

PUBLIC RECORDS POLICY AND PROCEDURE FOR PORT OF OTHELLO

The Port of Othello (the "Port") is required by RCW 42.56.100 to adopt and enforce reasonable rules and regulations, consistent with the intent of the Washington State Public Records Act (PRA), referenced in RCW Chapter 42.56 and the Model Rules of WAC 44-14., and to provide access to public records, protect public records from damage and disorganization and to prevent excessive interference with other essential functions of the Port. The Port is also required to protect certain public records from disclosure subject to various legal exemptions.

This PRA Disclosure Policy establishes the procedures the Port will follow to provide for the fullest assistance to requestors, including the timeliest possible action on requests, while protecting public records from damage and preventing "excessive interference with other essential agency functions." RCW 42.56.100. The Port is required to respond to public records requests pursuant to Chapter 42.56 RCW.

The Port is not required to respond to questions, do research, or to give information that is not the subject of an identifiable public record.

Except where these guidelines are mandated by statute, the guidelines in this policy are discretionary and advisory only and shall not impose any affirmative duty on the Port. The Port reserves the right to apply and interpret this policy as it sees fit and to revise or change the policy at any time.

Failure to comply with any provision of these rules shall not result in any liability imposed upon the Port other than that required in the PRA.

DEFINITIONS

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 Port regardless of physical form or characteristics. RCW 42.56.010(2).

2. "Writing" means 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. RCW 42.56.010(3).

3. "Identifiable record" means an identifiable record is one in existence at the time the records request is made and that Port staff can locate after an objectively reasonable search.

4. "Exempt record" includes all Port records that are specifically exempted or prohibited from disclosure by state or federal law, either directly in RCW 42.56 or other statutes.

RESPONSIBILITY

Public Records Officer: The Port's Public Records Officer is _____.
Other Port personnel may also process public records requests, as needs require.

PROCEDURE

1. How to Request Records: Any person requesting access to public records or seeking assistance in making such a request must contact the Public Records Officer at:

Chris Faix, Public Records Officer
705 E. Hemlock St.
Othello, WA 99344
(509) 488-2544
chris@portofothello.com

Hours: 8:00 am to 5:00 pm Monday through Friday

Or such other person designated as the Public Records Officer that may be subsequently designated by the Port.

2. Request Format: While there is no specific required format for a public records request, a requestor must provide the Port with reasonable notice that the request being made is for public records. If a request is contained in a larger document unrelated to a public records request, the requestor should point out the public records request by labeling the front page of the document as containing a public records request or otherwise calling the request to the attention of the Public Records Officer to facilitate timely response to the request.

The Port encourages requestors to issue requests for public records in writing on the Port's Standard Public Records Request Form, which is available from the Public Records Officer and from the Port's website.

Requests may be submitted in person, orally, by mail, fax, or e-mail. Mail, e-mail, and faxes will be considered received on the date the form is stamped "received", not on the date sent.

Requests should include the following information:

- A. The requestors name, mailing address, and contact phone number;
- B. The date of the request;
- C. The nature of the request, including a detailed description of the public record(s) adequate for the Port personnel to be able to locate the records;
- D. A statement regarding whether the records are being requested for a commercial purpose (RCW 42.56.070(9));
- E. Whether the requestor desires copies, or to inspect the requested records; and,
- F. Name of Requestor.

Requests for public records made orally must be made during normal business hours to the Public Records Officer or designee. If a request for public records is made orally to the appropriate individual, it will be confirmed by the Public Records Officer in writing within five (5) business days. If the requestor does not receive such written confirmation, the requestor should contact the Public Records Officer in writing to confirm that the request was received.

Please Note: A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records pursuant to RCW 42.56.080.

3. Response to Requests: The Port will process requests in the most efficient manner as the Public Records Officer deems appropriate. The Public Records Officer may ask a requestor to prioritize the records he or she is requesting so that the most important records may be provided first.

Within five (5) business days of receiving a request, the Port will either (A) provide the record; (B) provide an internet address and link on the Port's website to the specific records requested, except that if the requester notifies the Port that he or she cannot access the records through the internet, then the Port will provide copies of the record or allow the requester to view copies using a Port computer; (C) Acknowledge that the Port has received the request and provide a reasonable estimate of the time the Port will require to respond to the request; (D) Acknowledge that the Port has received the request and ask the requestor to provide clarification for a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of the time the Port will require to respond to the request if it is not clarified; or (E) Denying the public record request.

Additional time to respond may be based on the need to clarify the intent of the request, to locate and assemble the records, to redact confidential or exempt information, to prepare an exemption log, to notify third parties or agencies affected by the request and provide such parties/agencies with the opportunity to seek a court order preventing disclosure where appropriate, and/or to consult with the Port's legal counsel about whether the records are exempt from disclosure. The Public Records Officer should briefly explain the basis for the time estimated to respond. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the changed circumstances that make it necessary.

If the requestor fails to respond to a Port request to clarify the request, and the entire request is unclear, the Port will not respond to it. Otherwise, the Port will respond only to those portions of the request that are clear.

If the Port receives a request for public records identified in terms of "any and all documents related to" or similar language, and the requestor is unable or unwilling to help narrow the scope of the documents being sought in order to expedite the Port's response and/or reduce the volume of potentially responsive documents, the Public Records Officer is allowed to err on the side of producing more rather than fewer documents in response to such a broad, general request. Port personnel shall not be obligated to interpret such a broad, general request in order to decipher which specific documents may be of interest to the requestor, and the PRA does not allow a requestor to search through the Port's files for records which cannot be identified or described to the Port.

The Port is not authorized to provide lists of individuals for commercial purposes. The Public Records Officer may also seek sufficient information to determine if another statute or court order may prohibit disclosure. If the requestor fails to clarify an unclear request within fifteen (15) working days, the Port will treat the request as having been withdrawn. RCW 42.56.520(3).

If the public record contains personal information that identifies an individual or organization other than the subject of the requested public record, the Port may notify that individual or

organization to allow the party to seek relief pursuant to RCW 42.56.540. Such relief may include a court injunction prohibiting release of the record because such examination would not be in the public interest and would substantially and irreparably damage any person or vital governmental function. The Port may take the above into account when providing an estimate of when the records will be available. Nothing in this policy is intended to, nor does it, create any right to such notice.

When a request uses a phrase such as "all records relating to", the Public Records Officer may interpret the request to be for records which directly and fairly address the topic. The Port may respond to a request to provide access to a public record by providing the requestor with a link to the Port's website containing an electronic copy of that record if it can be determined that the requestor has internet access and the requestor agrees that the request has been satisfied.

When the requestor has found the records he or she is seeking, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

4. Providing Records in Installments: When the request is for a large number of records, the Port may provide access for inspection and copying in partial installments if reasonably determined that it would be practical to provide the records in that way. If the requestor does not contact the Public Records Officer within thirty (30) working days to arrange for the review of the first installment, the Port may deem the request abandoned and may stop fulfilling the remainder of the request. The Port may prioritize record requests received after commencing to fulfill the large request. RCW 42.56.120.

5. Electronic records: The process for requesting electronic public records is the same as the process for requesting paper public records. When a requestor requests records in an electronic format, if technically feasible, 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 Port and is generally commercially available; or will provide the records in a format that is reasonably translatable from the format in which the Port keeps the record.

With the consent of the requestor, the Port may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The Port may charge a fee consistent with RCW 43.105.280 for such customized access.

6. Documents Available on Website. Many public records are available on the Port's website. The Public Records Officer may direct the requester to the Port's website to fulfill a records request. For those who do not have access to the Internet, a record viewing workstation can be provided at the Port's Office located at 705 E. Hemlock St., Othello, WA 99344.

7. Videos and Other Multimedia. Port business may be recorded on video. All requests of video or other multimedia information or records shall state a date in which the event occurred as these digital files are not indexed as to the subject and are not word searchable.

8. No Duty to Create Records: This policy does not require the Port to answer written questions, summarize data or information, create new public records, or provide information in a format that is different from original public records; however, the Port may, in its discretion,

create such a new record to fulfill the request where it may be easier for the Port to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request. WAC 44-14-04003(5).

9. No Duty to Provide Information: This policy does not require the Port to respond to requests for information, research, opinions or advice. Requests for information, research, opinions, advice, or similar requests will not be responded to pursuant to this policy.

10. No Duty to Supplement Responses: The Port is not obligated to hold current records requests open to respond to requests for records that may be created in the future. A new request must be made to obtain later-created public records.

11. Fees: The Port has determined that it would be unduly burdensome to calculate the actual costs for providing public records. Accordingly, pursuant to RCW 42.56.120, the costs to be charged the requestor for public records is as follows:

a. Fifteen cents (\$.15) per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of Port equipment to photocopy public records; provided, however, that at the Executive Director's discretion, the first 25 pages may be provided at no cost;

b. Ten cents (\$.10) per page for public records scanned into an electronic format or for the use of Port equipment to scan the records;

c. Five cents (\$.05) per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

d. Ten cents (\$.10) per gigabyte for the transmission of public records in an electronic format or for the use of Port equipment to send the records electronically. The Port shall take reasonable steps to provide the records in the most efficient manner available to the Port in its normal operations; and

e. The actual cost of any digital storage media or device provided by the Port, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

11.1. The charges set forth above may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

11.2. The Port may charge a flat fee of up to two dollars (\$2.00) for any request as an alternative to fees authorized under 11 (a) - (e) of this subsection when the Port reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars (\$2.00). If the Port elects to charge the flat fee in this subsection for an initial installment, it will not charge the fees authorized under 11 (a) - (e) of this subsection on subsequent installments.

11.3. The Port will not impose copying charges for access to or downloading of records that are routinely posted on the Port's website prior to receipt of a request unless the requestor has specifically requested that the Port provide copies of such records through other means.

11.4. If requested, the Port will provide a summary of the applicable charges before any copies are made, and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

11.5. In addition to the charge imposed for providing copies of public records and for the use by any person of Port equipment copying costs, the Port will include a customized service charge. A customized service charge is imposed if the Port 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 Port for other Port purposes.

11.5.1. The customized service charge may reimburse the Port up to the actual cost of providing the services in this subsection.

11.5.2. The Port will assess a customized service charge only when the Port has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice will also provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

11.5.3. The Port may require a deposit in an amount not to exceed ten percent (10%) of the estimated cost of providing copies for a request, including a customized service charge. If the Port makes a request available on a partial or installment basis, the Port may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the Port is not obligated to fulfill the balance of the request. The Port may waive any charge assessed for a request pursuant to Port rules and regulations. The Port may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

11.6. Medical Records. Pursuant to federal law (under HIPAA and HITECH), reasonable, cost-based fees may be imposed only for certain permitted activities, such as the actual copying (whether on paper or to electronic media), postage, preparing a summary or explanation as allowable and in accordance with State law, and the cost of supplies for creating the paper copy or electronic media (i.e., physical media such as a compact disc [CD] or universal serial bus [USB] flash drive), if the individual requests that the electronic copy be provided on portable media. Search and retrieval fees may never be imposed unless the law changes to reflect otherwise. The Port will determine these fees through any manner deemed permissible by the U.S. Department of Health and Human Services Office of Civil Rights ("OCR"). These costs may align with those permitted by the State so long as the State-authorized costs are the same type of costs permitted under 45 CFR 164.524(c)(4) and are reasonable.

11.6.1. Per-page fees for medical records that are maintained electronically are not considered reasonable by OCR, and as such, are not permitted in the context of those specific records.

11.6.2. For these permitted activities identified in Section 11.6, the Port may charge for average allowable costs, or a flat fee not to exceed the maximum flat fee rate of six

dollars and fifty cents (\$6.50) or as deemed otherwise permissible by law. The Port also reserves the right to, alternatively, charge actual costs for these permitted activities so long as the Port advises the requestor in advance what the approximate costs will be for honoring their request.

12. Deposit: The Port may require a deposit of up to ten percent (10%) of the estimated cost of copying records prior to copying any records for a requestor. The Port may also require payment of the remainder of the cost before providing all of the records, or the payment of the costs of copying an installment before providing that installment. RCW 42.56.120.

13. Preservation of Public Records: No member of the public may remove a public record from the Port's property without the Public Records Officer's written permission. No member of the public may remove a public record from a viewing area, disassemble, or alter, fold, mark, deface, tear, damage or destroy any public record. Public records maintained in a file jacket or binders, or in chronological order, may not be dismantled except for the purpose of copying, and then only by Port staff. Copies of public records may be copied only on copying machines of the Port unless other arrangements are made by the Public Records Officer. No food or drink will be permitted during the inspection of public records. Access to file cabinets, shelves, vaults and other Port storage areas is restricted to authorized Port staff.

14. Organization of Public Records: The Port finds that maintaining an index as provided in RCW 42.56.070(3) for use by the public would be unduly burdensome and would interfere with Port operations given the high volume, various locations, and types of public records received, generated and otherwise acquired by the Port. RCW 42.56.070(4). Notwithstanding the foregoing, the Port will maintain its records in a reasonably organized manner and take reasonable actions to protect records from damage and disorganization.

15. Closing Abandoned or Unpaid Requests: If the requestor withdraws the request, fails to fulfill his or her obligations to inspect the records within thirty (30) days of notice that the records are available for inspection, or fails to pay the deposit, installment payment or final payment for the requested copies, Port personnel will close the request. Port personnel will document closure of the request and the conditions that led to closure. RCW 42.56.120.

16. Records Exempt from Public Disclosure: The Port is not required to permit public inspection and copying of records for which public disclosure of the record is prohibited, restricted or limited by state law or federal statute or regulation. The Port is prohibited by statute from disclosing lists of individuals for commercial purposes. RCW 42.56.070(9). The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. RCW 42.56.230 through 42.56.480 contains a large number of exemptions from public inspection and copying. Other statutes outside the Public Records Act may prohibit and exempt disclosure of certain documents or information. RCW 42.56.070(1). The Port's failure to list an exemption shall not affect the effectiveness of the exemption.

17. Denial of Request Due to Exemption: All denials of requests for public records will be accompanied by a written statement specifying the reason(s) for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. RCW 42.56.210(3).

18. Mechanism for Review of Denial: Any person who objects to the denial of a public records request may petition in writing to the Public Records Officer for a reconsideration of that

decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request. The Public Records Officer shall perform a review of the denial as promptly as possible. Pursuant to state law, the review shall be deemed concluded at the end of the second business day following the denial to represent final action for the purposes of judicial review. RCW 42.56.530.

19. Retention of Records: The Port is not required to retain all records it creates or uses. However, the Port will follow RCW Chapter 40.14, Preservation and Destruction of Public Records, in the retention and destruction of public records. The Secretary of State, State Archives Committee approves a general retention schedule for local agency records that is common to most agencies. Individual agencies may seek approval from the Local Records Committee for retention schedules specific to their agency or that, due to their particular business needs, must be kept longer than provided in the general schedule. The retention schedule for local agencies is available at www.secstate.wa.gov/archives. Retention schedules for documents vary based on the content of the record. WAC 4414-03005.

20. Loss of Right to Inspect: Inspection shall be denied and the records withdrawn by the Public Records Officer if the requestor, when reviewing the records, acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the Port.

21. Disclaimer of Liability: Neither the Port nor any officer, employee, official or custodian shall be liable, or shall a cause of action exist, for any loss or damage based upon a release of Public Records if the person releasing the records acted in good faith in attempting to comply with this policy. This policy is not intended to expand or restrict the rights of disclosure or privacy as they exist under state and federal law. Despite the use of any mandatory terms such as "shall", nothing in this policy is intended to impose mandatory duties on the Port beyond those imposed by state and federal law.

EXHIBIT B

PUBLIC RECORDS REQUEST FORM

INSTRUCTIONS TO REQUESTOR:

In accordance with state law, within five (5) business days of receiving a public record request, we will respond by either (1) providing the record; (2) acknowledging that the Port has received the request and providing a reasonable estimate of the time the Port will require to respond to the request; (3) denying the public record request; or (4) requesting clarification of the request.

This form should be completed in its entirety and may be emailed, mailed, or delivered in person, or the request may be made verbally. Verbal requests may require more time to process because they require the Public Records Officer to reduce the request to writing and verify with the requestor that the written form properly memorializes the request.

Send request to: Chris Faix, Public Records Officer
705 E. Hemlock St.
Othello, WA 99344
(509) 488-2544
chris@portofothello.com

Please indicate the following in reference to the charges and fees set forth in the Port's Public Records Policy and Procedure (check all that apply):

- I wish to inspect these records in person.
- I wish to inspect these records and then select records for copying or scanning.
- I wish to receive paper copies of these records.
- I wish to receive a CD containing electronic copies of these records.
- I wish to have paper copies mailed to me.
- I wish to have copies faxed to me.
- I wish to have copies emailed to me or transmitted electronically.

Please also indicate the following:

- The information requested is for commercial purposes. (RCW 42.17.270)
- I am a claimant against the Port. (RCW 42.56.080)

Please describe the records you are requesting in detail and any additional information that will assist us in locating this information for you as quickly as possible. Failure to provide sufficient information to identify the records may result in a denial of the request (WAC 44-14-04002(3)).

Date of Request: _____ Time of Request: _____
Requestor Name: _____ Phone Number: _____
Full Address: _____
Email Address: _____

Note: All communication (except delivery of records) between the Port and the requestor will be via email if an email address is provided.

OFFICE USE ONLY:

Request Received By: _____ Personnel #: _____

Date: _____ Time: _____

Release reviewed / released by: _____ Personnel #: _____

Date: _____ Time: _____

Comments:

Date completed: _____ Request denied: No Yes

Reason for denial: _____

Fees (see Section 11 of the Public Records Policy and Procedure) [note that medical records are subject to actual allowable costs, average allowable costs, or a maximum flat fee as outlined in Section 11.6 and 45 CFR 164.524(c)(4)]:

Flat fee (\$2.00): _____ YES _____ NO

Medical Records Flat fee (\$6.50): _____ YES _____ NO

Copies provided: _____ # @ \$0.15 each Subtotal \$ _____

Records scanned _____ # @ \$0.10 each Subtotal \$ _____

Files uploaded _____ # @ \$0.05 per four (4) electronic files Subtotal \$ _____

Data transmitted _____ # @ \$0.10 per gigabyte Subtotal \$ _____

CDs provided: _____ # @ \$1 each Subtotal \$ _____

Mailing cost: Envelope / Container Cost: \$ _____ Postage: \$ _____ Subtotal \$ _____

Customized Service Charge: _____ YES _____ NO Subtotal \$ _____

Total \$ _____

Date Paid: _____ Receipt #: _____

Communications Log:

Person Notified	By	Via	Date/Time	Details
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____