## REVISED STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 13 | **Name:** | Sam Porter |
| **Proposed No**.: | 2019-0137 | **Date:** | June 25, 2019 |

**COMMITTEE ACTION**

|  |
| --- |
| ***Proposed Substitute Ordinance 2019-0137.2 would make changes to King County Code related to fees and reporting requirements for Public Records Act requests, passed out of committee on June 25, 2019, without recommendation. The Ordinance was amended in committee with Amendment 1 to align the annual reporting requirements pertaining to public records act requests with 40.14.026(5) RCW and make technical adjustments.*** |

**SUBJECT**

Proposed Ordinance 2019-0137 would make changes to King County Code related to fees and reporting requirements for Public Records Act requests.

**SUMMARY**

Proposed Ordinance 2019-0137 would make three substantive changes to King County Code (K.C.C.) pertaining to Public Records Act (PRA) requests fees and reporting requirements.

1. First, it would amend K.C.C. Section 2.12 related to the fees charged to requestors receiving public records. This change would align K.C.C. with Washington State law that in 2017 revised statutory default fees for PRA requests.
2. Second, the proposed ordinance would amend K.C.C. Section 2.12 to change the contents of the departmental public records officer performance report that are included in the annual Public Records Committee[[1]](#footnote-1) (PRC) report transmitted to Council every April. This change would remove reporting requirements related to whether five-day response requirements were met and explanations for the length of requests that were six months or older.
3. Third, it would change the date by which the PRC annual report is transmitted to Council from April to July.

**BACKGROUND**

Public Records Act

The Public Records Act (PRA) requires that King County make written records available to the public upon request. State law defines public records as information that is prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.[[2]](#footnote-2) Some records are exempt under state law including such things as personal information maintained for students in public schools, information identifying the location of archaeological sites, and names of individuals residing in emergency or transitional housing.[[3]](#footnote-3)

Members of governing bodies and public records officers must complete a state mandated PRA training within 90 days of assuming their duties.[[4]](#footnote-4) PRA also requires that the County respond to records requests within five business days and either provide the record, deny the request, or give a time estimate for when the records will be available.[[5]](#footnote-5) A department may ask the requester to clarify what information they are seeking. If the requester fails to clarify the request, the agency is not obligated to respond. County agencies cannot charge a fee for locating or making records available for inspection.

Prior to legislative changes in 2017, state law allowed requesters of public records to be charged $0.15 per page for copies and $0.10 for scans of documents. In 2017, the public records request fee structure was revised in RCW 42.56 to allow agencies one of three options:

1. conduct a study determining the actual cost of producing records and charge that amount,
2. charge statutory defaults that appear in Table 1 of this staff report[[6]](#footnote-6), or
3. charge a flat fee of up to two dollars for any request if the request is clearly equal to or more than two dollars.

Currently the County is charging the flat fee of two dollars.

Summary of Proposed Ordinance 2019-0137

Below is a summary of the contents of each section of Proposed Ordinance 2019-0137:

Section 1: Findings that calculating the actual cost of providing public records would be unduly burdensome.

Section 2: Removes reference to a King County Code section proposed for removal in Section 3 below.

Section 3: Removes language related to charging requestors for certified copies. References RCW 42.56.120(2)(b) and (c) as the basis for what fees the county may charge for copies of records. Moves language allowing for the collection of a deposit of up to ten percent of the estimated costs of copying all the records requested.

Section 4: Revises the content of the Public Records Officer annual report that is included in the Public Records Committee annual report transmitted to Council. A comparison of the contents can be seen in Table 2 later in this staff report.

Section 5: Changes the deadline for the transmittal of the Public Records Committee annual report from April to July 1 annually.

**ANALYSIS**

Records Request Fees

In 2017, the Washington State Legislature amended RCW Chapter 42.56 and expanded the default fees for providing public records in paper and electronic form. Currently, King County departments charge a flat fee of two dollars for public records requests as described in RCW 42.56.120(2)(d). The proposed ordinance would amend King County Code to allow departments to charge the default fees as modified in 2017. Instead of a flat two dollar fee, the fees seen in Table 1 below could be combined if a request resulted in the production of records in more than one medium. Further, state law allows agencies to collect a deposit of up to ten percent of the estimated costs of producing the requests.[[7]](#footnote-7) The proposed ordinance retains this provision that currently exists in King County Code. The intent of collecting a deposit is to reduce the number of public records requests that are abandoned. While data was not available for all departments, the King County Sheriff's Office processed 6,701 records requests in 2018, 91 of which were abandoned.

**Table 1. Statutory Default Fees for Public Records Act Requests, RCW 42.56.120**

|  |  |
| --- | --- |
| **Public record medium** | **Cost** |
| Paper copies | $0.15/page |
| Scanned copies | $0.10/page |
| Electronic files transmitted electronically | $0.05/four electronic files |
| Transmission of electronic records | $0.10/gigabyte |
| Digital storage media or device provided by the agency | Actual cost |
| Shipping cost and packaging to ship | Actual cost |

Under the proposed fee structure a requester who is provided 200 separate scanned documents as PDFs in an email, the total size of which is 50 gigabytes, would be charged $27.50 as outlined below.

* $20.00 for the 200 scanned documents ($0.10/page),
* $2.50 for the 200 electronic files ($0.05/four electronic files), and
* $5.00 for the transmission of the electronic files ($0.10/gigabyte).

In comparison, the same request under the current structure would cost two dollars.

While state law states that agencies "shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations"[[8]](#footnote-8) there is no maximum allowable total charge for PRA requests.

According to the fiscal note, the anticipated revenue expected from this change would be approximately $8,000 annually with a five percent assumption of biennial growth. Executive staff indicate that the methodology used to develop this revenue projection was based on the current fee structure. The expected revenue would not cover the cost of providing records but is intended to allow requestors to be charged in a manner commensurate with the number of records received. According to a 2017 report sent to the state Joint Legislative Review Committee, King County Executive Branch agencies estimated that the total costs incurred in fulfilling requests was more than $1 million. This figure includes staff compensation, legal review, and average cost per requests.

Performance Reporting Requirements

There are two annual reports in King County Code related to public records that are proposed for modification under the Proposed Ordinance. The first report is the individual agency public records officer performance reports which are submitted to the chair of the Public Record Committee (PRC).[[9]](#footnote-9) These individual agency reports are included in the second report, the PRC annual report that is transmitted to Council annually in April.

Table 2 below compares the current requirements of the individual agency public records officer performance reports to the modified requirements as proposed by the Proposed Ordinance.

**Table 2. Comparison of Current Requirements versus Proposed Requirements for the Agency Public Records Officer Performance Report**

|  |  |  |
| --- | --- | --- |
| **Current Reporting Requirements** | **Change Type** | **Proposed Reporting Requirements** |
| Name of the requestor | No Change | Name of the requestor |
| Date the request was received | No Change | Date the request was received |
| Requests closed or opened in preceding year | Modified | Requests received in preceding year |
| Summary of the request | Modified | Text of the original request |
| Date the request was closed, if it was closed | Modified | Date of final disposition of the request |
| (not required) | New | A description of the records produced, redacted, or withheld and the reason for the withholding |
| Whether the five-day response requirement in KCC and state law was met | Removed | (removed) |
| For a request six months or older, an explanation for why the request was not closed sooner, or why the request is still open | Removed | (removed) |

The proposed ordinance would remove the five-day response requirement and information about requests that were open six months or longer, and would add description of the records produced, redacted, or withheld and the reason for the withholding. In 2018, 1.7 percent of King County PRA requests were not responded to within the required five-day response window.[[10]](#footnote-10) The reasons for missing the required response window are not formally tracked by Executive staff. Also in 2018, four percent of requests were either closed after six months or still open six months or longer.[[11]](#footnote-11) The reasons for this varied among requests but included requests being exceptionally large, complex, part of litigation, or pending collective bargaining.

The reporting requirement changes as proposed by the proposed ordinance is not mandated by the Public Records Act and therefore it would be a policy choice for the council. While the information proposed to be eliminated by the proposed ordinance may continue to be tracked by King County agencies, there are no additional provisions in King County Code that require its tracking or reporting.

Report transmittal date change

Currently, the individual agency public records officer performance reports received annually by March 20th are included in the PRC's annual report to Council due in April. Reports received after March 20th are forwarded to Council later as an addendum. The Proposed Ordinance would change the date of the PRC annual report from April to July to allow more time for the individual agency performance reports to be compiled and transmitted with the PRC report instead of later as an addendum.

Legal Review

Council's legal counsel has completed review of the proposed ordinance.

**AMENDMENT**

Amendment 1 to the Proposed Ordinance would modify reporting requirements and make technical adjustments to the legislation. The Amendment would change the reporting requirements of King County departments to the Public Records Committee (PRC) so that the information reported to the PRC aligns with the report requirements specified in RCW 40.14.026(5). The amendment would also change the date that departments submit information to the PRC to July 1 each year and the date the PRC transmits its report to the council to August 15. Amendment 1 to the Proposed Ordinance would also make technical changes. The amendment was not finalized at the time the packet was produced.

**TIMING**

There is a 10-day notice requirement for Proposed Ordinance 2019-0137. Should action be taken on June 25, 2019 at the Budget and Financial Management Committee meeting, notice will be published in the Seattle Times on June 26 with a Full Council public hearing date of July 10, 2019.

1. The Public Records Committee (PRC) was established in King County Code in 2006 by Ordinance 15608 and appears in K.C.C. 2.14.020. The PRC is chaired by the director of the Records and Licensing Services Division and committee membership is comprised of representatives from departments and elected agencies across King County government. The PRC is tasked with advising the King County Council and the County Executive on public records policies, providing guidance on countywide records storage management, and providing advice to County agencies on their use of digital communication. [↑](#footnote-ref-1)
2. RCW 42.56.010 [↑](#footnote-ref-2)
3. RCW 42.56.230 – 480 [↑](#footnote-ref-3)
4. RCW 42.56.150 and 42.56.152 [↑](#footnote-ref-4)
5. RCW 42.56.520 [↑](#footnote-ref-5)
6. RCW 42.56.120(2)(b) [↑](#footnote-ref-6)
7. RCW 42.56.120.4 [↑](#footnote-ref-7)
8. RCW 42.56.120.2.b.iv [↑](#footnote-ref-8)
9. K.C.C. 2.12.300 [↑](#footnote-ref-9)
10. According to the 2018 PRC annual report, there were 3,247 PRA requests of Executive Branch offices, 57 of which were not responded to within the five-day response window. This is 1.75% of requests. [↑](#footnote-ref-10)
11. According to the 2018 PRC annual report, there were 3,247 PRA requests of Executive Branch offices, 136 of which were either closed or open six months or longer. This is 4.18% of requests. [↑](#footnote-ref-11)