
SENATE BILL 5710

State of Washington

65th Legislature

2017 Regular Session

By Senators Kuderer and Palumbo

1 AN ACT Relating to penalties awarded for violations of the public
2 records act; and amending RCW 42.56.550.

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

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

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

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

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

9 (4) Any person who prevails against an agency in any action in
10 the courts seeking the right to inspect or copy any public record or
11 the right to receive a response to a public record request within a
12 reasonable amount of time shall be awarded all costs, including
13 reasonable attorneys' fees, incurred in connection with such legal
14 action. In addition, it shall be within the discretion of the court
15 to award such person an amount not to exceed one hundred dollars for
16 each day that he or she was denied the right to inspect or copy said
17 public record, subject to the limitation in subsection (5) of this
18 section.

19 (5) If the court determines that the agency acted in good faith
20 in denying the person the right to inspect or copy a record or the
21 right to receive a response to a public record request within a
22 reasonable amount of time, the maximum penalty that may be awarded is
23 five thousand dollars. In determining whether an agency acted in good
24 faith, the court shall consider, at a minimum, the following factors:

- 25 (a) A lack of clarity in the request;
26 (b) The agency's prompt response or legitimate follow-up inquiry
27 for clarification;
28 (c) The agency's honest, timely, and strict compliance with all
29 statutory procedural requirements and exceptions;
30 (d) Proper training and supervision of the agency's personnel;
31 (e) The reasonableness of any explanation for noncompliance by
32 the agency;
33 (f) The helpfulness of the agency to the requestor;
34 (g) The supplemental and unprompted provision by an agency of
35 responsive records that had inadvertently not been provided
36 previously; and
37 (h) The existence of agency systems to track and retrieve public
38 records.

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

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

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