

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state sentencing guidelines commission with the provisions of the Public (~~Disclosure~~) Records Act, ((RCW 42.17.250 through 42.17.340)) chapter 42.56 RCW, in conjunction with the Criminal Records Privacy Act, chapter 10.97 RCW, as well as chapter 9.94A RCW.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-020 ((Definitions-)) Times for inspection and copying records. (~~((1) "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 the commission regardless of physical form or characteristics.~~

~~((2) "Writing" means handwriting, typewriting, printing, photostating, photographings, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.~~

~~((3) "Commission" means the Washington state sentencing guidelines commission.~~

~~((4) "Disclosure" means inspection and/or copying.~~

~~((5) "Denial of disclosure" denotes any exempting from disclosure of any public record.)) All public records are available for inspection and copying at the commission office during normal business hours (8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m.). However, if these activities would interfere with essential agency functions, the agency reserves the right to require advance notice and to limit the amount of time spent on inspection of documents.~~

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-030 Public records ((available)) officer.
~~((Requests for any identifiable public record may be initiated at the commission office during normal business hours (8:00 a.m. - 12 and 1:00 p.m. - 5:00 p.m.).))~~ The commission shall ~~((at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within ten working days of receipt of the request for disclosure. The commission's failure to respond shall entitle the person seeking disclosure to petition the public records officer pursuant to WAC 437-06-090.))~~ designate a public records officer, located in the commission office, who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordinating staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-040 Request for public records ((officer)). ~~((The commission shall designate a public record officer, located in the commission office, who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordinating staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.))~~ According to chapter 42.56 RCW, members of the public may inspect, copy, or get copies of public records if they comply with the following procedures:

- (1) Make a request in writing which includes:
 - (a) The name of the person requesting the record;
 - (b) The time of day and calendar date on which the request is made; and
 - (c) The name or description of the records requested.
- (2) A request for disclosure shall be made during the customary business hours or by mail.
- (3) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.
- (4) When a person's identity is relevant to an exemption, that person may be required to provide personal identification, including photographic identification and/or fingerprints.

**WAC 437-06-050 ((Request for public records.)) Fees--
Inspection and copying.** ((1) The written request may include:

(a) ~~The name of the person requesting the record;~~
(b) ~~The time of day and calendar date on which the request is made; and~~

(c) ~~The nature of the request.~~

~~(2) A request for disclosure shall be made during the customary business hours or by mail. Public records shall be made available for inspection and copying during office hours. However, if these activities would interfere with essential agency functions, the agency reserves the right to require advance notice and to limit the amount of time spent on inspection of documents.~~

~~(3) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.~~

~~(4) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 437-06-100, the commission must provide the person requesting disclosure with a written explanation for the nondisclosure, pursuant to WAC 437-06-080.~~

~~(5) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, pursuant to WAC 437-06-080, may request a review under the provisions of WAC 437-06-090.~~

~~(6) When a person's identity is relevant to an exemption, that person may be required to provide personal identification, including photographic identification and/or fingerprints.))~~ (1) No fee shall be charged for the inspection of public records.

(2) The commission shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.

(a) Copies produced on copying and duplicating equipment are fifteen cents per page.

(b) Copies of other items such as magnetic tapes and records or other formats will be the cost of the services required to copy them.

(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies. One copy of the implementation manual will be issued to public agencies upon request.

(4) Prepayment of copying costs and postage shall be a prerequisite to copying and/or mailing of public records. However, the public records officer may waive the costs of copying or postage.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-060 (~~((Fees--Inspection and copying.))~~) **Protection of public records.** (~~((1) No fee shall be charged for the inspection of public records.~~

~~(2) The commission shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.~~

~~(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies. One copy of the implementation manual will be issued to public agencies upon request.~~

~~(4) Prepayment of copying costs and postage shall be a prerequisite to copying and/or mailing of public records. However, the public records officer may waive the costs of copying or postage.)~~ **Public records shall be disclosed only in the presence of a public records officer or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the commission. This section shall not be construed to prevent the commission from accommodating a client by use of mail in the disclosure process.**

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-070 (~~((Protection of public records.))~~) **Disclosure procedure.** (~~((Public records shall be disclosed only in the presence of a public records officer or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the commission. This section shall not be construed to prevent the commission from accommodating a client by use of mails in the disclosure process.))~~) **(1) The public records officer shall acknowledge receipt of request within five business days. The public records officer or designee will do one or more of the following:**

(a) Make the records available for inspection or copying;

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

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

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by

telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) The public records officer shall review file materials prior to disclosure.

(3) If the file does not contain materials exempt from disclosure, the public records officer shall ensure full disclosure.

(4) If the file does contain materials exempt from disclosure, the public records officer shall deny disclosure of those exempt portions of the file and will provide a written statement explaining the reason for denial. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.

(5) The statement of denial shall include:

(a) The specific exemption that authorizes the commission to withhold the record; and

(b) A brief explanation of how the exemption applies to the record the commission withheld.

(6) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, may request a review under the provisions of WAC 437-06-080.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-080 Remedy for review of denial of disclosure ((procedure)). ~~((1) The public records officer shall review file materials prior to disclosure.~~

~~(2) If the file does not contain materials exempt from disclosure, the public records officer shall ensure full disclosure.~~

~~(3) If the file does contain materials exempt from disclosure, the public records officer shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption applies. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.)~~ (1) If the person requesting disclosure disagrees with the decision of a public records officer denying disclosure of a public record, this person may within twenty days petition the commission's public records officer for review of the decision denying disclosure. The form used to deny disclosure of a public record shall clearly indicate this right of review.

(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the commission of the petition for review.

This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.56.520.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-090 (~~((Remedy for review of denial of))~~) **Exemptions to public records disclosure.** (~~((1) If the person requesting disclosure disagrees with the decision of a public records officer denying disclosure of a public record, this person may within twenty days petition the commission's public records officer for review of the decision denying disclosure. The form used to deny disclosure of a public record shall clearly indicate this right of review.~~

~~(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the commission of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320.))~~ The commission reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.56.040 through 42.56.550. Nondisclosable records include, but are not limited to:

(1) All exemptions as set forth in chapter 42.56 RCW.

(2) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of a pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general privileged under RCW 5.60.060(2).

(3) Nonconviction data, as defined in RCW 10.97.030(2), shall be disclosed to the subject of the record in person in the central office of the commission, but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete (RCW 10.97.080). Persons who are incarcerated, or their attorneys, shall receive a copy of nonconviction data upon asserting the belief in writing that the information regarding such person is inaccurate or incomplete.

WAC 437-06-100 ((Exemptions to public records)) Interagency disclosure. ((The commission reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.17.250 through 42.17.340. Nondisclosable records include, but are not limited to:

(1) ~~All exemptions as set forth in RCW 42.17.310(1).~~

(2) ~~Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of a pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general privileged under RCW 5.60.060(2).~~

(3) ~~Nonconviction data, as defined in RCW 10.97.030(2), shall be disclosed to the subject of the record in person in the central office of the commission, but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete (RCW 10.97.080). Persons who are incarcerated, or their attorneys, shall receive a copy of nonconviction data upon asserting the belief in writing that the information regarding such person is inaccurate or incomplete.)~~ (1) Unless prohibited by law, information may be disclosed by the commission to outside agencies, including other state of Washington agencies, or other state agencies.

(2) Outside agencies receiving information pursuant to subsection (1) of this section shall be thereby subject to the same standards of disclosure as are required of the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 437-06-110	Qualifications on nondisclosure.
WAC 437-06-120	Interagency disclosure.