

PORT OF COUPEVILLE		PUBLIC RECORDS ACT POLICY	
Resolution 231	Approved: March 8, 2017		Effective Date: March 8, 2017

The Public Records Act (the Act), Revised Code of Washington (RCW) Section 42.56, requires public agencies to make identifiable, non-exempt public records available for inspection and copying upon request and to publish rules addressing access to public records. To comply with the RCW the following Port of Coupeville Public Records Act Policy is established.

The purpose of this policy is to provide the public access to information concerning the conduct of government. In carrying out its responsibilities under the Act, the Port will be guided by the provisions of the Act describing its purposes and interpretation. Failure to comply with any provision of this Policy shall not result in any liability imposed upon the Port other than that stipulated in the Act.

Section 1. Definitions/Explanations

a. Public record. "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 the Port regardless of physical form or characteristics.

b. Writing. "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 is a writing.

c. Identifiable record. An identifiable record is one in existence at the time the records request is made and that the Port staff can locate after an objectively reasonable search.

d. Exempt record. All Port records are available for review by the public unless they are specifically exempted or prohibited from disclosure by state or federal law, either directly in RCW 42.56 or other statutes. For information related to Public Record Exemptions please see Municipal Research Service Center's (MRSC) publication "Public Records Act for Washington Cities, Counties and Special Purpose Districts" on the Port's website under Public Records Requests.

e. E-mail. Classification of emails as public records is dependent on the content of the message. Email messages are public records when they are created or received in the transaction of public business and retained as evidence of official actions. A record of the existence of an email is a public record regardless of the content of the email.

Section 2. Public Records Officer

Any person wishing to request access to public records or seeking assistance in making a request should contact the Port's Public Records Officer. The Port Executive Director has been designated by the Port Commission as the Public Records Officer. The Public Records Officer will oversee compliance with the Public Records Act, but may designate other Port staff members to process requests for public records. The Public Records Officer or his or her designees will provide the fullest assistance to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with the essential functions of the Port.

a. Requests for records. Requests to inspect or copy any records maintained by the Port shall be made to the Public Records Officer at:

Public Records Officer
Port of Coupeville
PO Box 128
Greenbank WA 98253

Telephone: 360-222-3151
FAX: 360-222-3484
E-mail:
executivedirector@portofcoupeville.org

b. Internet access to records. Many records are available on the Port's website at: www.portofcoupeville.org. Requesters are encouraged to view the available documents on the website prior to making a request.

Section 3. Availability of Public Records

a. Hours for inspection. Public records are available for inspection and copying at the Port office, Monday through Friday, from 1:00 PM to 4:00 PM, excluding legal holidays, by arrangement with the Public Records Officer.

b. Place of inspection. Records will be made available for inspection as determined by the Public Records Officer. A requestor may not take records from the Port offices, but may make copies for 15 cents per page.

c. Electronic access to records. To the extent practical, the Port will store, maintain, and make its records available electronically. The Public Records Officer will work with the requestor to determine the most appropriate method for providing electronic copies of responsive records.

d. Organization of records. The Port will maintain records in a reasonably organized manner and take reasonable actions to protect records from damage and disorganization.

e. Retention of records. The Port will retain its records in accordance with the Local Government Common Records Retention Schedule available at www.secstate.wa.gov. Public records may not be destroyed per a retention schedule if public records request or actual or anticipated litigation is pending.

Section 4. Making a Request for Public Records

a. Form. There is no required form for a public records request. A requester must provide the Port with reasonable notice that the request being made is for public records. Any person wishing to inspect or copy identifiable public records of the Port should make the request in writing in one of the following ways:

- On the provided request form (available online at www.portofcoupeville.org);
- By letter, fax, or e-mail addressed to the Public Records Officer.

The following information should be included in the request:

- Name and address of requestor;
- Contact information, including telephone number and email address;
- Identification of the requested records; and
- The date and time of day of the request.

c. Prioritization of records. The Public Records Officer may ask a requestor to prioritize the records he or she is requesting so that the most important records may be provided first. A requestor need not prioritize a request.

d. Copies. If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for the copies, as discussed in Section 8 below.

e. Purpose of request. If the request is for a list of individuals, the Public Records Officer may ask the requestor if her/she intends to use the records for a commercial purpose. The Port is not authorized to provide lists of individuals for commercial purposes.

f. Overbroad requests. The Port may not deny a request for identifiable public records solely because the request is overbroad. However, the Port may seek clarification, ask the requestor to prioritize the request so that the most important records are provided first, and/or communicate with the requestor to limit the size and complexity of the request. The Port may also provide the responsive records in installments over time. When a request uses an inexact phrase such as "all records relating to", the Public Records Officer may interpret the request to be for records which directly and fairly address the topic. When the requestor has found the records he or she is seeking, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

Section 5. Processing Public Records Requests

a. Providing assistance. All assistance necessary to help requestors locate particular responsive records shall be provided by the Public Records Officer or his/her designated representative, provided that the giving of such assistance does not unreasonably disrupt the daily operations of the Port or duties of any assisting employee(s).

b. Order for processing requests. The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

c. Acknowledging receipt and fulfilling requests. Within five business days of receipt of the request, the Public Records Officer will do one or more of the following:

- 1) Make the record available for inspection or copying;
- 2) 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;
- 3) Acknowledge that the request has been received and provide a reasonable estimate of when records will be available;
- 4) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone; or
- 5) Deny the request.

The Port may respond to a request to provide access to a public record by providing the requestor with a link to the Port's web site containing an electronic copy of that record if it can be determined that the requestor has internet access and the requestor agrees that the request has been satisfied.

d. Reasonable estimate of time to fully respond. If not able to respond within the five business-day period, the Public Records Officer must provide a reasonable estimate of the time it will take to fully respond to the request. Additional time may be needed to clarify the scope of the request, locate and assemble the records, redact confidential information, prepare a withholding index, notify third party persons or agencies affected by the request and/or consult with the Port Attorney about whether the records are exempt from disclosure. The Public Records Officer should briefly explain the basis for the time estimated to respond. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the changed circumstances that make it necessary.

e. Notification that records are available. If the requestor has sought to inspect the records, the Public Records Officer will notify him or her that the entire response or an installment is available for inspection and ask the requestor to contact the Port to arrange a mutually agreeable time for inspection. If the requestor seeks copies, the Public Records Officer should notify him or her of the projected costs and whether a deposit is required before making the copies.

f. Consequences of failure to respond. If the Port does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the Public Records Officer to determine the reason for failure to respond.

g. Consequences of failure to clarify a request. If the requestor does not respond to the Port's request for clarification within 30 days of the Port's request, the Public Records Officer may consider the request abandoned, send a letter closing the response to the requestor, and re-file the records.

h. Consequences of disclosing a record in error. The Port and its officials or employees are not liable for loss or damage based on release of a public record if the Port, official or employee acted in good faith in attempting to comply with the Public Records Act

i. Searching for records. The Port must conduct an objectively reasonable search for responsive records. After the records are located, the Public Records Officer should take reasonable steps to narrow down the number of records assembled to those that are responsive. The Port will not “bury” a requestor with non-responsive documents. However, the Public Records Officer is allowed to provide arguably, but not clearly, responsive records to allow the requestor to select the ones he or she wants, particularly if the requestor is unable or unwilling to help narrow the scope of the documents being sought.

j. Preserving requested records. If a requested record is scheduled shortly for destruction under the Port’s records retention schedule, the record cannot be destroyed until the public disclosure request has been resolved. Once a request has been closed, the Public Records Officer can destroy the record in accordance with the retention schedule.

k. Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part (see Section 7). If the Port believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific 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 determined to be exempt, the Public Records Officer will redact the exempt portions and provide the non-exempt portions [See Section 5(m) below].

l. Protecting the rights of others. If the requested records contain information that may affect rights of others and may be exempt from disclosure, prior to providing the records the Public Records Officer may give notice to those whose rights may be affected by the disclosure. Generally two weeks notice will be given in order to make it possible to contact the requestor and ask him or her to revise the request or, if necessary, allow affected individuals to seek an order from a court to prevent or limit the disclosure. The notice to the affected person(s) will include a copy of the request.

m. Redactions. 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. For example, the Public Records Officer shall redact identifying details such as social security numbers when he or she makes available or publishes any public record. In each case, the justification for the deletion shall be explained in writing.

n. Personal privacy and vital government interests. The privacy exemption does not apply if the information that might violate personal privacy or vital government interests can be redacted from the records being sought.

o. Inspection of records. To the extent possible, the Public Records Officer shall provide space to inspect public records. The requestor must claim or review the assembled records within thirty days of the Public Records Officer’s notification that the records are available for inspection or copying. The Public Records Officer will notify the

requestor in writing of this requirement and suggest that he or she contact the Port 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-day period, or make other arrangements, the Public Records Officer may close the request and re-file the assembled records. Other public records requests can be processed before a subsequent request by the same person for the same or almost identical records, which will be processed as a new request. The Act does not allow a requestor to search through the Port's files for records which cannot be identified or described to the Port. Members of the public may not remove documents from the viewing area or disassemble or alter any document.

p. Providing copies of records. The requestor shall indicate which documents he or she wishes to have copied using a mutually agreed upon non-permanent method of marking the desired records. After inspection is complete, the Public Records Officer will arrange for copying. Making a copy of an electronic record is considered copying and not creation of a new record.

q. Providing records in installments. When a request is for a large number of records, the Public Records Officer will provide access for inspection and copying in installments if he or she reasonably determines that it would be practical to provide the records in that way. If the requestor fails to inspect the entire set of records or one or more of the installments within 30 days, the Public Records Officer may stop searching for the remaining records and close the request.

r. Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the Public Records Officer will indicate that the Port has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

s. Closing withdrawn or abandoned requests. If the requestor withdraws the request, fails to fulfill his or her obligations to inspect the records, or fails to 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 Port has closed the request. The Public Records Officer will document closure of the request and the conditions that led to closure.

t. Later discovered documents. If, after the Public Records Officer has informed the requestor that the Port has provided all available records, the Port becomes aware of additional responsive documents that existed on the date of the request, the Public Records Officer will promptly inform the requestor of the additional documents and provide them on an expedited basis.

u. No duty to create records. The Port is not obligated to create a new record to satisfy a records request; however, the Port may, in its discretion, create such a new record to fulfill the request where it may be easier for the Port to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request. However, the requestor must agree in writing that the new record will satisfy the request.

v. No duty to supplement responses. The Port is not obligated to hold current records requests open to respond to requests for records that may be created in the

future. If a public record is created or comes into the possession of the Port after a request is received by the Port, it is not responsive to the request and will not be provided. A new request must be made to obtain later-created public records.

Section 6. Processing Requests for Electronic Records

The Preservation of Electronic Records requirements are outlined in WAC 434-662. An "electronic record" includes those public records which are stored on machine readable file format. If a record is created in an electronic format, the electronic record is the primary record and is subject to provisions of RCW 42.56, the Public Records Act. Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention period. Printing and retaining a hard copy is not a substitute for the electronic version. Responses to public record requests for electronic records other than those in common file formats such as pdf or similar formats will be coordinated through the Public Records Officer.

Section 7. Exempt and Prohibited Disclosure of Public Records

The Port is not required to permit public inspection and copying of records for which public disclosure of the record is prohibited, restricted or limited by state or federal statute or regulation.

- a.** The Port is prohibited by statute from disclosing lists of individuals for commercial purposes.
- b.** The Public Records Act, RCW 42.56, provides that a number of document types and information are prohibited from being disclosed or are exempt from public inspection and copying. A current list of these prohibitions and exemptions will be provided upon request by the Public Records Officer and or see Municipal Research Service Center's (MRSC) publication "Public Records Act for Washington Cities, Counties and Special Purpose Districts" on the Port's website under Public Records Requests.
- c.** In addition, other statutes may exempt or prohibit disclosure of other documents and information. Alternatively, the requestor may review a list of other statutes outside the Public Records Act that may prohibit or exempt disclosure of certain information please see Municipal Research Service Center's (MRSC) publication "Public Records Act for Washington Cities, Counties and Special Purpose Districts" on the Port's website under Public Records Requests.
- d.** The Port's failure to list an exemption shall not affect the effectiveness of the exemption.

Section 8. Costs of Providing Copies of Public Records

Per state law, the Port is not allowed to charge for locating a public record or for making records available for review or inspection. The Port may charge, however, for the actual costs of copying public records, including the staff time spent making the copies. This provision includes responses to public records requests for electronic records.

a. Fee schedule. The charge for standard black-and-white photocopies is fifteen cents per page. If the Port has to pay an outside firm for duplicating records in non-routine formats such as photographs, blueprints or tape recordings, the actual cost will be passed along to the requestor. For electronic data, the cost to be charged the requestor for each computer disc (CD) containing electronic data will be the actual purchase price of the CD. The cost to scan paper documents into an electronic format is \$0.05 per page.

b. Certified copies. Where the request is for a certified copy, an additional charge may be applied to cover the additional expense and time required for certification.

c. Faxing and mailing charges. The Port may also charge actual costs of long distance facsimile transmission and/or mailing, including the cost of the shipping container.

d. Sales tax. The Port will not charge sales tax on copies of records.

e. Use of other copying services. The Port is not required to copy records at its own facilities and may determine to use a commercial copying center. The Port will bill the requestor for the amount charged by the vendor.

f. Deposit or payment by installments. Before beginning to copy records, the Public Records Officer or designee may require a deposit of up to ten percent of the estimated costs of copying the records selected by a requestor. The Public Records Officer 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.

g. Method of payment. Payment may be made by cash, check, or money order to the Port of Coupeville.

h. Waiver of copying charges. The Public Records Officer has the discretion to waive copying charges for small requests, or for individuals or government agencies doing business with the Port if the Public Records Officer determines that this action is in the best interest of the Port.

Section 9. Denials of Requests for Public Records

a. Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including by e-mail) to the Public Records Officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request.

b. Consideration of petition for review. The Public Records Officer shall promptly provide the petition and any other relevant information to the Port Attorney or his or her designee to conduct the review. The Port Attorney or his or her designee will promptly

consider the petition and either affirm or reverse the denial within two business days following the Port's receipt of the petition, or within such other time to which the Port and the requestor mutually agree.

c. Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56 after the initial denial regardless of any internal administrative appeal.