

CONCISE EXPLANATORY STATEMENT
Chapter 10-04 WAC – Agency organization—Public records
Public Hearing: December 5, 2017
Adoption: December 20, 2017
Effective: January 20, 2018

Table of Contents

1. Purpose of Rulemaking.....	2
A. Background.....	2
B. Summary of the Rulemaking Activities	2
2. Changes to the Rules.....	2
3. Comments on Proposed Rules	2
A. Comment Period.....	2
B. Public Hearings.....	2
C. Summary of Comments Received on the Proposed Rules and Office Response	2

1. Purpose of Rulemaking

The purpose of this rulemaking is to update the Office of Administrative Hearings rules relating to agency organization and public records, and implement recent changes in public records laws.

A. Background

The 2017 Legislature passed two bills significantly impacting the Public Records Act: HB 1594 and ESHB 1595. Both bills were signed into law by the Governor in May 2017.

B. Summary of the Rulemaking Activities

Office staff held one public hearing on December 5, 2017, in addition to inviting written comments.

2. Changes to the Rules

The following are the differences between the proposed rule and the rule as adopted. Mere editing changes are not included.

WAC 10-04-060 – Installments

- The office removed subsection (2), regarding fees for installments of public records, to reduce confusion with or duplication of similar provisions in WAC 10-04-075(5)(b).

3. Comments on Proposed Rules

The purpose of this section is to respond to the oral and written comments received through the public comment period and at the public hearing.

A. Comment Period

The public comment period for this rulemaking began October 31, 2017 and ended December 5, 2017. The office received written comments from one person.

B. Public Hearings

Date and Location	Number Attended	Number Testified
December 5, 2017	0	0

C. Summary of Comments Received on the Proposed Rules and Office Response

The office has analyzed all the comments received on the proposed rule in detail and responses to these comments by category are listed below.

Stakeholder Comments	Office Response
WAC 10-04-015 Definitions	
1. Does the definition of “office” in WAC 10-04-015(4) mean headquarters only, or does it include the branch offices as well?	The office receives public records requests through its headquarters location as well as through all its field office locations. Currently, responses to the requests are processed at the headquarters location, but may involve assistance from staff in another location. Those making public records requests may make the request in a variety of methods, including through the office’s public website, telephone, mail, fax, or in person. Inspection of public records can be arranged to occur at any of the office’s locations. Furthermore, many of the office’s records are maintained only in electronic form, and may not be located at any one field office location. The generality of the term

	“office” contemplates these operational dynamics.
WAC 10-04-037 Location of case records	
<p>2. WAC 10-04-037 doesn’t clarify branch vs. headquarters for where file is “located.”</p> <p>3. How is case file different from official record? See WAC 10-04-015. But it doesn’t clarify what records OAH will keep after case is complete.</p>	<p>Because many records are maintained solely in electronic format and are available to all office locations through the case management system, it may not be possible to identify the physical location of the case file more specifically. Requestors seeking to inspect a file may generally do so at headquarters or any field office location, so the location of the file will not impact those requesting public records.</p> <p>While the office may retain copies of documents in the official record after the official record has been transmitted to the referring agency, it is generally not required to retain any portion of the official record except under agency retention policies and practices. The retention period will vary, depending on the caseload and types of records at issue.</p>
WAC 10-04-040 Requests for public records	
<p>4. Consider adding detail to WAC 10-04-040(4), clarifying that the requester should specify whether he or she is seeking to copy records or inspect records.</p>	<p>This is not a mandatory provision, but merely a non-exhaustive list of information that the requestor may provide to assist the office in processing the request.</p>
WAC 10-04-050 Inspection of public records	
<p>5. Consider adding “if requested” at the end of the sentence: “The office will provide space to inspect public records.”</p>	<p>It is clear from the context that the office will provide space for inspection of public records if inspection is requested. Adding “if requested” may be misconstrued as implying that, after a request for inspection is received, the requester must also specifically request space in which to conduct the inspection.</p>
WAC 10-04-060 Installments	
<p>6. WAC 10-04-060(2) seems to be better in WAC 10-04-075. Is this duplicative of WAC 10-04-075(5)(b)?</p>	<p>This section has been removed from WAC 10-04-060.</p>
WAC 10-04-070 Exemptions	
<p>7. Consider adding the phrase “or businesses” to WAC 10-04-070(3) so that it reads: “The office is prohibited by statute from disclosing lists of individuals or businesses for commercial purposes under RCW 42.56.070(8).”</p>	<p>This section was written to be consistent with the cited statute, which refers only to “lists of individuals requested for commercial purposes.”</p>
WAC 10-04-075 Fees for providing public records	
<p>8. In WAC 10-04-075(7), consider adding the language “which will be stated on the website,” so that the sentence reads:</p> <p>“For cash payments, it is within the office’s discretion to determine the denomination of bills and coins that will be accepted, which will be stated on the website.”</p>	<p>The office intends to provide this information on its fee schedule, which will be posted on the public website. It is not necessary to include this as a requirement in the rule itself.</p>