

HOUSE BILL NO. 893

INTRODUCED BY E. STAFMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF THE PUBLIC RECORDS OMBUDSMAN; REQUIRING THE PUBLIC RECORDS OMBUDSMAN TO PROVIDE PUBLIC RECORDS FACILITATED DISPUTE RESOLUTION SERVICES; PROVIDING THAT FACILITATED DISPUTE RESOLUTION RECORDS ARE CONFIDENTIAL; REQUIRING THE PUBLIC RECORDS OMBUDSMAN TO PROVIDE TRAINING TO PUBLIC EMPLOYEES; CREATING THE PUBLIC RECORDS ADVISORY COUNCIL; PROVIDING A PROCESS FOR THE SELECTION OF THE PUBLIC RECORDS OMBUDSMAN; PROVIDING DUTIES FOR THE PUBLIC RECORDS ADVISORY COUNCIL; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Public records ombudsman. (1) There is an office of the public records ombudsman. The office is allocated to the department of administration for administrative purposes only as provided in 2-15-121.

(2) The public records ombudsman must be appointed by the governor from a list of three qualified individuals nominated by the public records advisory council under [section 6]. The appointed ombudsman is subject to confirmation by the senate.

(3) The public records ombudsman must be a member in good standing of the state bar of Montana.

(4) The public records ombudsman shall serve for a term of 4 years, except that the ombudsman may be removed for cause by the governor or by motion of the public records advisory council with the consent of the governor.

(5) The public records ombudsman may be reappointed to consecutive terms.

NEW SECTION. Section 2. Facilitated dispute resolution services. (1) (a) The public records

1 ombudsman shall provide facilitated dispute resolution services when requested by a person as provided in
2 subsection (2) or by an executive branch agency as provided in subsection (3).

3 (b) The public records ombudsman may provide facilitated dispute resolution services when
4 requested by a person and a local government as provided in subsection (6).

5 (2) A person may seek facilitated dispute resolution services under this section when the person
6 who seeks to examine or obtain a copy of public information from an executive branch agency has:

7 (a) been denied access to all or a portion of the public information being sought;

8 (b) received a written fee estimate under 2-6-1006 that the person believes exceeds the actual
9 cost to be incurred by the executive branch agency in producing the requested information;

10 (c) been provided an estimate for the time to fulfill the request for public information under 2-6-
11 1006 that the person believes is excessive with regard to the public information requested; or

12 (d) not received the requested information by the end of the estimated time provided under 2-6-
13 1006.

14 (3) (a) An executive branch agency may seek facilitated dispute resolution services under this
15 section if the executive branch agency asserts in response to a request for public information that:

16 (i) the information being sought is not public information;

17 (ii) the information being sought is exempt from disclosure; or

18 (iii) the executive branch agency is entitled to the fees sought to produce the requested information
19 under 2-6-1006.

20 (b) A person who seeks to examine or obtain a copy of public information may decline the
21 facilitated dispute resolution services sought by the executive branch agency by giving notice to the agency in
22 writing within 10 days of the person's receipt of the agency's request for facilitated dispute resolution. If the
23 person gives written notice under this subsection (3)(b), the executive branch agency may not determine under
24 subsection (4)(a) that the person has failed to engage in good faith in the facilitated dispute resolution process.

25 (4) Notwithstanding any other provision of Title 2, chapter 6:

26 (a) if a person seeking to examine or obtain a copy of public information fails to engage in good
27 faith in the facilitated dispute resolution process as provided in subsection (2), the executive branch agency
28 may deny the request and refuse to disclose the requested information; and

(b) if an executive branch agency fails to engage in good faith in the facilitated dispute resolution process after a person requesting public information seeks facilitated dispute resolution services as provided in subsection (2), the person requesting public information may be awarded the costs and reasonable attorney fees incurred in pursuing the request for public information after a good faith determination under subsection (5).

(5) A party to a facilitated dispute resolution may request the public records ombudsman to make a determination as to whether a party is acting in good faith for the purposes of facilitating a remedy as provided in subsection (4). A determination by the public records ombudsman that a party has failed to act in good faith in the facilitated dispute resolution is reviewable by a district court.

(6) If a person seeks to examine or obtain a copy of public information from a local government, the person and the local government may agree to ask the public records ombudsman to provide facilitated dispute resolution services. If the public records ombudsman agrees to facilitate dispute resolution, the provisions of subsections (4) and (5) do not apply.

(7) Facilitated dispute resolution services must be requested in writing to the public records ombudsman. The public records ombudsman shall conduct the facilitated dispute resolution within 10 days following receipt of the request and any additional information required by the ombudsman. The deadline may be extended by agreement from the person requesting public information, the executive branch agency or local government, and the public records ombudsman.

(8) If a facilitated dispute resolution results in an agreement between the person requesting public information and the executive branch agency or local government, the public records ombudsman shall memorialize the agreement in writing. The written agreement must be signed by the parties and must control the resolution of the records request.

NEW SECTION. Section 3. Facilitated dispute resolution -- confidentiality. (1) Written records, documents, notes, statements, or other information prepared for and submitted to the public records ombudsman, prepared by the public records ombudsman, or exchanged between parties to a facilitated dispute resolution are confidential information and are exempt from disclosure under Title 2, chapter 6.

(2) The public records ombudsman may assert that public information in the control of the

ombudsman is exempt from disclosure under any exemption in Title 2, chapter 6, that may be asserted by an executive branch agency or local government.

NEW SECTION. Section 4. Public information training. (1) The public records ombudsman shall provide training to executive branch agencies and local governments on the requirements and best practices for processing and responding to public information requests.

(2) In developing, selecting, and providing training materials, the public records ombudsman shall coordinate with the secretary of state pursuant to 2-6-1101 and may coordinate with the state records committee provided for in 2-6-1107 and the local government records committee provided for in 2-6-1201.

(3) The public records ombudsman may provide guidance and advice to executive branch agencies and local governments regarding public information request processing, public information disclosure, and the applicability of exemptions from disclosure. Guidance and advice provided under this section is purely advisory. The public records ombudsman may not give advice related to a matter that is referred to a facilitated dispute resolution under [section 2].

NEW SECTION. Section 5. Public records advisory council. (1) There is a public records advisory council.

(2) The council consists of the following members:

(a) the secretary of state or a designee;

(b) the attorney general or a designee;

(c) the director of the department of administration or a designee;

(d) three members representing the news media who are appointed by the governor;

(e) one member representing cities who is appointed by the governor;

(f) one member representing counties who is appointed by the governor;

(g) one member representing the public sector workforce who is appointed by the governor;

(h) one member of the public who is appointed by the governor; and

(i) the public records ombudsman, who shall serve as the presiding officer of the council.

(3) Member of the council must be reimbursed and compensated in the same manner as members

1 of quasi-judicial boards under 2-15-124(7).

2 (4) The council shall meet at least once every 6 months. The council may meet at other times and
3 places specified by the call of the presiding officer or of a majority of the members of the council. A majority of
4 the members of the council constitutes a quorum for the transaction of business.

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6 **NEW SECTION. Section 6. Selection of public records ombudsman.** (1) When the position of the
7 public records ombudsman is vacant, the secretary of state or a designee shall serve as the acting presiding
8 officer of the public records advisory council.

9 (2) Within 30 days of the vacancy of the public records ombudsman position, the council shall
10 convene at the time and place designated by the acting presiding officer.

11 (3) At the meeting convened pursuant to subsection (2), the council shall consider only the
12 question of the nomination of three qualified individuals for the governor to consider for appointment as the
13 public records ombudsman pursuant to [section 1].

14 (4) The person who vacated the public records ombudsman position may participate in the
15 deliberations and vote on the slate of nominees to be presented to the governor unless the person was
16 removed from the position for cause pursuant to [section 1(4)].

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18 **NEW SECTION. Section 7. Public records advisory council -- duties.** The public records advisory
19 council shall perform the following duties:

20 (1) survey the practices and procedures of executive branch agencies and other local government
21 entities for:

22 (a) receiving public information requests, identifying the existence of public information responsive
23 to the requests, and gathering and disclosing responsive information;

24 (b) determining and applying exemptions from required disclosure of public information; and

25 (c) determining fee estimates and imposing or waiving fees under 2-6-1006;

26 (2) examine similar practices and procedures under subsection (1) in other states;

27 (3) prepare a biennial report with findings and recommendations, including recommendations for
28 legislation, and submit the report to the governor and the legislature in accordance with 5-11-210; and

1 (4) adopt policies and procedures governing the operations of the office of the public records
2 ombudsman, including but not limited to procedures for the conduct of facilitated dispute resolution.

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4 NEW SECTION. **Section 8. Appropriation.** There is appropriated \$264,736 from the general fund to

5 the department of administration for each year of the biennium beginning July 1, 2023. The appropriation must

6 be used for the purposes of funding the public records ombudsman, one additional FTE for training and

7 program support, and the public records advisory council pursuant to [sections 1 through 7]. The legislature

8 intends that the appropriation in this section be considered part of the ongoing base for the next legislative

9 session.

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11 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 7] are intended to be

12 codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1

13 through 7].

15 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2023.

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