

**WAC 44-14-04002 Obligations of requestors.** (1) **Fair notice that request is for public records.** A requestor must give an agency fair notice that the request is being made pursuant to the act. Requestors are encouraged to cite or name the act but are not required to do so.<sup>1</sup> A request using the agency's request form or online request form or portal, or using the terms "public records," "public disclosure," "FOIA," or "Freedom of Information Act" (the terms commonly used for federal records requests), especially in the subject line of an email or letter, is recommended. The request should be directed to the agency-designated person to receive requests (such as the public records officer) or the agency-designated address or submitted through the agency-designated portal for public records requests, which should provide an agency with fair notice in most cases. A requestor should not submit a "stealth" request, which is buried in another document in an attempt to trick the agency into not responding.

(2) **Identifiable record.** A requestor must request an "identifiable record" or "class of records" before an agency must respond to it. RCW 42.56.080 and 42.56.550(1).

An "identifiable record" is one that is existing at the time of the request and which agency staff can reasonably locate. The act does not require agencies to be "mind readers" and to guess what records are being requested.<sup>2</sup> The act does not allow a requestor to make "future" or "standing" (ongoing) requests for records not in existence; nonexistent records are not "identifiable."<sup>3</sup>

A request for all or substantially all records prepared, owned, used or retained by an agency is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records. RCW 42.56.080(1). A "keyword" must have some meaning that reduces a request from all or substantially all of an agency's records. For example, a request seeking any and all records from the department of ecology which contain the word "ecology" is not a request containing a keyword. The word "ecology" is likely on every agency letterhead, email signature block, notice, order, brochure, form, pleading and virtually every other agency document. A request for all of an agency's emails can encompass substantially all of an agency's records, and such a request contains no keywords. The act does not allow a requestor nor require an agency to search through agency files for records which cannot be reasonably identified or described to the agency.<sup>4</sup> It benefits both the requestor and the agency when the request includes terms that are for identifiable records actually sought by the requestor, and which produce meaningful search results by the agency.

However, a requestor is not required to identify the exact record he or she seeks. For example, if a requestor requested an agency's "2001 budget," but the agency only had a 2000-2002 budget, the requestor made a request for an identifiable record.<sup>5</sup>

An "identifiable record" is not a request for "information" in general.<sup>6</sup> For example, asking "what policies" an agency has for handling discrimination complaints is merely a request for "information."<sup>6</sup> A request to inspect or copy an agency's policies and procedures for handling discrimination complaints would be a request for an "identifiable record."

Public records requests are not interrogatories (questions). An agency is not required to answer questions about records, or conduct

legal research for a requestor.<sup>7</sup> A request for "any law that allows the county to impose taxes on me" is not a request for an identifiable record. Conversely, a request for "all records discussing the passage of this year's tax increase on real property" is a request for an "identifiable record."

When a request uses an inexact phrase such as all records "relating to" a topic (such as "all records relating to the property tax increase"), the agency may interpret the request to be for records which directly and fairly address the topic. When an agency receives a "relating to" or similar request, it should seek clarification of the request from the requestor or explain how the agency is interpreting the requestor's request.

(3) **"Overbroad" requests.** An agency cannot "deny a request for identifiable public records based solely on the basis that the request is overbroad." RCW 42.56.080. However, if such a request is not for identifiable records or otherwise is not proper, the request can still be denied. When confronted with a request that is unclear, an agency should seek clarification.

Notes:

<sup>1</sup>*Wood v. Lowe*, 102 Wn. App. 872, 10 P.3d 494 (2000).

<sup>2</sup>*Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998), ("identifiable record" requirement is satisfied when there is a "reasonable description" of the record "enabling the government employee to locate the requested records.").

<sup>3</sup>*Limstrom v. Ladenburg*, 136 Wn.2d 595, 604, n.3, 963 P.2d 869 (1998), *appeal after remand*, 110 Wn. App. 133, 39 P.3d 351 (2002); *Sargent v. Seattle Police Dep't*, 16 Wn. App. 1, 260 P.3d 1006 (2011), *aff'd in part, rev'd in part on other grounds*, 179 Wn.2d 376, 314 P.3d 1093 (2013) ("We hold that there is no standing request under the PRA."); *Smith v. Okanogan County*, 100 Wn. App. 7, 994 P.2d 857 (2000) (agency not required to create a record to respond to a PRA request).

<sup>4</sup>*Bonamy*, 92 Wn. App. at 409.

<sup>5</sup>*Violante v. King County Fire Dist. No. 20*, 114 Wn. App. 565, 571, n.4, 59 P.3d 109 (2002).

<sup>6</sup> *Bonamy*, 92 Wn. App. at 409.

<sup>7</sup>See *Limstrom*, 136 Wn.2d at 604, n.3 (act does not require "an agency to go outside its own records and resources to try to identify or locate the record requested."); *Bonamy*, 92 Wn. App. at 409 (act "does not require agencies to research or explain public records, but only to make those records accessible to the public").

[Statutory Authority: RCW 42.56.570. WSR 18-06-051, § 44-14-04002, filed 3/2/18, effective 4/2/18. Statutory Authority: 2005 c 483 § 4, RCW 42.17.348. WSR 06-04-079, § 44-14-04002, filed 1/31/06, effective 3/3/06.]