



Public Records Policy

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PUBLIC RECORDS POLICIES AND PROCEDURES

1.0 PURPOSE

- 1.1 The Skagit Council of Governments (SCOG) is committed to providing the public full access to public records in accordance with Chapter 44-14 WAC and the Public Records Act Chapter 42.56 RCW. The following policy will govern the compliance of the Council in respect to the provisions of RCW 42.56.070.
- a) SCOG is committed to conducting its business in a transparent way, and to making information about the Council's business and operations readily available to the public.
 - b) SCOG is a special-purpose local government that was created to provide regional planning and economic development services within Skagit County. The Council is committed to public accountability. The Council complies with:
 - i. Washington State Public Records Act ~ Chapter 42.56 Revised Code of Washington
 - ii. Public Records Act - Model Rules Chapter 44-14 Washington Administrative Code (WAC)
 - iii. Washington State Archives - Local Government Common Records Retention Schedule
 - iv. Public Records Policies and Procedures contained herein.
- 1.2 This policy describes the standard systems and procedures for responding to public records requests.

2.0 DEFINITIONS

- 2.1 "Exempt" means that the law allows or requires the withholding of a public record, or a portion thereof, from public disclosure.
- 2.2 "Five Day Letter" refers to SCOG's initial written response to a person or entity who has made a public records request pursuant to RCW 42.56.520. The "Five Day Letter" also includes an email response. This letter is required by statute to be postmarked and/or the email must be transmitted, no later than five business days after the receipt of the original request.
- 2.3 "Fullest Assistance" means a timely and thorough action and response to a public records request.
- 2.4 "Identifiable Public Records" refers to a request that contains a reasonable description enabling the Council's staff to identify and locate the requested records. RCW 42.56.080
- 2.5 "Public Record" means 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. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative

sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

- 2.6 “Public Records Officer” is the individual responsible for: receiving on behalf of SCOG and coordinating the response to public records requests; establishing public records response protocols for the Council; assisting with unusually large or complex public records requests; developing training protocols for all SCOG staff; and developing other guidance resources such as on-line public records request information. For SCOG, that person is identified as SCOG’s Executive Director. The Executive Director and/or the Board may change the identity of the Public Records Officer and shall give notice thereof.
- 2.7 “Public Records Request” is defined as a request to inspect or receive a copy of a public record.
- 2.8 “Public Records On-Line Request” describes the web-based Online Public Records Request Form that provides the general public with the ability to request public records electronically.
- 2.9 “Redaction” refers to the method of protecting from public viewing a portion of a record that is exempt from public disclosure.
- 2.10 “Shall” and “shall not” are legal terms to express mandatory and prohibited actions for SCOG staff.
- 2.11 “Writing” means handwriting, typewriting, printing, photo-stating, 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.

3.0 POLICY

- 3.1 Pursuant to the Washington State Public Disclosure Act, RCW Chapter 42.56 Public Records Act and the Washington Administrative Code (WAC), Model Rules Chapter 44-14, SCOG is required to make available for inspection and copying, identifiable, non-exempt public records as defined by the Act and WAC. The following policy will govern the compliance of the Council with respect to the provisions of the Act and WAC.
- 3.2 To the extent that this policy is in any way inconsistent with the RCW, the RCW will be deemed to prevail.
- 3.3 SCOG staff shall make all non-exempt records available for inspection and copying in accordance with the Washington State Public Records Act. The Council shall provide to the public the fullest assistance to ensure access to records containing information about the conduct of government at all levels, while also being mindful of individuals’ privacy rights (as defined by RCW 42.56.050) and the desirability of the efficient administration of government.

- 3.4 Questions about public disclosure that require legal interpretation beyond those addressed in the policy will be referred to, and notice of public records requests and responses will be copied to, SCOG's Legal Counsel at the discretion of the Executive Director.
- 3.5 Public record requests shall be reviewed by SCOG's Executive Director, and Legal Counsel at the discretion of the Executive Director.
- 3.6 SCOG may not deny a request for being "overbroad" (RCW 42.56.080) However, when a request is for a large number of records, the Public Records Officer shall provide access for inspection and copying in installments if that officer reasonably determines that it would be practical to provide responsive records in such a manner. If, within thirty (30) days (WAC 44-14-040), the requestor fails to inspect the entire set of records in one or more installments, the Public Records Officer may stop searching for records and close the request. The Public Records Officer shall promptly notify the requestor in writing when a request is closed.
- 3.7 If, after the Public Records Officer has informed the requestor that she/he has provided all available records and then becomes aware (WAC 44-14-04003) of responsive material that was not initially disclosed, he/she will promptly inform the requestor of the additional documents and provide them on an expedited basis.
- 3.8 SCOG shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose of the request; unless it must be determined whether a request for a list of names is being requested for commercial purposes, or information is needed to determine whether another statute prohibits disclosure. If the requestor fails to clarify an unclear request with thirty (30) days, the Public Records Officer will treat the request as having been withdrawn and close the request (RCW 42.56.520).
- 3.9 SCOG is not obligated to create new records or to compile data or information in order to respond to a public records request. (WAC 44-14-04003) or to respond to requests for information.
- 3.10 An example of a request for information versus a request for records is distinguished by "How many employees used sick days in the year 2006?" versus "Provide all time sheets or other documents that show how many sick days were used by employees in the year 2006." Specifically, SCOG is not obligated to respond to requests for information. However, when it is in the best interest of the Council's community outreach and communication efforts to do so, and if collecting the information requires a manageable time investment, then the Council may choose to do so.

4.0 OFFICE HOURS

- 4.1 Public records shall be available for inspection and copying during the customary office hours of SCOG. For purposes of this policy, the customary hours shall be from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

5.0 PUBLIC RECORDS OFFICER

- 5.1 SCOG's Public Records Officer (WAC 44-14-02002) shall serve as the point of contact for members of the public requesting disclosure of public records and oversee the agency's compliance with the public records disclosure requirements.
- 5.2 Specified staff members will be trained appropriately to handle and facilitate a public records request in the absence of the Public Records Officer.
- 5.3 The name and contact information of the Public Records Officer will be posted at SCOG's office in a highly visible location and on the Council's website for accessibility by the public. (RCW 42.56.580)

Duties include the following:

- a) Receiving on behalf of the Council all public records requests, and providing timely and complete Five Day Letter (see attached sample letter marked as Exhibit A); or
- b) If the request is unclear or does not sufficiently identify the requested records, the Five Day Letter shall contain a written request for clarification to the requestor; or
- c) Making requested records available for inspection and copying; or
- d) Denying the request in writing in accordance with Washington law when appropriate.
- e) Assist staff with unusually large or complex public record requests.
- f) Develop training protocols for all specified SCOG staff.
- g) Coordinate a public records web presence.
- h) Assist staff in properly documenting their records series and managing the public records request status.
- i) Assist all staff members in documenting and managing email correspondence to remain available for public record.
- j) Along with SCOG's Executive Director be the liaison between the Council and outside legal counsel.

6.0 PROCEDURES

- 6.1 Citizens interested in making a public record request must do so in a written, mailed (USPS) document addressed to the Public Records Officer or by submission of SCOG's electronic form (Exhibit B) which is available through the Council's website at www.scog.net. Requestors may deliver the record request in person at SCOG's office. Public records requests will be accepted electronically via the Council's website, in writing, or email addressed to the Public Records Officer. WAC 44-14-04002

a) Public Records Officer email address is:

publicdisclosure@scog.net

b) Skagit Council of Governments address for requesting records is:

315 South Third Street, Suite 100, Mount Vernon, WA 98273

A variety of records are available on SCOG's website at www.scog.net. Requestors are encouraged to view records available on the website prior to submitting a request for records. Only requests submitted as required above shall be deemed received by SCOG.

- 6.2 Upon receipt of a properly submitted request for public records a copy will be promptly provided to the Public Records Officer.
- 6.3 The Public Records Officer will date stamp, assign a tracking number and log in the Public Records Requests Tracking System (to ensure SCOG has a record of each request and the specific records being requested) and review with the Executive Director, and SCOG's Legal Counsel at the discretion of the Executive Director.
- 6.4 The Public Records officer shall respond to the request in writing within five (5) business days by making the records available for inspection and copying or by taking one of the other actions detailed in section 5.0 of the policy or as set forth in RCW 42.56.520.
- 6.5 In the event that the requested records contain information that may affect the rights of others and is arguably exempt from disclosure, the Public Records Officer may, prior to providing the records, give notice to such other person or entity whose rights may be affected by the disclosure. Such notice shall be given so as to make it possible for those other persons or entities to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit disclosure. The notice to the affected persons or entities will include a copy of the request. Before any such notification is sent to affected parties, the Public Records Officer shall coordinate with SCOG's Legal Counsel.
- 6.6 If SCOG cannot provide the requestor with access to or copies of the requested records that are subject to disclosure within the appropriate estimated timeframe, the requestor shall be informed in writing of the additional time that it will take to produce the records and/or whether the records may be provided in installments. In addition, the Public Records Officer shall determine how much additional time to respond is appropriate only where it is reasonable in light of the circumstances, e.g., while gathering the requested records, it is determined that they are more voluminous or less readily accessible than originally believed.
- 6.7 If a denial or partial denial occurs, the Public Records Officer, after consultation with Legal Counsel, shall remove the records or partial records from the disclosable materials. All denials or partial denials shall be documented in writing to the requestor.
- 6.8 For records exempt or partially exempt from disclosure, the Public Records Officer, in coordination with SCOG's Legal Counsel shall state the statutory exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of the

record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer shall redact (WAC 44-14-01004) the exempt portions, provide the non-exempt portions, and indicate to the requestor why portions of the record are being redacted.

- 6.9 If the requestor protests an exemption decision or a redaction, SCOG's Public Records Officer, Executive Director and SCOG's Legal Counsel will confer on the appropriate resolution.
- 6.10 Inspection shall occur at a time mutually agreed upon by the requestor and SCOG's Public Records Officer. SCOG shall not limit times of inspection to times during which the requestor is unavailable. Requestors cannot dictate unusual times for inspection. SCOG is only obligated to offer inspection during customary office hours. Typically, the records are produced for inspection in a conference room or other office area at 315 South Third Street, Suite 100, Mount Vernon, WA 98273. The inspection of records cannot create excessive interference with the essential office functions. SCOG shall have an employee observe the inspection of records by the requestor to ensure that the records are not altered or destroyed. SCOG's copy machine will be operated by SCOG staff persons only, as public use of the machine would unreasonably disrupt the operations of the Council. No original record may be removed from SCOG's offices under any circumstances.
- 6.11 Records may be provided in installments where they are part of a large set of records that must be identified, located and/or assembled for disclosure.
- 6.12 Where possible, records will be provided in an electronic format which will not allow alteration of the record or copy. There is no fee for inspecting public records. The fee schedule for copies and processing is available at www.scog.net and at SCOG's offices located at 315 South Third Street, Suite 100, Mount Vernon, WA 98273.
- 6.13 SCOG is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: SCOG does not have the resources to conduct a study to determine actual copying costs for all of its records; to conduct such a study would interfere with other essential agency functions; and, through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act including RCW 42.56.120 and other laws. Therefore, in order to timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious and in the public interest for SCOG to adopt the state legislature's approved fees and costs for most of the Council's records, as authorized in RCW 42.56.120 and as published in SCOG's fee schedule.

7.0 RESPONSIBILITIES

- 7.1 SCOG will follow the procedures outlined in this policy. Public records are public property. Their precise legal status varies depending on whether they are currently in the offices of the originating agency, or have been sent into the archives as historical records.
- 7.2 SCOG has determined that maintaining an index as provided in RCW 42.56.070 for use by the public would be unduly burdensome and would interfere with agency operations given the types of public records received, generated and otherwise acquired by SCOG. Notwithstanding the foregoing, SCOG will maintain its records in a reasonably organized manner and take reasonable actions to protect records from damage and disorganization.

- 7.3 SCOG will “protect public records from damage or disorganization” (RCW 42.56.100). Therefore, requestors shall not be allowed to take original records out of SCOG’s office. Extremely large copying requests may be completed by an outside vendor under SCOG’s control. The Public Records Officer will manage the transfer of original records between the office and the vendor.

8.0 RETENTION OF RECORDS

- 8.1 SCOG is not required to retain every record it ever created or used.
- 8.2 As defined in (WAC 44-14-03005) State and local records committees approve a general retention schedule for state and local agency records that applies to records that are common to most agencies. SCOG shall follow the Washington State Archives – Local Government Common Records Retention Schedule (CORE). (Exhibit C)

9.0 EXHIBITS AND SUPPORTING DOCUMENTS

- 9.1 Exhibit A: Sample “Five Day Letter” response acknowledging receipt of a public record request and providing a reasonable estimate of the time when the records will be available.
- 9.2 Exhibit B: Sample Online Public Records Request Form and Sample Public Records Request Form to be used for appropriate submission by individual requestors.
- 9.3 Exhibit C: Skagit Council of Governments Fee Schedule
- 9.4 Exhibit D: Washington State Archives – Local Government Common Records Retention Schedule (CORE).
- 9.5 Washington State Public Records Act ~ Chapter 42.56 Revised Code of Washington (RCW)
- 9.6 Public Records Act – Model Rules Chapter 44-14 Washington Administrative Code (WAC)