

Chapter 458-276 WAC ACCESS TO PUBLIC RECORDS

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-276-040	Operations and procedures. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-040, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-050	Public records available. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-050, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-060	Public records officer. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-060, filed 1/23/78.] Amended and decodified by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. Recodified as § 458-276-045.
458-276-070	Hours for records inspection and copying. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-070, filed 1/23/78.] Amended and decodified by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. Recodified as § 458-276-055.
458-276-080	Requests for public records. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-080, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-090	Copying. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-090, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-100	Exemptions. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-100, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-110	Review of denials of public records requests. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-110, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-120	Limitations on disclosure. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-120, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-130	Records index. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-130, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-140	Administrative offices. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-140, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.
458-276-150	Adoption of form. [Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-150, filed 1/23/78.] Repealed by WSR 15-01-105, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW.

WAC 458-276-010 Authority and purpose of access to public records. (1) The purpose of the Public Records Act, chapter 42.56 RCW, is to provide for the public's access to information concerning the conduct of government. The purpose of these rules in this chapter is to establish the procedures the department of revenue (department) will follow in order to provide this access to nonexempt public records. These rules provide information to persons requesting access to public records of the department and establish processes for both requestors and department staff that are designed to assist members of the public in obtaining access.

(2) In carrying out its responsibilities under the Public Records Act, the department must give due regard to the applicable statutory exemptions or limitations from disclosure described in WAC 458-276-045.

[Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. WSR 15-01-105, § 458-276-010, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-010, filed 1/23/78.]

WAC 458-276-020 Agency description—Public records officer—Public records. (1) **Department of revenue.** The department of revenue (department) is an agency headed by a director (director) appointed by the governor subject to confirmation by the state senate. The powers and duties of the director are those prescribed by RCW 82.01.060. The department administers state tax and business licensing laws, acts as advisor on revenue matters to the governor, the legislature, and other state and local agencies, and supervises and assists in the administration of property tax laws at the state and local level. Where appropriate, the term department also refers to the staff and employees of the department of revenue.

(2) **Public records officer.** The department's public records officer oversees compliance with the Public Records Act but other department employees, referred to as public records designees, will generally process the specific requests. These rules, therefore, will refer to the public records officer or designee. The public records officer or designee of the department will:

- Assist requestors in obtaining the requested records;
- Create and maintain for use by the public and department employees an index to the department's public records;
- Protect public records from damage or disorganization;
- Fulfill public records requests without excessive interference with essential functions of the department;
- Give due regard to statutory exemptions or other judicially recognized limitations from disclosure; and
- Prevent unreasonable invasions of privacy or the use of records for purposes of commercial lists when releasing records to the public.

(3) **Public records.** A public record is any writing prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics containing information relating to the conduct of government or the performance of any governmental or proprietary function.

(4) **Writing.** Writing is every means of recording any form of communication or representation whether by handwriting, typewriting, printing, photostating/copying, photographing, or other means of recording. A "writing" includes, but is not limited to, letters, email messages, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

[Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. WSR 15-01-105, § 458-276-020, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-020, filed 1/23/78.]

WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs. (1) **Availability.** All public records of the department of revenue (department) are deemed to be available for public inspection and copying pursuant to these rules in this chapter, except as otherwise provided by WAC 458-276-045 regarding exemptions and other limitations on disclosure of records.

(2) **Centralized administration.** All communications with the department regarding administration or enforcement of chapter 42.56 RCW and these rules in this chapter, and written requests for copies of the department's public records, decisions, and other matters, are handled by the information governance office.

(3) **Written and dated requests.** Requestors are encouraged to view the documents available on the web site prior to submitting a records request. The department recommends a written and dated request for public records to protect against unauthorized disclosure of confidential taxpayer information, unauthorized disclosure of licensing information, unauthorized disclosure of confidential property tax information, invasion of privacy, and to enhance the accuracy of the department's response to the request. A written request minimizes confusion or misunderstanding as to what is being requested and establishes a contact for clarifications and questions.

(4) **Request for records.** The written request is most effective if it contains the following information:

(a) Name of the person requesting the records or a point of contact;

(b) Calendar date on which the request is made;

(c) Specific records requested, if not identified in the public records index located online at dor.wa.gov, then an appropriate description of the records requested; and

(d) Contact information for questions about the request including, if possible, mailing address, email address, and telephone number.

(5) **Web site public records email request available.** The department has developed an "email request form" to assist requestors in obtaining public records. This email request form is located on the department's web site at www.dor.wa.gov (searching: "public records").

(6) **Department's contact information.** Any person requesting access to public records of the department or seeking assistance in making such a request should contact the information governance office. Written requests for identifiable public records may be submitted to the information governance office by mail, email message, through the department's web site, facsimile transmission, or delivered in person to the following addresses and physical location:

In-person delivery to physical address:

Department of Revenue
Information Governance Office
6400 Linderson Way S.W., Suite 288
Tumwater, WA 98501-6516

Mail delivery:

Department of Revenue
Information Governance Office
P.O. Box 47456
Olympia, WA 98504-7478

Email message: dorpublicrecords@dor.wa.gov

Department's web site: dor.wa.gov

Facsimile transmission (fax): 360-705-6655

(7) **Response.** Within five business days of the receipt of the initial public records request by the information governance office, the department will:

- Provide the record;
- Acknowledge that the department has received the request and provide a reasonable estimate of the time it will take to fully respond;
- Seek a clarification of the request; or
- Deny the request.

(8) **Electronic format.** When a person requests public records in an electronic format, the information governance office will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the records.

(9) **Public records index.** The department maintains and makes available for public inspection and copying an appropriate index or indices in accordance with RCW 42.56.070. Such index or indices are located on the department's web site (searching: "public records index").

(10) **Hours for inspection and copying.** Public records maintained by the department will be available for inspection and copying at the information governance office during the office hours of 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) **Fees.**

(a) There is no fee for the inspection of public records.

(b) Pursuant to RCW 42.56.120 (2)(b), the department is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(i) The department does not have the resources to conduct a study to determine actual copying costs for all of its records;

(ii) To conduct such a study would interfere with other essential agency functions; and

(iii) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

Therefore, the department will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The copy fees in (c) of this subsection apply to requests to the department under chapter 42.56 RCW and received on or after the effective date of this rule.

(c) The department will take reasonable steps to provide records in the most efficient manner available in its normal operations. However, the department will generally charge fees for providing copies, whether hardcopy or electronic, to public records requests and may combine the following fees to the extent that more than one type of fee applies to copies produced in response to a particular request:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records using standard black and white paper photocopying. For other than standard photocopies, a reasonable fee for providing

copies of public records and for use of the department's copy equipment may be charged;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically; and

(v) The actual cost of any digital storage media or device provided by the department, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(d) The department must provide, if asked by the requestor, a summary of the applicable charges before any copies are made. Based on the summary of applicable charges, the requestor may revise the request to reduce the number of copies to be made, thus reducing the charges.

(12) **Fee exception.** The department may not impose the copying fee under subsection (11) of this rule for access to or downloading of records the department routinely posts on dor.wa.gov prior to receipt of a request unless the requestor has specifically requested that the department provide copies of the records through other means.

(13) **Customized service charge.** In addition to the fees imposed under subsection (11) of this rule, the department may also impose a customized service charge. The amount of the customized service charge may:

(a) Be imposed if the department estimates the request will require the use of information technology expertise to prepare data compilations, or to provide customized electronic access services when the department does not use the compilations or customized electronic access services for other department purposes;

(b) Reimburse the department up to the actual cost of providing the services in subsection (13) of this rule; and

(c) Be imposed on the requestor only if the department notified the requestor of the charge. Additionally, the department must provide the requestor:

(i) An explanation of why the charge applies;

(ii) A description of the specific information technology expertise required to fulfill the request;

(iii) A reasonable estimate of the charge; and

(iv) The opportunity to alter the request in order to avoid or reduce the amount of the charge.

(14) **Deposit.** In addition to the fees and charges in subsections (11) and (13) of this rule, the department may also require a deposit not to exceed ten percent of the estimated cost of providing copies for a request. If the department makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the department is not obligated to fulfill the balance of the request.

(15) **Waiver or alteration of fees.** The department may waive any fee assessed for a public records request pursuant to department rules and regulations. The department may enter into any contract, memorandum of understanding, or other agreement with a requestor that pro-

vides an alternative fee arrangement to the charges authorized in this rule, or in response to a voluminous or frequently occurring request.

[Statutory Authority: Chapter 42.56 RCW and RCW 82.01.060(2). WSR 18-09-045, § 458-276-030, filed 4/12/18, effective 5/13/18; WSR 18-01-002, § 458-276-030, filed 12/6/17, effective 1/6/18. Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. WSR 15-01-105, § 458-276-030, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-030, filed 1/23/78.]

WAC 458-276-045 Public records exemptions—Determining limitations on disclosure—Commercial lists—Redactions—Exemption log. (1)

Exemptions. The Public Records Act provides that certain documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. The following statutes and judicially recognized limitations prohibit the availability of some documents held by the department of revenue (department) for inspection and copying:

- RCW 19.02.115 concerning certain business licensing information;

- RCW 82.32.330 concerning disclosure of tax returns and confidential taxpayer information;

- RCW 84.08.210 concerning certain property tax information; and

- Limitations from disclosure found in chapter 42.56 RCW and other statute exemptions, including an employee's right to privacy; deliberative process exemption under RCW 42.56.210(1) regarding records containing predecisional opinions or recommendations of subordinates expressed as part of the deliberative process that are not cited by the agency; attorney-client privilege in RCW 5.60.060 (2)(a) and RCW 42.56.210(1) exempting attorney work-product involving a controversy; and the prohibition on providing lists requested for commercial purposes prohibited by RCW 19.02.115, 42.56.070(9), and 82.32.330 (3)(k).

(2) **Nondisclosure for commercial lists.** The department is prohibited by RCW 19.02.115, 42.56.070(9), and 82.32.330 (3)(k) from giving, selling, or providing access to any list of persons for any commercial purpose. The department may require the requestor to sign a declaration that the requestor will not put a list of persons in the record to use for a commercial purpose.

(3) **Determination required.** The department must determine that a public record requested in accordance with the procedures outlined in WAC 458-276-030 is not exempt from disclosure under the provisions of RCW 19.02.115, 42.56.230, 82.32.330, 84.08.210, chapter 42.56 RCW, other statute limiting disclosure, or judicially recognized limitation from disclosure prior to the record's release.

(4) **Redactions.**

(a) RCW 42.56.210(1) creates an exception for tax information from any redaction requirement. Further, RCW 82.32.330 (1)(c), the department is not required to redact confidential taxpayer information within a document to permit its disclosure. RCW 19.02.115 states licensing information is confidential and privileged and does not list redaction as an authorized exception allowing disclosure. RCW 84.08.210 states tax information is confidential and privileged and does not list redaction as an authorized exception allowing disclo-

sure. The department's policy is to not redact confidential taxpayer information or licensing information for purposes of disclosure.

(b) Pursuant to RCW 42.56.070, the department will redact identifying details when disclosure of such details would be an invasion of privacy protected by chapter 42.56 RCW. The department may redact for the deliberative process exemption found at RCW 42.56.210(1). The department may redact information when protected by the attorney-client privilege found at RCW 5.60.060 (2)(a) and 42.56.210(1). The public records officer or designee will provide a brief explanation justifying such redaction in writing.

(5) **Exemption log.** All denials, partially or fully denied, of requests for public records will be accompanied by a written statement specifying the reason for the denial. This will include an exemption log of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. WSR 15-01-105, amended and recodified as § 458-276-045, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-060, filed 1/23/78.]

WAC 458-276-055 Review of denials of public records requests—Department's process—Attorney general and court review. (1) **Requestor's petition.** Any person who objects to the full or partial denial of a public records request may petition the department of revenue (department) in writing (including by email message) to the public records officer or designee for prompt review of such decision. The petition shall include a copy of the full or partial denial received by the requestor.

(2) **Prompt review.** After receiving a written request for review of a decision denying a public record, the public records officer or designee denying the request will refer it to the public records officer's supervisor for review. The petition will be reviewed promptly within two business days following the department's receipt of the petition or within such other time as the department and the requestor may mutually agree. Such approval or disapproval shall constitute final department action for purposes of review under RCW 42.56.530.

(3) **Attorney general office's review.** Pursuant to RCW 42.56.530, if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request that the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Court review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative review under this rule.

[Statutory Authority: RCW 82.01.060(2) and chapter 42.56 RCW. WSR 15-01-105, amended and recodified as § 458-276-055, filed 12/18/14, effective 1/18/15. Statutory Authority: RCW 42.17.250. WSR 78-02-064 (Order GT 78-1), § 458-276-070, filed 1/23/78.]