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Policy 321**

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PUBLIC RECORDS

.1 PURPOSE

The purpose of this chapter is to:

- Promote compliance with the provisions of the Public Records Act, Chapter 42.56 RCW. The Act provides that each agency adopt and enforce reasonable rules and regulations to provide full access to public records.
- Further the public policy rationale behind the Act specifically that the citizens of this County do not yield their sovereignty to the County government that services them and insist on remaining informed so that they may maintain control over the instruments they have created.
- Liberally construe the provisions of the Act to favor inspection and/or copying of records to the requester and to narrowly interpret the exemptions that prevent production of records.
- Make available for public access, inspection and/or copying all Public Records, unless the record falls within the specific exemptions cited in RCW 42.56 or other laws that exempt or prohibit production of specific information or records.
- Inform the citizens of Clallam County how they may go about requesting access to Public Records.
- Provide the requester(s) with the fullest assistance feasible based on available County resources.
- Protect Public Records from damage, disorganization, or premature destruction.
- Prevent excessive interference with other essential functions of government.
- Provide consistent procedures to ensure that requests for inspection and/or copying of Public Records are responded to fully and in a timely manner.

.2 PUBLIC RECORDS POLICY

Clallam County, in accordance with these rules, makes available for public inspection and/or copying all Public Records, unless the record falls within the specific exemptions of RCW 42.56 or other statute or regulation that exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy, the County redacts identifying details in a manner consistent with applicable statute or regulation when it makes available or publishes any Public Record. In each case, the justification for the redacting or withholding of specific information will be explained fully in an exemption log and included with the records. The County complies with records retention rules promulgated by the Secretary of State, Division of Archives and Records Management.

Other documents providing further guidance regarding the disclosure of records may be located under "Reference Documents" on the County's Intranet.

.3 APPLICABILITY

Except for offices or personnel governed by CR 31 or CR 31.1; i.e. Superior Court, District Court, and Juvenile and Family Services, this policy applies to all Clallam County departments/offices, (collectively "departments"), County Officials, and employees, agents, or volunteers employed by or acting on behalf of Clallam County.

.4 DEFINITIONS

The following is a list of definitions used in this policy; also see Policy 101, Definitions:

- "Access" means a Public Record is available to the requester through the use of an electronic device owned or possessed by the requester.
- "Agency" or "Local Agency" means the political subdivision of the State of Washington known as Clallam County including its departments and employees as defined elsewhere in this policy.
- "Board" means the Board of Clallam County Commissioners.
- "Complex request" means any request that requires review of qualitatively complex records for possible redaction/withholding under applicable exemption(s).
- "Copy" means a duplicate version of the Public Record with any applicable redactions or exemptions.
- "County" means Clallam County, Washington.
- "Department(s)" means the collective noun referring to those offices in the County headed by a County Official.
- "Disclosed" or "Disclosure" means informing a requester that a document, record, or category of records exists and is a Public Record.
- "Deputy Public Records Officer" means an individual who acts as the Public Records Officer when they are not available to perform the duties.
- "Employee(s)" means an individual hired by the County, in a budgeted personnel line, to perform a scope of work in exchange for monetary compensation.
- "Exempt" means that a law or regulation allows or requires the withholding of a public record, or a portion thereof, from the requester.
- "Fulfillment" means the County has completed the Public Records Request.
- "Fullest assistance" means the allocation of County resources; i.e. staff time, equipment to the processing of a Public Records Request that is feasible and practical for the County at a particular time. This allocation of staff resources shall at no time excessively interfere with the other essential functions of the agency.
- "Inspection" means the review of records by the requester. After review they may choose to purchase all or portions of the records.
- "Large request" means any request made pursuant to the Public Records Act that results in 350 or more pages of responsive records in any format.
- "Native format" means the format a record or document was originally created in.
- "Produce" or "Production" means a disclosed record or category of records that will be provided to the requester.

- "Public Record" means 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 County regardless of physical form or characteristics and not restricted by copyright or other license agreement limiting its dissemination.
- "Public Records Act" means RCW 42.56 as currently exists or is hereinafter enacted.
- "Public Records Request" means any written, or subsequently memorialized in writing, request to inspect and/or copy Public Records.
- "Routine request" means a Public Records Request that is fulfilled easily/immediately as resources permit.
- "Writing" means handwriting, typewriting, texting, printing, photocopying, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

.5 WHAT IS A PUBLIC RECORD?

The definition is found in RCW 42.56.010(3). Any record in any "native format" is a Public Record if the answer to each of these questions is "yes:"

- a. Is it a writing?
- b. Does the writing contain information relating to the conduct of government or the performance of any governmental or proprietary function?
- c. Is the writing prepared, owned, used, or retained (think "POUR") by Clallam County?

Example: A text message on a personal cell phone that was generated in order to conduct County business will be deemed a "public record" because it meets this three-part test. However that "public record" text on a personal cell phone does not make other texts on the personal cell phone "public records" subject to the PRA if the other texts are personal rather than County-related in nature. See Nissen v. Pierce County, 183 Wn.2d 863, 357 P.3d 45 (2015) (holding records held on personal cell phone subject to the Act).

Example: A request that seeks an explanation or asks "how," "why" or "when" something happened and does not ALSO seek a document, record or category of records is NOT A REQUEST FOR PUBLIC RECORDS and is instead a REQUEST FOR INFORMATION, meaning the Public Records Act does not apply.

.6 PUBLIC RECORDS OFFICER

The Board shall appoint, by Resolution, a Public Records Officer (PRO) as required by RCW 42.56.580. County Officials will designate at least one Public Records Specialist to act as the point of contact in their department.

6.1 Duties

The Public Records Officer will:

- a. Oversee and monitor, through fulfillment, the County's response to all requests for Public Records.
- b. Prepare and organize the County's responses to requests including, but not limited to, determination if records are wholly or partially exempt.
- c. Retain in a manner consistent with the applicable Records Retention Schedule a copy of the records and any exemption logs sent to a requester along with any correspondence between the County and the requester relating to the request.
- d. Facilitate the management of departmental records with Public Records Specialists including destruction and/or transfer to the Washington State Archives.
- e. Assist Public Records Specialists in any department to obtain records in order to fulfill a request.
- f. Maintain a log of all requests including, at a minimum, the nature of the request, the date received, the date acknowledgment was provided to the requester, the date the request was fulfilled, and a brief description of the records provided.
- g. Update the requester during the pendency of any request.
- h. Maintain membership in the Washington State Association of Public Records Officers including obtaining certification within four years of appointment.
- i. Stay abreast of developments in state law and case law relating to the Public Records Act, including attendance at trainings or seminars as financial resources allow.
- j. Authority to designate a person as a Deputy Public Records Officer.

.7 PUBLIC RECORDS SPECIALIST(S)

Each County Official shall designate at least one Public Records Specialist; County Officials may serve as Public Records Specialists or any employees of their department. The names of the Public Records Specialists shall be supplied to the Public Records Officer within 30 days of the adoption of this Policy and at any time thereafter when a new person is assigned to serve in the role.

7.1 Duties

The Public Records Specialist will:

- a. Notify the Public Records Officer within one business day of receipt of any request received and forward that request to the Public Records Officer for processing.
- b. Locate, collate, and organize any and all records responsive to the request for review and processing by the Public Records Officer including, but not limited to, assisting the Public Records Officer (when possible) in determining if records are wholly or partially exempt.
- c. Work with the Public Records Officer to determine if clarification of the request is needed and to identify reasonable time frames to locate/process records.
- d. Act as the "go-to" person in the Department by managing and maintaining all public records.
- e. Stay abreast of developments in state law and case law relating to the Public Records Act, including attendance at training or seminars as financial resources allow.
- f. At the discretion of the County Official overseeing their department, obtain and maintain membership in the Washington State Association of Public Records Officers.

.8 REQUESTING INSPECTION AND COPYING OF PUBLIC RECORDS

8.1 Submission of Request for Public Records

All Public Records Requests will be submitted to the Public Records Officer; although all departments must accept requests for Public Records and forward them to the Public Records Officer for processing within one business day. The Public Records Officer shall make reasonable efforts to identify the department(s) where the Public Record may reside and coordinate the response with the designated Public Records Specialist in that department(s).

8.2 Requests for Records Having a Statutory Fee Attached to Their Release

Nothing in this Policy or any related Ordinance is intended to or removes or repeals the authority of any County Official to collect a fee set by state law for providing a citizen a particular record or record set that is within their control or is maintained by their office.

8.3 Hours for Inspection of Public Records

Public Records possessed by the County shall be available by appointment for inspection and/or copying during normal Courthouse business hours as established by Board policy.

8.4 Form of Request

All Public Records Requests shall be in writing, or if made orally, shall be subsequently memorialized in writing by the employee receiving the request on forms prescribed by the Public Records Officer. The writing shall identify the public records sought for inspection and/or copying. Written requests in other forms, including e-mail and letter, that clearly identify the Public Records requested and contain the necessary information will be accepted.

8.5 Routine Requests

Departments frequently receive routine requests for copies of records. In cases where the department routinely makes copies of records that are readily available, the County Official may determine that a written request is not required and the Public Records Officer shall be notified to document the request. The Public Records Specialist shall have discretion to determine how and when they will notify the Public Records Officer of their receipt and fulfillment of a routine request. This discretion is not available to the Public Records Specialists with respect to non-routine requests. In cases when the County Official waives the written request, such as for certified copies, the Policy must be applied consistently to all members of the public.

.9 RESPONSE TO REQUESTS FOR INSPECTION AND COPYING

9.1 Responses to be Made Promptly

Any department receiving a request for Public Records shall notify the Public Records Officer within one business day and the Public Records Officer will respond to the requester within five business days after receipt to acknowledge receipt of the request.

9.2 Fulfilling a Public Records Request

The process for fulfilling a request will include one of more of the following actions:

- a. Notifying the requester that the County or department concludes that it holds no responsive records after a reasonable search.
- b. Providing the records requested once the County is satisfied the requester has paid all applicable costs without the need for an exemption log.
- c. Providing responsive records and an exemption log stating the County or department has responsive records that are either entirely exempt from production or partially redacted.
- d. Providing the first installment of the responsive records with or without an exemption log and with or without a prepaid down payment equal to 10 percent of the estimated overall cost.

- e. Providing the final installment of the responsive records with or without an exemption log.
- f. Notifying the requester they have made a request for information and there is no requirement under the PRA that the County provide such information or respond to the request for information.

CAVEAT: Subsection "f" above is a response that should not be utilized lightly and there may be good public relations in providing the information sought by the citizen although there is no requirement to do so.

The last contact with the requester should include express text stating "With this response the County considers the request dated _____ relating to _____ known as PRA request _____ is completed, closed, and fulfilled and no further action will be taken. Do not hesitate to contact the undersigned if you have any concerns about the response provided."

If a record is withheld or a portion redacted, the requester shall be informed of the County's internal appeals process.

If release is authorized and inspection is requested, the requesting party shall be provided with necessary assistance in performing the inspection. It is the responsibility of the employee providing for the inspection to ensure security of County records. Employees should not allow unknown persons to inspect records in circumstances where records could be removed or altered.

Copying of records shall be done by County personnel or, at the discretion of the County Official, on copy machines provided for the public. Fees for copying shall be charged in compliance with Washington Administrative Code (WAC 44-14), and the Revised Code of Washington (RCW 42.56) as currently exists or hereinafter enacted. Clallam County Code, Title 5, Chapter 5.100, Consolidated Fee Schedule also lists fees for copies of public records.

9.3 Appropriate Responses

The Public Records Officer after receiving a request for inspection and/or copying, shall within five business days in writing to the requester, invoke at least one and, if appropriate, more than one of the following options:

- a. Provide the requested public record.
- b. Provide an internet address and link on the County's website to the specific records requested, except that if the requester notifies the County they cannot access the records through the internet, then the Public Records Officer must provide copies of the records to the requester or, in the alternative, may allow the requester to review the records on a County computer.

- c. Advise the requester of the estimated time necessary to provide the requested Public Record, or determine whether it is appropriate to release the record.
- d. Deny the request in whole or in part and provide an exemption log.
- e. Acknowledge in writing or by e-mail that the request has been received and advise the requester that the department or County holds no documents responsive to the request.
- f. Provide the first installment of any responsive records.
- g. In the case of a "Large PRA Request" request a down payment equal to 10 percent of the estimated cost for providing the records.
- h. Inform the requester that their Public Records Request appears to be seeking a list of individuals to be used for commercial purposes and provide an affidavit to be executed before a Notary Public attesting that the list will not be used for commercial purposes.
- i. Seek clarification.

9.4 Additional Time to Respond

If additional time beyond five-business days is required to respond to a request, the requester shall be notified within five-business days from receipt of the request. The notice shall include an estimate of the time necessary to provide the requested Public Record, or determine whether it is appropriate to release the record.

The need for additional time may be based upon, but is not limited to, staff resource restraints, prior requests in the queue, the need to clarify the intent of the request, the time needed to a) locate and assemble the information requested, b) notify third parties or agencies affected by the request, or c) determine whether any of the information requested is exempt in whole or in part such that a denial should be made as to all or part of the request.

In acknowledging receipt of a Public Records Request that is unclear, the requester may be asked to clarify what documents or records are sought. If, after notice by the County, the requester fails to clarify the request the request shall be considered abandoned and closed.

Any request for additional time shall be reasonable and must be accompanied by a written explanation of why such a time frame is needed. Any request for an extension of time to respond in excess of 35 days before providing the requester with either the final response or the first installment of responsive record(s) shall be approved by the County's legal counsel for public records before being sent to the requester. Nothing in this section is intended to prohibit the Public Records Officer to seek an extension in excess of 35 days.

9.5 Denial of Release of Records

Denials of Public Records, or portions thereof, must be accompanied by a written statement citing the applicable law and the specific reasons therefore. The denial shall include an exemption log noting the existing records that meet the criteria of the request but are either a) entirely exempt and will not be produced; or b) include exempt information that will be redacted. The log shall include, to the greatest extent possible, the type of record, its date, the number of pages, and, unless otherwise protected, the author and recipient; or if protected, other means of sufficiently identifying particular records without disclosing protected content, and the applicable state of federal law that allows the exemption or partial redaction. When the use of any identifying features whatever would reveal protected content, the records are identified by a numbered sequence. The requester may appeal the denial. For purposes of this section, a County response of "no responsive records" shall also be considered a denial of public records.

9.6 Appeal Process

- a. Any person who objects to the initial denial or partial denial of a request for a Public Record subject to chapter 42.56 RCW may within 10 business days of the date of the denial decision, not including the day of the denial decision, petition the Public Records Officer in writing (including e-mail) for a review of that decision. An objection to a partial redaction shall be considered a denial for purposes of this section. An objection to a response stating "no responsive records" shall also be considered a denial. The petition must be in writing and include the name of the petitioner, one or more points of contact for the petitioner such as an email address, USPS address or phone number, and a copy of the denial or an adequate identification of the decision denying the request.
- b. The Prosecuting Attorney or their designee shall serve as the reviewing authority. The Public Records Officer shall promptly provide the petition and other relevant information to the reviewing authority.
- c. The reviewing authority shall consider the petition and affirm or reverse the denial within two business days after the receipt of the petition by the Public Records Officer or within such other time as the County and requestor mutually agree.
- d. A person whose Public Records Request is denied may seek judicial review at the conclusion of two business days after the initial denial regardless of any concurrent internal administrative appeal or intent to seek an internal administrative appeal.

9.7 County to Provide Fullest Assistance

If a Public Records Request is granted, the requesting party shall be provided with necessary assistance in performing the inspection. Copying of records shall be done by County personnel or, at the discretion of the County Official, on copy machines provided

for the public. Fees for copying shall be charged in compliance with WAC 44-14 and RCW 42.56 as currently exists or is hereinafter enacted.

If the County does not possess equipment to copy the public records sought by the requester, and if such equipment is available commercially, the person responding to the request shall determine the cost of copying and notify the requester that the County does not possess the equipment to make the requested copies and provide an estimate for commercial copying. Copying of public records commercially shall be accomplished by County personnel. Public records maintained by the County shall not be released to the requester for removal from County facilities.

It is the responsibility of the employee providing for the inspection to ensure security of County records. Employees should not allow unknown persons to remove original records from their department. Any commercial copying required will be accomplished by the County at the sole expense of the requester pursuant to copying fees in compliance with RCW, WAC and/or County Code.

9.8 Maintaining Records of Requests for Public Records

Public Records Requests and the responses to them must be retained by the Public Records Officer for two years following completion of the request in compliance with the State Retention Schedule. The records produced in response to the request must remain distinct from the original departmental/office records. The Public Records Officer shall keep a log of all Public Records Requests. The log may be destroyed after three years in compliance with the State Retention Schedule.

9.9 Protection of Public Records

Each department shall adopt and enforce reasonable procedures to protect public records from damage, disappearance, disorganization, or premature destruction. In order to ensure that essential functions of the County are continually carried out and Public Records are not damaged, altered, disorganized, or lost, access to record storage areas is restricted.

Public Records will be inspected in the Public Records Office. Inspection shall be at a convenient time for staff to assist and supervise the inspection so that essential functions of the office are not disrupted. No records shall be removed from a file except by staff. Staff supervising the inspection will be assigned based on availability. Inspection shall be denied and the records withdrawn if the individual inspecting the records is doing so in a manner to damage, alter, remove, or substantially disorganize them or is excessively interfering with other essential functions of the department.

.10 REASONABLE SEARCH

The Public Records Act imposes upon the County the obligation to perform a reasonable and prompt search for records when responding to a request. This requires the County to look for records in any location where they might reasonably be found. Such locations include department computer files, employee email (inbox, sent, or personal archive folders); deleted emails located on County servers, personal devices, paper files, file cabinets; basement archives; locked and/or otherwise secured storage facilities, etc.

The Public Records Officer, in coordination with the designated Public Records Specialist(s) will gather or locate the records potentially responsive to the request and memorialize the substance of the search in writing. The search record should include, but is not limited to time spent, employees contacted, locations searched; terms provided to the Information Technology Department for electronic records searches; etc. This document is retained with a copy of the records provided to the requester.

.11 RESEARCH, CREATION OF DOCUMENTS CONSIDERED CUSTOM WORK REQUEST

The County is not required to create documents in order to comply with a request for specific information. Rather, the County must produce existing records for review and copying. Also, the County is not obligated to compile information from various records so that information is in a form that is more useful to the requester. County employees are not required to do research for private individuals.

.12 CERTAIN PUBLIC RECORDS EXEMPT; DELETION OF EXEMPT PORTIONS THEREOF

Public Records exempt from public inspection and copying by federal and/or state law shall not be available for public inspection and copying; however, when exempt portions of public records can be redacted (exempt portions redacted), the remainder thereof shall be open to public inspection and copying.

.13 PRIVILEGED COMMUNICATIONS

Certain communications between County Officials, including employees and agents, and the attorneys of the Prosecuting Attorney's Office or outside legal counsel representing County interests will be and remain exempt from production as privileged communications between attorney and client although its existence must be disclosed.

A County Official or the person to whom the confidential correspondence or communication was directed retains the privilege of confidentiality and is always authorized to waive said privilege and authorize the Public Records Officer to release the otherwise confidential record to the requester and/or the public. An exception is that the Board as a whole is one of the Prosecuting Attorney's clients and it takes a majority of the Board to waive the privilege with respect to any correspondence or communication from the Prosecuting Attorney's Office.

Any employee or department considering waiving the confidentiality of a record will discuss it with the Public Records attorney in the Prosecuting Attorney's Office and Risk Management prior to doing so. Regardless of this consultation, the employee or department shall have the final decision regarding waiving this privilege.

.14 LIST OF EXEMPTIONS

Clallam County hereby attaches *Appendix C: Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW* as prepared by the Municipal Research Services Center (MRSC) as currently exists or is hereafter enacted, as the non-exclusive list of exemptions relied upon by all departments.

.15 INDEXING OF PUBLIC RECORDS

Pursuant to RCW 42.56.070(4), Clallam County has determined by Resolution 74, adopted July 3, 2001, that the indexing of Public Records would place a heavy burden on government operations. As such, Clallam County does not maintain an index of Public Records.

.16 ELECTRONICALLY STORED DATA AND INFORMATION

Public Records in the form of data that is electronically stored on a County or personal computer or device, a diskette, a magnetic tape, a compact disc, or in other similar ways shall be subject to public inspection and/or copying.

16.1 Data Available Through Public Access

Data that is publicly available by computer access without submission of a Public Records Request; i.e. data posted on the Internet, may be inspected and copied by any person or persons having access to computer equipment capable of such inspection and copying. Posting of such data on the Internet or other means widely available to the public is considered by the County to meet the Public Records Act requirements to fulfill a Public Records Request. As such, the County is not required to otherwise locate, copy, or make available for inspection, such records. The County will make arrangements to allow for inspection and/or copying for individuals who do not have access to the internet. Regular fees for copying the records shall apply.

16.2 Data Not Available Through Public Access

Data that is not publicly available by computer access without submission of a request for inspection and/or copying, but constitutes Public Records and is stored, contained, or available within the memory or storage facilities of a computer or electronic equipment, is subject to inspection and copying only with the cooperative services of the Information Technology Department.

When Public Records are adequately identified by the requester, an employee designated by the Director of the Information Technology Department, shall provide the information to the Public Records Officer for determination if it contains exempt records. If such examination reveals any data that is exempt from public inspection and/or copying or must be partially redacted, the requested Public Record shall be transferred to a CD or similar medium with the exempt portions thereof redacted. If the examination reveals any data that is an exempt record, inspection and/or copying thereof shall not be permitted. Records denied in their entirety shall be identified in writing as required by this Policy.

If the examination reveals no exempt information or records, the person requesting inspection and/or copying, at their option, may view the information on a non-County owned computer screen or electronic device, or have the information transferred to a compatible storage medium provided in sealed, retail packaging, or ask that the record be printed on paper. Provided, however, that the viewing of such information on a computer screen shall not be permitted except when the computer is operated by a County employee and only when diverting the County employee from his or her regular duties in order to operate a computer to permit viewing would not cause excessive interference with the essential functions of the County.

Nothing in this section is intended to prohibit a requester from obtaining a public record in paper format, although any request for a record which would require more than 350 sheets of letter-sized paper shall be considered a "Large PRA Request" and the County reserves the right to provide the responsive records in electronic format or request a down-payment of 10 percent of the estimated cost of the responsive records.

.17 FEES

It is the policy of Clallam County to recover the costs incurred for producing public records in a manner consistent with state law or regulation. All fees under ten dollars per request shall be waived. The County Official may waive other fees at their discretion, with written explanation of their rationale and approval of the Public Records Officer, if they determine such an action is in the best interests of the County. Waiver of copy costs in one instance shall not be a waiver for any future requests made by that requester or for any future requests made by others. For security purposes and to ensure uncorrupted copying, electronic data shall be copied on media recommended, approved and/or specified by the County and supplied by either the County for a fee or the requester at the County's sole discretion.

17.1 Charges for Locating Public Records

Subject to the limitations provided in this policy or as otherwise provided by law, Clallam County does not charge a fee to search for and locate existing records for Public Records Requests.

17.2 Fees for Copying of Public Records on Paper

Unless otherwise authorized by RCW, e.g., Ch. 36.18, for copying of specific records, Clallam County adheres to WAC 44-14 and RCW 42.56 as currently exists or hereinafter enacted when charging fees for copying public records. Fees are listed in the WACs, RCWs, and Consolidated Fee Schedule (CCC 5.100).

Certain public records are of a size or nature that cannot be copied using standard equipment and must be copied commercially. In such cases, the County will recover the full cost of copying including staff time for transport of the records and applicable sales tax.

For security purposes and to ensure uncorrupted copying, electronic data shall be copied on media recommended and specified by the County IT Department and supplied by the requester in sealed, retail packaging at the expense of the requester.

In the case of a conflict between the Public Records Act and another state law or regulation that authorizes a department or employee to collect a fee for providing a copy of a specific category of record arises, then the state law shall prevail.

.18 FREQUENTLY ASKED QUESTIONS AND ANSWERS

The questions and answers below are intended to guide employees in topics where questions are often asked. This is not intended to be an all-inclusive list of issues, topics, or answers. The information provided below is enforceable as a part of this policy.

- ***Do all requests for public records need to be in writing?***

No, but the employee receiving the request must memorialize it. Section 8.5 allows each County Official to set department policy not requiring a written form on routine requests where the department typically makes copies of the particular public record and the record is readily available. If the department has such a policy, it must be applied consistently to all public requests.

- ***Is the requester required to sign a form certifying that lists of names will not be used for commercial purposes?***

The County should always seek to obtain a certification. However, pursuant to recent case law, if no certification is obtained and yet the Public Records Officer suspects the list of individuals to be provided to the requester will be used for commercial purposes, then some investigation of the requesting person or firm by the Public Records Officer must occur to confirm or deny the suspicion.

In accordance with RCW 42.56.070(9), the County is prohibited from disclosing lists of individuals (natural persons) if the requester intends to make commercial use of the list. However, the RCW does not prohibit release of raw data from which a person could construct his own list of individuals for commercial purposes. In addition, this provision does not prohibit disclosure of lists of businesses, corporations, or partnerships. Attorney General Opinion 1975, 15 states "... *Where the work product of an agency in the form of a list of individuals would, if supplied to others, be used by the persons requesting it in such a manner as to contact or otherwise personally affect the individuals identified on the list it was, in our judgment, the intent of the drafters (though somewhat ineptly expressed) to limit access.*"

- ***Who makes the determination if records are exempt from production to a requester?***

The Public Records Officer, following consultation with the Prosecuting Attorney's Office, shall determine which records are exempt from disclosure such that a denial in whole or in part is necessary. A Public Records Specialist may also be involved in making these determinations. The decision to deny records is final two business days after it is made. After that date, an individual can file a lawsuit in Superior Court to challenge the denial.

- ***If the County has copies of public records of another public agency in its possession, does the County or the other agency make the disclosure decision?***

If the County possesses the records and a request is made, they must make the disclosure decision and release the records if they are determined to be subject to disclosure. The other agency should be consulted, and, if they object to the County's intent to disclose, seek a court order blocking disclosure, as allowed by RCW 42.56.540.

- ***How do I determine whether a request has been made for an existing record or a custom record and thus is not within the purview of the Public Records Act?***

Simply put, if the record or report exists and can be released without creating a new report or manipulating data, the record is considered a Public Record. Examples of Public Records include:

- An existing report that can be obtained from the computer application, whether or not the report is routinely used by the department. In some cases reports or query capabilities require the employee to choose fields or enter criteria for records matches. In those cases, where employee interaction is not unreasonable, the record would be considered a Public Record.
- A database that exists on the computer. Be aware that the statute does not require a County employee or Official to manipulate existing data so that only the requested

- information is included in any document or electronic file. Many times, the requested data is in a document or electronic file with other information. There is no requirement to segregate the requested information if it is identifiable without segregation. If the decision is made to manipulate data to segregate the data for convenience or other purposes, the resulting record is still a Public Record.
- E-mails that exist in a user's folders or in archives.
 - ***I have seen a request for records in their "native format." What does that mean?***
 - The "native format" of a record is
 - When a requester makes a request for a record in its "native format," courts have stated the requester is entitled to receive it in that native format when the native format is readily available in the marketplace to the County and the citizen, such as MS products.
 - If the software is unique to government or licensed to the government and not to the requester, then there is no obligation to provide it in its native format but in the spirit of "fullest assistance," the County Official or employee may choose to provide the requested record in a commonly available format.
 - ***Does the "native format" of a particular record or document change whether that record or document is a Public Record subject to disclosure and possible production to the requester?***
 - Courts have said emphatically that it does not. The native format of a record does not determine whether a record is a Public Record.
 - ***If a request is for a significant number of records that take time to locate and organize, is the County required to provide the information as it is located or can the disclosure be made after all records are located?***
 - Any request that generates more than 350 letter-sized pages is deemed to be a "Large PRA Request" to which special rules apply, such as providing the records in installments. Courts encourage the County to make records available to the requester on an installment basis as they become available rather than hold on to them and provide them to the requester only when the search is complete.
 - ***Should electronic data be converted to a format that cannot be changed by the requester?***

No. The data should be released in the format it is maintained by the County, particularly when the requester has asked for the data in its "native format." There is no requirement for the County to ensure data cannot be changed, and there is no prohibition against the requester changing data once it is released, though the requester may be liable for the fraudulent use of records.

- ***If the requester asks for electronic data to be changed to another format, is the County required to do so?***

If the County has conversion capability without a major expenditure of staff time, yes. For instance, if a database is being released and the requester asks to have the data in an ASCII format, the County is required to convert the data since we have the capability of doing so. If an electronic document was in MSWord format and the requester asks for the document in PDF format, the County would convert the document. However, if the requester asks for a document or data in a format for which we have no capability to convert, or the conversion time would be excessive, the County is not required to convert the data.

The time taken to reformat the data can be charged as part of the copying costs. Refer to applicable WACs, RCWs and CCC 5.100 for information on hourly rates.

- ***Can the County place a limit on the time period records are kept out of the file for inspection?***

Yes. But the time period must have a reasonable basis. Generally, a 30-day period for the requester to inspect the records would be reasonable. If however, the records are old and rarely accessed for other purposes, a 30-day restriction may not be reasonable. If this situation comes up, the department affected should consult with the Deputy Prosecutor assigned to Public Records.

Every effort should be made to provide a reasonable inspection period with the requester. Be aware that since there is no cost associated with the filing of a Public Records Request, the requester can simply re-file the same request. If a reasonable time period has been set and the requester fails to inspect the records, then files another request, contact the Deputy Prosecutor to discuss the matter prior to granting the second request.

- ***Are e-mail messages Public Records?***

Generally, yes. E-mail messages are Public Records when they are created or received in the transaction of public business. As such they must also be identified, filed, and retained just like any other document or record.

- ***Are e-mails and other communications from the Prosecuting Attorney's Office subject to public disclosure?***

The Prosecuting Attorney places a notice of attorney-client privilege, or marks "confidential" on communications that are to be considered exempt from production, although their existence must be disclosed. Any communication from the Prosecuting Attorney's Office should be checked for the warning prior to production to non-County

personnel. If so marked, the document is not to be released until the client has consulted with the attorney who authored the communication. The client retains the ultimate right to waive the confidentiality even after such a consultation.

- ***Can the County set a minimum time for an activity subject to an hourly fee?***

Yes. The minimum time for a task subject to an hourly fee in response to a Public Records Request is 1/10th of an hour. Tasks should be broken down into 10^{ths} of an hour (6 minute intervals) for Public Records Requests.

- ***Can a record be kept confidential because an employee or County Official promises someone that the information will be kept confidential?***

No. Employees and officials do not have the authority to promise confidentiality for records unless a specific statute authorizes confidentiality.

- ***Should sales tax be charged and collected when a fee for making copies of records is charged?***

No, such charges are exempt from the imposition of sales tax under RCW 82.12.02525. However, if the County lacks the technology to reproduce the records and must use an outside means in order to produce the records, then the County shall be reimbursed for the charges which may include sales tax.

- ***When might personal or identifying information relating to a County employee be subject to production to a requester?***

Information such as a personal email address or a personal cell phone number that would be exempt from production if found in your personnel file or an emergency phone tree for a given department would NOT be exempt from production to a requester if that same information was in the text of an email.

Appendix C: Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW

RCW 42.56.070(2) requires an agency to:

publish and maintain a current list containing every law, other than those listed in the PRA, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

The following list provides exemptions and prohibition statutes not listed in the PRA. Some of the exemptions and prohibitions on the list concern public record information that may not be relevant for your jurisdiction. For instance, cities would not normally have records regarding marriage license applications or adoption records.

MRSC will periodically update this list; the date of the last update is reflected in the footer. If you become aware of additions or corrections that should be made to the list, please notify one of the staff attorneys at MRSC.

The [Attorney General's Sunshine Committee](#) webpage also provides a list of public disclosure exemptions created annually by the Code Reviser's Office.

Washington State Statutes

<u>RCW 2.64.111</u>	Judicial conduct commission investigations of judges and initial proceedings
<u>RCW 4.24.550</u>	Information on sex offenders
<u>RCW 4.24.601</u> and <u>.611</u>	Trade secrets and confidential research, development or commercial information re products or business methods
<u>RCW 5.60.060</u>	Privileged communications
<u>RCW 5.60.070</u> ; <u>RCW 7.07.070</u>	Mediation records
<u>RCW 7.68.140</u>	Victims' compensation claims
<u>RCW 7.69A.030(4)</u>	Name, address and photograph of child victim or child witness
<u>RCW 7.69A.050</u>	Child victims and witnesses of certain crimes – protection of address
<u>RCW 7.75.050</u>	Records of Dispute Resolution Centers
<u>RCW 9.02.100</u>	Reproductive privacy
<u>RCW 9.41.097(2)</u>	Mental health information re persons buying pistols or applying for CPLs
<u>RCW 9.41.129</u>	Concealed pistol license applications

<u>RCW 9.73.230</u>	Name of confidential informants in written report on wire tapping
<u>RCW 9.51.050</u>	Disclosing transaction of grand jury
<u>RCW 9.51.060</u>	Disclosure of grand jury deposition
<u>RCW 9.73.090(1)(c)</u>	Prohibition on disclosure of law enforcement dash cam videos until final disposition of litigation
<u>RCW 9A.44.138</u>	Offender registration information given to high school or institution of higher education re an employee or student
<u>RCW 9A.82.170</u>	Financial institution records re criminal profiteering act
<u>RCW 10.27.090</u>	Grand jury testimony/evidence
<u>RCW 10.27.160</u>	Grand jury reports – release to public only by judicial order
<u>RCW 10.52.100</u>	Records identifying child victims of sexual assault
<u>RCW 10.77.205</u>	Information re victims, next of kin, or witnesses requesting notice of release of person found not guilty of a sex, violent, or felony harassment offense by reason of criminal insanity and the notice itself
<u>RCW 10.52.100</u>	Records identifying child victim of sexual assault
<u>RCW 10.77.210</u>	Records of persons committed for criminal insanity
<u>RCW 10.97.040</u>	Criminal history information released must include disposition, with some exceptions
<u>RCW 10.97.050</u>	Conviction and criminal history information
<u>RCW 10.97.060</u>	Deletion of certain criminal history record information, conditions
<u>RCW 10.97.070</u>	Disclosure of identity of suspect to victim
<u>RCW 10.97.080</u>	Inspection of criminal record by subject
<u>RCW 10.97.130</u>	Information about victims of sexual assault under age eighteen
<u>RCW 10.101.020(3)</u>	Information given by an accused regarding determination for indigent defense
<u>RCW 13.34.115</u>	Court dependency proceedings
<u>RCW 13.40.217</u>	Juveniles adjudicated of sex offenses – release of information
<u>RCW 13.50.010</u>	Maintenance of and access to juvenile records
<u>RCW 13.50.050</u>	Juvenile offender records
<u>RCW 13.50.100</u>	Juvenile/children records not relating to offenses
<u>RCW 13.60.020</u>	Missing children or endangered person information
<u>RCW 18.04.405</u>	Confidentiality of information gained by CPA
<u>RCW 18.19.060</u>	Notification to clients by counselors
<u>RCW 18.19.180</u>	Confidential communications with counselors
<u>RCW 19.215.020</u>	Destruction of personal health and financial information
<u>RCW 19.34.240(3)</u>	Private digital signature keys

<u>RCW 19.215.030</u>	Compliance with federal rules
<u>RCW 26.04.175</u>	Name and address of domestic violence victim in marriage records
<u>RCW 26.12.170</u>	Reports of child abuse/neglect with courts
<u>RCW 26.23.050</u>	Child support orders
<u>RCW 26.23.120</u>	Child support records
<u>RCW 26.26.041</u>	Uniform Parentage Act – protection of participants
<u>RCW 26.26.450</u>	Confidentiality of genetic testing
<u>RCW 26.33.330</u>	Sealed court adoption records
<u>RCW 26.33.340</u>	Agency adoption records
<u>RCW 26.33.343</u>	Access to adoption records by confidential intermediary
<u>RCW 26.33.380</u>	Adoption – identity of birth parents confidential
<u>RCW 26.44.010</u>	Privacy of reports on child abuse and neglect
<u>RCW 26.44.031</u>	Information related to reports of child abuse or neglect
<u>RCW 26.44.125</u>	Reports, reviews and hearings related to a review of abuse finding
<u>RCW 27.53.070</u>	Records identifying the location of archaeological sites
<u>RCW 29A.08.720</u>	Voter registration records – place of registration and any decision not to register to vote confidential
<u>RCW 29A.08.710</u>	Voter registration records – certain information exempt
<u>RCW 35.102.145</u>	Municipal business and occupation tax – local ordinance can protect return or tax information
<u>RCW 36.28A.060(8)</u>	Tactical and intelligence information provided to WASPC
<u>RCW 39.10.470(2)</u>	Alternative public works - trade secrets or other proprietary information submitted by bidder in connection with an alternative public works transaction if data identified and reasons stated in writing
<u>RCW 39.10.470(3)</u>	Alternative public works – proposals submitted by design-build finalists until notification of highest scoring finalist is made
<u>RCW 42.23.070(4)</u>	Municipal officer disclosure of confidential information prohibited
<u>RCW 42.41.030(7)</u>	Identity of local government whistleblower
<u>RCW 42.41.045</u>	Non-disclosure of protected information (whistleblower)
<u>RCW 43.43.762</u>	Contents of statewide criminal street gang database
<u>RCW 46.52.065</u>	State toxicologist records relating to analyses of blood samples
<u>RCW 46.52.080</u>	Traffic accident reports – confidentiality
<u>RCW 46.52.083</u>	Traffic accident reports – available to interested parties
<u>RCW 46.52.120</u>	Traffic crimes and infractions – confidential use by police and courts
<u>RCW 46.52.130(2)</u>	Abstract of driving record – limited disclosure

<u>RCW 48.62.101</u>	Local government insurance/risk management liability reserve funds established to settle claims
<u>RCW 50.13.060</u>	Access to employment security records by local government agencies
<u>RCW 50.13.100</u>	Disclosure of confidential employment security records allowed if identifying information deleted or with consent
<u>RCW 51.28.070</u>	Worker's compensation records confidential – limited disclosure
<u>RCW 51.36.060</u>	Physician information on injured workers
<u>RCW 60.70.040</u>	No duty to disclose record of common law lien
<u>RCW 68.50.105</u>	Autopsy reports – confidential – limited disclosure
<u>RCW 68.50.320</u>	Dental identification records – available to law enforcement agencies
<u>Ch. 70.02 RCW</u>	Medical records – access and disclosure – entire chapter (information from HC providers)
<u>RCW 70.05.170</u>	Child mortality reviews by local health departments
<u>RCW 70.24.022</u>	Public health agency information regarding sexually transmitted disease investigations - confidential
<u>RCW 70.24.024</u>	Transcripts and records of hearings regarding sexually transmitted diseases
<u>RCW 70.28.020</u>	Local health department TB records – confidential
<u>RCW 70.41.200</u>	Hospital quality improvement committee records and accreditation reports
<u>RCW 70.48.100</u>	Jail records and booking photos
<u>RCW 70.58.055</u>	Birth certificates – certain information confidential
<u>RCW 70.58.104</u>	Vital records, research confidentiality safeguards
<u>RCW 70.94.205</u>	Washington Clean Air Act – confidentiality of data.
<u>RCW 70.96A.150</u>	Registration and other records of alcohol and drug abuse treatment programs
<u>RCW 70.123.075</u>	Client records of domestic violence programs
<u>RCW 70.125.065</u>	Records of community sexual assault program and underserved populations provider in discovery
<u>RCW 71.05.425</u>	Notice of release or transfer of committed person after offense dismissal
<u>RCW 71.05.445</u>	Release of mental health information to Dept. of Corrections
<u>RCW 71.05.620</u>	Access to court records related to mental health cases under chapter 71.05 RCW
<u>RCW 71.24.035(5)(g)</u>	Mental health information system – state, county and regional support networks – confidentiality of client records
<u>RCW 71.34.335</u>	Mental health treatment of minors – records confidential
<u>RCW 71A.14.070</u>	Records regarding developmental disability – confidentiality

<u>RCW 72.09.345</u>	Notice to public about sex offenders – department of corrections access to information
<u>RCW 72.09.585</u>	Disclosure of inmate records to local agencies – confidentiality
<u>RCW 73.04.030</u>	Veterans discharge papers exemption (see related RCW 42.56.440)
<u>RCW 74.04.060</u>	Applicants and recipients of public assistance
<u>RCW 74.04.520</u>	Food stamp program confidentiality
<u>RCW 74.13.075(5)</u>	Juvenile’s status as a sexually aggressive youth and related info
<u>RCW 74.13.280</u>	Children in out-of-home placements - confidentiality
<u>RCW 74.20.280</u>	Child support enforcement – local agency cooperation, information
<u>RCW 74.34.095</u>	Abuse of vulnerable adults - confidentiality of investigations and reports
<u>RCW 82.32.330</u>	Disclosure of tax information
<u>RCW 84.36.389</u>	Confidential income data in property tax records held by assessor
<u>RCW 84.40.020</u>	Confidential income data supplied to assessor regarding real property

Selected Federal Confidentiality Statutes and Rules

18 USC § 2721 - 2725	Driver and License Plate Information
20 USC § 1232g	Family Education Rights and Privacy Act
23 USC § 409	Evidence of certain accident reports
42 USC 290dd-2	Confidentiality of Substance Abuse Records
42 USC § 405(c)(2)(C)(viii) (I)	Limits on Use and Disclosure of Social Security Numbers.
42 USC 654(26)	State Plans for Child Support
42 USC 671(a)(8)	State Plans for Foster Care and Adoption Assistance
42 USC 1396a(7)	State Plans for Medical Assistance
7 CFR 272.1(c)	Food Stamp Applicants and Recipients
34 CFR 361.38	State Vocational Rehabilitation Services Programs
42 CFR Part 2 (2.1 - 2.67)	Confidentiality of Alcohol and Drug Abuse Patient Records
42 CFR 431.300 - 307	Safeguarding Information on Applicants and Recipients of Medical Assistance
42 CFR 483.420	Client Protections for Intermediate Care Facilities for the Mentally Retarded

42 CFR 5106a	Grants to States for Child Abuse and Neglect Prevention and Treatment Programs
45 CFR 160-164	HIPAA Privacy Rule
46 CFR 40.321	USCG regulations regarding confidentiality