

Seattle City Attorney – Public Disclosure Policy

Subject: Public Disclosure

Publication Date: October 14, 2009

Effective: October 30, 2009

0.0 Background

The Seattle City Attorney supports open government. The City Attorney strives to comply with both the letter and the spirit of the Washington State Public Records Act, RCW Chapter 42.56 (the Act). The City Attorney is committed to full disclosure of all non-exempt public records in the custody of the office upon request. In May, 2009, the Seattle City Council passed ordinance 122969 requiring all departments to develop and adopt rules by November 1, 2009 explaining how they will implement specific requirements of the Act. As part of the City Attorney's commitment to public disclosure, the City Attorney adopts this policy.

1.0 Purpose

The purpose of this policy is to provide guidelines for the City Attorney's Office (CAO) for the promotion of consistent procedures and prompt responses to requests for public records, and to provide guidance to those who submit public disclosure requests to the CAO.

2.0 Definitions

- 2.1 Public Record** means any writing containing information relating to the conduct of the City of Seattle or the performance of any City of Seattle or proprietary function prepared, owned, used or retained by the City of Seattle regardless of physical form or characteristics.
- 2.2 Exempt Information** means any information that is privileged or otherwise not subject to disclosure under the Public Records Act, or any other law.
- 2.3 Redact** means to 'black out' or obscure a portion of a document.
- 2.4 Administrative Appeal** means an internal CAO process to review denials of public disclosure requests.

3.0 Applicability. This policy applies to the CAO, and to all public records within the custody of the department.

4.0 Policy statement.

- 4.1 Public disclosure training** has been and will continue to be provided to Law department staff consistent with the CAO's commitment to public disclosure. In addition, the CAO will continue its practice of providing training to others in the City to promote citywide compliance.
- 4.2 Departmental coordination.** Although individual City departments are not required to coordinate responses to public disclosure requests, one of the challenges and goals for a municipality as large as Seattle is to connect requestors with the appropriate department as soon as possible. To the extent feasible, the CAO will work together with other departmental public disclosure officers to facilitate responses to requests that involve multiple departments.

- 4.2.1 Public Disclosure Log.** The CAO will participate in the maintenance of a centralized public disclosure log of all public disclosure requests submitted to the City of Seattle that will include:
- (a) Tracking of staff time and expenditures related to responses to records requests;
 - (b) Request date; response date; closing date; requestor name; responsible agency(s); referrals to other departments; general subject of request; general information on redactions; and information on appeals and determinations.
- 4.2.2 Public Disclosure Web Portal.** The CAO website will maintain a link to the public disclosure web portal maintained by the Department of Executive Administration.
- 4.2.3 Website links.** A list or link to a list including direct contact information for all City of Seattle Public Disclosure Officers, and all applicable City records retention schedules, will be available on the CAO website.

5.0 Public Records Requests

5.1 Public Disclosure Officers

- 5.1.1** The CAO has two designated Public Disclosure Officers (PDO) for the Civil Division. An additional PDO is assigned for the Public and Community Safety Division. When a specific PDO is unavailable due to vacation, sick leave or otherwise, an alternate PDO will carry out the functions of the unavailable PDO's duties.
- 5.1.2** The persons serving as PDOs may change from time to time. The name and contact information for the individuals currently serving as the PDOs shall be clearly identified on the City Attorney's Office website.
- 5.1.3** The PDOs will be available for assistance to the public and may delegate any of their responsibilities to department staff, but they remain ultimately responsible for overseeing compliance with the Public Records Act and this Policy. The PDOs shall:
- (a) Be responsible for implementing department process regarding disclosure of public records;
 - (b) Serve as the principal contact point with any requestor who has made a records request, unless the PDO has delegated the responsibilities for a particular records request to another staff member;
 - (c) Coordinate department staff in responding to requests, generally ensuring staff compliance with public records disclosure requirements; and
 - (d) Make a decision regarding disclosure and the application of exemptions.
- 5.1.4 All records requests must be directed to the designated Public Disclosure Officers.** After the initial request, all subsequent communications from a

requestor should also be directed to the PDO, unless a staff person has been delegated the responsibilities for a particular request.

5.2 Making a Request.

- 5.2.1** The CAO may ask that a request for public records be submitted in writing, but the CAO shall not require written public disclosure requests. Requests delivered orally or by telephone shall be documented, and if possible, verified through written communication.
- 5.2.2** Requests should be made in writing directly to the department that has custody of the record requested. If the CAO receives a misdirected request it will forward that request directly to the appropriate City department PDO or the DEA Public Disclosure Coordinator.
- 5.2.3** A form for submitting requests will be available on the CAO website to include:
 - (a) Date and time of the request;
 - (b) Name of requestor (preferable, but anonymous requests are acceptable);
 - (c) Contact information for requestor;
 - (d) Date range for records requested;
 - (e) A detailed description of the requested records;
 - (f) Notice that inspection of records is free.

5.3 Frequently requested records and retention schedules. To the extent feasible, if the CAO possesses non-exempt records that are frequently requested, the CAO website shall make those records available online. In addition, The CAO website shall contain links to all records retention schedules applicable to the department.

5.4 Responding to a Request.

- 5.4.1 Written responses.** The Act requires that agencies provide a written response to all public disclosure requests within five full business days of receipt, exclusive of weekends and holidays. In other words, if a request is received on a Monday prior to 5PM, typically a response must be sent no later than the following Monday prior to 5PM. Initial responses will do one or more of the following:
 - a)** Make the records available for review;
 - b)** Provide a reasonable estimate of time (See 5.4.2) as to when records will be available;
 - c)** Deny the request in whole or in part and cite the specific exemption that applies (See 8.0);
 - d)** Ask for clarification;
 - e)** Let the requestor know that there are no responsive records;
 - f)** Forward any misdirected requests to the appropriate departmental Public Disclosure Officer or the DEA Public Disclosure Coordinator. Misdirected requests should be forwarded as quickly as possible upon determining the appropriate department.

- 5.4.2 A reasonable estimate of time.** Estimates of time required to respond to a request can take into account factors such as the CAO's resources, staff vacations, overall workload, and the volume and nature of the records involved. The estimated time to fulfill a request may also include the time required to give third party notice.
- 5.4.3 Unclear requests.** In acknowledging receipt of a records request that is unclear, the CAO will ask the requestor to clarify what records the requestor is seeking, and will endeavor to work with the requestor to receive adequate clarification.
- 5.4.4 Large requests – responding in installments.** When a request is for a large volume of records, the CAO may elect to provide records on an installment basis. In such case, the Public Disclosure Officer should provide a reasonable estimate in the initial written response concerning when the first installment will be available, and if possible, a schedule for future installments. If a requestor does not contact the Public Disclosure Officer within 30 days to arrange for the review of the first installment, the CAO may deem the request abandoned.
- 5.4.5 Notice of availability.** When the records responsive to the request (or the first installment) are available for inspection, the CAO will send the requestor a written notification. When the CAO is producing in installments, this written notification will also provide an estimate of when the next installment will be available.

6.0 Review of public records. Records that have been assembled in response to a request will be available by appointment during normal department business hours (normally 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.). Appointments shall be scheduled so that they don't interfere with essential department functions. The CAO must take reasonable precautions to protect records from damage and disorganization, including assigning individuals to be present during review of public record originals. There is no fee for inspection of public records.

7.0 Copies of public records.

- 7.1 Deposits.** Before copying a record, the CAO may require up to a ten percent deposit to cover the total cost of requested copies.
- 7.2 Costs for standard copies.** The CAO may charge .15 cents per page for standard 8 ½ by 11 inch black and white paper copies of public records.
- 7.3 Non-standard copies.** The CAO may charge its actual cost, including documented staff costs, for copying any non-standard records, such as over-sized maps and color copies.
- 7.4 Third party vendors.** In some cases, typically with the prior approval of the requestor, the CAO may utilize third party vendors for copying and charge the requestor for the actual copying costs.
- 7.5 Electronic records.** If possible, electronic records will be provided in their existing format, if requested in that format. When existing electronic records are provided by email, there will be no charge to the requestor. When electronic files are burned onto a CD, the requestor may be charged \$1.00 per CD. When standard 8 ½ by 11 inch copies of paper records are scanned from paper to .PDF, the requestor may be charged .10 cents per page.

7.6 Electronic databases. Non-exempt portions of electronic databases that can be extracted using standard queries will be provided in response to requests in the same manner as traditional records. Requests for customized data compilations that fall outside standard queries, reports, or formats entail the creation of a new record that may sometimes be obtained at extra cost, upon a prior agreement with the requestor for customized access, and at the department's discretion. Customized access requires specialized knowledge in computer skills and the cost shall be documented and reflect the hourly rate paid to department IT staff.

7.7 Mail. If requested, the CAO must mail records to requestors; however the requestor may be required to cover the cost of the postage and shipping materials.

7.8 Installments. If the CAO makes a request available on a partial or installment basis, the CAO may charge for any copies requested as each portion is provided.

7.9 Waiver. When the actual cost of copies is de minimis, the CAO may not charge the requestor. Any requests for standard copies of less than fifteen pages of public records may be provided at no charge.

8.0 Redactions and Exemptions. CAO responses refusing, in whole or in part, inspection of any public record shall include an identification of the record and a citation to the specific exemption authorizing the withholding of the record (or portion of a record).

8.1 Redactions. Redactions shall be identified along with the specific exemption that applies.

8.2 Documents exempt from disclosure. If the CAO determines that a record is exempt from disclosure in its entirety, the department shall inform the requestor in writing, including the following:

- (a) A citation of the specific exemption;
- (b) The type of record being withheld;
- (c) If necessary, a short explanation of how the exemption applies to the record;
- (d) The date the record was created;
- (e) The author, recipient, and subject matter, or if otherwise protected, other means of sufficiently identifying particular records without disclosing protected contents.

8.3 Common exemptions. As legal advisors and representatives for City departments, many of the documents maintained by the Law department constitute attorney-client privileged communication and attorney work product. Thus, the exemptions to disclosure most commonly cited by the CAO are RCW 42.56.070;5.60.060(2)(a) which applies to attorney-client privileged communication, and RCW 42.56.290 which applies to attorney work product created during actual or reasonably anticipated litigation. Other exemptions to disclosure that may be cited in response to a request can be found in RCW Chapter 42.56 and other state and federal law, incorporated by RCW Chapter 42.56.

9.0 Appealing denial of a request.

9.1 Administrative Appeals. The City Attorney shall be responsible for reviewing appeals of a denial of a request.

9.2 Notice. The CAO website shall include a notification that an administrative appeal of a denial of a public disclosure request must be submitted in writing to the City Attorney. The CAO website shall include a link to a form for submitting an appeal.

9.3 Response to appeal. Upon receipt of an administrative appeal, the CAO shall send a written response to the requestor within two business days. The written response shall do one of the following:

- (a) Uphold the CAO's denial of the request;
- (b) Modify the CAO's response to the request;
- (c) Inform the requestor that review of the administrative appeal will require additional time and provide an anticipated date when the review will be complete.