

Chapter 516-09 WAC

PUBLIC RECORDS

WAC

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WAC 516-09-010 Authority and purpose. (1) For the purposes of this chapter, the Public Records Act, chapter 42.56 RCW, is referred to as the act. RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Western Washington University will follow in order to provide full access to public records. Western Washington University shall hereinafter be referred to as the "university." Where appropriate, the term university also refers to the staff and employees of Western Washington University. These rules provide information to persons wishing to request access to public records of the university and establish processes for both requestors and university staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the university will be guided by the provisions of the act describing its purposes and interpretation.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-010, filed 12/18/07, effective 1/18/08.]

WAC 516-09-020 Agency description—Contact information—Public records officer. (1) Western Washington University is an institution of higher education, authority for which is located in chapter 28B.35 RCW. The administrative offices of the university are located at the university's main campus at Bellingham, Washington. The university also has education centers in Seattle, Everett, Mountlake Terrace, Shoreline, Bremerton, Oak Harbor, Anacortes, and Port Angeles.

(12/18/07)

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records officer located at the main campus listed below:

Public Records Officer
Western Washington University
516 High Street
Bellingham, WA 98225
Phone: 360-650-3051
Fax: 360-650-3044

Current contact information and additional information regarding release of public records can be found on the university web site at http://www.library.wvu.edu/info/pubrecords_procedures.html.

(3) The public records officer will oversee compliance with the act but another university staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the university will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-020, filed 12/18/07, effective 1/18/08.]

WAC 516-09-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university in the presence of university staff. For the purposes of this chapter, the normal business hours for the public records office are from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding university holidays. Other hours of inspection may be arranged if the requestor and the public records officer or designee agree on a different time. Records must be inspected at the offices of the university in the presence of university staff.

(2) Index of records. The Western Washington University records retention schedule is the index of records created after June 30, 1990. Links to many of these schedules can be located at <http://www.wvu.edu/depts/recmgmt/>.

(3) Organization of records. The university will maintain its records in a reasonably organized manner. The university will take reasonable actions to protect records from damage and disorganization. A requestor shall not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university web site at www.wvu.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

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(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, standard photocopies will be provided at a rate of no more than fifteen cents per page, or such amount as may be established in law.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-030, filed 12/18/07, effective 1/18/08.]

WAC 516-09-03001 "Public record" defined. Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing," containing information "relating to the conduct of government" or the performance of any governmental or proprietary function, "prepared, owned, used, or retained" by an agency.¹

(1) **Writing.** A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.17.020(41). "Writing" is defined very broadly as: "...handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.17.020(48). An e-mail is a "writing."

(2) **Relating to the conduct of government.** 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 absolutely no relation to the conduct of government is not a "public record." Even though a purely personal record might not be a "public record," a record of its existence might be. For example, a record showing the existence of a purely personal e-mail sent by an agency employee on an agency computer would probably be a "public record," even if the contents of the e-mail itself were not.²

(3) **"Prepared, owned, used, or retained."** A "public record" is a record "prepared, owned, used, or retained" by an agency. RCW 42.17.020(41).

A record can be "used" by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a "public record."³ For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a "public record" because the agency "used" the document in its decision-making process.⁴ The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.⁵

Sometimes agency employees work on agency business from home computers. These home computer records (including e-mail) were "used" by the agency and relate to the "conduct of government" so they are "public records." RCW 42.17.020(41). However, the act does not authorize unbridled searches of agency property.⁶ If agency property is not sub-

ject to unbridled searches, then neither is the home computer of an agency employee. Yet, because the home computer documents relating to agency business are "public records," they are subject to disclosure (unless exempt). Agencies should instruct employees that all public records, regardless of where they were created, should eventually be stored on agency computers. Agencies should ask employees to keep agency-related documents on home computers in separate folders and to routinely blind carbon copy ("bcc") work e-mails back to the employee's agency e-mail account. If the agency receives a request for records that are solely on employees' home computers, the agency should direct the employee to forward any responsive documents back to the agency, and the agency should process the request as it would if the records were on the agency's computers.

Notes: ¹*Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 748, 958 P.2d 260 (1998). For records held by the secretary of the senate or chief clerk of the house of representatives, a "public record" is a "legislative record" as defined in RCW 40.14.100. RCW 42.17.020(41).

²*Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691, 13 P.3d 1104 (2000).

³*Concerned Ratepayers v. Public Utility Dist. No. 1*, 138 Wn.2d 950, 958-61, 983 P.2d 635 (1999).

⁴*Id.*

⁵*See Op. Att'y Gen.* 11 (1989), at 4, n.2 ("We do not wish to encourage agencies to avoid the provisions of the public disclosure act by transferring public records to private parties. If a record otherwise meeting the statutory definition were transferred into private hands solely to prevent its public disclosure, we expect courts would take appropriate steps to require the agency to make disclosure or to sanction the responsible public officers.")

⁶*See Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004).

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-03001, filed 12/18/07, effective 1/18/08.]

WAC 516-09-040 Processing of public records requests—General. (1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification shall be requested and provided in writing by mail or fax. Based upon that clarification, the

public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Informing persons of records request. In the event that the request seeks records of named persons to whom the records pertain, the public records officer may, prior to providing records, give notice to such persons named in the request whose rights may be affected by the disclosure. The notice to the affected persons will include a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university shall promptly provide space to inspect public records in the presence of university staff. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee shall make any copies of records requested by the requestor or arrange for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate

that the university has completed a diligent search for the requested records, made any located nonexempt records available for inspection, and provided copies.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional documents existing at the time of the request, it will promptly inform the requestor of the additional documents and will make them available for inspection or provide copies upon payment on an expedited basis.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-040, filed 12/18/07, effective 1/18/08.]

WAC 516-09-050 Reserved.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-050, filed 12/18/07, effective 1/18/08.]

WAC 516-09-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the university for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside the act. The university's failure to list an exemption here shall not affect the efficacy of any exemption.

(a) RCW 5.60.060 - Privileged communications;

(b) 20 U.S.C. 1232g - Family Education Rights and Privacy Act (FERPA);

(c) 42 U.S.C. 405 (c)(2)(vii)(1) - Social Security numbers;

(d) 45 C.F.R. 16-0164 - HIPAA Privacy Rule;

(e) Chapter 19.108 RCW and RCW 4.24.601 - Uniform Trade Secrets Act; and

(f) Chapter 10.97 RCW - Regarding criminal history information.

(2) The university is prohibited by RCW 42.56.070(9) from providing lists of individuals for commercial purposes.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-060, filed 12/18/07, effective 1/18/08.]

WAC 516-09-070 Costs of providing copies of public records. (1) Costs for providing copies.

(a) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require payment of the costs of copying an installment before providing that

installment. The university will not charge sales tax when it makes copies of public records.

(b) Costs for duplicating electronic and other records. The university may charge actual costs for special arrangements necessary for providing copies of records when required by the requestor, e.g., costs of color copying, oversized records, tapes, CDs, or records in other formats. Prior to making duplicate copies, the public records officer or designee may request a deposit of ten percent of the estimated cost of reproduction.

(2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.

(3) Payment. Payment may be made by cash, check, or money order to the university.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-070, filed 12/18/07, effective 1/18/08.]

WAC 516-09-080 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(3) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-080, filed 12/18/07, effective 1/18/08.]