



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 27, 2017

TIME: 9:35 AM

WSR 17-22-067

Agency: Washington State Patrol

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

- Preproposal Statement of Inquiry was filed as WSR 17-17-80 ; 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) WAC 446-10-090 Costs for providing copies of public records.

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|------------------|---------|--|----------|
| December 5, 2017 | 9:00 PM | General Administration Building 210 11 th Avenue SW, Room G-6 Olympia, WA 98513 | |

Date of intended adoption: On or after December 15, 2017 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Gretchen Dolan
 Address: PO Box 42631, Olympia WA 98504
 Email: Gretchen.Dolan@wsp.wa.gov
 Fax:
 Other:
 By (date) November 28, 2017

Assistance for persons with disabilities:

Contact Gretchen Dolan
 Phone: (360) 596-4100
 Fax:
 TTY:
 Email: Gretchen.dolan@wsp.wa.gov
 Other:
 By (date) November 28, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Washington State Patrol has proposed amendments to WAC 446-10-090, Costs for providing copies of public records. The purpose of the proposal is to update the Rule to reflect developments in statutes and technology since the Rules were last revised in 2007. The proposed amendments address copying charges with respect to public records and electronic records and statutory citations. The anticipated effect is to modernize the WAC so it is a more functional resource for requestors and the agency.

Reasons supporting proposal: The Public Records Act (PRA) at chapter 42.56 RCW provides the public access to state and local government agency public records. In 2007, the State Patrol updated the current Rules. This Rule is now outdated in part due to statutory, case law and technological developments since 2007.
The reasons to support the proposal to amend this Rule include modernizing the Rule so it better reflects current laws.

Statutory authority for adoption: RCW 46.52.120(2)(b) and (c)

Statute being implemented: RCW 46.52.120(2)(b) and (c), chapter 42.56. RCW

Is rule necessary because of a:

| | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: The State Legislature has enacted a number of changes in the Public Records Act since 2007.

Name of proponent: (person or organization) Chief John R. Batiste, Washington State Patrol

| |
|--|
| <input type="checkbox"/> Private |
| <input type="checkbox"/> Public |
| <input checked="" type="checkbox"/> Governmental |

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|-------------------------|-----------------|----------------|
| Drafting: | Gretchen Dolan | Olympia, WA | (360) 596-4137 |
| Implementation: | Washington State Patrol | Olympia, WA | (360) 596-4100 |
| Enforcement: | Washington State Patrol | Olympia, WA | (360) 596-4100 |

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: A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328.

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)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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 42.56.120 and RCW 42.56.070.

Explanation of exemptions, if necessary: To the extent there are costs assessed by the State Patrol for providing records in response to PRA requests by small businesses, the authorized costs are set out in statute and apply to all requestors. RCW 42.56.070; RCW 42.56.120.


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: 10/25/2017 | Signature:  |
| Name: John R. Batiste | |
| Title: Chief | |

WAC 446-10-090 Costs for providing copies of public records.

- (1) The following copy fees and payment procedures apply to requests to the agency under chapter 42.56 RCW.
- (2) **Actual costs.** Pursuant to RCW 42.56.120 (2)(b), the agency is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:
- (a) The agency does not have the resources to conduct a study to determine all its actual copying costs;
- (b) To conduct such a study would interfere with other essential agency functions; and
- (c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).
- (3) **Costs for paper copies.** There is no fee charged for inspecting public records. The agency will charge for copies of paper records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). A requestor may obtain standard black and white photocopies for fifteen cents per page.
- (a) Before beginning to make copies, the public records officer or designee may estimate costs of copying the records, and may require a deposit of up to ten percent of all the records selected by the requestor.
- (b) The public records officer or designee may ~~((also))~~ require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.
- (c) The Washington state patrol shall not charge sales tax when it makes copies of public records.
- ~~((+2))~~ (4) **Costs for electronic records.** ~~((The cost of))~~ Electronic copies of records shall be ~~((the actual cost of the CD, DVD, audio or video tape, or disc.~~
- ~~+3))~~ charged as follows pursuant to RCW 42.56.120 (2)(b) and (c):
- (a) Ten cents per page for scanned records or for use of agency equipment for scanning.
- (b) Five cents for each four electronic files or attachments uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
- (c) Ten cents per gigabyte for records transmitted in an electronic format or for use of agency equipment to send records electronically.
- (d) Actual costs of any digital storage media or devices provided by the agency.
- (e) Actual costs of a "customized service charge" when the request would require the use of information technology expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes.
- (i) The agency will notify the requestor and take other steps if it will be doing a customized service charge.
- (ii) The public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may

also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(iii) Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

(iv) Public records request fees do not supersede other statutory provisions for copying fees.

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

~~((4))~~ (6) **Payment.** Payment ~~((may))~~ shall be made ~~((by check or money order only,))~~ payable to the Washington state patrol.

(7) **Summary of charges.** Upon request the Washington state patrol will provide a summary of the applicable charges before copies are made and the requestor may revise the request to reduce the number of copies, thereby reducing the applicable charges.

(8) **Waiver of charges [reserved].** It is within the discretion of the public records officer or designee to waive copying fees when:

(a) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this section.