

Chapter 170-01 WAC

DISCLOSURE OF PUBLIC RECORDS

WAC

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WAC 170-01-0010 Purpose. The purpose of this chapter is to provide rules for the department of early learning to implement the Public Records Act, chapter 42.56 RCW.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0010, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0020 Definitions. The definitions set forth in chapter 42.56 RCW shall apply to this chapter. Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section.

"DEL" or "department" means the department of early learning. Where appropriate, DEL also may refer to the officials and employees of the department of early learning.

"Disclosure" means inspection and/or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes anything prepared, owned, used or retained by the agency and can include agency publications, online information posted on internet sites owned or controlled by the agency, child care career and wage ladder information, ECEAP records, subsidy information, grants, requests for proposals and contract information, documents contained in licensing files, interagency communication including service level agreements and memorandums of understanding, e-mails, letters, memos, licensing complaint reports in CAMIS/FAMLINK, service episode records, records held by contractors if they related to agency's function or action, certain electronic records, and other records not readily available to the public such as old manuals or training materials. These records can be written, recorded or electronic.

To be a public record, a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public

record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" means the designated person for the department who oversees all records requests. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0020, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0030 Description of the department of early learning. (1) DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning programs previously under the departments of social and health services and commerce, as well as the state office of public instruction.

(2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.

(3) The administrative office of the department of early learning is located in Olympia, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504-0970, or call toll free 1-866-482-4325.

(4) Field offices exist in Aberdeen, Bellevue, Bellingham, Bremerton, Everett, Kennewick, Kelso, Kent, Mount Vernon, Othello, Port Angeles, Seattle, Spokane, Tacoma, Tumwater, Vancouver, Wenatchee, and Yakima.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0030, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0040 Public records officer. DEL's director will appoint a public records officer (PRO) whose responsibility is to serve as a "point of contact" for members of the public seeking public records. DEL will provide the public records officer's name and contact information by publishing it in the state register. DEL will also provide the public records officer's contact information on the department web site.

A request may be fulfilled by the PRO, or other DEL staff designated by the PRO.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0040, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0050 Records index. (1) The department keeps an index (list) of the following documents:

(a) Rules adopted by DEL under chapter 34.05 RCW.

(b) Substantive final orders issued by the department in adjudicative proceedings under chapter 34.05 RCW and chapter 170-03 WAC.

(c) Interpretive and policy statements filed by the department under chapter 34.05 RCW.

(2) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of other records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, electronic data and constituent records.

(3) The department will make available for public disclosure all indices if at a future time they are developed for agency use.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0050, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0100 Availability of public records.

Public records are available for inspection and copying during DEL's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required but significantly help DEL provide prompt and efficient service. Some DEL records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time for DEL to identify and gather them. Other records may be exempt from disclosure. Original records cannot be removed from a DEL building. If required by law, DEL must redact information in a record before making it available for inspection. DEL staff will make copies of records on request.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0100, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0110 Organization of records. DEL will maintain its records in an organized manner and will take reasonable actions to protect records from damage and disorganization. Records available on the DEL web site at www.del.wa.gov are available to the public without a records request, and the department does not copy those records. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0110, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0120 How to make a public records request. (1) Public records requests should be made directly to the DEL public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by e-mail to public.records@del.wa.gov, by fax to 360-413-3482 or mail. Requests may be delivered to: Department of Early Learning, P.O. Box 40970, Olympia, WA 98504-0970.

(b) DEL's public records request form is on its web site.

(c) A written request without using the DEL public records request form should contain:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) The date on which the request was made;

(v) A sufficient description of the record requested; and

(vi) If the information being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

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[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0120, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0200 How DEL responds to your public records request. Within five business days after receiving the request, DEL will either:

(1) Provide the record(s);

(2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;

(3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or

(4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that DEL relied upon in its denial.

At his or her discretion, the public records officer may send the request records by e-mail, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0200, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0210 What DEL considers a reasonable time estimate. DEL will roughly calculate the time it will take to fill the request. There is no standard amount of time for fulfilling a request, so reasonable estimates may vary. The estimates are based upon:

(1) The size of the record requested. A large request generally will take more time than a small request.

(2) The location or locations where requested records may be. Records may be stored at different DEL offices, or at state records storage facilities.

(3) The case load of the person filling the request. While providing public records is an essential function of the agency, it is not required to abandon its other, nonpublic records functions.

Example: A child care licensor who fills the request must work the public records request around their other duties monitoring and licensing facilities.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0210, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0220 Reasons for DEL extending the time needed to fill a public records request. DEL may need to extend the time needed to fill a public records request beyond the five days in order to:

(1) Locate and gather the information requested;

(2) Notify an individual or organization affected by the request, and to give them an opportunity to object if allowed by law;

(3) Determine whether: The information requested is exempt from disclosure; all or part of the request can be released; portions of the record must be redacted; or

(4) Wait for response after DEL has already contacted the requestor to clarify the intent, scope or specifics of the request. For example, if a request is objectively unclear, DEL will attempt to clarify. If the requestor fails to clarify the request within thirty days of the agency's request, the agency may consider the request abandoned. If the agency considers the request abandoned, it will send a closing letter to the requestor.

(4/11/12)

DEL will notify the requestor in writing if an extension is needed.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0220, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0230 Reasons for DEL denying disclosure of all or part of a record. RCW 42.56.030 states that the Public Records Act "shall be liberally construed and its exemptions narrowly construed." DEL will provide all records required by law. However, there are times when all or part of a record request would be denied, such as when:

- (1) The record is exempt from disclosure by law.
- (2) The request is for lists of individuals for commercial purposes, including family home providers.
- (3) The requestor has not asked for an identifiable record. The Public Records Act requires access to existing, identifiable public records in an agency's possession at the time of the request.
- (4) The request requires DEL to collect or organize data to create a public record, or to give data that did not exist at the time of the public records request.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0230, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0240 Types of records that may be exempt from disclosure. With any public records request, disclosure must occur unless a specific exemption exists in statute that would allow for DEL to not disclose the record or the information within a record.

DEL is always prohibited by statute from disclosing lists of individuals, including family home providers, for commercial purposes.

The Public Records Act lists exemptions or allows for "other statute" exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by DEL, for inspection and copying: For example, RCW 5.60.060(2) restricts privileged attorney-client communications between DEL staff and the office of the attorney general.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0240, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0250 If the public record requested is exempt from disclosure. If DEL determines that a record is exempt from disclosure, you will be informed in writing of the specific exemption authorizing DEL to withhold the record.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0250, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0260 If only part of the record requested is exempt from disclosure. DEL may redact (see WAC 170-01-0020) identifying details or other information when the information is not subject to disclosure. The requestor will be informed in writing of the exemptions authorizing DEL to withhold information within a record.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0260, filed 4/11/12, effective 5/12/12.]

(4/11/12)

WAC 170-01-0270 DEL reviews of records request denials. If DEL denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

(1) Asking the public records officer for an internal DEL review.

(2) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

(3) Asking for a judicial review.

All review requests must be in writing (letter, fax or e-mail). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

After receiving a request for an internal review, the public records officer will refer the matter for review to the agency communications manager who may consult with other agency leaders. The denial will either be upheld or reversed within two business days after the receipt of the review request.

To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0270, filed 4/11/12, effective 5/12/12.]

WAC 170-01-0300 Fees for inspecting or copying records. (1) **Costs for paper copies.** There is no cost to inspect records. Copying or duplicating fees are intended to equal DEL's costs, including costs of materials, machinery, and personnel. The fees charged may be reviewed periodically to assure their accuracy (RCW 42.56.120). Alternatively, if DEL has not determined the actual per page cost for photocopies of public records, it may charge up to fifteen cents for a standard black-and-white photocopy. The public records officer can share current fee rates.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be determined by how the electronic records are delivered. DEL will charge no more than fair-market value for information that must be delivered on a CD-ROM, DVD or other tool. DEL may charge (put value) for a paper record to be scanned. There will be no charge for e-mailing electronic records, unless another cost applies, such as scanning.

(3) **Costs of mailing.** DEL may also charge actual costs of mailing or shipping a record, including the cost of the shipping container.

(4) **Payment.** Before beginning to make copies, the public records officer may require a deposit of up to ten percent of the estimated cost of copying all the records selected by the requestor. The public records officer may also require payment for the remainder of the copying costs before providing all the records. DEL will not charge sales tax when it makes copies of public records.

If all or part of a requested record is not paid for, or the requested record is not claimed within thirty calendar days,

the department may consider the request as terminated. If terminated, the requestor must make a new records request to obtain the record.

Payment should be sent to the DEL Financial Services Office (P.O. Box 40970, Olympia, WA 98504-0970). Payment may be made by cash, check, or money order to the department of early learning. It should clearly be marked as payment for public records.

[Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0300, filed 4/11/12, effective 5/12/12.]