

WASHINGTON STATE UNIVERSITY

# Public Records

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## Overview

- Public Records Law
- Public Record Defined
- Recognizing Public Records Requests
- Processing Public Records Requests

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## The Public Records Act RCW 42.56

- In 1972 voters adopted Initiative 276 which resulted in the Public Records Act, RCW 42.56 (formerly RCW 42.17).
- Government agencies are instruments of the people.
- Government records belong to the citizens.
- Citizens should be able to see their records.

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## Public Interest

Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.

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## University Interest

It is in the University's best interest to manage each request in a courteous, prompt and thorough manner to minimize public distrust and possibly prevent the request from escalating into an expensive legal event.

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## What is a Public Record?

"Public record"...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.

"Writing"....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.

*Also...held on personal computers, text messages on cell phones used to conduct WSU business, voicemail received on the computer and retained, and gmail/yahoo/or other email systems used for WSU business.*

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## What is a Public Records Request?

A request from a member of the public asking for an identifiable University record that meets the definition of a Public Record *(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.)*

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## What is NOT a Public Records Request

- Your request for your own personnel file (see HRS).
- Requests for student education records.
- Interdepartmental requests.
- Requests for information (answering questions) that are not the subject of an identifiable record (we DO provide records containing the information requested, if they exist).

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## Increasing Requests

- 1994 - 2000 averaged 73 per year
- 2001 - 2004 averaged 170 per year
- 2005 - 2008 averaged 252 per year
- 2009 - 2012 averaged 337 per year
- 2013 - 2014 averaged 385 per year
- 2015 - 2016 averaged 420 per year
- 2017 - 557
- 2018- 93 (as of February 7, 2018)

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## Who makes these requests?

- Media
- Businesses
- Employees/Faculty
- Individuals seeking information about self or family
- Civic-minded citizens
- Attorneys
- Researchers
- Bad-faith requests or requests from unstable individuals

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## Examples

- Requests can be narrow or broad. Date specific or for several years period of time. Held by one or many individuals/departments/ colleges.
- WSU Police reports.
- Student Conduct complaints, investigation records.
- OEO complaints, investigation records.
- HRS complaints, investigation records.
- Personnel records.
- Contracts, bids.
- Coach employment contracts and other Athletic Department records.
- Lists of employees with names, salaries, locations, etc.
- Student directory information.
- Email of individual(s).
- WSU projects, topics in the news, etc.
- Veterinary Medicine client records.
- Budgets, expenditures, sources of revenue.

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## General Requirements

- Provide full public access to our public records.
- Treat all requestors equally (no preferential treatment).
- Provide the fullest assistance to requestors.
- Provide timely action on requests.
- Cannot require requestor to provide the purpose of a request, nor can we deny a request because it is broad.
- Not required to create records which do not exist, but we do create records from data that we can easily assemble when it exists.

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## Penalties

If we withhold or delay a public record that should be timely released, a court can award monetary fines to the prevailing party. The agency bears the burden of demonstrating to a court that an adequate search was undertaken (documented) and that any records withheld/redacted were lawfully exempt.

Potential monetary fines include all costs, reasonable attorney fees, and up to \$100 per record per day that the party was denied the right to inspect or copy the record (from the date the request was received).

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## Examples of Monetary Awards

- King County \$360,000+
- City of Prosser \$175,000 + \$200,000 attorney fees
- City of Mesa \$246,000 + attorney fees
- DSHS \$649,897 2011
- Department of Corrections \$200,000 + \$341,000 attorney fees 2007
- U of W \$175,000 in 2011 and \$725,000 in 2013 (*this was reversed by Court of Appeals in February 2015, UW still paid \$285,000 in attorney fees*)
- Spokane Public Schools in 2013, \$130,000
- Mason County \$175,000 and \$135,000
- City of Monroe \$157,000
- Jefferson County \$42,000
- Department of Labor and Industries (Wade's Gun Shop) \$546,509

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## Ethics in Public Service Act

No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under the Public Records Act was under a personal obligation to release the record, and failed to do so.

In rare cases, individual employees may also be civilly or criminally liable for violations of the Public Records Act up to \$5,000/violation. It is also a crime to willfully mutilate, conceal, or destroy public records unless authorized (such as destruction under the approved retention schedule). Such a violation may mean imprisonment up to 10 years or a fine of \$5,000, or both.

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## Be Prepared

- Always remain aware of the fact that we are each creating Public Records in the daily course of doing our jobs.
- Legally dispose of records in accordance with the records retention schedule, including email.

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## E-mail, Text Messages

- Most electronic messages are transitory communications without retention value.
- Some messages are public records requiring retention--such as evidence of official policies, actions, decisions or transactions.
- Do not use electronic mail or messages for confidential or sensitive communications--once created and sent, you lose control.
- Privacy cannot be guaranteed...very little is "confidential." Most records are subject to disclosure.

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## Destroying Records

A record scheduled for destruction may not be destroyed if a legal action (litigation hold notice) or Public Records Request involving that record is pending.

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## Processing Requests

Required to respond to a Public Records Request within 5 days by:

- Producing the records or making records available for inspection;
- Acknowledging receipt and providing a reasonable time for response;
- Denying the request and specifying the reasons; or
- Requesting clarification from the requestor.

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- Notify and coordinate collection of records with departments holding the records.
- Document the search to prove an adequate search was conducted. A search is not limited to one or more locations/individuals if there are additional places or staff where records are also held. All formats must be considered -- paper, electronic, etc.).
- Records are organized, copied/scanned, and each page is analyzed for applicability of lawful exemptions.

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- Records to be withheld because they are legally prohibited from disclosure are separated from the records to be disclosed.
- Redactions of exempt information are applied.
- Information that is exempt is redacted (blacked out) but the remainder of the record is disclosed.
- An index is required stating the legal reason for each redaction (RCW 42.56.210[3]).
- Notices may be sent to parties named in the records.

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- Requestors are invoiced at 15 cents per paper page for the final production copy. No charge for electronic records. We cannot charge for time of staff to search, review, or redact public records unless special programming is required (agreed to by the requestor).
- The originals, redacted originals, and a copy of the final production are retained.
- The file is closed.

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## Legal Exemptions

The Act favors disclosure -- exemptions must be "narrowly construed." There is no general privacy exemption. Frequent exemptions include:

- Residential addresses/telephone numbers of employees in personnel records;
- Annual reviews (unless misconduct);
- Social Security Numbers; WSU ID numbers, credit/debit card numbers, check numbers, Tax ID numbers;
- Names and identifiers of students (FERPA);
- Possible unfair practice (discrimination) and some law enforcement active investigative records; and
- Attorney/client privileged information.
- Personal information of clients such as owners who bring animals to Vet Med for veterinary care.

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## Summary

- Do not delay--forward any Public Records Requests to the Public Records Office immediately.
- When the Public Records Office requests records, promptly search for all records that are responsive and provide copies, following the instructions provided.
- Do not withhold or redact records because you think the information is exempt. Leave that determination to the Public Records Office.
- Dispose of records in conformance with the retention schedule.
- Manage your e-mail account.

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