



EXPEDITED RULE MAKING

CR-105 (June 2024) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: November 22, 2024

TIME: 12:03 PM

WSR 24-24-019

Agency: Washington Department of Fish and Wildlife (WDFW) P2024-15

Title of rule and other identifying information: (describe subject) The department seeks to make changes to WAC chapter 220-120 (Public Records).

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposed rule is to provide guidance to the public on the new requirements concerning the costs of providing public records following the implementation of body worn cameras for WDFW's law enforcement officers. The use of body-worn cameras began on September 1, 2024. The rule proposal will also clarify administrative procedures that will not change the effect of the current rule.

Reasons supporting proposal: The department needs to amend and update rules in WAC chapter 220-120 to accommodate the recent implementation of the department's use of body worn cameras by WDFW's law enforcement officers and other administrative requirements. The department previously undertook a Fee Study in 2024 to research the reasonable costs for producing records requested for body worn cameras.

Statutory authority for adoption: RCWs 77.04.012, 77.04.013, 77.04.020, 77.04.055 and 77.2.047

Statute being implemented: RCWs 42.56.040, 77.04.012, 77.04.013

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:

Name of proponent: (person or organization) WDFW

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Anne Masias	1111 Washington Street, SE Olympia, WA 98501	360-706-3325
Implementation:	Anne Masias	1111 Washington Street SE Olympia, WA 98501	360-706-3325
Enforcement:	Anne Masias	1111 Washington Street, SE Olympia, WA 98501	360-706-3325

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

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Expedited rule making is appropriate because the proposed rule making corrects rule language as well as clarifies and updates administrative processes without changing the rules' effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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BEGINNING (date/time) November 22, 2024 **AND RECEIVED BY** (date/time) February 4, 2025

Date: November 22, 2024

Name: Scott Bird

Title: WDFW Agency Rules Coordinator

Signature:



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

WAC 220-120-030 Public records available. (1) Some records may be available on the department's website at <http://wdfw.wa.gov>. Requestors are encouraged to search for and view records on the department's website (~~(in lieu)~~) instead of or (~~(prior to)~~) before making a public records request.

(2) Public records are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays, by appointment only. Based on other demands on the agency and/or the nature of the requested records, the public records officer may limit the hours during which particular public records are available for inspection and copying.

(3) Records must be inspected at the offices of the department and may not be removed from department offices. The majority of public records are located at the department's central office, although some may be located in other locations, including the regional offices.

(4) Requestors should contact the public records officer to determine the location and availability of records.

AMENDATORY SECTION (Amending WSR 18-07-080, filed 3/19/18, effective 4/19/18)

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 or email to the office or email address set forth in WAC 220-120-020(2))~~) requesting the department's public records should make their request in writing by mail or email or on the department's request form that is accessible on the department's internet page. The written request by mail or email must be addressed and sent to the public records officer as set forth in WAC 220-120-020(2) 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)~~) the requestor must so indicate in the request.

(3) A public records request form is available to requestors at the office of the public records officer and at the department's website 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 website or the secretary of state's website.

AMENDATORY SECTION (Amending WSR 18-07-080, filed 3/19/18, effective 4/19/18)

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) 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) 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 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 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 ((fourteen)) 14 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 (~~fourteen~~) 14-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 (~~fourteen~~) 14 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 (~~fourteen~~) 14-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 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.

(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~~) the public records officer reasonably determines it would be practical to provide the records in that manner.

(10) **Closing a withdrawn or abandoned request.** If the requestor either withdraws the request or fails to fulfill (~~his or her~~) the obligations to inspect the records or pay the deposit or final payment for the requested copies, then the public records officer 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 public records officer becomes aware of additional responsive documents within one year that existed at the time of the request, the 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~~) 14-day period, the public records officer may close the request. If a requestor fails to claim records that have been produced within a (~~fourteen~~) 14-day period, the public records officer may close the request.

AMENDATORY SECTION (Amending WSR 18-07-080, filed 3/19/18, effective 4/19/18)

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

(2) 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 website 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~~) 10 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.