

**THE WASHINGTON STATE PUBLIC RECORDS ACT**  
**Legally loots the pockets of taxpayers**



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This posting is excerpts with footnotes. The full article may be found at:

<http://www.skyvalleychronicle.com/FEATURE-NEWS/THE-WASHINGTON-STATE-PUBLIC-RECORDS-ACT-b-Legally-looting-the-pockets-of-taxpayers-2383902>

“It also references what other states do. In particular, the eight top rated states for public records access by the *National Freedom of Information Coalition* are used for comparison (Washington did not make the cut.)”

The Better Government Association and National Freedom of Information Coalition results and criteria report is accessible on the Library page of this website.

"The first big issue with the PRA is that **it offers a financial incentive to find some error in a records request response**. Six other states, including Michigan, Kentucky, Louisiana and Ohio have some potential for a requester to obtain a money judgment on requests, but these four states are *limited to willful or capricious* withholding of records. ."

The six states are: Michigan, Kentucky, Louisiana and Ohio with a monetary penalty with limits and New Mexico and Wisconsin with damages awarded, but not defined.

"The next big issue is having no restriction on the size or scope of a request. In a noted Appellate Court case, the judge tossed a request for "all records" as being overbroad.

The State Legislature then leaped into action, **overturning** that rather logical conclusion. Nowadays you can file multiple, massive PRA requests and then "data mine them" for any mere imperfection."

The Court Case was Hangartner v City of Seattle (2004) where the Supreme Court noted "We will not interpret a statute in a manner that leads to an absurd result." Absurdity being no barrier to the legislature, they overruled that decision in RCW 42.56.080 as "Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad." In November 2014, a request similar in scope to the Hangartner request for all records starting from July 4, 1776 was sent to Snohomish County. It was a legal request this time, absurdity be damned.

"In any case, your attorney can always generate what is called an "ER 408 settlement offer" which is a fancy, polite way of saying, "Pay us this much now or we will cost you that much later!" "

An interesting twist on this in one case was we will add more lawyers to the case if you don't settle:

"I have already discussed this case with PRA litigator Michelle Earl-Hubbard and plan to associate with her on any appeal. Also, it is likely that the Washington Coalition for Open Government (of which I am a member) would participate as an amicus."

The Washington Court System uses Rule G 31.1 for Administrative Records, which includes:

- (i) **INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE DECISION MAKER.** The requesting person may seek informal review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. The decision resulting from the informal review proceeding may be further reviewed in superior court pursuant to a writ of mandamus, prohibition, or certiorari. Decisions made by a judge under this subsection (ii) are part of the judicial function.
- (ii) **DEADLINE FOR SEEKING EXTERNAL REVIEW.** A request for external review must be submitted within 30 days of the issuance of the court or judicial agency's final decision under section (d)(3).

(e) **Monetary Awards Not Allowed.** Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

The requestor has the option of skipping the informal review and going directly to court. The Court Rules may be found at:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&groupName=ga](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=ga)

“And don't expect the State Legislature to do anything significant on this. The 2015 action by the legislature was to have the State Auditor determine how much a megabyte of data costs. (Hint, it's called a Transaction Cost and Louisiana figured that out a long time ago.)”

The Louisiana Cost Schedule is accessible on the Library page of this website.