

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 130-10 WAC PUBLIC RECORDS—DISCLOSURE.

AMENDATORY SECTION (Amending Order 73-4, filed 9/12/73)

WAC 365-04-030 ((Agency)) Department organization.

(1) The executive head of the ~~((agency))~~ department is a director appointed by the governor. The director may delegate such of his or her functions, powers, and duties to such officers and employees of the ~~((office))~~ department as he or she deems expedient to the furtherance of the purposes of the ~~((agency))~~ department. The operating sections of the ~~((agency))~~ department include the ~~((comprehensive health planning office, the law and justice planning office, and the local planning assistance, community services, model cities/planned variations, training and education, special projects, and administrative divisions))~~ administrative services division, the community services and housing division, the office of economic development and competitiveness, the energy division, and the local government division.

(2) The principal office of the ~~((agency))~~ department shall be ~~((at Olympia, Washington, in care of the Director of the Planning and Community Affairs Agency, Insurance Building, which office))~~ located at 1011 Plum Street SE, Olympia, Washington. This office shall be open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., (Saturdays, Sundays, and legal holidays excepted). Submissions, requests and communications shall be sent to the Director, ((Planning and Community Affairs Agency, Insurance Building, Olympia, Washington 98504)) Washington State Department of Commerce, P.O. Box 42525, Olympia, Washington 98504-2525.

~~((3) Pursuant to chapter 39.34 RCW and Executive Order 73-03, the director of the agency has entered into a joint venture agreement under which the functions and responsibilities of the planning and community affairs agency's local planning assistance, model cities/planned variations, special projects, training and education, community services, comprehensive health planning, law and justice planning and the Indian economic and employment assistance divisions, sections, and programs; as well as portions of the agency's administrative division and supporting programs have been assigned and delegated to the office of community development. The office of community development shall act as the agent for the planning and community affairs agency in carrying out the agency's functions and responsibilities; the agency shall act through the office of community development in connection with all matters assigned and delegated to the office of community development under the joint venture agreement for the duration of that agreement.))~~

NEW CHAPTER

Chapter 365-10 WAC PUBLIC RECORDS—DISCLOSURE

NEW SECTION

WAC 365-10-010 Purpose.

The purpose of this chapter shall be to ensure the department's compliance with the provisions of the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 365-10-020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Department" means the department of commerce.
- (2) "Disclosure" means inspection and/or copying.
- (3) "Public record" has the meaning ascribed to it in RCW 42.56.010, available at leg.wa.gov.
- (4) "Writing" has the meaning ascribed to it in RCW 42.56.010, available at leg.wa.gov.

NEW SECTION

WAC 365-10-030 Public Disclosure Officer.

The department shall designate a public disclosure officer who shall be responsible for implementing the department's rules regarding disclosure of public records, coordination of staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.

NEW SECTION

WAC 365-10-040 Public records—Availability.

(1) Public records are available for public inspection and copying during the department's normal business hours, which can be found in WAC 365-04-030. Records must be inspected at the main office of the department.

(2) The department will at all times take the most timely possible action on requests for disclosure, and shall respond in writing as set forth in WAC 365-10-090 within five business days of receipt of the request for records.

NEW SECTION

WAC 365-10-050 Request for public records.

(1) Any person wishing to inspect or copy public records of the department may submit the request in writing to the department, attn. Public Disclosure Officer or via e-mail at publicdisclosure@commerce.wa.gov. The department's current mailing address can be found in WAC 365-04-030. The request should include the following information:

- a) Name of requestor;
- b) Address of requestor;
- c) Other contact information, including telephone number and e-mail address;
- d) Identification of the public records sought adequate for the public records officer to locate the records; and
- e) The date and time of day of the request.

(2) The public records officer may accept public records requests by telephone or in person. However, the requesting party may be asked to submit the request in writing or the public records officer may confirm receipt of the request and restate the substance of the request in writing.

(3) Nothing in this chapter shall be construed to require the department to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the department and is not required for litigation by rules of pretrial discovery.

NEW SECTION

WAC 365-10-060 Fees—Inspection and copying.

(1) No fee shall be charged for the inspection of public records.

(2) The charge for providing public records may be the actual cost incident to providing the records.

(a) The charge may include the actual cost of the postage or delivery, including the cost of the shipping container, cost of duplicating tape recordings, videotapes, photographs, slides, disks or similar media.

(b) There will be no charge for e-mailing electronic records to a requestor, unless another cost applies.

(3) If determining the actual cost is too burdensome or if the cost cannot be determined, the department may charge fifteen cents for each page, however produced, and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(4) Before beginning to copy public records, the public records officer may require:

(a) A deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor;

(b) The payment of the remainder of the copying costs before providing all the records; or

(c) The payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(5) Payment must be made by cash in the exact amount charged, check, or money order to the department.

NEW SECTION

WAC 365-10-070 Protection of public records.

(1) No person shall knowingly alter, deface, or destroy public records of the department.

(2) Original copies of public records of the department shall not be removed from the premises where maintained.

(3) Care and safekeeping of public records furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

NEW SECTION

WAC 365-10-080 Records index.

The department will maintain and make available for public inspection and copying an index in accordance with RCW 42.56.070(5).

NEW SECTION

WAC 365-10-090 Disclosure procedure.

1) Within five business days of receipt of the public records request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

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

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, obtain clarification from the requestor. The public records officer may then revise the estimate of when records will be available; or

(e) Deny the request.

(2) In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure pursuant to RCW 42.56.540. The notice to the affected persons will include a copy of the request.

(3) Some records are exempt from disclosure, in whole or in part. If the department believes that an entire record is exempt from disclosure and should be withheld, the public records officer will identify the record, 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, the public records officer will redact the exempt portions, provide the nonexempt portions, state the specific exemption and provide a brief explanation of why the portions of the record are exempt from disclosure.

(4) When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the department has closed the request.

(5) When a response to a public records request is complex or involves a large number of records, the public records officer may provide access for inspection and copying in installments pursuant to RCW 42.56.080.

a) The requestor will be notified when an installment is ready for inspection. If, within thirty calendar days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer may close the request.

b) 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 ten percent of the estimated cost of copying all records selected by the requestor. If the requestor fails to pay the required cost within thirty days, the public records officer may close the request.

(6) The process for electronic public records is the same as paper public records.

(a) When a requestor requests records in an electronic format, the public disclosure officer will provide available nonexempt electronic public records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which

the agency keeps the record, or as otherwise agreed to between the requestor and the public disclosure officer.

(b) Whenever possible, the department will provide records in electronic format. If the department has only a paper copy of the record, the department, when feasible, may scan the paper record and provide the resulting electronic copy to the requestor. If the department maintains the record in electronic format, the record will be provided in the maintained electronic format unless the requestor specifically asks to receive the record in paper copies or it is otherwise not feasible to provide the record in electronic format.

(c) If a record exists on a web page, the department will respond to a request for the record by providing the link to the record on the web page.

(7) The department is not required to create a record that does not otherwise exist.

NEW SECTION

WAC 365-10-100 Exemptions to public records disclosure.

(1) The department reserves the right to determine that a public record requested is exempt, in whole or in part, under the provisions of chapter 42.56 RCW or other applicable provision of law.

(2) In addition, there are exemptions outside the Public Records Act that restrict the availability of some documents held by the department for inspection and copying;

(3) The department is prohibited by statute from disclosing lists of individuals for commercial purposes pursuant to RCW 42.56.070(9).

NEW SECTION

WAC 365-10-110 Qualifications on nondisclosure.

(1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.56.210(1).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court enforcing a subpoena in accordance with the provisions of RCW 42.56.210(2).

NEW SECTION

WAC 365-10-120 Review of denials of public records request.

(1)(a) Any person who has been denied an opportunity to inspect or copy a public record by the department, or who believes that the department has not made a reasonable estimate of the time required to respond to a public record request, may petition the department for prompt review of its decision.

(b) The petition shall be in writing and shall include a copy of, or reasonably identify, the written statement by the public disclosure officer denying the request or providing the estimate.

(c) The petition shall be sent to the public disclosure officer who shall promptly provide the petition and any other relevant information to the department official designated by the department to conduct the review.

(2) The designated official will immediately consider the petition and either affirm or reverse the denial or the estimate. This review will be complete within two business days following the

department's receipt of the petition, or within such times as mutually agreed by the department and the requestor.

(3) Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) 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.