

WSR 24-10-074
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed April 29, 2024, 2:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-053.

Title of Rule and Other Identifying Information: Washington state criminal justice training commission (WSCJTC) public records WAC changes.

Hearing Location(s): On June 12, 2024, at 10:00 a.m., at WSCJTC, 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: June 12, 2024.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email lacey.ledford@cjtc.wa.gov, by June 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This WAC updates the public records rules for WSCJTC to match current practices. It also updates the waiver of copying fees, record index location, and how to perform inspections of the record index if in person.

Reasons Supporting Proposal: To increase transparency and clarity of the rules.

Statutory Authority for Adoption: RCW 42.56.040 and 43.101.080.

Statute Being Implemented: RCW 42.56.040.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, 206-793-6332.

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 is part of a governmental process under the Public Records Act. The WAC will not fundamentally change the nature or requirements of the process.

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.

Scope of exemption for rule proposal:

Is fully exempt.

April 29, 2024
Lacey Ledford
Rules Coordinator

OTS-5383.2

AMENDATORY SECTION (Amending WSR 22-19-001, filed 9/7/22, effective 10/8/22)

WAC 139-02-021 Definitions. The definitions set forth in RCW 42.56.010 apply throughout this chapter. In addition, the definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **Commercial purposes** means a business activity by any form of business enterprise intended to generate revenue or financial benefit.

(2) **Customary business hours** refers to Burien administrative office hours (~~(which are 8:00 a.m. to 5:00 p.m., Monday through Friday)~~) as provided on the commission's website at cjtc.wa.gov, excluding holidays and days the commission is closed.

(3) **Electronic format** or **electronic records** or **electronic records format** refer to digital records as distinct from paper; examples include email, Word or Excel documents, PDF, or media files.

(4) **Executive director** means the executive director of the Washington state criminal justice training commission.

(5) **Page** means one impression/image on a single side of a standard 8" x 11" sheet of paper. It also applies to one electronic image of a single side of a sheet of paper. For example, the commission considers a physical sheet of paper with an impression/image on both sides as two pages.

(6) **Public Records Act** means the same as chapter 42.56 RCW.

(7) **Public records officer** means the public records officer or designee for the commission appointed by the executive director.

(8) **Request** or **public records request** means a public records request made pursuant to chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 22-19-001, filed 9/7/22, effective 10/8/22)

WAC 139-02-050 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying by appointment, per WAC 139-02-090(9), during ((normal)) customary business hours of the commission(~~(; 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays and days the campus is closed)~~). Records must be inspected at the Burien campus of the commission.

(2) **Records index.**

(a) The commission shall have available to all persons (~~(at its offices in Burien)~~) on its website a current index which provides identifying information as to the following records:

(i) ~~((All))~~ No historical index exists for records issued before July 1, 1990 (~~(, for which the commission has maintained an index)~~);

(ii) Final orders entered after June 30, 1990, that are issued in adjunctive proceedings as defined in RCW 34.05.010(1) and contain an analysis or decision of substantial importance to the commission in carrying out its duties;

(iii) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and contain an analysis or decision of substantial importance to the commission in carrying out its duties;

(iv) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990;

(v) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990; and

(vi) Meeting minutes of the governing body of commission.

(b) The system of indexing shall be as follows:

(i) The indexing system shall be administered by the commission's public records officer (~~and shall be located at the Burien campus~~).

(ii) (~~Copies of~~) The record indexes shall be available under the public record section on the commission's website for public inspection and copying (~~in the same manner provided for the inspection and copying of public records~~).

(iii) The public records officer shall establish and maintain a separate index for each item (~~contained in (a)(i) through (vi)~~) of this subsection as follows:

(A) All final orders and declaratory orders determined by the commission to contain analyses or decisions of substantial importance to the commission shall be listed alphabetically by the titles of the hearing or controversy and shall contain a phrase describing the important issue or issues.

(B) Interpretive statements and policy statements shall be indexed by the applicable program.

(C) The meeting minutes of the governing body of the commission shall be indexed chronologically.

(iv) The public records officer shall update all indexes at least once a year and shall revise such indexes when deemed necessary.

(3) Organization and protection of records.

(a) The commission maintains its records in a reasonably organized manner and takes reasonable actions to protect records from damage and disorganization. If commission records are maintained in a digital format, they will be provided digitally in response to a public records request. If records are maintained and inspected on paper, a requestor may ask for copies.

(b) Records will be made available to the requestor for inspection subject to the following restrictions:

(i) Only the public records officer or designee will remove records from the designated inspection area.

(ii) The quantity of records may be limited in accordance with the available space.

(iii) All possible care shall be taken by the requestor to prevent damage to the records.

(iv) Records shall not be marked, altered, cut or mutilated in any way.

(v) During inspection, eating, drinking, and smoking are prohibited.

(vi) Records shall not be defaced in any way including writing on, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that already exist in the file.

(vii) Records must be kept in the order in which received.

(viii) Commission personnel will provide all requested copies of records.

(ix) The public records officer or designee will remove the records from the inspection area when no longer required by the requestor and no later than the end of the customary business hours.

(c) Records may be available on the commission website at cjtc.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records of the commission shall make the request in writing using the commission public record request website, by letter, or email addressed to the public records officer. Each request should include the following information:

((+)) (i) Name of requestor;

((+)) (ii) Address of requestor;

((+)) (iii) The calendar date of the request;

(iv) Other contact information, including telephone number and/or an email address; and

((+)) (v) Identification or description of the public records adequate for the public records officer or designee to locate the records.

(b) Communications seeking commission records sent or provided to unauthorized locations, addresses or staff, will not be accepted or processed as public records request. Any such communication will be processed as general informal inquiries, general correspondence, general requests for information, or discovery as appropriate. The requestor may resubmit his/her request to the public records officer or designee at the Burien office during customary business hours.

(c) If the requestor wishes to have copies of the records made instead of inspecting them, the request should so indicate. Costs will be assessed in compliance with WAC 139-02-070.

(d) If requestors wish to inspect rather than obtain copies of records, they must indicate this preference in their requests and the requestor must follow the rules of requesting to inspect public records provided in WAC 139-02-090((+)) (9).

AMENDATORY SECTION (Amending WSR 22-19-001, filed 9/7/22, effective 10/8/22)

WAC 139-02-070 Costs for providing copies of public records.

(1) The following copy fees and payment procedures apply to requests to the agency under chapter 42.56 RCW.

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

(a) The agency 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) There is no fee charged for inspecting public records.

(4) **Costs for paper copies.** The agency will charge for copies of paper records pursuant to the fees in RCW 42.56.120 (2)(b) and (c) for each request.

(a) Before beginning to make copies for each request, the public records officer or designee may estimate costs of copying the records and may require a deposit of up to 10 percent of all the records selected by the requestor.

(b) The public records officer or designee may 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.

(c) The commission shall not charge sales tax when it makes copies of public records.

(5) **Costs for electronic records.** Electronic copies of records for each request shall be charged as follows pursuant to the fees in RCW 42.56.120 (2) (b) and (c), which includes:

(a) Charge for scanned records or for use of agency equipment for scanning.

(b) Charge for each four electronic files or attachments uploaded to email, or cloud-based data storage service, or other means of electronic delivery.

(c) Charge per gigabyte for records transmitted in an electronic format or for use of agency equipment to send records electronically.

(d) Actual costs of any digital storage media or devices provided by the agency.

(e) Actual costs of a "customized service charge" when the request would require the use of information technology expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes.

(i) The agency will notify the requestor and take other steps if it will be doing a customized service charge.

(ii) The public records officer or designee may require a deposit of up to 10 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.

(iii) Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

(iv) Public records request fees do not supersede other statutory provisions for copying fees.

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

(7) **Payment.** Payment shall be made (~~(payable to the Washington state criminal justice training commission by check or money order only)~~) through the fiscal department of the commission. The process to accept payments will be fully explained to the requestor.

(8) **Payment date.** The (~~(payment date for fees, deposits, or other costs will be scheduled at a minimum of 30 days, but no more than 45 days, after the required payment is communicated with the requestor)~~) commission shall accept payment for 30 days after the date the payment invoice is mailed. If a requestor fails to pay by the payment date, the request will be closed per WAC 139-02-090(~~(+8)~~) (11).

(9) **Summary of charges.** (~~(Upon)~~) For each request, the 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, thereby reducing the applicable charges.

(10) **Waiver of charges.** Waivers may be made at the discretion of the public records officer, except the public records officer or designee will not charge a requestor copying fees (~~(when:~~

~~(a) All of the records responsive to an entire request are paper copies only and are 100 or fewer pages; or~~

~~(b) All of the records responsive to an entire request are electronic and no more than))~~ over a one-year period from the date of their initial request until their requests have exceeded:

(a) One hundred printed pages; or

(b) The equivalent of 250 printed pages of electronic records.

AMENDATORY SECTION (Amending WSR 22-19-001, filed 9/7/22, effective 10/8/22)

WAC 139-02-090 Processing requests for public records. (1) **Providing fullest assistance.** The Washington state criminal justice training commission is charged by statute with adopting rules which provide for how it shall "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 evaluate and process requests according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Acknowledging receipt of request.** 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;

(b) Provide the requested records (or provide ~~((a-bill))~~ copying fees for the records if applicable) to the requestor;

(c) Provide a reasonable estimate of when records will be available (the public records officer may revise the estimate of when records will be available when necessary);

(d) Deny the request and provide a statutory explanation as to the reason for the denial; or

(e) Acknowledge receipt of the request and ask the requestor to clarify all or any part of the request that is unclear and provide to the greatest extent possible a reasonable estimate of the time the commission will require to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) Clarification may include identifying a record with specificity sufficient for the commission to locate or produce the record;

(iii) If the requestor fails to respond to a request for clarification ~~((and)), the ((entire request is unclear, the commission need not respond to it. The))~~ commission will respond to those portions of a request that are clear. If the requestor does not respond to the request for clarification on the unclear portion of the request after records on the clear portion have been provided, the commission will consider the request abandoned per subsection (11) of this section;

(iv) If the requestor fails to respond to a request for clarification for 30 days on an entirely unclear request, the commission will consider the request abandoned per subsection (11) of this section.

(3) **Additional time to respond.** Additional time for the commission to respond to a request may be based upon the need to clarify the request, locate and assemble the records requested, notify affected others or agencies affected by the request, or 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) **Consequences of failure to respond.** If the commission 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 the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. This notice is given so affected persons may seek an order from a court to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

(6) **Records exempt from disclosure.**

(a) The commission reserves the right to determine a public record is exempt in whole or in part consistent with provisions of the Public Records Act or other applicable provision of law.

(b) If the commission believes a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief 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 or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(c) Certain exemptions other than the Public Records Act itself restrict the disclosure of documents held by the commission. Some examples of such other applicable statutory exemptions include, but are not limited to:

(i) RCW 5.60.060: Attorney-client privileged records.

(ii) Chapter 19.108 RCW: Trade secrets.

(iii) RCW 43.101.400(1) background investigation records.

(7) The commission reserves the right to ~~((delete))~~ redact identifying details when producing any public record when there is reason to believe disclosure of such details would be an invasion of personal privacy protected by RCW 42.56.050.

(8) The commission is prohibited by statute from disclosing lists of individuals or records that may be manipulated to created lists of individuals for commercial purposes pursuant to RCW 42.56.070.

(9) **Inspection of public records.**

(a) A requestor must notify the commission in advance of their intent to inspect public records. Using the tracking ID the commission assigns to each public records request a requestor must identify with specificity and in advance the records the requestor wishes to inspect. The commission will assist the requestor in scheduling an appointment for inspection and may propose convenient alternatives to an in-person visit. Public records will be available for inspection during customary business hours and when staff are available to assist the requestor.

(b) When the request to inspect is for a large number of records, the public records officer may schedule inspection in installments.

(c) The commission will work with the requestor to schedule an inspection and notify the requestor in writing of the scheduled appointment. ~~((The requestor must inspect the requested records within 30 days of the))~~ If the requestor does not attend the scheduled inspection date, the commission will reach out to reschedule the inspection within 30 days of the first scheduled appointment. If the requestor or a representative of the requestor fails to inspect the records within the 30-day period or fails to make other arrangements, the commission may ~~((close))~~ consider the request abandoned and refile the

assembled records. If the requestor makes a request for the same records it will be processed as a new request.

(d) Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

(e) Inspections are conducted in accordance with the requirement that agencies protect the requested records from damage or disorganization. No member of the public shall remove a document from the inspection area or disassemble or alter any public record.

(f) After inspection is complete, the requestor may wish to identify which documents the requestor wishes the agency to copy.

(i) Where the commission charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.

(ii) Electronic records will be provided as a link to the records on the commission public records website if the records are located on the public records website, or in a format used by the commission and which is generally commercially available.

(g) When the inspection of the requested records is complete and any requested copies are provided the public records officer will close the records request.

(10) Providing records in installments.

(a) When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be more practical.

(b) If, within 30 days, the requestor fails to inspect one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(c) When the request is for copies of public records, the public records officer may require payment for each installment either prior to providing the installment or prior to providing subsequent installments. In addition, the requestor may be required to provide a deposit up to 10 percent of the estimated cost of copying all records selected by the requestor. If the requestor fails to pay the required cost by the scheduled payment date, the public records officer may consider the request abandoned and close the request.

(11) Closing a withdrawn or abandoned request.

(a) The public records officer will close a request when the requestor:

(i) Withdraws the request;

(ii) Fails to fulfill his or her obligations to inspect the records 30 days after the scheduled inspection date;

(iii) Fails to clarify an entirely unclear request 30 days after clarification was requested;

(iv) Fails to claim an installment 30 days after records were provided;

(v) Fails to pay required fees for an installment by the scheduled payment date;

(vi) Fails to pay the deposit or final payment for the requested copies by the scheduled payment date.

(b) The public records officer will close the request and indicate to the requestor that the Washington state criminal justice training commission has closed the request and refile the assembled records.

(12) Later discovered documents. If, after the Washington state criminal justice training commission has informed the requestor that

it has provided all available records, the Washington state criminal justice training 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.

(13) The commission is not required to create a record that does not otherwise exist.