

PUBLIC ACCESS TO NWESD 189 RECORDS PROCEDURES

The following procedures have been established by the Superintendent and published pursuant to Board Policy 4040 and RCW 42.56.040 to explain the process for public access to NWESD 189 records and to provide guidance in how the NWESD 189 will respond to such requests.

Records relating to the conduct of operations and functions of the NWESD 189 that have been prepared, owned, used, or retained by the NWSD 189 in any format are, in fact, public records to which members of the public may request access consistent with this procedure. When processing such requests, the NWESD 189 will provide the fullest assistance to the requestor and provide a response in the timeliest manner possible.

Public Records Officer

For the most timely and efficient response, requests for NWESD 189 records should be directed in writing to the Public Records Officer listed below, whose responsibilities include serving as a point of contact for members of the public in this process and overseeing the NWESD 189's compliance with the *Washington Public Records Act*, Chapter 42.56 RCW, and Policy 4040.

The current Public Records Office of the NWESD 189 may be reached at the Anacortes Administrative Office as follows:

Jennifer Longchamps, Administrative Assistant to the Superintendent and Board of Directors
Northwest Educational Service District 189
1601 R Avenue, Anacortes, WA 98221
Phone: (360) 299-4002 Fax: (360) 299-4070
Email: jlongchamps@nwesd.org

Information regarding contacting the Public Records Officer is also available at the NWESD 189 website at https://www.nwesd.org/records_request.

Consistent with state law, the Public Records Officer will complete trainings related to the *Washington Public Records Act* and public records retention no later than ninety (90) days after assuming the responsibilities of the Public Records Officer. After the initial training(s), the Public Records Officer must complete refresher training at intervals of no more than four (4) years as long as he/she remains the NWESD 189 Public Records Officer. Training must address particular issues related to the retention, production, and disclosure of electronic documents, including updating and improving technology information services.

Availability of Public Records

Public records are available for inspection and copying during normal business hours of the NWESD 189, Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding holidays. Records must be inspected at the offices of the NWESD 189.

The NWESD 189 will maintain its records in a reasonable, organized manner and take reasonable actions to protect records from damage and disorganization. A requestor will not take NWESD 189 records from NWESD 189 offices without the permission of the Public Records Officer or designee. During the inspection of records, a NWESD 189 employee will typically be present to protect records from damage or disorganization.

The NWESD 189 will also maintain a log of public records requests that have been submitted to and processed by the NWESD 189. This log will include, but not be limited to, the following information for each request: The identity of the requestor if provided, the date the request was received, the text of the original request, a description of the records produced in response to the request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request.

A variety of records and information are available on the NWESD 189 website at https://www.nwesd.org/records_request. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

Making a Request for Public Records

Any person wishing to inspect or copy public records of the NWESD 189 will make the request in person during the NWESD 189's normal office hours, or in writing by letter, fax, or email addressed to the Public Records Officer and including the following information:

- 1) Name, address, telephone number, and email address of requestor;
- 2) Identification of the public records adequate for the Public Records Officer or designee to locate the records; and
- 3) The date the request is submitted to the NWESD 189.

The NWESD 189's Public Records Request Form is available for use by requestors at the Anacortes Administration Office and online at <https://files.nwesd.org/website/Administration/Public-Records-Request-Form.pdf>.

A request under the *Washington Public Records Act*, Chapter 42.56 RCW and NWESD 189 Policy 4040 must seek an identifiable record or identifiable records. A request for all or substantially all of the records prepared, owned, used, or retained by the NWESD 189 is not a valid request for identifiable records. General requests for information from the NWESD 189 that do not seek identifiable records are also not covered by Policy 4040. A request for all records discussing a particular topic or containing a particular keyword or name will not be considered a request for all of the NWESD 189's records.

The process for requesting electronic public records is the same as for requesting paper public records. However, to assist the NWESD 189 in responding to a request for electronic records, a requestor should provide specific search terms that will allow the Public Records Officer or designee to locate and assemble identifiable records responsive to the request.

The NWESD 189 is not obligated by law to create a new record to satisfy a records request for information. The NWESD 189 may choose to create a record depending on the nature of the request and the convenience of providing the information in a new document, such as when data from multiple locations is requested and can be more easily combined into a single new record.

If the requestor wishes to have copies of the records made instead of inspecting them, he/she will make this clear in the request and make arrangements to pay for copies of the records or a deposit.

The Public Records Officer or designee may accept informal requests for public records by telephone or in person. To avoid any confusion or misunderstanding, however, requestors should be mindful that a request reduced to writing is always the preferred method. If the Public Records Officer or designee receives a request by telephone or in person, the Public Records Officer will confirm his/her understanding of the request with the requestor in writing.

Processing of Public Records Requests

The NWESD 189 will typically process requests in the order received. However, requests may also be processed out of order if doing so allows the most requests to be processed in the most efficient manner.

Records requests not made to the Public Records Officer of the NWESD 189 will be forwarded by building level administrators, program administrators, or other staff receiving the request to the Public Records Officer for processing.

Within five (5) business days of receipt of a request, the Public Records Officer will do one or more of the following:

- 1) provide copies of the record(s) requested or make the record available for inspection—or, in the alternative, provide an internet address and link to the NWESD 189's website where the specific record can be accessed (provided that the requestor has not notified the NWESD 189 that he/ she cannot access the records through the internet); or
- 2) acknowledge that the NWESD 189 has received the request and provide a reasonable estimate of the time it will require to fully respond; or
- 3) acknowledge that the NWESD 189 has received the request, and ask the requestor to provide clarification for a request that is unclear, while providing to the greatest extent possible a reasonable estimate of the time the NWESD 189 will require to respond to the request if it is not clarified; or,
- 4) deny the request (although no request will be denied solely on the basis that the request is overbroad).

If the requestor fails to respond to the NWESD 189's request for clarification within thirty (30) days and the entire request is unclear, the NWESD 189 may close the request and not further respond to it. If the requestor fails to respond to the NWESD 189's request for clarification

within thirty (30) days, and part of the request is unclear, the NWESD 189 will respond to the portion of the request that is clear and may close the remainder of the request. In unusual circumstances, the NWESD 189 may also seek a court order enjoining disclosure pursuant to law.

The NWESD 189 may deny a bot request that is one of multiple requests from the requestor within a twenty-four (24) hour period if the NWESD 189 establishes that responding to the multiple bot requests would cause excessive interference with the NWESD 189's other essential functions. The NWESD 189 may deem a request to be a bot request when the NWESD 189 reasonably believes the request was automatically generated by a computer program or script.

If the NWESD 189 does not respond in writing within five (5) business days of receipt of the request for disclosure, the requestor should contact the Public Records Officer to determine the reason for the failure to respond.

The NWESD 189 may inquire into the purpose for which a record is requested and may use the answer to aid in gathering responsive records and determining whether the public has a legitimate interest in obtaining the information. However, a requester is not required to provide a purpose and the NWESD 189 may not decline to furnish the records solely because the requester refuses to furnish a purpose for the request.

In the event that the requested records contain information that may affect rights of others and may be arguably exempt from disclosure, the Public Records Officer may, prior to providing the records, give notice to such others. The notice may make it possible for the others to contact the requestor and ask him/her to revise the request, or, if necessary, seek a court order to prevent or limit the disclosure. The notice to the affected persons may also include a copy of the request.

Some records are exempt from disclosure, in whole or in part, under a specific exemption contained in Chapter 42.56 RCW or another statute which exempts or prohibits disclosure of specific information or records.

If the NWESD 189 believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state in writing the specific exemption (and statutory section) which applies and provide a brief explanation of how the exemption applies to the record being withheld or redacted. This exemption and explanation will be provided to the requestor in a withholding index or log.

If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted in the withholding index or log.

Pursuant to RCW 42.56.070 (2), these rules contain a list of laws—other than those specifically listed in the Washington Public Records Act, Chapter 42.56 RCW—which may exempt

disclosure of certain public records or portions of records. The NWESD 189 has identified the following laws:

- 1) The *Family Educational and Privacy Rights Act* (FERPA), 20 USC § 1232g (regarding student educational records).
- 2) *Washington State Student Education Records Law*, RCW 28A.605.030.
- 3) The *Individuals with Disabilities Education Act* (IDEA), 20 U.S.C. § 1400 et. seq. and 34 C.F.R. Part 300 (protecting the confidentiality of personally identifying information contained in student records of students with disabilities).
- 4) Privileged communications and attorney work product, such as set forth in Chapter 5.60 RCW.
- 5) *Criminal Records Privacy Act* (CRPA), Chapter 10.97, RCW.
- 6) Information on students receiving free or reduced meal programs, 42 USC § 1758(b)(6).
- 7) *Health Insurance Portability and Accountability Act* (HIPPA), 45 CFR parts 160-164 (regarding health care information privacy and security).
- 8) Abuse of Children – Protection and Procedure, RCW 26.44.010; RCW 26.44.030(9).
- 9) Notification of Juvenile Offenders, RCW 13.04.155(3).
- 10) Examination questions for teachers or pupils prior to the examination, RCW 28A.635.040.
- 11) Public Law 98-24, Section 527 of the Public Health Services Act, 41 USC § 290dd-2 (confidentiality of alcohol and drug abuse patient records).
- 12) United States and Washington Constitutional provisions including, but not limited to, the right of privacy and freedom of association.

In addition to these exemptions, RCW 42.56.070 (9) prohibits providing access to lists of individuals requested for commercial purposes, and the NWESD 189 may not do so unless specifically authorized or directed by law.

The above list is for informational purposes only and is not intended to cover all possible exemptions from the public records law. The above list includes only exemptions which may be in addition to those set forth in Chapter 42.56 RCW. Under appropriate circumstances, the NWESD 189 may rely upon other legal exemptions which are not set forth above or contained within the public disclosure law.

Consistent with other demands, and without unreasonably disrupting NWESD 189 operations, the NWESD 189 will promptly provide for the inspection of nonexempt public records. No member of the public may remove a document from the viewing area without the permission of the Public Records Officer, nor may he/she disassemble or alter any document. The requestor will indicate which documents he/she wishes the NWESD 189 to copy. There is no cost to inspect NWESD 189 records.

After inspection is complete, the Public Records Officer or designee will make the requested copies or arrange for copying. When a requestor requests records in an electronic format, the Public Records Officer or designee will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the NWESD 189 and is generally commercially available, or in a format that is reasonably translatable from the format in which the NWESD 189 keeps the record.

When the request is for a large number of records, the Public Records Officer or designee has the right to provide access for inspection and copying in installments. If, within thirty (30) days, the requestor fails to inspect the entire set of records or one (1) or more of the installments, the Public Records Officer or designee may stop searching for the remaining records and close the request and discussed further below.

When the inspection of the requested records is complete and all requested copies are provided, the Public Records Officer or designee will indicate that the NWESD 189 has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

The requestor must claim or review the assembled records within thirty (30) days of the NWESD 189's notification to him/her that the records are available for inspection or copying. The NWESD 189 should notify the requestor in writing of this requirement and inform the requestor that he/she should contact the NWESD 189 to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty (30) day period or make other arrangements, the NWESD 189 may close the request and refile the assembled records.

When the requestor either withdraws the request or fails to fulfill his/her obligations to inspect the records or pay the deposit or final payment for the requested copies, the Public Records Officer will close the request and indicate to the requestor that the NWESD 189 has closed the request.

If, after the NWESD 189 has informed the requestor that it has provided all available records, the NWESD 189 becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

Costs of Providing Records, Waiver of Costs, and Agreements Regarding Costs

Printed Copies and Mailing:

The cost for copies is fifteen (15) cents per page for copies that exceed twenty-five (25) pages. Payment may be made by cash, check, or money order payable to the NWESD 189.

The NWESD 189 may also charge actual costs of mailing, including the cost of the shipping container.

The Public Records Officer or designee may require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

If requested, the NWESD 189 will provide a summary of the applicable charges before any copies are made. The requestor will be allowed to revise the request in order to reduce the applicable charges.

Customized Service Charge:

A customized service charge may be imposed if the NWESD 189 estimates that the request would require the use of information technology expertise to prepare data compilations, or to provide customized electronic access services when such compilations and customized access services are not used by the NWESD 189 for other NWESD 189 purposes. The customized service charge may reimburse the NWESD 189 up to the actual cost of providing the services in this paragraph.

The NWESD 189 will not assess a customized service charge unless it has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice will also provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

Electronic Records:

The cost for providing electronic records is as follows:

- 1) Ten (10) cents per page for public records scanned into an electronic format or for the use of NWESD 189 equipment to scan the records;
- 2) Five (5) cents per each four (4) electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;
- 3) Ten (10) cents per gigabyte for the transmission of public records in an electronic format or for the use of NWESD 189 equipment to send the records electronically; and
- 4) The actual cost of any digital storage media or device provided by the NWESD 189 the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

The NWESD 189 will take reasonable steps to provide the records in the most efficient manner available to the NWESD 189 in its normal operations.

The Public Records Officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

If requested, the NWESD 189 will provide a summary of the applicable charges before charges are imposed under this procedure. The requestor will be allowed to revise the request in order to reduce the applicable charges.

The NWESD 189 will not impose copying charges for access to or downloading of records that the NWESD 189 routinely posts on its website prior to the receipt of a request, unless the requestor has specifically requested that the NWESD 189 provide copies of such records through other means.

Deposits:

Before beginning to make the copies, the Public Records Officer or designee may require a deposit of up to ten (10) percent of the estimated costs of copying all the records selected by the requestor, including the cost of a customized service charge according to the provision above.

Waiver:

The Public Records Officer may waive any charge assessed for a request. On behalf of the NWESD 189, the Public Records Officer may also enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this procedure, or in response to a voluminous or frequently occurring request.

Review of Denials of Public Records

Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the Public Records Officer for a review of that decision. The petition will include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request.

The Public Records Officer will promptly provide the petition and any other relevant information to the Superintendent. That person will immediately consider the petition and either affirm or reverse the denial within two (2) business days following the NWESD 189's receipt of the petition, or within such other time that the NWESD 189 and the requestor mutually agree.

Reporting Costs of Producing Public Records

The NWESD 189 will provide the information specified in RCW Chapter 40.14 to the Joint Legislative Audit and Review committee as required by law.

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