

WSR 23-11-122
PROPOSED RULES
WASHINGTON STATE
SCHOOL DIRECTORS' ASSOCIATION
[Filed May 22, 2023, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-035.

Title of Rule and Other Identifying Information: Chapter 430-01

WAC.

Hearing Location(s): On July 12, 2023, at 10 a.m., at Washington State School Directors' Association Headquarters, P.O. Box 5248, Lacey, WA 98509.

Date of Intended Adoption: July 15, 2023.

Submit Written Comments to: Kelsey C. Winters, P.O. Box 5248, Lacey, WA 98509, email k.winters@wssda.org, by July 12, 2023.

Assistance for Persons with Disabilities: Contact Kelsey C. Winters, phone 360-252-3018, email k.winters@wssda.org, by July 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments would update, and bring further clarity to, provisions based on statute.

Statutory Authority for Adoption: Chapter 42.56 RCW, Public Records Act.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Abigail Westbrook, P.O. Box 5248, Lacey, WA 98509, 360-252-3018.

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.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

May 18, 2023
Tim Garchow
Executive Director

OTS-4571.1

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-010 Authority and purpose. (1) ((~~EHB-1595~~)) RCW 42.56.070(1) requires state agencies to make available for inspection and copying nonexempt "public records" in accordance with published rules. In compliance, this chapter is approved and adopted by the board of directors of Washington state school directors' association

(WSSDA) to ~~((inform, facilitate, and regulate the collection of allowed charges for public records requests))~~ establish the procedures the Washington state school directors' association will follow to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state school directors' association and establish processes for both requestors and Washington state school directors' association staff designed to best assist members of the public in obtaining access.

(2) These rules will be interpreted in favor of disclosure. Prompt assistance to the public shall be provided without affecting WSSDA's primordial mission of providing leadership, advocacy, and empowerment to its members.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-010, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-020 Definitions. (1) "Business days" are weekdays, Monday through Friday, excluding official Washington state holidays and state agency closures for any reason.

(2) "Public Records Act" or "act" means chapter 42.56 RCW.

(3) "WSSDA" means Washington state school directors' association established under chapter 28A.345 RCW.

(4) "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 ~~((the agency))~~ WSSDA.

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

(6) "Standard page" is an 8 × 11 size paper.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-020, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-030 Relevant training. (1) Pursuant to RCW 42.56.152, WSSDA's public records officer will complete a training course regarding the act and records retention within 90 days of assuming their responsibilities as public records officer. Thereafter, the public records officer will complete refresher courses every four years that they maintain the designation.

(2) All new WSSDA employees will receive basic training on public records, open government meeting, and records retention within ~~((nine-ty))~~ 90 days from date of hire. Such training includes access to publications, online classes, and tutorials on the subject published and offered by different agencies of the state.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-030, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-040 Access to public records. ((The public records are available for public access according to these rules, except as otherwise provided by law.)) **(1) Making requests for public records.**

(a) Any person wishing to inspect or copy public records of the agency must make the request in writing on WSSDA's request form or through the online portal located on WSSDA's website, or by letter addressed to the public records officer at the address listed in WAC 430-01-050(3), or by email to the public records officer at the email address listed in WAC 430-01-050(3), or by submitting the request in person at the address listed in WAC 430-01-050(3), and must include the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, they should so indicate and make arrangements to pay for copies of the records or a deposit in accordance with the allowable costs under WAC 430-01-090.

(c) A records request form is available for use by requestors at the WSSDA office and online at www.wssda.org.

(d) 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, they will confirm receipt of the information and the substance of the request in writing.

(2) Hours for inspection of public records. Public records are available for inspection and copying during WSSDA normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the WSSDA office. Many public records are also available for inspection and copying on the WSSDA website, www.wssda.org, at any time, at no cost.

(3) Organization of public records. WSSDA will maintain its records in a reasonably organized manner. WSSDA will take reasonable actions to protect records from damage or disorganization. When inspecting records in person, a requestor must comply with the protection requirements of WAC 430-01-130 and must make reasonable efforts to maintain the organization of the public records.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-040, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-050 Agency description—Contact information—Public records ((address)) officer. (1) WSSDA is an agency charged with the coordination of programs and procedures about policymaking and control and management among the school districts of Washington state. The powers and duties of WSSDA are described in chapter 28A.345 RCW.

(2) WSSDA's administrative offices are located at: 225 College Street N.E., Olympia, WA 98516.

(3) WSSDA's public records officer is available at the following address, telephone and fax numbers or email address:

Office of Public Records/Open Public Meetings
221 College Street N.E.
Olympia, WA 98516-5313

WSSDA Public Records Officer

Phone: 360-493-9231

Fax: 360-252-3022

Attn: Public Records Officer

Email: PublicRecordsRequest@wssda.org

Information and records are also available at the WSSDA website at www.wssda.org.

(4) The public records officer will oversee compliance with the act, but other WSSDA staff members may assist in processing the request. Therefore, these rules will refer to the public records officer or designee. The public records officer or designee and WSSDA will provide the fullest assistance to requestors and prevent fulfilling public records requests from causing excessive interference with WSSDA's essential functions.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-050, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-070 Responses to public records requests. ~~((In general,))~~ (1) Acknowledging receipt of the request. The public records officer shall respond within five business days from receipt of a request by doing one or more of the following:

~~((1))~~ (a) Provide copies of the records requested or make the record available for inspection;

~~((2))~~ (b) Provide an internet address and link to WSSDA's website where the specific record can be accessed;

~~((3))~~ (c) Acknowledge that WSSDA received the request and provide a reasonable estimate of the time to fully respond;

~~((4))~~ (d) Acknowledge that WSSDA received the request and ask the requestor to clarify a request that is unclear, while providing to the greatest extent possible, a reasonable estimate of the time WSSDA needs to respond to the request if it is not clarified; or

~~((5))~~ (e) Deny the request((÷

~~(6) When a requestor fails to respond to WSSDA's request for clarification within thirty days and the entire request is unclear, WSSDA may close the request without further response;~~

~~(7) When a requestor fails to respond to WSSDA's request for clarification within thirty days and only part of the request is unclear, WSSDA will respond to the portion of the request that is clear and may close the remainder of the request;~~

~~(8) In certain cases, WSSDA shall seek a court order enjoining disclosure pursuant to law;~~

~~(9))~~.

(2) **Requests for clarification.** In acknowledging receipt of a public record request that is unclear, WSSDA may ask the requestor to clarify what information the requestor is seeking.

(3) **Additional time.** Additional time required to respond to a request may be based upon the following:

(a) The need to clarify the intent of the request;

(b) The need to locate and assemble the information requested;

(c) The need to notify third persons or agencies affected by the request; or

(d) The need to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the requested.

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

(5) **Providing records in installments.** When the number of responsive records to a request is voluminous and the time for locating, assembling, or reviewing the records is considerable, the public records officer may choose to respond in installments.

(6) **Providing electronic records.**

(a) When electronic records are requested, WSSDA will provide:

(i) The nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by WSSDA and is generally commercially available; or

(ii) At WSSDA's discretion, in a format that is reasonably translatable from the format in which WSSDA keeps the records.

(b) WSSDA is under no obligation to convert electronic records to a specific format identified by the requestor.

(c) When metadata is requested, the agency 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.

(7) **Bot requests.** WSSDA shall deny a computer-generated bot request that is one of multiple requests from the requestor within a ~~((twenty-four))~~ 24 hour period whenever WSSDA establishes that responding to the multiple bot requests would cause excessive interference with WSSDA's other essential functions;

~~((10) When)~~ (8) If WSSDA inadvertently fails to respond in writing within five business days of receipt of the request for disclosure, the requestor can contact the public records officer or executive director to determine the reason for the failure to respond;

~~((11) When the number of responsive records to a request is voluminous and the time for locating, assembling, or reviewing the records is considerable, the public records officer may choose to re-~~

~~spend in installments treating each installment as a separate public records request.)~~)

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-070, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-080 Records exemption and court protection. WSSDA reserves the right to exempt public records from disclosure in accordance with chapter 42.56 RCW or other statutes which exempt or prohibit disclosure of specific information or records.

Whenever WSSDA believes that a record is exempt from disclosure and should be withheld, the public records officer shall specify in writing the exemption explaining how the exemption applies to the record withheld or redacted.

When only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer shall first redact the exempt portions; second, provide the nonexempt portions; and finally, explain in writing why portions of the record are exempt and redacted.

If the requested records contain information that may affect rights of others and the information is exempt from disclosure, the public records officer may, prior to providing the records, notify those affected to enable them to contact the requestor and ask (~~him or her~~) them to revise the request, or, if necessary, seek a court order to prevent or limit the disclosure. The notice to the affected persons may also include a copy of the request.

WSSDA is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-080, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-090 Costs of providing copies of public records. (1) ~~((Costs for paper copies))~~ **Inspections.** There is no fee for inspecting public records ~~((and charges can be waived for humanitarian reasons. However, a requestor may obtain photocopies or printed copies for a fee of fifteen cents per standard 8 x 11 page.~~

~~WSSDA reserves [the right] to charge a flat rate of two dollars if the fees allowed under this procedure to provide the records are equal to, or more than, two dollars.~~

~~Before making the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor and the balance to be paid before completion of the records request.~~

~~If requested, calculations of the costs excluding sales tax shall be shown to the requestor.~~

~~(2) **Costs for electronic records.** The actual costs for electronic records are as follows:~~

~~(a) Ten cents per page for public records scanned into an electronic format or for the use of WSSDA equipment to scan the records;~~

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

~~(c) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of WSSDA equipment to send the records electronically; AND~~

~~(d) The actual cost of any digital storage media or device provided by WSSDA, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.~~

~~There is no charge for the emailing of electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(3) **Costs of mailing.** WSSDA shall charge actual costs of mailing, including the cost of shipping.), either in person or on WSSDA's website.~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), WSSDA declares for the following reasons that it would be unduly burdensome 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 WSSDA 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 scheduling.**

(a) WSSDA will charge for copies of public records pursuant to the default fee schedule in RCW 42.56.120 (2)(b) and (c).

(b) Under RCW 42.56.130, WSSDA may charge other copying fees authorized by statutes outside of chapter 42.56 RCW.

(c) WSSDA may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(d) The charges for copying methods used by WSSDA are summarized in the fee schedule available on the WSSDA website at www.wssda.org.

(e) WSSDA will charge the actual amount charged by an external vendor for records copied by an external vendor including records in nonstandard sizes or formats.

(4) **Payment.** Payment is made by cash, check, or money order to WSSDA. Before copying public records, the public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all of the records. The public records officer or designee may 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. WSSDA will not charge sales tax when it makes copies of public records.

(5) **Customized charges.** A customized service charge is imposed by WSSDA when outside information technology experts are needed to prepare data compilations or to customize electronic access services when the compilations and customized access services are not used by WSSDA.

No customized service charge is applicable unless WSSDA notifies beforehand the requestor of the customized service charge explaining

its reason, a description of the specific expertise needed, and a reasonable estimate of the charge.

~~((These costs and charges are not exclusive and subject to change upon prior notice.))~~ (6) **Costs of mailing.** WSSDA will also charge actual costs of mailing, including the costs of the shipping container.

(7) **Payment of fees.** WSSDA 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.

(8) **Waiver of fees.** WSSDA 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: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-090, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-110 Closing and compliance of public records requests. (1) **Closing requests.** The request is deemed closed once the requested records or last installment of the request has been provided with the requestor expressly or impliedly acknowledging receipt without further follow-up communication being made. The public records officer or designee will communicate with the requestor indicating that WSSDA has completed a reasonable search for the requested records and made any located nonexempt records available for inspection or disclosure.

~~((Other closing conditions. A request is also deemed closed:~~

~~(1) When the requestor fails to make the required deposit of up to ten percent of the estimated costs of copying including the cost of customized service charge;~~

~~(2) When the requestor fails to timely respond to a notice of availability to inspect the records requested;~~

~~(3) When the requestor failed to inspect, pay, and/or pick up any or all of the requested records within fifteen business days of issuance of such notice of availability;))~~ (2) **Closing withdrawn or abandoned requests.** The public records officer or designee will close a request and indicate to the requestor that WSSDA has closed the request:

(a) When the requestor withdraws the request;

(b) When the requestor fails to clarify a request within 30 days after being asked to clarify the information the requestor is seeking;

(c) When the requestor fails to comply with WSSDA's guidelines for inspecting public records;

(d) When the requestor fails to pay any copying or other charges;

or

(e) When the requestor fails to claim or inspect an installment within 30 days after the public records officer or designee provides notice of the installment's availability.

(3) **Records retention.** Once closed, the records of the public records request is retained and the originals of any records assembled in response to the request refiled. Any duplicate copies of records may be destroyed in accordance with the records retention schedule.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-110, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-120 Review of denials of public records requests.

~~((The requestor may submit a petition for reconsideration either with the records officer or executive director of WSSDA for any denial of a public records request.~~

~~Upon receipt of the petition, the public records officer or executive director of WSSDA will review the petition the approval or disapproval of which constitute the final action of WSSDA.))~~ (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 submit a 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 must promptly provide the petition and any other relevant information to the executive director of WSSDA or their designee. The executive director or designee must consider the petition and either affirm or reverse the denial within two business days following WSSDA's receipt of the petition, or within such other time as WSSDA and the requestor mutually agree to.

(3) **Review by attorney general's office.** Pursuant to RCW 42.56.530, if WSSDA denies a requestor access to public records because WSSDA claims the records is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under 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 regardless of any internal administrative appeal.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-120, filed 4/16/18, effective 5/17/18.]

NEW SECTION

WAC 430-01-130 Protection of public records. In order to adequately protect WSSDA's public records, requestors must comply with the following requirements while inspecting public records:

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

(2) Requestors must have a designated WSSDA 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 that are maintained in a file or jacket, or in chronological or other filing order,

or those records that, if lost or destroyed, would constitute excessive interference with WSSDA's essential functions.

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

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 430-01-060 Requests for public records.
- WAC 430-01-100 General rules for charging.