

Chapter 434-12A WAC

PUBLIC RECORDS AND RULES OF PROCEDURE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

434-12A-020	Definitions. [Order 74-2, § 434-12A-020, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-050	Office hours. [Order 74-2, § 434-12A-050, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-060	Public records officer. [Order 74-2, § 434-12A-060, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-070	Protection of public records. [Order 74-2, § 434-12A-070, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-080	Records index. [Order 74-2, § 434-12A-080, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-090	Requests for public records. [Order 74-2, § 434-12A-090, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-130	Adoption of standard request form. [Order 74-2, § 434-12A-130, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-140	Communications and submissions relating to public records. [Order 74-2, § 434-12A-140, filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-990	Appendix A—Form—Organization chart. [Order 74-2, Appendix A (codified as WAC 434-12A-990), filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.
434-12A-99001	Appendix B—Form—Request for public record. [Order 74-2, Appendix B (codified as WAC 434-12A-99001), filed 2/19/74.] Repealed by WSR 09-04-026, filed 1/28/09, effective 2/28/09. Statutory Authority: RCW 42.56.040.

WAC 434-12A-010 Authority and purpose. (1) 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 the office of the secretary of state will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the office of the secretary of state and establish processes for both requestors and secretary of state 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 office of the secretary of state will be guided by the provisions of the act describing its purposes and interpretation.

[Statutory Authority: RCW 42.56.040. WSR 09-04-026, § 434-12A-010, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-010, filed 2/19/74.]

WAC 434-12A-030 Description of the organization of the office of the secretary of state. (1) The secretary of state's general duties are set forth in chapter 43.07 RCW, and relate generally to elections, the formation and maintenance of business organizations, charitable solicitations, charitable trusts, registration of domestic partnerships, archives and records management, the state library, the productivity board, the address confidentiality program, legacy Washington, and the combined fund drive. Additional functions include regulating the use of the state seal, filing or attesting to official acts of the legislature or governor, certifying to the legislature all matters legally required to be certified, issues apostilles, and other actions required or authorized by law. In addition to these constitutional and statutory duties, the secretary of state is frequently called upon to represent the state of Washington in international trade and cultural missions, and to greet and confer with dignitaries and delegations visiting the state of Washington from other countries.

(2) The functions of the secretary of state are performed through the following divisions and programs:

(a) The elections division, through which the secretary acts as the state's chief election officer;

(b) The corporations division, through which the secretary accepts filings as provided by law related to profit and nonprofit corporations and other forms of business organization, accepts registrations pursuant to the Charitable Solicitations Act and the Charitable Trust Act, accepts filings and issues licenses related to digital signatures, accepts registrations of domestic partnerships, and issues apostilles and trademarks;

(c) The archives and records management division, through which the secretary provides services as required by law related to archives and records management;

(d) The Washington state library, providing library services to the public and state government and related services;

(e) The special programs division, which includes:

(i) The productivity board, which the secretary chairs and whose staff provides organizational support and which provides awards and incentives related to state employee brainstorm and teamwork incentive programs;

(ii) The address confidentiality program, for victims of domestic violence, sexual assault and stalking;

(iii) Legacy Washington, which conducts, publishes and preserves oral histories of significant figures in Washington history; and

(iv) The combined fund drive, Washington state's workplace giving program for active and retired public employees.

(3) The offices of the secretary of state and their staff are located at:

(a) Main Administrative Office, Legislative Building, 416 Sid Snyder Way, P.O. Box 40220, Olympia, WA 98504-0220;

(b) Elections Division, 520 Union Ave. S.E., P.O. Box 40229, Olympia, WA 98504-0229;

(c) Corporations Division, 801 Capitol Way South, P.O. Box 40234, Olympia, WA 98504-0234;

(d) Archives and Records Management Division, 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238. The archives and records management division also includes:

(i) The State Records Center, located at 7590 New Market Street S.W., Tumwater, WA, mailing address: P.O. Box 40239, Olympia, WA 98504-0239;

(ii) Archives Regional facilities:

(A) Southwest Regional Branch, located at 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238;

(B) Puget Sound Regional Branch, located at 3000 Landerholm Circle S.E., MS-N100, Bellevue, WA 98007-6484;

(C) Northwest Regional Branch, located at Western Washington University, MS-9123, Bellingham, WA 98225-9123;

(D) Central Regional Branch, located at 400 E. University Way, Mail Stop 7547, Ellensburg, WA 98926-7547; and

(iii) The Washington State Digital Archives, and Eastern Washington Regional Branch, located at 960 Washington Street, Cheney, WA 99004;

(e) The Washington State Library, Point Plaza East, 6880 Capitol Blvd. S.E., Tumwater, P.O. Box 42460, Olympia, WA 98504-2460;

(f) The Productivity Board, The Address Confidentiality Program, and Legacy Washington, Legislative Building, P.O. Box 40220, Olympia, WA 98504-0220.

(4) Any person wishing to request access to public records of the office of the secretary of state, or seeking assistance in making such a request, should contact the public records officer by mail at P.O. Box 40224, Olympia, WA 98504-0224, or by fax at 360-704-7830, or by email at Publicrecords@sos.wa.gov. Information is also available at the secretary of state's web site, at www.sos.wa.gov.

(5) The public records officer will oversee compliance with the act but another secretary of state staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records offi-

cer or designee and the office of the secretary of state will provide the fullest assistance to the requestor; create and maintain for use by the public and the office of the secretary of state an index to public records of the office by making available those records retention schedules applicable to the office of the secretary of state; and prevent fulfilling public records requests from causing excessive interference with essential functions of the office.

[Statutory Authority: RCW 43.107.120, chapter 42.56 RCW, and 2017 c 304. WSR 17-22-047, § 434-12A-030, filed 10/25/17, effective 11/25/17. Statutory Authority: RCW 42.56.040. WSR 09-04-026, § 434-12A-030, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-030, filed 2/19/74.]

WAC 434-12A-040 Public records available. All public records of the office are deemed to be available for public inspection and copying pursuant to these rules and applicable state law, as follows:

(1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the office of the secretary of state, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the office of the secretary of state. An appointment may be required.

(2) **Records index.** An index of public records is available for use by members of the public, consisting of those records retention schedules applicable to the office of the secretary of state.

(3) **Organization of records.** The office of the secretary of state will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the office. A variety of records are available on the secretary of state web site at www.secstate.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the office of the secretary of state should make the request in writing by letter, fax, or email addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date of the request.

(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. Copies will be made by secretary of state staff unless other arrangements are agreed upon. Costs for copying are specified in WAC 434-12A-100.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. 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. The office will presume that the request is fully and accu-

rately described in this confirmation unless the requestor promptly indicates otherwise in writing.

[Statutory Authority: RCW 42.56.040, WSR 09-04-026, § 434-12A-040, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-040, filed 2/19/74.]

WAC 434-12A-045 Processing of public records requests—General. (1) Providing "fullest assistance."

The office of the secretary of state 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 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) Provide copies of the records, either in hard copy or electronically, upon payment of any applicable fees by the requestor; or
- (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. 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 office of the secretary of state 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) **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 the office of the secretary of state 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 office of the secretary of state 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. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim copies or review the assembled records within thirty days of the office's notification to him or her that the records are available for inspection or copying. The agency 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 copies or review the records. If the requestor or a representative of the requestor fails to claim copies or review the records within the thirty-day period or make other arrangements, the office of the secretary of state 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 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 office of the secretary of state 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 the office of the secretary of state has closed the request.

(11) **Later discovered documents.** If, after the office of the secretary of state has informed the requestor that it has provided all available records, the office 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 43.107.120, chapter 42.56 RCW, and 2017 c 304, WSR 17-22-047, § 434-12A-045, filed 10/25/17, effective 11/25/17. Statutory Authority: RCW 42.56.040, WSR 09-04-026, § 434-12A-045, filed 1/28/09, effective 2/28/09.]

WAC 434-12A-055 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 the agency and is generally commer-

cially 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 WAC 434-12A-100.

(3) **Customized access to databases.** With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The office of the secretary of state may charge a fee consistent with RCW 43.105.280 for such customized access.

[Statutory Authority: RCW 42.56.040. WSR 09-04-026, § 434-12A-055, filed 1/28/09, effective 2/28/09.]

WAC 434-12A-100 Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule. (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the office of the secretary of state declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing 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 functions.

(2) The office of the secretary of state may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

(3) The Washington state archives research fees covered by WAC 434-690-080 are determined by archives according to its terms. The corporation fees are per WAC 434-112-085.

(4) 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. The office of the secretary of state will not charge sales tax when it makes copies of public records.

(5) **Costs of mailing.** The office of the secretary of state may also charge actual costs of mailing, including the cost of the shipping container.

(6) **Payment.** Payment may be made by cash, check, or money order to the office of the secretary of state, or by those credit or debit cards accepted by the office.

(7) The public records officer or designee has discretion to waive the applicable fees when the total cost for copying and mailing all responsive records is less than five dollars.

[Statutory Authority: RCW 43.107.120, chapter 42.56 RCW, and 2017 c 304. WSR 17-22-047, § 434-12A-100, filed 10/25/17, effective 11/25/17. Statutory Authority: RCW 42.56.040. WSR 09-04-026, § 434-12A-100, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-100, filed 2/19/74.]

WAC 434-12A-110 Exemptions. (1) The Public Records Act provides that a number of document types 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 office of the secretary of state for inspection and copying:

RCW 5.60.060(2) (attorney-client privilege, together with attorney work product privilege).

RCW 5.60.060(5) (communications to a public officer in official confidence).

RCW 5.60.070 (communications between a mediator and a party to mediation).

RCW 19.34.240 (digital signatures).

RCW 19.34.420 (digital signatures).

RCW 29A.08.710 through 29A.08.775 (voter registration records).

RCW 29A.32.100 (arguments and statements for voters pamphlet).

RCW 29A.60.110 (sealing of ballot containers).

RCW 40.14.030 (exempt records accessioned into state archives).

RCW 40.24.070 (address confidentiality program).

RCW 43.07.100 (records of entities supplying information to the bureau of statistics).

5 U.S.C. § 552(a) (the federal Privacy Act).

The foregoing list is for informational purposes only and failure to list an exemption shall not affect the efficacy of any exemption. The secretary of state reserves the right to determine that a public record is exempt under the provisions of state law.

(2) The office of the secretary of state is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-12A-110, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 42.56.040. WSR 09-04-026, § 434-12A-110, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-110, filed 2/19/74.]

WAC 434-12A-120 Review of denials of public records request. (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 (including email) 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) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the assistant secretary of state or the deputy secretary of state. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the office's receipt of the petition, or within such other time as the office of the secretary of state and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the office of the secretary of state 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.

(4) **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 42.56.040. WSR 09-04-026, § 434-12A-120, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-120, filed 2/19/74.]

WAC 434-12A-150 Revolving fund. Pursuant to RCW 43.07.130, and subject to the current availability of such materials, the office of the secretary of state will supply any of the following items of printed matter to the public for a charge equal to the costs of printing, reprinting, and distributing such printed matter:

- (1) Lists of active corporations;
- (2) The provisions of Title 23 RCW;
- (3) The provisions of Title 23B RCW;
- (4) The provisions of Title 24 RCW;
- (5) The provisions of Title 25 RCW;
- (6) The provisions of Title 29A RCW;
- (7) The provisions of chapter 18.100 RCW;
- (8) The provisions of chapter 19.77 RCW;
- (9) The provisions of chapter 43.07 RCW;
- (10) The provisions of Title 11 RCW;
- (11) The provisions of Title 26 RCW;
- (12) The provisions of Title 30A RCW;
- (13) The provisions of Title 30B RCW;
- (14) The provisions of Title 42 RCW;
- (15) The provisions of Title 64 RCW;
- (16) The provisions of the Washington state Constitution;
- (17) The provisions of chapters 40.14, 40.16, and 40.20 RCW, and any statutes, rules, schedules, indexes, guides, descriptions, or other materials related to the public records of state or local government or to the state archives; and
- (18) Rules and informational publications related to the statutory provisions set forth above.

Upon request, any person may receive a list of such printed matter currently available, the cost of each such item of printed matter, and instructions for ordering one or more items. The revenue derived in this manner shall be placed in the secretary of state's revolving fund.

[Statutory Authority: RCW 43.107.120, chapter 42.56 RCW, and 2017 c 304. WSR 17-22-047, § 434-12A-150, filed 10/25/17, effective 11/25/17. Statutory Authority: RCW 42.56.040. WSR 09-04-026, § 434-12A-150, filed 1/28/09, effective 2/28/09; Order 74-2, § 434-12A-150, filed 2/19/74.]