

PUBLIC RECORDS ACT POLICY AND PROCEDURES

October 2023

PROGRAM STATEMENT

The City of Cle Elum (the “City”) is committed to providing full access to public records in accordance with the Washington State Public Records Act – Chapter 42.56 RCW (the “PRA”). The City is required to respond to public records requests, for identifiable public records, pursuant to the PRA. The City is not *required* by the PRA to respond to questions, conduct research, or to provide information.

Except as mandated by law, the guidelines set forth in this policy are discretionary and advisory only and shall not impose any affirmative duty on the City. The City reserves the right to apply and interpret this policy as it sees fit, and to revise or change the policy at any time, without further action by the City Council. Failure to comply with any provision of these rules shall not result in any liability on the part of the City other than as set forth in the PRA. This policy supersedes any and all of the City’s prior public records policies.

PURPOSE

The purpose of this Policy is to establish the guidelines and procedures that the City will follow in order to provide full access to public records, fullest assistance to requestors, and timely responses as required by RCW 42.56.100, while at the same time protecting public records from damage or disorganization, preventing disclosure of exempt or confidential information, and preventing excessive interference with other essential functions of the City.

SCOPE

This policy applies to all City employees and elected/appointed officials, including the City Council and board and commission members appointed by the Mayor.

1. DEFINITIONS

1.1 “City” means the City of Cle Elum.

1.2 “Employee” means the Mayor, City Council, Department Directors and all other City staff.

1.3 “Exempt” means that a statute allows or requires the withholding of a record, or a portion thereof, from disclosure.

1.4 “Fullest assistance” means a timely and thorough action and response to a public records request without unreasonable interference with Employees’ essential job functions.

1.5 “Public Records Officer” or “PRO” means the City Clerk of Cle Elum or such other person as designated by the City Administrator for processing public records requests and is the person responsible for assisting departments with public records requests and responses.

1.6 “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 any state or local agency regardless of physical form or characteristics.

1.7 “Redact” refers to the method of protecting from public viewing the portion of a record that is statutorily exempt from public disclosure.

1.8 “Exemption log” is a list of records or portions thereof that are responsive to a public records request but are exempt from disclosure, together with a reference to the specific record; the date of the record; the author; the subject; to whom the record is addressed and copied; the number of pages, the statutory exemption being applied; and a brief explanation of how the exemption applies to the record.

1.9 “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. An email, text, social media posting and database are therefore also “writings.”

2. POLICY

2.1 Availability of Records. The Public Records Officer shall make available for inspection and copying all nonexempt public records in accordance with the PRA.

2.2 Providing fullest assistance. The City shall provide the “fullest assistance” to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfillment of public records requests from causing excessive interference with essential functions of the City.

2.3 Records index. The City finds that maintaining an index of public records is unduly burdensome and would interfere with agency operations. See RCW 42.56.070(3) and (4). The requirement to maintain a public records index would be unduly burdensome or interfere with City operations because the Public Records Officer is also the City Clerk – a position within the City with numerous other responsibilities in addition to Public Records Officer. Moreover, the City’s budget and staffing levels make it unduly burdensome to maintain such index.

3. PROCEDURES

3.1. The City encourages all requests for public records be made in writing on a *Public Records Request Form*, which is available at City Hall and on the City of Cle Elum’s website. Requests may be submitted in person at City Hall, by mail, fax, or e-mail.

Oral requests will be accepted, and the substance will be promptly confirmed in writing to the requestor. Records received after hours will be considered “received” on the next business day.

3.2 In the event that requested records contain information that affects third parties, the Public Records Officer may, before providing the records, give notice to affected persons in accordance with RCW 42.56.540. The notice will include a copy of the request.

3.3 If a department believes that a record or any part of a record is exempt from disclosure, the Public Records Officer shall provide to the requestor a written communication identifying the record or portion withheld, the specific exemption relied upon and the authority for the exemption, and briefly explaining how the exemption applies to the record or portion withheld, including enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. If only portions of a record are exempt from disclosure, the Public Records Officer shall redact the exempt portions and provide the nonexempt portions. The documentation described in this section should be presented in the form of an exemption log.

3.4 A requestor may choose to have copies of records made instead of inspecting them. Charges for photocopies or electronically produced copies shall be made in accordance with RCW 42.56.070 and .120. The City may require a deposit of up to ten (10) percent of the estimated costs of copying all the records.

3.5 If the requestor chooses to inspect records before deciding whether to have copies made, the City shall provide space for inspection during regular business hours except when and to the extent it would cause excessive interference with other essential City functions or unreasonably disrupt operations. A City employee will observe and document the inspection. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor may indicate which records he or she wishes to have the City copy.

3.6 Routine requests are those in which the documents are available on the City’s website, such as meeting minutes, Ordinances, Resolutions, permits, or other documents routinely produced and readily available for review. All requests not otherwise identified as large or complex shall be

considered routine requests and will be handled in the normal course of business consistent with these policies and without undue delay caused by the processing of large or complex requests.

3.7 Non-routine, large, or complex requests are those in which: 1) there is a question about disclosure, in whole or in part; 2) the information requires more than a few minutes to compile; 3) the records requested come from more than one department or source; or 4) require legal review.

In making this determination, the Public Records Officer or designee should consider relevant factors including, but not limited to: a) the general, expansive, or all-inclusive nature of the request; b) the number of departments involved; c) the location of records and available method of searching records; d) the potential number of records implicated; e) the rights of third parties; f) the need for clarification of the request; g) administrative tasks necessary to process the request; h) the amount of time needed to review documents for applicable exemptions; i) the need for legal review of the public records request; and j) the format of relevant records.

3.8 The City is a small agency with a small staff. The City will allocate resources to responding to public records requests in order to not interfere with other City functions. The City strives to provide records as expeditiously as possible.

3.9 When the request is for a large number of records, the Public Records Officer shall provide access for inspection and copying in installments, if applicable.

3.10 In general, public records requests will be handled in the order they are received. If the City receives a request that results in a small amount of responsive records (i.e. would take around five to ten minutes to fulfill) and the City believes it can fulfill that request in a short amount of time, then the City may fill that request before others.

3.11 The City will fulfill public record requests as required by law. However, fulfilling public records requests will not interfere with other essential functions of the City. Fulfillment of public record requests will depend on the limited staffing and resources of the City.

3.12 A requestor may always choose to narrow or clarify a large or complex request. A requestor may always make a new public records request that more specifically identifies records needed and otherwise qualifies as a routine request, rescinding their narrow or complex request. Requestors are encouraged to consider the needs of others and utilize the public records request process responsibly.

3.13 If, within thirty (30) days after notification that records are available for inspection or copying, the requestor fails to inspect the entire set of records or one or more of the installments, as applicable, the City may close the request and re-file the records. The requestor shall be notified in writing of this action.

3.14 If, after informing the requestor that all responsive records have been provided, the Public Records Officer notifies the requestor that additional responsive records existed at the time of the request, it shall promptly inform the requestor of the additional records, provide a brief explanation of the circumstances, and provide them on an expedited basis.

3.15 The City 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 necessary to determine whether an exemption applies or whether a list of individuals is being requested for commercial purposes.

3.16 Any person who objects to the initial denial or partial denial of a public records request may petition in writing to the City Administrator for a review of the decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer denying the request. The City Administrator shall promptly consider the petition and either affirm or reverse the denial following receipt of the petition.

4. PROCESSING PUBLIC RECORDS REQUESTS

City employees receiving public records requests shall:

4.1 Receive and acknowledge requests for public records. If the request is oral, provide written confirmation to requestor.

4.2 Date stamp the request. Log the request into the City Clerk's spreadsheet, including date of receipt, requestor's name, the specific records requested, detailed notes about each communication with the requestor, staff time spent on researching the request, and the date closed. The employee responding to the request will use the public records request form to document detailed notes related to processing the request.

4.3 5-Day Letter: Within five (5) business days of receipt of the request, do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) Provide an internet address and link to the City's website to the specific records requested, unless the requestor notifies the City it cannot access the records through the internet. In that event, then the City will provide copies of the records or allow the requestor to view the copies. If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor. The per page cost is defined in RCW 42.56.120 or as set forth in the City's fee schedule;
- (c) Acknowledge the request and provide to the requestor a reasonable estimate of when the City will respond to the request including a specific date for a response;
- (d) Acknowledge the request and ask for clarification of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of the time needed to respond to the request if it is not clarified;
- (e) In acknowledging receipt of a public records request that is entirely unclear, the City may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to

clarify the request within thirty (30) days, the City need not respond to it and the request will be closed as abandoned and the City will send a closure letter to the requestor. *RCW 42.56.520; WAC 44-14-04003(8)*. However, if a portion of the request is clear, the request will not be closed and the City will respond to the portion(s) that are clear.

The City frequently receives requests for public records identified in terms of “any and all documents related to” or similar language. City staff 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 City’s files for records which cannot be identified or described to the City. When a request uses a vague phrase such as “all records relating to,” the PRO shall seek clarification to determine what identifiable records are being sought; or

(f) Deny the request, notify the requestor of the denial, and provide a written statement of the specific reasons for the denial.

4.4 Third Party Notice: If applicable, provide notice to third parties whose rights may be affected by the disclosure including the third-party notice required by RCW 42.56.250(12).

4.5 Union Request Coordination: If a request is from a labor union representing City employees, review the request with the City Attorney.

4.6 Gather Responsive Records: Identify and collect responsive records, and document steps taken, including employees contacted and search terms used.

4.7 Identify Applicable Exemptions: Identify exemptions, if any, and redact or withhold exempt documents after consulting with the Public Records Officer as needed. See section 5.0.

4.8 Prepare Log: Prepare exemption log, if applicable.

4.9 Arrange for Payment: If the requestor wishes to receive copies without prior inspection, make arrangements for payment and provide copies.

4.10 Arrange for Inspection: If the requestor seeks inspection, arrange for inspection at a time mutually agreed upon by the requestor and the department. Designate an employee to observe and document the inspection.

4.11 Make Copies: After inspection is complete, make requested copies or arrange for copying. Large copying requests can be completed by an outside copying vendor.

4.12 Close the Request: Notify the requestor that the request is closed when:

(a) A diligent search for the requested records has been made and responsive records have been produced and, if applicable, an exemption log has been provided;

(b) A requestor has not, within thirty (30) days of notification that records are available for inspection or copying, inspected or requested copies of the records;

(c) A requestor has not, within thirty (30) days of notification that copies have been made, claimed and paid for copies; or

(d) A requestor has not, within thirty (30) days of a request for clarification, provided clarification.

4.14 Coordination on Petitions: The Public Records Officer will work with the City Attorney on any petitions of denials or partial denials.

4.15 Costs. The City does not have the resources to conduct a study to determine actual copying costs for all its records; to conduct such a study would interfere with other essential City functions. 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 the City to adopt the state legislature's approved fees and costs for most of the City records, as authorized in RCW 42.56.120, as now existing or hereafter amended:

- 15 cents/page for photocopies or printed electronic copies;
- 10 cents/page for records scanned into electronic format;
- 5 cents for every four electronic files or attachments uploaded to an email, cloud storage service or other electronic delivery system;
- 10 cents/per gigabyte for transmitting records electronically; or
- The actual cost of digital media device, container used to mail the copies and the actual postage or delivery charge.

Fee Calculation. The fees set forth in this Section are default fees set pursuant to RCW 42.56.070(7) and 42.56.120. The City finds that the process to calculate actual costs for producing paper and electronic records is unduly burdensome given the limited amount of staff resources to dedicate to this research and analysis.

Costs for Copies/electronic files. A requestor may obtain paper copies or electronically produced copies of records (electronic files) as provided under RCW 42.56.070(7), 42.56.120 and WAC 44-14-07003; the City will charge for those copies/files according to the City's fee schedule.

Costs for Scans. A requestor may obtain scans of paper records as provided under RCW 42.56.070(8), 42.56.120 and WAC 44-14-07003; provided, the City may charge for scanning documents not already in electronic format. The City can, at its discretion, send the project to a commercial copying/scanning center and bill the requestor for the amount charged by the vendor, as set forth herein.

The City will not charge sales tax when it makes copies or scans of public records, but if the records are sent to a third party for copying/scanning, that third party may charge sales tax and the requestor will be responsible for payment of that tax as well as the third party's actual charges for copies or scans.

Other Costs. For records in other forms, the City will charge the actual cost it pays for the medium used to record or transfer the record(s) provided. Those mediums include, but are not limited to, tapes, floppy disks, CDs, DVDs, USB flash drives, and paper that costs more than \$0.15 per page. The statements providing those costs are the invoices paid to obtain them and are available for public inspection and copying.

Payment of fees is required prior to release of records unless other arrangements have been made.

Fee Estimates. Upon request, the City will provide a summary of the applicable charges before copies are made and the requestor may revise the request to reduce the number of copies.

Fee Waivers. No fee is charged for inspection of a public record or for locating a record. The PRA does not require cities to provide fee waivers for copies of documents. Fees may be waived if the records request is for a counter document, a collision report, police incident report, or the responsive records, in total, are 20 pages or less.

Deposits. Before beginning to make copies, the City may require a deposit of up to ten percent (10%) of the estimated costs of copying or scanning all the records selected by the requestor. The City may also require payment of the remainder of the copying/scanning costs before providing all the records, or the payment of the costs of copying/scanning an installment before providing that installment.

Costs of Mailing. If a requestor requests that records be mailed to them, the City may also charge actual costs of mailing, including the cost of the shipping container. When mailing public records, it is the City's standard practice to send them via Certified Mail to ensure that the records are received.

Payment. Payment may be made by cash, check, or money order made payable to the City of Cle Elum. Credit/debit cards are not accepted for payment of copies.

Use of Outside Vendor: The City is not required to copy/scan records at its own facilities. The City, at its discretion, can send the project to a commercial copying/scanning center and bill the requestor for the amount charged by the vendor. The City can arrange with the requestor to pay the vendor directly. The City cannot charge the default per page copying/scanning charge when its cost at a vendor is more or less than the default charge set forth herein.

4.16 Deposits for Copying Costs:

(a) Copying deposit. The City shall charge a deposit of up to ten percent of the reasonably estimated copying costs of an entire request, including a customized service charge, before beginning to copy the records. The City can require the payment of the deposit before copying an installment of the records or the entire request. The deposit applies to the records selected for copying by the requestor, not all the records made available for inspection. The City may waive the deposit for small requests where the deposit might be only a few dollars. Any unused deposit

must be refunded to the requestor. When copying is completed, the City shall require the payment of the remainder of the copying charges before providing the records.

(b) Copying charges for each installment. If the City provides records in installments, the City may charge and collect all applicable copying fees (not just the ten percent deposit) for each installment, unless the City is assessing a two-dollar flat fee. The City may agree to provide an installment without first receiving payment for that installment.

5. EXEMPTIONS

The Act provides that a number of records are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any “other statute” exempts or prohibits disclosure. Additional statutes that may exempt public records from disclosure include but are not limited to the following statutes referenced in Exhibit A attached hereto.

EXHIBIT A

RCWs

- RCW 2.64.111 Documents regarding discipline/retirement of judges RCW 2.64.113 Confidentiality- violations
- RCW 4.24.550 Information on sex offenders to public
- RCW 5.60.060 Privileged communications
- RCW 5.60.070 Court-ordered mediation records
- RCW 7.68.140 Victims compensation claims
- RCW 7.69A.030(4) Child victims and witnesses- protection of identity RCW 7.69A.050 Rights of child victims and witnesses - addresses
- RCW 7.75.050 Records of Dispute Resolution Centers
- RCW 9.51.050 Disclosing transaction of grand jury
- RCW 9.51.060 Disclosure of grand jury deposition
- RCW 9.02.100 Reproductive privacy
- RCW 9A.82.170 Financial institution records- wrongful disclosure RCW 10.27.090 Grand jury testimony/evidence
- RCW 10.27.160 Grand jury reports- release to public only by judicial order
- RCW 10.29.030 Organized crime special inquiry judge
- RCW 10.29.090 Records of special inquiry judge proceedings
- RCW 10.52.100 Records identifying child victim of sexual assault
- RCW 10.77.210 Records of persons committed for criminal insanity RCW 10.97.040 Criminal history information released must include disposition
- RCW 10.97.050 Conviction and criminal history information RCW 10.97.060 Deletion of certain criminal history record information, conditions
- RCW 10.97.070 Disclosure of identity of suspect to victim RCW 10.97.080 Inspection of criminal record by subject
- RCW 13.32A.090 Crisis residential centers notice to parent about child RCW 13.34.115 Court dependency proceedings
- RCW 13.40.217 Juveniles adjudicated of sex offenses - release of information
- RCW 13.50.010 Maintenance of and access to juvenile records RCW 13.50.050 Juvenile offenders
- RCW 13.50.100 Juvenile/children records not relating to offenses RCW 13.60.020 Missing children information
- RCW 13.70.090 Citizen juvenile review board- confidentiality
- RCW 15.120.050 Industrial hemp research program
- RCW 18.04.405 Confidentiality of information gained by CPA
- RCW 18.19.060 Notification to clients by counselors
- RCW 18.19.180 Confidential communications with counselors
- RCW 19.02.115 Licensing Information
- RCW 19.215.020 Destruction of personal health and financial information
- RCW 19.215.030 Compliance with federal rules
- RCW 26.04.175 Name and address of domestic violence victim in marriage records

- RCW 26.12.170 Reports of child abuse/neglect with courts
- RCW 26.23.050 Child support orders
- RCW 26.23.120 Child support records
- RCW 26.26.041 Uniform Parentage Act - protection of participants RCW 26.26.450 Confidentiality of genetic testing
- RCW 26.33.330 Sealed court adoption Records
- RCW 26.33.340 Agency adoption records
- RCW 26.33.343 Access to adoption records by confidential intermediary RCW 26,33.345 Release of name of court for adoption or relinquishment
- RCW 26.33.380 Adoption - identity of birth parents confidential
- RCW 26.44.010 Privacy of reports on child abuse and neglect
- RCW 26.44.020(19) Unfounded allegations of child abuse or neglect RCW 26.44.030 Reports of child abuse/neglect
- RCW 26.44.125 Right to review and amend abuse finding- confidentiality
- RCW 27.53.070 Records identifying the location of archaeological sites RCW 29A.08.720 Voter registration records- place of registration confidential
- RCW 29A.08.710 Voter registration records- certain information exempt
- RCW Chapter 40.14 Preservation and destruction of public records
- RCW 42.23.070(4) Municipal officer disclosure of confidential information prohibited
- RCW 42.41.030(7) Identity of local government whistleblower
- RCW 42.41.045 Nondisclosure of protected information (whistleblower)
- RCW 46.52.080 Traffic accident reports - confidentiality
- RCW 46.52.083 Traffic accident reports - available to interested parties
- RCW 46.52.120 Traffic crimes and infractions- confidential use by police and courts
- RCW 46.52.130(2) Abstract of driving record
- RCW 46.61.506 BAC and blood test results
- RCW 48.02.065 Insurance commissioner
- RCW 48.62.101 Local government insurance transactions - access to information
- RCW 50.13.060 Access to employment security records by local government agencies
- RCW 50.13.100 Disclosure of non-identifiable information or with consent
- RCW 51.28.070 Workers compensation records
- RCW 51.36.060 Physician information on injured workers
- RCW 60.70.040 No duty to disclose record of common law hen
- RCW 68.50.105 Autopsy reports
- RCW 68.50.320 Dental identification records - available to law enforcement agencies
- RCW Chapter 69.50 Uniform controlled substance
- RCW Chapter 70.02 Medical records - access and disclosure - entire chapter.
- RCW 70.05.170 Child mortality reviews by local health departments
- RCW 70.24.022 Public health agency information regarding sexually transmitted disease investigations - confidential
- RCW 70.24.024 Transcripts and records of hearings regarding sexually transmitted diseases
- RCW 70.24.105 HIV/STD records
- RCW 70.28.020 Local health department TB records - confidential

- RCW 70.48.100 Jail records and booking photos
- RCW 70.58.055 Birth certificates - certain information confidential
- RCW 70.58.104 Vital records, research confidentiality safeguards
- RCW 70.96A.150 Alcohol and drug abuse treatment programs
- RCW 70.123.075 Client records of domestic violence programs
- RCW 70.125.065 Records of rape crisis centers in discovery
- RCW 71.05.390 Information about mental health consumers
- RCW 71.05.395 applies to mental health records
- RCW 71.05.400 Information to next of kin or representative
- RCW 71.05.425 Notice of release or transfer of committed person after offense dismissal
- RCW 71.05.427 Information that can be released
- RCW 71.05.430 Statistical data
- RCW 71.05.440 Penalties for unauthorized release of information
- RCW 71.05.445 Release of mental health information to Dept, of Corrections
- RCW 71.05.620 Authorization requirements and access to court records
- RCW 71.05.630 Release of mental health treatment records
- RCW 71.05.640 Access to treatment records
- RCW 71.05.650 Accounting of disclosures
- RCW 7i.24.035(5)(g) Mental health information system
- RCW 71.34.200 Mental health treatment of minors
- RCW 71.34.210 Court records for minors related to mental health treatment
- RCW 71.34.225 Release of mental health services information
- RCW 71A.14.070 Records regarding developmental disability
- RCW 72.09.345 Notice to public about sex offenders
- RCW 72.09.585(3) Disclosure of inmate records to local agencies
- RCW 73.04.030 Veterans discharge papers
- RCW 74.04.060 Applicants and recipients of public assistance
- RCW 74.04.520 Food stamp program confidentiality
- RCW 74.09.900 Medical assistance
- RCW 74.13.121 Financial information of adoptive parents
- RCW 74.13.280 Children in out-of-home placements
- RCW 74.20.280 Child support enforcement - local agency cooperation, information
- RCW 74.34.095 Abuse of vulnerable adults - confidentiality of investigations and reports.
- RCW 82.32.330 Disclosure of tax information
- RCW 84.36.389 Confidential income data in property tax records held by assessor
- RCW 84.40.020 Confidential income data supplied to assessor regarding real property

Federal Statutes and Regulations

- 18 USC Sec 2721 Driver's Privacy Protection Act 20
- 20 USC § I232g Family Education Rights and Privacy Act
- 42 USC 29odd-2 Confidentiality of Substance Abuse Records
- 42 USC 405(c)(2)(vii)(l) Limits on Use and Disclosure of Social Security Numbers.

- 42 USC 654(26) State Plans for Child Support
- 42 USC 671(a)(8) State Plans for Foster Care and Adoption Assistance
- 42 USC 13963(7) State Plans for Medical Assistance
- 5 USR Sec. 552(a) Social Security Numbers
- 7 CFR 272.1(c) Food Stamp Applicants and Recipients
- 28 CFR Sec. 513.20(b) FBI and WA Rap sheet
- 34 CFR 361.38 State Vocational Rehabilitation Services Programs
- 42 CFR Part 2 (2.1-2.67) Confidentiality of Alcohol and Drug Abuse Patient Records
- 42 CFR 431.300-307 Safeguarding Information on Applicants and Recipients of Medical Assistance
- 42 CFR 483.420 Client Protections for Intermediate Care Facilities for the Mentally Retarded
- 42 CFR 5106a(b)(2)(A) Grants to States for Child Abuse and Neglect Prevention and Treatment Programs
- 45 CFR 160-164 HIPAA Privacy Rule