



Public Records Issue Brief

**Concerning costs associated with responding to public records requests HB 1595
Improving public records administration HB 1594**

Cities are champions of open and transparent government. Passed by voters in 1972, Washington's Public Records Act (PRA) is an important law that protects citizens' right to know how their governments operate, and is a vital tool that ensures accountability to the public.

Every day, local government officials ensure transparency in government and serve as stewards of public resources by effectively implementing the PRA. However, advances in technology and the increased volume and complexity of records requests are undermining the PRA. This act must be updated to reflect 21st century realities in order to fulfill its original purpose, provide government transparency, and make wise use of taxpayer dollars.

According to a recent study by the State Auditor's Office (SAO), cities received over 114,000 requests in 2015. The majority of those requests were straightforward and easy to fulfill. The increasingly complex nature of technology coupled with over 400 exemptions and numerous court decisions have impacted government's ability to comply with the PRA.

The PRA needs reasonable updates to continue to meet the law's original intent and to keep pace with changing technology. A recent poll of Washington voters showed that 77% favor charging a small fee to cover some of the cost of providing the records.

Cities support:

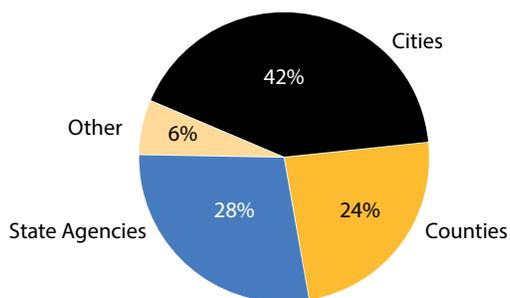
HB 1595

- Amends the PRA to allow cities to charge a small fee for providing copies of electronic records.
- Creates the ability for cities to deny overwhelming computer generated "bot" requests.
- Prohibits overly broad requests for all of a city's records.
- Creates a way for cities to apply a service charge to exceptionally complex requests.

HB 1594

- Requires training for records officers to address issues of retention, production and disclosure of electronic records.
- Creates a grant program within the Office of the Secretary of State for local governments to improve their public record management systems.
- Establishes a program within the Office of the Attorney General to consult with local governments on public records best practices.
- Creates a study on the feasibility of establishing a statewide open records portal.
- Provides for mediation between a city and a requestor when there is disagreement on a request.

Local governments received the majority of records requests in 2015



Source: 2016 SAO performance audit "The Effects of Public Records Requests on State and Local Government", pg. 16.

More details

Why does the Public Records Act need changes?

The Public Records Act provides protections for public access to records and strong penalties for agencies and officials who fail to comply. Unfortunately, the law lacks provisions to protect the public from those who misuse or abuse the law. Further, the law has failed to keep up with changing technologies and nationwide best practices, like some form of alternative dispute resolution.

more details on back

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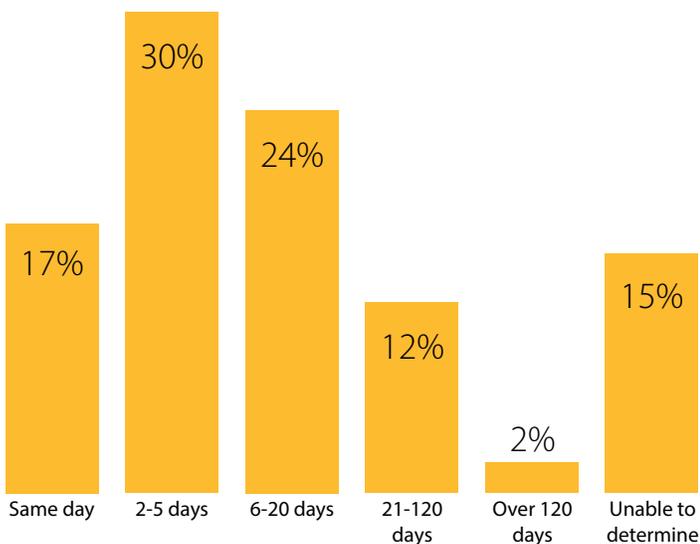
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More details cont.

- The PRA is a cornerstone of government transparency. However, technological advances and incremental changes to the law over the past 40 years have made the PRA vulnerable to misuse. Stakeholders need to work together to ensure that the PRA continues to meet its original intent while prohibiting harassment, abuse, and the waste of taxpayer dollars.
- Significant technological advances since 1972 – the year the PRA was adopted by voters – have considerably changed the number, size, and complexity of the records that cities and counties must manage. Between 2011 and 2015, the average number of requests increased by 36 percent.
- Despite growth in the number and complexity of requests, local governments are making a concerted effort to keep up. Governments fulfill 17 percent of requests the same day. Overall, they fulfill 47 percent of requests within five days and 71 percent in less than 21 days.
- Cities and counties invest a significant amount of time and resources in managing records and fulfilling records requests. Governments spent more than \$60 million last year fulfilling public records requests. The dollars allocated to records management bring this figure even higher.
- Fear of litigation drives too many decisions. Jurisdictions are agreeing to large settlements out of fear of enormous litigation costs. This is not a good use of taxpayer dollars, nor does it create a more open and accountable government. We need more clarity to avoid disputes and prevent misuse, as well as better options for resolving disputes when they arise.

Governments fulfilled most records requests quickly



Source: 2016 SAO performance audit "The Effects of Public Records Requests on State and Local Government", pg. 19.

Solutions to strengthen the intent of the law

Cities need tools to protect resources intended for essential services from those who use records requests for harassing or profit-driven motives.

- **Reasonable charges for providing electronic data**
Records simply aren't the same as they used to be. In 1972, when the PRA passed, typewriters and filing cabinets were standard office equipment. Today, cities use websites, email, Facebook, Twitter, and more to serve the public. The State Auditor found that only 25% of requests were for paper records, while 70% were for some form of electronic records. Legislators should recognize the reality of government work and adjust the PRA for our modern world.
- **Alternative Dispute Resolution**
Too often cities and requestors end up in court over disputed public records requests. Litigation results in wasted time and money, while diverting resources that could be used to better serve the public. Alternative dispute resolution offers cities and requestors an opportunity to solve disagreements without litigation. It costs less than going to court and results in quicker resolutions.
- **Reasonable charges for fulfilling specialized requests and conducting research**
Some jurisdictions are seeing a rise in complex requests that may require developing specialized access or conducting extensive research to fulfill. When a request goes beyond what is routine, agencies should be able to recoup a portion of the costs. This type of cost recovery is already assumed in the Attorney General's model rules, but without better definitions, cities aren't able to use this tool.
- **Technical and funding assistance**
Cities need help to implement leading technology practices for better records management. Funding must be restored to grant programs that provide assistance. Additionally, the state should explore ways to encourage the use of online records access like the portals being put into place by some local governments.

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