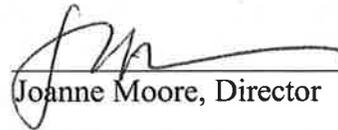


Policy and Procedure 1.01 Public Records

Subject: Public Records

Date: March 2016 (replaces interim policy and procedure dated May 2015)


Joanne Moore, Director

PURPOSE

The purpose of this Policy and Procedure is to implement Washington Supreme Court General Rule 31.1 (GR 31.1), which the Court has adopted to establish a statewide administrative records policy for courts and judicial branch agencies, including the Washington State Office of Public Defense (OPD). The Washington State Public Records Act (“PRA”) (Chapter 42.56 RCW) does not apply to judicial branch records. *See City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009).

REFERENCES

Washington Supreme Court General Rule 31.1 (GR 31.1), available at www.courts.wa.gov/court_rules

OPD POLICY

It is the policy of the Washington State Office of Public Defense (OPD) to facilitate access to agency records consistent with the principles of open administration of justice as provided in the Washington State Constitution, applicable statutes, case law, and court rules including attorney ethics rules.

This OPD Policy and Procedure incorporates by reference and follows the requirements of GR 31.1, “Access to Administrative Records.”

APPLICATION OF THIS POLICY

This policy applies to all OPD records, as defined by GR31.1, regardless of the physical form of the record, the method of recording the record, or the method of storing the record.

PUBLIC RECORDS OFFICER

The OPD director shall designate an agency attorney to act as the agency’s Public Records Officer. Contact information is posted and updated as necessary on the OPD website, www.opd.wa.gov.

PROCEDURES FOR RECORDS REQUESTS

As provided in GR 31.1:

- 1) Requests to access OPD records shall be submitted in writing to the Public Records Officer. A fillable request form is available on the agency website www.opd.wa.gov, though OPD accepts written requests in alternate formats. Email is an acceptable method for requesting records.

Contact information for the Public Records Officer, including postal address, email, telephone, and fax, is listed on the website.

- 2) OPD will initially respond to a written request for records access within five working days of receipt at the agency. Working days are Monday through Friday, excluding holidays. If OPD is not able to fully respond to the request within five working days, the initial response will acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised.
- 3) OPD will communicate with the requester as necessary to clarify the records being requested. OPD may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one initially requested.
- 4) OPD will respond to the substance of the records request within the timeframe specified in the initial response to the request. If the agency is unable to fully comply in this timeframe, then it will comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If OPD is not able to fully satisfy the records request in the manner requested, it will explain in writing any deviation from the terms of the request.
- 5) If a particular request is of a magnitude such that OPD cannot fully comply within a reasonable time due to constraints on the agency's time, resources, or personnel, OPD will communicate this to the requester. OPD will attempt to reach agreement with the requester to narrow the request to a more manageable scope within an achievable timeframe, which may include a schedule of installment responses. If OPD and the requester are unable to reach agreement, then OPD will respond to the extent practicable and inform the requester that it has completed its response.
- 6) OPD may deny a records request if it determines that: the request was made to harass or intimidate OPD or its employees; fulfilling request would likely threaten the security of the agency; fulfilling the request would likely threaten the safety or security of agency employees, family members of agency employees, or any other person; or fulfilling the request may assist criminal activity. Harassing or intimidating requests by correctional inmates or persons residing in civil commitment facilities for sexually violent predators may be subject to court injunction as provided in RCW 42.56.565, and RCW 71.09.120.

REVIEW PROCEDURES

As provided in GR 31.1:

- 1) The OPD Public Records Officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.
- 2) Upon written request submitted to OPD within 90 days of the records officer's decision in a particular matter, the OPD Director will conduct an informal review of the decision. To ensure timely receipt and attention, a request for a Director's review should be submitted in writing to the Public Records Officer.

The Director's review proceeding is informal and summary and will be held within five working days of agency receipt of the written request for review. If that timeframe is not possible, then within five working days the Director's review shall be scheduled for the earliest practical date. The Director will communicate his/her decision to the requester in writing.

- 3) Upon the exhaustion of remedies provided above, and within 30 days of the issuance of the Director's decision, a requester may seek further administrative or court review as provided in GR 31.1(d)(4) "External review."
- 4) GR 31.1(e) does not allow for attorney fees, costs, civil penalties, or fines.

PERSONS WHO ARE SUBJECTS OF RECORDS

- 1) Unless otherwise required or prohibited by law, OPD has the option of notifying a person named in a record or to whom a record specifically pertains, that access to the record has been requested.
- 2) A person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker under “Review Procedures” above.
- 3) If OPD provides access to a requested record, a person who is named in that record, or to whom the record specifically pertains, has a right to initiate review under the “Review Procedures” section or to participate as a party to any review initiated by a requester. If either the record subject or the record requester objects to informal review, such alternative shall not be available. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

CHARGING OF FEES

- 1) There is no fee to view records available at the OPD office during normal office hours. OPD will work with a requester to schedule a mutually agreeable time to view records.
- 2) OPD may charge requesters a fee for the photocopying or scanning of records. If a court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute controls. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW.

OPD has determined that it is not cost-effective to charge for copying a total of 50 or fewer pages. For copying a total of more than 50 black-and-white pages contained in one or more documents, OPD may charge 15 cents per page. OPD will accept payment in cash, personal check, bank check, or money order.

- 3) OPD may require a deposit not to exceed the estimated cost of providing copies for a request. If requested records are made available on a partial or installment basis, OPD may charge for each part of the request as it is provided. If an installment of a records request is not claimed by the requester within 30 days, OPD is not obligated to fulfill the balance of the request.
- 4) A fee not to exceed \$30 per hour may be charged for staff services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.