

# CITY OF SEQUIM PUBLIC RECORDS DISCLOSURE GUIDE

## ***1. INTRODUCTION***

The State of Washington has enacted laws ensuring that citizens have broad access to public records. The law requires that public agencies retain public records for a period of time and disclose those public records in response to inquiries by the public. For more detailed information of public disclosure requirements and definitions, refer to RCW 42.17. This document should serve as a guide to responding to requests for public records. This is not intended to be a complete answer to all questions that may arise concerning the disclosure of public records. Most of the city records are public records. This includes things written on paper or recorded electronically, photographs, audio recordings, survey documents, construction plans, etc. [RCW 42.17.020 provides more detail concerning definitions.]

## ***2. GENERAL REQUIREMENT OF THE PUBLIC RECORDS ACT***

With limited exceptions, the City, and all of its departments, are required to disclose all ***identifiable*** “public records” that relate to the conduct of the City when such records are requested by any person. A city is required to respond in writing within five days to any public records disclosure request. The response can either (1) provide for inspection and/or copying of the records; (2) acknowledge receipt of the request and provide an estimate of the time needed to produce the records; or (3) deny the request. [RCW 42.17.320 lists the permissible reasons for taking more than five days to actually produce documents.] Failure to respond to a request for records in the appropriate manner may result in a court assessing substantial fines against the City.

### ***A. The Date of Receipt of a Request is Not Included***

RCW 42.17.320 provides that a response to a public records request must be made within five business days. However, RCW 1.12.040, which is a general statute that appears to be of application throughout the state statutes, provides: “The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday, Saturday, or Sunday, and then it is also excluded.”

***B. The City Must Make Documents Available***

The City must make available for public inspection and copying all public records, unless the record falls within the specific exemptions of the Public Records Act or other statute which exempts or prohibits disclosure of specific information or records. A person may choose to inspect all public records on a certain subject but copy only a portion of those records.

***C. “Identifiable” Public Records***

The Act requires the City to produce “identifiable public records.” Under the Public Records Act, the City is not required to create records that do not exist at the time the request is made or to respond to questions that are not answerable by providing an existing public record. *If the records are not identifiable by the person fulfilling the request, the City should respond to the requestor by informing him or her that clarification of the request is necessary in order for the City to respond.*

*For example:*

1. A request for “the salaries of City employees” should not be considered a request for a public record, as no *record* is actually requested.
2. If a person requests a *single* list of the salaries for all City employees and the City does not have a single list of all employee salaries, the City would not be required to create a single list. The appropriate response would be “No record exists to respond to your records request.”

The requirement that a record be “identifiable” does not require that the record be identified by the requestor with exact precision. A member of the public may not know the name or location of a specific record. However, the City has a duty to “provide for the fullest assistance to inquirers,” which may include assisting requestors in clarifying their requests to identify the records that are intended to be requested.

***D. Delete/Redact Exempt Materials***

The City is not relieved of its obligation to respond to requests for public records because a portion of the record contains information covered by an exemption. The City has a duty to delete or redact specific information covered by an exemption and disclose the remainder of the record.

***E. Additional Time Necessary***

Additional time may be needed in order to respond to a request. The additional time needed to respond to a request may be based upon (1) the need to clarify a request; (2) additional time needed to locate and respond to the request; (3) the need to contact a third

party or agency affected by the request; or (4) additional time needed to determine whether certain information is covered by an exemption to the disclosure requirements.

#### ***F. Clarification Requested***

If the City's response seeks clarification of a request, the requesting party must clarify the intent of the request. A requesting party's failure to respond to a request for clarification excuses the City from responding to the request.

#### ***G. Denial of Request***

If the City denies the request, the denial must be made in writing and must state specifically the reasons(s) for the denial. The denial must identify the specific exemption upon which the City relies and contain a brief explanation of how that exemption applies to the records that are not being disclosed. Because denials can result in litigation, obtain an opinion from the attorney prior to denying a request. A denial decision is final at the end of the second business day following the denial of inspection. After that date, an individual can file a lawsuit in superior court to challenge the denial.

#### ***H. Charges for Request***

Cities cannot charge for the time required to locate a public record, however, they can charge for the reasonable copying charges if a person requests copies of public records. The City may charge up to \$.15 per page for photocopies of requested records.

If the City uses the services of a company or other municipality to satisfy the request, the requester shall pay the actual cost for those services.

### ***3. What is a "Public Record?"***

The determination of whether or not a document is a "public record" is the first step in determining whether or not the Public Records Act applies. The law requires the definition of "public record" to be very broad to promote full access to public records.

The definition of a "public record" contains three elements. The record must have each of the following three characteristics to be considered a public record:

- The record must be a "writing". The law defines a "writing" as any "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."

- The record must contain information related to the conduct of the government or the performance of a government or proprietary function.
- The record must be prepared, owned, used, or retained by the City.

*For example:* If a person requests a record that does not exist at that time but may be created in the *future*, it does not qualify as a “writing,” as there is not, as yet, any communication or representation that can be recorded. If there is no “writing”, there can be no “public record.”

#### **4. ELECTRONIC MAIL AND PUBLIC RECORDS DISCLOSURE**

It is generally accepted that electronic mail messages constitute a “writing” under the Public Disclosure Act. It is imperative that communications using the City’s electronic mail system be carried on with professionalism. It must be understood that when an electronic mail message is written or received, it may become a public record that is disclosed to the public.

If you receive an electronic mail message that is a public record, you should print the electronic message, file it in the appropriate file, and delete the message from your email system. This process will create a permanent record that is retained in a location that is easily accessible and will prevent the waste of computer disk space.

#### **5. HOW THE RECORDS REQUEST IS MADE**

##### **A. No Reason is Necessary**

The City cannot require the requestor to provide information as to the purpose for the request, except to establish that the requestor is not using a list of individuals in the possession of the City for commercial purposes.

##### **B. Form of the Request**

Those records that are clearly disclosable and readily available may be provided to the public without the use of a request form. However, if it is a request that may be unclear or take some time to locate, a written request must be completed by the person requesting the documents and submitted to the City Clerk, except for law enforcement records requests which request may be submitted directly to the Chief of Police.

##### **C. No Relief from Burdensome Requests**

The City is not relieved from the requirement to provide identifiable records even if the request is inconvenient or burdensome. As long as the record is disclosable, and in the possession of the City, the record will be provided.

## **6. PENALTIES FOR VIOLATING THE PUBLIC RECORDS ACT**

### ***A. Attorney's Fees and Penalties***

A party who prevails against the City in a lawsuit seeking either the disclosure of a record or the right to receive a response to a request for records within a reasonable time may recover costs of filing the case and attorney's fees.

### ***B. No Liability for Good Faith Response***

If the City discloses a public record in good faith when, according to the law, it should not have, the City and its employees will not be held liable for any damage to the party aggrieved by the disclosure. For example, an individual named in a public record may not hold the City liable for a good faith release of that record on the ground that disclosure violates the subject's privacy. This good faith protection does not apply to a situation in which the City wrongfully refuses to disclose records.

## **7. EXCEPTIONS TO THE REQUIREMENT THAT PUBLIC RECORDS BE DISCLOSED**

There are many exceptions to the requirement that public records be disclosed. When determining whether a record falls within one of the exceptions to disclosure, it is important to note that the courts read the exceptions very narrowly and favor disclosure. The public records identified in RCW 42.17.310, and future amendments thereto, are incorporated in this chapter and shall be exempt from public inspection and copying. The City Clerk shall maintain and make available for public inspection and copying a current version of RCW 42.17.310.