

SENATE BILL REPORT

SB 5710

As of March 10, 2017

Title: An act relating to penalties awarded for violations of the public records act.

Brief Description: Concerning penalties awarded for violations of the public records act.

Sponsors: Senators Kuderer and Palumbo.

Brief History:

Committee Activity: State Government: 2/17/17.

Brief Summary of Bill

- Limits maximum award to a person seeking access to a public record who prevails against an agency at \$5,000 if the agency acted in good faith.
- Provides factors for courts to consider when determining whether the agency acted in good faith.

SENATE COMMITTEE ON STATE GOVERNMENT

Staff: Samuel Brown (786-7470)

Background: The Public Records Act (PRA). The PRA, enacted in 1972 as part of Initiative 276, requires that all state and local governments make all public records available for public inspection and copying unless certain statutory exemptions apply. Provisions requiring disclosure of public records are interpreted liberally, while exemptions from disclosure are narrowly construed to effectuate a policy favoring disclosure.

Agencies must respond to public record requests within five business days. The agency must (1) provide the records requested, (2) deny the request on the basis of applicable exemptions, or (3) acknowledge that the agency has received the request and provide a reasonable estimate of the time needed to respond to the request.

Challenging Agency Denials. A person who prevails against an agency in any action in the courts seeking the right to inspect or copy a public record is awarded all costs, including reasonable attorney's fees. In addition, the court has the discretion to award such person an amount of up to \$100 for each day the person was denied the right to inspect or copy the

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public record. In *Yousoufian v. Sims*, a 2010 case, the Washington State Supreme Court introduced and applied a 16-item framework of aggravating and mitigating factors to guide trial court judges in setting penalties for agency PRA violations.

Summary of Bill: The maximum penalty that may be awarded to a public records requestor for an agency wrongful denial of the right to inspect or copy a public record is limited to \$5,000 if the court determines the agency acted in good faith.

In determining whether the agency acted in good faith, the court must consider the following nonexclusive factors:

- lack of clarity in the request;
- prompt agency response or inquiry for clarification;
- the agency's honest, timely, and strict compliance with statutory requirements;
- proper training and supervision of agency personnel;
- the reasonableness of an agency explanation for noncompliance;
- agency helpfulness to the requestor;
- any supplemental unprompted delivery of responsive records inadvertently not provided; and
- the existence of agency systems to track and retrieve public records.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The purpose of the bill is provide accountability and transparency. It would balance the interests of requestors and agencies that acted in good faith with the burdens placed by emerging technology. The penalty to agencies should be based on the culpability of the agency in question and not the size of the request. This bill helps deter bad conduct, it encourages agencies to act in good faith and protects them when they do so. There is, in many cases, a disincentive for agencies to act in good faith when forced to choose between a potentially bankrupting penalty or illegally withholding information from the requestor. There should be predictable penalties for good faith actions.

CON: The *Yousoufian* factors allow the judiciary discretion and leeway in determining the scope of the agency penalties for violations of the PRA. This bill would remove that discretion. It is difficult, in many cases, to effectively prove bad faith on the part of the agency that is in violation of the PRA, and this bill creates undue burdens for the litigants to bring cases against agencies for access to public records. The current system and penalty structure encourages agencies involved with a request to comply and provide access to public records.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Kurt Triplett, City of Kirkland; Candice Bock, Association of Washington Cities.

CON: Rowland Thompson, Allied Daily Newspapers; Arthur West, Washington League for Increased Transparency and Ethics (WASHLITE); Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: No one.