

HOUSE BILL NO. 100

INTRODUCED BY B. MERCER

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORD LAWS; ESTABLISHING REQUIREMENTS AND DEADLINES FOR PUBLIC AGENCIES THAT ARE NOT LOCAL GOVERNMENTS; GENERALLY REVISING FEES FOR PUBLIC INFORMATION REQUESTS; ESTABLISHING A 2-YEAR RETENTION PERIOD OF INFORMATION REQUESTS AND RESPONSES FOR PUBLIC AGENCIES THAT ARE NOT LOCAL GOVERNMENTS; ESTABLISHING THE FEES THAT A PUBLIC AGENCY MAY CHARGE WHEN RESPONDING TO PUBLIC INFORMATION REQUESTS; ALLOWING A PERSON TO FILE AN ACTION IN DISTRICT COURT IF A PUBLIC AGENCY THAT IS NOT A LOCAL GOVERNMENT FAILS TO MEET THE RESPONSE DEADLINE; AMENDING SECTIONS 2-6-1006 AND 2-6-1009, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-6-1006, MCA, is amended to read:

"2-6-1006. Public information requests -- fees. (1) (a) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(b) (i) All public agencies are governed by this subsection (1).

(ii) A public agency that is not an executive branch agency must meet the requirements of subsection (2) when responding to a public information request.

(iii) ~~(A) Except as provided in subsections (1)(b)(iii)(B) and subsection (1)(b)(iv), all executive branch agencies must meet the requirements of subsection (3) when responding to a public information request.~~

~~(B) — The provisions of subsection (3) apply to the secretary of state, the justice department, the superintendent of public instruction, and the state auditor beginning on October 1, 2025.~~

(iv) The secretary of state must meet the requirements of subsection (4) regarding fees.

(c) A public agency other than the office of the secretary of state may charge, ~~pursuant to this subsection (1)(c), a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost efficient and timely manner possible~~ a fee pursuant to subsections (1)(e) and (5) and this subsection (1)(c). The fee must be documented. ~~The fee may include the time required to gather public information.~~ The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(d) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(e) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

(2) Upon receiving a request for public information, a public agency that is not an executive branch agency shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered ~~and as well as~~ any fees that may be charged pursuant to subsection (1)(c).

(3) (a) (i) An executive branch agency shall respond to a public information request by acknowledging receipt of the request within 5 business days of the agency's designated contact person receiving the request. Except for confidential, privileged, or otherwise protected information that is not subject to public disclosure under applicable law and information withheld from public scrutiny as provided in 2-6-1003, the executive branch agency shall respond by:

(i)(A) making the public information maintained by the executive branch agency available in a timely manner for inspection and copying by the requesting person;

(ii)(B) providing a specified public record to the requesting person within 5 working days of the executive branch agency's acknowledgment of receipt of the request if the request is for a single, specific,

clearly identifiable, and readily available public record. ~~This subsection (3)(a)(ii) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations; or~~

~~(iii)(C)~~ responding as provided in subsection (3)(b).

(ii) Subsection (3)(a)(i)(B) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations.

(b) (i) If a request seeks public information that cannot be readily identified and gathered, the agency shall provide the requesting person an estimate of the time it will take to fulfill the request and any fees that may be charged ~~pursuant to subsection (1)(c)~~ and shall provide the public information to the requesting person in a timely manner, which may be, except as provided in subsection (3)(b)(ii), within either:

(A) 90 days of the public agency's acknowledgment of the request; or

(B) 6 months of the public agency's acknowledgment of the request if the agency determines 90 days is not feasible for a response and the agency provides the requesting person written notice explaining why the agency is unable to provide a response within 90 days.

(ii) If an executive branch agency requires a requesting person to pay an estimated fee ~~pursuant to subsection (1)(c)~~, the agency's obligation to respond to the request is suspended upon sending the estimate to the requesting person and remains suspended until the requesting person makes payment.

(c) An executive branch agency may request additional information or clarification from a requesting person for the purpose of expediting the agency's response to the request. If the agency has requested additional information or clarification, the agency's obligation to respond to the request is suspended until the requesting person provides the requested information or clarification or until the requesting person denies the agency's request for additional information or clarification. If a person requesting public information fails to respond within 30 days to an agency's request for additional information or clarification, the agency may close the request after notifying the requesting person.

(d) Each executive branch agency must have a designated contact for public information requests posted on its website.

(e) ~~By November 1, 2024, or 1 month after this section becomes applicable to an executive branch agency, whichever occurs second,~~ an executive branch agency that is subject to this subsection (3) shall:

(i) establish a public information request process describing the steps for submitting a request and the process the agency will follow when responding to a request for public information, which must be published on a state website;

(ii) provide statistics about public information requests received by the designated contact of the agency, including the number of requests and the agency's response time to fulfill or otherwise resolve the requests; and

(iii) retain and publish on a state website the public information requests the agency has received and the agency's response. Requests and responses must be available for 2 years from the date of the request. The agency is not required to publish requests or responses if the request:

(A) was not submitted according to the agency's posted process;

(B) pertains only to a specific person or property, including requests for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(C) was for information accessible on a state website or other publication available at the time the request was made.

(4) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or a public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(5) A public agency may charge the following fees:

(a) fees for making public information maintained by the public agency available for inspection and copying by the requesting person at the public agency. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(a)(i) through (5)(a)(v). These fees may include but are not limited to:

(i) fees for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request;

(iii) the cost of providing the public information to the requester, including but not limited to copying and media costs;

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(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(b) fees for fulfilling a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(b)(i) through (5)(b)(v). These fees may include but are not limited to:

(i) fees for gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request;

(iii) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(c) fees for fulfilling a request for public information that is not a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(c)(i) through (5)(c)(vi). These fees may include but are not limited to:

(i) a filing fee not to exceed \$20;

(ii) fees for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(iii) the actual cost to fulfill the request;

(iv) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(v) a convenience fee as provided in 2-17-1102, if applicable; and

(vi) other reasonable costs directly incurred by the public agency.

(6) If a public agency collects a filing fee from the requester prior to fulfilling a public information request pursuant to subsection (5)(c), the public agency shall apply the filing fee as a credit toward the other request fulfillment costs enumerated in subsection (5)(c)."

Section 2. Section 2-6-1006, MCA, is amended to read:

"2-6-1006. Public information requests -- fees. (1) (a) A person may request public information

from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(b) (i) All public agencies are governed by this subsection (1).

(ii) ~~A public agency that is not an executive branch agency~~ local government must meet the requirements of subsection (2) when responding to a public information request. A local government is not subject to subsection (3).

(iii) (A) ~~Except as provided in subsections (1)(b)(iii)(B) and (1)(b)(iv), all executive branch agencies~~ subsection (1)(b)(iv), a public agency that is not a local government must meet the requirements of subsection (3) when responding to a public information request.

~~(B) — The provisions of subsection (3) apply to the secretary of state, the justice department, the superintendent of public instruction, and the state auditor beginning on October 1, 2025.~~

(iv) The secretary of state must meet the requirements of subsection (4) regarding fees.

(c) A public agency other than the office of the secretary of state may charge, ~~pursuant to this subsection (1)(c), a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost efficient and timely manner possible~~ a fee pursuant to subsections (1)(c) and (1)(e) and this subsection (1)(c). The fee must be documented. ~~The fee may include the time required to gather public information.~~ The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(d) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(e) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

(2) Upon receiving a request for public information, a ~~public agency that is not an executive branch agency~~ local government shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the ~~public agency~~ local government available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered ~~and as well as~~ any fees that may be charged pursuant to subsection (1)(c).

(3) (a) (i) ~~An executive branch agency~~ A public agency that is not a local government shall respond to a public information request by acknowledging receipt of the request within 5 business days of the agency's designated contact person receiving the request. Except for confidential, privileged, or otherwise protected information that is not subject to public disclosure under applicable law and information withheld from public scrutiny as provided in 2-6-1003, ~~the executive branch agency~~ a public agency that is not a local government shall respond by:

(i)(A) making the public information maintained by the ~~executive branch agency~~ available in a timely manner for inspection and copying by the requesting person;

(ii)(B) providing a specified public record to the requesting person within 5 working days of the ~~executive branch agency's~~ acknowledgment of receipt of the request if the request is for a single, specific, clearly identifiable, and readily available public record. ~~This subsection (3)(a)(ii) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations; or~~

(iii)(C) responding as provided in subsection (3)(b).

(ii) Subsection (3)(a)(i)(B) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations.

(b) (i) If a request seeks public information that cannot be readily identified and gathered, the ~~agency~~ a public agency that is not a local government shall provide the requesting person an estimate of the time it will take to fulfill the request and any fees that may be charged ~~pursuant to subsection (1)(c)~~ and shall provide the public information to the requesting person in a timely manner, which may be, except as provided in subsection (3)(b)(ii), within either:

(A) 90 days of the ~~public agency's~~ acknowledgment of the request; or

(B) 6 months of the ~~public agency's~~ acknowledgment of the request if the agency determines 90 days is not feasible for a response and the agency provides the requesting person written notice explaining why the agency is unable to provide a response within 90 days.

(ii) If an ~~executive branch agency~~ requires a requesting person to pay an estimated fee pursuant to ~~subsection (1)(c)~~, the agency's obligation to respond to the request is suspended upon sending the estimate to the requesting person and remains suspended until the requesting person makes payment.

(c) ~~An executive branch agency~~ A public agency that is not a local government may request additional information or clarification from a requesting person for the purpose of expediting the agency's response to the request. If the agency has requested additional information or clarification, the agency's obligation to respond to the request is suspended until the requesting person provides the requested information or clarification or until the requesting person denies the agency's request for additional information or clarification. If a person requesting public information fails to respond within 30 days to an agency's request for additional information or clarification, the agency may close the request after notifying the requesting person.

(d) Each ~~executive branch agency~~ public agency that is not a local government must have a designated contact for public information requests posted on its website.

(e) ~~By November 1, 2024, or 1 month after this section becomes applicable to an executive branch agency, whichever occurs second, an executive branch agency that is subject to this subsection (3)~~ November 1, 2026, a public agency that is not a local government shall:

(i) establish a public information request process describing the steps for submitting a request and the process the agency will follow when responding to a request for public information, which must be published on a state website;

(ii) provide statistics about public information requests received by the designated contact of the agency, including the number of requests and the agency's response time to fulfill or otherwise resolve the requests; and

(iii) retain and publish on a state website the public information requests the agency has received and the agency's response. Requests and responses must be available for 2 years from the date of the request. The agency is not required to publish requests or responses if the request:

(A) was not submitted according to the agency's posted process;

(B) pertains only to a specific person or property, including requests for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(C) was for information accessible on a state website or other publication available at the time the request was made.

(4) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or a public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(5) A public agency may charge the following fees:

(a) fees for making public information maintained by the public agency available for inspection and copying by the requesting person at the public agency. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(a)(i) through (5)(a)(v). These fees may include but are not limited to:

(i) fees for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request;

(iii) the cost of providing the public information to the requester, including but not limited to copying and media costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(b) fees for fulfilling a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(b)(i) through (5)(b)(v). These fees may include but are not limited to:

(i) fees for gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(ii) the actual cost to fulfill the request;

(iii) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(iv) a convenience fee as provided in 2-17-1102, if applicable; and

(v) other reasonable costs directly incurred by the public agency.

(c) fees for fulfilling a request for public information that is not a request for a single, specific, clearly identifiable, and readily available public record. A public agency that incurs a cost may only charge for it once pursuant to subsections (5)(c)(i) through (5)(c)(vi). These fees may include but are not limited to:

(i) a filing fee not to exceed \$20;

(ii) fees for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible;

(iii) the actual cost to fulfill the request;

(iv) the cost of providing the public information to the requester, including but not limited to scanning, copying, media, postage, and shipping costs;

(v) a convenience fee as provided in 2-17-1102, if applicable; and

(vi) other reasonable costs directly incurred by the public agency.

(6) If a public agency collects a filing fee from the requester prior to fulfilling a public information request pursuant to subsection (5)(c), the public agency shall apply the filing fee as a credit toward the other request fulfillment costs enumerated in subsection (5)(c)."

Section 3. Section 2-6-1009, MCA, is amended to read:

"2-6-1009. Written notice of denial -- failure to meet response deadline -- civil action -- costs to prevailing party in certain actions to enforce constitutional or statutory rights. (1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.

(2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.

(3) If a person who makes an information request to ~~an executive branch agency~~ a public agency that is not a local government does not receive a response from the agency as required in 2-6-1006(3), the person may file a complaint in district court.

(4) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title

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1 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees."

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3 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
5 the part remains in effect in all valid applications that are severable from the invalid applications.

6

7 NEW SECTION. Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is
8 effective October 1, 2025.

9 (2) [Sections 2 and 3] are effective July 1, 2026.

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11 NEW SECTION. Section 6. Termination. [Section 1] terminates June 30, 2026.

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- END -