

AMENDATORY SECTION (Amending WSR 16-09-114, filed 4/20/16, effective 5/21/16)

**WAC 516-09-020 Agency description—Contact information—Public records officer.** (1) Western Washington University is an institution of higher education, authority for which is located in chapter 28B.35 RCW. The administrative offices of the university are located at the university's main campus at Bellingham, Washington. (~~The university also has education centers in Seattle, Everett, Mountlake Terrace, Shoreline, Bremerton, Oak Harbor, Anacortes, and Port Angeles.~~)

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records officer located at the main campus listed below:

Public Records Officer

Western Washington University

516 High Street

Bellingham, WA 98225

Phone: 360-650-2728

Fax: 360-650-4228

Current contact information and additional information regarding release of public records can be found (~~on the university web site at <http://www.wvu.edu/publicrecords/index.shtml>~~) online at the public records officer's web site.

(3) The public records officer will oversee compliance with the act but another university staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the university will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 16-09-114, § 516-09-020, filed 4/20/16, effective 5/21/16; WSR 08-01-106, § 516-09-020, filed 12/18/07, effective 1/18/08.]

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-030 Availability of public records.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university in the presence

of university staff. For the purposes of this chapter, the normal business hours for the public records office are from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding university holidays. Other hours of inspection may be arranged if the requestor and the public records officer or designee agree on a different time. Records must be inspected at the offices of the university in the presence of university staff.

(2) Index of records. The Western Washington University records retention schedule is the index of records (~~created after June 30, 1990. Links to many of these schedules can be located at <http://www.wwu.edu/depts/recmgmt/>~~) and is available online at the university archives and records management web site.

~~(3) ((Organization of records. The university will maintain its records in a reasonably organized manner. The university will take reasonable actions to protect records from damage and disorganization.))~~ A requestor shall not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university web site (~~at [www.wwu.edu](http://www.wwu.edu)~~). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university must make the request in writing on the university's request form(~~(, appended to this chapter and)~~) located at ([http://www.library.wvu.edu/info/pubrecords\\_request.pdf](http://www.library.wvu.edu/info/pubrecords_request.pdf)) the public records officer's web site; or by letter, email, or fax addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Date and time of the request;

(v) Identification of the public records adequate for the public records officer to locate the records; and

(vi) A verification that the records requested shall not be used to compile a commercial sales list.



Western Washington University  
 Public Records Office  
 Western Libraries; HH231  
 516 High St.  
 Bellingham, WA 98225 – 9103  
 Phone: (360) 650- 3051  
 FAX: (360) 650- 3044

### Request for Public Records

IDENTIFICATION	
Name	Date of Request
Street Address	Phone
City / State / Zip	Representing
Records to be: _____ Viewed _____ Copied	
The University charges 15¢ per page for standard copies. There is no charge for viewing records. Requester must pay in advance by check, made payable to WWU; please remit to above address. Materials will be released when payment is received.	
NATURE OF REQUEST	
Description of Records – Please give a written description of the records you wish to see and, where possible, indicate dates, topic, and person(s) referenced. Please be as specific as possible.	
I hereby certify that the information obtained as a result of this request for public records will not be used in whole or in part to compile a list for commercial purposes. <b>(RCW 42.56.070)</b>	
Requester's Signature: _____	
DISPOSITION OF REQUEST – OFFICE USE ONLY	
Date Received	Request Number
Request Referred to:	<u>Name / Department</u> <u>Date Sent</u>
1.	_____
2.	_____
<input type="radio"/> REQUEST APPROVED	Date: _____ By: _____
<input type="radio"/> _____ Copies @ 15¢ per page, for total of \$ _____ .	
<input type="radio"/> No charge; request was less than 10 pages.	
<input type="radio"/> REQUEST DENIED	Date: _____ By: _____
Reasons for Denial:	

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(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records (~~(or a deposit.~~ Pursuant to RCW 42.56.120, standard photocopies will be provided at a rate of no more than fifteen cents per page, or such amount as may be established in law)) per WAC 516-09-070.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-030, filed 12/18/07, effective 1/18/08.]

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-03001 "Public record" defined.** (~~(Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing,"~~) A 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 an)) by any state agency((="

~~(1) **Writing.** A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.17.020(41). "Writing" is defined very broadly as: "...handwriting, typewriting, printing, photostating, 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." RCW 42.17.020(48). An email is a "writing."~~

~~(2) **Relating to the conduct of government.** To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a "public record." Even though a purely personal record might not be a "public record," a record of its existence might be. For example, a record showing the existence of a purely personal email sent by an agency employee on an agency computer would probably be a "public record," even if the contents of the email itself were not.<sup>2</sup>~~

~~(3) **"Prepared, owned, used, or retained."** A "public record" is a record "prepared, owned, used, or retained" by an agency. RCW 42.17.020(41).~~

~~A record can be "used" by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a "public record."<sup>3</sup> For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a "public record" because the agency "used" the document in its decision making process.<sup>4</sup> The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.<sup>5</sup>~~

~~Sometimes agency employees work on agency business from home computers. These home computer records (including email) were "used" by the agency and relate to the "conduct of government" so they are "public records." RCW 42.17.020(41). However, the act does not authorize unbridled searches of agency property.<sup>6</sup> If agency property is not subject to unbridled searches, then neither is the home computer of an agency employee. Yet, because the home computer documents relating to agency business are "public records," they are subject to disclosure (unless exempt). Agencies should instruct employees that all public records, regardless of where they were created, should eventually be stored on agency computers. Agencies should ask employees to keep~~



~~agency related documents on home computers in separate folders and to routinely blind carbon copy ("bcc") work emails back to the employee's agency email account. If the agency receives a request for records that are solely on employees' home computers, the agency should direct the employee to forward any responsive documents back to the agency, and the agency should process the request as it would if the records were on the agency's computers.~~

Notes: <sup>1</sup>*Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 748, 958 P.2d 260 (1998). For records held by the secretary of the senate or chief clerk of the house of representatives, a "public record" is a "legislative record" as defined in RCW 40.14.100. RCW 42.17.020(41).  
<sup>2</sup>*Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691, 13 P.3d 1104 (2000).  
<sup>3</sup>*Concerned Ratepayers v. Public Utility Dist. No. 1*, 138 Wn.2d 950, 958-61, 983 P.2d 635 (1999).  
<sup>4</sup>*Id.*  
<sup>5</sup>*See Op. Att'y Gen. 11 (1989)*, at 4, n.2 ("We do not wish to encourage agencies to avoid the provisions of the public disclosure act by transferring public records to private parties. If a record otherwise meeting the statutory definition were transferred into private hands solely to prevent its public disclosure, we expect courts would take appropriate steps to require the agency to make disclosure or to sanction the responsible public officers.")  
<sup>6</sup>*See Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004).))

regardless of physical form or characteristics. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission, or internship; and do not have a supervisory role or delegated agency authority.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-03001, filed 12/18/07, effective 1/18/08.]

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-040 Processing of public records requests—General.**

(1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

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

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

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

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification shall be requested and provided in writing by mail or fax. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(i) A request for all or substantially all records is not a valid request for identifiable records and will be denied. RCW 42.56.080(2).

(ii) A bot request that is one of multiple requests from the requestor to the agency within a twenty-four-hour period will be denied. A "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script. RCW 42.56.080(2).

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Informing persons of records request. In the event that the request seeks records of named persons to whom the records pertain, the public records officer may, prior to providing records, give notice to such persons named in the request whose rights may be affected by the disclosure. The notice to the affected persons will include a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university shall promptly provide space to inspect public records in the presence of university staff. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

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

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments,

the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the university has completed a diligent search for the requested records, made any located nonexempt records available for inspection, and provided copies.

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

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional documents existing at the time of the request, it will promptly inform the requestor of the additional documents and will make them available for inspection or provide copies upon payment on an expedited basis.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-040, filed 12/18/07, effective 1/18/08.]

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-070 Costs of providing copies of public records.**

~~((1))~~ Costs for providing copies.

~~((a) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require payment of the costs of copying an installment before providing that installment. The university will not charge sales tax when it makes copies of public records.~~

~~(b) Costs for duplicating electronic and other records. The university may charge actual costs for special arrangements necessary for providing copies of records when required by the requestor, e.g., costs of color copying, over-sized records, tapes, CDs, or records in other formats. Prior to making duplicate copies))~~ Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce university resources to conduct a

study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the public records officer shall establish, maintain, and make available for public inspection and copying a statement of costs that the university charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. Fees may be waived when the public records officer determines collecting a fee is not cost effective for the university.

Prior to providing records, the public records officer or designee may request ((a deposit of ten percent of)) the estimated cost of reproduction.

~~((2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.~~



~~(3) Payment. Payment may be made by cash, check, or money order to the university.))~~

[Statutory Authority: RCW 28B.35.120(12) and 42.56.100. WSR 08-01-106, § 516-09-070, filed 12/18/07, effective 1/18/08.]