

DRAFT

OFFICE OF HEARING EXAMINER
PUBLIC RECORDS DISCLOSURE PROCEDURES

1. PURPOSE

- 1.1 This document provides the procedures the Office of Hearing Examiner will follow for complying with the Washington State Public Records Act, Chapter 42.56 RCW, and other laws that may require, permit, or prohibit disclosure of certain records and information in the custody of or maintained by the Office of Hearing Examiner (OHE).

2. PUBLIC RECORDS OFFICER

- 2.1 The Public Records Officer (PRO) is the point of contact for those seeking disclosure of public records in OHE custody.
- 2.2 The PRO oversees OHE compliance with the Public Records Act
- 2.2.1 Assists those making a request for public records;
- 2.2.2 Coordinates OHE response to requests; and
- 2.2.3 Ensures that public records being reviewed are protected from damage or disorganization.
- 2.3 With the Hearing Examiner, the PRO conducts staff training on public records disclosure.

3. REQUESTS FOR PUBLIC RECORDS

- 3.1 Requests for the disclosure of public records should be made in writing using OHE's request form. The form is available in the office and on the OHE website. Letters, electronic mail, and facsimiles are accepted if they contain the requisite elements:
- (a) requestor's name;
- (b) requestor's address;
- (c) requestor's telephone number and/or email address;
- (d) information sufficient to identify the records being requested; and
- (e) date and time of day of the request.
- 3.2 Oral requests are also accepted, but a written record of the request must be created as in 3.1 above, and then confirmed with the requestor.
- 3.3 All requests for the disclosure of public records must be directed to the PRO. In the PRO's absence, the requests must be directed to _____.

- 3.4 If the requestor wishes to receive copies of the records requested rather than simply inspecting them, he or she should request copies from the PRO and make arrangements to pay for the copies.

4. FEES AND COSTS

- 4.1 There is no cost to review records responsive to a request.
- 4.2 The PRO shall provide and encourage electronic delivery of responsive records at no cost to the requestor whenever feasible.
- 4.3 Paper copies will be provided at fifteen (15) cents per page per RCW 42.56.070(8). Documents scanned to CD will incur a \$1.00 fee per CD. Mailed items will incur the cost of copies plus the actual cost for postage and container or envelope.
- 4.4 When standard 8 ½ x 11 records are scanned from paper to PDF, the requestor may be charged 10 cents per page.
- 4.5 OHE will charge its actual cost, including the use of a third party vendor, for providing copies of non-standard records, such as color copies and oversized documents. When considering use of a third party vendor, OHE will notify and request written approval from the requestor regarding the costs before proceeding.

5. INITIAL RESPONSE TO REQUEST

- 5.1 The PRO shall respond to all requests for the disclosure of public records within five business days of date OHE received them. The five day rule is calculated according to RCW 1.12.040, which states that the time is computed by excluding the first day and including the last unless the last day is a legal holiday, Saturday, or Sunday, in which case it is also excluded. Requests received after 5:00 PM shall be deemed received on the next business day. Responses shall be made in one of the following ways:
 - 5.1.1 Providing the requested records or responding in writing that there are no records responsive to the request;
 - 5.1.2 Denying the request with a written explanation of the reason for denial;
 - 5.1.3 Acknowledging the request in writing and giving a reasonable estimate of the time required to respond;

- 5.1.4 Asking for clarification of the request, which may be done by telephone or electronic mail. If clarification is requested by telephone, any modifications to the request shall be confirmed in writing.
 - (a) If the requestor fails to respond within 30 days to a request for clarification, the request is considered abandoned and a closing letter is sent to the requestor.
- 5.2 The initial response shall include a copy of the original request or refer to it by date and topic.
- 5.3 The PRO shall forward misdirected requests for the disclosure of public records to the appropriate City department(s) and notify the requestor of this action. Misdirected requests are requests for records that are neither in the custody of, nor the responsibility of OHE.
- 5.4 Pursuant to RCW 42.56.540, before releasing a record, the PRO may notify a person named in the record, or to whom the record specifically pertains, that release of the record has been requested.
- 5.5 Estimates of time required to respond to a request may take into account factors such as OHE's resources, staff leaves, overall workload, and the volume and nature of records involved, and the time required to give third party notice pursuant to 4.4 above.

6. PRODUCTION OF RECORDS

- 6.1 The PRO shall make records responsive to a request available for inspection and copying during normal business hours unless a record falls within a specific exemption to disclosure. Normal business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays. Appointments are normally required and must be scheduled with the PRO. The PRO must take reasonable precautions to protect records from damage and disorganization.
- 6.2 When records responsive to a request have been compiled, the PRO shall notify the requestor that the records are available for inspection or delivery, and state the amount of projected copying costs and, if applicable, mailing costs. If the requestor has asked to inspect the records, the notification should ask that he or she contact the PRO to arrange a mutually convenient time for inspection.
- 6.3 Records provided in response to a request are those that exist at the time the request is made. OHE is not required to create records to satisfy a request or to produce records created after the request was made.

- 6.4 Records or parts of records that are determined to be exempt from disclosure will be redacted or withheld. An exemption log will be created and provided to the requestor. The log will identify the type of record, its date and number of pages, and the author or recipient of the record if their identity is not exempt. The log will also cite the appropriate exemption and include a brief, written explanation of its application. Requestors may be notified in advance if a substantial number of responsive records will be unavailable. Common exemptions can be found at RCW 42.56.210 through 42.56.510.
- 6.5 In the case of multiple requests for disclosure of public records, the PRO shall prioritize requests in order to process the greatest number of requests in the least amount of time. Requests requiring little effort shall be filled without delay even if received after a request requiring a more dedicated effort.
- 6.6 If a request involves a large number of records (250 pages or more), the records may be made available for inspection or delivered in installments. The requestor shall be asked to prioritize the request to allow OHE to produce the most important records first. Large requests require an advance deposit of 10% of the estimated cost for copying and delivery.
- 6.7 A response to a request is considered complete once a requestor has been notified in writing that all responsive documents have been compiled and are available for review and/or delivery.
- 6.8 If a requestor fails to make arrangements to review or retrieve records, or an installment of records, within thirty days of notification that they are available, the PRO will stop making any requested copies and assembling any remaining installments, return the documents to their original location, and notify the requestor in writing the request has been closed.
- 6.9 The PRO shall maintain a log of all requests received and a copy of all documents provided in response to a request.
- 6.10 The PRO shall enter information concerning each request on the city-wide public disclosure log maintained by the Department of Executive Administration.
- 6.11 In the event additional responsive records are discovered that existed at the time the request was made, the PRO will promptly notify the requestor and provide an opportunity for review and/or copying of the additional records.
- 6.12 The PRO shall develop a procedure for tracking all staff time and expenditures related to responses to requests for public records.

7. RETENTION OF PUBLIC RECORDS FOR THE PURPOSE OF DISCLOSURE

- 7.1 All OHE employees shall maintain OHE records within their control in accordance with approved records retention schedules. Each employee is responsible for protecting the records from destruction and disorganization. For guidance, contact the PRO concerning approved retention schedules and the organization of archived electronic mail.
- 7.2 Records that have passed their required retention period, but are still in the possession of OHE at the time a request is made for them shall be maintained in their original form for 6 months following the date the request is closed.

8. APPEAL PROCESS

- 8.1 A requestor may appeal redaction of, or denial of access to a record within eight days of the date of the denial letter.
 - 8.1.1 The Hearing Examiner is the designated review authority. Within two business days of the date the appeal is received, the Hearing Examiner shall review the denial and do one of the following:
 - (a) issue a decision affirming the denial;
 - (b) issue a decision modifying the denial;
 - (c) issue a decision overturning the denial; or
 - (d) issue a letter informing the requestor that review of the appeal will require additional time and providing an anticipated date by which review will be completed.
 - 8.1.2 The Hearing Examiner's decision is a final administrative action for purposes of appeal to superior court.