

 <p>POLICY</p>	Applicability Department Wide		
	Effective Date November 2, 2021	Page Number 1 - 6	Policy Number 42
	Public Records		

Approved by

DocuSigned by:  FF699DFCFDE1425... Allyson Brooks, Director State Historic Preservation Officer	11/2/2021 Date
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Policy

It is the policy of the Department of Archaeology and Historic Preservation (DAHP) to release records in compliance with the Washington State Public Records Act (PRA) and any other applicable provisions of federal or state law.

Purpose

DAHP is required by RCW 42.56.100 to adopt and enforce reasonable rules and regulations to provide full public access to public records, to protect public records from damage and disorganization and to prevent excessive interference with other essential functions of DAHP. These rules and regulation shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. DAHP is also required to protect certain public records from disclosure subject to various legal exemptions.

This policy provides the practices for responding to and fulfilling requests for disclosure of public records in a manner consistent with the PRA. This policy includes statutory requirements and best practices. DAHP is not required to respond to questions, do research, or to provide information that is not an identifiable public record.

DAHP reserves the right to apply, interpret, modify, or suspend this policy at any time. This policy shall be posted on DAHP's website.

Definitions

1. The Department of Archaeology and Historic Preservation is Washington State's primary agency with knowledge and expertise in historic preservation. We advocate for the preservation of Washington's irreplaceable cultural resources (historic and archaeological) which include significant buildings, structures, sites, objects, and districts. Through education and information, we provide leadership for the protection of our shared heritage.
2. "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. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who (a) do not serve in an administrative capacity; (b) Have not been appointed by the agency to an agency board, commission, or internship; and (c) Do not have a supervisory role or delegated agency authority. RCW 42.56.010(3). Electronic data, including emails,

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that meets this definition shall be considered a public record. Records created or received by employees using non-state issued devices only qualify as a public record if the employee was acting within the scope of employment when the record was created or received, or when the record is used for department purposes.

3. “Writing” means 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 42.56.010(4)

4. “Identifiable Record” means an identifiable record is one in existence at the time the records request is made and DAHP can locate after an objectively reasonable search. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records. RCW 42.56.080

5. “Exempt Record” includes records or portions of records that are specifically exempted or prohibited from disclosure by state or federal law, either directly in RCW 42.56 or other statutes. Exemption from disclosure of a portion of a record does not automatically exempt the remainder of the record from disclosure. Exempt portions of records may be subject to redaction.

6. “Transitory Records” are records with little or no administrative, legal or fiscal value that need not be kept for future use or information. They are deleted or recycled when no longer needed for agency business but are subject to disclosure while they exist.

Guidelines

The Public Records Officer is responsible for handling public records requests and managing records. Other DAHP staff may also process public records requests as needs require. The Public Records officer shall:

- Be responsible for implementing the DAHP’s process regarding disclosure of public records;
- Serve as the principal contact point with any Requestor who has made a Records Request to DAHP, unless the Public Records Officer has delegated these responsibilities to a specific staff member;
- Coordinate staff in this regard, generally ensuring the compliance of the staff with public records disclosure requirements;
- Make the final decision in cooperation with the Assistant Attorney General regarding disclosure and application of exemptions;
- Maintain the agency’s indices, if any;
- Maintain a log of public records requests; and
- Undergo training required of Public Records Officers by Washington State law.

Procedure for PRA Request:

1. The Records Officer Compiles All Public Records Requests

Members of the public who wish to inspect or receive DAHP records are encouraged to submit a Public Records Request in writing, and should provide the following information. However, a request is not required to be made in writing.

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- The date and time of the request
- The name and address of the person making the request, and convenient means of contact such as email or phone number
- Specific description of records requested, i.e. subject, time frame, etc.
- How the requester would like to receive the request (email, DVD in mail, paper copies)

2. Response to Public Records Requests

DAHP will promptly respond to all Public Records Requests within 5 business days by either:

- Making the requested record(s) available; or
- Providing a link to the records if they are on the website or the public side of WISAARD; or
- Asking for clarification if the request is unclear; or
- Making a portion of the records available in installments as they are assembled; or
- Denying the request due to exemptions; or
- Indicating that there are no responsive records; or
- Acknowledging the request and providing a reasonable estimate of time needed to respond.

Large Requests: When receiving a request that appears to be broad in nature, DAHP may request clarification from the requestor to ensure that the appropriate records are identified and to determine if the request can be narrowed. Clarification shall focus on information needed to identify responsive records. Any information provided about the purpose of the request shall not be used as a basis for denying the request. When a requestor agrees to narrow a request, nothing prevents the requestor from later expanding the request back to its original scope. When a Records Request is for a large volume of records, DAHP may elect to provide records on an installment basis.

Requests for “All Records”: A public records request must be for identifiable records. A request for all or substantially all records is not a valid request for identifiable records. A request for all records regarding a particular topic, person, or containing a specific keyword is a valid request.

Requests for List of Names: The PRA prohibits DAHP from producing a list of names to a requestor who intends to use the list for commercial purposes. When a requestor requests a list of names, the requestor should explain the intended use of the list and will be asked to sign a declaration providing that the list will not be used for commercial purposes. The Public Records Officer may do research to confirm that the request is not for commercial purposes. RCW 42.56.070(8)

Bot Requests: DAHP may deny a bot request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the agency. For purposes of this subsection, "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

Notice to Third Parties: If a public record contains personal information that identifies an individual or organization other than the subject of the requested public record, DAHP may notify that individual or organization to allow the third party to seek relief pursuant to RCW 42.56.540. DAHP may take this into account when providing an estimate for when the records will be available. DAHP should also review any contracts with third parties that may contain special notice provisions. Nothing in this policy is intended to create any right to such notice.

Creating Records: A PRA request only applies to records that exist at the time of the request. The PRA does not apply to requests for information or require DAHP staff to create a new record. Requesters cannot make “standing” PRA requests.

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3. Fulfillment of Requests

- Fulfillment of requests shall be processed in the order that provides the timeliest response. Requests may be filled in the order of receipt as long as easily fulfilled requests are not postponed behind larger or more complicated requests because they were received later.
- After receiving a request, the PRO shall determine what departments might have responsive records and whether it will be necessary to conduct electronic searches for records. The PRO will then coordinate with the appropriate staff as needed. DAHP staff will be prompt in searching for responsive records and providing them to the PRO in accordance with the timeline established by the PRO. If DAHP staff are using home computers, personal devices, or personal accounts to conduct State business, those devices and accounts also need to be searched by the employees or officials who are using them when those devices and accounts may have responsive records. If DAHP's contractors performing State work have responsive public records as a consequence of the contract, they should also be notified of the records request. If staff cannot provide the records by the date established by the PRO, a reasonable estimate of how long it will take to provide the records must be provided.
- The Public Records Officer is responsible for identifying records that are potentially exempt.

4. Denials of Requests Must State Why

Any denials of requests for Public Records must state in writing the specific reason for the denial. A statement of the specific exemption and how it applies to the record withheld must be provided.

5. Requests May Need Clarification

DAHP may ask for clarification if the request is unclear. If the requestor fails to clarify, DAHP will not fulfill the request.

6. Exemptions from Public Disclosure

Some records are exempt from Public Disclosure, and will not be released to the general public (Chapter RCW 42.56).

The Records Officer may also redact identifying details when it may result in an invasion of personal privacy interests (RCW 42.56.210). The Records Officer must detail the reason for each exemption/redaction by use of an exemption/redaction log which is provided to the requester.

7. The Director Handles All Appeals of Denials

Any person who objects to a denial of a Public Records Request may petition for review by the Director. The requestor must submit this request in writing. The Director (or someone entitled to act on his or her behalf) will either affirm or reverse the decision within two business days.

8. Abandonment/Failure to Respond

If clarification is requested and not received, DAHP will close the request after 30 business days of requester inactivity and notify the requester of the closure.

9. Inspection of Records

Consistent with the Public Records Act, physical inspection and review of the records shall be offered at no charge during normal office hours from 8:00 AM to 4:00 PM Monday through Friday. Where records contain information exempt from disclosure under the Public Records Act, the office shall withhold that information when such release would result in the loss or damage to the resource. Because of limited researcher space, limited staff, the physical extent of the records and because specific records and components of records are exempt from public disclosure, the

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Department shall provide explicit instruction to ensure equitable access, orderly inspection, and re-filing of the records.

10. Copying of Records

Copying of public records of historic, archaeological and cultural sites is allowed to professional researchers (architectural historians, historic preservation specialists, historians, archaeologists, environmental technicians, engineers and planners), agency officials from federal, state and local government agencies and tribal officials. Private landowners may gain access only to those cultural resource records pertaining to historic and archaeological sites located on their property. Landowners must show proof of ownership of the land in order to gain access to records; this includes but is not limited to current tax records or deed of ownership listing the applicable Township, Range and Sections. Such copying is permitted upon completion and signature by the requestor of a confidentiality agreement for those records that are exempt from public disclosure. Where records contain information exempt from disclosure under the Public Records Act the Department shall withhold that information when such release would result in the loss or damage to the resource.

11. DAHP Contact Information:

Mailing:

Department of Archaeology and Historic Preservation
c/o Records Manager
PO Box 48343
Olympia, WA 98504-8343

Email:

recordrequest@dahp.wa.gov

Fax:

360-586-3067

12. Exemptions

The Public Records Act and other statutes exempt or prohibit disclosure of certain public records. It is the policy of DAHP to provide prompt and helpful access to all public records in DAHP's custody that State statutes do not exempt or prohibit from disclosure. Requested records may only be withheld or redacted consistent with statutory requirements, which shall be documented for the requestor in accordance with the requirements of RCW 42.56.210(3).

The following are summaries of commonly used exemptions by DAHP. DAHP reserves the right to use any exemption permitted by law and it not limited to the list below:

- RCW 42.56.300(1)- records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites
- RCW 42.56.300(3)- any site form, report, specific fields and tables relating to site form data within a database, or geographic information systems spatial layer related to (a) archaeological sites or (c) traditional cultural places
- RCW 5.60.060(2)(a)- attorney-client privileged communication and work product
- RCW 42.56.230(3)- personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy

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- RCW 42.56.230(5)- credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law
- RCW 42.56.250(2)- applications for public employment
- RCW 42.56.250(4)- the following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, payroll deductions including the amount and identification of the deduction, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency
- Section 304 of the National Historic Preservation Act and RCW 42.56.080(2)-307103. Access to information
 - (a) The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary [of the Interior], shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may-
 - (1) cause a significant invasion of privacy;
 - (2) risk harm to the historic property; or
 - (3) impede the use of a traditional religious site by practitioners.
 - (2)... or other statute which exempts or prohibits disclosure of specific information or records to certain persons.