

ORIGINAL



PUBLIC RECORDS ACT DISCLOSURE POLICY

OVERVIEW

1. Authority

RCW 42.56.070(1) requires each local agency to make available for inspection and copying public records which are not specifically exempted by statute. RCW 42.56.070(2) requires each agency to publish and maintain, for informational purposes, a current list containing every law, other than those listed under Chapter 42.56 RCW, that the agency believes exempts or prohibits disclosure of specific information or records of the agency.

2. Purpose

As directed by RCW 42.56.100, the purpose of this policy is to establish the procedures the Port of Benton (the "Port") will follow to provide full access to public records not specifically exempted by state or federal law. This policy will ensure that requestors receive the fullest assistance while preventing excessive interference with other essential functions of the Port.

3. Application

This policy applies to all requests for public records made pursuant to Chapter 42.56 RCW, and supersedes all prior versions of the Port of Benton's Public Records Act Disclosure Policy. This policy is subject to revision at any time.

4. Definitions

Listed below are terms defined by the Public Records Act. Any term not defined by the Public Records Act or this policy shall be defined by its common meaning.

a. "Agency" includes all state and local agencies. A "local agency" includes counties, cities, towns, municipal corporations . . . or any office, department, division, board, commission, or agency thereof. The Port of Benton is an agency governed by the provisions of Chapter 42.56 RCW.

b. "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

c. "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 by volunteers who:

- i. Do not serve in an administrative capacity;
- ii. Have not been appointed by the agency to an agency board, commission, or internship; and
- iii. Do not have a supervisory role or delegated agency authority.

d. "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.

PRACTICE

1. Responsibilities

a. **Public Records Officer.** The Port of Benton has publicly identified the Port Attorney as the Public Records Officer whose responsibility is to serve as a point of contact for requests under the Public Records Act. The Port Attorney is designated to oversee compliance with the Washington State Public Records Act. Other specific Port staff members may receive or respond to public records requests as set forth below.

2. Public Records Request - General Provisions

a. Port officials, officers and employees are not required to respond to a public records request if the request is not made pursuant to this policy. However, if a public record is readily accessible and can be easily provided at the time the request is made without need for further analysis regarding release, a Port official, officer or employee may respond to the request.

b. Public records which are prepared for the purpose of making them available to the public may be provided without completing a formal public records request.

3. Availability of Public Records. Public records are available for inspection and copying during normal business hours of the Port, excluding municipal legal holidays. Records must be inspected at the offices of the Port, and arrangements for inspection and/or copying must be made in advance. Inspection of public records must occur in a non-disruptive manner. No member of the public may remove a public record from a viewing area, disassemble, or alter any public record.

4. Organization / Protection of Public Records. The Port will maintain its records in a reasonably organized manner consistent with available resources. Pursuant to RCW 42.56.070(4), the Port of Benton has determined that development and maintenance of a current index of all public records as required by RCW 42.56.070(3) is unduly burdensome. See Port of Benton Executive Order – Public Records Index, signed July 1, 2016.

5. Making a Request for Public Records. A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records.

a. Requestors must use the applicable public records request forms available at the Port Office (3250 Port of Benton Blvd., Richland, WA) or on the Public Records Page located on the Port of Benton's website (www.portofbenton.com). Requests may be made in writing by mail, or electronically (see Section C below). The Port does not accept public records requests submitted by telephone or fax.

b. Requests submitted by mail will be deemed received on the date received by the Port. Requests submitted electronically after the close of business will be deemed received on the next business day.

c. If the request is to be submitted electronically, requestors should obtain a fillable .pdf form by visiting: <http://portofbenton.com/your-port/public-records-request-form/> That form shall be filled out in full, and submitted via email to: publicrecords@portofbenton.com

d. If submitted in writing by mail, the mailing address for the Public Records Officer is:

Public Records Officer
Port of Benton
3250 Port of Benton Blvd.
Richland, WA 99354

6. Processing of Public Records Requests

a. Acknowledging Receipt of Request. Within five (5) business days of receipt of a request, the Port will respond by doing one or more of the following:

- Making the record(s) available, in whole or in part, for inspection or copying;
- Acknowledging the request and providing a reasonable estimate of time required by the Port to respond to the request;
- Acknowledging the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of time necessary to respond to the request if it is not clarified; or
- Denying the request, in whole or in part, and providing the legal basis for such denial.

In computing time, the day on which the request is received does not count as one of the five business days. Holidays and weekends are also excluded from the calculation of time. RCW 1.12.040.

b. Clarification Requested. If, after clarification is requested by the Port on a request that is wholly unclear, a requestor fails to provide the requested clarification or fails to describe an identifiable public record with adequate specificity such that it can be located, the Port will deem the request abandoned and withdrawn, and will take no further action. Clarification must be received within ten (10) calendar days of the date the request for clarification is sent by the Port.

c. Third Party Notice. In the event the requested record(s) contain information that may affect the rights of other persons of interest and/or may be exempt from disclosure, the Port may, prior to providing the records, give notice to such other persons of interest whose rights may be affected by disclosure. The notice shall include a complete copy of the public records request. Third parties shall be given twenty (20) business days to obtain and provide to the Port an order from the court preventing or limiting disclosure.

d. Records Exempt from Public Disclosure. The Port shall make available for public inspection and copying all public records, unless the record or specific information contained within the record is exempt or prohibited from disclosure by state or federal law. If any record, in whole or in part, is determined to be exempt from disclosure, the Port shall provide the requestor with a written statement of the specific exemption authorizing the withholding of the record, in whole or in part, and shall provide a brief explanation of how the exemption applies to the record, or a portion thereof, withheld. RCW 42.56.070.

i. The Public Records Act provides that a number of types of records are exempt from public inspection and copying. See RCW 42.56.210 – 630.

ii. Other statutes outside the Public Records Act may also prohibit or exempt disclosure of certain records or information. RCW 42.56.070(1). The Port's failure to list all possible bases for exemption shall not affect the Port's ability to rely on such an exemption.

iii. By law, the Port is prohibited from disclosing records of individuals requested for commercial purposes. RCW 42.56.070(9).

e. Providing Records in Installments. When a request is for a large number of records, or records that require extensive review prior to disclosure, the Port may provide access for inspection and copying on an installment basis. If, within 30 calendar days from the date of notice that records are available for inspection or copying, the requestor fails to inspect or pay for copies of the records, the Port will discontinue fulfilling the balance of the request, and shall consider it abandoned and closed.

i. If the Port elects to make records available on a partial or installment basis, the Port may charge for each installment of the request as it is provided. RCW 42.56.120.

7. No Duty to Create Records. The Port is not obligated to answer written questions, create new public records, or provide a record in a format different from the original format of the record; however, the Port may, in its discretion, offer to create such a record to fulfill a request where it may be easier for the Port to create a record responsive to the request than to collect and make available voluminous records.

8. No Duty to Supplement Responses. The Port is not obligated to hold current records requests open to respond to requests for records that may be created in the future. A new request must be made to obtain later-created public records.

9. Fees; Statutory Limits

a. The Port finds that calculating the actual costs associated with providing public records is unduly burdensome for the following reasons: 1) quantifying certain necessary resources (ink, electricity, "wear and tear" on equipment) is inherently difficult; 2) funds were not allocated for

performing a study to calculate actual costs, and the Port's established priorities do not include funding for this particular effort; 3) staff resources are insufficient to perform a study and to calculate actual costs; and 4) a study would interfere with and disrupt essential Port functions

b. The fees for copies of public records are as stated in the attached Fee Schedule. Fees are consistent with the amounts established by state law. The Port may also charge for the actual cost of any digital storage media or device, the actual cost of any container or envelope used for mailing, and the actual cost of postage or delivery charges. No fee shall be charged for the inspection of public records or for locating public records and making them available for inspection. Payment of fees assessed is required prior to release of records. RCW 42.56.120.

10. Customized Service Charges. The Port may impose a customized service charge if the Port determines that the records request requires the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the Port for other agency purposes. Requestors will be notified in advance of the estimated cost, along with an explanation of why the customized service charge applies and a description of the specific expertise required, so that the request may be amended to avoid or reduce cost, if desired.

11. Deposit. The Port may require a deposit of up to ten percent (10%) of the estimated cost of providing records as provided herein, to include customized service charges, if any.

12. Closing Abandoned Requests. If the requestor withdraws the request, fails to clarify a request when asked, or fails to timely inspect or pay for copies of the records provided, the Port will close the request and notify the requestor that the request has been closed and that no further action will be taken. The closure of the request and the circumstances that led to closure will be documented. RCW 42.56.120.

13. Denial of Request Due to Exemption. All denials of requests for public records will be accompanied by an Exemption/Privilege Log that identifies the record(s) at issue and explains the legal basis for the denial. RCW 42.56.210(3). Any person who objects to the initial denial or partial denial of a records request must petition in writing (mail or email included) to the Public Records Officer for a review of that decision. The petition shall include a copy of the request denial, or reasonably identify the written statement by the Public Records Officer or designee that denied the request, any must specify the portion(s) of the decision that should be reviewed. An explanation of the requestor's reason for disagreeing with the decision may be included in the petition. The Public Records Officer shall review the petition with counsel for the Port and shall either affirm or reverse the denial within ten (10) business days following the receipt of the petition, or within such other time as the Port and the requestor mutually agree. The decision of the Public Records Officer on the petition constitutes the final action of the Port.

14. Executive Director's Review and Approval. The Port Commission has reviewed and authorized the Port Executive Director to approve this Public Records Act Disclosure Policy as representative of the Port's ongoing efforts to comply with State legislation and public policy to provide a transparent government.

AUTHORITY

Governing authority includes Chapter 42.56 RCW and Chapter 44-14 WAC.

PREVIOUS POLICY

Public Access to Port of Benton Records, approved January 3, 2017.

Approval



SCOTT D. KELLER, PPM®
Executive Director, Port of Benton

1-4-18

Date

PUBLIC RECORDS DISCLOSURE FEE SCHEDULE – See Chapter 42.56 RCW

Description	Unit/Size	Fee
Photocopy Fee (Black & White or Color)	10 Pages or Less (any size)	No Charge
Photocopy Fee (Black & White or Color)	More than 10 pages, each page charged (8 X 11, 8 X 14, 11x17)	0.15
Scanned Paper Documents	10 Pages or Less (any size)	No Charge
Scanned Paper Documents	Per Page -Over 10 pages - any size (all pages charged)	0.10
Electronic Files/Attachments uploaded for delivery via email / cloud-based service	Per every 4 Electronic Files / Attachments	.05
Electronic Transmission of Electronic Public Records	Per Gigabyte	0.10
Flash Drive	Per Flash Drive	7.00
CD	Per CD	1.00
DVD	Per DVD	1.00