**A Position on Washington HB 1037**

**“An act relating to cost recovery for public records”**

**The Problem:** Various state and local municipalities are experiencing increased costs as a result of the demands of certain public record requests from out-of-state commercial entities. Specifically, some of the complex requests from out of state commercial entities seeking this information for resale purposes require data going back as far as 50 years.[[1]](#footnote-1)

The State of Washington’s Public Records Act (PRA) requires state and local governments to make public records available for inspection and copying with limited statutory exemptions. Interpretation of the PRA favors disclosure and currently includes cost recovery provisions of up to 15 cents per page for copying costs, staff time for this work, and mailing expenses.[[2]](#footnote-2)

These recovery provisions were mandated by the Washington legislature, and are comparable to those at the Federal level and by state and local governments across our nation. Cost recovery for public records recognizes the public good associated with an open government through access to public records, a vital service and civil duty of the government.

However, government entities are not for profit institutions and should not be allowed to turn fulfillment of their public records duties into a means of generating revenues for what is a publically beneficial and legally mandated exchange of information. The notion that the “taxpayers of this state effectively subsidize commercial requestors through the production of records without charge” is a misconception.[[3]](#footnote-3) In fact, it could also be interpreted that the commercial requestors are subsidizing various agencies’ fulfilment of their public records mission, via the net benefit to both taxpayers in general and for consumers whose transactions are fulfilled by the completion of these records requests.

Washington citizens benefit from the application of enhanced technologies offered by many of the commercial entities making these requests, as well as their incorporation into national distribution systems they provide for sharing information across multiple industry platforms. By making these requests, companies are effectively reducing the costs associated with providing access to public records and are in fact subsidizing the state entities by developing these technologies at their own expense, while still subsidizing request processing costs under the current cost recovery framework. Absent such a system, individually submitted or more labor intensive requests might overwhelm the same agencies currently requesting the expansion of the cost recovery provisions.

The purposes for which these record requests are being made also merit additional consideration. Many of the requests in question have very specific purposes that serve a public good worthy of consideration for exemption under the current cost recovery structure. The PRA currently exempts access fees for “members of the news media, a nonprofit organization, or an educational institution…or other binding agreement or under the authority of a law other than the Public Records Act.”[[4]](#footnote-4) Examples of these kinds of exemptions are apparent in several instances involving the real estate industry. As noted in the PRA, the documenting of real property and its legal transfer is clearly a commercial activity by title agencies and real estate professionals, yet serves a public function found by the State to warrant an exemption from the cost recovery fees in place.

In a similar fashion, obtaining public records of an individual’s criminal history to ensure safe tenancy in multifamily rental housing, or employment in certain sensitive positions, offers a commercial need with a public mission. The state of Washington’s Residential Landlord-Tenant Act (RLTA) regulates the relationship between landlords and tenants, and acknowledges that screening reports are an important part of the safe housing relationship. HB2537, currently pending before this legislature, states that “the legislature found and declares comprehensive tenant screening reports are a necessary and fair solution for both applicants and landlords.”[[5]](#footnote-5) Ironically, while HB2537 pursues questionable methods to limit the costs associated with tenant screening reports, some of which are being assessed under the current PRA, HB1037 would increase these costs.

Providing critical public record data to prevent dangerous individuals from residing in family housing environments, or from gaining employment in sensitive jobs where consumer safety is paramount seems just as worthy of exemption as the documentation of real property. Additionally, many municipal codes, state laws, and federal statutes require these records for compliance. This seems to be a direct qualification for exemptions under PRA from the existing cost recovery provisions.

**The Recommendation:**

The Washington legislature should undertake a complete review of the effectiveness of the current cost recovery provisions of the PRA, including analysis of the entities currently being assessed fees perhaps in contradiction of the standards of the Act. After this review and having gained a fuller understanding of entities currently being assessed fees that may merit an exemption, a more detailed plan of cost recovery can be devised. Such a cost recovery system should include exemptions that balance both the costs and public benefits associated with public document requests, and to ensure that recovery costs are not more detrimental than helpful to the citizens.

1. State of Washington 63rd Legislature 2013 Regular Session, HB1037 House Bill Report, Staff Summary of Public Testimony, page 4. [↑](#footnote-ref-1)
2. State of Washington, Public Records Act, [2005 c 274 § 102.] [↑](#footnote-ref-2)
3. State of Washington 63rd Legislature 2013 Regular Session, HB1037 Section 1, page 2, line 1-3. [↑](#footnote-ref-3)
4. Ibid, Exemptions from cost recovery. [↑](#footnote-ref-4)
5. State of Washington 63rd Legislature 2014 Regular Session, HB2537 Section 1, page 2 line 3. [↑](#footnote-ref-5)