

PUBLIC RECORDS INSPECTION AND COPYING PROCEDURES

Section 1. Authority and Purpose.

A. Chapter 42.56 RCW, the Public Records Act ("act"), requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public records" to include 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 agency.

B. The purpose of these rules is to establish the procedures LESA will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of LESA and establish processes for both requesters and LESA staff that are designed to best assist members of the public in obtaining such access. These rules have been written to incorporate best practices for compliance with the act and are based upon and organized according to Model Rules promulgated by the Attorney General of the State of Washington.

C. The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights, to protect public records from damage or disorganization and to prevent excessive interference with other essential functions of the agency. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, LESA will be guided by the provisions of the act describing its purposes and interpretation.

D. All LESA divisions, boards, committees, commissions and officers are required to follow these procedures.

Section 2. Agency Description – Contact Information – Public Records Officer.

A. LESA is an independent interlocal agency and an agency subject to the act. Any person wishing to request access to public records of LESA or seeking assistance in making such a request shall contact the public records officer of LESA. At the present time, the Records Division of LESA processes all public disclosure requests and the LESA Records Assistant Director is the ultimate public records officer, but may delegate day-to-day duties within the Records staff.

B. It is important to understand that LESA acts as records custodian for official incident reports of several law enforcement agencies. These reports currently total over 141,632 annually as of 2008, and all are subject to specific statutory regulation in addition to the Public Records Act. Most requests to inspect or copy incident reports must be forwarded by LESA for final determination by the originating law enforcement agency and then returned to LESA for processing. For example, if the request is for an incident report concerns a juvenile, there are specific limitations on disclosure of information under RCW ch. 13.50. For another example, if the request is for a 9-1-1 recording that contains medical information, that information is subject to the Medical Records Privacy Act [RCW ch. 70.02]. These requirements create necessary delays to ensure proper response.

C. Requests for access to public records shall be addressed to the Public Records Officer.

D. The applicable public records officer will oversee compliance with the act but another agency staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requesters; ensure that public records are protected from damage or disorganization; and prevent fulfillment of public records requests from causing excessive interference with essential functions of LESA or its participating law enforcement agencies.

Section 3. Availability of Public Records.

A. Hours for Inspection of Records. Public records which are determined to be subject to disclosure are available for inspection and copying during normal public counter hours of LESA Records, Monday, Wednesday through Friday, 8:30 a.m. to 4:00 p.m., excluding legal holidays. Records must be inspected at the offices of the public records officer or designee for LESA or such other LESA office designed by the public records officer or designee.

B. Records Index. The LESA Executive Board has found in Resolution No. 751 that maintaining an index is unduly burdensome and would interfere with agency operations for LESA. The requirement would unduly burden or interfere with LESA operations because LESA employs approximately 160 employees who generate hundreds of records on a daily basis that include final opinions, statements of policy, interpretations of policy, administrative manuals, instructions to staff that affect members of the public, planning policies and goals, interim and final planning decisions, factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, factual information derived from tests, studies, reports, or surveys, and correspondence and materials referred to therein relating to regulatory, supervisory, or enforcement responsibilities. Furthermore, LESA acts as records custodian for official incident reports of several law enforcement agencies which currently total over 141,632 annually as of 2008. Virtually every LESA division would be required to devote full-time employees exclusively to the task of collecting, reading, categorizing, indexing, and maintaining a current index of such records. In addition, the time required by other employees to ensure that the records were forwarded to the designated employees for indexing and communicating with the designated employee regarding the purposes of the records would be substantial. Because of the size of LESA, the volume and variety of such records and lack of available resources to devote to such an endeavor, creating an index would be unduly burdensome and would unduly interfere with agency operations.

C. Organization of Records. LESA maintains its records in a reasonably organized manner. LESA will take reasonable actions to protect records from damage and disorganization. A requester shall not take original records from LESA offices or that of its agencies. A variety of records is available on the LESA web site at <http://www.lesa.net>. Requesters are encouraged to view the documents available on the web site prior to submitting a records request.

D. Making a Request for Public Records.

1. Any person wishing to inspect or obtain copies of public records shall make the request in writing on LESA's standard request form, by delivery by U.S. mail, on-line at <http://www.lesa.net> or in person addressed to the public records officer of LESA. The form shall include the following information:

- a. legal name of requester;
- b. mailing address of requester;
- c. other contact information, including telephone number, fax number, and any e-mail address;
- d. reasonable identification of the public records requested adequate for the public records officer or designee to identify and locate the records;
- e. the date and time of day of the request; and
- f. the signature of the requester.

2. Persons seeking public records or information available for inspection and copying from LESA may seek assistance from the Public Records officer. The Public Records Officer may facilitate identification of records which are available for disclosure and minimize unnecessary effort and cost to LESA and to persons seeking available records.

3. If the requester wishes to have copies of the records made, instead of simply inspecting them, he or she shall so indicate and make arrangements to pay for copies of the records or at least make a deposit of 10 percent of the cost of copying estimated by the public records officer or designee before copying will commence. Pursuant to LESA Executive Board Resolution 745, standard black and white 8½" x 11" photocopies will be provided at 15 cents per page.

4. Requests shall be made to the public records officer upon the standard form which shall be made available at the Records Division and on-line at <http://www.lesa.net>.

5. Persons requesting public records that include a list of individuals will be required to provide a declaration under penalty of perjury certifying sufficient facts from which the public records officer or designee can reasonably determine that the records will not be used for any commercial purpose (profit-expecting activity) prohibited by RCW 42.56.070(9) unless specifically authorized by other law.

6. Persons requesting public records for which other laws limit or prohibit disclosure to a particular class of persons or for limited purposes will be required to provide a declaration under penalty of perjury certifying sufficient facts from which the public records officer or designee can reasonably determine that the legal requirements for disclosure of such records to the requester have been met.

Section 4. Processing of Public Records Requests – General.

A. Providing "fullest assistance." LESA is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requesters, and provide the "most timely possible action" on public records requests.

The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

B. Acknowledging Receipt of Request. Except as to law enforcement records maintained by LESA on behalf of participating law enforcement agencies, which are subject to specific law enforcement agency review as noted above in section 2, within five business days of receipt of the request, the public records officer will do one or more of the following:

1. Make the records available for inspection or copying;
2. Provide in writing, mailed or delivered to the requester, a reasonable estimate of time when records will be available;
3. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requester. Such clarification may be requested and provided by telephone, but it is desirable to confirm such clarifications in writing. The public records officer or designee may revise the estimate of when records will be available; or
4. Deny the request, in whole or in part.
5. With regard to law enforcement records maintained by LESA on behalf of participating law enforcement agencies, which are subject to specific law enforcement agency review, the request form provides, and the requestor acknowledges that up to 15 business days may be required prior to response. [See Section 2B above.]

C. Consequences of Failure to Respond. Except as to law enforcement records maintained by LESA on behalf of participating law enforcement agencies, which are subject to specific law enforcement agency review as noted above in section 2, if the LESA or its applicable agency does not respond in writing within five business days of receipt of the request for disclosure, the requester should contact the public records officer to determine the reason for the failure to respond.

D. Protecting Rights of Others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requester and ask him or her to revise the request or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

E. Records Exempt or Prohibited from Disclosure. Some records are exempt from or are prohibited from disclosure by law, in whole or in part. If LESA or its applicable agency believes that a record is exempt from or prohibited from disclosure and should be withheld, the public records officer or designee will state the specific exemption or prohibition under which the record or a portion of the record is being withheld. If only a portion of a record is exempt or prohibited from disclosure but the remainder is not exempt or prohibited, the public records officer will redact the exempt or prohibited portions, provide the nonexempt portions, and indicate to the requester why portions of the record are being redacted.

F. Inspection of Records.

1. Consistent with other demands, LESA or its applicable agency shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requester shall indicate which documents he or she wishes the agency to copy.

2. The requester must claim or review the assembled records within 30 days of the LESA's or its applicable agency's notification to him or her that the records are available for inspection or copying. The agency will notify the requester in writing of this requirement and inform the requester that he or she should contact the agency to make arrangements to claim or review the records. If the requester or a representative of the requester fails to claim or review the records within the 30-day period or make other arrangements satisfactory to the LESA or its applicable agency, the LESA or its applicable agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or similar records, which can be processed as a new request.

G. Providing Copies of Records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying upon a deposit of at least 10 percent of the estimated cost of copying.

H. Providing Records in Installments. When the request is for a large number of records, the public records officer or designee 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, within 30 days, the requester fails to inspect the entire set of records or one or more of the installments after being made available, or to pay the balance of the cost of copying of records copied or those copied in an installment, the public records officer or designee may stop searching for the remaining records and close the request.

I. Completion of Inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that LESA or its applicable agency has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

J. Closing Withdrawn or Abandoned Request. When the requester either withdraws the request or fails to fulfill his or 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 requester that LESA or its applicable agency has closed the request. Subsequent copies requested may not be made until the requester has paid any unpaid bill for copying services requested by the requester, whether or not the copies previously made have been retained for the requester or destroyed when the previous bill remained unpaid for more than 30 days after notice mailed to the requester.

K. Later Discovered Documents. If, after LESA or its applicable agency has informed the requester that it has provided all available records, LESA or its applicable agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requester of the additional documents and provide them on an expedited basis.

L. Protection of Records and Functions.

1. Public records shall be made available without disrupting essential functions of the offices. Any LESA employee who believes that response to public records requests will excessively interfere with other essential agency functions shall consult with his or her supervisor.
2. An agency may follow a reasonable schedule regarding retrieval of a record from an off-premises storage site so that no more than one trip per week to the remote site is required.
3. With regard to copying, prearrangement is recommended so that it can be accommodated within the work schedule. Copies shall be made only by a staff member. The precise time must remain flexible and will depend upon the work schedule for that day.
4. Review of other original records shall be done only in the immediate presence of and under the supervision of a LESA employee responsible for protecting the originals against damage, alteration, or disorganization by the requester. The public records officer may limit the maximum time allowed during any working day for supervised review to avoid excessive interference with the agency's other essential functions. When the time needed for this purpose exceeds two hours, time periods on a future day or days may be assigned. If the agency is able to provide access which excludes the requester from access to original records which might be damaged or disorganized and from access to originals or copies or exempt from disclosure, additional time may be made available.

Section 6. Exemptions.

The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Exemptions outside the Public Records Act that restrict the availability of some documents held by LESA or its applicable agencies for inspection and copying include, but are not limited to, those set forth for counties and municipalities in the most recent list of other such statutes posted on the web site of the Municipal Research Service Center, which is presently located at www.mrsc.org/Publications/pr06.pdf, Appendix C, and which is incorporated herein by reference. The list is available for inspection and copying from the applicable public records officer. LESA and its agencies are prohibited by statute from disclosing lists of individuals for commercial purposes.

Section 7. Costs of Providing Copies of Public Records.

A. Costs Required for Inspection. There is no fee for inspecting public records. There is no fee for the staff time necessary to prepare the records for inspection, for the copying required to redact records before they are inspected, or an archive fee for getting the records from off-site. The costs of making the records available for inspection or copying are not charged to the requester.

B. Costs for Copies. Costs are as set forth in LESA Executive Board Resolution No. 745. A requester may obtain standard 8½" x 11" black and white photocopies for 15 cents per page. If the actual cost of copying is determined by the LESA or by the applicable agency to be other than 15 cents per page, that charge may

be collected if a statement of the factors and the manner used to determine this charge is available from the public records officer or designee. Before beginning to make these copies, the public records officer or designee may require a deposit of 10 percent of the estimated costs of copying all the records selected by the requester. The public records officer or designee shall require the payment of the remainder of the copying costs for those copies before providing them to the requester, whether they include all of the records or an installment. LESA and its agencies do not charge sales tax when they make copies of public records.

C. Costs for Electronic Records. The cost of electronic copies of records shall be the amount per hour for copying information on a CD-ROM or other media, plus the listed cost for each CD-ROM or other media as set forth in LESA Executive Board Resolution No. 745 or as may be as set forth in the statement of the factors and manner used to determine this charge available from the public records officer.

D. Costs of Mailing. LESA may also charge actual costs of mailing, including the cost of the shipping container or envelope if the requester requests mailing or shipping.

E. Payment. Payment may be made by cash or money order to LESA.

F. Waiver of Payment. LESA or its applicable agency may waive the cost of copying if the cost is less than the cost of processing payment.

G. Charges Required by Other Statutes. If a different charge for copies or certification is required to be collected by a statute other than the Public Records Act, such as RCW 46.52.085 or RCW 10.97.100, the provisions of that statute shall govern.

H. Outside Contracts for Copying. LESA may arrange for copying by LESA contractors charged with preserving and protecting public records, instead of copying requested records using LESA services. In such event, the cost of copying charged shall be the contract charges, and such charges shall be paid by the requester directly to the LESA contractor who performed the copying. If the requester made a deposit in advance of copying, any unapplied portion of the deposit will be refunded to the requester, provided that the contract charges are paid and the copies are picked up by the requester within 30 days after written notice of the unpaid contract charges is mailed to the requester's address.

I. Repetitive Contracts. LESA may enter into contractual agreements with persons who intend to request access to public records available for disclosure to them on a continuous or regularly recurring basis. The terms of any contract executed in accordance with this Section will supersede and control over any otherwise applicable provisions of this policy.

Section 8. Review of Denials of 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 to the public records officer or designee 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 or designee shall promptly provide the petition and any other relevant information to the public records officer's supervisor or other officials designated by the agency to conduct the review, who shall immediately consult with the Legal Advisor before action on the petition. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as is mutually agreeable to LESA and the requester.

C. Judicial Review. Any person may obtain judicial review of a public records request denial pursuant to RCW 42.56.550 at the conclusion of two business days following the initial denial regardless of any internal administrative appeal.

Resolution No. 765

WHEREAS, by Resolution No. 752 adopted December 16, 2009, LESA adopted a Public Disclosure Policy describing its practices and procedures for public disclosure requests, and

WHEREAS, revisions to the policy are necessary to reflect changes in public counter hours, methods of making requests and paying for copies,

Now, Therefore,

BE IT RESOLVED BY THE EXECUTIVE BOARD OF THE LAW ENFORCEMENT SUPPORT AGENCY:

The Director is authorized to distribute and publicize the revised Public Disclosure Policy in substantially the same form as attached hereto as Exhibit "A".

6/16/10
Adopted


(For the Executive Board)