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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-4316.1/12

ATTY/TYPIST: AL:eab

BRIEF DESCRIPTION: Regarding inspection and copying of any public record.

1 AN ACT Relating to the inspection and copying of any public record;  
2 amending RCW 42.56.565; and adding a new section to chapter 42.56 RCW.

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

4 **Sec. 1.** RCW 42.56.565 and 2011 c 300 s 1 are each amended to read  
5 as follows:

6 (1) A court shall not award penalties under RCW 42.56.550(4) to a  
7 person who was serving a criminal sentence in a state, local, or  
8 privately operated correctional facility on the date the request for  
9 public records was made, unless the court finds that the agency acted  
10 in bad faith in denying the person the opportunity to inspect or copy  
11 a public record.

12 (2) The inspection or copying of any ~~((nonexempt))~~ public record  
13 ~~((by persons serving criminal sentences in state, local, or privately  
14 operated correctional facilities))~~ may be enjoined pursuant to this  
15 section.

16 (a) The injunction may be requested by: (i) An agency or its  
17 representative; (ii) a person named in the record or his or her  
18 representative; or (iii) a person to whom the requests specifically  
19 pertains or his or her representative.

1 (b) The request for injunction must be filed in: (i) The superior  
2 court in which the movant resides; or (ii) the superior court in the  
3 county in which the record is maintained.

4 (c) In order to issue an injunction, the court must find that:

5 (i) The public record request was made to harass or intimidate the  
6 agency or its employees;

7 (ii) Fulfilling the request would likely threaten the security of  
8 correctional facilities;

9 (iii) Fulfilling the request would likely threaten the safety or  
10 security of staff, inmates, family members of staff, family members of  
11 other inmates, or any other person; (~~or~~)

12 (iv) Fulfilling the request may assist criminal activity; or

13 (v) The agency can demonstrate that it faces significant burden in  
14 fulfilling the public record request.

15 (3) In deciding whether to enjoin a public record request under  
16 subsection (2) of this section, the court may consider all relevant  
17 factors including, but not limited to:

18 (a) Other public record requests by the requestor;

19 (b) The type of public record or records sought;

20 (c) Statements offered by the requestor concerning the purpose for  
21 the public record request;

22 (d) Whether disclosure of the requested public records would likely  
23 harm any person or vital government interest;

24 (e) Whether the public record request seeks a significant and  
25 burdensome number of documents;

26 (f) The impact of disclosure on (~~correctional facility~~) security  
27 and order at an agency, the safety or security of (~~correctional~~  
28 ~~facility~~) agency staff, inmates, or others; and

29 (g) The deterrence of criminal activity.

30 (4) The motion proceeding described in this section shall be a  
31 summary proceeding based on affidavits or declarations, unless the  
32 court orders otherwise. Upon a showing by a preponderance of the  
33 evidence, the court may enjoin all or any part of a request or  
34 requests. Based on the evidence, the court may also enjoin, for a  
35 period of time the court deems reasonable, future requests by:

36 (a) The same requestor; or

37 (b) An entity owned or controlled in whole or in part by the same  
38 requestor.

1       (5) Before filing a request for an injunction pursuant to  
2 subsection (2)(c)(v) of this section, an agency shall notify the public  
3 record requestor that it intends to seek an injunction. The requestor  
4 shall be allowed fifteen days to revise its public record request. If  
5 the requestor submits a revised public record request, the agency may  
6 still seek judicial review without allowing the requestor to further  
7 revise the request.

8       (6) The agency shall continue to fulfill the request in a manner  
9 consistent with the public records act until the court issues a  
10 decision on the injunction request, unless the court orders otherwise.

11       (7) An agency shall not be liable for penalties under RCW  
12 42.56.550(4) for any period during which an order under this section is  
13 in effect, including during an appeal of an order under this section,  
14 regardless of the outcome of the appeal.

15       NEW SECTION. Sec. 2. A new section is added to chapter 42.56 RCW  
16 to read as follows:

17       (1)(a) An agency may adopt a policy limiting the number of hours  
18 that agency must devote to responding to public records requests to  
19 prevent excessive interference with its other essential functions if it  
20 makes the following documents publicly available:

21       (i) Agency budgets for the current and past three fiscal years;

22       (ii) Agendas and minutes for all public meetings for the past three  
23 fiscal years;

24       (iii) Salary schedule for all current positions and the names of  
25 all employees;

26       (iv) Resolutions and ordinances; and

27       (v) Contracts that exceed thirty-five thousand dollars that are  
28 currently in place or that terminated in the past three fiscal years.

29       (b) For a local agency this policy must be in the form of adopted  
30 legislation and for state agencies it must be in the form of an adopted  
31 rule.

32       (2) Tasks subject to the limit in this subsection include the time  
33 it takes to search for responsive records, scan or make paper or  
34 electronic copies, and review, redact, and prepare to mail or e-mail  
35 responsive records. It does not include time spent in litigation or  
36 time spent by an attorney providing legal advice regarding records.  
37 The policy may include rules on setting priorities on what requests

1 will be fulfilled in what order based on the size of the request and  
2 the number of other requests from that requester made in the preceding  
3 twelve months.

4 (3) When an agency adopts rules pursuant to subsection (1)(b) of  
5 this section, any time that agency anticipates that it will take more  
6 than sixty calendar days to fulfill a request, the agency must inform  
7 the requester of the factors that go into this time estimate, including  
8 a list of all other pending requests. The agency's time estimate is  
9 subject to court challenge pursuant to RCW 42.56.550(2).

10 (4) For any legislation or rule adopted pursuant to subsection  
11 (1)(b) of this section, the value of the time allotted may not equal  
12 less than one percent of the agency's annual operations and maintenance  
13 budget and must be based on the average salary of the person primarily  
14 assigned to process requests. In no case may an agency adopt a rule  
15 that allows it to spend fewer than five hours per month responding to  
16 requests.

17 (5) For agencies with a general fund budget that exceeds one  
18 million dollars, documents are publicly available if they are  
19 accessible through a central web site. For agencies with budgets under  
20 one million dollars, documents are publicly available if they are  
21 produced for inspection within five business days of being requested.

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