



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (October 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 28, 2017

TIME: 3:16 PM

WSR 17-24-026

Agency: Office of the Code Reviser

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The office of the code reviser is amending chapter 1-06 WAC to better conform such chapter to: (1) Recent changes in the law concerning public records; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC), and (3) current agency practices.

Citation of rules affected by this order:

New: WAC 1-06-082, 1-06-084, 1-06-086 and 1-06-095;

Repealed: WAC 1-06-040, 1-06-120 and 1-06-160; and

Amended: WAC 1-06-010, 1-06-020, 1-06-030, 1-06-050, 1-06-060, 1-06-070, 1-06-080, 1-06-090, 1-06-100, 1-06-110, 1-06-130, and 1-06-140.

Suspended:

Statutory authority for adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120, and 42.56.520; and chapter 304, Laws of 2017.

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 17-20-105 on October 4, 2017 (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>4</u>	Amended	<u>12</u>	Repealed	<u>3</u>

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>4</u>	Amended	<u>12</u>	Repealed	<u>3</u>
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: November 28, 2017

Name: K. Kyle Thiessen

Title: Code Reviser

Signature:



AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-010 Purpose. The purpose of this chapter ((shall be)) is to ensure compliance by the statute law committee and the office of the code reviser with the provisions of chapter 42.56 RCW ((dealing with public records)), the Public Records Act. The agency adopts these rules and regulations so as to provide fullest assistance to inquirers and full public access to the agency's public records while protecting those records from damage or disorganization, preventing excessive interference with other essential agency functions, and not unreasonably disrupting agency operations.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ((("Public record" includes 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 this agency regardless of physical form or characteristics, except (a) those records of the bill drafting functions of the code reviser deemed confidential pursuant to RCW 1.08.027 and (b) computer programs, products, and databases deemed exempt pursuant to chapter 42.56 RCW.

Public record as relates to this agency does not include computer programs, products, and databases prepared, owned, used, or retained by this agency for the benefit of another state agency. Applications for the disclosure of such records should be addressed to the agency in interest.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) "Agency" means the committee, the code reviser, the office of the code reviser, and the staff and employees thereof.

(2) "Business days" are weekdays, Monday through Friday, excluding state legal holidays.

(3) "Code reviser" means the code reviser employed by the committee pursuant to RCW 1.08.011.

(4) "Committee" means the statute law committee created pursuant to chapter 1.08 RCW ((chapter 157, Laws of 1951).

(4) "Reviser" means the code reviser employed by the committee pursuant to RCW 1.08.011, and where appropriate the term also refers to the staff and employees of the office of the code reviser.

(5) "Agency" means the committee, the code reviser, and the staff and employees thereof, unless the context clearly indicates otherwise.

(6) "Records of the bill drafting functions" means any file or writing in the office of the code reviser created in connection with a request for preparation of legislation or research thereon, and the

~~confidentiality of such records may be waived only by the person who requested the services of the office of the code reviser).~~

(5) "Public record" and "writing" have the meanings given in RCW 42.56.010.

(6) "Public Records Act" means chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-030 Description of central and field organization. (1)

~~((The office of the code reviser is located in the Pritchard Building, Olympia, Washington, 98504.~~

~~(2)) The committee consists of eleven members. ((The secretary of the senate, the chief clerk of the house of representatives, the staff director of a nonpartisan professional committee, staff of the senate and the house of representatives, two members of the senate and the house of representatives, and one each appointed by the governor, the chief justice of the supreme court, and the Washington State Bar Association.)) The committee employs a code reviser, who serves as its secretary, employs necessary staff for the office of the code reviser, and manages the daily operations of the office of the code reviser.~~

~~((3)) (2) Among the primary responsibilities of the ((committee and the code reviser)) agency is the duty to periodically codify, index, and publish the *Revised Code of Washington* and to revise, correct, and harmonize the statutes by means of administrative or suggested legislative action as may be appropriate. The agency is also the official bill drafting arm of the legislature and its various committees, and prepares for the legislature all bills, memorials, resolutions, amendments, and conference reports, which activities are pursued on a nonpartisan, professional, lawyer-client, confidential basis under RCW 1.08.027((, and RCW 1.08.028 prohibits the office of the code reviser from rendering written opinions concerning the constitutionality of any proposal)). The agency also produces the legislative digest and history of bills ((and the daily status report)). Immediately following each session of the legislature, the committee indexes and publishes the ((temporary edition of the)) session laws ((and subsequently publishes the permanent edition; it also responds to citizen's requests for copies of recently enacted laws)). The committee administers chapter 34.05 RCW, the Administrative Procedure Act, serving as official repository for the rules of the various state agencies and the institutions of higher education, and creating and publishing the *Washington Administrative Code* and the *Washington State Register*.~~

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-050 Public records available. All public records of the agency~~((, as defined in WAC 1-06-020, are deemed to be))~~ are available for public inspection and copying pursuant to ~~((these rules))~~ this chapter, except as otherwise provided by ~~((chapter 42.56 RCW and WAC 1-06-100))~~ law.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-060 Public records officer. The agency's public records ~~((shall be))~~ are in the charge of the public records officer designated by the code reviser. The public records officer ~~((shall be))~~ is responsible for the following: The implementation of the agency's rules and regulations regarding release of public records, coordinating the staff of the agency in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of ~~((chapter 42.56 RCW))~~ the Public Records Act. The public records officer may be contacted as described in WAC 1-06-140.

AMENDATORY SECTION (Amending WSR 09-14-023, filed 6/23/09, effective 8/1/09)

WAC 1-06-070 Office hours. Public records ~~((shall be))~~ are available for inspection and copying by appointment only, as described in WAC 1-06-086. Appointments may only be scheduled during the customary office hours of the agency. For the purposes of this chapter, the customary office hours ~~((shall be))~~ of the agency are from 8:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-080 Requests for public records. ~~((In accordance with requirements of chapter 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:~~

~~(1) A request shall be made in writing upon a form prescribed by the agency which shall be available at its office. The form shall be presented to the public records officer; or to any member of the agency's staff, if the public records officer is not available, at the office of the agency during customary office hours. The request shall include the following information:~~

~~(a) The name, address, and organization represented, if any, of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request was made;~~

~~(c) The nature of the request;~~

~~(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;~~

~~(e) If the requested matter is not identifiable by reference to the agency's current index, an appropriate description of the record requested;~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.) All requests under the Public Records Act to inspect or copy public records of the agency must be written and directed to the agency public records officer at the email address, street address, or facsimile number set forth in WAC 1-06-140. Requests may also be physically delivered to the front desk of the office of the code reviser during normal business hours. Each request must include:~~

~~(1) The requestor's name, email address or street address, and telephone number;~~

~~(2) A request for identifiable public records; and~~

~~(3) An indication that the request is made pursuant to the Public Records Act.~~

NEW SECTION

WAC 1-06-082 Responses to public records requests. (1) Generally. The agency will respond to public records requests in the manner prescribed by the Public Records Act.

(2) **Priority of requests.** The agency will generally handle requests in the order in which they are received. However, the agency will modify this approach, to the extent it deems necessary, to ensure that requests which seek larger volumes of records, require closer review, or are otherwise more complicated or time consuming, do not unreasonably delay simpler, more routine requests.

(3) **Installments.** The agency may provide records on an installment basis as provided in the Public Records Act. For purposes of WAC 1-06-084 through 1-06-090 each installment of records is treated as a separate public records request, unless otherwise specified.

(4) **Customized electronic access.** Where the agency deems it appropriate, the agency may choose to provide customized electronic access to public records. However, any requestor seeking such customized electronic access must pay, in advance, for agency staff time and any other direct costs related to providing such customized electronic access. Because the agency maintains electronic records in a very wide variety of formats, the viability of providing this service is evaluated on a case-by-case basis.

NEW SECTION

WAC 1-06-084 Notice of availability. (1) Generally. Once records responsive to a request, or any installment thereof, have been located, assembled, reviewed, and prepared for release, and any affected third persons or agencies notified, the agency will promptly notify the requestor that those records are available for inspection or copying.

(2) **Statement of copying, mailing, or other costs.** The notice of availability will state any costs for obtaining a copy of the records, the costs for having a copy mailed to the requestor, and any other allowable costs under WAC 1-06-090 or the Public Records Act.

(3) **Response to notice of availability.** Upon receipt of a notice of availability, the requestor may inspect the records by:

(a) Scheduling a viewing appointment as provided under WAC 1-06-086;

(b) Requesting that a copy of the requested records be held for pickup at the agency office, subject to payment of any copying or other charges; or

(c) Requesting that a copy of the requested records be sent to the requestor, subject to payment of any copying or other charges.

(4) **Failure to respond to notice of availability.** If, within ten business days of issuance of a notice of availability, the requestor fails to claim the records, or any installment thereof, by either scheduling a viewing appointment or requesting copies and making any required payment, the agency may consider the request closed. In such case, the agency may cease locating, assembling, reviewing, or otherwise processing any remaining records, and it may dispose of any records made available as provided under WAC 1-06-095.

NEW SECTION

WAC 1-06-086 Viewing appointments. (1) **No fee.** No fee is charged for inspecting records at the agency's office.

(2) **By appointment only.** In-office inspections are by appointment only. In-office inspections must be scheduled in advance by contacting the agency as provided in WAC 1-06-140.

(3) **Protection of public records.** Access to records during viewing appointments is restricted to the viewing area designated by the agency. No document may be physically removed by a member of the public from the viewing area for any reason whatsoever; nor may any member of the public who is viewing documents disassemble, deface, or cause the disorganization of any record for any reason whatsoever. An agency staff member may observe any inspection to ensure that records are not disorganized, defaced, or otherwise harmed. Records furnished must be returned in the same file sequence or organization as when furnished. Boisterous or otherwise disruptive conduct during viewing appointments is not permitted.

(4) **Identification of records reviewed.** At the end of each viewing appointment, the requestor shall identify to agency staff those records reviewed during the appointment. If any records remain to be reviewed, another viewing appointment must be scheduled at that time. Reviewed records, or remaining records for which no further viewing appointment has been scheduled, are subject to disposition as provided under WAC 1-06-095.

(5) **Obtaining copies at viewing appointments.** At the end of each viewing appointment, the requestor shall identify to agency staff any records he or she would like copied. Agency staff will arrange to provide such copies in as timely a manner as possible in view of all circumstances, including the volume of copies requested, any pending copying requests, time of day, staff resources, and any other relevant considerations. Records identified for copying during viewing appoint-

ments are subject to prepayment of any copying or other costs in accordance with WAC 1-06-090.

(6) **Failure to attend a scheduled viewing appointment.** A requestor who fails to attend a scheduled viewing appointment must call the agency within ten business days to reschedule the missed appointment. Unless otherwise permitted by the agency, a viewing appointment may not be rescheduled more than two times. If a requestor fails to reschedule a missed viewing appointment within ten business days or has already rescheduled the appointment two times, the agency may consider the request closed and may dispose of any records or copies made available in accordance with WAC 1-06-095.

AMENDATORY SECTION (Amending WSR 06-17-010, filed 8/4/06, effective 9/4/06)

~~WAC 1-06-090 Copying of public records. ((No fee shall be charged for the inspection of public records. Upon request for an identifiable public record, the office of the code reviser may charge a fee of:~~

- ~~• Thirty five cents per page of copy for providing paper copies of public records maintained on paper or electronically;~~
- ~~• Two dollars per CD ROM for copies of electronically maintained public records;~~
- ~~• Two dollars per page and fifteen dollars per hour charge for double column, publication master copies of electronically maintained public records.~~

~~The office of the code reviser may fax documents, but there is a ten page maximum. There is no charge for this service.~~

~~These charges are the amounts necessary to reimburse the agency for its actual costs incident to such copying.) (1) **Copying facilities available.** Subject to payment of copying and other charges, facilities will be made available to requestors for the copying of public records as set forth under WAC 1-06-086, except when and to the extent that this would unreasonably disrupt the operations of the agency.~~

~~(2) **Copying costs.** In accordance with RCW 42.56.070(7) and 42.56.120, the agency may charge fees for providing copies of public records. The agency has determined that calculating the actual costs for providing copies would be unduly burdensome. This determination is based on the large number of factors involved in calculating the actual cost and the frequency with which these factors change. The agency does not currently have accurate data regarding these factors, nor does it have the resources or appropriated funds to conduct an actual cost study. The agency cannot divert resources away from other critical agency programs in order to perform such a cost study. Additionally, such a study would likely need to be repeated on a regular basis. Therefore, the agency adopts the schedule of fees provided in RCW 42.56.120(2).~~

~~(3) **Other costs.** The agency may charge for nonpaper media (for example, without limitation, compact disks (CDs), digital versatile disks (DVDs), audiotape, or videotape) used to provide copies, packaging, postage, or other charges as allowed by law. Such charges will not exceed the amount necessary to reimburse the agency for actual costs.~~

(4) **Deposits.** The agency may require a ten percent deposit on copying or other charges. Any required deposit must be paid before the request is processed.

(5) **Prepayment.** The agency will not release any requested copies of public records unless and until the requestor has paid all copying and other charges. If payment is not received by the agency within fifteen business days of issuance of the agency's notice of availability, the agency may consider the request closed, and any records or copies responsive to such request are subject to disposition as provided under WAC 1-06-095.

(6) **Waiver.** The agency, in its sole discretion, may waive any fee assessed for providing copies of public records whenever the agency determines that collection of the fee would be contrary to the agency's mission or would not be in the public interest.

(7) **Customized publications.** The agency maintains a separate fee schedule for use with requests that seek creation of a customized publication or compilation. Because these requests seek creation of a new record, they are outside the scope of this chapter and chapter 42.56 RCW.

NEW SECTION

WAC 1-06-095 Closing public records requests. (1) **Generally.** Once the requestor has inspected or been provided with copies of the records made available in response to his or her request, that request is closed. However, with respect to any installment of records other than the final installment, the foregoing applies only to that installment and not the entire request, unless otherwise provided in this chapter.

(2) **Other closing events.** A request may also be closed:

(a) If a requestor does not respond to a request for clarification or otherwise fails to clarify within ten business days;

(b) If the requestor fails to make a required deposit or payment for requested copies as provided under WAC 1-06-090;

(c) If the requestor fails to respond to a notice of availability as provided under WAC 1-06-084;

(d) If all records identified in any notice of availability, including a notice with respect to an installment of records, have not been inspected, paid for, or picked up within fifteen business days of issuance of such notice of availability; or

(e) As otherwise provided by this chapter or by law.

(3) **Disposition of records upon closing.** Upon the closing of a request, originals of any records assembled in response to the request will be refiled, and any copies of records may be destroyed.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-100 Exemptions. (1) (~~The agency reserves the right to determine that a public record requested in accordance with the proce-~~

dures outlined in WAC 1-06-080 is exempt under the provisions of RCW 1.08.027 or chapter 42.56 RCW.

(2) In addition, pursuant to RCW 42.56.070(1), the agency reserves the right to delete identifying details when it makes available or publishes any public record, in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.56 RCW. The public records officer will fully justify such deletion in writing.

(3)) **Generally.** Chapter 42.56 RCW, and other applicable law, provide that certain public records are exempt from public inspection and copying. For informational purposes only, the agency lists the following laws that are believed to exempt or prohibit disclosure of specific information or records of the agency:

(a) RCW 1.08.027 exempts or prohibits disclosure of certain records related to the bill drafting functions of the agency. This includes any file or writing in the office of the code reviser created in connection with a request for preparation of legislation or research thereon.

(b) RCW 5.60.060 (2)(a) exempts or prohibits disclosure of certain records relating to communication between an attorney and his or her client.

(c) RCW 44.68.060(2) may exempt or prohibit disclosure of certain records placed or maintained in the legislative service center by the agency. RCW 44.68.060(3) exempts or prohibits disclosure of certain bill drafting records placed or maintained in the legislative service center by the agency.

(2) **Identification of exemptions.** All denials of requests for public records ((must)) will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

AMENDATORY SECTION (Amending Order 8, filed 9/25/74, effective 10/25/74)

WAC 1-06-110 Review of denials of public records request. (1) **Petition for review.** Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the public records officer. The written request ((shall)) must specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) **Response to petition.** Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request ((shall)) will refer ((it)) the request for review to the code reviser(, ~~who shall~~) or his or her designee. The code reviser or designee will immediately consider the matter and either affirm or reverse such denial(, ~~The request shall be returned with a final decision,~~) within two business days following ((the original)) receipt of the written request for review of the denial.

(3) **Exhaustion of administrative remedies.** Administrative remedies ((shall)) are not ((be considered)) exhausted until the agency

has returned the petition with a decision or until the close of the second full business day following receipt of the written request for review of the denial (~~((of inspection))~~), whichever occurs first.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-130 Records index. (1) A chronological index is maintained providing identifying information as to all governmental records (~~((issued, adopted, or promulgated after June 30, 1972,))~~) that are deemed by the agency to fall within the purview of RCW 42.56.070 (~~((and that are not exempted under chapter 42.56 RCW, RCW 1.08.027, 40.14.180, or WAC 1-06-020))~~) (5).

(2) The current index promulgated by the agency (~~((must be))~~) is available to all persons under the same rules (~~((and on the same rules))~~) and on the same conditions as are applied to public records available for inspection and copying.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-06-140 (~~((Communications with the agency.))~~) Public records address. (~~((All communications with the agency including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.56 RCW and these rules; requests for copies of the agency's rules and other matters, shall be addressed as follows:))~~) The agency's public records officer may be contacted at the following mailing address, telephone number, or email address:

Public Records Officer

Office of the Code Reviser(~~((, c/o Public Records Officer,))~~)

P.O. Box 40551(~~((,))~~)

Olympia, WA 98504-0551

Telephone: 360-786-6777

Facsimile: 360-786-1471

Email: CodeRev.WA@leg.wa.gov

The agency's web site is at <http://leg.wa.gov/CodeReviser/>.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 1-06-040	Operations and procedures.
WAC 1-06-120	Protection of public records.
WAC 1-06-160	Request for public record—Form.