

WSR 25-13-029

PROPOSED RULES

SECRETARY OF STATE

[Filed June 6, 2025, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-09-009.

Title of Rule and Other Identifying Information: Public records rules and procedures.

Hearing Location(s): On July 22, 2025, at 9:00 a.m., at the Washington State Library, 6880 Capital Boulevard S.E., Tumwater, WA 98501. When attending the hearing, walk into the front lobby of the Washington state library. You will be escorted to the conference room at 8:55 a.m. to be present when the hearing begins at 9:00 a.m. If you arrive after that time, there will be a staff member available in the lobby to escort you to the conference room.

Date of Intended Adoption: July 23, 2025.

Submit Written Comments to: Bob Williamson, P.O. Box 40224, Olympia, WA 98504-0224, email bob.williamson@sos.wa.gov, fax 360-704-7834, beginning June 7, 2025, 12:00 p.m., by July 21, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bob Williamson, phone 360-704-5209, fax 360-704-7834, email bob.williamson@sos.wa.gov, by July 21, 2025, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments update and clarify procedures for responding to public records requests in the office of the secretary of state.

Reasons Supporting Proposal: Current rules under chapter 434-12A WAC are outdated and do not entirely reflect actual operating procedures.

Statutory Authority for Adoption: Chapter 42.56 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bob Williamson, Tumwater, 360-704-5209.

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.

Scope of exemption for rule proposal:

Is fully exempt.

May 30, 2025
Amanda Doyle
Chief of Staff

RDS-6286.2

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available (~~for inspection and copying non-exempt~~) "public records" in accordance with published rules. (~~The act defines "public record" 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 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the "act"), that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of (~~these rules~~) this chapter is to establish the (~~procedures~~) rules the office of the secretary of state (the "office") 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 office of the secretary of state and establish processes for both requestors and secretary of state 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 office of the secretary of state~~) office will be guided by the provisions of the act describing its purposes and interpretation when carrying out responsibilities in chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 17-22-047, filed 10/25/17, effective 11/25/17)

WAC 434-12A-030 Description of the organization of the office of the secretary of state. (1) The (~~secretary of state's~~) office's general duties are set forth in chapter 43.07 RCW, and relate generally to elections, the formation and maintenance of business organizations, charitable solicitations, charitable trusts, registration of domestic partnerships, archives and records management, the state library, the productivity board, the address confidentiality program, legacy Washington, and the combined fund drive. (~~Additional functions include regulating the use of the state seal, filing or attesting to official acts of the legislature or governor, certifying to the legislature all matters legally required to be certified, issues apostilles, and other actions required or authorized by law. In addition to these constitutional and statutory duties, the secretary of state is frequently called upon to represent the state of Washington in international trade and cultural missions, and to greet and confer with dignitaries and delegations visiting the state of Washington from other countries.~~

(2) ~~The functions of the secretary of state are performed through the following divisions and programs:~~

(a) ~~The elections division, through which the secretary acts as the state's chief election officer;~~

~~(b) The corporations division, through which the secretary accepts filings as provided by law related to profit and nonprofit corporations and other forms of business organization, accepts registrations pursuant to the Charitable Solicitations Act and the Charitable Trust Act, accepts filings and issues licenses related to digital signatures, accepts registrations of domestic partnerships, and issues apostilles and trademarks;~~

~~(c) The archives and records management division, through which the secretary provides services as required by law related to archives and records management;~~

~~(d) The Washington state library, providing library services to the public and state government and related services;~~

~~(e) The special programs division, which includes:~~

~~(i) The productivity board, which the secretary chairs and whose staff provides organizational support and which provides awards and incentives related to state employee brainstorm and teamwork incentive programs;~~

~~(ii) The address confidentiality program, for victims of domestic violence, sexual assault and stalking;~~

~~(iii) Legacy Washington, which conducts, publishes and preserves oral histories of significant figures in Washington history; and~~

~~(iv) The combined fund drive, Washington state's workplace giving program for active and retired public employees.~~

~~(3) The offices of the secretary of state and their staff are located at:~~

~~(a) Main Administrative Office, Legislative Building, 416 Sid Snyder Way, P.O. Box 40220, Olympia, WA 98504-0220;~~

~~(b) Elections Division, 520 Union Ave. S.E., P.O. Box 40229, Olympia, WA 98504-0229;~~

~~(c) Corporations Division, 801 Capitol Way South, P.O. Box 40234, Olympia, WA 98504-0234;~~

~~(d) Archives and Records Management Division, 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238. The archives and records management division also includes:~~

~~(i) The State Records Center, located at 7590 New Market Street S.W., Tumwater, WA, mailing address: P.O. Box 40239, Olympia, WA 98504-0239;~~

~~(ii) Archives Regional facilities:~~

~~(A) Southwest Regional Branch, located at 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238;~~

~~(B) Puget Sound Regional Branch, located at 3000 Landerholm Circle S.E., MS-N100, Bellevue, WA 98007-6484;~~

~~(C) Northwest Regional Branch, located at Western Washington University, MS-9123, Bellingham, WA 98225-9123;~~

~~(D) Central Regional Branch, located at 400 E. University Way, Mail Stop 7547, Ellensburg, WA 98926-7547; and~~

~~(iii) The Washington State Digital Archives, and Eastern Washington Regional Branch, located at 960 Washington Street, Cheney, WA 99004;~~

~~(e) The Washington State Library, Point Plaza East, 6880 Capitol Blvd. S.E., Tumwater, P.O. Box 42460, Olympia, WA 98504-2460;~~

~~(f) The Productivity Board, The Address Confidentiality Program, and Legacy Washington, Legislative Building, P.O. Box 40220, Olympia, WA 98504-0220.~~

~~(4) Any person wishing to request access to public records of the office of the secretary of state, or seeking assistance in making such a request, should contact the public records officer by mail at P.O.~~

Box 40224, Olympia, WA 98504-0224, or by fax at 360-704-7830, or by email at Publicrecords@sos.wa.gov. Information is also available at the secretary of state's website, at www.sos.wa.gov.

~~(5))~~ (2) The public records officer ((will oversee)) is responsible for overseeing the office's compliance with the act, but another ((secretary of state)) office 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 office of the secretary of state will provide the fullest assistance to the requester)) will implement the office's rules regarding public records; create and maintain ((for use by the public and the office of the secretary of state an index to public records of the office by making available those records retention schedules applicable to the office of the secretary of state; and prevent fulfilling public records requests from causing excessive interference with essential functions of the office)) a records index; and provide the fullest possible assistance to requestors.

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-040 Public records available. All public records of the office are deemed to be available for the public ((inspection and copying)) during normal business hours, pursuant to these rules and applicable state law ((, as follows:

~~(1) Hours for inspection of records.~~ Public records are available for inspection and copying during). For the purposes of this chapter, normal business hours ((of the office of the secretary of state,)) are Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the office ((of the secretary of state,)) for which an appointment ((may be)) is required.

~~((2))~~ (1) Records index. Pursuant to RCW 42.56.070, an index ((of public records)) is available ((for use by members of the public, consisting of those records retention schedules applicable to the office of the secretary of state)) on the office's website at www.sos.wa.gov. A variety of other records are also available on the office's website. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

~~((3))~~ (2) Organization of records. The office ((of the secretary of state)) will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. ((A requester shall not take original records from the office. A variety of records are available on the secretary of state website at www.secstate.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 office of the secretary of state should make the request in writing by letter, fax, or email addressed to the public records officer and including the following information:~~

- ~~• Name of requester;~~
- ~~• Address of requester;~~
- ~~• 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; and~~
- ~~• The date of the request.~~

~~(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Copies will be made by secretary of state staff unless other arrangements are agreed upon. Costs for copying are specified in WAC 434-12A-100.~~

~~(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing. The office will presume that the request is fully and accurately described in this confirmation unless the requestor promptly indicates otherwise in writing.)~~

NEW SECTION

WAC 434-12A-042 Making a request for public records. In accordance with chapter 42.56 RCW, the public may request to inspect or copy records as follows:

- (1) Submit a request through one of the following methods:
 - (a) Online at www.sos.wa.gov;
 - (b) Email to PublicRecords@sos.wa.gov;
 - (c) Mail to P.O. Box 40224, Olympia, WA 98504-0224;
 - (d) Fax to 360-704-7830; or
 - (e) Verbally by phone at 360-704-5220 or in person. The public records officer or designee will confirm receipt of request in writing. The office will presume that the request is fully and accurately described in this confirmation unless the requestor promptly indicates otherwise in writing.
- (2) Requestors may be asked to include the following information with their records request:
 - (a) Name of requestor. Identity of requestor may be required if the records sought are limited to a particular group;
 - (b) Other contact information, such as email address, physical address, or telephone number;
 - (c) The calendar date of the request;
 - (d) The nature of the request; and
 - (e) A specific description of the public records, adequate for the public records officer or designee to locate the records.
- (3) If the requestor wishes to have copies of the records made instead of inspecting them, they should so indicate.
- (4) When requesting a list of individuals, the requestor may be required to complete a statement agreeing not to release or use the information for commercial purposes.
- (5) Requests must be made for identifiable public records and the office may ask for clarification when necessary. The public records officer or designee is not able to answer questions about the nature of records or their use.

AMENDATORY SECTION (Amending WSR 17-22-047, filed 10/25/17, effective 11/25/17)

WAC 434-12A-045 Processing of public records requests (~~(—General—)~~). (1) **Providing "fullest assistance."** (~~(The office of the secretary of state 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 provide the fullest assistance alongside the most timely possible action to requestors, without excessive interference to other essential functions of the office. The public records officer or designee will process requests in ~~((the))~~ an 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 or designee will do one or more of the following:

(a) (~~(Make the records available for inspection or copying;)~~) Provide the record or make the records available for inspection or copying, either in hard copy or electronically;

(b) Provide (~~(copies of the records, either in hard copy or electronically, upon payment of any applicable fees by the requestor; or))~~) an online link to the record. If the requestor notifies the office they cannot access records through the internet, then the public records officer or designee will provide copies of the record or allow the requestor to view copies;

(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 if the request is unclear or does not sufficiently identify the requested records. (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 close the request if the requestor fails to clarify the request within five business days of notice; or

(e) Deny the request. Denials will be accompanied by a written statement citing specific reasons for denial.

(3) (~~(Consequences of failure to respond.)~~) **Delayed responses.** If the (~~(office of the secretary of state does not respond))~~) requestor does not receive a response in writing within five business days of ((receipt of)) submitting the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the ((failure to respond)) delay and to determine whether their request was received.

(4) **Protecting rights of others.** (~~(In the event that))~~) If the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer or designee may ((, prior to providing the records, give)) provide notice to ((such others whose rights may be affected by the disclosure)) the persons named in the records, before providing records to the requestor. ((Such)) Notice should be given so as to make it possible for those ((other)) persons named to contact the requestor and ask ((him or her)) them 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. Due to these notifications, fulfillment of the request may be delayed.

(5) ~~((Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the office of the secretary of state 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 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.))~~ **Searching for records.** The office will conduct a reasonable search for responsive records. A reasonable search typically involves the public records officer or designee working with departments across the office to decide where the records are likely to be and how to access them. The office is only responsible for records it creates or maintains and not for records created or maintained by other state agencies or local governments.

(6) **Inspection of records.**

(a) Consistent with other demands, the office ~~((of the secretary of state))~~ shall promptly 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))~~ public records. The requestor shall indicate which ~~((documents he or she wishes the agency to copy))~~ records they want copied.

(b) The requestor must claim copies or review the assembled records within thirty days of the office's notification ~~((to him or her that the records are available for inspection or copying))~~. The ~~((agency))~~ public records officer or designee will notify the requestor in writing of this requirement and ~~((inform the requestor that he or she should contact the agency))~~ ask them to make arrangements to ~~((claim copies))~~ collect or review the records.

(c) If the requestor or ~~((a))~~ their representative ~~((of the requestor))~~ fails to claim ~~((copies))~~ or review the records within the ~~((thirty))~~ 30-day period or make other arrangements, the office ~~((of the secretary of state))~~ 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.))~~ The public records officer or designee will notify the requestor in writing that the request will be closed within 10 business days if the records are not inspected.

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

(8) **Providing electronic records.** Electronic records will be provided in a format that is generally commercially available. If the requestor notifies the office they cannot access electronic records, then the public records officer or designee will provide paper copies of the record or allow the requestor to view copies using an office computer.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee ~~((will))~~ may 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))~~ records in installments. If,

within ~~((thirty))~~ 30 days, the requestor fails to inspect or open electronically 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. The public records officer or designee will notify the requestor in writing that the request will be closed within 10 business days if the records are not inspected or opened electronically.

~~((9))~~ (10) Completion of ((inspection)) request. ~~((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 office of the secretary of state has completed a diligent search for the requested records and made any located nonexempt records available for inspection.))~~ After the public records officer or designee has finished all searches for records, provided all installments of records, and after the requestor has completed any inspections or requests for copies, the office will send the requestor a written notification, closing the request.

~~((10))~~ (11) Closing withdrawn or abandoned requests. ~~((When))~~ If the requestor either withdraws the request or fails to fulfill ~~((his or her))~~ their obligations to inspect the records ~~((or pay the deposit or final payment for the requested copies)),~~ the public records officer ~~((will))~~ or designee may close the request and indicate in writing to the requestor that the ~~((office of the secretary of state has closed the))~~ request is closed.

~~((11))~~ (12) Later discovered documents. ~~If ((, after the office of the secretary of state has informed the requestor that it has provided all available records,))~~ the office ~~((becomes aware of))~~ discovers additional responsive documents existing at the time of the request, ~~((it))~~ the public records officer or designee will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 434-12A-054 No duty to create records. The office is not obligated to create a new record to satisfy a records request, including production of new records from an electronic database. See WAC 44-14-04003(6).

AMENDATORY SECTION (Amending WSR 17-22-047, filed 10/25/17, effective 11/25/17)

WAC 434-12A-100 ~~((Calculation of actual costs of producing copies of public records declared to be unduly burdensome Adoption of statutory fee schedule.))~~ Costs for providing copies of public records. (1) ~~((Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the office of the secretary of state declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and~~

~~disrupt other essential functions.))~~ The office does not charge fees for the inspection of public records.

(2) ~~The office ((of the secretary of state)) may charge fees for ((production of))~~ providing copies of public records consistent with the fee schedule established in RCW 42.56.120 ((, as amended by section 3, chapter 304, Laws of 2017)).

(3) ~~((The Washington state archives research fees covered by WAC 434-690-080 are determined by archives according to its terms. The corporation fees are per WAC 434-112-085.))~~ Pursuant to RCW 42.56.120(2), the office declares for the following reasons that it would be unduly burdensome to calculate the actual costs of providing copies of public records:

(a) Funds were not allocated for performing a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential functions.

(4) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ~~((ten))~~ 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. The office ~~((of the secretary of state))~~ will not charge sales tax when it makes copies of public records.

~~((5) **Costs of mailing.** The office of the secretary of state may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(6) **Payment.** Payment may be made by cash, check, or money order to the office of the secretary of state, or by those credit or debit cards accepted by the office.~~

~~(7) The public records officer or designee has discretion to waive the applicable fees when the total cost for copying and mailing all responsive records is less than five dollars.))~~

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-12A-110 Exemptions. (1) The Public Records Act provides that a number of ~~((document))~~ record types are exempt from public ~~((inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits))~~ disclosure. If the office determines a record or information within a record is exempt from disclosure, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or portion of the record is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions while providing the non-exempt portions.

(2) Requestors should be aware ((of the following)) that exemptions((,)) outside the Public Records Act((, that)) may restrict the availability of some ((documents)) records held by the office ((of the secretary of state for inspection and copying)). These exemptions include, but are not limited to, the following:

RCW 5.60.060(2) (attorney-client privilege, together with attorney work product privilege).

RCW 5.60.060(5) (communications to a public officer in official confidence).

RCW 5.60.070 (communications between a mediator and a party to mediation).

~~(RCW 19.34.240 (digital signatures).~~

~~RCW 19.34.420 (digital signatures).)~~

RCW 29A.08.710 through 29A.08.775 (voter registration records).

RCW 29A.32.100 (arguments and statements for voters pamphlet).

RCW 29A.60.110 (sealing of ballot containers).

RCW 40.14.030 (exempt records accessioned into state archives).

RCW 40.24.070 (address confidentiality program).

~~(RCW 43.07.100 (records of entities supplying information to the bureau of statistics).~~

~~5 U.S.C. § 552(a) (the federal Privacy Act).)~~

The foregoing list is for informational purposes only and failure to list an exemption shall not affect the efficacy of any exemption. The ~~((secretary of state))~~ office reserves the right to determine that a public record is exempt under the provisions of state law.

~~((2))~~ (3) The office ~~((of the secretary of state))~~ is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-120 Review of denials of public records requests.

(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))~~ the 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 assistant secretary of state or the deputy secretary of state ~~((That person)),~~ who will ~~((immediately))~~ consider the petition and either affirm or reverse the denial. Within two business days following ((the office's)) receipt of the petition, ((or within such other time as the office of the secretary of state and the requestor mutually agree to)) the assistant secretary of state or deputy secretary of state shall notify the petitioner and the public records officer in writing of the decision or that more time is required to consider the petition.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the office ~~((of the secretary of state))~~ 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|---|
| WAC 434-12A-055 | Processing of public records requests— Electronic records. |
| WAC 434-12A-150 | Revolving fund. |