

RESOLUTION NO. 1096 (2018)

A Resolution of the Port Commission of the Port of Everett Amending the Public Records Policy, finding an index of all public records would be unduly burdensome, making a finding and setting a fee for copies of public records, canceling and superseding Resolution No. 1059 (2016), dated October 11, 2016.

WHEREAS, it is the policy of the Commissioners of the Port of Everett, a municipal corporation, that (1) full access to the information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of the organization; (2) staff shall make available all identifiable Port records, subject only to the exceptions contained in law, and to abide by the intent of the Public Records Act (RCW 42.56); (3) the fullest assistance to members of the public and timely possible action on requests for Public Records be afforded to those requesting records.

WHEREAS, the Commissioners of the Port of Everett find that it would be unduly burdensome to index all the Port records specified in RCW 42.56.070(4), given the wide range of Port activities, the limited staff availability, and the inordinate amount of time it would take to develop and maintain such an index; and

WHEREAS, as a result of ESHB 1594 and EHB 1595 by the Washington State Legislature becoming legally effective on July 23, 2017, Port staff reviewed Resolution No. 1059 and suggest revisions to the documents for accessing public records at the Port of Everett as set forth in the attached policy; and

WHEREAS, changes in the public records policy will be needed in the future, and given its administrative nature, such changes may be made by staff without further action from the Board of Commissioners subject to Section 3 of this Resolution to provide Commission oversight; and,

WHEREAS, it is further the policy of the Commissioners of the Port of Everett to impose a reasonable charge reflecting the actual costs to the Port of providing copies of Port records to members of the public, but find that it would be unduly burdensome to calculate the actual copying costs and shall opt to use the Public Records Act default copying fee schedule as set forth in Section 3 of RCW 42.56.120.

NOW, THEREFORE, BE IT RESOLVED, based on the foregoing findings, as follows:

1. Pursuant to RCW 42.56.070(4), the Commission finds that maintaining an index of all public records would be unduly burdensome inasmuch as doing so would consume limited Port resources and compromise essential Port functions. Upon this finding the Port is not lawfully required to maintain such index and shall not maintain an index of all of its public records. To the extent indexes are prepared for use by the Port District, those indexes shall be made available for public inspection and copying.

2. Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Port of Everett finds that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records for the following reasons: Funds were not allocated

for performing a study necessary to calculate such actual costs, limited Port resources are better allocated in a manner consistent with the Port's strategic plan, Port staff lack the resources and expertise to conduct such a study, and such a study would interfere with and disrupt other essential agency functions. Therefore, staff is directed to assess charges for the copying of public records in a manner authorized by law and as set forth in section 3 of RCW 42.56.120.

3. The Public Records Policy is incorporated by reference herein and adopted by the Commission. This policy may be modified without further action of the Board of Commissioners. Provided, however, that the Executive Director inform the Board of Commissioners of any such modifications; and, provided further, that the Port's attorney endorses to the Commission such modifications following a review for legal sufficiency.

4. Copies of this Resolution and the attached Policy and Procedures for Accessing Public Records shall be available for public inspection and copying at the Port's Administrative Offices, the Port's Marina Office and the Port's Web site at www.portofeverett.com.

5. Resolution No. 1096 (2018) cancels and supersedes Resolution No. 1059 (2016) previously adopted on October 11, 2016.

ADOPTED by the Everett Port Commission on 6th day of February, 2018.

EVERETT PORT COMMISSION



Glen Bachman, President



Bruce Fingarson, Vice President



Tom Stiger, Secretary

PUBLIC RECORDS POLICY

1. INTRODUCTION

A. POLICY AND FUTURE AMENDMENTS.

It is the policy of the Port to respond to requests for Public Records in a manner that is transparent and in compliance with the Washington Public Records Act, Chapter 42.56 RCW (PRA). This Policy may be amended by the Executive Director, provided he or she provides notice to the Board of Commissioners in either a regular or special open public meeting.

B. GENERAL INQUIRIES.

In general, citizen and media requests about Port District operations or policy can be answered by the Executive Director or other knowledgeable staff. Media inquiries should be directed to the Port's Chief of Policy & Communications or Executive Director.

II. PUBLIC RECORDS AND THE PORT'S OBLIGATIONS

A. PUBLIC RECORD.

The PRA (Chapter 42.56 RCW), requires that members of the public be provided access to public records held by government agencies including the Port of Everett, for inspection and, if desired, copying. The term "public record" is defined in the Revised Code of Washington as follows:

"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 any state or local agency regardless of physical form or characteristics. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

- (a) Do not serve in an administrative capacity;
- (b) Have not been appointed by the agency to an agency board, commission, or internship; and
- (c) Do not have a supervisory role or delegated agency authority.

RCW 42.56.010(3)."

The term "writing" is defined in the statute as:

"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."

B. TEXTING OF PUBLIC RECORDS.

Port employees shall not use text messaging, which shall include texting and instant messaging, to create, transmit, or conduct official Port business, except under the circumstance cited below:

1. General Announcements. Text messaging of general announcements such as weather reports, state of emergency notices and other public service announcements for which there is no response from the recipient requested or required. Once transmitted or received, such texts should be deleted from the employee's cell phone or hand held device.
2. Transitory Records. An employee may send or receive a text message of a transitory nature which only contains (a) information of temporary, short-term value upon which no policy development or action of the Port is reasonably believed to be based; and, (b) the law does not otherwise require the information to be retained. Once transmitted or received, such texts should be deleted from the employee's cell phone of hand held service.

Example of Transitory Records that should be deleted:

- (a) Unsolicited junk texts or personal texts sent to a Port phone.
- (b) Notices or memoranda that do not relate to Port functions.
- (c) Telephone messages, driving directions, meeting times, letters of transmittal which do not add any information to the transmitted materials.

Emergency Text Messaging: Employees may use text messaging to receive and transmit information relating to the conduct of the Port or the performance of its functions during an emergency. Provided, however, that such text messaging shall be forwarded to the employee's [Port e-mail inbox within a reasonable time of such emergency], and such record shall be stored or released in compliance with other Port policies.

In the event an employee is unsure whether he or she has texted a Public Record subject to records retention requirements, or if the employee has inadvertently texted in violation of this policy, the employee shall forward that message to his or her Port email inbox, and such record shall be stored or released in compliance with other Port policies.

Note: Records for which there is a current discovery request in connection with litigation or reasonably anticipated litigation or for which there is a pending records request under the Public Records Act, should **not** be deleted.

C. RECORDS THAT ARE EXEMPT FROM DISCLOSURE REQUIREMENTS.

State law allows the Port to withhold information contained in a public record if the information is exempted by law. Such exemptions are listed in RCW 42.56.210 through RCW 42.56.480. Other exemptions may exist as a matter of recognized law from court cases and other statutes. For example, and not by way of limitation, the records containing the following information may be exempt from disclosure requirements.

1. Confidential Attorney-client privileged communications.
2. Personal information in files maintained for employees, appointees, or elected officials of the Port to the extent that disclosure would violate their right to privacy. This includes, without limitation, tax information, driver's license or identification cards issued by the state of Washington, social security numbers, and other private information that is of no legitimate public concern, the disclosure of which would be highly offensive to a reasonable person.
3. Test questions, scoring keys, and other exam information used on licenses, employment or academics;
4. Generally, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event, shall disclosure be denied for more than three (3) years after the appraisal.
5. Valuable formulae, designs, drawings, and research data obtained by the Port within five (5) years of the request for disclosure when such disclosure would produce private gain and public loss.
6. Preliminary drafts, notes, recommendations and inter-agency memoranda in which opinions are expressed or policies formulated or recommended, except if that specific record is publicly cited in connection with a Port actions.
7. The residential addresses and telephone numbers of employees or volunteers which are held in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.
8. RCW 42.56.070(9) prohibits disclosure of lists of individuals (i.e. moorage lists) for commercial purposes. Non-commercial uses such as political mailing lists of non-profit charities may be given access.
9. Records, maps or other information identifying the location of archaeological sites in order to avoid looting or depredation of such sites.
10. Records assembled, prepared or maintained to prevent, mitigate or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or the general civilian population of the state and that manifest an extreme indifference to human life.
11. Failure of the Port to list in this policy an allowable exemption under any applicable law does not affect the efficacy of any exemption or its available use by the Port.

III. TO ACCESS A PUBLIC RECORD

A. STANDARDIZED REQUEST FORM.

The Port of Everett has developed a standardized form to assist members of the public who wish to make specific requests for public records.

B. HOW TO REQUEST A PUBLIC RECORD.

Copies of the standardized public records request form will be made available at Port District offices, including, the Marina Office, and the Waterfront Center Administration Office. Requests should be made to the Port's Public Records Officer, who is designated as the Office Manager/Public Information Officer, 1205 Craftsman Way, Suite 200, Everett, WA 98201, phone number (425) 259-3164.

The form will also be made available on the Port's website at www.portofeverett.com. The form specifies what documents are being requested, and will be forwarded to the Public Records Officer for management of the process through the appropriate departments to ensure that responsive deadlines are met. A master file of all disclosure request forms shall be maintained in the Main Administrative Office subject to the Secretary of State Retentions Schedule.

Occasionally, members of the public may submit a request via e-mail or by means other than the Port's Public Records Request Form. These requests should be treated as public records requests even though they are not on the standard form.

Copies of the Port of Everett's Public Records Resolution and Rules of Procedure shall also be made available for inspection and copying at designated Port District offices, and on the Port's website at www.portofeverett.com.

In coordination with the Public Records Officer, and as provided by state law, public records shall be available for inspection and copying during the customary office hours of the Port of Everett (Monday through Friday, excluding legal holidays, 8:00 a.m. through 5:00 p.m.). A Port staff person may monitor the inspection of certain records.

C. MAILED REQUESTS.

Public records request forms may be mailed, faxed or e-mailed to members of the public upon request and at the expense of the requestor. The requestor may also download the public records request form from the Port's website at www.portofeverett.com.

IV. PORT OF EVERETT PROCEDURES FOR RESPONDING TO REQUESTS FOR PUBLIC RECORDS

A. PROMPT RESPONSE.

Upon receipt of a public records request, the requested materials or a written response will be provided within five (5) working days, exclusive of the day of acceptance by the Port,

unless there are circumstances that require a longer period of time. If the requestor has not received a response from the Port within this time period, the requestor is encouraged to contact the public records officer immediately to ensure that the public records request was received by the Port.

B. PROCEDURE IF ADDITIONAL TIME IS NEEDED.

Notification will be provided to the requestor in writing if more time is needed for the following reasons:

- (a) clarifying the intent of the request; or
- (b) more time is required to provide the material; or
- (c) notifying third persons or agencies affected by the request; or
- (d) determining whether any of the information requested is exempt and a denial shall be made to all or part of the request; or
- (e) such other reason as may be authorized by law.

C. PROCEDURE IF CLARIFICATION IS NEEDED.

If a request is not specific, or an identifiable record cannot be ascertained from the request, the Public Records Officer may seek clarification from the requestor and shall be coupled with an estimated response time. If clarification is not received and the entire request is unclear, the records request may be denied, with the reason clearly stated in writing. If portions of the request are clear, however, the Port shall respond to those portions.

RCW 42.56.080(3) provides that the Port may deny a “bot” request that is one of multiple requests from the requestor to the Port within a 24-hour period, if staff establishes that responding to multiple requests would cause excessive interference with other essential functions of the Port. Staff is directed to make such a determination upon evaluating the following factors: 1. The number of requests. 2. Whether such requests are a duplication of the same request for the same records. 3. Whether responding to such requests would direct staff resources away from other time-sensitive assignments of staff. A request for all or substantially all of an agency’s records is not a valid PRA request; however, a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency’s records.

D. PROCEDURE IF NOTIFYING THIRD PARTIES.

The Port of Everett occasionally receives exempt records such as proprietary or sensitive business information from third parties including prospective or current clients or tenants. It is the policy of the Port to attempt to provide advance notice to affected third parties of requests for information supplied to the Port which may be sensitive. The information provider (third party) may seek to prevent disclosure of such information through litigation pursuant to RCW 42.56.540.

The notice to the affected persons will include a copy of the request and may include the documents containing the information in question.

E. PROVIDING RECORDS IN INSTALLMENTS.

When the request is for a large number of records, the Public Records Officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the Public Records Officer or designee may stop searching for the remaining records and close the request.

F. PROCEDURE IF INFORMATION NEEDS TO BE DELETED.

If it is determined that the document is exempt in part but can be made available after deletion of exempt portions, the request shall be granted; provided that such exempt portions shall first be deleted.

G. INTERNAL PORT PROCEDURE IF A REQUEST IS DENIED.

If the Port determines to deny the request, in whole or in part, a written statement of the applicable exemptions and specific reasons for the denial shall be provided to the requestor. A decision by the Port denying inspection shall be reviewed by the Port Attorney. Such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final action for the purposes of judicial review. The requestor shall be notified by mail of the decision to grant or deny the request.

V. COST FOR ACCESS TO PUBLIC RECORDS

A. NO COST FOR INSPECTION.

No fee shall be charged for inspection of Port records.

B. COSTS OF COPYING/SCANNING.

The costs to be charged the requestor for public records is hereby established as follows:

PRA Fee Schedule – RCW 42.56.120(3)	
Copies:	
15 cents /page	Photocopies, printed copies of electronic records when requested by the requester, or for the use of agency equipment to make photocopies.
10 cents /page	Scanned records, or use of agency equipment for scanning.
5 cents / each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
10 cents /gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual Cost	Digital storage media or devices.
Actual Cost	Any container or envelope used to mail copies.
Actual Cost	Postage or delivery charges

Actual Cost	Data compilations prepared as a customized service when required technology for doing so is not presently available and such services are not used by the agency for other agency purposes. May only be charged upon notice to requesting party of an estimated costs pursuant to RCW 42.56.120(3).
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Upon request, the Port of Everett shall provide a summary of applicable charges before copies are made so that the requester may have the opportunity to revise the request. RCW 42.56.120, Sec 3.

C. COSTS OF MAILED COPIES.

Actual costs for postage and delivery can be included, as well as the cost of any envelopes, if a public record is mailed to a requestor.

D. SALE OF EXTRA COPIES OF DOCUMENTS.

The Port occasionally has extra copies of documents. To the extent that the Port has extra copies of documents, they will be made available to the public at the cost of the Port. Once the supply is exhausted, the Port shall charge the normal cost of copying as provided above.

E. CERTIFIED COPIES.

In the case of public records which are requested to be certified by the Port, an additional charge of Two Dollars and Fifty Cents (\$2.50) per document shall be charged in addition to the per page copying charge. Requesting parties shall be charged the actual costs for reproduction of records, such as blueprints or photographs, that are not capable of being copied using the Port's copying equipment. A deposit may be required depending upon the volume or number of copies requested.

F. COPIES FOR PORT BUSINESS.

The Port of Everett may provide copies free of charge for Port related business. Those persons requesting copies of documents pursuant to the Washington Civil Rules shall be treated the same as the public in general and will pay for copies at the rates quoted herein or as may be directed by the judicial body.

G. CUSTOMIZED SERVICE CHARGE

For requests for records requiring the use of Information Technology (IT) expertise to prepare data compilations or customized access services that are not otherwise used by the agency may be subject to a deposit charge of up to 10% of the estimated customized service charge costs. The Port shall provide notice of charges together with an explanation pursuant to RCW 42.56.120(3) prior to assessment of the costs.

VI. APPEAL PROCESS IF MY REQUEST IS DENIED.

A. APPEAL OF DENIAL TO DISCLOSE.

The requestor may appeal the decision by the Port of Everett to withhold the information by filing a notice of appeal within five (5) calendar days of the date of the decision to deny

inspection of the requested public record. The appeal shall be filed and directed to the Public Records Committee, which shall consist of the Executive Director, or designee, a Port Commissioner, or designee, and Port Attorney, that together upon affirmative vote upon consideration of the request and relevant facts, will either affirm or reverse the denial within five (5) business days following the Port of Everett's receipt of the appeal or within such time as the requestor mutually agree.