

# ACTION ITEM #1

## WSU All Campuses, Amendments to WAC 504-45 Public Records (Stacy Pearson)

November 17, 2017

TO ALL MEMBERS OF THE BOARD OF REGENTS

**SUBJECT:** WSU All Campuses, Amendments to WAC 504-45, Public Records

**PROPOSED:** That the Board of Regents adopt the amendments to WAC 504-45 addressed below, relating to Public Records.

**SUBMITTED BY:** Stacy Pearson, Vice President for Finance and Administration

**SUPPORTING  
INFORMATION:**

The Board of Regents has authority pursuant to RCW 28B.30 and RCW 34.05 to adopt, amend, and repeal rules published in the Washington Administrative Code. WAC 504.45 concerns rules related to Public Records. A summary of the proposed amendments follows, and a copy of the chapter, illustrating the specific changes is appended as Attachment A. By way of background, the University is updating procedures in order to comply with legislative changes pursuant to RCW 42.56.120(2), as amended by Chapter 304, Laws of 2017, sec. 3, which became effective July 23, 2017. The University adopted an emergency rule on July 21, 2017. These proposed changes to the permanent rule have been reviewed by the Washington State University's Division of the Office of the Attorney General.

Summary of proposed amendments to Public Records:

- 504-45-010: Revisions to grammar.
- 504-45-020: Modifications include reference to "other" Washington State University Campuses; the addition of Everett campus; update referenced web address; revisions to grammar.
- 504-45-030: Updates referenced web addresses; subsection 4 (b) removes detailed information regarding costs of photocopies and makes note to reference WAC 504-45-070 or <https://wsu.edu> for payment information.
- 504-45-040: Revisions to grammar.

- 504-45-050: In subsection 3, a link to WAC 504-45-070 (Costs of providing copies of public records) has been added.
- 504-45-060: Revisions to grammar.
- 504-45-070: Subsection 1 revised to include costs of providing public records in various electronic formats. Subsection 2 adds language explaining the customized service charge that can be imposed if IT expertise is required to fulfill the request. In the case that a customized service charge would apply for the request, the University must notify the requester with the option to modify their request to avoid or reduce these charges. Subsection 4, new section includes reference to RCW 42.56.120 (2) as amended by Chapter 304, Laws of 2017, sec. 3. Provides justification why it is not feasible for WSU to charge actual costs.
- 504-45-080: Revisions to grammar.

ATTACHMENT:

Chapter Copy, illustrating specific changes is appended as Attachment A.

ATTACHMENT A

1710 N. E. Upper Drive,  
Pullman, WA 99163.

October 11, 2017

Washington State University  
c/o Deborah Bartlett  
Director of Procedures, Records, and Forms  
Mail Code 1225  
Pullman, WA 99164  
Email: prf.forms@wsu.edu

Dear Ms. Bartlett:

While the purpose of the proposal is laudable, I respectfully request that the proposed change (insofar as it would impose a cost on copying of Public Records requests responses) should not be adopted. If a cost needs to be imposed, it should be only for requests emanating from outside Washington.

The proposed imposition of costs on persons filing public records requests would have a chilling effect on freedoms, and would disproportionately impact lower cost taxpayers, already the most oppressed in our society.

1. **Imposing a Cost on Records Requests Would Have a Chilling Effect.** Public Records laws like WAC chapter 504-45 give people a general right of access to information held by or on behalf of public authorities. The information does not belong to government officials, they are merely our (the Washington taxpayers') agents, acting as custodians of that information. The information belongs to us taxpayers and should be made easily and economically available to taxpayers.

It has been said that "sunshine is the best disinfectant." Public Records laws promote a culture of openness and accountability across the public sector and lead to a better understanding about (i) how public authorities carry out their duties, (ii) why they make the decisions they do, (iii) and how they spend public money. This understanding and openness is critical to the proper functioning of our State. Without broad public disclosure of the operations and management of government, we citizens would have little recourse to even know about wrongdoing.

There is a natural desire of government officials to shield prejudicial information from the public. Common sense tells us that the greater the motivation a public agency has to shield its operations, the greater the public's need to know. The greater the barriers to obtaining information, the less information will be disclosed.

My own experience has borne that out. Recently, I was aware that wrongdoing may have taken place at WSU with respect to federal grants I oversee. I was unable to obtain information directly from the suspected wrongdoers -- they simply stonewalled me. A Public Records request (actually several) was my only recourse. In response to my requests, I was given a huge number of

unresponsive documents mixed in with the documents showing wrongdoing. This “over production” of documents is often done intentionally in order to make it more difficult for citizens to find the “relevant” documents showing wrongdoing. If I had to stand in an office and inspect those large number of documents (without getting a copy), or pay to get a copy, the wrongdoing would have remained concealed. It was only because I could get a copy and inspect the documents in my home at my leisure that wrongdoing could be exposed. The proposed rule would encourage “over production” of requests.

Imposing a cost on obtaining copies would have a chilling effect on Public Records requests. This is especially so in instances where wrongdoing was rampant. The number of responsive documents, and the need for disclosure, actually grows stronger with the breadth and degree of misconduct by public officials. Under this proposal the cost of seeking proof would grow greater with the degree of wrongful activity (and the concomitant greater number of responsive documents).

Public Records should be made more available, not less.

2. **Imposing a Cost Would Disproportionally Impact the Poor.** This proposal also would also disproportionately impact the poorer of our fellow citizens. They cannot hire lawyers. They need an easy and economical way to obtain information when they feel wronged. The proposed amendment would take us in the less desirable direction and make the essence of citizens’ rights less available to those among us who need it the most.

In sum, the recent adverse publicity (“sunlight”) on various aspects of WSU governance has largely arisen from information provided in Public Records response documentation

I must also apologize for not attending today due to prior commitments outside of Pullman

Thank you.



Norman G. Lewis, as a private citizen here,

And

Regents Professor and Eisig-Tode Distinguished Professor,

Institute of Biological Chemistry,

Washington State University,

and

Fellow, Royal Society of Edinburgh (Scotland’s National Academy), FRSE,

Fellow, American Association for the Advancement of Science (AAAS), FAAAS,

Fellow, American Society of Plant Biologists, FASPB,

Fellow, International Academy of Wood Science, FIAWS,

Phytochemical Pioneer Award 2016, Phytochemical Society of North America (PSNA),

Life Member, PSNA.