

1 SENATE BILL NO. 232  
2 INTRODUCED BY J. ELLIS, B. LER, S. O'BRIEN, D. LENZ, J. WELBORN, J. FITZPATRICK, D. ZOLNIKOV, B.  
3 BEARD  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORDS LAWS;  
6 ESTABLISHING SEPARATE REQUIREMENTS FOR EXECUTIVE BRANCH AGENCIES; ESTABLISHING A  
7 DEADLINE FOR EXECUTIVE BRANCH AGENCIES TO ACKNOWLEDGE RECEIPT OF A PUBLIC  
8 INFORMATION REQUEST; ALLOWING FOR AN EXTENSION OF THE RESPONSE DEADLINE BY MUTUAL  
9 AGREEMENT BETWEEN THE REQUESTER AND THE AGENCY; ALLOWING A PERSON TO FILE AN  
10 ACTION IN DISTRICT COURT IF AN EXECUTIVE BRANCH AGENCY FAILS TO MEET THE RESPONSE  
11 DEADLINE; AND AMENDING SECTIONS 2-6-1006 AND 2-6-1009, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14

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

16 **"2-6-1006. Public information requests -- fees.** (1) (A) A person may request public information

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

19 (B) (I) ALL PUBLIC AGENCIES ARE GOVERNED BY THIS SUBSECTION (1).

20 (II) A PUBLIC AGENCY THAT IS NOT AN EXECUTIVE BRANCH AGENCY MUST MEET THE REQUIREMENTS OF  
21 SUBSECTION (2) WHEN RESPONDING TO A PUBLIC INFORMATION REQUEST.

22 (III) (A) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(B)(III)(B) AND (1)(B)(IV), ALL EXECUTIVE BRANCH  
23 AGENCIES MUST MEET THE REQUIREMENTS OF SUBSECTION (3) WHEN RESPONDING TO A PUBLIC INFORMATION  
24 REQUEST.

25 (B) THE PROVISIONS OF SUBSECTION (3) APPLY TO THE SECRETARY OF STATE, THE JUSTICE DEPARTMENT,  
26 THE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND THE STATE AUDITOR BEGINNING ON OCTOBER 1, 2025.

27 (IV) THE SECRETARY OF STATE MUST MEET THE REQUIREMENTS OF SUBSECTION (4) REGARDING FEES.

28 ~~(2) Upon receiving a request for public information, a public agency shall respond in a timely~~

**Amendment - 2nd Reading-yellow - Requested by: Janet Ellis - (S) Committee of Whole**

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

SB0232.002.001

1 manner to the requesting person by ~~acknowledging to the requesting person that the request was received~~  
2 ~~within 5 days of receiving the request for information and:~~

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 any fees that may be charged pursuant to~~  
7 ~~subsection (3)(4).~~

8 (3) ~~(a) Notwithstanding the estimate of response time required in subsection (2)(b) and except as~~  
9 ~~provided in subsections (3)(b) and (3)(c), an executive branch agency shall provide the requested public~~  
10 ~~information to the requesting person in a timely manner but no later than 20 working days from the date the~~  
11 ~~agency acknowledges receipt of the request for information under subsection (2)(a).~~

12 (b) ~~The agency and the requester may mutually agree to extend the deadline for response in~~  
13 ~~subsection (3)(a) by an additional 20 working days.~~

14 (c) ~~The department of corrections is not subject to the response deadline in subsection (3)(a).~~

15 (3)(4)(C) A public agency OTHER THAN THE OFFICE OF THE SECRETARY OF STATE may charge,  
16 PURSUANT TO THIS SUBSECTION (1)(C), a fee for fulfilling a public information request. Except where a fee is  
17 otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in  
18 the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time  
19 required to gather public information. The public agency may require the requesting person to pay the  
20 estimated fee prior to identifying and gathering the requested public information.

21 (4)(5)(D) A public agency is not required to alter or customize public information to provide it in a  
22 form specified to meet the needs of the requesting person.

23 (5)(6)(E) If a public agency agrees to a request to customize a records request response, the  
24 costs of the customization may be included in the fees charged by the agency.

25 (6)(7) (a) The secretary of state is authorized to charge fees under this section. The fees must be set  
26 and deposited in accordance with 2-15-405. The fees must be collected in advance.

27 (b) ~~The secretary of state may not charge a fee to a member of the legislature or public officer for~~  
28 ~~any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or~~

**Amendment - 2nd Reading-yellow - Requested by: Janet Ellis - (S) Committee of Whole**

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

SB0232.002.001

1 ~~resolution passed by the legislature relative to the member's official duties.~~

2 (2) UPON RECEIVING A REQUEST FOR PUBLIC INFORMATION, A PUBLIC AGENCY THAT IS NOT AN EXECUTIVE  
3 BRANCH AGENCY SHALL RESPOND IN A TIMELY MANNER TO THE REQUESTING PERSON BY:

4 (A) MAKING THE PUBLIC INFORMATION MAINTAINED BY THE PUBLIC AGENCY AVAILABLE FOR INSPECTION  
5 AND COPYING BY THE REQUESTING PERSON; OR

6 (B) PROVIDING THE REQUESTING PERSON WITH AN ESTIMATE OF THE TIME IT WILL TAKE TO FULFILL THE  
7 REQUEST IF THE PUBLIC INFORMATION CANNOT BE READILY IDENTIFIED AND GATHERED AND ANY FEES THAT MAY BE  
8 CHARGED PURSUANT TO SUBSECTION (1)(C).

9 (3) (A) AN EXECUTIVE BRANCH AGENCY SHALL RESPOND TO A PUBLIC INFORMATION REQUEST BY  
10 ACKNOWLEDGING RECEIPT OF THE REQUEST WITHIN 5 BUSINESS DAYS OF THE AGENCY'S DESIGNATED CONTACT PERSON  
11 RECEIVING THE REQUEST. EXCEPT FOR CONFIDENTIAL, PRIVILEGED, OR OTHERWISE PROTECTED INFORMATION THAT IS  
12 NOT SUBJECT TO PUBLIC DISCLOSURE UNDER APPLICABLE LAW AND INFORMATION WITHHELD FROM PUBLIC SCRUTINY AS  
13 PROVIDED IN 2-6-1003, THE EXECUTIVE BRANCH AGENCY SHALL RESPOND BY:

14 (i) MAKING THE PUBLIC INFORMATION MAINTAINED BY THE EXECUTIVE BRANCH AGENCY AVAILABLE IN A  
15 TIMELY MANNER FOR INSPECTION AND COPYING BY THE REQUESTING PERSON;

16 (ii) PROVIDING A SPECIFIED PUBLIC RECORD TO THE REQUESTING PERSON WITHIN 5 WORKING DAYS OF  
17 THE EXECUTIVE BRANCH AGENCY'S ACKNOWLEDGMENT OF RECEIPT OF THE REQUEST IF THE REQUEST IS FOR A SINGLE,  
18 SPECIFIC, CLEARLY IDENTIFIABLE, AND READILY AVAILABLE PUBLIC RECORD. THIS SUBSECTION (3)(A)(II) DOES NOT  
19 APPLY TO REQUESTS PERTAINING ONLY TO A SPECIFIED PERSON OR PROPERTY, INCLUDING REQUESTS FOR  
20 APPLICATIONS, VITAL RECORDS, LICENSES, PERMITS, OR REGISTRATIONS; OR

21 (iii) RESPONDING AS PROVIDED IN SUBSECTION (3)(B).

22 (B) (i) IF A REQUEST SEEKS PUBLIC INFORMATION THAT CANNOT BE READILY IDENTIFIED AND GATHERED,  
23 THE AGENCY SHALL PROVIDE THE REQUESTING PERSON AN ESTIMATE OF THE TIME IT WILL TAKE TO FULFILL THE  
24 REQUEST AND ANY FEES THAT MAY BE CHARGED PURSUANT TO SUBSECTION (1)(C) AND SHALL PROVIDE THE PUBLIC  
25 INFORMATION TO THE REQUESTING PERSON IN A TIMELY MANNER, WHICH MAY BE, **except as provided in subsection**  
26 **(3)(b)(ii), within:**

27 **(+) (A) WITHIN 90 DAYS OF THE PUBLIC AGENCY'S ACKNOWLEDGMENT OF THE REQUEST; OR**

28 **(+) (B) WITHIN 6 MONTHS OF THE PUBLIC AGENCY'S ACKNOWLEDGMENT OF THE REQUEST IF THE AGENCY**

**Amendment - 2nd Reading-yellow - Requested by: Janet Ellis - (S) Committee of Whole**

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

SB0232.002.001

1 DETERMINES 90 DAYS IS NOT FEASIBLE FOR A RESPONSE AND THE AGENCY PROVIDES THE REQUESTING PERSON

2 WRITTEN NOTICE EXPLAINING WHY 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  
8 HAS REQUESTED ADDITIONAL INFORMATION OR CLARIFICATION, THE AGENCY'S OBLIGATION TO RESPOND TO THE  
9 REQUEST IS SUSPENDED UNTIL THE REQUESTING PERSON PROVIDES THE REQUESTED INFORMATION OR CLARIFICATION  
10 OR UNTIL THE REQUESTING PERSON DENIES THE AGENCY'S REQUEST FOR ADDITIONAL INFORMATION OR CLARIFICATION.  
11 IF A PERSON REQUESTING PUBLIC INFORMATION FAILS TO RESPOND WITHIN 30 DAYS TO AN AGENCY'S REQUEST FOR  
12 ADDITIONAL INFORMATION OR CLARIFICATION, THE AGENCY MAY CLOSE THE REQUEST AFTER NOTIFYING THE  
13 REQUESTING PERSON.

14 (D) EACH EXECUTIVE BRANCH AGENCY MUST HAVE A DESIGNATED CONTACT FOR PUBLIC INFORMATION  
15 REQUESTS POSTED ON ITS WEBSITE.

16 (E) ~~ONE~~ By November 1, 2024, or 1 MONTH AFTER THIS SECTION BECOMES APPLICABLE to an  
17 executive branch agency, whichever occurs second, AN EXECUTIVE BRANCH AGENCY that is subject to this  
18 subsection (3) SHALL:

19 (i) ESTABLISH A PUBLIC INFORMATION REQUEST PROCESS DESCRIBING THE STEPS FOR SUBMITTING A  
20 REQUEST AND THE PROCESS THE AGENCY WILL FOLLOW WHEN RESPONDING TO A REQUEST FOR PUBLIC INFORMATION,  
21 WHICH MUST BE PUBLISHED ON A STATE WEBSITE;

22 (ii) PROVIDE STATISTICS ABOUT PUBLIC INFORMATION REQUESTS RECEIVED BY THE DESIGNATED CONTACT  
23 OF THE AGENCY, INCLUDING THE NUMBER OF REQUESTS AND THE AGENCY'S RESPONSE TIME TO FULFILL OR OTHERWISE  
24 RESOLVE THE REQUESTS; AND

25 (iii) RETAIN AND PUBLISH ON A STATE WEBSITE THE PUBLIC INFORMATION REQUESTS THE AGENCY HAS  
26 RECEIVED AND THE AGENCY'S RESPONSE. THE AGENCY IS NOT REQUIRED TO PUBLISH REQUESTS OR RESPONSES IF THE  
27 REQUEST:

28 (A) WAS NOT SUBMITTED ACCORDING TO THE AGENCY'S POSTED PROCESS;

1            (B) PERTAINS ONLY TO A SPECIFIC PERSON OR PROPERTY, INCLUDING REQUESTS FOR APPLICATIONS,  
2 VITAL RECORDS, LICENSES, PERMITS, REGISTRATIONS, AND RELATED SUPPORTING DOCUMENTS; OR  
3            (C) WAS FOR INFORMATION ACCESSIBLE ON A STATE WEBSITE OR OTHER PUBLICATION AVAILABLE AT THE  
4 TIME THE REQUEST WAS MADE.  
5            (4) (A) THE SECRETARY OF STATE IS AUTHORIZED TO CHARGE FEES UNDER THIS SECTION. THE FEES MUST  
6 BE SET AND DEPOSITED IN ACCORDANCE WITH 2-15-405. THE FEES MUST BE COLLECTED IN ADVANCE.  
7            (B) THE SECRETARY OF STATE MAY NOT CHARGE A FEE TO A MEMBER OF THE LEGISLATURE OR PUBLIC  
8 OFFICER FOR ANY SEARCH RELATIVE TO MATTERS PERTAINING TO THE DUTIES OF THE MEMBER'S OFFICE OR FOR A  
9 CERTIFIED COPY OF ANY LAW OR RESOLUTION PASSED BY THE LEGISLATURE RELATIVE TO THE MEMBER'S OFFICIAL  
10 DUTIES."

11  
12            **Section 2.** Section 2-6-1009, MCA, is amended to read:

13            **"2-6-1009. Written notice of denial -- failure to meet response deadline -- civil action -- costs to**  
14 **prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that  
15 denies an information request to release information or records shall provide a written explanation for the  
16 denial.

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

20            (3) If a person who makes an information request to an executive branch agency does not receive  
21 a response from the agency as required in 2-6-1006(3)(a) and (3)(b) 2-6-1006(3), the person may file a  
22 complaint in district court.

23            ~~(3)~~(4) A person alleging a deprivation of rights who prevails in an action brought in district court to  
24 enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title  
25 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees."

26  
27            NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are  
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,