

Chapter 198-14 WAC

PUBLIC RECORDS

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WAC 198-14-010 Authority and purpose. The Public Records Act (act), chapter 42.56 RCW, applies to the environmental and land use hearing office (ELUHO), a state agency, and the boards within that agency. The purpose of these rules is to establish the procedures ELUHO, and the boards, will follow in order to provide full access to public records concerning the conduct of government. These rules provide information to persons wishing to request access to public records of ELUHO and the boards within ELUHO, and also establish processes for both requestors and ELUHO employees that are designed to best assist members of the public in obtaining access to public records. In carrying out its responsibilities under the act, ELUHO will be guided by the provisions of the act describing its purposes and interpretation. The act and these rules will be interpreted in favor of disclosure.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-010, filed 1/10/12, effective 2/10/12.]

WAC 198-14-020 Definitions. (1) "Environmental and land use hearing office (ELUHO)" means the single state agency comprised of the pollution control hearings board, the shorelines hearings board, and the growth management hearings board. Where appropriate, the term ELUHO also refers to the employees of the agency.

(2) "Public records" includes 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 any state or local agency regardless of physical form or characteristics.

(3) "Public records officer" means the administrative manager of ELUHO. The public records officer serves as the point of contact for members of the public and oversees compliance with the act but, may designate another ELUHO employee to serve as the point of contact for members of the public and to process requests for public records.

(4) "Writing" means 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,

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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.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-020, filed 1/10/12, effective 2/10/12.]

WAC 198-14-030 Agency description—Contact information—Public records officer. (1) The environmental land use hearing office (ELUHO) is a single quasi-judicial environmental, land use and adjudicatory agency comprised of three boards: The pollution control hearings board, created in RCW 43.21B.010, the shoreline hearings board, created in RCW 90.58.170, and the growth management hearings board, created in RCW 36.70A.250. Each board provides for the expeditious and efficient disposition of environmental and/or land use appeals within its respective area of statutory jurisdiction.

(2) Any person wishing to request access to public records of ELUHO, or seeking assistance in making such a request, shall contact the public records officer of ELUHO, or the board maintaining such records at the offices of ELUHO. Information identifying ELUHO's public records officer and the specific physical and mailing addresses for the agency is available on ELUHO's web site: www.eluho.wa.gov.

The ELUHO office is located at:
1111 Israel Road S.W.
Tumwater, WA 98501
Phone: 360-664-9160

(3) ELUHO, through its public records officer or designee(s), will provide the "fullest assistance" to requestors; create and maintain an index to public records of ELUHO for use by the public and ELUHO officials; ensure that public records are protected from damage or disorganization; and ensure that responses to public records requests do not cause excessive interference with essential functions of the ELUHO.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-030, filed 1/10/12, effective 2/10/12.]

WAC 198-14-040 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of ELUHO, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the offices of ELUHO or the offices of the boards that comprise ELUHO.

(2) **Records index.** An index of public records is available for use by members of the public, including final orders, declaratory orders, interpretive statements, and statements of

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policy. The index may be accessed online at www.eluho.wa.gov.

(3) **Organization of records.** ELUHO and the boards of the ELUHO will maintain records in a reasonably organized manner. ELUHO and the boards will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from the offices at which the records are maintained without the permission of the public records officer or designee. Many records are available on the ELUHO web site at www.eluho.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-040, filed 1/10/12, effective 2/10/12.]

WAC 198-14-050 Requests for public records. (1)

Any person wishing to inspect or copy public records of ELUHO or the boards of ELUHO should make the request in writing on ELUHO's request form, or by letter, fax, or email addressed to the public records officer and include the following information:

- (a) Name of requestor;
- (b) Address of requestor;
- (c) Other contact information, including telephone number and an email address, if available;
- (d) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (e) The date and time of the request.

(2) 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 pay a deposit as provided for in WAC 198-14-090.

(3) Forms are available for use by requestors at the office of ELUHO and online at www.eluho.wa.gov.

(4) The public records officer or designee may accept requests for public records by telephone or in person, if the request contains the above information. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-050, filed 1/10/12, effective 2/10/12.]

WAC 198-14-060 Processing of public records requests—General. (1) Providing "fullest assistance."

By statute, ELUHO must adopt rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other 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 will do one or more of the following:

- (a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit 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; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone or in writing. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request and provide a written statement specifying the reasons for denial.

(3) **Failure to respond.** If ELUHO does not respond in writing within five business days of receipt of the request for disclosure, the requestor is encouraged to contact the public records officer to inquire into the status of the public records request.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit 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 ELUHO believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption relied upon and provide a brief explanation of why the record or a portion of the record is being withheld from disclosure. 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 the basis for redaction.

(6) Inspection of records.

(a) Consistent with other demands, ELUHO shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. Access to file cabinets, shelves, or storage areas is restricted to ELUHO employees, who shall be present during the inspection. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of ELUHO's notification to him or her that the records are available for inspection or copying. ELUHO will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency 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, ELUHO may close the request and refile the assembled records. 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 the requested copies 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 may 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 that have been made available for inspection, 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 ELUHO has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(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 ELUHO has closed the request.

(11) **Later discovered documents.** If, after ELUHO has informed the requestor that it has provided all available records, ELUHO becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-060, filed 1/10/12, effective 2/10/12.]

WAC 198-14-070 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by ELUHO and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by RCW 43.105.-280 and WAC 198-14-090(2).

(3) **Customized access to databases.** With the consent of the requestor, the agency may provide customized access to an agency database under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. ELUHO may charge a fee consistent with RCW 43.105.280 for such customized access, which may include reasonable charges for staff time necessary to conduct customized searches of the agency databases.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-070, filed 1/10/12, effective 2/10/12.]

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WAC 198-14-080 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.

(2) ELUHO incorporates by reference the exemptions to the act including, but not limited to, the following:

RCW 42.56.230 Personal information;

RCW 42.56.250 Employment and licensing;

RCW 42.56.270 Financial, commercial, and proprietary information;

RCW 42.56.280 Preliminary drafts, notes, recommendations, and intra-agency memorandums;

RCW 42.56.290 Agency party to controversy;

RCW 42.56.600 Mediation communications;

RCW 5.60.060 Attorney client privilege.

(3) ELUHO is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-080, filed 1/10/12, effective 2/10/12.]

WAC 198-14-090 Costs of providing copies of public records. (1) **Costs for paper copies.**

(a) There is no fee for inspecting public records. Photocopies of thirty-five pages or more will be charged at fifteen cents per page and, nonstandard copies, including planning or engineering documents, oversized maps, and photographs, will be charged at the actual cost of reproduction. ELUHO may, in its discretion, send records to a commercial copying center for duplication. The requestor is required to pay the actual cost of copying performed by a copying vendor. Actual cost will be charged for manuals and nonprinted materials, such as audio or video tapes or CDs.

(b) 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 the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. ELUHO will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be the actual cost of medium and preparation, including the actual cost of any necessary scanning. There will be no charge for emailing electronic records to a requestor, unless another cost applies, such as a scanning fee. ELUHO may charge a fee consistent with RCW 43.105.-280 and WAC 198-14-070(3) for customized access of electronic records.

(3) **Costs of mailing.** ELUHO may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to ELUHO.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-090, filed 1/10/12, effective 2/10/12.]

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WAC 198-14-100 Review of denials of public records. (1) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if ELUHO denies access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may ask the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(2) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550, as amended, regardless of any internal administrative appeal. Final agency action, for the purposes of judicial review, shall be deemed completed at the end of the second business day following the denial.

[Statutory Authority: RCW 42.56.040, 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-03-042, § 198-14-100, filed 1/10/12, effective 2/10/12.]