



# PROPOSED RULE MAKING

**CR-102 (October 2017)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 19, 2017

TIME: 9:18 AM

WSR 18-01-100

**Agency:** Department of Social and Health Services, Services and Enterprise Support Administration

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 17-17-102 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) The department is proposing to create a new section as WAC 388-01-005, repeal existing section WAC 388-01-040, and amend the following existing sections: WAC 388-01-010, WAC 388-01-015, WAC 388-01-020, WAC 388-01-030, WAC 388-01-050, WAC 388-01-060, WAC 388-01-070, WAC 388-01-080, WAC 388-01-090, WAC 388-01-100, WAC 388-01-110, WAC 388-01-120, WAC 388-01-130, WAC 388-01-140, WAC 388-01-150, WAC 388-01-160, WAC 388-01-170, WAC 388-01-180, WAC 388-01-190, and WAC 388-01-200.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
February 6, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2">https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2</a>

**Date of intended adoption:** Not earlier than February 7, 2018 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator  
 Address: PO Box 45850  
 Olympia, WA 98504

Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 p.m. February 6, 2018

**Assistance for persons with disabilities:**

Contact Jeff Kildahl, DSHS Rules Consultant  
 Phone: 360-664-6092  
 Fax: 360-664-6185  
 TTY: 711 Relay Service  
 Email: [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov)  
 Other:  
 By (date) January 23, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed amended rules add language to clarify, update, and ensure clear policies for responding to public records requests under chapter 42.56 RCW, and align policy to comply with new statutes. The proposed repeal of WAC 388-01-040 removes existing redundant language, and the proposed new section WAC 388-01-005 adds a new definition section for rule clarity.

**Reasons supporting proposal:** See purpose statement above.

**Statutory authority for adoption:** RCW 42.56.040

**Statute being implemented:** chapter 42.56 RCW

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization)  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting: Records Officer	Natasha House, DSHS Public	PO Box 45135, Olympia WA 98504	360-902-8484
Implementation: Records Officer	Natasha House, DSHS Public	PO Box 45135, Olympia WA 98504	360-902-8484
Enforcement: Records Officer	Natasha House, DSHS Public	PO Box 45135, Olympia WA 98504	360-902-8484

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: Amendments to chapter 388-01 WAC clarify current department policy and are not considered "significant legislative rules". A cost-benefit analysis is not required.



**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)                | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)               | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

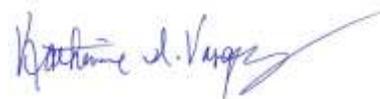
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** December 13, 2017

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



NEW SECTION

**WAC 388-01-005 What definitions apply to this chapter?** The following definitions apply to this chapter:

(1) "Authorization" means a detailed document that gives DSHS permission to use or disclose confidential information and records for specified purposes.

(2) "Business days" means Monday through Friday, excluding legal holidays.

(3) "Client" means a person who receives services or benefits from DSHS. Clients include but are not limited to, consumers, recipients, applicants, residents of DSHS facilities or institutions, patients, parents and children involved with child welfare services, juveniles involved with the juvenile justice system, parents receiving support enforcement services, persons who previously received services or benefits, and persons applying for benefits or services.

(4) "DSHS" means the department of social and health services

(5) "Public records coordinator" means a person designated to respond to public records requests within an organizational unit or who are appointed as responsible for a local office, unit, region, program, or facility.

(6) "Public records officer" means the person designated as the public records officer for the DSHS under RCW 42.56.580. The DSHS public records officer has primary responsibility for management, oversight, and monitoring of DSHS's public records request process.

(7) "Redact" means deleting or marking out exempt information from a public record.

(8) "Third party notice" means notifying affected persons or entities of a public records request to allow the opportunity to enjoin disclosure of the records under RCW 42.56.540.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-010 What are the purposes of this chapter?** The purposes of this chapter are to:

(1) Describe the organization of the department of social and health services (DSHS); and

(2) ~~((Ensure that DSHS complies with laws governing the disclosure (release) of public records; and~~

~~(3))~~ Explain how an individual or organization ~~((can))~~ may obtain public records.

AMENDATORY SECTION (Amending WSR 02-15-119, filed 7/18/02, effective 8/18/02)

**WAC 388-01-015 Does any provision in this title create a ~~((right or))~~ cause of action~~((, or compel DSHS to establish a program or entitlement))~~?** Except where otherwise provided, no provision in Title 388  
WAC:

- (1) ~~Creates or is intended to create any right or cause of action((, or));~~
- (2) ~~Adds to or intends to add to any existing right or cause of action((, nor may anything in Title 388 WAC be relied upon to compel)); or~~
- (3) Compels the establishment of any program or special entitlement.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-020 ((What is DSHS and)) How is DSHS organized?** (1) ((DSHS was created to unite related statewide social and health service programs within a single agency. DSHS programs are designed to protect the general public, as well as persons who are unable to fully care for themselves or meet their basic needs)) DSHS's current organizational structure can be located at the following link: <https://www.dshs.wa.gov/strategic-planning/organizational-chart>.

(2) ((It is organized into seven administrations plus the secretary's and deputy secretary's offices:

- (a) ~~Aging and adult services,~~
- (b) ~~Children's services,~~
- (c) ~~Economic services,~~
- (d) ~~Health and rehabilitative services,~~
- (e) ~~Juvenile rehabilitation,~~
- (f) ~~Management services, and~~
- (g) ~~Medical assistance.~~

(3) ~~To request an organizational chart, contact: DSHS, Office of the Secretary, P.O. Box 45010, Olympia, WA 98504 5010, or telephone number (360) 902 7800.~~

(4) ~~DSHS has offices in the community to serve clients. Local DSHS offices have various names, such as community services office (CSO), regional offices, home and community services (HCS), division of child support (DCS), children's services, division of developmental disabilities (DDD) field service offices, and facilities)) You may also request organizational charts by writing to:~~

DSHS, office of the secretary  
PO Box 45010  
Olympia, WA 98504-5010.

AMENDATORY SECTION (Amending WSR 03-17-014, filed 8/12/03, effective 9/12/03)

**WAC 388-01-030 What ((DSHS)) public records are available?** (1) DSHS prepares and keeps public records that relate to the programs it administers. All records DSHS uses to conduct business are public records.

DSHS public records may include((,)) documents, audio and video recordings, pictures, email, computer disks, and electronic data.

(2) DSHS public records are available to the public unless a law exempts them from disclosure. Some DSHS records ((contain)) are confi-

dential (~~((information that is))~~) and not available to everyone. Records exempt from public disclosure are listed under chapter 42.56 RCW, WAC 388-01-020, and other federal and state laws applicable to DSHS.

(3) (~~((You))~~) Clients, or someone authorized to act for (~~((you or by you))~~) a client, may (~~((have))~~) access (~~((to))~~) confidential records about (~~((you))~~) the client that (~~((would otherwise be))~~) are exempt from disclosure to the public unless specifically prohibited by law.

(4) Upon (~~((your))~~) request, DSHS may (~~((give you))~~) provide access to records such as rules, policies, indexes, interpretive statements, pamphlets, forms, and other publications at cost under WAC 388-01-180 without using the public records (~~((disclosure))~~) request process.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-050 Who should be contacted to request a public record?** (~~((An individual should contact the public disclosure coordinators at DSHS offices to request a public record. Public disclosure coordinators are located at local community service offices (CSO), regional offices, home and community services (HCS), division of child support (DCS), children's services, DDD field services offices, DSHS facilities, and within each DSHS administration))~~) Requests for public records may be sent to the DSHS public records officer using the following contact information:

DSHS public records officer  
Services and enterprise support administration  
Information governance unit  
PO Box 45135  
Olympia, WA 98504-5135  
Telephone: (360) 902-8484  
Fax: (360) 902-7855  
Email: DSHSPublicDisclosure@dshs.wa.gov.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-060 How (~~((can))~~) may an individual request a public record?** (1) An individual (~~((can))~~) may request a public record orally or in writing. DSHS (~~((encourages))~~) prefers that all public record requests be in writing on (~~((a))~~) the "request for (~~((disclosure of))~~) DSHS records" form, DSHS 17-041(X). Individuals may (~~((request this form from DSHS, Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504 5805, (360) 664 6120, or email at DSHSFormsRecordsMgmt@dshs.wa.gov))~~) locate this form on the DSHS website at <https://www.dshs.wa.gov/fsa/forms> or request it from:

DSHS public records officer  
Services and enterprise support administration  
Information governance unit  
PO Box 45135  
Olympia, WA 98504-5135  
Telephone: (360) 902-8484

Fax: (360) 902-7855

Email: DSHSPublicDisclosure@dshs.wa.gov.

(2) If ~~((the form is not used))~~ an individual does not use the DSHS form, the written public record request should include the following information:

(a) The requester's name, organization, mailing address, telephone number, fax number, and email address;

(b) The date of the request;

(c) A detailed description of the identifiable public record being requested;

(d) The email or mailing address where DSHS should send copies of the ~~((record are to be mailed))~~ records, or if the requester wants to ~~((examine))~~ inspect the record at DSHS; and

(e) The requester's signature ~~((of the requester))~~.

(3) An individual ~~((can))~~ may fill out a record request at a DSHS office ~~((7))~~ or send it by regular mail, ~~((electronic mail))~~ email, or fax to the public ~~((disclosure coordinator at the appropriate DSHS office))~~ records officer listed in WAC 388-01-050.

(4) Requests by third parties for confidential client records must be accompanied by a valid authorization as set forth in WAC 388-01-150.

(5) DSHS may ask an individual requesting a public record for personal identification when the law makes a record disclosable to a specific person.

(6) DSHS may deny a "bot" request, which is one of multiple requests from a requester within a twenty-four period, if responding to multiple requests would cause excessive interference with other essential DSHS functions.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-070 When ~~((can))~~ may a public record be ~~((examined))~~ inspected?** (1) Individuals ~~((can examine))~~ may inspect public records during DSHS office hours. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, ~~((except for))~~ excluding legal holidays. Contact the public ~~((disclosure))~~ records coordinator in the appropriate office to arrange a time to ~~((examine))~~ inspect the public record.

(2) In order to preserve the record or prevent interference in the performance of departmental duties, DSHS reserves the right to restrict an individual's ability to ~~((examine))~~ inspect or copy public records. This does not prevent DSHS from providing copies of the public record by mail or email.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-080 Does DSHS charge for ~~((examining))~~ inspecting or ~~((copying))~~ providing public records?** (1) There is no fee for ~~((examining))~~ inspecting public records.

~~(2) ((DSHS charges one or more of the following fees for copies of public records:~~

~~(a) Up to fifteen cents per page for black and white photocopies of a record;~~

~~(b) The actual cost of manuals, blueprints, and other nonprinted materials such as audio or video tapes; and~~

~~(c) The cost of postage, when items are mailed (see RCW 42.17.260)) Pursuant to RCW 42.56.120(2)(b), DSHS does not calculate the actual costs for copying records because to do so would be unduly burdensome for the following reasons:~~

~~(a) DSHS does not have the resources to conduct a study to determine all of its actual copying costs; and~~

~~(b) To conduct such a study would interfere with other essential agency functions.~~

~~(3) ((Government agencies, or DSHS clients involved in an administrative hearing procedure, may receive public records reasonably related to the hearing free of charge)) DSHS 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;~~

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

~~(4) DSHS may waive copying ((and postage)) fees ((if)) in one or more of the following circumstances:~~

~~(a) ((Providing a copy of the record assists in managing a program)) Clients receiving the first copy of their file; ((or))~~

~~(b) ((The expense of billing exceeds the copying and postage costs)) Producing records assists in managing a program;~~

~~(c) The expense of billing exceeds the cost of producing records.~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-090 When and how must DSHS respond to a public record request?**

(1) Within five business days after ((receiving the)) DSHS receives a public record request, DSHS must ((review the public record and must)):

~~((1) Provide the)) (a) Produce responsive public records; ((or~~

~~(2)) (b) Acknowledge receipt of the request((,)) and ((give the DSHS)) provide an estimated date for first response; ((or~~

~~(3)) (c) Provide an internet address and link to the specific records requested;~~

~~(d) Seek clarification of an unclear request; or~~

~~(e) Deny the request in writing, noting the reason(s) for denial.~~

(2) DSHS may produce records in installments, as appropriate.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-100** ~~When ((might))~~ may DSHS need to extend the time to respond to a public record request? (1) DSHS ~~((might need to))~~ may extend ~~((the time to respond to a public record request))~~ its estimated response time to:

(a) Locate and gather ~~((the information requested))~~ responsive records;

(b) Notify an individual or organization identified in or affected by the request; ~~((and/or))~~

(c) Determine whether ~~((the information))~~ requested ~~((is))~~ records are exempt and whether all or part of the ~~((public record requested can))~~ records may be released; ~~((and/or))~~

(d) Contact the ~~((individual requesting the public record))~~ requester to clarify the intent, scope, or specifics of the request.

(2) If ((the individual requesting the public record fails to)) a requester does not clarify ((the)) an unclear request under subsection (1)(d) of this section, DSHS does not have to respond to the unclear parts of the request.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-110** ~~What if ((an individual thinks DSHS is unreasonably delaying the release of a public record)) a requester disputes production time estimates?~~ If ~~((an individual requesting a public record))~~ a requester thinks ~~((DSHS))~~ DSHS's time estimate for producing records under chapter 42.56 RCW is ~~((unreasonably delaying the release of a public record))~~ unreasonable, the ~~((individual))~~ requester may:

(1) Petition the public ~~((disclosure))~~ records coordinator to ~~((release the public record before the date indicated on DSHS response (see WAC 388-01-090))~~ reduce the time estimate; or

(2) File a lawsuit in superior court ~~((to require DSHS to release the public record))~~ under RCW 42.56.550(2).

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-120** ~~What if the public record ((that is requested)) contains information that is exempt from public disclosure?~~ (1) ~~((If the requested public record contains information that is exempt from public disclosure, DSHS may:~~

(a) Release the nonexempt portion, explaining what exemption applies to the deleted portion of the record; or

(b) ~~Deny release of the entire record, sending a written explanation citing the exemption that applies to the denial))~~ 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. Personal information includes, but is not limited to:

- (i) Names;
- (ii) Telephone numbers;
- (iii) Fax numbers;
- (iv) Email addresses;
- (v) Social security numbers;
- (vi) Medical record numbers;
- (vii) Health plan beneficiary numbers;
- (viii) Account numbers;
- (ix) Certificate or license numbers;
- (x) Vehicle identifiers and serial numbers, including license plate numbers;
- (xi) Device identifiers and serial numbers;
- (xii) Web universal resource locators (URLs);
- (xiii) Internet protocol (IP) address numbers;
- (xiv) Biometric identifiers, including finger and voice prints;
- (xv) Full face photographic images and any comparable images;
- (xvi) Any other unique identifying number, characteristic, or code;
- (xvii) All geographic subdivisions smaller than a state, including street address, mailing address, city, county, precinct, geocodes, and zip code, except for the initial three digits of a zip code; and
- (xviii) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death.

(b) Under RCW 74.04.060 and related federal laws, information and records about applicants and recipients of public assistance and other services provided and received under Title 74 RCW.

(c) Under chapter 13.50 RCW and related federal laws, information and records about juvenile offender and child welfare cases.

(d) Under chapter 26.23 RCW and related federal laws, information and records about child support enforcement.

(e) Under chapter 26.33 RCW and related federal laws, information and records about adoption.

(f) Under chapter 70.02 RCW and related federal laws, protected health care information and medical records.

(g) Under RCW 74.34.095, information and records about alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(h) Under RCW 42.56.230(3), personal information in files maintained for DSHS employees or elected officials to the extent that disclosure would violate their right to privacy.

(i) Under RCW 42.56.250, the following information from personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

- (A) Residential addresses;
- (B) Residential phone numbers;
- (C) Personal wireless telephone numbers;
- (D) Personal email addresses;
- (E) Social security numbers;
- (F) Driver's license numbers;
- (G) Identocard numbers;
- (H) Emergency contact information; and

(I) Names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

(j) Under RCW 42.56.640 and 43.17.410, sensitive personal information of vulnerable individuals and in-home caregivers for vulnerable populations, except as allowed under subsection (3) of this section.

(2) ((DSHS may release information to law enforcement officers and United States immigration officials to the extent authorized by RCW 74.04.062)) If the requested public record contains information that is exempt from public disclosure, DSHS 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, sending a written explanation and citing the exemption that applies to the denial; or

(c) Neither confirm or deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed, when a denial would reveal information that is confidential and must not be disclosed.

(3) Sensitive personal information under subsection (1)(j) of this section may be disclosed or produced if DSHS determines that the requester:

(a) Is exempt under RCW 42.56.645;

(b) Is subject to a current contract or court order requiring the requester to protect the confidentiality of the information; or

(c) Has complied with procedures developed by DSHS to protect the confidentiality of the information.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-130 What are ((an individual's)) a requester's options if DSHS denies a public record request? ((If)) (1) After DSHS ((denies)) takes final action to deny all or a portion of a public record request, ((an individual)) a requester may do any one or more of the following:**

((1)) (a) Petition for ((a)) agency review ((of the denied request from)) by the denying public ((disclosure)) records coordinator or ((a director)) an approved designee. ((Contact DSHS to obtain a petition form (DSHS 17-062(X)) at: DSHS Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805, (360) 664-6120, or email DSHSFormsRecordsMgmt@dshs.wa.gov. DSHS has two business days after receiving the petition to respond. If DSHS upholds the denial, the decision is considered final; or

(2)) The written request must specifically refer to the written statement by the public records coordinator that constituted or accompanied the denial.

(b) Ask the office of the attorney general to review the public record request.

((a)) (i) Send a copy of the denied public record request and the DSHS written denial to:

Office of the attorney general

Public records review  
(~~(P.O.)~~) PO Box 40100  
Olympia WA 98504-0100.

~~((b))~~ (ii) The office of the attorney general will review the request and DSHS denial. The office of the attorney general issues a written opinion as to whether the requested public record is excluded from disclosure.

~~((3))~~ (c) File a lawsuit for ~~((release of a public record))~~ judicial review under the Public Records Act in superior court in the county where the public record is located.

~~((a) DSHS must establish that its denial of a public record is legal.~~

~~(b) If the DSHS denial is reversed, the court may require DSHS to pay costs and attorney fees. DSHS may be fined five dollars to one hundred dollars a day for each day they denied the public record)~~ (2) "Final action" occurs when DSHS indicates that it will not provide responsive records. When DSHS produces installments of records, final action occurs when DSHS produces its last installment or indicates that it will not reconsider a denial. Before DSHS produces its last installment, DSHS may cure deficiencies within prior installments. DSHS encourages requesters to contact the public records coordinator with questions or concerns about installments prior to final action.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-140** ~~If a public record ((contains personal information that)) identifies or pertains to an individual or organization, other than the ((subject of the record)) requester, is that individual or organization notified?~~ (1) If ((a public record contains personal information that identifies)) records responsive to a public records request identify or pertain directly to an individual or organization other than the ((subject of the requested public record)) requester, DSHS may notify ((that)) the named individual or organization about the request.

(2) ((DSHS may send a written notice to the individual or organization if releasing the personal information could damage the individual or organization, or government operations, or is not in the best interest of the public. The notice should)) DSHS's third party notice may include:

(a) ((The record being requested)) A copy of the original request;

(b) ((The date DSHS intends to release the record)) If appropriate, the records that identify or pertain to the third party; ((and))

(c) ((How the individual or organization can prevent release of the record (see RCW 42.17.330)) The date DSHS 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 DSHS and the requester under RCW 42.56.540 prior to the intended release date.

(3) DSHS may ((also send a written notice to the record)) inform the requester ((notifying them)) that:

~~(a) ((The individual or organization whose personal information is contained in the requested public record has been)) A third party has been notified of the request;~~

~~(b) DSHS ((expects a response from the individual or organization regarding)) provided the third party with a due date for objecting to disclosure ((of their personal information by a specified date)); and~~

~~(c) ((Disclosure may be denied)) In the absence of an agreement with the requester, the third party may bring a lawsuit against the requester and DSHS under RCW 42.56.540 to stop disclosure.~~

~~((4) DSHS releases the record by the specified date if no one objects or the contacted party does not respond by the specified date.~~

~~(5) DSHS must notify the office of the attorney general when an individual or organization, other than the subject of a record, files a lawsuit to prevent release of the record.)~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-150** ~~((Can an individual's record be requested by his or her representative)) May a third party request a client's record?~~

~~(1) ((An individual's)) A third party, such as a DSHS client's attorney((, legal guardian,)) or lay representative ((can request the individual's record with a signed written release)), may access confidential records about a DSHS client with a valid authorization.~~

~~(2) The ((written release must include)) authorization should:~~

~~(a) ((The identity of the individual(s) or organization(s) authorized to receive the records)) Identify the client;~~

~~(b) ((An identification of the record(s), or part of the record, that the individual wants released)) Identify the individual(s) or organization(s) authorized to receive the records; ((and))~~

~~(c) ((The date the release expires)) State that DSHS may disclose the information to the requester;~~

~~(d) Identify the record(s) that the client wants DSHS 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 DSHS to release any one or more of the following to the requester: chemical dependency records, HIV or STD records, or mental health records; and~~

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

~~(3) DSHS may ask for ((identification verifying)) additional proof to verify the ((representatives's relationship to the individual)) third party's authority to access confidential records.~~

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

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

~~(b) If over age thirteen, chemical dependency or mental health records (see RCW 70.96A.230 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 DSHS.

(5) Legal guardians authorized by court order to act on behalf of a client are not considered to be a third party request.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-160 Is DSHS required to create public records for requesters?** (1) DSHS is only required to provide access to existing, identifiable public records in its possession at the time of the request (see RCW ((42.17.270)) 42.56.080).

(2) DSHS is not required to collect information to create a public record that does not exist at the time ((of)) the public record request is received.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-170 ((Can)) May DSHS release public records ((to its offices and to)) outside ((agencies)) of the Public Records Act?** (1) ((For the purposes of this chapter, outside agencies include, but are not limited to, group homes, mental health centers, drug and alcohol agencies, and other state agencies)) A request for information is not a Public Records Act request.

(2) ((DSHS may release public records to its offices and to outside agencies when the information relates to the administration of DSHS programs unless exempt by 45 C.F.R. 205.50 or other law)) A request to access records under authority other than the Public Records Act is not a Public Records Act request, including but not limited to the following examples:

(a) Requests by current employees to access their personnel files under RCW 49.12.240;

(b) Requests by employees and labor unions to access employment records under collective bargaining agreements;

(c) Requests by qualified individuals and organizations to access confidential juvenile offender and child welfare records under chapter 13.50 RCW and related federal laws;

(d) Requests by qualified individuals or organizations to access confidential child support enforcement records under chapter 26.23 RCW and related federal laws;

(e) Requests by qualified individuals or organizations to access confidential adoption records under RCW 26.33.340;

(f) Requests for public access to confidential child welfare records under RCW 74.13.500 through RCW 74.13.525;

(g) Requests by qualified individuals and organizations to access confidential health care information and medical records under chapter 70.02 RCW and related federal laws;

(h) Requests for records pursuant to a contract; and

(i) A legal subpoena for DSHS records.

~~((3) If an outside agency requests a public record for reasons other than information that relates to the administration of DSHS programs, the outside agency must have the individual's written authorization.~~

~~(4) Outside agencies receiving information are subject to applicable disclosure confidentiality laws.)~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-180 Who should ~~((be contacted))~~ an individual contact to review or get a copy of an interpretive or policy statement index~~((, or to get a copy of the documents))~~?** DSHS issues administrative policy statements that apply to the whole department. Administrations may issue policies and interpretive statements that relate to their own programs. (See RCW 34.05.010).

(1) To receive a copy of a DSHS administrative policy, send a written request to:

~~Office of ((Legal Affairs,))~~ policy and external relations  
Rules and policies assistance unit~~((, P.O.))~~  
PO Box 45850~~((,))~~  
Olympia, ~~((Washington))~~ WA 98504-5850.

(2) To receive a copy or review a specific administration's policies or interpretive statements, send a written request to the administration.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-190 How can an individual get an index of DSHS significant decisions?** (1) The DSHS board of appeals reviews and selects orders and creates an index of significant decisions that substantially affect DSHS performance (see RCW ~~((42.17.260))~~ 42.56.070).

(2) The index:

- (a) Is divided into program categories;
- (b) Contains a copy or synopsis of the order; and
- (c) Is updated, as needed.

(3) An individual can ~~((inspect or request a copy of))~~ view the index on the boards of appeals website at <https://www.dshs.wa.gov/node/4060/board-appeals> or inspect or request a copy by contacting the board of appeals ~~((located))~~ at:

~~((Board of Appeals  
Blake Office Park  
4500 10th Avenue Southeast  
Lacey, WA 98503-5803  
(360) 664-6100~~

~~Mailing address:  
Board of Appeals  
P.O. Box 45803  
Olympia, WA 98503-5803))~~

Board of appeals  
1115 Washington ST SE  
Olympia, WA 98504-5803  
Telephone: (360) 664-6100

Mailing address:  
Board of appeals  
PO Box 45803  
Olympia, WA 98504-5803.

(4) An individual may ask the board of appeals to index an order as a significant decision by sending a written request with a copy of the order to the mailing address.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

**WAC 388-01-200 How ((are petitions)) may an individual file a petition for declaratory ((orders filed)) order by DSHS? An individual may file a petition for declaratory order by DSHS as follows:**

(1) ~~((First,))~~ Read the information on declaratory orders in RCW 34.05.240 and WAC 10-08-250, 10-08-251, and 10-08-252((+)); and

(2) ~~((Next,))~~ File the petition with the DSHS rules and policies assistance unit((+)) at:

DSHS((+P.O.)) rules and policies assistance unit

PO Box 45850((+))

Olympia, WA 98504-5850.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-01-040           What public records are available for release?