



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 14-17-137; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: Amending three rules; decodifying and recodifying two rules; and repealing ten rules in chapter 458-276 WAC, titled: "Access to Public Records". These rules explain the Public Records Act, chapter 42.56 RCW, and establish procedures the Department of Revenue will follow to provide access to public records.

Hearing location(s):
 Capitol Plaza Building
 4th Floor Executive Conference Room
 1025 Union Avenue SE
 Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Call in option can be provided upon request no later than 3 days before the hearing date.

Date: December 11, 2014 Time: 10:30 AM

Submit written comments to:
 Name: Mark E. Bohe
 Address: Department of Revenue
 Post Office Box 47453
 Olympia, Washington 98504-7453

E-mail: markbohe@dor.wa.gov
 FAX: (360) 534-1606

By: December 11, 2014 at noon

Date of intended adoption: December 18, 2014
(Note: This is NOT the effective date)

Assistance for persons with disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Updating these rules interpreting the public records act, chapter 42.56 RCW, will clarify and update the procedures the Department follows to provide access to public records. These rules will provide information and establish processes for requesting and obtaining access to public records. These rules also explain statutory exemptions from disclosure.

Reasons supporting proposal: These changes will provide the public with a better understanding of the Department's procedures regarding access to public records and the statutory exemptions from disclosure.

Statutory authority for adoption: RCW 82.01.060(2)

Statute being implemented: Chapter 42.56 RCW (Public Records Act)

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

DATE October 31, 2014

NAME
Dylan Waits

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 31, 2014
TIME: 9:24 AM

WSR 14-22-061

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent:

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Mark Bohe	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1574
Implementation.... Dylan Waits	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1583
Enforcement..... Alan Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. These rules do not create reporting, recordkeeping, and other compliance requirements that would economically impact a small business or fiscally impact a school district.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: This is not a significant legislative rule under RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-010 ((Declaration of)) Authority and purpose of access to public records. ((This chapter is promulgated by the department of revenue in compliance with RCW 42.17.250 and to set out procedures by which public records of the department will be made available to the public for inspection and copying.)) (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.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-020 ((Definitions.)) Agency description—Public records officer—Public records. (1) ((Public records. "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 any state or local agency regardless of physical form or characteristics.

(2) Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, 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 and other documents.

(3)) **Department of revenue.** The department of revenue (department) is an agency headed by a director (director) appointed by the governor subject to ((confirmation)) confirmation by the state senate. The powers and duties of the director are((, inter alia,)) those prescribed by RCW 82.01.060. The department ((of revenue will hereinafter be referred to as the "department," and the director will hereinafter be referred to as the "director.")) 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, e-mail 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.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-030 ((Description of central and field organization of the department.)) ~~Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs.~~ ((The department of revenue administers state tax 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 state and local levels. The central administrative offices of the department and its staff are located at General Administration Building, Fourth Floor, Olympia, Washington 98504. Operating divisions of the department are: Field Operations, Interpretation and Appeals, Research and Information, Office Operations, Inheritance Tax, Property Tax, Administrative Services, and Forest Tax.)) (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 centralized administration of the public records officer or designee, sometimes collectively referred to as the department's public records unit. This rule describes this centralized administration. The public records officer or designee may be contacted

at their centralized location described in subsection (6) of this rule.

(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, e-mail address, and telephone number.

(5) **Web site public records e-mail request available.** The department has developed an "e-mail request form" to assist requestors in obtaining public records. This e-mail 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 public records officer or designee of the department. Written requests for identifiable public records may be submitted to the department's public records officer or designee by mail, e-mail message, secure message, facsimile transmission, or delivered in person to the following addresses and physical location:

Mail delivery:

Department of Revenue

Public Records Unit

P.O. Box 47478

Olympia, WA 98504-7478;

E-mail message: dorpublicrecords@dor.wa.gov;

Internet web site: dor.wa.gov (search: "public records");

Facsimile transmission (fax): 360-705-6655;

Street address:

6500 Linderson Way S.W., Suite 102

Tumwater, WA 98501-6561.

(7) **Response.** Within five business days of the receipt of the initial public records request by the public records officer or designee, 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 public records officer or designee 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 of revenue (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 in the central administrative offices of the taxpayer services division at the address and location described in subsection (6) of this rule, will be available for inspection and copying at the central administrative office during the customary office hours of the department. For the purposes of these rules in this chapter, the customary office hours are 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) **Copying.** There is no fee for the inspection of public records. The department may charge fifteen cents per page for 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. The department will publish copying fees to make them readily available to the public. Any fee will be limited to reimbursing the department for its costs incident to such copying. The present fees for copying can be found on the department's internet web site: dor.wa.gov (search: "public records").

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-060 **Public records ((officer)) exemptions—Determining limitations on disclosure—Commercial lists—Redactions—Exemption log.** ((The department's public records are in the charge of the public records officer designated by the director. The person so designated will be located in the central administrative office, research and information division, of the department. The public records officer is responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the department with the public records disclosure requirements of chapter 42.17 RCW.)) (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 disclosure. 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.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

~~WAC 458-276-070 ((Hours for records inspection and copying.))~~

~~Review of denials of public records requests—Department's process—Attorney general and court review. ((Public records maintained in the central administrative offices will be available for inspection and copying at the administrative office during the customary office hours of the department. For the purposes of this chapter, the customary office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Specific records not available in the central administrative offices will be made available pursuant to the procedures described in WAC 458-276-080(3).)) (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 e-mail 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.~~

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
458-276-060	458-276-045
458-276-070	458-276-055

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 458-276-040	Operations and procedures.
WAC 458-276-050	Public records available.
WAC 458-276-080	Requests for public records.
WAC 458-276-090	Copying.
WAC 458-276-100	Exemptions.
WAC 458-276-110	Review of denials of public records requests.
WAC 458-276-120	Limitations on disclosure.
WAC 458-276-130	Records index.
WAC 458-276-140	Administrative offices.
WAC 458-276-150	Adoption of form.

DRAFT