

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1667

Chapter 372, Laws of 2019

66th Legislature
2019 Regular Session

PUBLIC RECORDS REQUEST ADMINISTRATION--VARIOUS PROVISIONS

EFFECTIVE DATE: July 28, 2019—Except for section 3, which becomes effective June 30, 2020.

Passed by the House April 26, 2019
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 25, 2019
Yeas 47 Nays 0

CYRUS HABIB

President of the Senate

Approved May 13, 2019 3:54 PM

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 SUBSTITUTE HOUSE BILL 1667** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 16, 2019

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1667

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By House Appropriations (originally sponsored by Representatives Springer, Walsh, Appleton, Peterson, Smith, and Griffey)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to public records request administration;
2 amending RCW 40.14.026, 42.56.570, and 36.22.175; and providing an
3 effective date.

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

5 **Sec. 1.** RCW 40.14.026 and 2017 c 303 s 6 are each amended to
6 read as follows:

7 (1) The division of archives and records management in the office
8 of the secretary of state must establish and administer a competitive
9 grant program for local agencies to improve technology information
10 systems for public record retention, management, and disclosure, and
11 any related training. The division of archives and records management
12 may use up to six percent of amounts appropriated for the program for
13 administration of the grant program. (~~The program in this subsection~~
14 ~~ceases to exist June 30, 2020.~~)

15 (2) Any local agency may apply to the grant program. The division
16 of archives and records management in the office of the secretary of
17 state must award grants annually. The division of archives and
18 records management must consult with the chief information officer to
19 develop the criteria for grant recipient selection with a preference
20 given to small local governmental agencies based on the applicant
21 agency's need and ability to improve its information technology

1 systems for public record retention, management, and disclosure. The
2 division of archives and records management may award grants for
3 specific hardware, software, equipment, technology services
4 management and training needs, indexing for local records and digital
5 data, and other resources for improving information technology
6 systems. To the extent possible, information technology systems,
7 processes, training, and other resources for improving information
8 technology systems for records retention and distribution may be
9 replicated and shared with other governmental entities. Grants are
10 provided for one-time investments and are not an ongoing source of
11 revenue for operation or management costs. A grantee may not supplant
12 local funding with grant funding provided by the office of the
13 secretary of state. (~~The program in this subsection ceases to exist~~
14 ~~June 30, 2020.~~)

15 (3) The joint legislative audit and review committee must conduct
16 a review of the attorney general's consultation program and the state
17 archivist's training services created under section 4, chapter 303,
18 Laws of 2017, and the local government competitive grant program
19 created under this section. The review must include:

20 (a) (i) Information on the number of local governments served, the
21 types of consultation and training provided, and the implementation
22 of any practices adopted from the attorney general's consultation
23 program and the state archivist's training services; and

24 (ii) The effectiveness of the consultation program and the
25 training services in providing assistance for local governments; and

26 (b) (i) Information on the number of local governments that
27 applied for and participated in the competitive grant program under
28 this section, the amount of funding awarded through the grant
29 program, and how such funding was used; and

30 (ii) The effectiveness of the grant program in improving local
31 government technology information systems for public records
32 retention, management, disclosure, and training.

33 (4) Each agency shall maintain a log of public records requests
34 submitted to and processed by the agency, which shall include but not
35 be limited to the following information for each request: The
36 identity of the requestor if provided by the requestor, the date the
37 request was received, the text of the original request, a description
38 of the records produced in response to the request, a description of
39 the records redacted or withheld and the reasons therefor, and the
40 date of the final disposition of the request. The log must be

1 retained by the agency in accordance with the relevant record
2 retention schedule established under this chapter, and shall be a
3 public record subject to disclosure under chapter 42.56 RCW.

4 (5) To improve best practices for dissemination of public
5 records, each agency with actual staff and legal costs associated
6 with fulfilling public records requests of at least one hundred
7 thousand dollars during the prior fiscal year must, and each agency
8 with such estimated costs of less than one hundred thousand dollars
9 during the prior fiscal year may, report to the joint legislative
10 audit and review committee by July 1st of each subsequent year the
11 following metrics, measured over the preceding year:

12 ~~(a) ((An identification of leading practices and processes for~~
13 ~~records management and retention, including technological upgrades,~~
14 ~~and what percentage of those leading practices and processes were~~
15 ~~implemented by the agency;~~

16 ~~(b) The average length of time taken to acknowledge receipt of a~~
17 ~~public records request;~~

18 ~~(c) The proportion of requests where the agency provided the~~
19 ~~requested records within five days of receipt of the request compared~~
20 ~~to the proportion of requests where the agency provided an estimate~~
21 ~~of an anticipated response time beyond five days of receipt of the~~
22 ~~request;~~

23 ~~(d) A comparison of the agency's average initial estimate~~
24 ~~provided for full disclosure of responsive records with the actual~~
25 ~~time when all responsive records were fully disclosed, including~~
26 ~~whether the agency sent subsequent estimates of an anticipated~~
27 ~~response time;~~

28 ~~(e))~~ The number of requests where the agency provided the
29 requested records within five days of receiving the request.

30 (b) The number of requests where the agency provided a time
31 estimate for providing responsive records beyond five days after
32 receiving the request.

33 (c) The average and median number of days from receipt of request
34 to the date the request is closed.

35 (d) The number of requests where the agency formally sought
36 additional clarification from the requestor;

37 ~~((f))~~ (e) The number of requests denied in full or in part and
38 the most common reasons for denying requests;

39 ~~((g))~~ (f) The number of requests abandoned by requestors;

1 ~~((h))~~ (g) To the extent the information is known by the agency,
2 requests by type of requestor, including individuals, law firms,
3 organizations, insurers, governments, incarcerated persons, the
4 media, anonymous requestors, current or former employees, and others;

5 ~~((i))~~ (h) Which portion of requests were fulfilled
6 electronically compared to requests fulfilled by physical records;

7 ~~((j))~~ (i) The number of requests where the agency ~~((was
8 required to scan))~~ scanned physical records electronically to fulfill
9 disclosure;

10 ~~((k))~~ (j) The total estimated agency staff time spent on each
11 individual request;

12 ~~((l))~~ (k) The estimated costs incurred by the agency in
13 fulfilling records requests, including costs for staff compensation
14 and legal review, and a measure of the average cost per request;

15 ~~((m))~~ (l) The number of claims filed alleging a violation of
16 chapter 42.56 RCW or other public records statutes in the past year
17 involving the agency, categorized by type and exemption at issue, if
18 applicable;

19 ~~((n))~~ (m) The costs incurred by the agency litigating claims
20 alleging a violation of chapter 42.56 RCW or other public records
21 statutes in the past year, including any penalties imposed on the
22 agency;

23 ~~((o))~~ (n) The costs incurred by the agency with managing and
24 retaining records, including staff compensation and purchases of
25 equipment, hardware, software, and services to manage and retain
26 public records ~~((or otherwise assist in the fulfillment of public
27 records requests))~~; and

28 ~~((p))~~ (o) Expenses recovered by the agency from requestors for
29 fulfilling public records requests, including any customized service
30 charges ~~((; and~~

31 ~~(q) Measures of requestor satisfaction with agency responses,
32 communication, and processes relating to the fulfillment of public
33 records requests))~~.

34 (6) The joint legislative audit and review committee must consult
35 with state and local agencies to develop a reporting method and
36 clearly define standardized metrics in accordance with this section.

37 (7) By December 1, 2019, the joint legislative audit and review
38 committee must report to the legislature on its findings from the
39 review, including recommendations on whether the competitive grant
40 program, the attorney general's consultation program, and the state

1 archivist's training services should continue or be allowed to
2 expire.

3 **Sec. 2.** RCW 42.56.570 and 2017 c 303 s 4 are each amended to
4 read as follows:

5 (1) The attorney general's office shall publish, and update when
6 appropriate, a pamphlet, written in plain language, explaining this
7 chapter.

8 (2) The attorney general, by February 1, 2006, shall adopt by
9 rule advisory model rules for state and local agencies, as defined in
10 RCW 42.56.010, addressing the following subjects:

11 (a) Providing fullest assistance to requestors;

12 (b) Fulfilling large requests in the most efficient manner;

13 (c) Fulfilling requests for electronic records; and

14 (d) Any other issues pertaining to public disclosure as
15 determined by the attorney general.

16 (3) The attorney general, in his or her discretion, may from time
17 to time revise the model (~~(rule[s])~~) rules.

18 (4) Local agencies should consult the advisory model rules when
19 establishing local ordinances for compliance with the requirements
20 and responsibilities of this chapter.

21 (5) (~~(Until June 30, 2020,)~~) The attorney general must establish
22 a consultation program to provide information for developing best
23 practices for local agencies requesting assistance in compliance with
24 this chapter including, but not limited to: Responding to records
25 requests, seeking additional public and private resources for
26 developing and updating technology information services, and
27 mitigating liability and costs of compliance. The attorney general
28 may develop the program in conjunction with the advisory model rule
29 and may collaborate with the chief information officer, the state
30 archivist, and other relevant agencies and organizations in
31 developing and managing the program. (~~(The program in this subsection~~
32 ~~ceases to exist June 30, 2020.)~~)

33 (6) (~~(Until June 30, 2020,)~~) The state archivist must offer and
34 provide consultation and training services for local agencies on
35 improving record retention practices.

36 **Sec. 3.** RCW 36.22.175 and 2011 1st sp.s. c 50 s 931 are each
37 amended to read as follows:

1 (1)(a) In addition to any other charge authorized by law, the
2 county auditor shall charge a surcharge of one dollar per instrument
3 for each document recorded. Revenue generated through this surcharge
4 shall be transmitted monthly to the state treasurer for deposit in
5 the local government archives account under RCW 40.14.024. These
6 funds shall be used solely for providing records scheduling, security
7 microfilm inspection and storage, archival preservation, cataloging,
8 and indexing for local government records and digital data and access
9 to those records and data through the regional branch archives of the
10 division of archives and records management.

11 (b) The division of archives and records management within the
12 office of the secretary of state shall provide records management
13 training for local governments and shall establish a competitive
14 grant program to solicit and prioritize project proposals from local
15 governments for potential funding to be paid for by funds from the
16 auditor surcharge and tax warrant surcharge revenues. Application for
17 specific projects may be made by local government agencies only. The
18 state archivist in consultation with the advisory committee
19 established under RCW 40.14.027 shall adopt rules governing project
20 eligibility, evaluation, awarding of grants, and other criteria
21 including requirements for records management training for grant
22 recipients.

23 (2) The advisory committee established under RCW 40.14.027 shall
24 review grant proposals and establish a prioritized list of projects
25 to be considered for funding by January 1st of each even-numbered
26 year, beginning in 2002. The evaluation of proposals and development
27 of the prioritized list must be developed through open public
28 meetings. Funding for projects shall be granted according to the
29 ranking of each application on the prioritized list and projects will
30 be funded only to the extent that funds are available. A grant award
31 may have an effective date other than the date the project is placed
32 on the prioritized list.

33 (3)(a) In addition to any other surcharge authorized by law, the
34 county auditor shall charge a surcharge of one dollar per instrument
35 for every document recorded after January 1, 2002. Revenue generated
36 through this surcharge shall be transmitted to the state treasurer
37 monthly for deposit in the local government archives account under
38 RCW 40.14.024 to be used exclusively for: (i) The construction and
39 improvement of a specialized regional facility located in eastern
40 Washington designed to serve the archives, records management, and

1 digital data management needs of local government; and (ii) payment
2 of the certificate of participation issued for the Washington state
3 heritage center to the extent there is an excess fund balance in the
4 account and fees generated under RCW 36.18.010 and 43.07.128 are
5 insufficient to meet debt service payments on the certificate of
6 participation.

7 (b) To the extent the facilities are used for the storage and
8 retrieval of state agency records and digital data, that portion of
9 the construction of such facilities used for state government records
10 and data shall be supported by other charges and fees paid by state
11 agencies and shall not be supported by the surcharge authorized in
12 this subsection, except that to the extent there is an excess fund
13 balance in the account and fees generated under RCW 36.18.010 and
14 43.07.128 are insufficient to meet debt service payments for the
15 Washington state heritage center, the local government archives
16 account under RCW 40.14.024 may be used for the Washington state
17 heritage center.

18 (c) At such time that all debt service from construction of the
19 specialized regional archive facility located in eastern Washington
20 has been paid, fifty percent of the surcharge authorized by this
21 subsection shall be reverted to the centennial document preservation
22 and modernization account as prescribed in RCW 36.22.170 and fifty
23 percent of the surcharge authorized by this section shall be reverted
24 to the state treasurer for deposit in the public records efficiency,
25 preservation, and access account to serve the archives, records
26 management, and digital data management needs of local government,
27 except that the state treasurer shall not revert funds to the
28 centennial document preservation and modernization account and to the
29 public records efficiency, preservation, and access account if fees
30 generated under RCW 36.18.010 and 43.07.128 are insufficient to meet
31 debt service payments on the Washington state heritage center.

32 (4) In addition to any other surcharge authorized by law, the
33 county auditor shall charge a surcharge of one dollar per instrument
34 for every document recorded. Revenue generated through this surcharge
35 shall be transmitted to the state treasurer monthly for deposit in
36 the local government archives account under RCW 40.14.024 to be used
37 exclusively for the competitive grant program in RCW 40.14.026, and
38 for the attorney general's consultation program and state archivist's
39 training services authorized in RCW 42.56.570.

1 NEW SECTION. **Sec. 4.** Section 3 of this act takes effect June
2 30, 2020.

Passed by the House April 26, 2019.
Passed by the Senate April 25, 2019.
Approved by the Governor May 13, 2019.
Filed in Office of Secretary of State May 16, 2019.

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