

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DEPARTMENT OF CORRECTIONS

(agency name)

Administrative Order No. 82-3

(1) I, Amos E. Reed, director of Department of Corrections

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

Adoption:

WAC 137-04 Introduction to Department of Corrections
WAC 137-08 Public Records Disclosure

Repeal:

WAC 275-52 Institutional Industries
WAC 275-40 Annual Inspection of Jails

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 81-24-077 filed with the code reviser on 12/2/81. Such rules shall take effect:

[X] pursuant to RCW 34.04.040(2).
[] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

XX (a) This rule is promulgated pursuant to RCW 42.17.250 and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of (name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the (agency) as authorized in RCW

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this agency is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON

APPROVED AND ADOPTED January 5 19 82

JAN 26 1982

By Amos E. Reed

Amos E. Reed, Secretary

Title

CODE REVISER'S OFFICE WSR 82-04-023

Chapter 137-04 WAC

INTRODUCTORY

NEW SECTION

WAC 137-04-010 DEFINITIONS. As used in this title:

(1) "Secretary" means the secretary of the department of corrections.

(2) "Department" means the department of corrections.

(3) "Inmate" means any person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough or work release.

(4) The term "resident", as well as inmate, is used to designate a person on parole or probation status residing at a community residential facility.

NEW SECTION

WAC 137-04-015 ESTABLISHMENT OF DEPARTMENT. The department of corrections was established effective July 1, 1981, by chapter 136, Laws of 1981, 47th legislature. Previously, functions delegated to the department of corrections were assigned to the adult corrections division, department of social and health services.

NEW SECTION

WAC 137-04-020 STRUCTURE OF THE DEPARTMENT. (1) The executive head of the department is the secretary who is appointed by the governor with the consent of the senate, and serves at the pleasure of the governor. The secretary manages the department and is responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons.

(2) The department is organized into four divisions which are headed by directors who report to the secretary. The responsibilities of these divisions are:

(a) The division of prisons is responsible for the operation of all state correctional facilities, including the Washington state penitentiary; the Washington corrections center; the Washington state reformatory; the McNeil Island penitentiary; the Purdy treatment center for women; the Cedar Creek corrections center; the Clearwater corrections center; the Firland correctional center; the Indian Ridge treatment center; the Larch corrections center; the Olympic correctional center; the Pine Lodge correctional center; the special offender center; and such other state correctional institutions, camps or facilities as may hereafter be established pursuant to law under the jurisdiction of the department for the confinement of convicted felons.

(b) The division of community services is responsible for community based services such as probation and parole and work/training release.

(c) The division of management and budget is responsible for providing a variety of services to the other divisions and offices of the

department including budget and accounting, management information systems, research and analysis, management services, internal audit, and contracts and regulations.

(d) The division of institutional industries is responsible for providing a comprehensive work program for inmates, including free venture industries, tax reduction industries, institutional support industries, community work industries, and community service programs. All inmates working in prison industries are paid a wage and contribute to the cost of corrections. Inmates are assigned to these programs based on skills, aptitude, and experience.

(3) Also reporting to the secretary are the chiefs of personnel services, legal services, public information, special investigations, assistant secretary for program development, and legislative liaison and supervisor of internal audits.

NEW SECTION

WAC 137-04-030 USE OF GENDER AND NUMBER. As used in this title, words importing the singular number may extend and be applied to several persons or things and vice versa. Words importing the masculine gender may be applied to females or organizations.

Chapter 137-08 WAC

PUBLIC RECORDS--DISCLOSURE

NEW SECTION

WAC 137-08-010 PURPOSE. The purpose of this chapter shall be to ensure compliance by the department of corrections with the provisions of the public records disclosure act, RCW 42.17.250 through 42.17.340.

NEW SECTION

WAC 137-08-020 DEFINITIONS. (1) "Public records" 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 department regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) "Department" means the department of corrections.

(4) "Client" means any person or organization about whom the department has a record.

(5) "Disclosure" means inspection and/or copying.

(6) "Denial of disclosure" denotes any exempting from disclosure of any public record.

NEW SECTION

WAC 137-08-060 PUBLIC RECORDS AVAILABLE. (1) Requests for any identifiable public record may be initiated at any office of the department during normal business hours.

(2) The department shall at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within ten working days of receipt of the request for disclosure. The department's failure to so respond shall entitle the person seeking disclosure to petition the public records officer pursuant to WAC 137-04-140.

NEW SECTION

WAC 137-08-070 PUBLIC RECORDS OFFICER. The department shall designate a public records officer, located in the state administrative office, who shall be responsible for implementing the department's rules regarding disclosure of public records, coordination of staff in this regard, and generally insuring compliance by the staff with public records disclosure requirements.

NEW SECTION

WAC 137-08-080 PUBLIC DISCLOSURE COORDINATOR. Each departmental administrative unit, for example, each institution, shall designate from among its employees at least one public disclosure coordinator, who shall:

- (1) Have responsibility to respond to written requests for disclosure of the department's nonexempt public records located in that office; and
- (2) Refer the person requesting disclosure to any other office where the record is located, and assist further in the disclosure process; and
- (3) Verify, if necessary, the identity of any person requesting information.

NEW SECTION

WAC 137-08-090 REQUEST FOR PUBLIC RECORDS. (1) Unless waived by a public disclosure coordinator, all requests for the disclosure of a public record must be in writing identifying the record sought with reasonable certainty. The written request may include:

- (a) The name of the person requesting the record;
 - (b) The time of day and calendar date on which the request is made, and;
 - (c) The nature of the request.
- (2) A request for disclosure shall be made during customary business hours.
- (3) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 137-08-150, the department must provide the person requesting disclosure with a written explanation for the nondisclosure, pursuant to WAC 137-08-130.
- (4) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure pursuant to WAC 137-08-130, may request a review under the provisions of WAC 137-08-140.
- (5) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.
- (6) Nothing in this section or elsewhere in this chapter shall be construed to require the department to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the department and is not required for litigation by rules of pretrial discovery.

NEW SECTION

WAC 137-08-100 DISCLOSURE TO CLIENT'S REPRESENTATIVE. (1) If a client requests disclosure to a representative, that request must be accompanied by a written release signed by the client, except that, as an accommodation to the client and if the legislator or attorney representing the client can provide assurance that the client has authorized disclosure, the client's record may be briefly discussed with that legislator or attorney so long as there is neither physical inspection nor copying of client records by that representative. A written release must include:

- (a) The identity of the person(s) or organization(s) to whom disclosure is to be made;
- (b) An identification of the record, or portion thereof, to be disclosed;
- (c) A statement of when the authorization for disclosure expires.

(2) Disclosures of information to a representative shall be made to the same extent as to the client.

(3) The legal guardian of a client has any and all rights accorded to a client by this section.

NEW SECTION

WAC 137-08-110 FEES--INSPECTION AND COPYING. (1) No fee shall be charged for the inspection of public records.

(2) The department shall collect the following fees plus postage to reimburse itself for actual costs incident to providing copies of public records:

(a) Fifty cents per page for ten pages or less;

(b) Thirty-five cents per page from eleven to fifty pages;

(c) Twenty cents per page for over fifty pages.

(3) Nothing contained in this section shall preclude the department from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the department.

(4) The secretary of the department or his designee is authorized to waive any of the foregoing copying costs.

NEW SECTION

WAC 137-08-120 PROTECTION OF PUBLIC RECORDS. Public records shall be disclosed only in the presence of a public disclosure coordinator or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the department. This section shall not be construed to prevent the department from accommodating a client by use of the mails in the disclosure process.

NEW SECTION

WAC 137-08-130 DISCLOSURE PROCEDURE. (1) The public disclosure coordinator shall review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the public disclosure coordinator shall ensure full disclosure.

(3) If the file does contain materials exempt from disclosure, the public disclosure coordinator shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption or reason applies. The remaining, nonexempt materials shall be fully disclosed.

NEW SECTION

WAC 137-08-140 REMEDY FOR REVIEW OF DENIAL OF DISCLOSURE. (1) If the person requesting disclosure disagrees with the decision of a public disclosure coordinator denying disclosure of a public record, this person may at any time petition the department's public records officer for review of the decision denying disclosure. The form used by the public disclosure coordinator to deny disclosure of a public record shall clearly indicate this right of review.

(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the department of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320.

NEW SECTION

WAC 137-08-150 EXEMPTIONS TO PUBLIC RECORDS DISCLOSURE. The department reserves the right to determine if a public record requested in accordance with the procedures outlined in WAC 137-08-090 is exempt or nondisclosable under RCW 42.17.250 through RCW 42.17.340.

Nondisclosable records include, but are not limited to:

(1) Personal information in any files concerning a prisoner, probationer, or parolee to the extent required by RCW 42.17.310(1)(a); however, disclosure may be made to that person or that person's representative, except as otherwise prohibited by these rules;

(2) Data (including information revealing the identity of persons who file complaints, except as the complainant may authorize) contained in intelligence, investigative, and other related files compiled by investigative, law enforcement or penology agencies, and state agencies vested with the responsibility to discipline members of any profession. This data is nondisclosable to the extent required by RCW 42.17.310(1)(d) and (e), RCW 10.97.080, chapter 446-20 WAC;

(3) Certain juvenile justice or juvenile care records to the extent required by chapter 13.50 RCW;

(4) Personal information in files maintained for an employee of the department to the extent required by RCW 42.17.310(1)(b);

(5) Deliberative material, as opposed to facts upon which a decision is based, contained in preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended; except that a specific record shall be disclosable when publicly cited by the department in connection with any action to the extent required by RCW 42.17.310(1)(i);

(6) Records which are relevant to a controversy to which the department is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

(7) Criminal history records information including conviction and nonconviction information as required by RCW 10.97.

NEW SECTION

WAC 137-08-160 QUALIFICATIONS ON NONDISCLOSURE. (1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.17.310 (2).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court enforcing a subpoena in accordance with the provisions of RCW 42.17.310 (3), or an order of the office of hearings enforcing a subpoena.

NEW SECTION

WAC 137-08-170 INTERAGENCY DISCLOSURE. (1) Unless prohibited by law, information may be disclosed by the department to outside agencies, including other state of Washington agencies, or agencies of other states.

(2) Outside agencies receiving information pursuant to subsection (1) of this section shall be thereby subject to the same standards of disclosure as are required of the department.

NEW SECTION

WAC 137-08-180 RECORDS INDEX. (1) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, reports, surveys, staff studies, and other materials.

(2) The department will make available for public disclosure all indices which may at a future time be developed for agency use.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- (1) WAC 275-52-010 HEARINGS.
- (2) WAC 275-52-015 SUBJECT OF HEARINGS.
- (3) WAC 275-52-020 SALE OF PRODUCE.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- (1) WAC 275-40-010 ANNUAL INSPECTION.
- (2) WAC 275-40-020 REPORTS.
- (3) WAC 275-40-030 SPECIAL SUBJECTS OF INSPECTION AND REPORTS.
- (4) WAC 275-40-040 INSPECTION RESULTS AND RATINGS.
- (5) WAC 275-40-050 TRAINING PROGRAMS.
- (6) WAC 275-40-060 ANNUAL REPORT TO LEGISLATURE.
- (7) WAC 275-40-070 REVIEW AND REVISION.