

WSR 23-16-139
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed August 2, 2023, 9:11 a.m., effective September 2, 2023]

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

Purpose: Amending chapter 136-03 WAC to make changes to the public records process of the agency.

Citation of Rules Affected by this Order: New WAC 136-03-045, 136-03-081 and 136-03-115; repealing WAC 136-03-060, 136-03-070, 136-03-080, 136-03-100 and 136-03-110; and amending WAC 136-03-010, 136-03-020, 136-03-030, 136-03-040, 136-03-060, and 136-03-090.

Statutory Authority for Adoption: RCW 36.78.070.

Other Authority: RCW 42.56.040.

Adopted under notice filed as WSR 23-07-093 on March 17, 2023.

Changes Other than Editing from Proposed to Adopted Version: Minor change made to WAC 136-03-040 regarding location for in-person public record requests and clarifying that requests must be submitted rather than made or sent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 6, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 6, Repealed 5.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 1, 2023.

Jane Wall
Executive Director

OTS-4441.3

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-010 Purpose and authority. The purpose of this chapter is to establish rules for compliance by the Washington county road administration board with the provisions of chapter 42.56 RCW ((42.17.250 through 42.17.340)) dealing with public records. This chapter describes the places at which, the employees from whom, and the methods whereby persons may obtain information, make submittals or requests, or obtain copies of agency decisions. Other chapters in Title 136 WAC describe the general course and method of the board's operations and the nature and requirements of all ((of)) its formal and informal procedures. For a description of the board's organization, see chapter 136-01 WAC.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-010, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-010, filed 6/10/92, effective 7/11/92.]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-020 Public records officer. The board's public records officer shall be the executive assistant to the county road administration board. The public records officer shall be officed at 2404 Chandler Court S.W., Suite 240, Olympia, Washington. The public records officer shall be responsible for:

(1) Implementation of chapter 42.56 RCW (~~(42.17.250 through 42.17.340)~~) and (~~(these rules and regulations)~~) this chapter regarding release of public records;

(2) Coordinating staff efforts of the county road administration board in this regard; and

(3) Ensuring compliance of the staff with (~~(RCW 42.17.250 through 42.17.340 and these regulations)~~) chapter 42.56 RCW and this chapter.

(~~The public records officer shall establish and maintain the index system required by RCW 42.17.260(4).~~)

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-020, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-020, filed 6/10/92, effective 7/11/92.]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-030 Public records available. (~~(All public records of the county road administration board not exempted by RCW 42.17.310, or other statute which exempts or prohibits disclosure (see RCW 47.17.260(1)), shall be available for public inspection and copying pursuant to these rules.)~~) Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 3:30 p.m. Monday through Friday, excluding legal holidays.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-030, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-030, filed 6/10/92, effective 7/11/92.]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-040 Requests for public records. (~~(Public records of the county road administration board shall be obtainable by persons who comply with the following procedures:~~

~~(1) A written request for public records shall be addressed to the public records officer. Such request shall include the following:~~

- ~~(a) The name of the person requesting the records (requestor).~~
- ~~(b) The calendar date on which the request was made.~~
- ~~(c) If the requested records are referenced in the current index maintained by the county road administration board, a reference to the requested record as it is described in such current index.~~
- ~~(d) If the requested records are not referenced in the current index, a statement that identifies the specific records requested.~~
- ~~(e) Where the requested records might be used for such a purpose, a verification that the records requested shall not be used to compile a commercial sales list.~~

~~(2) The public records officer shall inform the requestor whether and when the requested records will be available for inspection or copying at 2404 Chandler Court S.W., Suite 240, Olympia, Washington. If the requestor asks that the records be mailed to him or her, the public records officer shall do so, provided the records can be copied and sent without unreasonably disrupting the operations of the county road administration board, as provided in RCW 42.17.270.~~

~~(3) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the county road administration board is also a party (or when such a request is made by or on behalf of an attorney for such a party) the request shall be referred to the assistant attorney general assigned to the county road administration board for appropriate response.))~~

(1) Website records: Persons seeking public records of the county road administration board under the act are strongly encouraged to, before submitting a records request, first review the board's website at www.crab.wa.gov.

(2) Public Records Act requests: Public Records Act requests to the board must be submitted only to the public records officer in the Olympia office, in one of the following ways:

Online form: www.crab.wa.gov/
Email: publicrecords@crab.wa.gov
U.S. Mail, delivery, in-person:
County Road Administration Board
2404 Chandler Ct. S.W., Suite 240
Olympia, WA 98502

Requestors are strongly encouraged to submit requests in writing. Requestors are encouraged to use the online Public Records Act request form, which, once completed, is automatically submitted to the board's public records officer. The board accepts in-person requests at the Olympia office during normal office hours, 9:00 a.m. to noon and 1:00 p.m. to 3:30 p.m. Monday through Friday, excluding holidays and days the agency is closed. If the agency receives an oral request, the agency will reduce the request in writing and verify in writing with the requestor that it correctly memorialized the request.

Communications seeking agency records, but which are sent or provided to unauthorized staff will not be accepted as or processed as Public Records Act requests. The agency will process such communications as general informal inquiries, general correspondence, general requests for information, or discovery, as appropriate. The requestor may resubmit their request to the public records officer.

This Public Records Act request procedure provides the fullest assistance to requestors by:

(a) Establishing a uniform point of contact for all Public Records Act requests to the agency and related inquiries, consistent with the public records officer contact information published in the Washington State Register, and pursuant to RCW 42.56.580; and

(b) Enabling the agency to promptly distinguish Public Records Act requests as high volume of other daily communications to the agency on multiple topics, so as to enable appropriate responses and thereby avoid excessive interference with other essential agency functions as provided in RCW 42.56.100; and

(c) Ensuring that records requests submitted under the act are centrally reviewed during business hours by the public records officer or designee, so the agency may more efficiently assign a tracking number to the request, log it in, review it, provide an initial or other response within five business days after receipt as provided in RCW 42.56.520, and otherwise timely process the request pursuant to the act and these rules.

(3) The public records officer will oversee compliance with the act, but a designee may process the request. The public records officer or designee and the agency will provide the fullest assistance to requestors; 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 agency. More information about submitting public records requests to the agency is in this chapter and on the board's website.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-040, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-040, filed 6/10/92, effective 7/11/92.]

NEW SECTION

WAC 136-03-045 Response to public records act requests. (1)

General. The agency shall respond promptly to requests for records made under chapter 42.56 RCW, the Public Records Act. Within five business days of receiving a Public Records Act request, the agency will assign the request a tracking number and log it in. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Response.** Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one of the following:

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

(i) If copies are available on the agency's 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 agreed upon and satisfied, 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 the request or part of a request that is unclear, to provide, to the greatest extent possible, a reasonable estimate of the time the agency 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) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Additional time to respond.** Additional time for the agency to respond to a request may be based upon the need to clarify the request, locate and assemble the records requested, notify third persons 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 a part of the request.

(4) (a) **Communication encouraged.** If the requestor has not received a response in writing or has questions or concerns regarding the records request, the requestor is encouraged to contact the public records officer.

(b) **Reasonable estimate of time or costs.** The agency will provide an estimate of the time required to respond to the request, and may provide an estimate of copying costs pursuant to a specific request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs stated are not reasonable, the requestor may petition the public records officer for a formal review under WAC 136-03-090.

(5) **Third-party notice.** 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 or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure under RCW 42.56.540. Such notice should be given so as to make it possible for those other persons to contact the requestor to revise their 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) **Exemptions from disclosure.** Some records are exempt from disclosure, in whole or in part. If the agency believes that a record or part of 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 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 or designee 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 agency shall provide space to inspect public records at a location designated by the agency. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents they wish the agency to copy.

(b) The requestor must claim or review the assembled records within 30 days of the agency'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 claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30 day period or make other arrangements, the agency may close the request and refile the assembled records. Multiple public records requests from the same requestor can be processed in a manner so as not to interfere with essential agency functions, including processing records requests from other requestors.

(8) **Providing copies of records.** After inspection is complete, and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested by the requestor, the public records officer or designee shall make the requested copies or arrange for copying.

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

(b) Electronic records will be provided as a link to the records on the agency's website if the records are located on the website, or in a format used by the agency and which is generally commercially available. Records will generally not be provided by email, particularly for larger records responses with multiple records, or where records may not be successfully delivered or received via the agency's or the requestor's email systems.

(9) **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 30 days, the requestor fails to inspect or pay for the entire set of records or one or more of the installments, the public records officer or designee may stop searching for or producing 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 agency has completed a reasonable 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 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 agency has closed the request.

(12) **Later discovered documents.** If, after the agency has informed the requestor that it has provided all available records, the agency 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 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-060 ((Inspection and)) Copying ((costs)) fees—Pay-ments. ((1) No fee shall be charged for inspection of public records.

~~(2) The county road administration board shall impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse the county road administration board for its actual costs incident to such copying. Actual costs shall include:~~

~~(a) The labor and overhead costs of staff associated with responding to the request;~~

~~(b) Computer and/or copying machine costs and overhead; and~~

~~(c) Paper and/or other duplicating medium costs.)~~

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

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

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are 25 or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is undeliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or entire request, or customized service charge, exceeds \$25.

(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 agency will notify the requestor when payment is due.

(7) Payment should be made by check or money order to the county road administration board. The agency 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 agency 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.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-060, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-060, filed 6/10/92, effective 7/11/92.]

NEW SECTION

WAC 136-03-081 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statutes" exempts or prohibits disclosure. The attorney general's office maintains a list of exemptions commonly applicable to records which can be found on the attorney general's office website www.atg.wa.gov. Requestors should view this list to be aware of some of the exemptions, some of which are outside of the Public Records Act, that restrict the availability of some records held by the agency including, but not limited to, attorney-client privilege and work product doctrine.

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

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AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-090 Review of denial of public records request, estimates of time, estimates of cost. (~~((1) Any person who objects to the denial of a request for a public record may petition the public records officer for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.~~

~~(2) If the public records officer decides to affirm the denial, then the written request for review shall immediately be referred to the assistant attorney general assigned to the county road administration board. The assistant attorney general shall promptly consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision within two business days following the original denial.~~

~~(3) Administrative remedies shall not be considered exhausted until the public records officer has returned the petition with a deci-~~

~~sion or until the close of the second business day following denial of inspection, whichever occurs first.))~~

~~(1) The requestor is encouraged to communicate with the public records officer or assigned designee regarding denials of public records requests, estimates of time, or estimates of costs. If the requestor remains unsatisfied, the requestor may seek formal review of the issue.~~

~~(2) Any person who objects to the agency's denial or partial denial of a request for a public record or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of such decision by submitting a written request for a formal internal administrative review to the public records officer.~~

~~(3) The written request for formal review shall specifically refer to the written statement by the public records officer or designee which constituted or accompanied the denial or estimate.~~

~~(4) The request for formal review is to be directed to:~~

~~Executive Director
County Road Administration Board
2404 Chandler Ct. S.W., Suite 204
Olympia, WA 98502~~

~~(5) After receiving a written request for formal review of a decision denying a public record or estimate, the public records officer or designee denying the request shall refer it to the executive director. The agency will, within two business days following receipt of written request, respond with an estimate of time to consider the matter. Following such review, the executive director will either affirm, reverse, or amend the denial or estimate.~~

~~(6) For purposes of WAC 136-03-115, the agency shall have concluded a public record is exempt from disclosure only after the review conducted under this section has been completed.~~

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-090, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-090, filed 6/10/92, effective 7/11/92.]

NEW SECTION

WAC 136-03-115 Requests for review. A person may request that the attorney general's office conduct a review pursuant to RCW 42.56.530 of the agencies denial of records requested. Requests for such review shall be directed to the attorney general's office in accordance with WAC 44-06-160.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 136-03-050	Availability for public inspection and copying of public records—Office hours.
WAC 136-03-070	Protection of public records.
WAC 136-03-080	Denial of request.
WAC 136-03-100	Records index.
WAC 136-03-110	Availability.