

WSR 21-17-025
PROPOSED RULES
OFFICE OF THE
CORRECTIONS OMBUDS

[Filed August 6, 2021, 2:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-091.

Title of Rule and Other Identifying Information: Rules implementing Public Records Act for the office of the corrections ombuds.

Hearing Location(s): On September 21, 2021, at 12:00 p.m. Microsoft Teams meeting. Join on your computer or mobile app (please go to <https://oco.wa.gov/public-meetings> to access the link) or call in (audio only) +1 564-999-2000,,640029681# United States, Olympia, Conference ID 640 029 681#.

Date of Intended Adoption: September 30, 2021.

Submit Written Comments to: Joanna Carns, Director, 2700 Evergreen Parkway N.W., Olympia, WA 98505, email Joanna.carns@gov.wa.gov, by August 30, 2021.

Assistance for Persons with Disabilities: Contact Joanna Carns, Director, phone 360-764-3168, email Joanna.carns@gov.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement rules that are required under RCW 42.56.040 and 42.56.070. No changes or other impacts to existing rules.

Reasons Supporting Proposal: Establishment of rules is required under RCW 42.56.040 and 42.56.070, as it is for every agency.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 34.05.310 - [34.05.]395.

Statute Being Implemented: Public Records Act, chapter 42.56 RCW.

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

Name of Proponent: Joanna Carns, office of the corrections ombuds, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joanna Carns, 2700 Evergreen Parkway N.W., Olympia, WA 98505, 360-764-3168.

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; and rule content is explicitly and specifically dictated by statute.

August 6, 2021
Joanna Carns
Director

OTS-3203.1

Chapter 138-12 WAC

PUBLIC RECORDS ACCESS

NEW SECTION

WAC 138-12-010 Authority and purpose. (1) The office of the corrections ombuds serves the purpose of providing information to incarcerated individuals and their families; promoting public awareness and understanding of the rights and responsibilities of incarcerated individuals; identifying system issues and responses for the governor and the legislature to act upon; and ensuring compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of incarcerated individuals under the jurisdiction of the department. The administrative office of the corrections ombuds and its staff are located at 2700 Evergreen Parkway N.W., Olympia, Washington 98505.

(2) The purpose of these rules is to establish the procedures the ombuds will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the ombuds office and establish processes for both requestors and ombuds office staff that are designed to best assist members of the public in obtaining such access.

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NEW SECTION

WAC 138-12-020 Contact information—Public records officer. The public records officer for the ombuds shall be responsible for responses to requests for public records. Any person wishing to request access to public records of the corrections ombuds office, or seeking assistance in making such a request should contact the public records officer of the ombuds office:

Public Records Officer
Corrections Ombuds Office
2700 Evergreen Parkway N.W.
Olympia, WA 98505
email: OCOPDR@gov.wa.gov

Information and public records are also available at the ombuds office website at <https://oco.wa.gov/>. Requestors are encouraged to view the information and records available on the website prior to contacting the records officer.

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NEW SECTION

WAC 138-12-030 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying by appointment during normal business hours of the ombuds of-

office, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding legal holidays. Original records must be inspected at the ombuds office. A requestor shall not take ombuds office records from ombuds offices without the permission of the public records officer or designee.

(2) **Records index and records available online.** An index of public records is available for use by members of the public. The index may be accessed online at <https://oco.wa.gov/>. A variety of records is also available on the ombuds office website.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the ombuds office should make the request in writing by letter or email addressed to the public records officer. Records requests should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to retain photocopies or electronic versions of nonelectronic records instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. A deposit may be required prior to the office's collection of the records requested. Pursuant to WAC XXX.

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NEW SECTION

WAC 138-12-040 Processing of public records requests—General.

(1) **Order of response.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying; or
- (b) If copies or scanned records are requested and terms of payment are met, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(3) **Clarifications.**

(a) If a requestor fails to respond to a request to clarify the request and the entire request is unclear, the request may be closed without further action.

(b) If portions of the request are clear, those portions of the request will be processed.

(4) **Failure to respond.** If the ombuds does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(5) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the ombuds office believes that a record is exempt from disclosure and should be withheld in whole or in part, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld or redacted. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) **Inspection of records.**

(a) Consistent with other demands, the ombuds office shall promptly provide space to inspect public records. No member of the public may remove a record from the viewing area or disassemble or alter any record. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the ombuds office notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the ombuds office may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(9) **Providing records in installments.** When the request is for a large number of records or records requiring extensive review for confidential information, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the ombuds of-

office has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the ombuds office has closed the request.

(12) **Later discovered records.** If, after the ombuds office has informed the requestor that it has provided all available records, the ombuds office becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

(13) Detailed policy can be found on office website at <https://oco.wa.gov/>.

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NEW SECTION

WAC 138-12-050 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide 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 in a format that is reasonably translatable from the format in which the agency keeps the record.

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NEW SECTION

WAC 138-12-060 Exemptions. (1) The Public Records Act provides that a number of types of records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some records held by ombuds office for inspection and copying: RCW 43.06C.060, corrections ombuds confidentiality provisions.

(2) The ombuds office is prohibited by statute from disclosing lists of individuals for commercial purposes.

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NEW SECTION

WAC 138-12-070 Costs of providing copies of public records. (1) Copying fees - Payments. The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at <https://oco.wa.gov/>.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are at the discretion of the public records officer.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the ombuds office. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

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NEW SECTION

WAC 138-12-080 Review of denials of public records. (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 shall promptly provide the petition and any other relevant information to the director of the ombuds office. The petition will be affirmed or reversed within five business days following the ombuds office receipt of the petition, or within such other time as the ombuds office and the requestor mutually agree.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the ombuds office denies a requestor access to public records because it 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. The attorney general has adopted rules on such requests in 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.

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