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**SENATE BILL 5571**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Rivers

1 AN ACT Relating to limiting frivolous claims by modifying  
2 administrative and judicial review processes for public records  
3 request responses; and amending RCW 42.56.520 and 42.56.550.

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

5 **Sec. 1.** RCW 42.56.520 and 2017 c 303 s 3 are each amended to  
6 read as follows:

7 (1) Responses to requests for public records shall be made  
8 promptly by agencies, the office of the secretary of the senate, and  
9 the office of the chief clerk of the house of representatives. Within  
10 five business days of receiving a public record request, an agency,  
11 the office of the secretary of the senate, or the office of the chief  
12 clerk of the house of representatives must respond in one of the ways  
13 provided in this subsection (1):

14 (a) Providing the record;

15 (b) Providing an internet address and link on the agency's  
16 website to the specific records requested, except that if the  
17 requester notifies the agency that he or she cannot access the  
18 records through the internet, then the agency must provide copies of  
19 the record or allow the requester to view copies using an agency  
20 computer;

1 (c) Acknowledging that the agency, the office of the secretary of  
2 the senate, or the office of the chief clerk of the house of  
3 representatives has received the request and providing a reasonable  
4 estimate of the time the agency, the office of the secretary of the  
5 senate, or the office of the chief clerk of the house of  
6 representatives will require to respond to the request;

7 (d) Acknowledging that the agency, the office of the secretary of  
8 the senate, or the office of the chief clerk of the house of  
9 representatives has received the request and asking the requestor to  
10 provide clarification for a request that is unclear, and providing,  
11 to the greatest extent possible, a reasonable estimate of the time  
12 the agency, the office of the secretary of the senate, or the office  
13 of the chief clerk of the house of representatives will require to  
14 respond to the request if it is not clarified; or

15 (e) Denying the public record request.

16 (2) Additional time required to respond to a request may be based  
17 upon the need to clarify the intent of the request, to locate and  
18 assemble the information requested, to notify third persons or  
19 agencies affected by the request, or to determine whether any of the  
20 information requested is exempt and that a denial should be made as  
21 to all or part of the request.

22 (3)(a) In acknowledging receipt of a public record request that  
23 is unclear, an agency, the office of the secretary of the senate, or  
24 the office of the chief clerk of the house of representatives may ask  
25 the requestor to clarify what information the requestor is seeking.

26 (b) If the requestor fails to respond to an agency request to  
27 clarify the request, and the entire request is unclear, the agency,  
28 the office of the secretary of the senate, or the office of the chief  
29 clerk of the house of representatives need not respond to it.  
30 Otherwise, the agency must respond, pursuant to this section, to  
31 those portions of the request that are clear.

32 (4) Denials of requests must be accompanied by a written  
33 statement of the specific reasons therefor. Agencies, the office of  
34 the secretary of the senate, and the office of the chief clerk of the  
35 house of representatives shall establish mechanisms for ~~((the most))~~  
36 a prompt ~~((possible))~~ review of decisions denying inspection, and  
37 such review shall be deemed completed at the end of the ~~((second))~~  
38 10th business day following the denial of inspection ~~((and))~~. Such  
39 review shall constitute final agency action or final action by the  
40 office of the secretary of the senate or the office of the chief

1 clerk of the house of representatives for the purposes of judicial  
2 review, unless the requestor petitions the agency, the office of the  
3 secretary of the senate, or the office of the chief clerk of the  
4 house of representatives for an administrative review in accordance  
5 with subsection (5) of this section, in which case the entity's  
6 determination after the administrative review under subsection (5) of  
7 this section constitutes final agency action or final action by the  
8 office of the secretary of the senate or the office of the chief  
9 clerk of the house of representatives for the purposes of judicial  
10 review.

11 (5) Agencies, the office of the secretary of the senate, and the  
12 office of the chief clerk of the house of representatives shall  
13 establish an administrative review process for requesters to appeal  
14 the denial of a request or to make a claim that the response to a  
15 request is incomplete. The administrative review process must allow a  
16 requester to petition the agency, the office of the secretary of the  
17 senate, or the office of the chief clerk of the house of  
18 representatives, whichever is applicable, for a review of the  
19 agency's response to a public records request within 30 days of the  
20 denial or closure of the request. Once received, the administrative  
21 review must be completed within 20 business days of receiving the  
22 petition for an administrative review. If, through the administrative  
23 review process, the agency finds that records were improperly  
24 withheld, the agency must provide the responsive records in  
25 accordance with this title.

26 **Sec. 2.** RCW 42.56.550 and 2017 c 304 s 5 are each amended to  
27 read as follows:

28 (1) Upon the motion of any person having been denied an  
29 opportunity to inspect or copy a public record by an agency, the  
30 superior court in the county in which a record is maintained may  
31 require the responsible agency to show cause why it has refused to  
32 allow inspection or copying of a specific public record or class of  
33 records. The burden of proof shall be on the agency to establish that  
34 refusal to permit public inspection and copying is in accordance with  
35 a statute that exempts or prohibits disclosure in whole or in part of  
36 specific information or records.

37 (2) Upon the motion of any person who believes that an agency has  
38 not made a reasonable estimate of the time that the agency requires  
39 to respond to a public record request or a reasonable estimate of the

1 charges to produce copies of public records, the superior court in  
2 the county in which a record is maintained may require the  
3 responsible agency to show that the estimate it provided is  
4 reasonable. The burden of proof shall be on the agency to show that  
5 the estimate it provided is reasonable.

6 (3) Judicial review of all agency actions taken or challenged  
7 under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall  
8 take into account the policy of this chapter that free and open  
9 examination of public records is in the public interest, even though  
10 such examination may cause inconvenience or embarrassment to public  
11 officials or others. Courts may examine any record in camera in any  
12 proceeding brought under this section. The court may conduct a  
13 hearing based solely on affidavits. A party seeking judicial review  
14 must have exhausted all administrative remedies provided under RCW  
15 42.56.520 and shall sign a certification attesting that the request  
16 for records is not being made for any improper purpose.

17 (4) (~~Any~~) Except where the court finds that the certification  
18 in subsection (3) of this section was signed untruthfully, any person  
19 who prevails against an agency in any action in the courts seeking  
20 the right to inspect or copy any public record or the right to  
21 receive a response to a public record request within a reasonable  
22 amount of time (~~shall~~) may be awarded all reasonable costs,  
23 including reasonable attorney fees, incurred in connection with such  
24 legal action. In addition, it shall be within the discretion of the  
25 court to award such person an amount not to exceed one hundred  
26 dollars for each day that he or she was denied the right to inspect  
27 or copy said public record. If the court finds the agency was in  
28 substantial compliance with this title and acted reasonably and in  
29 good faith, then the court shall consider those factors in  
30 determining any award. The court may alternatively direct all or a  
31 portion of any award to be deposited into the local government  
32 archives account created in RCW 40.14.024.

33 (5) If the court finds the party requested to inspect or copy a  
34 public record or participated in the civil action for an improper  
35 purpose, the court may not assess and award costs or attorney fees to  
36 the party.

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

1        ~~((6))~~ (7) Actions under this section must be filed within ~~((one~~  
2 ~~year))~~ 180 days of the agency's claim of exemption or the last  
3 production of a record on a partial or installment basis.

4        (8) For purposes of this section, a request made for any  
5 "improper purpose" means the request to inspect or copy a public  
6 record or to bring a civil action pursuant to this section is made  
7 primarily: To harass; to cause an unreasonable or a frivolous  
8 increase in the cost of government operations or delay in government  
9 action; in pursuit of an award of statutory fees, costs, or other  
10 monetary award; to cause a violation of this chapter; or for any  
11 other frivolous purpose.

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