
25 operating appropriations act, this act is null and void.

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