



## COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

---

Date: March 1, 2024  
To: Senate State Affairs Committee  
Sen. Jim Guthrie, Chair  
Sen. Treg A. Bernt, Vice Chair  
Sen. Chuck Winder  
Sen. Kelly Arthur Anthon  
Sen. Mark Harris  
Sen. Abby Lee  
Sen. Ben Toews  
Sen. Melissa Wintrow  
Sen. James D. Ruchti  
CC: sstaf@senate.idaho.gov  
Re: **Comments on HB 588 (the Bill)**

### **Who We Are**

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, governmental, commercial, and societal benefit. Members of CSPRA are just a few of the many entities that comprise a vital link in the flow of information for these purposes and provide services that are widely used by constituents in your state. Collectively, CSPRA members alone employ over 75,000 persons across the U.S. The economic and societal activity that relies on entities such as CSPRA members is valued in the trillions of dollars and employs millions of people. Our economy and society depend on value-added information and services that includes public record data for many important aspects of our daily lives and work, and we work to protect those sensible uses of public records.

### **Concerns About State Residency Requirements for Public Records Access**

We are concerned with any law that seeks to treat non-resident requests for public records access differently than those of residents. We think this is contrary to sound public records policy. We oppose delays in access to public records as proposed in HB 588 as such changes will result in limiting timely access to public records and lead to expensive additional steps and efforts to get timely access to records in return for little to no benefit.

In delaying records access to non-residents, these laws prohibit timely access to scientists, public advocacy groups and non-profits, book publishers, software companies, entrepreneurs, Internet service providers and applications, risk management services, land records companies, realtors,



or any one of the many industries, jobs, and professions that use and rely on public records as part of their work. American businesses, from the Fortune 500 to a one-person shop, need reliable 50-state information to function, grow, and manage risks. When Idaho residents look for information, products, and services, their interests and contracts for services do not stop at the state line. They use the resources that meet their needs just as residents of other states will use the resources and services of Idaho residents and companies to meet theirs. Open reciprocity and eliminating transactional barriers between the states has been the bulwark of state efficiency, productivity, and prosperity since the current US Constitution replaced the Articles of Confederation. We urge you to avoid trying to put an information barrier around the public records that will interrupt the flow of information and commerce.

### **Denial of Access That Violates Fairness**

A person who owns property, has a stake in public policy, or has a business interest in a state may not be a resident or citizen of the state. These same persons very often pay one or more taxes or fees in a state. Yet, by delaying access based on a citizenship or residency requirement, they will only be given timely access to public records if they find or pay a resident/citizen agent to do it for them, which is ultimately what will happen. This is grossly unfair and a waste of the average person's time and money. A person's property rights, and economic interests often depend on fair and timely access to public records. Any legislation that seeks deny those who do not meet a resident or citizenship requirements such timely access is a denial of their rights to protect their personal, civic, and financial interests. Denial of such rights serves no legitimate governmental purpose and denies equal protection to Americans with multistate interests.

### **These Laws Force the Use of Agents for No Economic Benefit**

Residency requirements would compel someone who needs timely access to public records to get a state resident to request access on their behalf or, alternatively, become a corporate citizen of the state. In either case, this would result in having a series of agency agreements and transactions that would just add cost to doing business or owning property in a state with absolutely no value added.

### **Policy Alternatives to Address Burdensome Records Requests**

If the legislature's intent is to reduce or manage excessive and unduly burdensome records requests, creating distinctions between residents and non-residents is not an effective or fair way to do that. It will not solve the underlying problem of unduly burdensome requests or the need to modernize the records system to meet most requests at a low marginal cost and without a lot of manual and expensive processing. We have appended a framework for addressing burdensome or excessive records requests to the end of this letter. Furthermore, CSPRA and its members have worked and will continue to work with any jurisdiction to help develop laws and policies to address this problem in a targeted and effective way.

### **Protect Legal and Beneficial Uses of Public Records**

Information is intricately embedded in so many aspects of life and commerce that it is difficult to predict all the ways that a change in information policy will affect various people, products,



services, uses, and government functions. CSPRA has tracked such policies over the last three decades and we often see many unintended consequences of limits on access and use of public records. This often results in a long list of frequently revised exceptions. The root cause of such unintended consequences is the attempt to limit access to public records and public information rather than focusing on bad actors and specific acts that the legislature wants to address.

Thank you for your consideration of our input.

**Richard J. Varn**  
**Executive Director**  
**Coalition for Sensible Public Records Access**

San Antonio, TX

Email: [cspra@cspra.org](mailto:cspra@cspra.org)

Cell : (515) 229-8984

*A non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, commercial, and societal benefit.*





---

## COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

### **Managing Excessive Requests While Preserving Public Records Access**

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, commercial, and societal benefit. It is CSPRA's belief that the records of how our society governs itself at all levels and manner of government ought to be open and accessible to all.

Policymakers and records managers in all levels and branches of government endeavor to fulfill public records requests with fidelity to the purpose and requirements of the law. Occasionally, some of these requests are seen as excessive and a solution is sought for dealing with such requests. CSPRA has developed the principles and framework below to assist those developing solutions to this problem.

#### **Always a Need for Balance**

- Maintaining and defending an open and accessible government is not easy and not without challenges
- The need to be fair and open should be not presumed to be a lesser value than low costs or efficiency
- The best approach is to be fair, open, and low cost—and technology often makes that possible
- When challenges remain and achieving all three objectives at once is not possible, the needs and interest of both cost management and fair and open government need to be understood and accounted for in making decisions





- The weight and value placed on fairness and openness should be measured in both its great value to a free and open society and the economic benefits of open public records access
- When the values at stake and the effects of decisions are properly weighted, a proper balance can be struck

### **What to Avoid**

- Do not judge records requestors by who they are or where they are from rather than by the effect of their request
- Do not use the “excessive” label as a pretext or excuse to:
  - Avoid maintaining a modern records system
  - Hide records and thereby avoid responsibility for government misdeeds or mismanagement
  - Deny requests for trivial or personal reasons
  - Collect more taxes and fees from users or categories of users
  - Cut the budgets for records management

### **How to Judge a Request to Be “Excessive”**

- A request may be considered excessive if it:
  - Is not foreseeable and therefore beyond record managers’ ability to plan ahead to meet such requests in a routine manual or automated manner
  - Requires substantial manual processing because the technology to automate does not exist or is not cost effective
  - Requires interpretation of the data and judgment as to its meaning

### **Framework for Solutions**

- Determine what requests are actually causing a problem beyond the records system’s operational parameters
- Determine the key factors causing the requests to be problematic
- To the extent possible, improve the records system to accommodate such requests
- For those remaining, narrowly tailor an exception



- Use quantitative analysis of fulfilling the request, not qualitative analysis of the requestor and their motives in crafting the exception
  - Example: Section 506(a) of Pennsylvania’s Right to Know Law (“An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.”)
- Use a multi-factor formula with allowance for judgment in favor of granting the request, a chance to reframe the request so it can be granted, and a chance for appeal if denied
- Non-judicial appeal of findings of excessiveness should be to a disinterested third party
- The same entity for appeals should be available for advisory opinions to help guide records managers’ decisions

For additional information, questions, or feedback on this document or any public records issues, please contact us or visit our web site as <http://www.cspra.org>.

