

Chapter 392-105 WAC

SUPERINTENDENT OF PUBLIC INSTRUCTION—ACCESS TO PUBLIC RECORDS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

<p>392-105-001 392-105-003 392-105-005 392-105-007 392-105-013 392-105-015 392-105-025 392-105-035</p>	<p>Purpose. [Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-001, filed 4/15/80.] Repealed by WSR 18-13-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 28A.300.040 and 2017 c 304. Description of organization. [Statutory Authority: RCW 42.17.250, 42.17.260 and 42.17.320. WSR 85-19-007 (Order 85-9), § 392-105-003, filed 9/6/85. Statutory Authority: RCW 42.17.250 and 42.17.320. WSR 82-19-047 (Order 82-12), § 392-105-003, filed 9/14/82. Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-003, filed 4/15/80.] Repealed by WSR 18-13-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 28A.300.040 and 2017 c 304. Operations and procedures. [Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-005, filed 4/15/80.] Repealed by WSR 18-13-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 28A.300.040 and 2017 c 304. Definitions. [Statutory Authority: RCW 42.17.250 through [42.17].320. WSR 92-10-016 (Order 92-04), § 392-105-007, filed 4/28/92, effective 5/29/92.] Repealed by WSR 18-13-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 28A.300.040 and 2017 c 304. Request to inspect and copy. [Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-013, filed 4/15/80.] Repealed by WSR 92-10-016 (Order 92-04), filed 4/28/92, effective 5/29/92. Statutory Authority: RCW 42.17.250 through [42.17].320. Public records officer. [Statutory Authority: RCW 42.17.250 through [42.17].320. WSR 92-10-016 (Order 92-04), § 392-105-015, filed 4/28/92, effective 5/29/92. Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-015, filed 4/15/80; Order 7-75, § 392-105-015, filed 12/22/75. Formerly WAC 392-12-010 (part).] Repealed by WSR 18-13-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 28A.300.040 and 2017 c 304. Requests for public records. [Statutory Authority: RCW 42.17.250 through [42.17].320. WSR 92-10-016 (Order 92-04), § 392-105-025, filed 4/28/92, effective 5/29/92. Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-025, filed 4/15/80; Order 7-75, § 392-105-025, filed 12/22/75. Formerly WAC 392-12-010 (part).] Repealed by WSR 18-13-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 28A.300.040 and 2017 c 304. Determination regarding exempt records. [Statutory Authority: RCW 42.17.250 - [42.17].320. WSR 93-07-039 (Order 93-05), § 392-105-035, filed 3/11/93, effective 4/11/93; WSR 92-10-016 (Order 92-04), § 392-105-</p>
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WAC 392-105-010 Purpose and authority. The purpose of this chapter is to implement the requirements of the Public Records Act, chapter 42.56 RCW. The superintendent of public instruction adopts these rules to provide the fullest assistance to requestors and full access to the agency's public records while protecting those records from damage or disorganization; preventing excessive interference with essential agency functions, including the agency's core mission of supervising all matters pertaining to public schools; and not unreasonably disrupting agency operations.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-010, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-010, filed 4/15/80; Order 7-75, § 392-105-010, filed 12/22/75. Formerly WAC 392-12-010 (part).]

WAC 392-105-020 Agency description—Contact information—Public records officer. (1) The office of superintendent of public instruction is an agency headed by the superintendent of public instruction, a constitutional officer of the state charged with supervision over all matters pertaining to public schools. The powers and duties of the superintendent and the agency are described in Title 28A RCW.

(2) The superintendent of public instruction's administrative offices are located at: Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504.

(3) The superintendent of public instruction's public records officer may be contacted at the following mailing address, telephone number, or email address:

Public Records Officer
Office of the Superintendent of Public Instruction
P.O. Box 47200
Olympia, WA 98504-7200
360-725-6372
publicrecordsrequest@k12.wa.us

Information and records are also available at the superintendent of public instruction web site at www.k12.wa.us.

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

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-020, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 42.17.250 through [42.17].320. WSR 92-10-016 (Order 92-04), § 392-105-020, filed 4/28/92, effective 5/29/92. Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 80-05-034 (Order 80-5), § 392-105-020, filed 4/15/80; Order 7-75, § 392-105-020, filed 12/22/75. Formerly WAC 392-12-010 (part).]

WAC 392-105-030 Definitions. (1) "Agency" means the office of superintendent of public instruction.

(2) "Public record" and "writing" shall have the meanings as stated in RCW 42.56.010.

(3) "Public records officer" means the employee designated by the superintendent under RCW 42.56.580(1) responsible for overseeing the agency's compliance with the Public Records Act.

(4) "Superintendent of public instruction" and "superintendent" mean the elected officer of the state as defined by RCW 28A.300.010 who is the head of the office of superintendent of public instruction.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-030, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 42.17.250 - [42.17].320. WSR 93-07-039 (Order 93-05), § 392-105-030, filed 3/11/93, effective 4/11/93; WSR 92-10-016 (Order 92-04), § 392-105-030, filed 4/28/92, effective 5/29/92. Statutory Authority: RCW 42.17.250 and 42.17.260. WSR 90-22-044 (Order 39), § 392-105-030, filed 11/2/90, effective 12/3/90; WSR 80-05-034 (Order 80-5), § 392-105-030, filed 4/15/80; Order 7-75, § 392-105-030, filed 12/22/75. Formerly WAC 392-12-010 (part).]

WAC 392-105-040 Request, hours for inspection, and organization of public records. (1) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the agency must make the request in writing on the agency's request form or through an online portal, or by letter, or email addressed to the public records officer at the email address publicly designated by superintendent of public instruction, or by submitting the request in person at the address listed in WAC 392-105-020, 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, he or she should so indicate and make arrangements to pay for copies of the records or a deposit, in accordance with the allowable costs under WAC 392-105-060.

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(c) A records request form is available for use by requestors at the office of the public records officer and online at www.k12.wa.us/publicrecordsrequest.

(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, he or she 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 normal business hours of the agency, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the administrative offices of the agency. Many public records are also available for inspection and copying on the agency's web site, www.k12.wa.us, at any time, at no cost.

(3) **Organization of public records.** The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. When inspecting records in person, a requestor must comply with protection requirements of WAC 392-105-060 and must make reasonable efforts to maintain the organization of the public records.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-040, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 42.17.250 - [42.17].320. WSR 93-07-039 (Order 93-05), § 392-105-040, filed 3/11/93, effective 4/11/93; WSR 92-10-016 (Order 92-04), § 392-105-040, filed 4/28/92, effective 5/29/92.]

WAC 392-105-050 Protection of public records. In order to adequately protect the agency's public records, requestors must comply with the following guidelines while inspecting public records:

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

(2) Requestors must have a designated agency 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 the agency'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.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-050, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 42.17.250 through [42.17].320. WSR 92-10-016 (Order 92-04), § 392-105-050, filed 4/28/92, effective 5/29/92.]

WAC 392-105-060 Costs of providing copies of public records. (1) **Inspection.** The agency does not charge a fee for the inspection of public records, either in person or on the agency's web site.

(2) **Statutory default costs.** Pursuant to RCW 42.56.120 (2), the agency declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records:

(6/14/18)

(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 agency may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and as published in the agency's fee schedule available on the agency web site at www.k12.wa.us.

(b) The agency will charge the actual amount charged by an external vendor for records copied by an external vendor including records in nonstandard sizes or formats as published in the agency's fee schedule available on the agency web site at www.k12.wa.us.

(4) Processing payments. Before copying public records, the public records officer or designee may require a deposit of up to ten 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. The agency will not charge sales tax when it makes copies of public records.

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

(6) Costs of mailing. The agency may also charge actual costs of mailing, including the costs of the shipping container.

(7) Payment of fees. The agency 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. The agency 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: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-060, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 42.17.250 - [42.17].320. WSR 93-07-039 (Order 93-05), § 392-105-060, filed 3/11/93, effective 4/11/93; WSR 92-10-016 (Order 92-04), § 392-105-060, filed 4/28/92, effective 5/29/92.]

WAC 392-105-070 Responses to public records requests. (1) **Acknowledging receipt of request.** The agency will respond to a request within five business days of receipt, by:

(a) Providing the record(s);

(b) Providing an internet address and link to the record(s) on the agency web site;

(c) Acknowledging that the agency has received the request, asking for clarification to the extent the request is unclear, and providing a reasonable estimate of the time the agency will require to respond to the request if not clarified; or

(d) Denying the public record request.

(2) **Requests for clarification.** In acknowledging receipt of a public record request that is unclear, the agency 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 request.

(4) **Processing requests.** The agency will process requests in the order in which they are received. The agency 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.

(a) The agency may elect to provide responsive records on a partial or installment basis when:

(i) It appears that the number of records responsive to a request may be large; or

(ii) The process of locating, assembling, or reviewing the records may be lengthy.

(b) The agency has no obligation to locate and assemble records responsive to a subsequent installment until the previous installment has been claimed or inspected.

(6) Providing electronic records.

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

(i) 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 commercially available; or

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

(b) The agency 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) **Completion of inspection or disclosure.** When the inspection or disclosure of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a reasonable search for the requested records and made any located nonexempt records available for inspection or disclosure.

(8) **Closing withdrawn or abandoned requests.** The public records officer or designee will close a request and indicate to the requestor that the agency has closed the request when:

- (a) The requestor withdraws the request;
- (b) The requestor fails to clarify a request within ten business days after being asked to clarify the information the requestor is seeking;
- (c) The requestor fails to comply with the agency's guidelines for inspecting public records;
- (d) The requestor fails to pay any copying or other charges; or
- (e) The requestor fails to claim or inspect an installment within ten business days after the public records officer or designee provides notice of the installment's availability.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-070, filed 6/14/18, effective 7/15/18.]

WAC 392-105-080 Determination regarding exempt records. (1) When the agency denies, in whole or in part, a request for inspection of any public record, the agency must include a statement of the specific exemption authorizing the denial and a brief explanation of how the exemption applies to the record withheld.

(2) If only a portion of a record is exempt from disclosure but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-080, filed 6/14/18, effective 7/15/18.]

WAC 392-105-090 Review of denials of public records requests. (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 must promptly provide the petition and any other relevant information to the superintendent of public instruction or his or her designee. The superintendent or designee must consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as the agency and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the agency denies a requestor access to public records because the agency 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 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 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-090, filed 6/14/18, effective 7/15/18.]

WAC 392-105-100 Records index. (1) The records retention schedule established by the division of the state archives of the office of the secretary of state serves as an index for the identification and location of the agency's records, including those described in RCW 42.56.070(5). The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. With the assistance of the public records officer or designee, any person can obtain access to the agency's public records using the records retention schedule.

(2) Policy statements and interpretive statements as defined in RCW 34.05.010 are available on the agency's web site or upon request through the agency's public records office.

[Statutory Authority: RCW 28A.300.040 and 2017 c 304. WSR 18-13-060, § 392-105-100, filed 6/14/18, effective 7/15/18.]