
HOUSE BILL 2576

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By Representatives McBride, Nealey, Ryu, Tarleton, Springer, S. Hunt, Johnson, Zeiger, Rossetti, Clibborn, Peterson, Haler, Hargrove, Jinkins, Gregerson, Senn, and Hickel

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1 AN ACT Relating to public records act requests to local agencies;
2 amending RCW 42.56.520, 42.56.100, 42.56.120, and 42.56.550;
3 reenacting and amending RCW 42.56.240 and 42.56.080; adding new
4 sections to chapter 42.56 RCW; and creating new sections.

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)(a) In order to prevent excessive interference with other
2 essential functions of the local agency, a local agency may adopt a
3 policy limiting the number of hours it devotes on a monthly basis to
4 responding to public records requests. This policy may only be
5 adopted if the local agency makes the following documents publicly
6 available, as defined in subsection (5) of this section:

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

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

11 (b) A policy adopted by a local agency under this section:

12 (i) May include rules for establishing priorities as to the order
13 in which public records requests will be fulfilled. Prioritizations
14 may be based on the size of the request and the number of requests
15 the requestor has made in the preceding twelve months;

16 (ii) Must provide that unfilled requests or installments roll
17 over into the following month and will continue to be fulfilled in
18 installments based on available time under the policy; and

19 (iii) Must be reviewed and amended, as deemed necessary, by the
20 governing body of the local agency not less than once every other
21 year.

22 (c) In developing a policy and establishing resources available
23 to respond to requests on a monthly basis, local agencies are
24 encouraged to consider the average time spent responding to requests
25 over the prior two-year period.

26 (d) Local agencies choosing to adopt a policy authorized by this
27 subsection (1) must do so in the form of adopted legislation subject
28 to public hearing.

29 (e) If a court holds that records have been withheld by an agency
30 from disclosure or production for an unreasonable period of time as a
31 result of the agency devoting an inadequate amount of time to
32 responding to requests under a policy authorized by this section, the
33 agency must revise the policy.

34 (2) Tasks subject to a limit authorized by this section may
35 include the time it takes to search for responsive records and review
36 and redact responsive records. Tasks subject to a limit authorized by
37 this section may not include time spent in litigation or time spent
38 by an attorney providing legal advice regarding records.

39 (3)(a) When a local agency that has adopted a policy authorized
40 by this section anticipates that fulfilling a request will take more

1 than sixty calendar days, the local agency must inform the requestor
2 in writing of the factors that will determine a response time
3 estimate, including providing a list of all other pending requests.

4 (b) Local agencies' response time estimates are subject to review
5 by the public records commission established in section 201 of this
6 act and to court challenges pursuant to RCW 42.56.550.

7 (4) For any legislation, rule, or policy adopted by a local
8 agency under this section that limits the number of hours the local
9 agency devotes to responding to public records requests:

10 (a) The number of hours allotted by the local agency for
11 responding to requests each month must be reasonable in light of the
12 local agency's resources and other essential functions; and

13 (b) The local agency must establish a minimum amount of time each
14 month, not fewer than ten hours, it will devote to responding to
15 requests that is also reasonable in light of the local agency's
16 resources and other essential functions.

17 (5) For purposes of this section, documents are "publicly
18 available" if:

19 (a) For local agencies with a web site and employing ten or more
20 full-time equivalent employees, documents are accessible through a
21 central web site; or

22 (b) For local agencies without a web site or employing fewer than
23 ten full-time equivalent employees, documents are produced for
24 inspection within five business days of being requested or are
25 accessible through the local agency's web site.

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

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

31 (2) Within five business days of receiving a public record
32 request, an agency, the office of the secretary of the senate, or the
33 office of the chief clerk of the house of representatives must
34 respond by ~~((either-(1)))~~:

35 (a) Providing the record;

36 ~~((+2))~~ (b) Providing an internet address and link on the
37 agency's web site to the specific records requested, except that if
38 the requester notifies the agency that he or she cannot access the
39 records through the internet, then the agency must provide copies of

1 the record or allow the requester to view copies using an agency
2 computer;

3 ~~((3))~~ (c) Acknowledging that the agency, the office of the
4 secretary of the senate, or the office of the chief clerk of the
5 house of representatives has received the request and providing a
6 reasonable estimate of the time the agency, the office of the
7 secretary of the senate, or the office of the chief clerk of the
8 house of representatives will require to respond to the request; or
9 ~~((4))~~ (d) Denying the public record request.

10 (3) Additional time required to respond to a request may be based
11 upon:

12 (a) The need to clarify the intent of the request~~((τ))~~;

13 (b) The need to locate and assemble the information
14 requested~~((τ))~~;

15 (c) The need to notify third persons or agencies affected by the
16 request~~((τ))~~;

17 (d) A policy adopted by a local agency in accordance with section
18 101 of this act; or

19 (e) The need to determine whether any of the information
20 requested is exempt and that a denial should be made as to all or
21 part of the request.

22 (4) In acknowledging receipt of a public record request that is
23 unclear, an agency, the office of the secretary of the senate, or the
24 office of the chief clerk of the house of representatives may ask the
25 requestor to clarify what information the requestor is seeking. If
26 the requestor fails to clarify the request, the agency, the office of
27 the secretary of the senate, or the office of the chief clerk of the
28 house of representatives need not respond to it.

29 (5) Denials of requests must be accompanied by a written
30 statement of the specific reasons ~~((therefor))~~ for the denial.
31 Agencies, the office of the secretary of the senate, and the office
32 of the chief clerk of the house of representatives shall establish
33 mechanisms for the most prompt possible review of decisions denying
34 inspection, and such review shall be deemed completed at the end of
35 the second business day following the denial of inspection and shall
36 constitute final agency action or final action by the office of the
37 secretary of the senate or the office of the chief clerk of the house
38 of representatives for the purposes of judicial review.

1 PART II

2 PUBLIC RECORDS COMMISSION

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

5 (1) A public records commission is created to administer the
6 provisions of this chapter, and comprises five members as provided in
7 this subsection.

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

10 (i) One member representing the news media;

11 (ii) One member representing local government interests;

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

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

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

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

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

24 (d) Members of the public records commission may be reappointed
25 to the commission.

26 (2) Members of the public records commission shall be appointed
27 to staggered terms: One of the initial members shall be appointed to
28 a term of two years; two of the initial members shall each be
29 appointed to a term of three years; and two of the initial members
30 shall each be appointed to a term of four years. When the term of an
31 initial member expires, members subsequently appointed to that
32 position shall be appointed to terms of four years.

33 (3) The governor may remove, upon notice and hearing, any member
34 of the public records commission for neglect of duty or misfeasance
35 or malfeasance in office, as defined in RCW 29A.56.110. Members may
36 not be removed by the governor for any other cause.

37 (4) If a vacancy in a position on the public records commission
38 occurs, the governor shall appoint a person meeting the same

1 qualifications as the member vacating the position to serve the
2 remainder of the expired term.

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

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

10 (7) The office of the state auditor shall provide administrative
11 and clerical assistance to the public records commission. The public
12 records commission may appoint officers and employees as necessary
13 for the proper performance of the commission's duties under this
14 chapter.

15 (8) The dedicated open records account is created in the custody
16 of the state treasurer. Twenty percent of any amount awarded at the
17 discretion of the court to persons who prevail against agencies under
18 RCW 42.56.550 must be deposited into the dedicated open records
19 account. Expenditures from the account may be used only for the
20 administration, operation, and support of the public records
21 commission. Only the state auditor, or the state auditor's designee,
22 may authorize expenditures from the account. The account is subject
23 to allotment procedures under chapter 43.88 RCW, but an appropriation
24 is not required for expenditures.

25 (9) Annually by July 1st, the public records commission must
26 submit a written report to the legislature and the governor setting
27 forth: All cases the commission heard during the fiscal year; the
28 decision rendered in each case; the names, salaries, and duties of
29 all employees and officers of the commission; and an accounting of
30 all moneys received and disbursed by the office of the state auditor
31 on behalf of the commission. Reports to the legislature and the
32 governor must be submitted in compliance with RCW 43.01.036.

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

35 (1) Each member of the public records commission must be
36 compensated in accordance with RCW 43.03.250. Each member of the
37 public records commission must be reimbursed for travel expenses
38 incurred in the discharge of the member's official duties as provided
39 in RCW 43.03.050 and 43.03.060.

1 (2) Payment of expenses of the public records commission,
2 including travel expenses incurred by employees or officers of the
3 commission, must be made in accordance with RCW 43.03.050 and
4 43.03.060.

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

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

12 (2)(a) When a dispute arises under this chapter between a local
13 agency and a requestor, the local agency and the requestor may submit
14 a request to the public records commission for resolution of the
15 dispute through speedy voluntary arbitration or voluntary mediation.
16 If either the local agency or the requestor does not agree to resolve
17 the dispute by voluntary arbitration or voluntary mediation, the
18 local agency or the requestor may submit a request to the public
19 records commission for an adjudicative proceeding, conducted in
20 accordance with chapter 34.05 RCW.

21 (b) The public records commission, within its discretion, may
22 accept or decline any requests submitted under (a) of this subsection
23 and accept only those requests that the commission determines most
24 appropriate for resolution under this section. Adjudication or
25 resolution of a dispute under this section does not limit the ability
26 of any party to seek other remedies available under this chapter.

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

32 (4)(a) The public records commission shall establish a roster of
33 qualified arbitrators to conduct voluntary arbitrations of requests
34 submitted to the commission under subsection (2) of this section.
35 Parties to a dispute may stipulate to using a specific arbitrator
36 from the roster established by the commission or, if the parties
37 cannot agree, the commission may appoint an arbitrator. Voluntary
38 arbitrations shall be conducted in accordance with rules adopted by
39 the public records commission.

1 (b) The public records commission shall establish a roster of
2 neutral mediators to resolve requests submitted to the commission for
3 voluntary mediation under subsection (2) of this section. Parties to
4 a dispute may stipulate to using a specific mediator from the roster
5 established by the commission or, if the parties cannot agree, the
6 commission may appoint a mediator. Voluntary mediations shall be
7 conducted in accordance with rules adopted by the public records
8 commission.

9 (c) The commission shall establish rules for voluntary
10 arbitrations and mediations. Arbitrators and mediators on the roster
11 established by the commission must be knowledgeable regarding the
12 public records act, court holdings interpreting and applying the
13 public records act, and the procedures of agencies pursuant to the
14 public records act. The commission may provide assurances that
15 agreements reached through mediation or decisions of an arbitrator
16 are carried out.

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

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

35 (6) The public records commission shall strive to resolve
36 disputes submitted to the commission in the most timely and cost-
37 efficient manner for all parties.

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

1 The principal office and place of business of the public records
2 commission shall be in the city of Olympia, but the commission may
3 meet and exercise any or all of its powers at any other place in the
4 state.

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

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

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

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

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

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

33 (3) Any records of investigative reports prepared by any state,
34 county, municipal, or other law enforcement agency pertaining to sex
35 offenses contained in chapter 9A.44 RCW or sexually violent offenses
36 as defined in RCW 71.09.020, which have been transferred to the
37 Washington association of sheriffs and police chiefs for permanent
38 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

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

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

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

13 (7) Data from the electronic sales tracking system established in
14 RCW 69.43.165;

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

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

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

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

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

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

4 **PART III**

5 **COST RECOVERY MECHANISM FOR PUBLIC RECORDS SOUGHT FOR COMMERCIAL**
6 **PURPOSES**

7 NEW SECTION. **Sec. 301.** The legislature finds that public
8 agencies must remain capable of adequately informing the public of
9 their activities through timely disclosure of public records.
10 However, public agencies are increasingly burdened by broad record
11 requests from commercial entities, including data miners, whose
12 purpose is to sell or resell the public records for a private profit.
13 Public agencies expend taxpayer dollars to locate, assemble, redact,
14 review, and provide the requested public records. Under existing law,
15 except for copying and mailing costs, public agencies may not recover
16 the true costs of providing this service. As a result, the taxpayers
17 of this state effectively subsidize commercial requestors.
18 Accordingly, it is the intent of the legislature to protect the
19 public interest and prevent diversion of scarce agency resources by
20 authorizing public agencies to recover their costs through charging a
21 reasonable fee when records are requested for the purpose of sale or
22 resale. It is the intent of the legislature to authorize agencies to
23 establish such fees, without in any manner limiting public inspection
24 of records or delaying public access to records.

25 **Sec. 302.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285
26 are each reenacted and amended to read as follows:

27 (1) Public records (~~shall~~) must be available for inspection and
28 copying, and agencies (~~shall~~) must, upon request for identifiable
29 public records, make them promptly available to any person
30 (~~including, if applicable,~~). Public records may be made available
31 on a partial or installment basis as records that are part of a
32 larger set of requested records are assembled or made ready for
33 inspection or disclosure.

34 (2) Agencies (~~shall~~) must not deny a request for identifiable
35 public records solely on the basis that the request is overbroad.

36 (3) Agencies (~~shall~~) must not distinguish among persons
37 requesting records, and such persons (~~shall not be~~) are not

1 required to provide information as to the purpose for the request
2 except to establish whether:

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

6 (b) The request is subject to the fee authorized under RCW
7 42.56.120(3).

8 (4) Agency facilities ((shall)) must be made available to any
9 person for the copying of public records except when and to the
10 extent that this would unreasonably disrupt the operations of the
11 agency. Agencies ((shall)) must honor requests received by mail for
12 identifiable public records unless exempted by provisions of this
13 chapter.

14 **Sec. 303.** RCW 42.56.100 and 1995 c 397 s 13 are each amended to
15 read as follows:

16 (1) Agencies shall adopt and enforce reasonable rules and
17 regulations, and the office of the secretary of the senate and the
18 office of the chief clerk of the house of representatives shall adopt
19 reasonable procedures allowing for the time, resource, and personnel
20 constraints associated with legislative sessions, consonant with the
21 intent of this chapter to provide full public access to public
22 records, to protect public records from damage or disorganization,
23 and to prevent excessive interference with other essential functions
24 of the agency, the office of the secretary of the senate, or the
25 office of the chief clerk of the house of representatives. Such rules
26 and regulations ((shall)) must provide for the fullest assistance to
27 inquirers and the most timely possible action on requests for
28 information. Nothing in this section ((shall)) relieves agencies, the
29 office of the secretary of the senate, and the office of the chief
30 clerk of the house of representatives from honoring requests received
31 by mail for copies of identifiable public records.

32 (2) If a public record request is made at a time when such record
33 exists but is scheduled for destruction in the near future, the
34 agency, the office of the secretary of the senate, or the office of
35 the chief clerk of the house of representatives shall retain
36 possession of the record, and may not destroy or erase the record
37 until the request is resolved.

38 (3) Local agencies may, upon notice and public comment, adopt by
39 ordinance or rule reasonable regulations that establish a priority

1 for promptly fulfilling noncommercial purpose requests before
2 commercial purpose requests.

3 **Sec. 304.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to
4 read as follows:

5 (1) Except as provided in this section, no fee ((shall)) may be
6 charged ((for the inspection of public records. No fee shall be
7 charged)) for locating, disclosing the existence of, producing, or
8 inspecting public documents ((and)) or for making them available for
9 copying.

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

31 (3) A local agency may charge a fee to recover its actual costs
32 in responding to a request made for a commercial purpose. Before
33 charging this fee, a local agency must develop and adopt, with notice
34 and public hearing, a fee schedule. The agency must publish the fee
35 schedule along with a summary of the methodology or rationale by
36 which the fees were established. The fee may be a flat fee, a fee per
37 record, or other type of fee, but may not exceed a reasonable
38 estimate of the actual cost to provide the records and must be based
39 upon the least costly method available to the local agency. Actual

1 costs may include, but are not limited to, the cost of locating,
2 producing, inspecting, redacting, and copying the records for the
3 requestor.

4 (4) A local agency may require a requestor to sign a declaration,
5 pursuant to RCW 9A.72.085, under penalty of perjury attesting whether
6 or not the purpose of the request is for a commercial purpose. A
7 person or entity intentionally misrepresenting the purpose of a
8 request that is made for a commercial purpose is liable for a civil
9 penalty at least equivalent to what the agency would have charged for
10 the records. Penalties under this section are in addition to any
11 other civil or criminal penalties and remedies available under any
12 other law of this state.

13 (5) A local agency may enter into an agreement with a requestor
14 to fulfill regular periodic records requests. Such an agreement may
15 include a provision for an alternative fee arrangement from the fee
16 authorized in subsection (3) of this section.

17 (6) If a fee is allowed under this section, an agency may require
18 a deposit in an amount not to exceed ten percent of the estimated
19 cost of providing copies for a request that is able to be fulfilled
20 in one transaction. If an agency makes a request available on a
21 partial or installment basis, the agency may charge ten percent as a
22 deposit for each installment of the request and require payment for
23 the remaining balance of the installment when it is provided. If an
24 installment of a records request is not claimed, reviewed, or paid
25 for, the agency is not obligated to fulfill the remainder of the
26 request nor can it collect payment for the remainder of the request
27 that is unfulfilled.

28 (7) For purposes of this section:

29 (a) A "commercial purpose" means the use of a public record, or
30 part of a record, requested by or on behalf of a for-profit business,
31 enterprise, or entity:

32 (i) For the purpose of sale or resale of the record for profit;

33 (ii) For obtaining or compiling information derived from the
34 record for the purpose of sale or resale for profit, or facilitating
35 a profit, or increasing business opportunities from the use of such
36 information; or

37 (iii) For obtaining records when the requestor does not already
38 have in place a preexisting agreement with the local agency.

39 (b) A "commercial purpose" does not mean the use of a public
40 record or part of a record for publication by any print, electronic,

1 or other transmitted news media outlet used to broadly disseminate
2 information regarding matters of public interest or for use in any
3 judicial or quasi-judicial proceeding.

4 **Sec. 305.** RCW 42.56.550 and 2011 c 273 s 1 are each amended to
5 read as follows:

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

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

22 (3) Upon the motion of any person who believes that an agency has
23 required payment of a cost recovery fee that is not consistent with
24 the fee schedule authorized in RCW 42.56.120(3), or has applied a fee
25 for a request that is exempt under RCW 42.56.120(3), the superior
26 court in the county in which a record is maintained may require the
27 responsible agency to show by a preponderance of the evidence that
28 the request was primarily for a commercial purpose and that no
29 exemption is applicable, or that the fee schedule adopted by the
30 local agency was correctly applied.

31 (4) Judicial review of all agency actions taken or challenged
32 under RCW 42.56.030 through 42.56.520 (~~shall~~) must be de novo.
33 Courts (~~shall~~) must take into account the policy of this chapter
34 that free and open examination of public records is in the public
35 interest, even though such examination may cause inconvenience or
36 embarrassment to public officials or others. Courts may examine any
37 record in camera in any proceeding brought under this section. The
38 court may conduct a 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~~) must be awarded all
5 costs, including reasonable attorney fees, incurred in connection
6 with such legal action. In addition, it (~~shall be~~) is within the
7 discretion of the court to award such person an amount not to exceed
8 one hundred dollars for each day that he or she was denied the right
9 to inspect or copy said public record. Twenty percent of any amount
10 awarded to a person at the discretion of the court under this
11 subsection must be deposited into the dedicated open records account
12 created in section 201 of this act.

13 ~~((+5))~~ (6) For actions under this section against counties, the
14 venue provisions of RCW 36.01.050 apply.

15 ~~((+6))~~ (7) Actions under this section must be filed within one
16 year of the agency's claim of exemption or the last production of a
17 record on a partial or installment basis.

18 **PART IV**

19 **LOCAL GOVERNMENT ARCHIVES ACCOUNT**

20 NEW SECTION. **Sec. 401.** Under RCW 36.22.175, 40.14.024, and
21 40.14.027 purposes for which funds in the local government archives
22 account are supposed to be used include local government services,
23 such as: Records management training for local government agencies;
24 providing records scheduling, security microfilm inspection, and
25 storage; archival preservation; cataloging; indexing for local
26 government records and digital data; and access to local government
27 records and data through the regional branch archives of the division
28 of archives and records management.

29 It is the intent of the legislature that expenditures from the
30 local government archives account be used for these purposes. It is
31 also the intent of the legislature that the local government archives
32 account be fully funded through appropriations in the 2017-2019
33 omnibus appropriations act.

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