

WSR 23-14-112

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed July 5, 2023, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-087.

Title of Rule and Other Identifying Information: Chapter 504-45 WAC, Public records.

Hearing Location(s): On August 9, 2023, at 4:00 p.m., Zoom meeting. Join from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/94531918080>, Meeting ID 945 3191 8080; or join by telephone (long distance) +1 253 215 8782, +12532158782,,94531918080# US (one-tap mobile call). To find an international phone number, see <https://wsu.zoom.us/j/94531918080>. No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: September 15, 2023.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, by August 9, 2023.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by August 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the rules regarding public records, including availability, processing, exemptions, costs of providing public records, review of denials, and description of the university agency.

Reasons Supporting Proposal: The proposed amendments modify, clarify, and update the university's public records rules.

Statutory Authority for Adoption: RCW 28B.30.150, 42.56.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Executive Director, Policy and Governance, French Administration, Room 442, Pullman, WA 99164-1045, 509-335-5524 or Alicia Foth, Manager, University Public Records Officer, Public Records Office, Information Technology Building, Room 3011, Pullman, WA 99164-1225; Implementation: Alicia Foth, Manager, University Public Records Officer, Public Records Office, Information Technology Building, Room 3011, Pullman, WA 99164-1225; and Enforcement: Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration, Room 442, Pullman, WA 99164-1045, 509-335-5524.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider these rules to be significant legislative rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 5, 2023
Deborah L. Bartlett, Director
Policies, Records, and Forms
University Rules Coordinator

OTS-4704.1

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-020 Agency description—Contact information—Public records officer. (1) Washington State University is an institution of higher education, authority for which is located in chapter 28B.30 RCW. The system administrative offices and the main campus of the university are located at ~~((the university's main campus at))~~ Pullman, Washington. Other campuses are located at Spokane, Tri-Cities, Vancouver, and Everett, Washington. There is also a global (online) campus. Agricultural research centers are located at Mt. Vernon, Prosser, Puyallup, Vancouver, and Wenatchee, Washington. Cooperative extension offices are maintained at the county seats of all counties in the state. The university also has operations offices at Seattle and Olympia, Washington.

(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 office located at the Pullman administrative offices. Current contact information and additional information regarding release of public records, including costs, are available on the university's website at <https://wsu.edu>.

(3) The public records officer oversees compliance with the act, but another university staff member may process the request. Therefore, these rules refer to the public records officer or "designee." The public records officer or designee and the university 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.

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying by appointment during normal business hours of the university. For the purposes of this chapter, the normal business hours for the public records office are from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding the university's holidays and scheduled and emergency closure periods. Records must be inspected at the offices of the university.

(2) Index of records. An index of final orders, declaratory orders, interpretive statements, and policy statements entered after June 30, 1990, is available at the office of the university's rules coordinator at the Pullman campus. The university posts links to many of these records on its website at <https://wsu.edu>.

(3) Organization of records. The university maintains its records in a reasonably organized manner. The university takes reasonable actions to protect records from damage and disorganization. A requestor must not take university records from university offices without the permission of the public records officer or designee. Certain records

are available on the university's website at <https://wsu.edu>. Requestors are encouraged to view the documents available on the website 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 should make the request in writing on the university's public records portal, using the request form on the university's website, or by letter (~~(, fax,)~~) or email addressed to the public records officer or designee. The university also honors in-person requests received by the public records office during normal business hours. The public records office records in-person verbal requests in writing and confirms the substance of the request with the requestor. The following information must be included in the request:

(i) Name of the person requesting records, unless the requestor wishes to remain anonymous;

(ii) Mailing address of requestor;

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

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, (~~he or she~~) they should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, standard photocopies or electronically produced copies are provided at the rates established in WAC 504-45-070. A requestor may also refer to the university's website at <https://wsu.edu> for current rates.

(c) A form is available for use by requestors at the public records office and on the university's website at <https://wsu.edu>.

~~((d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she confirms receipt of the information and the substance of the request in writing.))~~

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-040 Processing of public records requests—General.

(1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it is to "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 processes requests in the order allowing the most requests to be processed in the most efficient manner. This may include grouping requests to help ensure university resources are being used efficiently, for example, when an individual requestor, or one or more requestors from the same organization, makes multiple records requests.

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

(a) Makes 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, sends the copies to the requestor;

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

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

(e) Denies the request.

(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 or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask (~~him or her~~) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons includes 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 or designee states the specific exemption and provides 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 or designee redacts the exempt portions, provides the nonexempt portions, and indicates to the requestor why portions of the record are being redacted.

(6) Inspection of records.

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

(b) The requestor must claim or review the assembled records within (~~thirty~~) 30 days of the university's notification to (~~him or her~~) them that the records are available for inspection or copying. The university notifies the requestor in writing of this requirement and informs the requestor that (~~he or she~~) they 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~~) 30-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 makes any copies of records requested by the requestor or arranges for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee provides access for inspection and copying in installments, if ~~((he or she))~~ they reasonably determine ~~((s))~~ that it would be practical to provide the records in that way. If, within ~~((thirty))~~ 30 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 indicates that the university has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) Closing withdrawn or abandoned request. The public records officer or designee may close the request and indicate to the requestor that the university has closed the request when the requestor ~~((either))~~:

(a) Withdraws the request ~~((or))~~;

(b) Fails to provide clarification within 30 days of a request for clarification;

(c) Fails to fulfill ~~((his or her))~~ their obligations to inspect the records, which includes opening and downloading the records within 30 days; or

(d) Fails to pay the deposit or final payment for the requested copies ~~((, the public records officer or designee closes the request and indicates to the requestor that the university has closed the request))~~ within 30 days.

(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 ~~((responsible))~~ responsive documents existing at the time of the request, it must promptly inform the requestor of the additional documents and make them available for inspection or provide copies upon payment on an expedited basis.

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-050 Processing of public records requests—Electronic records. (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests records in an electronic format, the public records officer or designee provides the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to databases. With the consent of the requestor, the university may provide customized access under RCW ~~((43.41A.130))~~ 43.105.355 if the record is not reasonably locatable or

not reasonably translatable into the format requested. The university may charge a fee consistent with RCW ((43.41A.130)) 43.105.355 for such customized access. (See WAC 504-45-070.)

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-060 Exemptions. (1) The Public Records Act provides that a number of types of ((documents)) records are exempt from public inspection and copying. In addition, ((documents)) records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some ((documents)) records held by the university for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside the act. The university's failure to list an exemption here does not affect the efficacy of any exemption.

- (a) RCW 5.60.060 - Privileged communications;
 - (b) 20 U.S.C. 1232g - Family Education Rights and Privacy Act (FERPA);
 - (c) 42 U.S.C. 405 (c) (2) (vii) (1) - Social Security numbers;
 - (d) 45 C.F.R. parts 106 and 164 - Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - (e) Chapter 19.108 RCW and RCW 4.24.601 - Uniform Trade Secrets Act; and
 - (f) Chapter 10.97 RCW - Regarding criminal history information.
- (2) The university is prohibited by statute from providing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-070 Costs of providing ((copies of)) public records. (1) Costs for ((copies of)) public records. There is no fee for inspecting public records. The following fees apply to copies of public records:

- (a) Ten cents per page for records scanned into electronic format;
- (b) Five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system;
- (c) Ten cents per gigabyte for transmitting records electronically;
- (d) Fifteen cents per page for photocopies of public records and/or printed copies of electronic public records when requested;
- (e) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge;
- (f) For body worn camera footage, staff redaction time as provided in RCW 42.56.240 (14) (f); and
- (g) Under RCW ((42.56.120)) 42.56.130, the university may charge other copy fees authorized by statutes outside chapter 42.56 RCW.

(2) In addition to the charge imposed for providing ~~((copies of))~~ public records and for the use by any person of university equipment, the university may include a customized service charge. The university charges for customized services pursuant to RCW 42.56.120(3). The customized service charge may reimburse the university up to the actual cost of providing the services in this section. The university provides the requestor the opportunity to amend ~~((his or her))~~ their request in order to avoid or reduce the cost of a customized service charge. The university may require a deposit in an amount not to exceed ~~((ten))~~ 10 percent of the estimated cost of providing ~~((copies))~~ records for a request, or 10 percent of the estimated cost of staff redaction time for body worn camera footage, including a customized service charge. If the university makes a request available on a partial or installment basis, the university may charge for each part of the request as it is provided.

(3) Payment. Payment may be made by credit or debit card, cash, check, or money order to the university. For payments made by credit or debit card, a service fee equivalent to the cost of processing the payment is charged.

(a) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The university notifies the requestor of when payment is due.

(b) The university closes a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

(4) Pursuant to RCW 42.56.120(2), ~~((as amended by section 3, chapter 304, Laws of 2017, Washington State))~~ the university declares that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records for the following reasons:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(5) The university's public records office publishes a schedule of fees on the university's website consistent with this rule. The university reserves the right to change its fees as allowed by RCW 42.56.120.

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-080 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition must include a copy of, or reasonably identify, the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer ~~((must))~~ immediately refers the petition to their supervisor, or

a designee in the supervisor's absence, who considers the petition and either affirms or reverses such denial within two business days following the university's receipt of the petition, or within such other time as the university and the requestor mutually agree.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university 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 the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may request 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 appeal.