

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1595

Chapter 304, Laws of 2017

65th Legislature
2017 Regular Session

PUBLIC RECORDS REQUESTS--FEES--IDENTIFIABLE RECORDS--BOT REQUESTS

EFFECTIVE DATE: 7/23/2017

Passed by the House April 17, 2017
Yeas 80 Nays 18

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2017
Yeas 43 Nays 4

CYRUS HABIB

President of the Senate

Approved May 16, 2017 10:40 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1595** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 16, 2017

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1595

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By Representatives Nealey, McBride, Senn, Springer, Koster, Klippert, Dye, Schmick, J. Walsh, Haler, Manweller, Harris, Dent, Peterson, Bergquist, Gregerson, Clibborn, Fey, Fitzgibbon, Dolan, Wilcox, Lytton, Griffey, Hayes, Muri, Goodman, Robinson, Sells, Steele, Kraft, Smith, Tharinger, Stanford, Kloba, Jinkins, Hargrove, Slatter, and Kagi

Read first time 01/25/17. Referred to Committee on State Government.

1 AN ACT Relating to costs associated with responding to public
2 records requests; and amending RCW 42.56.070, 42.56.080, 42.56.120,
3 42.56.130, and 42.56.550.

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

5 **Sec. 1.** RCW 42.56.070 and 2005 c 274 s 284 are each amended to
6 read as follows:

7 (1) Each agency, in accordance with published rules, shall make
8 available for public inspection and copying all public records,
9 unless the record falls within the specific exemptions of subsection
10 (({6})) (8) of this section, this chapter, or other statute which
11 exempts or prohibits disclosure of specific information or records.
12 To the extent required to prevent an unreasonable invasion of
13 personal privacy interests protected by this chapter, an agency shall
14 delete identifying details in a manner consistent with this chapter
15 when it makes available or publishes any public record; however, in
16 each case, the justification for the deletion shall be explained
17 fully in writing.

18 (2) For informational purposes, each agency shall publish and
19 maintain a current list containing every law, other than those listed
20 in this chapter, that the agency believes exempts or prohibits
21 disclosure of specific information or records of the agency. An

1 agency's failure to list an exemption shall not affect the efficacy
2 of any exemption.

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

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

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

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

13 (d) Planning policies and goals, and interim and final planning
14 decisions;

15 (e) Factual staff reports and studies, factual consultant's
16 reports and studies, scientific reports and studies, and any other
17 factual information derived from tests, studies, reports, or surveys,
18 whether conducted by public employees or others; and

19 (f) Correspondence, and materials referred to therein, by and
20 with the agency relating to any regulatory, supervisory, or
21 enforcement responsibilities of the agency, whereby the agency
22 determines, or opines upon, or is asked to determine or opine upon,
23 the rights of the state, the public, a subdivision of state
24 government, or of any private party.

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

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

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

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

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

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

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

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

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

9 Rules establishing systems of indexing shall include, but not be
10 limited to, requirements for the form and content of the index, its
11 location and availability to the public, and the schedule for
12 revising or updating the index. State agencies that have maintained
13 indexes for records issued before July 1, 1990, shall continue to
14 make such indexes available for public inspection and copying.
15 Information in such indexes may be incorporated into indexes prepared
16 pursuant to this subsection. State agencies may satisfy the
17 requirements of this subsection by making available to the public
18 indexes prepared by other parties but actually used by the agency in
19 its operations. State agencies shall make indexes available for
20 public inspection and copying. State agencies may charge a fee to
21 cover the actual costs of providing individual mailed copies of
22 indexes.

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

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

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

29 (7) Each agency (~~((shall))~~) may establish, maintain, and make
30 available for public inspection and copying a statement of the actual
31 (~~((per page cost or other costs, if any,))~~) costs that it charges for
32 providing photocopies or electronically produced copies, of public
33 records and a statement of the factors and manner used to determine
34 the actual (~~((per page cost or other costs, if any))~~) costs. Any
35 statement of costs may be adopted by an agency only after providing
36 notice and public hearing.

37 (a)(i) In determining the actual (~~((per page))~~) cost for providing
38 (~~((photocopies))~~) copies of public records, an agency may include all
39 costs directly incident to copying such public records including:

1 (A) The actual cost of the paper and the per page cost for use of
2 agency copying equipment; and

3 (B) The actual cost of the electronic production or file transfer
4 of the record and the use of any cloud-based data storage and
5 processing service.

6 (ii) In determining other actual costs for providing
7 ((photocopies)) copies of public records, an agency may include all
8 costs directly incident to:

9 (A) Shipping such public records, including the cost of postage
10 or delivery charges and the cost of any container or envelope used;
11 and

12 (B) Transmitting such records in an electronic format, including
13 the cost of any transmission charge and use of any physical media
14 device provided by the agency.

15 (b) In determining the actual ((per page cost or other)) costs
16 for providing copies of public records, an agency may not include
17 staff salaries, benefits, or other general administrative or overhead
18 charges, unless those costs are directly related to the actual cost
19 of copying the public records. Staff time to copy and ((mail)) send
20 the requested public records may be included in an agency's costs.

21 ~~(8) ((An agency need not calculate the actual per page cost or~~
22 ~~other costs it charges for providing photocopies of public records if~~
23 ~~to do so would be unduly burdensome, but in that event: The agency~~
24 ~~may not charge in excess of fifteen cents per page for photocopies of~~
25 ~~public records or for the use of agency equipment to photocopy public~~
26 ~~records and the actual postage or delivery charge and the cost of any~~
27 ~~container or envelope used to mail the public records to the~~
28 ~~requestor.~~

29 ~~(9))~~) This chapter shall not be construed as giving authority to
30 any agency, the office of the secretary of the senate, or the office
31 of the chief clerk of the house of representatives to give, sell or
32 provide access to lists of individuals requested for commercial
33 purposes, and agencies, the office of the secretary of the senate,
34 and the office of the chief clerk of the house of representatives
35 shall not do so unless specifically authorized or directed by law:
36 PROVIDED, HOWEVER, That lists of applicants for professional licenses
37 and of professional licensees shall be made available to those
38 professional associations or educational organizations recognized by
39 their professional licensing or examination board, upon payment of a
40 reasonable charge therefor: PROVIDED FURTHER, That such recognition

1 may be refused only for a good cause pursuant to a hearing under the
2 provisions of chapter 34.05 RCW, the administrative procedure act.

3 **Sec. 2.** RCW 42.56.080 and 2016 c 163 s 3 are each amended to
4 read as follows:

5 (1) A public records request must be for identifiable records. A
6 request for all or substantially all records prepared, owned, used,
7 or retained by an agency is not a valid request for identifiable
8 records under this chapter, provided that a request for all records
9 regarding a particular topic or containing a particular keyword or
10 name shall not be considered a request for all of an agency's
11 records.

12 (2) Public records shall be available for inspection and copying,
13 and agencies shall, upon request for identifiable public records,
14 make them promptly available to any person including, if applicable,
15 on a partial or installment basis as records that are part of a
16 larger set of requested records are assembled or made ready for
17 inspection or disclosure. Agencies shall not deny a request for
18 identifiable public records solely on the basis that the request is
19 overbroad. Agencies shall not distinguish among persons requesting
20 records, and such persons shall not be required to provide
21 information as to the purpose for the request except to establish
22 whether inspection and copying would violate RCW 42.56.070(~~((9))~~) (8)
23 or 42.56.240(14), or other statute which exempts or prohibits
24 disclosure of specific information or records to certain persons.
25 Agency facilities shall be made available to any person for the
26 copying of public records except when and to the extent that this
27 would unreasonably disrupt the operations of the agency. Agencies
28 shall honor requests received in person during an agency's normal
29 office hours, or by mail or email, for identifiable public records
30 unless exempted by provisions of this chapter. No official format is
31 required for making a records request; however, agencies may
32 recommend that requestors submit requests using an agency provided
33 form or web page.

34 (3) An agency may deny a bot request that is one of multiple
35 requests from the requestor to the agency within a twenty-four hour
36 period, if the agency establishes that responding to the multiple
37 requests would cause excessive interference with other essential
38 functions of the agency. For purposes of this subsection, "bot

request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script.

Sec. 3. RCW 42.56.120 and 2016 c 163 s 4 are each amended to read as follows:

(1) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, except as provided in RCW 42.56.240(14) and subsection (3) of this section. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. When calculating any fees authorized under this section, an agency shall use the most reasonable cost-efficient method available to the agency as part of its normal operations. If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record.

(2)(a) Agency charges for ((photocopies shall)) actual costs may only be imposed in accordance with the ((actual per page cost or other)) costs established and published by the agency pursuant to RCW 42.56.070(7), and in accordance with the statement of factors and manner used to determine the actual costs. In no event may an agency charge a per page cost greater than the actual ((per page)) cost as established and published by the agency.

(b) An agency need not calculate the actual costs it charges for providing public records if it has rules or regulations declaring the reasons doing so would be unduly burdensome. To the extent the agency has not determined the actual ((per page cost for photocopies of)) costs of copying public records, the agency may not charge in excess of:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the

1 person requesting records, or for the use of agency equipment to
2 photocopy public records;

3 (ii) Ten cents per page for public records scanned into an
4 electronic format or for the use of agency equipment to scan the
5 records;

6 (iii) Five cents per each four electronic files or attachment
7 uploaded to email, cloud-based data storage service, or other means
8 of electronic delivery; and

9 (iv) Ten cents per gigabyte for the transmission of public
10 records in an electronic format or for the use of agency equipment to
11 send the records electronically. The agency shall take reasonable
12 steps to provide the records in the most efficient manner available
13 to the agency in its normal operations; and

14 (v) The actual cost of any digital storage media or device
15 provided by the agency, the actual cost of any container or envelope
16 used to mail the copies to the requestor, and the actual postage or
17 delivery charge.

18 (c) The charges in (b) of this subsection may be combined to the
19 extent that more than one type of charge applies to copies produced
20 in response to a particular request.

21 (d) An agency may charge a flat fee of up to two dollars for any
22 request as an alternative to fees authorized under (a) or (b) of this
23 subsection when the agency reasonably estimates and documents that
24 the costs allowed under this subsection are clearly equal to or more
25 than two dollars. An additional flat fee shall not be charged for any
26 installment after the first installment of a request produced in
27 installments. An agency that has elected to charge the flat fee in
28 this subsection for an initial installment may not charge the fees
29 authorized under (a) or (b) of this subsection on subsequent
30 installments.

31 (e) An agency shall not impose copying charges under this section
32 for access to or downloading of records that the agency routinely
33 posts on its public internet web site prior to receipt of a request
34 unless the requestor has specifically requested that the agency
35 provide copies of such records through other means.

36 (f) A requestor may ask an agency to provide, and if requested an
37 agency shall provide, a summary of the applicable charges before any
38 copies are made and the requestor may revise the request to reduce
39 the number of copies to be made and reduce the applicable charges.

1 (3)(a)(i) In addition to the charge imposed for providing copies
2 of public records and for the use by any person of agency equipment
3 copying costs, an agency may include a customized service charge. A
4 customized service charge may only be imposed if the agency estimates
5 that the request would require the use of information technology
6 expertise to prepare data compilations, or provide customized
7 electronic access services when such compilations and customized
8 access services are not used by the agency for other agency purposes.

9 (ii) The customized service charge may reimburse the agency up to
10 the actual cost of providing the services in this subsection.

11 (b) An agency may not assess a customized service charge unless
12 the agency has notified the requestor of the customized service
13 charge to be applied to the request, including an explanation of why
14 the customized service charge applies, a description of the specific
15 expertise, and a reasonable estimate cost of the charge. The notice
16 also must provide the requestor the opportunity to amend his or her
17 request in order to avoid or reduce the cost of a customized service
18 charge.

19 (4) An agency may require a deposit in an amount not to exceed
20 ten percent of the estimated cost of providing copies for a request,
21 including a customized service charge. If an agency makes a request
22 available on a partial or installment basis, the agency may charge
23 for each part of the request as it is provided. If an installment of
24 a records request is not claimed or reviewed, the agency is not
25 obligated to fulfill the balance of the request. An agency may waive
26 any charge assessed for a request pursuant to agency rules and
27 regulations. An agency may enter into any contract, memorandum of
28 understanding, or other agreement with a requestor that provides an
29 alternative fee arrangement to the charges authorized in this
30 section, or in response to a voluminous or frequently occurring
31 request.

32 **Sec. 4.** RCW 42.56.130 and 2005 c 274 s 286 are each amended to
33 read as follows:

34 The provisions of RCW 42.56.070(7) and (8) and 42.56.120 that
35 establish or allow agencies to establish the costs charged for
36 photocopies or electronically produced copies of public records do
37 not supersede other statutory provisions, other than in this chapter,
38 authorizing or governing fees for copying public records.

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

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

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

20 (3) Judicial review of all agency actions taken or challenged
21 under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall
22 take into account the policy of this chapter that free and open
23 examination of public records is in the public interest, even though
24 such examination may cause inconvenience or embarrassment to public
25 officials or others. Courts may examine any record in camera in any
26 proceeding brought under this section. The court may conduct a
27 hearing based solely on affidavits.

28 (4) Any person who prevails against an agency in any action in
29 the courts seeking the right to inspect or copy any public record or
30 the right to receive a response to a public record request within a
31 reasonable amount of time shall be awarded all costs, including
32 reasonable attorney fees, incurred in connection with such legal
33 action. In addition, it shall be within the discretion of the court
34 to award such person an amount not to exceed one hundred dollars for
35 each day that he or she was denied the right to inspect or copy said
36 public record.

37 (5) For actions under this section against counties, the venue
38 provisions of RCW 36.01.050 apply.

1 (6) Actions under this section must be filed within one year of
2 the agency's claim of exemption or the last production of a record on
3 a partial or installment basis.

Passed by the House April 17, 2017.

Passed by the Senate April 7, 2017.

Approved by the Governor May 16, 2017.

Filed in Office of Secretary of State May 16, 2017.

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