

WSR 21-18-025

PERMANENT RULES

HUMAN RIGHTS COMMISSION

[Filed August 23, 2021, 11:47 a.m., effective September 23, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These proposed rules update information on requesting and obtaining public records from the human rights commission, and provide a method for having the denial of a public records reviewed within the agency. These rules will also allow charging the statutory default costs for providing public records. The language of WAC 164-04-030 has been substituted with new language, and additional WAC sections have been added. The updates reflect the Public Records Act model rules, chapter 44-14 WAC, and reflect the costs incurred by the agency in providing copies of public records. The subject of the original WAC 162-04-035 is no longer relevant, as the process does not conform to current records release exemptions. The original rules are out of date. There is also no mechanism within the original rules for charging for copies of public records requests. As a small agency with limited resources and a large volume of public records requests, the human rights commission is struggling with covering those costs and dealing with voluminous requests. The proposed rules will allow the agency to charge the statutory default costs for copying and mailing records.

Citation of Rules Affected by this Order: New WAC 162-04-032, 162-04-033, 162-04-034, 162-04-036, 162-04-037 and 162-04-038; and amending WAC 162-04-030 and 162-04-035.

Statutory Authority for Adoption: RCW 42.56.120, 42.56.040.

Adopted under notice filed as WSR 21-13-011 on June 4, 2021.

Changes Other than Editing from Proposed to Adopted Version: In WAC 162-04-032, "if" was changed to "when" in subsection (2) in response to public comment related to indexing of records.

In WAC 162-04-033, an email address was corrected in subsection (3) (a).

In WAC 162-04-034, "him or her" was changed to "the person" to utilize more gender inclusive language.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 30, 2021.

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Policy Analyst

OTS-3034.2

AMENDATORY SECTION (Amending WSR 89-23-019, filed 11/7/89, effective 12/8/89)

**WAC 162-04-030 Public access to records. (~~((1) Records available.~~**

~~(a) General rule and exceptions.~~ All public records as defined by chapter 42.17 RCW (this includes photographs, tapes, and other materials as well as written documents) prepared, owned, used or retained by the Washington state human rights commission shall be available for public inspection and copying during normal office hours in the office where they are located, except for the following:

~~(i) Personal information in files maintained for the commission's employees or members to the extent that disclosure would violate their right to privacy.~~

~~(ii) The file, except for the complaint, compiled in investigating a complaint filed under RCW 49.60.230, during the time until a finding as provided by RCW 49.60.240 or settlement is adopted by the commission or the case is referred to the attorney general for preparation for public hearing. Specific records in the file may be kept sealed and not made available after this time if the executive director has issued a protective order which states the general nature of the records and the reason why they are not open to inspection, and the records are exempt from public inspection under RCW 42.17.310.~~

~~(iii) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the commission or another agency in connection with any agency action.~~

~~(iv) 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 pretrial discovery for causes pending in the superior courts.~~

~~(v) Any other information which is exempt from public inspection under RCW 42.17.310 and where disclosure would violate personal privacy or vital government interest.~~

~~(b) Conditions which override the exceptions.~~ Even where it comes within one of the above exceptions to public access, a particular record shall nevertheless be available for inspection and copying if:

~~(i) Its disclosure would not violate personal privacy or impair a vital governmental interest;~~

~~(ii) The information which would violate personal privacy or impair a vital governmental interest can be deleted from the record; or~~

~~(iii) The record contains statistical information not descriptive of any readily identifiable person or persons.~~

~~(2) Copying.~~ Persons may copy any record which may be inspected. In offices where a copying machine is kept by the commission, machine copies shall be made available to a person on request. No charge shall be made for up to ten sheets in connection with a single request, but ten cents a sheet shall be charged for each sheet beyond ten. Copying facilities may be denied when making them available would unreasonably disrupt the operation of the office, because of the volume of copying or other valid reasons. The absence or unavailability of agency copying facilities shall be given weight in determining whether there are special circumstances justifying removal of a record from the office as provided in subsection (3) of this section.

~~(3) Protection of records.~~ No record shall be allowed to be removed from a commission office by anyone other than a staff member or

other officially authorized person unless special circumstances make the removal necessary or desirable, and protection of the record is reasonably assured. Before such removal is allowed a receipt itemizing the contents of the record and giving the address and telephone number of the place where it will be kept shall be signed by the person taking the record and approved in writing by the person in charge of the office or division responsible for the record.

~~(4) **Personnel records.** Requests for inspection of materials in the personnel files of commission employees or members shall be referred to the executive director, or in his or her absence, the deputy director, and promptly acted upon by him or her. When inspection is denied, it shall be the responsibility of the person making that decision to issue within twenty-four hours the written statement required by RCW 42.17.310(4) and 42.17.320 identifying RCW 42.17.310 (1)(b) as the exemption authorizing withholding of the record, and explaining how inspection of the record would violate the employee's or commissioner's right of privacy. The decision of the executive director or deputy director shall be final agency action for purposes of judicial review.~~

~~(5) **Other records; review of denial.** Requests for inspection of records not in the personnel files of commission employees or members (that is, not covered by subsection (4) of this section) shall be acted upon immediately by the staff person who has charge of the record at the time the request is made. When that person believes that a request to inspect a record must be denied, he or she shall immediately contact his or her supervisor by telephone and obtain concurrence from the supervisor before denying inspection. The supervisor shall then issue, or cause to be issued, the written statement required by RCW 42.17.310(4) and chapter 42.17 RCW identifying the specific exemption authorizing the withholding of the record (or part) and briefly explaining how the exemption applies to the record withheld. A copy of the statement shall be immediately delivered or mailed to the deputy director.~~

~~(6) **Interpretation.** It is the policy of the Washington state human rights commission to carry out the spirit as well as the letter of chapter 42.17 RCW, and thus to afford the public maximum access to its records, subject to necessary respect for the right of individuals to privacy and the need for efficient administration of government. This regulation shall be interpreted in light of that spirit and this policy.)~~ (1) RCW 42.56.070(1) requires the human rights commission to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" at RCW 42.56.010(3) to include 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. RCW 42.56.010(3) excludes from the definition of "public record" the records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority.

(2) The purpose of these rules is to establish the procedures that the human rights commission 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 human rights commission and establish processes for both requestors and human rights

commission staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the human rights commission will be guided by the provisions of the act describing its purposes and interpretation.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-019, §162-04-030, filed 11/7/89, effective 12/8/89; Order 13, §162-04-030, filed 2/16/73.]

NEW SECTION

**WAC 162-04-032 Agency contact information—Public records officer.** (1) The human rights commission central office is located at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504.

(2) The public records officer will oversee compliance with the act but another human rights commission 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 human rights commission will provide full assistance to requestors; create and maintain for use by the public and human rights commission officials an index to public records of the human rights commission (when applicable); ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the human rights commission.

(3) Any person wishing to request access to public records of the human rights commission, or seeking assistance in making such a request should contact the public records officer designee of the human rights commission:

Records Analyst  
Human Rights Commission  
711 S. Capitol Way, Ste. 402  
P.O. Box 42490  
Olympia, WA 98504-2490  
360-359-4925  
360-586-2282  
records@hum.wa.gov

Information is also available at the human rights commission's website at [www.hum.wa.gov](http://www.hum.wa.gov).

(4) The human rights commission will provide members of the public with a form to make a public records request. This form is available through the public records officer designee or the website at [www.hum.wa.gov](http://www.hum.wa.gov).

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NEW SECTION

**WAC 162-04-033 Availability of public records.** (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the human rights commission, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the human rights commission. Many public records are also available for inspection and copying on the human rights commission's website at any time, at no cost.

(2) **Organization of records.** The human rights commission will maintain its records in a reasonably organized manner. The human rights commission will take reasonable actions to protect records from damage and disorganization. A requestor shall not take human rights commission records from the human rights commission. A variety of records is available on the human rights commission's website at [www.hum.wa.gov](http://www.hum.wa.gov). Requestors are encouraged to view the documents available on the website prior to submitting a records request.

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

(a) Any person wishing to inspect or copy public records of the human rights commission should make the request in writing on the human rights commission's request form, or by letter, fax, or email addressed to the public records officer designee at the email address [records@hum.wa.gov](mailto:records@hum.wa.gov), or by submitting the request in person at the human rights commission, 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504 and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records;
- Any limitations to the records request, such as by date that the record was created, by respondent entity, or by statutorily covered area such as employment or housing;
- 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. Pursuant to WAC 132-04-037 charges for copies are provided in a fee schedule available at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504, or at [www.hum.wa.gov](http://www.hum.wa.gov).

(c) A records request form is available for use by requestors at the office of the public records officer designee and online at [www.hum.wa.gov](http://www.hum.wa.gov).

(d) The public records officer designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer designee accepts such a request, they will confirm receipt of the information and the substance of the request in writing.

(e) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

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NEW SECTION**WAC 162-04-034 Processing of public records requests—General.**

(1) **Providing "fullest assistance."** The human rights commission is charged by statute with adopting rules which provide for how it will "provide full access to public records"; "protect records from damage or disorganization"; "prevent excessive interference with other essential functions of the agency"; provide "fullest assistance" to requestors; and provide the "most timely possible action" on public records requests. 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) Upon receipt of a request, the public records officer designee will log the text of the request, the name of the requestor, and the date of the request.

(3) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.

(4) Access to public records can be provided by allowing inspection of the record, providing a copy, or posting the record on the human rights commission's website and assisting the requestor with finding it.

(5) A requestor must request an "identifiable record" or "class of records" before the human rights commission 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. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records.

(6) **Acknowledging receipt of request.** Following the initial evaluation of the request under subsection (3) of this section, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the human rights commission's internet website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon, send the copies to the requestor;

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available);

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request that is unclear, and then to provide, to the greatest extent possible, a reasonable estimate of time the human rights commission will require to respond to the request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing.

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the human rights commission need not respond to it. The human rights commission will respond to those portions of a request that are clear; or

(d) Deny the request.

(7) **Consequences of failure to respond.** If the human rights commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contact the public records officer to determine the reason for the failure to respond.

(8) **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 the person 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.

(9) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the human rights commission believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. 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. A description of the records being withheld and the reasons for withholding, and the date of the final disposition of the request shall be logged.

(10) **Inspection of records.**

(a) A requestor may request to inspect records at the human rights commission office in Olympia. The records will be assembled and redacted of exempt information. Consistent with other demands, the human rights commission shall then provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document.

(b) The requestor must review the assembled records within thirty days of the human rights commission's notification to them that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that they should contact the agency to make arrangements to review the records. If the requestor or a representative of the requestor fails to review the records within the thirty-day period or make other arrangements, the human rights commission 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.

(c) **Providing copies of records.** After inspection is complete, the requestor requests copies of documents, the public records officer or designee shall make the requested copies or arrange for copying. If documents are copied, the copying charges outlined in WAC 162-04-037 will apply.

(11) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if they reasonably determine that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect or provide payment for one or more of the installments, the public re-

cords officer or designee may stop searching for the remaining records and close the request.

(12) **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 on the log and in the last communication with the requestor that the human rights commission has completed a reasonable search for the requested records and made any located nonexempt records available for inspection or has provided the requested copies or electronic documents.

(13) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill their obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the human rights commission has closed the request.

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

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AMENDATORY SECTION (Amending WSR 89-23-019, filed 11/7/89, effective 12/8/89)

**WAC 162-04-035 ((Protective orders to seal produced documents.))**

**Processing of public records requests—Electronic record.** ((+1) **May be requested.** Any person who is asked or compelled to produce records may request a protective order to have a particular document or part of document that has been produced or will be produced kept confidential for official use only, without public access.

(2) **To whom addressed.** Prior to notice of hearing, a request for a protective order shall be made to the chairperson of the commission pursuant to the procedures established in WAC 162-08-020. After notice of hearing, a request for a protective order shall be made by motion to the administrative law judge, as provided in WAC 162-08-263(3).

(3) **Form of request.** Requests for a protective order shall be in written affidavit form and shall state the requestor's reasons why a protective order should be issued for the documents covered.

(4) **Grounds for issuance.** A protective order may be made only upon findings that:

(a) The document or part of document is exempt from public disclosure under RCW 42.17.260 and 42.17.310 (Initiative 276) and the commission's implementing regulation, WAC 162-04-030, and;

(b) The requestor has shown legitimate need for confidentiality of the document or part of document.

(5) **Form of order.** The protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and



signature of the executive director or other authorized staff person or the administrative law judge. The text of the order shall contain:

(a) A description in general terms of each document covered by the order. *Example:* "Report dated . . . . . of Dr. . . . . to respondent on results of physical examination of the complainant, two pages."

(b) A statement of the specific exemption from the disclosure provisions of chapter 42.17 RCW authorizing the withholding of the record or part of record and a brief explanation of how the exemption applies to what is withheld. See RCW 42.17.310(4).

(c) A statement of why there is need for confidentiality of the document or part of document.

(6) **Filing of order.** The protective order shall be affixed to a sealed envelope containing the protected document and both shall be kept in the case file, or, alternatively, the original order and protected document may be kept at another place and a copy of the protective order placed in the case file along with a notation as to where the original order and protected document are kept.

(7) **Effect of order.** Except as may be provided in the protective order, documents covered by the protective order shall not be revealed to anyone other than commissioners, members of the commission's staff, and the commission's legal counsel for official purposes and shall not become public when the rest of the file becomes public as provided in WAC 162-04-030 (1)(a)(ii), but:

(a) Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of the hearing or case, and;

(b) Nothing herein is intended to prevent a court from ordering production of a protected document under RCW 42.17.310(3) or other authority.

(8) **Other protective orders.** Issuance of other kinds of protective orders concerning discovery is governed by WAC 162-08-096.) (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 designee will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the human rights commission and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by WAC 162-04-037. The fee schedule is available at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504 and www.hum.wa.gov.

(3) **Customized electronic access services.** While not required, and with the consent of the requestor, the human rights commission may decide to provide customized electronic access services and assess charges under RCW 42.56.120 (2)(f). A customized service charge applies only if the human rights commission 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 purposes. The human rights commission may charge a fee consistent with RCW 42.56.120 (2)(f) for such customized access.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-019, § 162-04-035, filed 11/7/89, effective 12/8/89.]

NEW SECTION

**WAC 162-04-036 Exemptions.** (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. The human rights commission will exempt these records from inspection and copying.

(2) The human rights commission is prohibited by statute from disclosing lists of individuals for commercial purposes.

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NEW SECTION

**WAC 162-04-037 Costs of providing copies of public records.** (1) **Inspection.** There is no fee for inspecting public records, including inspecting records on the human rights commission's website.

(2) **Statutory default costs.** The human rights commission is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: Funds were not allocated for performing a study to calculate such actual costs and the human rights commission does not have the resources to conduct a study to determine actual copying costs for all its records; staff resources are insufficient to perform a study and to calculate such actual costs; to conduct such a study would interfere with other essential agency functions; and, through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act, including RCW 42.56.120 and other laws. Therefore, in order to timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious and in the public interest for the human rights commission to adopt the state legislature's approved fees and costs for most of the human rights commission's records, as authorized in RCW 42.56.120 and as published in the agency's fee schedule.

(3) **Fee schedule.** The fee schedule is available at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504 and on the human rights commission's website at [www.hum.wa.gov](http://www.hum.wa.gov).

(4) **Estimate of costs for requestor.** If a requestor asks, the human rights commission will provide a summary of the applicable charges before copies are made, and the requestor may revise the request to reduce the number of copies to be made. The human rights commission will also provide a requestor, in advance, information concerning customized service charges if the request involves customized service.

(5) **Processing payments.** Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The human rights commission will not charge sales tax when it makes copies of public records.

(6) **Costs of mailing.** The human rights commission may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment may be made by cash, check, or money order to the human rights commission.

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NEW SECTION

**WAC 162-04-038 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 agency executive director. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the human rights commission's receipt of the petition, or within such other time as the human rights commission and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the human rights commission 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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