

A Washington Coalition for Open
Government



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Executive Summary: Survey of State and Local Agencies Regarding Costs of Processing Records Requests

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Introduction

In 2013, government lobbyists wanted to change the Public Records Act (PRA) so that cost concerns alone could justify denial of citizens' records requests. HB1128 was designed to address claims that PRA processing costs had become excessive. As originally proposed, HB 1128 would have allowed state and local government agencies to cap the total number of hours spent processing records requests each year, and to obtain injunctions against fulfilling public record requests¹ based on "undue burden," among other reasons.

In order to assess the arguments presented in support of HB 1128, the Washington Coalition for Open Government (WCOG) sought to determine if any agencies actually analyzed their total annual costs of fulfilling public disclosure requests. WCOG sent PRA requests to eight state agencies and 96 local governments – including 43 cities and all 39 counties – seeking "all records discussing or referring to any analysis of the total costs of responding to public disclosure requests." Of the 104 government entities surveyed, *not one could point to any study or even rudimentary analysis of how much it*

¹ HB 1128 stated in part:

"Sec. 1... (1)... the inspection or copying of any public record may be enjoined pursuant to this section. The injunction may be requested by: A local agency or its representative; or a person named in the record....

(2) In order to issue the injunction, the court must find that: (a) The request was made to harass or intimidate the local agency or its employees; or ... (c) The public record request creates an undue burden on the local agency....;

(3) In deciding whether to enjoin a public record request under this section, the court may consider all relevant factors including, but not limited to:

(a) Other public records requests by the requester;

(b) The type of public record or records sought;

(c) Statements offered by the requester concerning the purpose for the public record request;

(d) Whether disclosure of the requested public records would likely harm any person or vital government interest;

(e) Whether the public record request seeks a significant and burdensome number of documents, however an injunction may not be issued under this section based solely on the number of records requested;

(f) The local agency's effort to accommodate the requester;

(g) The resources necessary to fulfill the request, taking into account the resources of the local agency as a whole and the local agency's other essential functions;

(h) The impact of disclosure on the safety or security of the local agency staff, facilities, or others; and (i) The deterrence of criminal activity....

Sec. 2...(1)(a) In order to prevent excessive interference with other essential functions, a local agency may adopt a policy limiting the number of hours it devotes to responding to public records requests...."

spent providing records to the public. Thus, there is no detectable pattern of excessive PRA costs. In light of WCOG’s research, the Legislature should reject any future attempts to curtail the public’s right to access government records based solely on complaints about costs.

Background

HB 1128’s fiscal note² stated that passing the bill would bring “potentially substantial” savings to agencies. WCOG wanted to discover if any actual data, as opposed to anecdotal information, supported such claims. WCOG’s survey included agencies that had publicly complained of an excessive PRA burden.³ Other agencies were chosen to reflect a diverse range of sizes and geographic locations. WCOG sent its public disclosure request to eight state agencies⁴, all thirty-nine counties, forty-three cities⁵, six ports⁶, and eight school districts.⁷

WCOG sent the same records request to each of 104 state and local agencies, asking them to provide the following (emphasis added):

All records discussing or referring to *any analysis of the total costs of responding to public disclosure requests.* This request includes but is not limited to staff reports, studies, fiscal notes, meeting minutes or other records reflecting an *attempt to quantify PRA processing costs* per year (or other time period) during the years 2010, 2011, 2012,

² “This bill would result in an indeterminate, but potentially substantial, reduction in expenditure for local government related to reduced staff time to respond to public records requests.” HB 1128 Fiscal Note (see <https://fortress.wa.gov/binaryDisplay.aspx?package=32816>).

³ Agencies that testified for the bill or were quoted in newspaper articles included: Spokane School District, City of Pasco, City of Gold Bar, Whatcom County, Yakima County, Pierce County, Richland School District, Monroe Public Schools, Port of Allyn, City of Seatac, City of Port Orchard, Bethel School District, Evergreen Public Schools, City of Monroe, City of Mesa, and Royal City.

⁴ State agencies: The Department of Corrections, the Department of Ecology, the Department of Social and Health Services, The Department of Transportation, the Governor’s Office, the University of Washington, the Washington State Patrol, and Washington State University.

⁵ Cities: Almira, Anacortes, Auburn, Bellingham, Benton City, Blaine, Chehalis, Cheney, Clarkston, College Place, Coulee Dam, Coupeville, East Wenatchee, Edmonds, Ellensburg, Elma, Everett, Gold Bar, Kennewick, Lacey, Longview, Lynden, Mesa, Monroe, Moses Lake, North Bend, Pasco, Port Orchard, Poulso, Pullman, Republic, Royal City, Seatac, Seattle, Shoreline, Spokane, Tacoma, Union Gap, University Place, Vancouver, Wenatchee, and Yakima.

⁶ Ports: Port of Allyn, Port of Anacortes, Port of Everett, Port of Port Angeles, Port of Seattle, and Port of Tacoma.

⁷ School Districts: Battle Ground School District, Bethel Public Schools, Evergreen Public Schools, Lake Washington School District, Monroe Public Schools, Richland School District, Seattle Public Schools, and Spokane Public Schools.

and 2013. This request does not include PRA litigation costs. All records of *budget allocations specifically for processing public records requests* for any and all departments, divisions, and offices for the years 2010, 2011, 2012, and 2013. This request includes but is not limited to budget line items.

All records related to any *analysis done to determine actual copying costs* pursuant to RCW 42.56.120 in the years 2010, 2011, 2012, and 2013. (RCW 42.56.120 authorizes agencies to charge a reasonable fee for providing copies, or for public use of copying equipment, based on a determination of the actual per-page cost. Agencies which have not determined actual copying costs may charge up to 15 cents per page for copying public records.)

All records reflecting *recovery of PRA costs through copying fees* in the years 2010, 2011, 2012, and 2013, including any analysis of copying costs vs. revenues.

Results

Nine counties, eight cities and one port did not respond at all to WCOG's records request, notwithstanding the PRA requirement to respond within 5 days by producing or denying records or providing a reasonable time estimate for production. Responses from the 86 other agencies ranged from a simple "no responsive records" to lengthy clarification conversations, emails and reassessments. Records produced included budgets, minutes, invoices, logs and emails. Many of the agencies simply explained what they charge for copying requested records, typically 15 cents per page.⁸ Not one agency was able to produce a study of the actual costs of responding to public disclosure requests.

One agency had studied costs of providing large reproductions such as maps and plans, but not PRA costs generally. Other agencies provided narrative descriptions of cost concerns.⁹

⁸ Of the 104 surveyed agencies, some compiled receipts for copying fees, and some just kept copies of the invoices to the requesters stating what amount was due.

⁹ For example, Dan Bigelow, Wahkiakum County's Prosecuting Attorney, mentioned that one big request forced the county to hire an Information Technology advisor to recover documents being requested. He said the county was required to spend approximately \$600 on that request. Mr. Bigelow stated that for a small county, even one large public disclosure request could be a significant burden. The Port of Allyn, in an unsigned, undated letter, detailed how it had received a request from "a person that is known throughout the state for being awarded large sums of money from public agencies for Public Records violations." The letter said that, due to what was being requested and the identity of the requester, the Port immediately consulted with its insurance company and an attorney. The letter went on to detail the search that the Port of Allyn conducted: "There were 7 file cabinets, 6 desk file drawers, 5 computers and two laptops,

Gold Bar's then-Mayor Joe Beavers asserted that there are three types of requesters: "bona fide users who might misstate what they were requesting; data users who bankrupt the city; and the 'I sue for money' crew." Mr. Beavers expressed his belief that the PRA is an extortion tool. The City of Gold Bar's conflicts with requesters have received significant press coverage and are not recounted here.

WCOG received one overtly hostile response to its records request. The Mayor of the Town of Coulee Dam sent the following email:

My clerk has received a public records request from you and I have a problem with that. First of all, are you with the state of Washington or are you a non-profit outfit? I know why you are doing this and HE won't get help this way. I am fed up with this kind of harassment and my clerk has a lot of work on her plate and can't take the time to play silly games. I will be in contact with my State Senator about this as soon as I get done here. Could you give me a list of all the other towns that have received a letter from you.....that is my records request.¹⁰

Findings and Recommendations

The Coulee Dam response illustrates why *HB 1128 was dangerous and should not be resurrected*. If agencies could choose which requests to process within a limited number of hours, they could ignore those requests which they perceive – rightly or wrongly – to be unfriendly. In other words, the public's right to know could yield to political gamesmanship. The Coulee Dam response illustrates how easily a citizen's legitimate records request could be ignored as "harassment."

The lack of any response from 18 local government agencies also illustrates why the *PRA should not be weakened*. If agencies are ignoring the current disclosure requirements despite the risk of statutory penalties of up to \$100 a day, they are even more likely to withhold records of public interest if the requirements are relaxed.

Most importantly, the WCOG survey confirms that efforts like HB 1128 are driven not by factual data about processing costs, but by perceptions and anecdotes.

including home computers that had to be searched to make sure we did not miss any records. We had to review over 40 years worth of minutes of meetings, and we also had to review years of e-mails on the Ports computers including those of staff and commissioners that they may have sent or received from their home computers." In its letter, the Port stated that it devoted an estimated \$18,961.25 in staff time to the request, consuming 8% of its \$250,000 total budget.

¹⁰ Once Mayor Snow was made aware that the request was "legitimate," Coulee Dam promptly located and sent records, although not what WCOG requested.

Both the *costs and benefits of the PRA must be analyzed thoroughly* before the Legislature considers another bill to curtail public access.

WCOG will be happy to assist in any legislative effort to assess the benefits of the PRA not just to the public but to government agencies, which gain public trust and support through transparency. WCOG also remains committed to helping agencies use existing tools to limit PRA processing costs. These tools include posting important records online so that all citizens can access them easily, training records officers to provide complete and accurate responses so as to avoid needless litigation, halting the processing of a large records request if the requester has not picked up records already produced, and suspending a records search if the requester has not responded to a request for clarification. To see WCOG's 2014 legislative agenda, go to: http://www.washingtoncog.org/legislative_priorities.php.

In closing, WCOG reminds the Legislature to heed the words of the voters in adopting the PRA more than 40 years ago:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.