

Title 437 WAC

SENTENCING GUIDELINES COMMISSION

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Chapter 437-06 WAC PUBLIC RECORDS—DISCLOSURE

WAC

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WAC 437-06-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state sentencing guidelines commission with the provisions of the Public Disclosure Act, RCW 42.17.250 through 42.17.340 in conjunction with the Criminal Records Privacy Act, chapter 10.97 RCW, as well as chapter 9.94A RCW.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-010, filed 11/19/84.]

WAC 437-06-020 Definitions. (1) "Public record" 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 commission regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographings, 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) "Commission" means the Washington state sentencing guidelines commission.

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

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

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-020, filed 11/19/84.]

WAC 437-06-030 Public records available. Requests for any identifiable public record may be initiated at the

commission office during normal business hours (8:00 a.m. - 12 and 1:00 p.m. - 5:00 p.m.).

The commission 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 commission's failure to respond shall entitle the person seeking disclosure to petition the public records officer pursuant to WAC 437-06-090.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-030, filed 11/19/84.]

WAC 437-06-040 Public records officer. The commission shall designate a public record officer, located in the commission office, who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordinating staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-040, filed 11/19/84.]

WAC 437-06-050 Request for public records. (1) 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 the customary business hours or by mail. Public records shall be made available for inspection and copying during office hours. However, if these activities would interfere with essential agency functions, the agency reserves the right to require advance notice and to limit the amount of time spent on inspection of documents.

(3) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.

(4) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 437-06-100, the commission must provide the person requesting disclosure with a written explanation for the nondisclosure, pursuant to WAC 437-06-080.

(5) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, pursuant to WAC 437-06-080, may request a review under the provisions of WAC 437-06-090.

(6) When a person's identity is relevant to an exemption, that person may be required to provide personal identification, including photographic identification and/or fingerprints.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-050, filed 11/19/84.]

WAC 437-06-060 Fees—Inspection and copying.

(1) No fee shall be charged for the inspection of public records.

(2) The commission shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.

(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies. One copy of the implementation manual will be issued to public agencies upon request.

(4) Prepayment of copying costs and postage shall be a prerequisite to copying and/or mailing of public records. However, the public records officer may waive the costs of copying or postage.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-060, filed 11/19/84.]

WAC 437-06-070 Protection of public records.

Public records shall be disclosed only in the presence of a public records officer 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 commission. This section shall not be construed to prevent the commission from accommodating a client by use of mails in the disclosure process.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-070, filed 11/19/84.]

WAC 437-06-080 Disclosure procedure.

(1) The public records officer shall review file materials prior to disclosure.

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

(3) If the file does contain materials exempt from disclosure, the public records officer 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 applies. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-080, filed 11/19/84.]

WAC 437-06-090 Remedy for review of denial of disclosure.

(1) If the person requesting disclosure disagrees with the decision of a public records officer denying disclosure of a public record, this person may within 20 days petition the commission's public records officer for review of the decision denying disclosure. The form used 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 commission of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-090, filed 11/19/84.]

WAC 437-06-100 Exemptions to public records disclosure. The commission reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.17.250 through 42.17.340. Nondisclosable records include, but are not limited to:

(1) All exemptions as set forth in RCW 42.17.310(1).

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

(3) Nonconviction data, as defined in RCW 10.97.030(2), shall be disclosed to the subject of the record in person in the central office of the commission, but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete (RCW 10.97.080). Persons who are incarcerated, or their attorneys, shall receive a copy of nonconviction data upon asserting the belief in writing that the information regarding such person is inaccurate or incomplete.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-100, filed 11/19/84.]

WAC 437-06-110 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 in accordance with the provisions of RCW 42.17.310(3).

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-110, filed 11/19/84.]

WAC 437-06-120 Interagency disclosure. (1) Unless prohibited by law, information may be disclosed by the commission to outside agencies, including other state of Washington agencies, or other state agencies.

(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 commission.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-06-120, filed 11/19/84.]

Chapter 437-10 WAC

BYLAWS

WAC

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WAC 437-10-010 Officers of the sentencing guidelines commission. (1) The presiding officer of the sentencing guidelines commission denominated the "chairperson" shall be appointed by the governor. The chair shall call and preside over all meetings of the sentencing guidelines commission, appoint the presiding officers and members of subcommittees of the sentencing guidelines commission except as specifically provided herein, and do all such other things as are appropriate for or delegated to such officer by the sentencing guidelines commission; (2) a vice-chair, appointed by the chairperson of the sentencing guidelines commission, shall preside in the absence of the chair as well as act for the chair and the sentencing guidelines commission under direction; (3) in the absence of both the chair and vice-chair, an acting vice-chair, appointed by the sentencing guidelines commission shall preside at that meeting of the sentencing guidelines commission.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-010, filed 11/19/84.]

WAC 437-10-020 Meetings of the sentencing guidelines commission. (1) The sentencing guidelines commission shall meet at the call of its chair or upon request of any three members of the sentencing guidelines commission.

(2) Subcommittees, advisory committees shall meet upon the call of their respective presiding officers.

(3) Policies and rules relating to the calling of, frequency, openness to the public, and opportunity for participant discussion during meetings; member's absences; quorums; rules of order; forms of action; and voting procedures pertain also to subcommittees. Minutes for the subcommittees and advisory committees shall be recorded and automatically adopted if there are not objections raised.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-020, filed 11/19/84.]

WAC 437-10-030 Absences of members from meetings. Any member who misses three consecutive meetings will have the fact called to that member's attention by the chair of the sentencing guidelines commission with the request that the member reconsider his or her ability to continue as a member. The chair shall also advise the governor of situations regarding absenteeism which the chair deems appropriate to call to the attention of the governor and request that the governor consider a replacement for that member.

(1997 Ed.)

[Statutory Authority: RCW 9.94A.060 (2)(b). 93-24-111, § 437-10-030, filed 12/1/93, effective 1/1/94. Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-030, filed 11/19/84.]

WAC 437-10-040 Quorum. A quorum for the transaction of business, except actions taken pursuant to RCW 9.94A.040, 9.94A.160, or 9.94A.165, shall constitute no fewer than a simple majority of the voting members appointed. The members present at a meeting at which a quorum is not present may elect to proceed with the business of the meeting subject to ratification of all action taken whenever a quorum is next present at a meeting.

Actions taken pursuant to RCW 9.94A.040, 9.94A.160, or 9.94A.165 must be approved by an absolute majority of the voting members of the commission.

[Statutory Authority: RCW 9.94A.060 (2)(b). 93-24-111, § 437-10-040, filed 12/1/93, effective 1/1/94. Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-040, filed 11/19/84.]

WAC 437-10-050 Participation and discussion during sentencing guidelines commission meetings, rules of order, and forms of action. (1) Only duly appointed members or his or her designee of the sentencing guidelines commission and such other persons as are recognized by the chair shall be permitted to participate in the discussion of any matter before the sentencing guidelines commission unless otherwise authorized by a majority of the members of the sentencing guidelines commission present and voting. Any person wishing to participate in such discussion shall notify the sentencing guidelines commission in writing, not less than three days prior to the meeting at which such discussion will be held.

(2) The business of the sentencing guidelines commission shall be conducted in accordance with *Robert's Rules of Order*, new edition, unless such rules are suspended or unless otherwise provided for by these rules.

(3) The sentencing guidelines commission shall act by the adoption of a motion or a resolution.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-050, filed 11/19/84.]

WAC 437-10-060 Voting procedures. (1) Voting during meetings of the sentencing guidelines commission shall be recorded.

(2) The chairperson shall have the same voting rights as any other member of the sentencing guidelines commission.

(3) Only duly appointed members of the sentencing guidelines commission (not designees) shall be permitted to vote on any issue before the sentencing guidelines commission except for the designee of the director of the office of financial management who shall be permitted to vote; no proxies shall be permitted to vote.

(4) Action by the sentencing guidelines commission will be determined by a simple majority vote in accordance with quorum requirements.

(5) Any member on the sentencing guidelines commission who has a direct or indirect personal interest in a contract or application before the sentencing guidelines commission will withdraw himself/herself from voting on that matter. The sentencing guidelines commission member may, however, participate in discussions and answer questions from other sentencing guidelines commission members.

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[Statutory Authority: RCW 9.94A.060 (2)(b). 93-24-111, § 437-10-060, filed 12/1/93, effective 1/1/94. Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-060, filed 11/19/84.]

WAC 437-10-070 Minutes. (1) All meetings of the sentencing guidelines commission and subcommittees will have staff available to make a written record concerning the actions of the commission.

(2) Upon termination of the sentencing guidelines commission meeting, the minutes shall be promptly recorded and submitted to the commission members for final approval.

(3) At the next scheduled meeting of the sentencing guidelines commission, the minutes shall be reviewed by the commission and any amendments or changes will be made. The commission will then adopt the minutes as final. Subcommittee minutes will be recorded and mailed to the subcommittee members. These minutes will be automatically approved and adopted if there are no suggested changes.

(4) The chair of the sentencing guidelines commission along with the executive officer will sign the approved commission meeting minutes. The minutes will then be placed in appropriate folders for a permanent record, subject to audit and public inspection. Subcommittee minutes will be signed by the subcommittee chair and the executive officer.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-070, filed 11/19/84.]

WAC 437-10-080 Change in bylaws. (1) A section or subsection of the bylaws may be reviewed for change at the request of any voting member of the sentencing guidelines commission.

(2) A change in the bylaws must be approved by a simple majority vote of the sentencing guidelines commission.

[Statutory Authority: Chapter 9.94A RCW. 84-23-048 (Order 84-01), § 437-10-080, filed 11/19/84.]