

Chapter 173-03 WAC

PUBLIC RECORDS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-03-040	How do I get access to the public records of the department of ecology? [Statutory Authority: RCW 42.17.-250. WSR 98-16-052 (Order 98-12), § 173-03-040, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340 and 1992 c 139. WSR 92-20-116 (Order 92-37), § 173-03-040, filed 10/7/92, effective 11/7/92. Statutory Authority: RCW 42.17.250 - 42.17.-340. WSR 78-02-041 (Order DE 77-35), § 173-03-040, filed 1/17/78.] Repealed by WSR 17-23-098 (Order 16-14), filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.56.100.
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WAC 173-03-010 Purpose. The purpose of this chapter is to implement the requirements of the Public Records Act, chapter 42.56 RCW. The department adopts these rules to provide the fullest assistance to requestors and full access to the department's public records while protecting those records from damage or disorganization; preventing excessive interference with essential agency functions, including the agency's core environmental missions; and not unreasonably disrupting agency operations.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-010, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-010, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-010, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-010, filed 1/17/78.]

WAC 173-03-020 Definitions. (1) The terms "public record" and "writing" shall have the meanings as stated in RCW 42.56.010.

(2) "Ecology" means the department of ecology.

(3) "Director" means the director of ecology.

(4) "Public records officer" means the employee designated by the director under RCW 42.56.580(1) responsible for overseeing ecology's compliance with the Public Records Act.

(5) "Designee" means the employee of ecology designated by the director or the public records officer to serve as the public records coordinator at the headquarters offices or at each of the regional offices in the absence of the officer.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-020, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW

(11/15/17)

42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-020, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-020, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-020, filed 1/17/78.]

WAC 173-03-030 Agency description—Contact information—Public records officer. (1) The department of ecology is an agency headed by a director appointed by the governor subject to confirmation by the senate. The powers and duties of the director are described in chapter 43.21A RCW. Ecology effectively manages air and water resources and implements a coordinated pollution control program for air, water, and land resources. More information on ecology's functions and organization can be found at its web site at www.ecology.wa.gov.

(2) Ecology's headquarters administrative office is located at: 300 Desmond Dr. S.E., Lacey, WA 98503.

(3) Ecology's public records officer may be contacted at the following mailing address, telephone number, or email address:

Public Records Officer
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
360-407-6040
Recordsofficer@ecy.wa.gov

Information and records are also available at the ecology web site at www.ecology.wa.gov. Requestors are encouraged to view the information and documents available on the web site prior to contacting the public records officer.

(4) The name of the current public records officer is on file with the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register* which is available online at www.leg.wa.gov/codereviser.

The public records officer will oversee compliance with the act but another ecology staff member may process the request. The public records officer or designee will provide fullest assistance to requestors and prevent fulfilling public records requests from causing excessive interference with ecology's essential functions.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-030, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-030, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340 and 1992 c 139. WSR 92-20-116 (Order 92-37), § 173-03-030, filed 10/7/92, effective 11/7/92. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-030, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-030, filed 1/17/78.]

WAC 173-03-050 Records index. The records retention schedule established by the division of state archives of the office of the secretary of state serves as an index for the

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identification and location of ecology's records including those described in RCW 42.56.070(5).

The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. With the assistance of the public records officer or designee, any person can obtain access to ecology's public records using the records retention schedule.

Policy statements and interpretive statements as defined in RCW 34.05.010 entered after June 30, 1990, are indexed by number and subject matter and are available on the agency's web site.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-050, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-050, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-050, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-050, filed 1/17/78.]

WAC 173-03-060 Requests for public records. All requests under the Public Records Act to inspect or copy public records shall be in writing and directed to the agency public records officer at the email address or mailing address set forth in WAC 173-03-030(3) or via online submission on ecology's web site if available. The request shall include the following information:

- (1) The requestor's name, email address or mailing address, and telephone number; and
- (2) A request for identifiable records. An identifiable public record is one for which the requestor has given a reasonable description enabling ecology to locate the requested record(s).

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-060, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-060, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340 and 1992 c 139. WSR 92-20-116 (Order 92-37), § 173-03-060, filed 10/7/92, effective 11/7/92. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-060, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-060, filed 1/17/78.]

WAC 173-03-065 Responses to public records requests. (1) Ecology will respond to a request within five business days of receipt, by either:

- (a) Providing the record(s);
- (b) Providing an internet address and link to the record(s) on an ecology web site;
- (c) Acknowledging that ecology has received the request, asking for clarification to the extent the request is unclear, and providing a reasonable estimate of the time ecology will require to respond to the request if not clarified; or
- (d) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is

unclear, ecology may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request within ten business days, ecology need not respond to it and will close the request.

(3) Ecology will process requests in the order in which they are received. Ecology may modify this approach as necessary to ensure that requests which seek larger volumes of records, require closer review, or are otherwise more time consuming, do not unreasonably delay simpler, more routine requests.

(4) When it appears that the number of records responsive to a request may be large, that the process of locating, assembling, or reviewing the records may be lengthy, or that it is otherwise appropriate, ecology may choose to provide records on a partial or installment basis. Ecology need not locate and assemble records responsive to a subsequent installment until the previous installment is claimed or inspected. If an installment is not claimed or inspected within ten business days of notice of availability, the agency need not respond further and will close the request.

(5) When electronic records are requested, ecology will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or, at ecology's discretion, in a format that is reasonably translatable from the format in which the agency keeps the records. Ecology is under no obligation to convert electronic records to a specific format identified by the requestor. When metadata is requested, ecology will provide the records in a native file format that preserves metadata where technically feasible. Metadata may be unavailable for records that require conversion to a nonnative format in order to apply exemptions.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-065, filed 11/15/17, effective 12/16/17.]

WAC 173-03-070 Costs of providing public records.

(1) Ecology does not charge a fee for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), ecology declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions. Ecology may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and as published in ecology's fee schedule available on the ecology web site at www.ecology.wa.gov.

(3) Ecology will charge the actual amount charged by an external vendor for records copied by an external vendor including records in nonstandard sizes or formats as published in ecology's fee schedule available on the ecology web site at www.ecology.wa.gov.

(4) Before copying public records, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all of the records. The public records officer or designee may also require payment of

the remainder of the copying costs before providing all of the records, or the payment of costs of copying an installment before providing the installment.

(5) At ecology's sole discretion, ecology may provide customized electronic access to public records if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by ecology for other agency purposes. Ecology will charge the actual costs, including staff time, necessary to reimburse the agency for providing customized electronic access services.

(6) Ecology will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(7) Ecology may waive any charges for providing public records at the discretion of the public records officer. This determination will be made on a case-by-case basis.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-070, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-070, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340 and 1992 c 139. WSR 92-20-116 (Order 92-37), § 173-03-070, filed 10/7/92, effective 11/7/92. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-070, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-070, filed 1/17/78.]

WAC 173-03-075 Notice of availability. (1) Once records responsive to a request or any installment thereof have been located, assembled, reviewed, and prepared for release, and any affected third persons or agencies notified, ecology will notify the requestor that those records are available for inspection or copying.

(2) The notice of availability will state any costs for obtaining copies of the records and any other allowable costs under WAC 173-03-070 or the Public Records Act.

(3) Upon receipt of a notice of availability, the requestor may inspect records by scheduling a viewing appointment with the public records officer or designee or requesting copies.

(4) If, within ten business days of issuance of a notice of availability, the requestor fails to claim the records (or any installment thereof) by either scheduling a viewing appointment or requesting copies and making any required payment, ecology will close the request.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-075, filed 11/15/17, effective 12/16/17.]

WAC 173-03-080 Denial of public records request—Claim of exemption. When ecology denies, in whole or part, a request for inspection of any public record, it must include a statement of the specific exemption authorizing the denial and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-080, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-080, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-080, filed 1/17/78.]

(11/15/17)

WAC 173-03-090 Review of denial of public records request—Claim of exemption. (1) A requestor who objects to the denial of a request for a public record may petition for prompt review of that decision by submitting a written request for review to the public records officer at the email address or mailing address set forth in WAC 173-03-030(3). The written request shall specifically refer to the written statement by the public records officer or designee which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the director or the director's delegate. The director or delegate shall immediately consider the matter and either affirm or reverse the denial. Within two business days following receipt of the petition for review the director or delegate will notify the requestor of the decision or notify the requestor that more time is required to consider the petition.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-090, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-090, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-090, filed 1/17/78.]

WAC 173-03-100 Protection of public records. In order to adequately protect ecology's public records, requestors must comply with the following guidelines while inspecting public records:

(1) Requestors may not remove any public record from ecology's premises.

(2) Requestors must have a designated ecology employee present while inspecting a public record.

(3) Requestors may not mark or deface a public record in any manner during inspection.

(4) Requestors may not dismantle public records which are maintained in a file or jacket, or in chronological or other filing order, or those records which, if lost or destroyed, would constitute excessive interference with ecology's essential functions.

(5) Access to file cabinets, shelves, vaults, or other storage areas is restricted to ecology personnel, unless other arrangements are made with the public records officer or designee.

[Statutory Authority: RCW 42.56.100. WSR 17-23-098 (Order 16-14), § 173-03-100, filed 11/15/17, effective 12/16/17. Statutory Authority: RCW 42.17.250. WSR 98-16-052 (Order 98-12), § 173-03-100, filed 7/31/98, effective 8/31/98. Statutory Authority: RCW 42.17.250 - 42.17.340 and 1992 c 139. WSR 92-20-116 (Order 92-37), § 173-03-100, filed 10/7/92, effective 11/7/92. Statutory Authority: RCW 43.17.060 and 42.17.260. WSR 90-21-119 (Order 90-37), § 173-03-100, filed 10/23/90, effective 11/23/90. Statutory Authority: RCW 42.17.250 - 42.17.340. WSR 78-02-041 (Order DE 77-35), § 173-03-100, filed 1/17/78.]