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HOUSE BILL 3013

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State of Washington

65th Legislature

2018 Regular Session

By Representative Morris

1 AN ACT Relating to expanding the scope and resources for public  
2 records access; amending RCW 42.56.010 and 42.56.070; adding a new  
3 section to chapter 42.56 RCW; adding a new section to chapter 44.04  
4 RCW; repealing RCW 42.56.560; and providing for submission of this  
5 act to a vote of the people.

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

7 **Sec. 1.** RCW 42.56.010 and 2017 c 303 s 1 are each amended to  
8 read as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Agency" includes all state agencies and all local agencies.  
12 "State agency" includes every state office, department, division,  
13 bureau, board, commission, or other state agency. For purposes of  
14 public records created after the effective date of this section,  
15 "state agency" includes every state office, department, division,  
16 bureau, board, commission, or other body within any of the judicial,  
17 legislative, or executive branches of the state. "Local agency"  
18 includes every county, city, town, municipal corporation, quasi-  
19 municipal corporation, or special purpose district, or any office,  
20 department, division, bureau, board, commission, or agency thereof,  
21 or other local public agency.

1 (2) "Person in interest" means the person who is the subject of a  
2 record or any representative designated by that person, except that  
3 if that person is under a legal disability, "person in interest"  
4 means and includes the parent or duly appointed legal representative.

5 (3) "Public record" includes any writing containing information  
6 relating to the conduct of government or the performance of any  
7 governmental or proprietary function prepared, owned, used, or  
8 retained by any state or local agency regardless of physical form or  
9 characteristics. For the office of the secretary of the senate and  
10 the office of the chief clerk of the house of representatives, public  
11 records that were created before the effective date of this section  
12 means legislative records as defined in RCW 40.14.100 and also means  
13 the following: All budget and financial records; personnel leave,  
14 travel, and payroll records; records of legislative sessions; reports  
15 submitted to the legislature; and any other record designated a  
16 public record by any official action of the senate or the house of  
17 representatives. This definition does not include records that are  
18 not otherwise required to be retained by the agency and are held by  
19 volunteers who:

20 (a) Do not serve in an administrative capacity;

21 (b) Have not been appointed by the agency to an agency board,  
22 commission, or internship; and

23 (c) Do not have a supervisory role or delegated agency authority.

24 (4) "Writing" means handwriting, typewriting, printing,  
25 photostating, photographing, and every other means of recording any  
26 form of communication or representation including, but not limited  
27 to, letters, words, pictures, sounds, or symbols, or combination  
28 thereof, and all papers, maps, magnetic or paper tapes, photographic  
29 films and prints, motion picture, film and video recordings, magnetic  
30 or punched cards, discs, drums, diskettes, sound recordings, and  
31 other documents including existing data compilations from which  
32 information may be obtained or translated.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.56  
34 RCW to read as follows:

35 No exemption established under this chapter may apply to any  
36 public records prepared, owned, used, or retained by any state agency  
37 that were created after the effective date of this section.

1       **Sec. 3.** RCW 42.56.070 and 2017 c 304 s 1 are each amended to  
2 read as follows:

3       (1) Each agency, in accordance with published rules, shall make  
4 available for public inspection and copying all public records,  
5 unless ~~((the record falls within the specific exemptions of~~  
6 ~~subsection (8) of this section, this chapter, or other))~~ another  
7 statute ((which)) exempts or prohibits disclosure of specific  
8 information or records, or the record falls within the specific  
9 exemption in this chapter, except as provided in section 2 of this  
10 act. To the extent required to prevent an unreasonable invasion of  
11 personal privacy interests protected by this chapter, ~~((an))~~ a local  
12 agency shall delete identifying details in a manner consistent with  
13 this chapter when it makes available or publishes any public record;  
14 however, in each case, the justification for the deletion shall be  
15 explained fully in writing.

16       (2) For informational purposes, each agency shall publish and  
17 maintain a current list containing every law, other than those listed  
18 in this chapter, that the agency believes exempts or prohibits  
19 disclosure of specific information or records of the agency. An  
20 agency's failure to list an exemption shall not affect the efficacy  
21 of any exemption.

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

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

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

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

32       (d) Planning policies and goals, and interim and final planning  
33 decisions;

34       (e) Factual staff reports and studies, factual consultant's  
35 reports and studies, scientific reports and studies, and any other  
36 factual information derived from tests, studies, reports, or surveys,  
37 whether conducted by public employees or others; and

38       (f) Correspondence, and materials referred to therein, by and  
39 with the agency relating to any regulatory, supervisory, or  
40 enforcement responsibilities of the agency, whereby the agency

1 determines, or opines upon, or is asked to determine or opine upon,  
2 the rights of the state, the public, a subdivision of state  
3 government, or of any private party.

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

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

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

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

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

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

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

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

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

28 Rules establishing systems of indexing shall include, but not be  
29 limited to, requirements for the form and content of the index, its  
30 location and availability to the public, and the schedule for  
31 revising or updating the index. State agencies that have maintained  
32 indexes for records issued before July 1, 1990, shall continue to  
33 make such indexes available for public inspection and copying.  
34 Information in such indexes may be incorporated into indexes prepared  
35 pursuant to this subsection. State agencies may satisfy the  
36 requirements of this subsection by making available to the public  
37 indexes prepared by other parties but actually used by the agency in  
38 its operations. State agencies shall make indexes available for  
39 public inspection and copying. State agencies may charge a fee to

1 cover the actual costs of providing individual mailed copies of  
2 indexes.

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

- 6 (a) It has been indexed in an index available to the public; or  
7 (b) Parties affected have timely notice (actual or constructive)  
8 of the terms thereof.

9 (7) Each agency may establish, maintain, and make available for  
10 public inspection and copying a statement of the actual costs that it  
11 charges for providing photocopies or electronically produced copies,  
12 of public records and a statement of the factors and manner used to  
13 determine the actual costs. Any statement of costs may be adopted by  
14 an agency only after providing notice and public hearing.

15 (a)(i) In determining the actual cost for providing copies of  
16 public records, an agency may include all costs directly incident to  
17 copying such public records including:

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

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

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

25 (A) Shipping such public records, including the cost of postage  
26 or delivery charges and the cost of any container or envelope used;  
27 and

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

31 (b) In determining the actual costs for providing copies of  
32 public records, an agency may not include staff salaries, benefits,  
33 or other general administrative or overhead charges, unless those  
34 costs are directly related to the actual cost of copying the public  
35 records. Staff time to copy and send the requested public records may  
36 be included in an agency's costs.

37 (8) This chapter shall not be construed as giving authority to  
38 any local agency, the office of the secretary of the senate, or the  
39 office of the chief clerk of the house of representatives to give,  
40 sell or provide access to lists of individuals requested for

1 commercial purposes, and agencies, the office of the secretary of the  
2 senate, and the office of the chief clerk of the house of  
3 representatives shall not do so unless specifically authorized or  
4 directed by law: PROVIDED, HOWEVER, That lists of applicants for  
5 professional licenses and of professional licensees shall be made  
6 available to those professional associations or educational  
7 organizations recognized by their professional licensing or  
8 examination board, upon payment of a reasonable charge therefor:  
9 PROVIDED FURTHER, That such recognition may be refused only for a  
10 good cause pursuant to a hearing under the provisions of chapter  
11 34.05 RCW, the administrative procedure act.

12 NEW SECTION. **Sec. 4.** RCW 42.56.560 (Application of RCW  
13 42.56.550) and 2005 c 274 s 289 & 1995 c 397 s 16 are each repealed.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 44.04  
15 RCW to read as follows:

16 The chief clerk of the house of representatives and the secretary  
17 of the senate must ensure sufficient resources and staff are provided  
18 to fully comply with the requirements of the legislative branch under  
19 chapter 42.56 RCW in maintaining public records and responding to  
20 public records requests. Each member of the senate or house of  
21 representatives may receive an allowance, in accordance with RCW  
22 44.04.120, to the extent necessary for ensuring compliance with  
23 chapter 42.56 RCW.

24 NEW SECTION. **Sec. 6.** The secretary of state shall submit this  
25 act to the people for their adoption and ratification, or rejection,  
26 at the next general election to be held in this state, in accordance  
27 with Article II, section 1 of the state Constitution and the laws  
28 adopted to facilitate its operation.

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