

HOUSE BILL No. 1523

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3.

Synopsis: Search fee for public records requests. Allows a state or local government agency (agency) to charge a maximum hourly fee for any records search that exceeds two hours. Prohibits, with certain exceptions, an agency from charging a fee for providing a public record by electronic mail. Provides that if a public record is in an electronic format, an agency (excluding the office of the county recorder) shall provide an electronic copy or a paper copy, at the option of the person making the request for a public record.

Effective: July 1, 2017.

Richardson

January 18, 2017, read first time and referred to Committee on Government and Regulatory Reform.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1523

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-3-3, AS AMENDED BY P.L.58-2016,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 3. (a) Any person may inspect and copy the public
4 records of any public agency during the regular business hours of the
5 agency, except as provided in section 4 of this chapter. A request for
6 inspection or copying must:
7 (1) identify with reasonable particularity the record being
8 requested; and
9 (2) be, at the discretion of the agency, in writing on or in a form
10 provided by the agency.
11 No request may be denied because the person making the request
12 refuses to state the purpose of the request, unless such condition is
13 required by other applicable statute. If a request is for inspection or
14 copying of a law enforcement recording, the request must provide the
15 information required under subsection (i).
16 (b) A public agency may not deny or interfere with the exercise of
17 the right stated in subsection (a). Within a reasonable time after the



- 1 request is received by the agency, the public agency shall either:
2 (1) provide the requested copies to the person making the request;
3 or
4 (2) allow the person to make copies:
5 (A) on the agency's equipment; or
6 (B) on the person's own equipment.
7 (c) Notwithstanding subsections (a) and (b), a public agency may or
8 may not do the following:
9 (1) In accordance with a contract described in section 3.5 of this
10 chapter, permit a person to inspect and copy through the use of
11 enhanced access public records containing information owned by
12 or entrusted to the public agency.
13 (2) Permit a governmental entity to use an electronic device to
14 inspect and copy public records containing information owned by
15 or entrusted to the public agency.
16 (d) Except as provided in subsection (e), a public agency that
17 maintains or contracts for the maintenance of public records in an
18 electronic data storage system shall make reasonable efforts to provide
19 to a person making a request a copy of all disclosable data contained
20 in the records on paper, disk, tape, drum, or any other method of
21 electronic retrieval if the medium requested is compatible with the
22 agency's data storage system. This subsection does not apply to an
23 electronic map.
24 (e) A state agency may adopt a rule under IC 4-22-2, and a political
25 subdivision may enact an ordinance, prescribing the conditions under
26 which a person who receives information on disk or tape under
27 subsection (d) may or may not use the information for commercial
28 purposes, including to sell, advertise, or solicit the purchase of
29 merchandise, goods, or services, or sell, loan, give away, or otherwise
30 deliver the information obtained by the request to any other person for
31 these purposes. Use of information received under subsection (d) in
32 connection with the preparation or publication of news, for nonprofit
33 activities, or for academic research is not prohibited. A person who
34 uses information in a manner contrary to a rule or ordinance adopted
35 under this subsection may be prohibited by the state agency or political
36 subdivision from obtaining a copy or any further data under subsection
37 (d).
38 (f) Notwithstanding the other provisions of this section, a public
39 agency is not required to create or provide copies of lists of names and
40 addresses (including electronic mail account addresses) unless the
41 public agency is required to publish such lists and disseminate them to
42 the public under a statute. However, if a public agency has created a



1 list of names and addresses (excluding electronic mail account
 2 addresses), it must permit a person to inspect and make memoranda
 3 abstracts from the list unless access to the list is prohibited by law. The
 4 lists of names and addresses (including electronic mail account
 5 addresses) described in subdivisions (1) through (3) may not be
 6 disclosed by public agencies to any individual or entity for political
 7 purposes and may not be used by any individual or entity for political
 8 purposes. In addition, the lists of names and addresses (including
 9 electronic mail account addresses) described in subdivisions (1)
 10 through (3) may not be disclosed by public agencies to commercial
 11 entities for commercial purposes and may not be used by commercial
 12 entities for commercial purposes. The prohibition in this subsection
 13 against the disclosure of lists for political or commercial purposes
 14 applies to the following lists of names and addresses (including
 15 electronic mail account addresses):

16 (1) A list of employees of a public agency.

17 (2) A list of persons attending conferences or meetings at a state
 18 educational institution or of persons involved in programs or
 19 activities conducted or supervised by the state educational
 20 institution.

21 (3) A list of students who are enrolled in a public school
 22 corporation if the governing body of the public school corporation
 23 adopts a policy:

24 (A) with respect to disclosure related to a commercial purpose,
 25 prohibiting the disclosure of the list to commercial entities for
 26 commercial purposes;

27 (B) with respect to disclosure related to a commercial purpose,
 28 specifying the classes or categories of commercial entities to
 29 which the list may not be disclosed or by which the list may
 30 not be used for commercial purposes; or

31 (C) with respect to disclosure related to a political purpose,
 32 prohibiting the disclosure of the list to individuals and entities
 33 for political purposes.

34 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
 35 and may not discriminate among similarly situated commercial entities.
 36 For purposes of this subsection, "political purposes" means influencing
 37 the election of a candidate for federal, state, legislative, local, or school
 38 board office or the outcome of a public question or attempting to solicit
 39 a contribution to influence the election of a candidate for federal, state,
 40 legislative, local, or school board office or the outcome of a public
 41 question.

42 (g) A public agency may not enter into or renew a contract or an



1 obligation:

- 2 (1) for the storage or copying of public records; or
 3 (2) that requires the public to obtain a license or pay copyright
 4 royalties for obtaining the right to inspect and copy the records
 5 unless otherwise provided by applicable statute;

6 if the contract, obligation, license, or copyright unreasonably impairs
 7 the right of the public to inspect and copy the agency's public records.

8 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
 9 apply.

10 (i) A request to inspect or copy a law enforcement recording must
 11 be in writing. A request identifies a law enforcement recording with
 12 reasonable particularity as required by this section only if the request
 13 provides the following information regarding the law enforcement
 14 activity depicted in the recording:

- 15 (1) The date and approximate time of the law enforcement
 16 activity.
 17 (2) The specific location where the law enforcement activity
 18 occurred.
 19 (3) The name of at least one (1) individual, other than a law
 20 enforcement officer, who was directly involved in the law
 21 enforcement activity.

22 **(j) This subsection applies to a public record that is in an**
 23 **electronic format. This subsection does not apply to a public record**
 24 **recorded in the office of the county recorder. The public agency**
 25 **shall provide an electronic copy or a paper copy, at the option of**
 26 **the person making the request for a public record. This subsection**
 27 **does not require a public agency to change the format of a public**
 28 **record.**

29 SECTION 2. IC 5-14-3-8, AS AMENDED BY P.L.58-2016,
 30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2017]: Sec. 8. (a) For the purposes of this section, "state
 32 agency" has the meaning set forth in IC 4-13-1-1.

33 (b) Except as provided in this section, a public agency may not
 34 charge any fee under this chapter **for the following:**

- 35 (1) To inspect a public record. ~~or~~
 36 **(2) To search for a record, if the search does not exceed two**
 37 **(2) hours.**
 38 ~~(2)~~ **(3) To search for, examine or review a record to determine**
 39 **whether the record may be disclosed.**
 40 **(4) To provide an electronic copy of a public record by**
 41 **electronic mail. However, a public agency may charge a fee**
 42 **for a public record transmitted by electronic mail if the fee**



1 **for the public record is authorized under:**

2 **(A) subsection (f) or (j); or**

3 **(B) section 6(c) of this chapter.**

4 (c) The Indiana department of administration shall establish a
5 uniform copying fee for the copying of one (1) page of a standard-sized
6 document by state agencies. The fee may not exceed the average cost
7 of copying records by state agencies or ten cents (\$0.10) per page,
8 whichever is greater. A state agency may not collect more than the
9 uniform copying fee for providing a copy of a public record. However,
10 a state agency shall establish and collect a reasonable fee for copying
11 nonstandard-sized documents.

12 (d) This subsection applies to a public agency that is not a state
13 agency. The fiscal body (as defined in IC 36-1-2-6) of the public
14 agency, or the governing body, if there is no fiscal body, shall establish
15 a fee schedule for the certification or copying of documents. The fee for
16 certification of documents may not exceed five dollars (\$5) per
17 document. The fee for copying documents may not exceed the greater
18 of:

19 (1) ten cents (\$0.10) per page for copies that are not color copies
20 or twenty-five cents (\$0.25) per page for color copies; or

21 (2) the actual cost to the agency of copying the document.

22 As used in this subsection, "actual cost" means the cost of paper and
23 the per-page cost for use of copying or facsimile equipment and does
24 not include labor costs or overhead costs. A fee established under this
25 subsection must be uniform throughout the public agency and uniform
26 to all purchasers.

27 (e) If:

28 (1) a person is entitled to a copy of a public record under this
29 chapter; and

30 (2) the public agency which is in possession of the record has
31 reasonable access to a machine capable of reproducing the public
32 record;

33 the public agency must provide at least one (1) copy of the public
34 record to the person. However, if a public agency does not have
35 reasonable access to a machine capable of reproducing the record or if
36 the person cannot reproduce the record by use of enhanced access
37 under section 3.5 of this chapter, the person is only entitled to inspect
38 and manually transcribe the record. A public agency may require that
39 the payment for **search and** copying costs be made in advance.

40 (f) Notwithstanding subsection ~~(b)~~; **(b)(1), (b)(2), (b)(3)**, (c), (d),
41 (g), (h), or (i), a public agency shall collect any certification, copying,
42 facsimile machine transmission, or search fee that is specified by



1 statute or is ordered by a court. **Notwithstanding subsection (b)(4), a**
2 **public agency shall collect any certification or search fee that is**
3 **specified by statute or is ordered by a court.**

4 (g) Except as provided by subsection (h), for providing a duplicate
5 of a computer tape, computer disc, microfilm, law enforcement
6 recording, or similar or analogous record system containing
7 information owned by the public agency or entrusted to it, a public
8 agency may charge a fee, uniform to all purchasers, that does not
9 exceed the sum of the following:

10 (1) The agency's direct cost of supplying the information in that
11 form. However, the fee for a copy of a law enforcement recording
12 may not exceed one hundred fifty dollars (\$150).

13 (2) The standard cost for selling the same information to the
14 public in the form of a publication if the agency has published the
15 information and made the publication available for sale.

16 (3) In the case of the legislative services agency, a reasonable
17 percentage of the agency's direct cost of maintaining the system
18 in which the information is stored. However, the amount charged
19 by the legislative services agency under this subdivision may not
20 exceed the sum of the amounts it may charge under subdivisions
21 (1) and (2).

22 (h) This subsection applies to the fee charged by a public agency for
23 providing enhanced access to a public record. A public agency may
24 charge any reasonable fee agreed on in the contract under section 3.5
25 of this chapter for providing enhanced access to public records.

26 (i) This subsection applies to the fee charged by a public agency for
27 permitting a governmental entity to inspect public records by means of
28 an electronic device. A public agency may charge any reasonable fee
29 for the inspection of public records under this subsection, or the public
30 agency may waive any fee for the inspection.

31 (j) Except as provided in subsection (k), a public agency may charge
32 a fee, uniform to all purchasers, for providing an electronic map that is
33 based upon a reasonable percentage of the agency's direct cost of
34 maintaining, upgrading, and enhancing the electronic map and for the
35 direct cost of supplying the electronic map in the form requested by the
36 purchaser. If the public agency is within a political subdivision having
37 a fiscal body, the fee is subject to the approval of the fiscal body of the
38 political subdivision.

39 (k) The fee charged by a public agency under subsection (j) to cover
40 costs for maintaining, upgrading, and enhancing an electronic map may
41 be waived by the public agency if the electronic map for which the fee
42 is charged will be used for a noncommercial purpose, including the



1 following:

- 2 (1) Public agency program support.
 3 (2) Nonprofit activities.
 4 (3) Journalism.
 5 (4) Academic research.

6 (l) This subsection does not apply to a state agency. A fee collected
 7 under subsection (g) for the copying of a law enforcement recording
 8 may be:

- 9 (1) retained by the public agency; and
 10 (2) used without appropriation for one (1) or more of the
 11 following purposes:
 12 (A) To purchase cameras and other equipment for use in
 13 connection with the agency's law enforcement recording
 14 program.
 15 (B) For training concerning law enforcement recording.
 16 (C) To defray the expenses of storing, producing, and copying
 17 law enforcement recordings.

18 Money from a fee described in this subsection does not revert to the
 19 local general fund at the end of a fiscal year.

20 **(m) For purposes of this subsection, "computer processing**
 21 **time" means the amount of time a computer takes to process a**
 22 **command or script to extract or copy electronically stored data**
 23 **that is the subject of a public records request. A public agency may**
 24 **not charge a fee for the first two (2) hours required to search for**
 25 **a record. A public agency may charge a search fee for any time**
 26 **that exceeds two (2) hours. If the public agency charges a search**
 27 **fee, the agency shall charge an hourly fee that does not exceed the**
 28 **lesser of:**

- 29 (1) the hourly rate of the person making the search; or
 30 (2) twenty dollars (\$20) per hour.

31 **A public agency charging an hourly fee under this subsection for**
 32 **searching for a record may charge only for time that the person**
 33 **making the search actually spends in searching for the record. A**
 34 **public agency may not charge for computer processing time and**
 35 **may not establish a minimum fee for searching for a record. A**
 36 **public agency shall make a good faith effort to complete a search**
 37 **for a record within a reasonable time in order to minimize the**
 38 **amount of a search fee. The fee must be prorated to reflect any**
 39 **search time of less than one (1) hour. If a fee is charged by a public**
 40 **agency under subsection (g), (h), (i), or (j) for a public record, the**
 41 **public agency may not charge a fee for searching for the record**
 42 **under this subsection.**

