

PORT OF SKAGIT COUNTY

RESOLUTION No. 12-17

A RESOLUTION OF THE PORT COMMISSION OF THE PORT OF SKAGIT COUNTY, AMENDING THE POLICY IMPLEMENTING THE LAWS OF THE STATE OF WASHINGTON WITH REGARD TO PUBLIC RECORDS AND THE DISCLOSURE THEREOF

WHEREAS, pursuant to Chapter 44-14 Washington State WAC Public Records Act and Chapter 42.56 Washington State RCW the Port of Skagit County is required to make available for inspection and copying, Public Documents as defined in RCW 42.56.070. The following policy will govern the compliance of the Port in respect to the provisions of RCW 42.56.070.

NOW, THEREFORE, BE IT RESOLVED that the Port Commission of the Port of Skagit County hereby establishes the following described Public Records Request Response Procedures:

1.0 OVERVIEW

- 1.1 The Port of Skagit is committed to conducting its business in a transparent way, and to making information about the Port's business and operations readily available to the public.
- 1.2 The Port of Skagit is a special-purpose local government (Port District, pursuant to Title 53 RCW) that was created by, and serves the citizens of Skagit County. As a special-purpose local government serving the citizens of Skagit County, the Port is committed to public accountability. The Port complies with:
 - Washington State Public Records Act ~ Chapter 42.56 Revised Code of Washington
 - Public Records Act – Model Rules Chapter 44-14 Washington Administrative Code (WAC)
 - Washington State Archives – Local Government General Records Retention Schedule
 - Public Records Requests Response Procedures and Resolution Number 12-17

2.0 PURPOSE

- 2.1 To describe the standard Port of Skagit systems and procedures for responding to public records requests.

3.0 ORGANIZATIONS AFFECTED

- 3.1 All Port of Skagit departments and offices.

4.0 DEFINITIONS

- 4.1 "Exempt" means that the law allows or requires the withholding of a public record, or a portion thereof, from public disclosure.

- 4.2 “Five-Day Letter” refers to the Port of Skagit’s initial written response to a person or entity who has made a public records request pursuant to RCW 42.56.520. This letter is required by statute to be postmarked no later than five business days after the receipt of the original request.
- 4.3 “Fullest Assistance” means a timely and thorough action and response to a public records request.
- 4.4 “Identifiable Public Records” refers to a record that contains a reasonable description enabling the Port of Skagit employee to identify and locate the requested records.
- 4.5 "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.
- 4.6 “Public Records Officer” is the individual responsible for: receiving on behalf of the Port of Skagit and coordinating the response to public records requests; establishing public records response protocols for the Port of Skagit; assisting departments and offices with unusually large or complex public records requests; developing training protocols for all Port of Skagit staff; and developing other guidance resources such as on-line public records request information.
- 4.7 “Public Records Request” is defined as a request to inspect or receive a copy of a public record.
- 4.8 “Public Records On-Line Request” describes the web-based Port of Skagit on-line request form that provides the general public with the ability to request public records electronically.
- 4.9 “Redaction” refers to the method of protecting from public viewing a portion of a record that is statutorily exempt from public disclosure.
- 4.10 “Shall” and “shall not” are legal terms to express mandatory and prohibited actions for Port of Skagit employees.
- 4.11 "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.

5.0 POLICY:

- 5.1 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 the Port of Skagit 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 Port with respect to the provisions of the Act and WAC.
- 5.2 To the extent that this policy is in any way inconsistent with the RCW, the RCW will be deemed to prevail.
- 5.3 Port of Skagit departments and offices shall make all non-exempt records available for inspection and copying in accordance with the Washington State Public Records Act. The Port of Skagit department and offices 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.
- 5.4 Questions about public disclosure that require legal interpretation beyond those addressed in this policy will be referred to, and notice of all public records requests and responses will be copied to, the Port of Skagit Legal Counsel.
- 5.5 All public record requests shall be reviewed by the Port of Skagit Executive Director and Port of Skagit Legal Counsel.
- 5.6 Port of Skagit departments and offices 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 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.
- 5.7 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.
- 5.8 Port of Skagit departments and offices 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.
- 5.9 Port of Skagit departments and offices are not obligated to create new records in order to respond to a public records request. (WAC 44-14-04003) or to respond to requests for information.

5.10 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, the Port of Skagit is not obligated to respond to requests for information. However, when it is in the best interest of the Port’s community outreach and communication efforts to do so, and if collecting the information requires a manageable time investment, then the Port may choose to do so.

6.0 OFFICE HOURS:

6.1 Public records shall be available for inspection and copying during the customary office hours of the Port. For the 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.

7.0 PUBLIC RECORDS OFFICER:

7.1 The Port of Skagit 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.

7.2 Specified staff members will be trained appropriately to handle and facilitate a public records request in the absence of the Public Records Officer.

7.3 The name and contact information of the Public Records Officer will be posted at the Port of Skagit in a highly visible location and on the external internet home site for accessibility by the public. (RCW 42.56.580)

Duties include the following:

- (a) Receiving on behalf of the Port all public records requests, and providing timely and complete a 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 Port of Skagit staff.
- (g) Coordinate a public records web presence.
- (h) Assist departments in properly documenting their records series and managing the public records requests status.

- (i) Assist all staff members in documenting and managing email correspondence to remain available for public record.
- (j) Along with the port Executive Director be the liaison between the Port of Skagit and outside legal counsel.

8.0 PROCEDURES

- 8.1 Citizens interested in making a public record request must do so in a written, mailed (USPS) or faxed request addressed to the Public Records Officer or by submission of the Port of Skagit's electronic form (Exhibit B) which is available through the Port's website home page at www.portofskagit.com. Requesters may also fill out and submit an inner office form available at the Port of Skagit front desk area addressed to the Public Records Officer. Public records requests will be accepted electronically via the port's website, in writing, email, fax addressed to the Public Records Officer.
- 8.2 Upon receipt of a request for public records a copy will be promptly provided to the Public Records Officer.
- 8.3 The Public Records Officer will date stamp, log into the Public Records Requests Tracking System (to ensure the Port of Skagit has a record of each request and the specific records being requested) and review with both the Executive Director and Port of Skagit Legal Counsel.
- 8.4 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 7.0 of this policy or as set forth in RCW 42.56.520.
- 8.5 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 the Port of Skagit Legal Counsel.
- 8.6 If the Port of Skagit 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. 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.
- 8.7 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.

- 8.8 For records exempt or partially exempt from disclosure, the Public Records Officers, in coordination with Port of Skagit 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 44-14-04004) the exempt portions, provide the non-exempt portions, and indicate to the requestor why portions of the record are being redacted.
- 8.9 If the requestor protests an exemption decision or a redaction, the Port of Skagit Public Records Officer, Executive Director and the Port of Skagit Legal Counsel will confer on the appropriate resolution.
- 8.10 Inspection shall occur at a time mutually agreed upon by the requestor and the Port of Skagit Public Records Officer. The Port of Skagit shall not limit times of inspection to times during which the requestor is unavailable. Requestors cannot dictate unusual times for inspection. The Port of Skagit is only obligated to offer inspection during customary office hours. Typically, the records are produced for inspection in the conference room or other office area at 15400 Airport Drive, Burlington, WA. The inspection of records cannot create excessive interference with essential office functions. The Port of Skagit shall have an employee observe the inspection of records by the requestor to ensure that the records are not altered or destroyed. The Port of Skagit copy machine will be operated by staff persons only, as public use of the machine would unreasonably disrupt the operations of the Port. No original record may removed from the Port offices under any circumstances.
- 8.11 Records may be provided in installments where they are part of a large set of records that must be indentified, located and/or assembled for disclosure.
- 8.12 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. A requestor may obtain standard black and white copies for (\$.15) cents per page. The Port of Skagit may also charge the cost of mailing based on the current postage rate and will inform the requestor before the copying is performed.

9.0 RESPONSIBILITIES

- 9.1 All departments 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 sent into the archives as historical records.
- 9.2 Port of Skagit departments and offices will “protect public records from damage or disorganization” (RCW 42.56.100). Therefore, requestors shall not be allowed to take original records out of a Port of Skagit office. Extremely large copying requests may be completed by an outside copy vendor. The responsible office or department will manage the transfer of original records between the office and the vendor.

10.0 RETENTION OF RECORDS

- 10.1 The Port of Skagit is not required to retain every record it ever created or used.

10.2 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. The Port of Skagit shall follow the Washington State Archives – Local Government General Records Retention Schedule, Section 21 Port Districts (Exhibit C).

11.0 EXHIBITS AND SUPPORTING DOCUMENTS

11.1 Exhibit A; Sample “5 Day Letter” response acknowledging receipt of a public record request and providing a reasonable estimate of time when the records will be available.

11.2 Exhibit B: Sample Port of Skagit Request for Access to Public Records inner office and internet form to be used for appropriate submission by individual requestors.

11.3 Exhibit C: Washington State Archives – Local Government General Records Retention Schedule.

11.4 Washington State Public Records Act ~ Chapter 42.56 Revised Code of Washington

11.5 Public Records Act – Model Rules Chapter 44-14 Washington Administrative Code (WAC)

12.0 THIS RESOLUTION REPLACES AND SUPERSEDES RESOLUTION NO. 95-15, THE NOVEMBER 1974 POLICY STATEMENT, CHAPTER 5000 OF POLICY MANUAL RESOLUTION NO. 80-43, RESOLUTION NO. 95-10, AND ANY AND ALL OTHER RESOLUTIONS PERTAINING TO PUBLIC RECORDS.

ADOPTED by the Port Commission of the Port of Skagit County at a regular meeting thereof held this 14th day of August, 2012.

Signature on File

President
Signature on File

Vice President
Signature on File

Secretary