

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0010 Purpose.** The purpose of this chapter is to provide rules for the department ~~((of early learning))~~ to implement the Public Records Act, chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

**WAC 170-01-0020 Definitions.** The definitions set forth in chapter 42.56 RCW shall apply to this chapter. ~~((Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section))~~ The following definitions also apply to this chapter.

"Authorization" means a detailed document that gives the department permission to use or disclose confidential information records for specified purposes.

"Client" means a person who receives services or benefits from the department.

~~(("DEL" or))~~ "Department" means the department of ((early learning)) children, youth, and families. Where appropriate, ~~((DEL))~~ "department" also may refer to the officials and employees of the department of ((early learning)) children, youth, and families.

"Disclosure" means inspection ~~((and/or))~~ or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes any writing, as defined in RCW 42.56.010, 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. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" or "PRO" means the designated person for the department who oversees all records requests under RCW 42.56.580. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

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**WAC 170-01-0030 ~~((Description of the)) Department ((of early learning)) locations.~~** (1) ~~((DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning pro-~~

grams previously under the departments of social and health services and commerce, as well as the state office of public instruction.

~~(2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.~~

~~(3)) The administrative office of the department ((of early learning)) is located ((in Olympia, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504-0970, or call toll free 1-866-482-4325)) at 1500 Jefferson Street, S.E., Olympia, Washington.~~

~~((4)) (2) Field offices are located throughout the state and contact information can be found on ((DEL's)) the department's web site, www.dcyf.wa.gov.~~

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**WAC 170-01-0040 Public records officer.** ~~((DEL's))~~ The department's director will appoint a public records officer (PRO) whose responsibility is to serve as a "point of contact" for members of the public seeking public records. ~~((DEL))~~ The department will provide the public records officer's name and contact information by publishing it in the state register. ~~((DEL))~~ The department will also provide the public records officer's contact information on ~~((the department))~~ its web site, www.dcyf.wa.gov.

A request may be fulfilled by the PRO, or ~~((other DEL))~~ department staff designated by the PRO.

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**WAC 170-01-0050 Records index.** (1) ~~The ((department keeps an index (list) of the following documents:~~

~~(a) Rules adopted by DEL under chapter 34.05 RCW.~~

~~(b) Substantive final orders issued by the department in adjudicative proceedings under chapter 34.05 RCW and chapter 170-03 WAC.~~

~~(c) Interpretive and policy statements filed by the department under chapter 34.05 RCW.~~

~~(2) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of other records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, electronic data and constituent records.~~

~~(3) The department will make available for public disclosure all indices if at a future time they are developed for agency use.)~~ 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's records including those described in RCW 42.56.070(5).

(2) The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or pur-

pose, and the retention period. The records retention schedule is available to the public for inspection and copying. The records retention schedule is updated by the department as needed. With the assistance of the public records officer or designee, any person can obtain access to the department's public records using the records retention schedule.

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**WAC 170-01-0100 Availability of public records.** Public records are available for inspection and copying during ~~((DEL's))~~ the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help ~~((DEL))~~ the department provide prompt and efficient service. Some ~~((DEL))~~ department records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time ~~((for DEL))~~ to identify and gather ~~((them))~~. Other records may be exempt from disclosure. Original records cannot be removed from ~~((a DEL building))~~ the inspection location. If required by law, ~~((DEL))~~ department staff must redact information in a record before making it available for inspection. ~~((DEL))~~ Department staff will make copies of records on request.

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**WAC 170-01-0110 Organization of records.** ~~((DEL))~~ The department will maintain its records in an organized manner and will take reasonable actions to protect records from damage and disorganization. Records available on the ~~((DEL))~~ department's web site ~~((at www.del.wa.gov))~~, www.dcyf.wa.gov, are available to the public without a records request, and the department does not copy those records. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

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**WAC 170-01-0120 How to make a public records request.** (1) Public records requests should be made directly to the ~~((DEL))~~ department's public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by email to public.records@del.wa.gov, by fax to 360-725-4925 or mail. Requests may be delivered to ~~((: Department of Early Learning, P.O. Box 40970,~~

Olympia, WA 98504-0970)) 1500 Jefferson Street S.E., Olympia, Washington or P.O. Box 40975, Olympia, WA 98504-0975.

(b) ~~((DEL's))~~ The department's public records request form is on its web site. The department recommends that requestors submit requests using the department's public records request form.

(c) A written request without using the DEL public records request form should contain:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) The date on which the request was made;

(v) A sufficient description of the record requested; and

(vi) If the ~~((information))~~ record being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

(3) The department may ask an individual requesting a public record for proof of identification when the law restricts disclosure to a specific person.

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**WAC 170-01-0200 How ~~((DEL))~~ the department responds to ((your)) public records requests.** Within five business days ~~((after))~~ of receiving the request, ~~((DEL))~~ the department will either:

(1) Provide the ~~((record(s)))~~ record;

(2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;

(3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or

(4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that ~~((DEL))~~ the department relied upon in its denial.

At his or her discretion, the public records officer may send the ~~((request))~~ requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

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**WAC 170-01-0230 Reasons for ~~((DEL))~~ denying disclosure of all or part of a record.** RCW 42.56.030 states that the Public Records Act "shall be liberally construed and its exemptions narrowly construed." ~~((DEL))~~ The department will provide all records required by law. However, there are times when all or part of a record request ~~((would))~~ may be denied, such as when:

(1) The record is exempt from disclosure by law.

(2) The request is for lists of individuals for commercial purposes, including family home providers.

(3) The requestor has not asked for an identifiable record. The Public Records Act requires access to existing, identifiable public records in an agency's possession at the time of the request.

(4) The request requires (~~DEL~~) the department to collect or organize data to create a public record, or to give data that did not exist at the time of the public records request.

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**WAC 170-01-0240 Types of records that may be exempt from disclosure.** (~~With any public records request, disclosure must occur unless a specific exemption exists in statute that would allow for DEL to not disclose the record or the information within a record.~~

~~DEL is always prohibited by statute from disclosing lists of individuals, including family home providers, for commercial purposes.~~

~~The Public Records Act lists exemptions or allows for "other statute" exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by DEL, for inspection and copying: For example, RCW 5.60.060(2) restricts privileged attorney-client communications between DEL staff and the office of the attorney general.)~~ (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for welfare recipients and patients or clients of public institutions or public health agencies;

(b) Under RCW 42.56.230(2), personal information in files maintained for a child enrolled in licensed child care;

(c) Under chapter 13.50 RCW and related federal laws, information and records;

(d) Under chapter 26.33 RCW and related federal laws, information and records about adoption;

(e) Under RCW 42.56.230(3), personal information in files maintained for department employees or elected officials to the extent that disclosure would violate their privacy rights;

(f) Under RCW 42.56.250, personal information in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency; and

(g) Under RCW 42.56.640(2), names of family child care providers.

(2) If the requested public record contains information that is exempt from public disclosure, the department may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record and send a written explanation citing the exemption that applies to the denial; or

(c) When a denial would reveal confidential information, neither confirm nor deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed.

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**WAC 170-01-0250** If the public record requested is exempt from disclosure. If ((DEL)) the department determines that a record is exempt from disclosure, ((you)) the requestor will be informed in writing of the specific exemption authorizing DEL to withhold the record.

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**WAC 170-01-0260** If only part of the record requested is exempt from disclosure. ((DEL)) The department may redact (see WAC 170-01-0020) identifying details or other information when the information is not subject to disclosure. The requestor will be informed in writing of the exemptions authorizing ((DEL)) the department to withhold information within a record.

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**WAC 170-01-0270** ((DEL)) Department reviews of records request denials. (1) All review requests must be in writing (letter, fax or email). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

(2) If ((DEL)) the department denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

(a) Asking the public records officer for an internal ((DEL)) review. ((After receiving a request for an internal review, the public records officer will refer the matter for review to the deputy director who may consult with other agency leaders.)) The denial will either be upheld or reversed within two business days after the receipt of the review request.

(b) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

(c) Asking for a judicial review.

To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

**WAC 170-01-0290 Charges for public records.** (1) There is no cost to inspect public records.

(2) Calculating the actual costs of charges for providing public records is unduly burdensome because ~~((it will consume scarce))~~ the department ((of early learning)) does not have resources to conduct a study of actual costs((, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending)) for all requested records. In addition, conducting such a study would interfere with other essential agency functions.

(3) ~~((Instead of calculating the actual costs of charges for records, the director or director's designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the department of early learning charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b), as amended by section 3, chapter 304, Laws of 2017. The department may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.))~~ The department may do one or more of the following:

(a) Charge for copies of records according to the default fees in RCW 42.56.120 (2)(b), (c), and (d);

(b) Charge for customized services pursuant to RCW 42.56.120(3);

(c) Charge other copy fees authorized by statutes outside of chapter 42.56 RCW; and

(d) Enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) **Fee waivers.** ~~((Fee waivers are an exception and are available for some small requests under the following conditions:~~

~~(a) It is within the discretion of the public records officer to waive copying fees when:~~

~~(i) All of the records responsive to an entire request are paper copies only and are twenty five or fewer pages; or~~

~~(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.~~

~~(b) Fee waivers are not applicable to records provided in installments.))~~ The department may waive copying fees in one or more of the following circumstances:

(a) Clients receiving the first copy of their file;

(b) Producing records assists in managing a program;

(c) The expense of billing exceeds the cost of producing records;  
and

(d) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages.

(5) **Advance deposits.** The public records officer may require an advance deposit of ten percent of the estimated ~~((fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty five dollars.~~

~~(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. DEL will notify the requestor when payment is due. Payment should be delivered to the DEL Financial Services Office, P.O. Box 40970, Olympia, WA 98504-0970. Payment may be made by cash, check, or money order to the department of early learning. It should clearly be marked as payment for public records.~~

~~(7) DEL will close)) costs of copying records. The public records officer may also require the payment of the remainder of the copying costs before providing all of the records, or, when records are provided on an installment basis, require payment of the costs of copying an installment before providing that installment. If the requestor does not claim an installment of a records request, the department is not obligated to continue producing the balance of the request.~~

~~(6) A request will be closed when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-01-0210	What DEL considers a reasonable time estimate.
WAC 170-01-0220	Reasons for DEL extending the time needed to fill a public records request.

NEW SECTION

**WAC 170-01-0206 Notifying third parties of a request.** (1) If records responsive to a public records request identify or pertain directly to an individual or organization other than the requestor, the department may notify the named individual or organization about the request.

(2) The department's third-party notice may include:

(a) A copy of the original request;

(b) If appropriate, a copy of the records that identify or pertain to the third party;

(c) The date the department intends to release the record; and

(d) A statement that the third party may prevent release of the record by agreement or by bringing a lawsuit and getting an injunction against the department and the requestor under RCW 42.56.540 prior to the intended release date.

(3) The department may inform the requestor that:

(a) A third party has been notified of the request;

(b) The department provided the third party with a due date for objecting to disclosure; and

(c) The third party may bring a lawsuit against the requestor and the department under RCW 42.56.540 to prohibit disclosure.

NEW SECTION

**WAC 170-01-0205 Third-party requests for otherwise confidential records.** (1) A third party, such as a department client's attorney or lay representative, may access otherwise confidential records about a department client with a valid authorization.

(2) The authorization should:

(a) Identify the client;

(b) Identify the individual(s) or organization(s) authorized to receive the records;

(c) State that the department may disclose the information to the requestor;

(d) Identify the record(s) that the client wants the department to release;

(e) State the date the authorization expires or an expiration event that relates to the client or the purpose of the use of disclosure;

(f) State the reason for disclosure;

(g) State the right to revoke;

(h) State the potential for redisclosure;

(i) As appropriate, include specific language authorizing the department to release any one or more of the following to the requestor: Substance use disorder records, child welfare records, adoption records, records concerning reproductive health and sexually transmitted diseases, and mental health records; and

(j) Include a dated, verified signature of the individual with legal authority to authorize the release of records.

(3) The department may ask for additional proof to verify the third-party's authority to access confidential records when required by law.

(4) In general, a parent may access confidential records about a child under age eighteen. A child must consent to disclosure of the following confidential records:

(a) At any age, birth control, and abortion records (see RCW 9.02.100);

(b) If over age thirteen, substance use disorder and mental health records (see 42 C.F.R., Part 2 and RCW 71.34.530);

(c) If over age fourteen, sexually transmitted disease records (see RCW 70.24.110); and

(d) If over age eighteen, all client records held by the department.

(5) Legal guardians under Title 13 RCW and legal custodians under chapter 26.10 RCW are not considered third parties for the purposes of accessing records pertaining to children in their care and custody.