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DIVISION II
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No. 40144-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SHAWN GREENHALGH, Appellant;

v.

DEPARTMENT OF CORRECTIONS, Respondent.

APPEAL FROM THE SUPERIOR COURT FOR
GRAYS HARBOR COUNTY

The Honorable F. Mark McCauley
No. 08-2-00504-2

REPLY BRIEF OF APPELLANT GREENHALGH

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ORIGINAL

PM 6-4-10

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A. INTRODUCTION

Respondent Department of Corrections (the “Department”) has argued that Mr. Greenhalgh was provided the documents he requested. It also argued the statutory language of RCW 42.56.550(6) must apply because of statutory interpretation. Finally, the Department argued that the discovery rule cannot apply to the Public Records Act (“PRA”). Mr. Greenhalgh will address each argument in turn.

B. SUMMARY OF ARGUMENT

Mr. Greenhalgh will first show that the Department’s argument shifts the burden to requesters to recognize when a PRA response is inadequate and would provide agencies an incentive to conceal the existence of documents that they would prefer to keep from the public. He will then show that the Department’s argument for a strict reading of the PRA’s statute of limitations contravenes the PRA’s mandate for liberal construction favoring the people of Washington and requiring agencies to provide the fullest assistance in making all public records available upon request. Finally, he will demonstrate that the statutory scheme of the PRA requires application of the discovery rule to the date of accrual.

C. ARGUMENT

1. THE DEPARTMENT VIOLATED THE PRA BY FAILING TO PROVIDE THE REQUESTED RECORDS TO MR. GREENHALGH AFTER HE INFORMED THEM HIS REQUEST WAS LACKING.

Mr. Greenhalgh made a simple request on November 10, 2006. It was a request for a list that every inmate is familiar with. When Mr. Greenhalgh wrote to the Public Disclosure Coordinator (“PDC”) at Stafford Creek Corrections Center (“SCCC”) asking for clarification on December 18, 2006, he wrote expecting to receive the rest of the documents listing what the original disclosure earlier in the month failed to list – various electronic and other items.

There was no response. Mr. Greenhalgh wrote another letter on March 21, 2007. This time he received a reply – a one page list. He had no reason to realize there was more to it than what he received. It was only after being informed by inmates who themselves, unlike Mr. Greenhalgh, had served time at SCCC, that he realized there was more to it than met the eye.

- a) The Department Failed Its Responsibility Under RCW 42.56.100 By Failing To Provide The Fullest Assistance To A Records Requester.

The agency’s statutory obligation to supply the fullest assistance to PRA inquirers per RCW 42.56.100 has been interpreted to mean two things: first, a requester is not required to “provide the exact name of the

requested record” and, second, an agency is required to “liberally construe the scope of a records request.” Overstreet, Ed., Public Records Act Deskbook: Washington’s Public Disclosure and Open Public Meetings Law § 4.1 (Wash. State Bar Assoc. 2006) (citing *Horsehead Indus., Inc. v. U.S. Envtl. Prot. Agency*, 999 F. Supp. 59, 66 (D.D.C. 1998); *Knight v. Food & Drug Admin.*, 938 F.Supp. 710, 716 (D.Kan. 1996)).¹ Here, Mr. Greenhalgh was not required to provide the exact list name of the record he was requesting and DOC cannot parse the request to preclude any other lists pertaining to the store that were kept at SCCC. If there was any question at all as to which list Mr. Greenhalgh wished to obtain, it is the Department’s responsibility to inform him of the ambiguity and ask for his clarification.

Furthermore, the Department’s argument that Mr. Greenhalgh was entitled only to a main store list is factually inadequate. The Department has tried to claim that being provided the most current list for the main store was sufficient. While it is true that Mr. Greenhalgh asked for “[t]he most current Inmate Store Price List for the Stafford Creek Corrections Center Inmate Main Store,” it is also true that he made no differentiation between possible lists. Also, the staff at SCCC made no such distinction

¹Washington courts often look to federal courts’ interpretation of FOIA cases when there are parallels between the issues. *Id.*

in their responses and only looked at store lists, not “main” store lists, supporting Mr. Greenhalgh’s contention that two pages were initially withheld. It is clear that SCCC staff did not make such an artificial distinction.

The Department also argued that because the watches are supplied by outside vendors, that Mr. Greenhalgh’s request was insufficient. However, there is no way that he would have know because he has served no time at SCCC. Furthermore, the watches obtained from outside vendor are kept at the store and they are not ordered directly from the vendor. CP 110-21 (Exhibit Y).

There is no language on the original store list produced that states it is the “main” store; it is titled “SCC Store Order List.” The one page that was subsequently produced refers only to the “Stafford Creek Property Order List.” As a matter of fact, it appears that these two apparent lists are both supplied to inmates from the same store. (“All returns for exchange must be verified by store or property staff before returning to store.”). To expect an individual like Mr. Greenhalgh not housed at SCCC to know there might be more than one store at SCCC without being so informed is simply unfair, and it certainly is not providing the fullest assistance possible.

Additionally, it is also critical to note that items defined by DOC as “personal property” are on the first list provided to Mr. Greenhalgh. For example, bowls, playing cards, tweezers, and water pitchers are all defined as personal property items, yet they are included on the “Store Order List” and are not included on the “Property Order List.” Given that SCCC does not distinguish between the types of property as defined by the Department on its store lists, it is not reasonable to expect that Mr. Greenhalgh should know better. CP 110-21 (Exhibit Z).

- b) No Matter Whether The December 18, 2006, Letter Is Characterized As A Request For Clarification Or An Expansion Of The Original Request, The Department Is Still Liable.

The Department has tried to categorize as a “purported follow-up” to the November 10, 2006 request the letter dated December 18, 2006. Given that Mr. Greenhalgh referenced the December 11, 2006 production in this letter, there can be no doubt it was a follow-up letter. It is also clear that there were four responsive documents and this is clearly shown by the Declaration of Mr. Burt after reviewing the responses of the Department.² CP 82-87.

²The Department made sure to cite to Mr. Clark’s request but ignored the contents of Mr. Burt’s Declaration. The language in Mr. Burt’s declaration provided the necessary evidence that the document existed when Mr. Greenhalgh submitted his request in November, 2006.

Furthermore, Mr. Greenhalgh did not expand the scope of his original request or seek an “additional” list as the Department maintains. Mr. Greenhalgh’s follow-up letter simply explained that he could not find other items like electrical appliances. He left this very open ended, using these as an example of missing items. He was not requesting only a list of these items because he specifically asked if “there is another list, listing additional items.” CP 34-72 (Exhibit G). These additional items could include electrical appliances and any other items on a list available for inmates at SCCC to purchase that he had not already been provided. In fact, the list provided did not include only appliances but also photo albums, ear plugs, and moustache scissors. Mr. Greenhalgh did not expand the scope of his original request in his follow-up letters and the Department’s response was not limited merely to a listing of appliances available.

The Department’s focus on the November 10, 2006 request ignores all subsequent correspondence from Mr. Greenhalgh to the Department. When the December 18, 2006 letter is fully considered in its context, one conclusion must be made – at a minimum Mr. Greenhalgh merely explained his request. At the maximum, it must be treated as an expansion of his prior request. The only critical difference this makes to this case is how the December 18, 2006, letter affects the starting date of

the penalty period. This is because if it is categorized by this Court as an expansion of the request, the start date is November 10, 2006. If it is treated as an expansion, it must be treated as a new request for the purposes of calculating any penalty and the date penalties start is December 18, 2006. It is only logical because any failure to properly respond to an expansion of an initial request must be treated as a violation of the PRA. To not do so creates a situation wherein the requester must send in a separate request and start new correspondence. Such a situation is illogical both for the requester and the agency.

2. STATUTORY CONSTRUCTION MANDATES HOLDING THE STATUTE OF LIMITATIONS DOES NOT APPLY IN THIS CASE.

The Department's attempts to define "partial" disclosure to mean the type of incomplete disclosure at issue here is not a reasonable interpretation of the Public Records Act. When interpreting a statute, a court begins with the language of the statute. *State v. Malone*, 106 Wn.2d 607, 610 724 P.2d 364 (1986) ("Words in a statute should be given their plain and ordinary meaning unless a contrary legislative intent appears."). "A court cannot read into a statute that which does not appear." *Id.* "Any statutory interpretation which would render an unreasonable and illogical consequence should be avoided." *Puyallup v. Pacific NW Bell*, 98 Wn.2d 443, 450, 656 P.2d 1035 (1982). "An act must be construed as a whole,

considering all provisions in relation to each other and, if possible, harmonizing all to insure proper construction of each provision.” *In re Piercy*, 101 Wn.2d 490, 492, 681 P.2d 223 (1984).³

The Department has claimed that “partial” is different from “installment” because of the disjunctive “or” in the statute of limitations section. The Department then crafts a definition of “partial” that reflects its incomplete disclosure in the present case. The history of the adoption of the statute of limitations section belies this definition.

The initial draft of the bill used the phrase “on a rolling basis” to refer to disclosures that are not made in a single, complete disclosure. See Attachment A, House Bill 1758 at 14-15.⁴ The phrase “on a rolling basis” was used in the another section of the original bill. *Id.* at 11. Consequently, in the section that would become RCW 42.56.080, the pertinent section read “...on a rolling basis as records that are part of a larger set of requested records ...”

³Despite the Department’s contention, there is a presumption that the same phrase used in different parts of the same statute has the same meaning. *Welch v. Southland Corp.*, 134 Wn.2d 629, 636, 952 P.2d 162 (1998) (harmonizing separate sections of the tort reform act). This principle has been applied to the PRA in *Cowles Pub’g Co. v. State Patrol*, 109 Wn.2d 712, 722, 748 P.2d 597 (1988) (applying the presumption to harmonize the phrase “invasion of privacy” in separate sections of the PRA).

⁴<http://apps.leg.wa.gov/documents/billdocs/2005-06/Pdf/Bills/House%20Bills/1758.pdf> (last visited on May 19, 2010).

When the bill was in committee, the phrase in the statute of limitations section “on a rolling basis” was changed to read “on a partial or installment basis.” See Attachment B, Substitute House Bill 1758, at 4-5.⁵ The phrase was also replaced in what would become RCW 42.56.080, so that it now read “...on a partial or installment basis as records that are part of a larger set of requested records...” Attachment B. at 1. The Substitute Bill also included a new section dealing with payment for copies of records requests. It provided in part: “[i]f an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided.” *Id.* at 2.

When the bill was finalized and signed, and as it exists now, the text referred to “partial or installment basis” in three sections. In section .080, the PRA provides, in part:

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure....

Section .120, which covers payment for records, provides:

... An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a

⁵<http://apps.leg.wa.gov/documents/billdocs/2005-06/Pdf/Bills/House%20Bills/1758-S.pdf> (last visited on May 19, 2010).

partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.

And finally, section .550(6) which is the statute of limitations section provides:

Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

It is not possible to read the phrase “partial or installment basis” in the three above sections that were enacted together and conclude that the Department’s proposed definition of “partial” is reasonable. Section .080 is unambiguous that when records are provided on either a “partial” or “installment” basis, it is understood that the disclosed records are “records that are part of a larger set of requested records.” Additionally, section .120 uses “each part” to refer to individual disclosures made under both “partial” and “installment” bases. Under the Department’s definition, there is only a single incomplete disclosure, so there is no other part that has been provided or will be provided, so a reference to payment for parts is rendered nonsensical. The Department cannot harmonize its definition of “partial” with the way the word is used in these other sections as required by *Piercy*.

The only reasonable interpretation from the fact that the phrase “on a partial or installment basis” replaced the phrase “on a rolling basis” and

that “partial or installment” are used together in other parts of the PRA is that the Legislature did not intend for the word “partial” to be synonymous with “incomplete” in the way the Department suggests. Instead, partial and installment are simply gradations of formality in determining how and when a large production of records will be provided to a requester over time. Installment means that the agency affixes times for disclosure of parts of a set of records, while partial simply means that some of the set will be provided now and some later.

Under either a partial or installment disclosure, the statute of limitations does not begin to run until *all* requested records have been provided, which is done when either the final installment disclosure is made, or when the final part of a partial disclosure is made. Any other construction of the statute of limitations, which categorically differentiates partial and installment productions, would “yield unlikely, strange or absurd consequences,” as it would not allow the identical word to have the same definition in other sections of the same statute. *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994).

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3. THE PRINCIPLES UNDERLYING STATUTES OF LIMITATION ARE NOT VIOLATED BY APPLICATION OF THE DISCOVERY RULE IN PUBLIC RECORDS ACT CASES.

a) The Discovery Rule Can Require A Factual Finding Which Prevents Abuse.

The policy behind strict adherence to the statute of limitation is not affected by application of the discovery rule to PRA cases. Washington courts have recognized that statutes of limitation exist to prevent plaintiffs from “sleep[ing] on their rights” and to allow legal claims to go stale. *See Crisman v. Crisman*, 85 Wn. App. 15, 19, 931 P.2d 163 (1997) (*citing Douchette v. Bethell Sch. Dist. No. 403*, 117 Wn.2d 805, 813, 818 P.2d 1362 (1991)). The discovery rule has been rejected in circumstances which would allow a plaintiff the opportunity to “manipulate the date an action accrues.” Brief of Appellee Department of Corrections (“Response Brief”) at 14, 15 (*citing Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 381-82, 166 P.3d 662 (2007); *Huff v. Roach*, 125 Wn. App. 724, 732, 106 P.3d 268 (2005)). None of these concerns are affected by the application of the discovery rule to the PRA.

The discovery rule contains built in safeguards that prevent a requester from sleeping on her claims under the PRA and from manipulating the date of accrual of the cause of action. Applying the discovery rule to the PRA requires the claim to accrue when the requester

knows or should know that she has “been denied an opportunity to inspect or copy a public record by an agency,” or when she “believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request.” RCW 42.56.550. As a consequence, issues of fact may exist regarding how and when the requester knew about the agency’s failure to acknowledge a record’s existence or whether a requester exercised due diligence. A requester simply can not “sleep on” her right to receive requester records or to manipulate the accrual date. If a requester knows or should know response is inadequate, that requester must act diligently to exercise her rights under the PRA. The Department’s concern about unfair exposure to penalties is consequently unfounded.

b) The Public Record Act’s Statutory Basis Does Not Preclude Application Of The Discovery Rule.

The Department also argued that courts are less likely to apply the discovery rule when a statute of limitations is statutory and does not explicitly adopt the discovery rule. Response Brief at 15 (citing *Elliott v. Dep’t of Labor and Indus.*, 151 Wn. App. 442, 447, 213 P.3d 44 (2009)). The Department’s argument both ignores the statutory framework of the PRA and the legislative history of the Industrial Insurance Act. The PRA, unlike the Industrial Insurance Act, explicitly requires courts to liberally construe its provisions in favor of the public policy of allowing citizens to

remain informed.⁶ RCW 42.56.030. As such, the statute of limitations must also be construed liberally.

Elliott is distinguishable because the legislature included a provision for the discovery rule to apply to occupational diseases, not injuries. *Id.* at 5 (citing *Rector v. Dep't of Labor and Indus.*, 61 Wn. App. 385, 810 P.2d 1363 (1991)). Furthermore, in the industrial injury context the legislature had purposefully changed the statute by amending the law to remove the discovery rule. *Id.* at 366. In both those situations, unlike the PRA, the legislature considered the discovery rule and chose to modify the legislation accordingly.

The Department's reliance on the Legislature's failure to codify the discovery rule in the PRA is misguided. The PRA does not contemplate that an agency will entirely fail in its most basic duty to acknowledge the existence of a responsive document. *See* RCW 42.56.520 (outlying the three alternatives by which an agency *must* respond to a request). The PRA requires that, at a minimum, an agency acknowledge that record exists when it is identifiable based on a request. When a request needs no clarification, the agency *must* either produce the

⁶The Act was so favored that it was explicitly provided the power to preempt other statutes. RCW 42.56.030 ("In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.")

record or describe the record and cite the exemption on which the agency bases denial of production. *Id.* Further, the PRA requires that agencies make all records available upon request. Because the mandatory language of the statute has not provided for inadequate responses by agencies, it cannot be argued that the Legislature intended not to apply the discovery rule in such cases.

c) Public Policy Requires The Discovery Rule Be Applied To The Public Records Act Because An Agency Controls All Access To Its Records.

The Department argued that *U.S. Oil & Refining Company v. Department of Ecology*, 96 Wn.2d 85, 633 P.2d 1329 (1981) is distinguishable because an agency lacks “inherent incentive” to not produce a record.⁷ Response Brief at 24, fn. 11. Nothing could be further than the truth. The PRA itself recognizes that agencies often have reason not to want records to be made public. *See* RCW 42.56.550(3) (recognizing that examination of records “may cause inconvenience or embarrassment to public officials or others”). Courts are routinely faced with situations in which agencies have fought vigorously to prevent the

⁷It is suggested that requesters may inquire further as to the adequacy of the agency’s response. The Department seems to forget that Mr. Greenhalgh did exactly this – twice! Furthermore, such an argument shifts the burden of knowledge and compliance to the requester. Also, putting this argument in a footnote does not relegate this argument to the dust bin. *U.S. Oil* is controlling because it has a statutory framework and yet the discovery rule applies, just like it should apply to the statutory framework of the PRA.

release of public records. *See, e.g., Yousoufian v. Office of Ron Sims*, 165 Wn.2d 439, 460-461, 200 P.3d 232 (2009) (lambasting King County for its attempts to avoid a timely response).

The agency is also in a much better position to be well-informed about the existence of a document.⁸ Consequently, an agency is burdened with duties commensurate with its more-informed position. Agencies have the duty to make *all* responsive documents available. RCW 42.56.100. Additionally, agencies have the express duty to provide the “fullest assistance” to requesters and to provide “the most timely possible action” on requests. *Id.* These duties ensure that agencies consistently bear the burden of production by knowing what records are within their control and ensuring that those records are timely produced when requested.

The penalty provision of the PRA was enacted because the Legislature recognized an inherent incentive for agencies to avoid making records public. While that incentive is commonly exhibited by agencies citing exemptions that do not apply, concealing the existence of a responsive document could be a more effective means of preventing the disclosure of sensitive documents. Without the discovery rule, an agency

⁸To prevent a potential suit, an agency can always produce records after initially informing the requester they do not exist with no penalty.

that can avoid penalty for concealing a document if it can keep its existence secret for more than 365 days. It would also be able to then argue that a record was destroyed in accordance to the retention schedule, thus denying the requester access, especially if the document is claimed to be a transitory document.

d) The Special Relationship Exists Between All Requesters And The Agency.

The Department attempts to sidestep Mr. Greenhalgh's argument that the special nature of the relationship between the public and public agencies requires the discovery rule be applied by arguing there is no such special relationship pertaining to Mr. Greenhalgh because he is not special. Mr. Greenhalgh has made no such claim. The Department owes a special duty to all requesters, including Mr. Greenhalgh because there is a special relationship between the governed and the governing. The special relationship is reinforced by the statutory duties of timeliness and fullest assistance provided for in the PRA and discussed above. This is the ultimate special relationship which controls our democracy.

D. CONCLUSION

For the reasons stated above and in his Opening Brief, Mr. Greenhalgh respectfully asks this Court to reverse the trial court's order dismissing this case based upon the statute of limitations. He asks this Court to hold the Department liable for violations of the Public Records

Act and determine the period for which the Department is liable. He then asks either this Court determine the statutory penalties or remand this case back to the trial court to determine penalties. He finally asks that reasonable attorneys fees and costs be awarded.

DATED this 4th day of June, 2010.

Respectfully submitted,


MICHAEL C. KAHRs, WSBA #27085
Attorney for Appellant Shawn Greenhalgh

CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on June 4th, 2010, in Seattle, County of King, State of Washington, I emailed and deposited the following documents with the United States Mail, postage prepaid and 1st class on the following parties:

1. APPELLANT'S REPLY BRIEF

Daniel Judge
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By: 
MICHAEL C. KAHRIS

Date: 6/4/10

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ATTACHMENT A

Z-0567.1

HOUSE BILL 1758

State of Washington

59th Legislature

2005 Regular Session

By Representatives Kessler, Nixon, Haigh, Chandler, Clements, Schindler, Hunt, Hunter, Hinkle, Takko, B. Sullivan, Miloscia, Buck and Shabro; by request of Attorney General

Read first time 02/04/2005. Referred to Committee on State Government Operations & Accountability.

1 AN ACT Relating to public disclosure; amending RCW 42.17.270,
2 42.17.250, and 42.17.340; reenacting and amending RCW 42.17.310 and
3 42.17.300; and adding a new section to chapter 42.17 RCW.

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

5 **Sec. 1.** RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are
6 each reenacted and amended to read as follows:

7 (1) The following are exempt from public inspection and copying:

8 (a) Personal information in any files maintained for students in
9 public schools, patients or clients of public institutions or public
10 health agencies, or welfare recipients.

11 (b) Personal information in files maintained for employees,
12 appointees, or elected officials of any public agency to the extent
13 that disclosure would violate their right to privacy.

14 (c) Information required of any taxpayer in connection with the
15 assessment or collection of any tax if the disclosure of the
16 information to other persons would (i) be prohibited to such persons by
17 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
18 taxpayer's right to privacy or result in unfair competitive
19 disadvantage to the taxpayer.

1 (d) Specific intelligence information and specific investigative
2 records compiled by investigative, law enforcement, and penology
3 agencies, and state agencies vested with the responsibility to
4 discipline members of any profession, the nondisclosure of which is
5 essential to effective law enforcement or for the protection of any
6 person's right to privacy.

7 (e) Information revealing the identity of persons who are witnesses
8 to or victims of crime or who file complaints with investigative, law
9 enforcement, or penology agencies, other than the public disclosure
10 commission, if disclosure would endanger any person's life, physical
11 safety, or property. If at the time a complaint is filed the
12 complainant, victim or witness indicates a desire for disclosure or
13 nondisclosure, such desire shall govern. However, all complaints filed
14 with the public disclosure commission about any elected official or
15 candidate for public office must be made in writing and signed by the
16 complainant under oath.

17 (f) Test questions, scoring keys, and other examination data used
18 to administer a license, employment, or academic examination.

19 (g) Except as provided by chapter 8.26 RCW, the contents of real
20 estate appraisals, made for or by any agency relative to the
21 acquisition or sale of property, until the project or prospective sale
22 is abandoned or until such time as all of the property has been
23 acquired or the property to which the sale appraisal relates is sold,
24 but in no event shall disclosure be denied for more than three years
25 after the appraisal.

26 (h) Valuable formulae, designs, drawings, computer source code or
27 object code, and research data obtained by any agency within five years
28 of the request for disclosure when disclosure would produce private
29 gain and public loss.

30 (i) Preliminary drafts, notes, recommendations, and intra-agency
31 memorandums in which opinions are expressed or policies formulated or
32 recommended except that a specific record shall not be exempt when
33 publicly cited by an agency in connection with any agency action.

34 (j)(i) Records which are relevant to a controversy to which an
35 agency is a party but which records would not be available to another
36 party under the rules of pretrial discovery for causes pending in the
37 superior courts.

1 (ii)(A) Records reflecting communications transmitted in confidence
2 between a public official or employee of a public agency acting in the
3 performance of his or her duties and an attorney serving in the
4 capacity of legal advisor for the purpose of rendering or obtaining
5 legal advice, and records prepared by the attorney in furtherance of
6 the rendition of legal advice.

7 (B) Records are not exempt from disclosure under this subsection
8 merely because they reflect communications in meetings where legal
9 counsel was present or because a record or copy of a record was
10 provided to legal counsel, if the elements of (j)(ii)(A) of this
11 subsection are not met.

12 This subsection (1)(j)(ii) governs exemption of records from the
13 provisions of this chapter based on the attorney-client privilege as
14 applied to public agencies and public officials in their official
15 capacities, rather than the provisions of RCW 5.60.060(2).

16 (k) Records, maps, or other information identifying the location of
17 archaeological sites in order to avoid the looting or depredation of
18 such sites.

19 (l) Any library record, the primary purpose of which is to maintain
20 control of library materials, or to gain access to information, which
21 discloses or could be used to disclose the identity of a library user.

22 (m) Financial information supplied by or on behalf of a person,
23 firm, or corporation for the purpose of qualifying to submit a bid or
24 proposal for (i) a ferry system construction or repair contract as
25 required by RCW 47.60.680 through 47.60.750 or (ii) highway
26 construction or improvement as required by RCW 47.28.070.

27 (n) Railroad company contracts filed prior to July 28, 1991, with
28 the utilities and transportation commission under RCW 81.34.070, except
29 that the summaries of the contracts are open to public inspection and
30 copying as otherwise provided by this chapter.

31 (o) Financial and commercial information and records supplied by
32 private persons pertaining to export services provided pursuant to
33 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
34 export projects pursuant to RCW 43.23.035.

35 (p) Financial disclosures filed by private vocational schools under
36 chapters 28B.85 and 28C.10 RCW.

37 (q) Records filed with the utilities and transportation commission

1 or attorney general under RCW 80.04.095 that a court has determined are
2 confidential under RCW 80.04.095.

3 (r) Financial and commercial information and records supplied by
4 businesses or individuals during application for loans or program
5 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
6 or during application for economic development loans or program
7 services provided by any local agency.

8 (s) Membership lists or lists of members or owners of interests of
9 units in timeshare projects, subdivisions, camping resorts,
10 condominiums, land developments, or common-interest communities
11 affiliated with such projects, regulated by the department of
12 licensing, in the files or possession of the department.

13 (t) All applications for public employment, including the names of
14 applicants, resumes, and other related materials submitted with respect
15 to an applicant.

16 (u) The residential addresses or residential telephone numbers of
17 employees or volunteers of a public agency which are held by any public
18 agency in personnel records, public employment related records, or
19 volunteer rosters, or are included in any mailing list of employees or
20 volunteers of any public agency.

21 (v) The residential addresses and residential telephone numbers of
22 the customers of a public utility contained in the records or lists
23 held by the public utility of which they are customers, except that
24 this information may be released to the division of child support or
25 the agency or firm providing child support enforcement for another
26 state under Title IV-D of the federal social security act, for the
27 establishment, enforcement, or modification of a support order.

28 (w)(i) The federal social security number of individuals governed
29 under chapter 18.130 RCW maintained in the files of the department of
30 health, except this exemption does not apply to requests made directly
31 to the department from federal, state, and local agencies of
32 government, and national and state licensing, credentialing,
33 investigatory, disciplinary, and examination organizations; (ii) the
34 current residential address and current residential telephone number of
35 a health care provider governed under chapter 18.130 RCW maintained in
36 the files of the department, if the provider requests that this
37 information be withheld from public inspection and copying, and
38 provides to the department an accurate alternate or business address

1 and business telephone number. On or after January 1, 1995, the
2 current residential address and residential telephone number of a
3 health care provider governed under RCW 18.130.040 maintained in the
4 files of the department shall automatically be withheld from public
5 inspection and copying unless the provider specifically requests the
6 information be released, and except as provided for under RCW
7 42.17.260(9).

8 (x) Information obtained by the board of pharmacy as provided in
9 RCW 69.45.090.

10 (y) Information obtained by the board of pharmacy or the department
11 of health and its representatives as provided in RCW 69.41.044,
12 69.41.280, and 18.64.420.

13 (z) Financial information, business plans, examination reports, and
14 any information produced or obtained in evaluating or examining a
15 business and industrial development corporation organized or seeking
16 certification under chapter 31.24 RCW.

17 (aa) Financial and commercial information supplied to the state
18 investment board by any person when the information relates to the
19 investment of public trust or retirement funds and when disclosure
20 would result in loss to such funds or in private loss to the providers
21 of this information.

22 (bb) Financial and valuable trade information under RCW 51.36.120.

23 (cc) Client records maintained by an agency that is a domestic
24 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
25 crisis center as defined in RCW 70.125.030.

26 (dd) Information that identifies a person who, while an agency
27 employee: (i) Seeks advice, under an informal process established by
28 the employing agency, in order to ascertain his or her rights in
29 connection with a possible unfair practice under chapter 49.60 RCW
30 against the person; and (ii) requests his or her identity or any
31 identifying information not be disclosed.

32 (ee) Investigative records compiled by an employing agency
33 conducting a current investigation of a possible unfair practice under
34 chapter 49.60 RCW or of a possible violation of other federal, state,
35 or local laws prohibiting discrimination in employment.

36 (ff) Business related information protected from public inspection
37 and copying under RCW 15.86.110.

1 (gg) Financial, commercial, operations, and technical and research
2 information and data submitted to or obtained by the clean Washington
3 center in applications for, or delivery of, program services under
4 chapter 70.95H RCW.

5 (hh) Information and documents created specifically for, and
6 collected and maintained by a quality improvement committee pursuant to
7 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
8 4.24.250, regardless of which agency is in possession of the
9 information and documents.

10 (ii) Personal information in files maintained in a data base
11 created under RCW 43.07.360.

12 (jj) Financial and commercial information requested by the public
13 stadium authority from any person or organization that leases or uses
14 the stadium and exhibition center as defined in RCW 36.102.010.

15 (kk) Names of individuals residing in emergency or transitional
16 housing that are furnished to the department of revenue or a county
17 assessor in order to substantiate a claim for property tax exemption
18 under RCW 84.36.043.

19 (ll) The names, residential addresses, residential telephone
20 numbers, and other individually identifiable records held by an agency
21 in relation to a vanpool, carpool, or other ride-sharing program or
22 service. However, these records may be disclosed to other persons who
23 apply for ride-matching services and who need that information in order
24 to identify potential riders or drivers with whom to share rides.

25 (mm) The personally identifying information of current or former
26 participants or applicants in a paratransit or other transit service
27 operated for the benefit of persons with disabilities or elderly
28 persons.

29 (nn) The personally identifying information of persons who acquire
30 and use transit passes and other fare payment media including, but not
31 limited to, stored value smart cards and magnetic strip cards, except
32 that an agency may disclose this information to a person, employer,
33 educational institution, or other entity that is responsible, in whole
34 or in part, for payment of the cost of acquiring or using a transit
35 pass or other fare payment media, or to the news media when reporting
36 on public transportation or public safety. This information may also
37 be disclosed at the agency's discretion to governmental agencies or
38 groups concerned with public transportation or public safety.

1 (oo) Proprietary financial and commercial information that the
2 submitting entity, with review by the department of health,
3 specifically identifies at the time it is submitted and that is
4 provided to or obtained by the department of health in connection with
5 an application for, or the supervision of, an antitrust exemption
6 sought by the submitting entity under RCW 43.72.310. If a request for
7 such information is received, the submitting entity must be notified of
8 the request. Within ten business days of receipt of the notice, the
9 submitting entity shall provide a written statement of the continuing
10 need for confidentiality, which shall be provided to the requester.
11 Upon receipt of such notice, the department of health shall continue to
12 treat information designated under this section as exempt from
13 disclosure. If the requester initiates an action to compel disclosure
14 under this chapter, the submitting entity must be joined as a party to
15 demonstrate the continuing need for confidentiality.

16 (pp) Records maintained by the board of industrial insurance
17 appeals that are related to appeals of crime victims' compensation
18 claims filed with the board under RCW 7.68.110.

19 (qq) Financial and commercial information supplied by or on behalf
20 of a person, firm, corporation, or entity under chapter 28B.95 RCW
21 relating to the purchase or sale of tuition units and contracts for the
22 purchase of multiple tuition units.

23 (rr) Any records of investigative reports prepared by any state,
24 county, municipal, or other law enforcement agency pertaining to sex
25 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
26 defined in RCW 71.09.020, which have been transferred to the Washington
27 association of sheriffs and police chiefs for permanent electronic
28 retention and retrieval pursuant to RCW 40.14.070(2)(b).

29 (ss) Credit card numbers, debit card numbers, electronic check
30 numbers, card expiration dates, or bank or other financial account
31 numbers, except when disclosure is expressly required by or governed by
32 other law.

33 (tt) Financial information, including but not limited to account
34 numbers and values, and other identification numbers supplied by or on
35 behalf of a person, firm, corporation, limited liability company,
36 partnership, or other entity related to an application for a liquor
37 license, gambling license, or lottery retail license.

1 (uu) Records maintained by the employment security department and
2 subject to chapter 50.13 RCW if provided to another individual or
3 organization for operational, research, or evaluation purposes.

4 (vv) Individually identifiable information received by the work
5 force training and education coordinating board for research or
6 evaluation purposes.

7 (ww) Those portions of records assembled, prepared, or maintained
8 to prevent, mitigate, or respond to criminal terrorist acts, which are
9 acts that significantly disrupt the conduct of government or of the
10 general civilian population of the state or the United States and that
11 manifest an extreme indifference to human life, the public disclosure
12 of which would have a substantial likelihood of threatening public
13 safety, consisting of:

14 (i) Specific and unique vulnerability assessments or specific and
15 unique response or deployment plans, including compiled underlying data
16 collected in preparation of or essential to the assessments, or to the
17 response or deployment plans; and

18 (ii) Records not subject to public disclosure under federal law
19 that are shared by federal or international agencies, and information
20 prepared from national security briefings provided to state or local
21 government officials related to domestic preparedness for acts of
22 terrorism.

23 (xx) Commercial fishing catch data from logbooks required to be
24 provided to the department of fish and wildlife under RCW 77.12.047,
25 when the data identifies specific catch location, timing, or
26 methodology and the release of which would result in unfair competitive
27 disadvantage to the commercial fisher providing the catch data.
28 However, this information may be released to government agencies
29 concerned with the management of fish and wildlife resources.

30 (yy) Sensitive wildlife data obtained by the department of fish and
31 wildlife. However, sensitive wildlife data may be released to
32 government agencies concerned with the management of fish and wildlife
33 resources. Sensitive wildlife data includes:

34 (i) The nesting sites or specific locations of endangered species
35 designated under RCW 77.12.020, or threatened or sensitive species
36 classified by rule of the department of fish and wildlife;

37 (ii) Radio frequencies used in, or locational data generated by,
38 telemetry studies; or

1 (iii) Other location data that could compromise the viability of a
2 specific fish or wildlife population, and where at least one of the
3 following criteria are met:

4 (A) The species has a known commercial or black market value;

5 (B) There is a history of malicious take of that species; or

6 (C) There is a known demand to visit, take, or disturb, and the
7 species behavior or ecology renders it especially vulnerable or the
8 species has an extremely limited distribution and concentration.

9 (zz) The personally identifying information of persons who acquire
10 recreational licenses under RCW 77.32.010 or commercial licenses under
11 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
12 department, and type of license, endorsement, or tag. However, the
13 department of fish and wildlife may disclose personally identifying
14 information to:

15 (i) Government agencies concerned with the management of fish and
16 wildlife resources;

17 (ii) The department of social and health services, child support
18 division, and to the department of licensing in order to implement RCW
19 77.32.014 and 46.20.291; and

20 (iii) Law enforcement agencies for the purpose of firearm
21 possession enforcement under RCW 9.41.040.

22 (aaa)(i) Discharge papers of a veteran of the armed forces of the
23 United States filed at the office of the county auditor before July 1,
24 2002, that have not been commingled with other recorded documents.
25 These records will be available only to the veteran, the veteran's next
26 of kin, a deceased veteran's properly appointed personal representative
27 or executor, a person holding that veteran's general power of attorney,
28 or to anyone else designated in writing by that veteran to receive the
29 records.

30 (ii) Discharge papers of a veteran of the armed forces of the
31 United States filed at the office of the county auditor before July 1,
32 2002, that have been commingled with other records, if the veteran has
33 recorded a "request for exemption from public disclosure of discharge
34 papers" with the county auditor. If such a request has been recorded,
35 these records may be released only to the veteran filing the papers,
36 the veteran's next of kin, a deceased veteran's properly appointed
37 personal representative or executor, a person holding the veteran's

1 general power of attorney, or anyone else designated in writing by the
2 veteran to receive the records.

3 (iii) Discharge papers of a veteran filed at the office of the
4 county auditor after June 30, 2002, are not public records, but will be
5 available only to the veteran, the veteran's next of kin, a deceased
6 veteran's properly appointed personal representative or executor, a
7 person holding the veteran's general power of attorney, or anyone else
8 designated in writing by the veteran to receive the records.

9 (iv) For the purposes of this subsection (1)(aaa), next of kin of
10 deceased veterans have the same rights to full access to the record.
11 Next of kin are the veteran's widow or widower who has not remarried,
12 son, daughter, father, mother, brother, and sister.

13 (bbb) Those portions of records containing specific and unique
14 vulnerability assessments or specific and unique emergency and escape
15 response plans at a city, county, or state adult or juvenile
16 correctional facility, the public disclosure of which would have a
17 substantial likelihood of threatening the security of a city, county,
18 or state adult or juvenile correctional facility or any individual's
19 safety.

20 (ccc) Information compiled by school districts or schools in the
21 development of their comprehensive safe school plans pursuant to RCW
22 28A.320.125, to the extent that they identify specific vulnerabilities
23 of school districts and each individual school.

24 (ddd) Information regarding the infrastructure and security of
25 computer and telecommunications networks, consisting of security
26 passwords, security access codes and programs, access codes for secure
27 software applications, security and service recovery plans, security
28 risk assessments, and security test results to the extent that they
29 identify specific system vulnerabilities.

30 (eee) Information obtained and exempted or withheld from public
31 inspection by the health care authority under RCW 41.05.026, whether
32 retained by the authority, transferred to another state purchased
33 health care program by the authority, or transferred by the authority
34 to a technical review committee created to facilitate the development,
35 acquisition, or implementation of state purchased health care under
36 chapter 41.05 RCW.

37 (fff) Proprietary data, trade secrets, or other information that
38 relates to: (i) A vendor's unique methods of conducting business; (ii)

1 data unique to the product or services of the vendor; or (iii)
2 determining prices or rates to be charged for services, submitted by
3 any vendor to the department of social and health services for purposes
4 of the development, acquisition, or implementation of state purchased
5 health care as defined in RCW 41.05.011.

6 (2) Except for information described in subsection (1)(c)(i) of
7 this section and confidential income data exempted from public
8 inspection pursuant to RCW 84.40.020, the exemptions of this section
9 are inapplicable to the extent that information, the disclosure of
10 which would violate personal privacy or vital governmental interests,
11 can be deleted from the specific records sought. No exemption may be
12 construed to permit the nondisclosure of statistical information not
13 descriptive of any readily identifiable person or persons.

14 (3) Inspection or copying of any specific records exempt under the
15 provisions of this section may be permitted if the superior court in
16 the county in which the record is maintained finds, after a hearing
17 with notice thereof to every person in interest and the agency, that
18 the exemption of such records is clearly unnecessary to protect any
19 individual's right of privacy or any vital governmental function.

20 (4) Agency responses refusing, in whole or in part, inspection of
21 any public record shall include a statement of the specific exemption
22 authorizing the withholding of the record (or part) and a brief
23 explanation of how the exemption applies to the record withheld.

24 **Sec. 2.** RCW 42.17.270 and 1987 c 403 s 4 are each amended to read
25 as follows:

26 Public records shall be available for inspection and copying, and
27 agencies shall, upon request for identifiable public records, make them
28 promptly available to any person including, if applicable, on a rolling
29 basis as records that are part of a larger set of requested records
30 become available and ready for inspection or disclosure. Agencies
31 shall not deny a request for identifiable public records on the basis
32 that the request is overbroad. Agencies shall not distinguish among
33 persons requesting records, and such persons shall not be required to
34 provide information as to the purpose for the request except to
35 establish whether inspection and copying would violate RCW
36 42.17.260(~~(+5)~~) (9) or other statute which exempts or prohibits
37 disclosure of specific information or records to certain persons.

1 Agency facilities shall be made available to any person for the copying
2 of public records except when and to the extent that this would
3 unreasonably disrupt the operations of the agency. Agencies shall
4 honor requests received by mail for identifiable public records unless
5 exempted by provisions of this chapter.

6 **Sec. 3.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
7 each reenacted and amended to read as follows:

8 No fee shall be charged for the inspection of public records. No
9 fee shall be charged for locating public documents and making them
10 available for copying. A reasonable charge may be imposed for
11 providing copies of public records and for the use by any person of
12 agency equipment or equipment of the office of the secretary of the
13 senate or the office of the chief clerk of the house of representatives
14 to copy public records, which charges shall not exceed the amount
15 necessary to reimburse the agency, the office of the secretary of the
16 senate, or the office of the chief clerk of the house of
17 representatives for its actual costs directly incident to such copying.
18 Agency charges for photocopies shall be imposed in accordance with the
19 actual per page cost or other costs established and published by the
20 agency. In no event may an agency charge a per page cost greater than
21 the actual per page cost as established and published by the agency.
22 To the extent the agency has not determined the actual per page cost
23 for photocopies of public records, the agency may not charge in excess
24 of fifteen cents per page. Agency documentation of its actual costs
25 for copies, including photocopies, shall be subject to audit for
26 accuracy by the office of the state auditor.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.17 RCW
28 to read as follows:

29 Each state and local agency shall separately appoint and maintain
30 and publicly identify an individual whose responsibility is to serve as
31 a point of contact for members of the public in requesting disclosure
32 of public records and to oversee the agency's compliance with the
33 public records disclosure requirements of this chapter.

34 **Sec. 5.** RCW 42.17.250 and 1973 c 1 s 25 are each amended to read
35 as follows:

1 (1) Each state agency shall separately state and currently publish
2 in the Washington Administrative Code and each local agency shall
3 prominently display and make available for inspection and copying at
4 the central office of such local agency, for guidance of the public:

5 (a) Descriptions of its central and field organization and the
6 established places at which, the employees from whom, and the methods
7 whereby, the public may obtain information, make submittals or
8 requests, or obtain copies of agency decisions;

9 (b) Statements of the general course and method by which its
10 operations are channeled and determined, including the nature and
11 requirements of all formal and informal procedures available;

12 (c) Rules of procedure;

13 (d) Substantive rules of general applicability adopted as
14 authorized by law, and statements of general policy or interpretations
15 of general applicability formulated and adopted by the agency; ~~((and))~~

16 (e) Each amendment or revision to, or repeal of any of the
17 ~~((foregoing))~~ documents in this subsection (1); and

18 (f) The identity of the agency's appointed individual to whom
19 members of the public may be directed to submit requests for disclosure
20 or inspection of public records and who is responsible for overseeing
21 the disclosure or inspection of such records.

22 (2) Except to the extent that he or she has actual and timely
23 notice of the terms thereof, a person may not in any manner be required
24 to resort to, or be adversely affected by, a matter required to be
25 published or displayed and not so published or displayed.

26 (3)(a) The attorney general, by February 1, 2006, shall adopt by
27 rule a model rule for state and local agencies, as defined in RCW
28 42.17.020, addressing the following subjects:

29 (i) Providing fullest assistance to requestors;

30 (ii) Indexing of public records;

31 (iii) Fulfilling large requests in the most timely manner;

32 (iv) Fulfilling requests for electronic records; and

33 (v) Any other issues pertaining to public disclosure as determined
34 by the attorney general.

35 (b) The attorney general, in his or her discretion, may from time
36 to time revise the model rule.

1 **Sec. 6.** RCW 42.17.340 and 1992 c 139 s 8 are each amended to read
2 as follows:

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

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

18 (3) Judicial review of all agency actions taken or challenged under
19 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take
20 into account the policy of this chapter that free and open examination
21 of public records is in the public interest, even though such
22 examination may cause inconvenience or embarrassment to public
23 officials or others. Courts may examine any record in camera in any
24 proceeding brought under this section. The court may conduct a hearing
25 based solely on affidavits.

26 (4) Any person who prevails against an agency in any action in the
27 courts seeking the right to inspect or copy any public record or the
28 right to receive a response to a public record request within a
29 reasonable amount of time shall be awarded all costs, including
30 reasonable attorney fees, incurred in connection with such legal
31 action. In addition, it shall be within the discretion of the court to
32 award such person an amount not less than (~~five~~) fifty dollars and
33 not to exceed (~~one~~) five hundred dollars for each day that he or she
34 was denied the right to inspect or copy said public record.

35 (5) For actions under this section against counties, the venue
36 provisions of RCW 36.01.050 apply.

37 (6) Actions under this section must be filed within one year of the

1 agency's claim of exemption or the last production of a record on a
2 rolling basis.

--- END ---

ATTACHMENT B

H-2350.1

SUBSTITUTE HOUSE BILL 1758

State of Washington

59th Legislature

2005 Regular Session

By House Committee on State Government Operations & Accountability (originally sponsored by Representatives Kessler, Nixon, Haigh, Chandler, Clements, Schindler, Hunt, Hunter, Hinkle, Takko, B. Sullivan, Miloscia, Buck and Shabro; by request of Attorney General)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to public disclosure; amending RCW 42.17.270,
2 42.17.250, and 42.17.340; reenacting and amending RCW 42.17.300; and
3 adding a new section to chapter 42.17 RCW.

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

5 **Sec. 1.** RCW 42.17.270 and 1987 c 403 s 4 are each amended to read
6 as follows:

7 Public records shall be available for inspection and copying, and
8 agencies shall, upon request for identifiable public records, make them
9 promptly available to any person including, if applicable, on a partial
10 or installment basis as records that are part of a larger set of
11 requested records are assembled or made ready for inspection or
12 disclosure. Agencies shall not deny a request for identifiable public
13 records solely on the basis that the request is overbroad. Agencies
14 shall not distinguish among persons requesting records, and such
15 persons shall not be required to provide information as to the purpose
16 for the request except to establish whether inspection and copying
17 would violate RCW 42.17.260(~~(+5)~~) (9) or other statute which exempts
18 or prohibits disclosure of specific information or records to certain
19 persons. Agency facilities shall be made available to any person for

1 the copying of public records except when and to the extent that this
2 would unreasonably disrupt the operations of the agency. Agencies
3 shall honor requests received by mail for identifiable public records
4 unless exempted by provisions of this chapter.

5 **Sec. 2.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
6 each reenacted and amended to read as follows:

7 No fee shall be charged for the inspection of public records. No
8 fee shall be charged for locating public documents and making them
9 available for copying. A reasonable charge may be imposed for
10 providing copies of public records and for the use by any person of
11 agency equipment or equipment of the office of the secretary of the
12 senate or the office of the chief clerk of the house of representatives
13 to copy public records, which charges shall not exceed the amount
14 necessary to reimburse the agency, the office of the secretary of the
15 senate, or the office of the chief clerk of the house of
16 representatives for its actual costs directly incident to such copying.
17 Agency charges for photocopies shall be imposed in accordance with the
18 actual per page cost or other costs established and published by the
19 agency. In no event may an agency charge a per page cost greater than
20 the actual per page cost as established and published by the agency.
21 To the extent the agency has not determined the actual per page cost
22 for photocopies of public records, the agency may not charge in excess
23 of fifteen cents per page. An agency may require a deposit in an
24 amount not to exceed ten percent of the estimated cost of providing
25 copies for a request. If an agency makes a request available on a
26 partial or installment basis, the agency may charge for each part of
27 the request as it is provided. If an installment of a records request
28 is not picked up, the agency is not obligated to fulfill the balance of
29 the request.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17 RCW
31 to read as follows:

32 Each state and local agency shall separately appoint and maintain
33 and publicly identify an individual whose responsibility is to serve as
34 a point of contact for members of the public in requesting disclosure
35 of public records and to oversee the agency's compliance with the
36 public records disclosure requirements of this chapter.

1 **Sec. 4.** RCW 42.17.250 and 1973 c 1 s 25 are each amended to read
2 as follows:

3 (1) Each state agency shall separately state and currently publish
4 in the Washington Administrative Code and each local agency shall
5 prominently display and make available for inspection and copying at
6 the central office of such local agency, for guidance of the public:

7 (a) Descriptions of its central and field organization and the
8 established places at which, the employees from whom, and the methods
9 whereby, the public may obtain information, make submittals or
10 requests, or obtain copies of agency decisions;

11 (b) Statements of the general course and method by which its
12 operations are channeled and determined, including the nature and
13 requirements of all formal and informal procedures available;

14 (c) Rules of procedure;

15 (d) Substantive rules of general applicability adopted as
16 authorized by law, and statements of general policy or interpretations
17 of general applicability formulated and adopted by the agency; (~~and~~)

18 (e) Each amendment or revision to, or repeal of any of the
19 (~~foregoing~~) documents in this subsection (1); and

20 (f) The identity of the agency's appointed individual to whom
21 members of the public may be directed to submit requests for disclosure
22 or inspection of public records and who is responsible for overseeing
23 the disclosure or inspection of such records.

24 (2) Except to the extent that he or she has actual and timely
25 notice of the terms thereof, a person may not in any manner be required
26 to resort to, or be adversely affected by, a matter required to be
27 published or displayed and not so published or displayed.

28 (3)(a) The attorney general, by February 1, 2006, shall adopt by
29 rule a model rule for state and local agencies, as defined in RCW
30 42.17.020, addressing the following subjects:

31 (i) Providing fullest assistance to requestors;

32 (ii) Indexing of public records;

33 (iii) Fulfilling large requests in the most timely manner;

34 (iv) Fulfilling requests for electronic records; and

35 (v) Any other issues pertaining to public disclosure as determined
36 by the attorney general.

37 (b) The attorney general, in his or her discretion, may from time
38 to time revise the model rule.

1 **Sec. 5.** RCW 42.17.340 and 1992 c 139 s 8 are each amended to read
2 as follows:

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

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

18 (3) Judicial review of all agency actions taken or challenged under
19 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take
20 into account the policy of this chapter that free and open examination
21 of public records is in the public interest, even though such
22 examination may cause inconvenience or embarrassment to public
23 officials or others. Courts may examine any record in camera in any
24 proceeding brought under this section. The court may conduct a hearing
25 based solely on affidavits.

26 (4) Any person who prevails against an agency in any action in the
27 courts seeking the right to inspect or copy any public record or the
28 right to receive a response to a public record request within a
29 reasonable amount of time shall be awarded all costs, including
30 reasonable attorney fees, incurred in connection with such legal
31 action. In addition, it shall be within the discretion of the court to
32 award such person an amount not less than five dollars and not to
33 exceed (~~one~~) five hundred dollars for each day that he or she was
34 denied the right to inspect or copy said public record.

35 (5) For actions under this section against counties, the venue
36 provisions of RCW 36.01.050 apply.

37 (6) Actions under this section must be filed within one year of the

1 agency's claim of exemption or the last production of a record on a
2 partial or installment basis.

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