

WSR 22-09-044

PROPOSED RULES

MILITARY DEPARTMENT

[Filed April 14, 2022, 12:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-003 [22-06-033].

Title of Rule and Other Identifying Information: WAC 323-10-070 Costs of providing copies of public records.

Hearing Location(s): On May 24, 2022, at 10:00 a.m., Microsoft Teams meeting <https://bit.ly/3OrmNCv>. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the military department will not provide a physical location for this hearing in order to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please join the hearing online at the Microsoft Teams link provided here.

Date of Intended Adoption: May 24, 2022.

Submit Written Comments to: Cynthia Whaley, Building 1, Camp Murray, WA 98430, email [Cynthia.whaley@mil.wa.gov](mailto:Cynthia.whaley@mil.wa.gov), by May 3, 2022.

Assistance for Persons with Disabilities: Contact Cynthia Whaley, phone 253-640-4966, email [Cynthia.whaley@mil.wa.gov](mailto:Cynthia.whaley@mil.wa.gov), by May 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prior to the adoption of the emergency rule CR-103E filed November 17, 2021, the military department has not required public records requesters to pay for the costs of copies as permitted by RCW 42.56.120, as amended in 2017 by EHB 1596. The purpose of this proposed permanent rule is to allow the department to charge statutory fees under RCW 42.56.120 and mitigate current costs to the agency in responding to public records requests.

Reasons Supporting Proposal: EHB 1596 (2017) authorized agencies to assess statutory costs for copies of public records if the agency has adopted a rule or regulation declaring the reasons that determining the actual cost of copies would be unduly burdensome. The military department is initiating permanent rule making that would make that determination and accordingly authorize the military department to assess statutory costs for copies, as permitted by RCW 42.56.120.

Statutory Authority for Adoption: RCW 42.56.120.

Statute Being Implemented: RCW 42.56.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state military department, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cynthia Whaley, Building 1, Camp Murray, WA 98430, 253-640-4966.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposal is not a significant legislative rule for the purposes of RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Per RCW 42.56.120, costs are determined as follows: Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person

requesting records, or for the use of agency equipment to photocopy public records;

Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations.

April 14, 2022  
Cynthia Whaley  
Public Records Officer  
Rules Coordinator

### OTS-3479.1

AMENDATORY SECTION (Amending WSR 14-22-096, filed 11/4/14, effective 12/5/14)

**WAC 323-10-070 Costs of providing copies of public records.** (1) ~~((Costs for paper copies.))~~ **Inspection.** There is no fee for inspecting public records. ~~((A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger sized documents cost will be based on the actual cost to reproduce them at the time of the request.~~

~~(2) Costs for electronic records. The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. The charge for electronic records provided on any medium other than email will be in the amount necessary to reimburse the actual cost to the agency.~~

~~(3) Deposits. Before beginning to make copies or scanning responsive records,))~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), the department 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:

(a) 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;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(3) **Fee schedule.**

(a) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 and as published in the department's fee schedule available on the agency website at <https://mil.wa.gov/public-record-disclosure>.

(b) The department will charge the actual amount charged by an external vendor for records copied by an external vendor.

(c) The charges for copies under this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(4) **Customized electronic access services.** At the department's sole discretion, the department may provide customized electronic access to public records if the department 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 the department for other agency purposes. The department will charge the actual costs, including staff time, necessary to reimburse the department for providing customized electronic access services.

(5) **Deposits.** The public records officer or designee may require ((a)) an advance deposit of ((up to ten)) 10 percent of the estimated ((costs of copying all the records selected by the requestor)) fees when preparing records for an installment or an entire request. The public records officer or designee may also require the payment of the remainder of the copying or scanning costs before providing all the records, or the payment of the costs of copying or scanning an installment before providing that installment. The ((military)) department will not charge sales tax when it makes copies of or scans public records.

((+4)) (6) **Payment of fees.** The department 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) **Waiver of fees.** The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

(8) **Costs of mailing.** The ((military)) department may ((also)) charge actual costs of mailing, including the cost of the shipping container.

((+5)) (9) **Payment.** Payment may be made by cash, check, or money order to the ((military)) department.

[Statutory Authority: RCW 42.56.040. WSR 14-22-096, § 323-10-070, filed 11/4/14, effective 12/5/14. Statutory Authority: RCW 42.56.010 and 42.56.100. WSR 12-09-089, § 323-10-070, filed 4/18/12, effective 5/19/12; § 323-10-070, filed 2/13/74.]