

CHARGING ATTORNEYS FOR REQUESTING A COPY OF BODY CAMERA VIDEO FOR CLIENTS (HB 1080)

That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

RCW 42.17A.001(11); Initiative Measure No. 276, approved November 7, 1972.

Proposed Amendments

House Bill 1080 and its amendments to RCW 42.56.240 will require an attorney to pay for redactions to body camera videos if the public records clerk believes the attorney may obtain a copy of the unredacted materials through a discovery process.

Basis for Opposition

Defense attorneys make these requests for at least three reasons which are critical to due process: 1) as a means to begin investigation prior to charges being filed, 2) so that accused person may have their own copy of partially redacted records, and 3) as a check to ensure all records were properly disclosed by the prosecutor.

Prosecutor's Position: The prosecutor will disclose records in discovery needed by the defense attorney to represent their client so a public records request is unnecessary.

Response: In many jurisdictions, charges are not filed right away. As a result, access to records through discovery is delayed until charges are filed (sometimes by many months). Public records requests provide a defense attorney with the ability to begin case preparation prior to charges being filed. In fact, in many instances, pre-charge investigation using public records results in a defense attorney convincing a prosecutor not to file charges. What could be a better use of

government transparency than to prevent the injustice of charging an innocent citizen with a crime?

Prosecutor's Position: An attorney receives these items in discovery, so an accused person need not have their own copy.

Response: A defense attorney is prohibited from sharing a copy of discovery with their clients, so defense attorneys will often request public records on behalf of a client as a service so the client. After all, the client has been accused of a crime by the prosecutor, so the client should have the records they are entitled to as part of due process and their ability to properly respond. Limiting their access to one or two visits to their attorney's office is not fair or just.

An individual client will still have a right to make these public records requests – regardless of this proposed law change – so it will simply have the effect of preventing the attorney from providing a service. The individual client absolutely must have the right to these records for their own review and preparation. This strikes to the very core of the Public Records Act purpose of transparency.

Prosecutor's Position: The criminal defense attorney will receive all of these records in discovery.

Response: Although this is often the case, every defense attorney will have an example of where public records requests revealed something missing from discovery. These requests provide a check on the prosecutor's office duty to disclose discovery.

Prosecutor's Position: A public records clerk can decide when to charge these fees.

Response: Discovery is very nuanced and case specific, so it is unreasonable to expect a public records clerk to be able to properly make the decision about what constitutes discovery.

Conclusion

A public records request is a vital tool in a defense attorney's representation to provide due process. We are a society built on the transparency of government, open records, and checks and balances. The proposed amendments would erode all three.

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