

**Calculation of Actual Costs of Producing Copies of Public
Records – Briefing, Public Hearing and Decision.**

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Summary

Meeting dates: February 8-10, 2018

Agenda item: Calculation of Actual Costs of Producing Copies of Public Records – Briefing, Public Hearing and Decision.

Presenter(s): Bill Falling, Information Governance Program Manager; Scott Bird, Rules Coordinator

Background summary:

Based on the passage of Engrossed House Bill 1595 during the 2017 legislative session, state agencies including the department became authorized to charge for certain fees for records under RCW chapter 42.56. The new fees include a nominal cost for each electronic record, including each gigabyte, and the actual costs for specialized IT data services. The department has declared that the calculation of actual costs to produce public records would be unduly burdensome and has elected to go with the default fee provisions in the new law

Policy issue(s) you are bringing to the Commission for consideration:

The department must amend its existing records rules in chapter 220-120 to conform with new legislation passed in 2017.

Public involvement process used and what you learned:

No public input has been received since the posting and publication of the rule proposal. In addition, the department website provided instructions, associated documents, a timeline and the ability to submit and comment on the proposal online. The public was also invited to comment at this Commission meeting.

Action requested:

Requesting approval and adoption of the proposed WAC amendments.

Draft motion language:

Move to approve the amendments of WAC regulations 220-120-020, -040, -050, -060, -070 and -070 as presented by staff.

Justification for Commission action:

The proposed amendments conform to legislation passed in 2017.

This action is further justified under RCW 77.12.047.

Communications Plan:

Once the proposal is adopted, the department will be posting an update to the public on its rules webpage to update the amendments to the WAC provisions. The department

will also update the legislative links to its WAC provisions that are currently located on its website

Form revised 12/5/12



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 01, 2017
TIME: 9:49 AM

WSR 17-22-132

Agency: Department of Fish and Wildlife (WDFW)

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 17-15-048 filed on July 11, 2017 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
- Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is amending the following rules as they relate to copy costs of department documents:

- 220-120-020 Public records officer
- 220-120-040 Requests for public records
- 220-120-050 Processing requests for public records
- 220-120-060 Costs of providing public records
- 220-120-070 Exemptions
- 220-120-080 Review of denials of public records requests

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 9-10, 2018	8:00 a.m.	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	

Date of intended adoption: March 17, 2018 (Note: This is NOT the effective date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator
 Address: 600 Capitol Way N. Olympia, WA 98501-1091
 Email: Rules.Coordinator@dfw.wa.gov
 Fax: (360) 902-2155
 Other:
 By (date) November 30, 2017

Assistance for persons with disabilities:

Contact Delores Noyes
 Phone: (360) 902-2349
 Fax:
 TTY: (360) 902-2207
 Email: Delores.Noyes@dfw.wa.gov
 Other:
 By (date) January 30, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending its rules based on passage of HB 1595 which provides legal authority for the department to charge the public for requested copies of department documents.

Reasons supporting proposal: 2017 legislation mandates that the department amend its rules concerning copy costs of department documents

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047

Statute being implemented: RCW 42.56.120

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Washington State Department of Fishing and Wildlife (WDFW) Private Public Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Bill Falling	1111 Washington Street, Olympia, WA 98501	360-902-2221
Implementation:	Bill Falling	1111 Washington Street, Olympia, WA 98501	360-902-2221
Enforcement:	Chief Steve Bear	1111 Washington Street, Olympia, WA 98501	360-902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:

TTY:

Email:

Other:

No: Please explain: The proposed rule changes do not affect hydraulics.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: November 1, 2017

Signature:

Name: Scott Bird



Title: Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-120-020 Public records officer. (1) The department's public records officer:

- (a) Receives all public records requests made to the department;
- (b) Provides assistance to persons seeking department public records;
- (c) Oversees the department's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests; and
- (d) ~~((Creates and maintains an index of certain department public records, to the extent required by RCW 42.56.070(5), and~~
- ~~(e))~~ Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) The public records officer can be contacted at:

Public Records Officer
Department of Fish and Wildlife
Office Location:
Natural Resources Building, 5th Floor
1111 Washington Street S.E.
Olympia, WA 98501-1091
Mailing Address:
P.O. Box ~~((43200))~~ 43146
Olympia, WA ~~((98504-3200))~~ 98504-3146
email address: PublicDisclosureRequest@dfw.wa.gov

Current contact information is also available at the department's web site at <http://wdfw.wa.gov>.

(3) The public records officer may designate one or more department staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) and/or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-120-040 Requests for public records. (1) Any person wishing to inspect or copy public records of the department must make the request in writing on the department's request form, or by letter ~~((, fax,))~~ or email to the office or email address set forth in WAC 220-120-020(2). The written request must be addressed and sent to the public records officer and include the following information:

- (a) Name of the requestor;
- (b) Address of the requestor;
- (c) Other contact information, including telephone number and email address, if the requestor has one;

(d) Identification of the public records sought, in a form or description that is adequate for the public records officer to identify and locate the records; and

(e) The date and time of day of the request.

(2) If the requestor wishes to have copies of the records made, whether hard copy or electronic, instead of inspecting them, he or she must so indicate in the request (~~and must either make a deposit for the cost of copying the records or make arrangements to pay for copies of the records~~).

(3) A public records request form is available to requestors at the office of the public records officer and at the department's web site at <http://wdfw.wa.gov>.

(4) The records retention schedule established by the division of state archives of the office of the secretary of state serves as an index for the identification and location of the department records including those described in RCW 42.56.070(5). The records retention schedule can be found at either the department's web site or the secretary of state's web site.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-120-050 Processing requests for public records. (1) **Order of processing public records requests.** The public records officer will process requests in the order allowing the greatest number of requests to be processed in the most efficient manner.

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

(a) ~~((Make the records available for inspection or copying;))~~
Provide the records or provide a web link to the records;

(b) Send the copies to the requestor if copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon;

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

~~(d) Request clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available if an estimate was given; or~~

~~(e))~~ Acknowledge that the department has received the request, ask for clarification if the request is unclear, and provide a reasonable estimate of time required to respond to the request; or

~~(d) Deny the request.~~

(3) **If no response is received.** If the public records officer does not respond in writing within five business days of receipt of the request for disclosure, the requestor should ~~((consider contacting))~~ contact the public records officer to ensure that the department received the request.

(4) **Protecting the rights of others.** In the event that the requested public records contain information that may affect rights of others and may, therefore, be exempt from disclosure, the public records officer 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 to revise the request or, if necessary,~~) seek a court order to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

(5) **Records exemption from disclosure.** Some records are exempt from disclosure, in whole or in part, as provided in chapter 42.56 RCW and in other statutes. If the department believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the records 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 will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspections of records.**

(a) Consistent with other demands, the department will promptly provide space to inspect public records it has assembled in response to a properly submitted public records request. No member of the public may remove a document from the viewing area or disassemble or alter any document. If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must inspect the assembled records within (~~thirty~~) fourteen days of the department's notification to him or her that the records are available for inspection or copying. The department will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the department to make arrangements to inspect the records. If the requestor fails to inspect the records within the (~~thirty-day~~) fourteen-day period or make other arrangements, the department may close the request and refile the assembled records. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(7) **Providing copies of records.**

(a) Upon request, the department will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 220-120-060. If a requestor wishes to obtain a copy of a particular record or records after inspecting records, he or she should so indicate to the public records officer, who will make the requested copies or arrange for copying.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the department's offices. If the copies are available for pickup at the department's offices, the requestor must pay for the copies within (~~thirty~~) fourteen days of the department's notification to him or her that the copies are available for pickup. The department will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the department to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the (~~thirty-day~~) fourteen-day period, or fails to make other arrangements, the department may close the request. If the requestor subsequently files the same or a substantially similar request, that subse-

quent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide 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.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer may make the records available for inspection, or provide copies of the records in installments if he or she reasonably determines it would be practical to provide the records in that manner. ~~((The requestor must inspect the installment of assembled records, or pay for and pick up records if copies of the records are made available for pick up at the department's offices, within thirty days of the department's notification to him or her that records are available for inspection or are ready for pickup. If the requestor fails to inspect the installment of copies within the thirty day period, fails to pay for and pick up the installment of copies within the thirty day period, or fails to make other arrangements, the public records officer may stop searching for the remaining records and close the request.))~~

(10) **Closing a withdrawn or abandoned request.** ~~((When))~~ If the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, ~~((the public records officer will indicate that the department has completed a diligent search for the requested records and has made any located, nonexempt records available for inspection.))~~ then the public records officer ~~((will))~~ may close the request.

(11) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer will indicate that the department has completed a diligent search for the requested records and has made any located, nonexempt records available for inspection. Thereafter, the public records officer may close the request.

(12) **Later discovered documents.** If, after the department informs the requestor that it has provided all available records, the ~~((department))~~ public records officer becomes aware of additional responsive documents within one year that existed at the time of the request, the ~~((department))~~ public records officer will promptly inform the requestor of the additional documents and make them available for inspection or provide copies on an expedited basis.

(13) Failure to clarify or claim records. The department may ask the requestor to clarify what information that the requestor is seeking. If a requestor fails to respond to a request for clarification within a fourteen-day period, the public records officer may close the request. If a requestor fails to claim records that have been produced within a fourteen-day period, the public records officer may close the request.

WAC 220-120-060 Costs of providing public records. (1) There is no fee for inspecting public records.

(2) ~~((The department charges fifteen cents per sheet for paper copies of documents up to paper size 11" x 18". The department will not charge sales tax when it makes copies of public records.~~

~~(3) The department may charge costs for providing copies of records in electronic format based on the department's actual costs and/or based on outside vendor rates for copying the same or similar records. The department incurs actual costs in scanning a paper only record into an electronic format and may charge ten cents per page for electronic copies of scanned paper only records.~~

~~(4) **Deposits and payments for copies and installments of copies.** Before beginning to make copies of requested records, the public records officer may require a deposit of up to ten percent of the estimated costs of copying. The public records officer may also require the payment of any outstanding balance of copying costs prior to providing the copies, or the payment of any outstanding balance of the copying costs for an installment of copies before providing the installment. If payment for an installment of copies is not received within thirty days of the department's notification to the requestor that the copies are available, the public records officer may stop searching for the remaining records and close the request.~~

~~(5) **Costs of mailing.** The department may also charge the actual costs of mailing, including the cost of the shipping container.~~

~~(6)) Pursuant to RCW 42.56.120(2), the department finds that it is unduly burdensome to calculate the actual costs that 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 department lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; (b) a study would interfere with and disrupt other essential department functions. The department may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and as published in the department's fee schedule available on the department web site at <http://wdfw.wa.gov>.~~

~~(3) Before copying requested public records, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all of the records. The public records officer or designee may also require payment of the remainder or an installment of the copying costs before providing all of the records.~~

~~(4) The department will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.~~

~~(5) The department may determine whether customized electronic access to public records is required if the department estimates that the request would require 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 department for other department purposes. The department will charge the actual costs, including staff time and outside vendor costs necessary to reimburse the department for providing customized electronic access services.~~

(6) The department may waive any charges for providing public records at the discretion of the public records officer. This determination will be made on a case-by-case basis.

(7) Payment. Payment may be made by cash, check, or money order to the Washington department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-120-070 Exemptions. (1) The Public Records Act exempts a number of types of records from public disclosure (see chapter 42.56 RCW).

(2) Records are also exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions outside the Public Records Act, which restrict the availability of some records held by the department:

(a) Privileged communication under RCW 5.60.060; ~~((and))~~

(b) Criminal records history under chapter 10.97 RCW; and

(c) A list of common record exemptions can be found at the department web site.

(3) The department is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-120-080 Review of denials of public records requests.

(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 the written statement by the public records officer denying the request.

(2) **Consideration of petition for review.** The public records officer will promptly provide the petition and any other relevant information to the director of the department. The director or designee will immediately consider the petition and either affirm or reverse the denial within two business days following the department's receipt of the petition, or ~~((within such other time as the department and the requestor mutually agree to))~~ will notify the requestor that more time is required to consider the petition.

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

(4) **Judicial review.** Any person may obtain 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.