

1 HOUSE BILL NO. 100

2 INTRODUCED BY B. MERCER

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORD LAWS;  
6 ESTABLISHING REQUIREMENTS AND DEADLINES FOR PUBLIC AGENCIES THAT ARE NOT LOCAL  
7 GOVERNMENTS; GENERALLY REVISING FEES FOR PUBLIC INFORMATION REQUESTS;  
8 ESTABLISHING A 2-YEAR RETENTION PERIOD OF INFORMATION REQUESTS AND RESPONSES FOR  
9 PUBLIC AGENCIES THAT ARE NOT LOCAL GOVERNMENTS; ESTABLISHING THE FEES THAT A PUBLIC  
10 AGENCY MAY CHARGE WHEN RESPONDING TO PUBLIC INFORMATION REQUESTS; PROVIDING THAT  
11 THE FIRST HOUR OF SERVICE NOT BE CHARGED; ESTABLISHING AN HOURLY FEE LIMIT; ALLOWING  
12 A PERSON TO FILE AN ACTION IN DISTRICT COURT IF A PUBLIC AGENCY THAT IS NOT A LOCAL  
13 GOVERNMENT FAILS TO MEET THE RESPONSE DEADLINE; AMENDING SECTIONS 2-6-1006 AND 2-6-  
14 1009, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

15

16 WHEREAS, the right to know is a fundamental right; and

17 WHEREAS, consistent application of the right to know in the branches of state government is in the  
18 public interest; and

19 WHEREAS, access to public information is essential to participation in the activities of state  
20 government; and

21 WHEREAS, in the absence of standards of general application, the agencies and branches of state  
22 government have each developed their own procedures and fees for obtaining access to public information;  
23 and

24 WHEREAS, inconsistency and unpredictability lead to uncertainty on the part of individuals seeking  
25 access to public information; and

26 WHEREAS, such uncertainty may discourage people from exercising the right to know; and

27 WHEREAS, providing consistent standards for handling public information requests across the  
28 agencies and branches of state government and setting reasonable limits on the fees charged to individuals

1 requesting public information ensure people will know what to expect.

2

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

4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           (B)     6 months of the public agency's acknowledgment of the request if the agency determines 90

1 days is not feasible for a response and the agency provides the requesting person written notice explaining why  
2 the agency is unable to provide a response within 90 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) fees for making public information maintained by the public agency available for inspection and  
10 copying by the requesting person at the public agency. A PUBLIC AGENCY THAT INCURS A COST MAY ONLY CHARGE  
11 FOR IT ONCE PURSUANT TO SUBSECTIONS (5)(A)(I) THROUGH (5)(A)(V). These fees may include but are not limited  
12 to:

13 (i) fees NOT EXCEEDING \$25 AN HOUR for searching for, gathering, reviewing, processing, and  
14 providing information in the most cost-efficient and timely manner possible;

15 (ii) the actual cost to fulfill the request, SUBJECT TO THE LIMIT PROVIDED IN SUBSECTION (5)(A)(I);

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

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

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

20 (b) fees for fulfilling a request for a single, specific, clearly identifiable, and readily available public  
21 record. A PUBLIC AGENCY THAT INCURS A COST MAY ONLY CHARGE FOR IT ONCE PURSUANT TO SUBSECTIONS (5)(B)(I)  
22 THROUGH (5)(B)(V). These fees may include but are not limited to:

23 (i) fees NOT EXCEEDING \$25 AN HOUR for gathering, reviewing, processing, and providing  
24 information in the most cost-efficient and timely manner possible;

25 (ii) the actual cost to fulfill the request, SUBJECT TO THE LIMIT PROVIDED IN SUBSECTION (5)(B)(I);

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

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

- 1           (v) other reasonable costs directly incurred by the public agency.
- 2           (c) fees for fulfilling a request for public information that is not a request for a single, specific,
- 3 clearly identifiable, and readily available public record. A PUBLIC AGENCY THAT INCURS A COST MAY ONLY CHARGE
- 4 FOR IT ONCE PURSUANT TO SUBSECTION (5)(C)(I) THROUGH (5)(C)(VI). ~~These~~ AFTER THE FIRST HOUR OF SERVICE,
- 5 WHICH IS FREE AFTER THE FILING FEE IN SUBSECTION (5)(C)(I) IS PAID, THESE fees may include but are not limited to:
- 6           (i) a filing fee not to exceed \$20;
- 7           (ii) fees NOT EXCEEDING \$25 AN HOUR for searching for, gathering, reviewing, processing, and
- 8 providing information in the most cost-efficient and timely manner possible;
- 9           (iii) the actual cost to fulfill the request, SUBJECT TO THE LIMIT PROVIDED IN SUBSECTION (5)(C)(II);
- 10          (iv) the cost of providing the public information to the requester, including but not limited to
- 11 scanning, copying, media, postage, and shipping costs;
- 12          (v) a convenience fee as provided in 2-17-1102, if applicable; and
- 13          (vi) other reasonable costs directly incurred by the public agency.
- 14          (6) If a public agency collects a filing fee from the requester prior to fulfilling a public information
- 15 request pursuant to subsection (5)(c), the public agency shall apply the filing fee as a credit toward the other
- 16 request fulfillment costs enumerated in subsection (5)(c)."

17

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

19           **"2-6-1006. Public information requests -- fees.** (1) (a) A person may request public information

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

21 persons.

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

23           (ii) ~~A public agency that is not an executive branch agency~~ local government must meet the

24 requirements of subsection (2) when responding to a public information request. A local government is not

25 subject to subsection (3).

26           (iii) ~~(A)-Except as provided in subsections (1)(b)(iii)(B) and (1)(b)(iv), all executive branch agencies~~

27 subsection (1)(b)(iv), a public agency that is not a local government must meet the requirements of subsection

28 (3) when responding to a public information request.

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

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

4           (c)     A public agency other than the office of the secretary of state may charge, pursuant to this  
5 subsection (1)(c), a fee for fulfilling a public information request. Except where a fee is otherwise provided for  
6 by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient  
7 and timely manner possible a fee pursuant to subsections (1)(e) and (1)(e) AND (5) and this subsection (1)(c).

8 The fee must be documented. ~~The fee may include the time required to gather public information.~~ The public  
9 agency may require the requesting person to pay the estimated fee prior to identifying and gathering the  
10 requested public information.

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

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

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

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

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

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

28           ~~(i)~~(A) making the public information maintained by the ~~executive branch agency~~ available in a timely

1 manner for inspection and copying by the requesting person;

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

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

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

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

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

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

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

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

1 person.

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

4 (e) ~~By November 1, 2024, or 1 month after this section becomes applicable to an executive branch~~  
5 ~~agency, whichever occurs second, an executive branch agency that is subject to this subsection (3) November~~  
6 1, 2026, a public agency that is not a local government shall:

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

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

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

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

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

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

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

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

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

27 (a) fees for making public information maintained by the public agency available for inspection and  
28 copying by the requesting person at the public agency. A PUBLIC AGENCY THAT INCURS A COST MAY ONLY CHARGE

1 FOR IT ONCE PURSUANT TO SUBSECTION (5)(A)(I) THROUGH (5)(A)(V). These fees may include but are not limited to:

2 (i) fees NOT EXCEEDING \$25 AN HOUR for searching for, gathering, reviewing, processing, and  
3 providing information in the most cost-efficient and timely manner possible;

4 (ii) the actual cost to fulfill the request, SUBJECT TO THE LIMIT PROVIDED IN SUBSECTION (5)(A)(I);

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

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

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

9 (b) fees for fulfilling a request for a single, specific, clearly identifiable, and readily available public  
10 record. A PUBLIC AGENCY THAT INCURS A COST MAY ONLY CHARGE FOR IT ONCE PURSUANT TO SUBSECTIONS (5)(B)(I)

11 THROUGH (5)(B)(V). These fees may include but are not limited to:

12 (i) fees NOT EXCEEDING \$25 AN HOUR for gathering, reviewing, processing, and providing  
13 information in the most cost-efficient and timely manner possible;

14 (ii) the actual cost to fulfill the request, SUBJECT TO THE LIMIT PROVIDED IN SUBSECTION (5)(B)(I);

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

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

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

19 (c) fees for fulfilling a request for public information that is not a request for a single, specific,  
20 clearly identifiable, and readily available public record. A PUBLIC AGENCY THAT INCURS A COST MAY ONLY CHARGE

21 FOR IT ONCE PURSUANT TO SUBSECTIONS (5)(C)(I) THROUGH (5)(C)(VI). ~~These~~ AFTER THE FIRST HOUR OF SERVICE,  
22 WHICH IS FREE AFTER THE FILING FEE IN SUBSECTION (5)(C)(I) IS PAID, THESE fees may include but are not limited to:

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

24 (ii) fees NOT EXCEEDING \$25 AN HOUR for searching for, gathering, reviewing, processing, and  
25 providing information in the most cost-efficient and timely manner possible;

26 (iii) the actual cost to fulfill the request, SUBJECT TO THE LIMIT PROVIDED IN SUBSECTION (5)(C)(II);

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

- 1           (v) a convenience fee as provided in 2-17-1102, if applicable; and  
2           (vi) other reasonable costs directly incurred by the public agency.  
3           (6) If a public agency collects a filing fee from the requester prior to fulfilling a public information  
4 request pursuant to subsection (5)(c), the public agency shall apply the filing fee as a credit toward the other  
5 request fulfillment costs enumerated in subsection (5)(c)."

6

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

8           **"2-6-1009. Written notice of denial -- failure to meet response deadline -- civil action -- costs to**  
9 **prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that  
10 denies an information request to release information or records shall provide a written explanation for the  
11 denial.

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

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

18           (4) A person alleging a deprivation of rights who prevails in an action brought in district court to  
19 enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title  
20 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees."

21

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

25

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

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

