

WAC Rules Review



June 11, 2009

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Washington State Criminal Justice Training Commission

2009 WAC Review Schedule

<u>Commission Meeting</u>	<u>WAC Chapter</u>	
September 2008	139-05-210 Law enforcement Equivalency	Final Action
	139-02-010 - 110 Public Disclosure	Introduction
June 2009	139-02-010 - 110 Public Disclosure	Final Action

CODE REVISER FILINGS

WAC	Pre-Proposal Filed	WSR #	Proposed Rule Making Filed	WSR #	Commission Approved	Rule-Making Order Filed	WSR #	Effective
PUBLIC RECORDS								
Chapter 139-02-010	07/23/2008	08-15-147	3/17/09	09-07-083				
Chapter 139-02-020	07/23/2008	08-15-148	3/17/09	09-07-083				
Chapter 139-02-030	07/23/2008	08-15-150	3/17/09	09-07-083				
Chapter 139-02-040	07/23/2008	08-15-153	3/17/09	09-07-083				
Chapter 139-02-050	07/23/2008	08-15-151	3/17/09	09-07-083				
Chapter 139-02-060	07/23/2008	08-15-150	3/17/09	09-07-083				
Chapter 139-02-070	07/23/2008	08-15-152	3/17/09	09-07-083				
Chapter 139-02-080	07/23/2008	08-15-154	3/17/09	09-07-083				
Chapter 139-02-090	07/23/2008	08-15-155	3/17/09	09-07-083				
Chapter 139-02-100	07/23/2008	08-15-154	3/17/09	09-07-083				
Chapter 139-02-110	07/23/2008	08-15-150	3/17/09	09-07-083				
LAW ENFORCEMENT								
139-05-210	1/31/2008	08-04-066	5/27/08	08-12-007	09/10/08	09/18/08	08-20-010	10/19/08
CORRECTIONS								
139-10-310	10/11/07	07-21-051	1/31/2008	08-04-046	3/12/2008	3/19/2008	08-08-016	4/20/2008
139-10-320	10/11/07	07-21-052	1/31/2008	08-04-046	3/12/2008	3/19/2008	08-08-016	4/20/2008
139-10-410	10/11/07	07-21-050	1/31/2008	08-04-046	3/12/2008	3/19/2008	08-08-016	4/20/2008
139-10-420	10/11/07	07-21-049	1/31/2008	08-04-046	3/12/2008	3/19/2008	08-08-016	4/20/2008
139-10-510	10/11/07	07-21-047	1/31/2008	08-04-046	3/12/2008	3/19/2008	08-08-016	4/20/2008
139-10-520	10/11/07	07-21-048	1/31/2008	08-04-046	3/12/2008	3/19/2008	08-08-016	4/20/2008
OTHER								
139-30-015	10/11/07	07-21-054	1/31/2008	08-04-047	3/12/2008	3/19/2008	08-08-017	4/20/2008
139-35-015	10/11/07	07-21-056	1/31/2008	08-04-048	3/12/2008	3/19/2008	08-08-018	4/20/2008

Rule Summary

WAC 139-02-010-110
Public records

1. WHO PROPOSED THE RULE?

Washington State Criminal Justice Training Commission staff.

2. REASON FOR RULE CHANGE?

Update language to reflect the correct RCW and language of the AGO's model rules:

WAC 139-02-010
WAC 139-02-020
WAC 139-02-040
WAC 139-02-050
WAC 139-02-070
WAC 139-02-090

repeal rules that were incorporated into the updated rules:

WAC 139-02-030
WAC 139-02-060
WAC 139-02-080
WAC 139-02-100
WAC 139-02-110

3. STATEMENTS AGAINST RULE CHANGE?

None

4. POTENTIAL AGENCY IMPACT?

No impact

5. ACTION REQUIRED

Approval

6. STATUTORY AUTHORITY

RCW 42.56.040

7. STAFF RECOMMENDATION

Pass

8. PROPOSED ADOPTION DATE

June 2009

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-010 Authority and purpose. (~~The purpose of this chapter shall be to ensure compliance by the criminal justice training commission with the provisions of the Public Records Disclosure Act, RCW 42.17.250 through 42.17.340.~~) (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" 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. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the act), that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures the Washington state criminal justice training commission shall follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state criminal justice training commission and establish processes for both requestors and Washington state criminal

justice training commission staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the Washington state criminal justice training commission shall be guided by the provisions of the act describing its purposes and interpretation.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-02-010, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 05-01-109, filed 12/15/04, effective 1/15/05)

WAC 139-02-040 Public ((disclosure)) records officer.

~~((The commission shall designate a public disclosure officer who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff in this regard, and generally insuring compliance by the staff with public records disclosure requirements.))~~ (1) The Washington state criminal justice training commission is the state training academy for law enforcement and corrections professionals. The Washington state criminal justice training commission's campus is located in Burien, WA at 19010 1st Avenue South. The Washington state criminal justice training commission has a fiscal office in Lacey, WA located at 3060 Willamette Drive N.E.

(2) Any person wishing to request access to public records of the Washington state criminal justice training commission, or seeking assistance in making such a request, should contact the public records officer of the Washington state criminal justice training commission:

Public Records Officer

Washington State Criminal Justice Training Commission

MS: TB-35

19010 1st Avenue South

Burien, WA 98148

Phone: 206-835-7358

Fax: 206-835-7924

E-mail: publicrecords@cjtc.state.wa.us

Information is also available at the Washington state criminal justice training commission's web site at <http://www.cjtc.state.wa.us>.

(3) The public records officer will oversee compliance with the act, but another Washington state criminal justice training commission staff member may process the request. Therefore, these rules will refer to the public records officer or designee. The public records officer or designee and the Washington state criminal justice training commission will provide the fullest assistance to requestors; create and maintain for use by the public and Washington state criminal justice training commission officials an index to public records of the Washington state criminal justice training commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington state criminal justice training commission.

[Statutory Authority: RCW 43.101.080. 05-01-109, § 139-02-040, filed 12/15/04, effective 1/15/05; 00-17-017, § 139-02-040, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-050 ((Request for)) Availability of public records. ((~~(1) Unless waived by a public disclosure officer, all requests for the disclosure of a public record must be in writing identifying the record sought with reasonable certainty. The written request may include:~~

~~(a) The name of the person requesting the record;~~

~~(b) The calendar date on which the request is made; and~~

~~(c) The nature of the request.~~

~~(2) An in-person request for disclosure shall be made during customary business hours.~~

~~(3) If the public record contains material exempt from disclosure pursuant to law, the commission must provide the person requesting disclosure with a written explanation for the nondisclosure, pursuant to WAC 137-08-130.~~

~~(4) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.~~

~~(5) Nothing in this section or elsewhere in this chapter shall be construed to require the commission to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the commission and is not required for litigation by rules of pretrial discovery.)~~ **(1) Hours for**

inspection of records. Public records are available for inspection and copying during normal business hours of the Washington state criminal justice training commission; 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Records must be inspected at the offices of the Washington state criminal justice training commission.

(2) **Records index.** An index of public records is available for use by members of the public. The index includes a list of current manuals of the Washington state criminal justice training commission, a current list of laws, other than those listed in chapter 42.56 RCW, that exempts or prohibits disclosure of specific information or records, and current Washington Administrative Code agency rules. The index may be accessed on-line at www.cjtc.state.wa.gov or at the Washington state criminal justice training commission in Burien.

(3) **Organization of records.** The Washington state criminal justice training commission maintains its records in a reasonably organized manner. The Washington state criminal justice training commission takes reasonable actions to protect records from damage and disorganization. A requestor shall not take Washington state criminal justice training commission records from Washington state criminal justice training commission offices without the permission of the public records officer or designee. Records may be available on the Washington state criminal justice training commission web site at www.cjtc.state.wa.us/. Requestors are encouraged to view the

documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records of the Washington state criminal justice training commission shall make the request in writing using the Washington state criminal justice training commission request form, or by letter, fax, or e-mail addressed to the public records officer. Each request should include the following information:

 Name of requestor;

 Address of requestor;

 Other contact information, including telephone number and/or any e-mail address; and

 Identification of the public records adequate for the public records officer or designee to locate the records.

(b) If requestors wish to inspect rather than obtain copies of records, they must indicate this preference in their requests. Pursuant to WAC 139-02-070, standard photocopies are provided at fifteen cents per page, plus postage.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-02-050, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-070 (~~((Fees--Inspection and copying.))~~) Costs for providing copies of public records. (~~((1) No fee shall be charged for the inspection of public records.~~)

~~(2) The commission shall collect a fee of twenty cents per page plus postage as reimbursement for the cost of providing copies of public records.~~

~~(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the commission.~~

~~(4) The director of the commission or his or her designee is authorized to waive any of the foregoing copying costs.))~~ (1) Costs for paper copies. There is no fee charged for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make copies, the public records officer or designee may estimate costs of copying the records, and may require a deposit of up to ten percent of all the records selected by the requestor. The public records officer or designee 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. The Washington state criminal justice training commission will not charge sales tax when it makes copies of public records.

(2) Costs for electronic records. The cost of electronic copies of records shall be the actual cost of the CD, DVD, audio or video tape, or disc.

(3) Costs of mailing. The Washington state criminal justice training commission may also charge actual costs of mailing, including the cost of the shipping container.

(4) Payment. Payment may be made by check or money order only, payable to the Washington state criminal justice training commission.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-02-070, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-090 (~~((Disclosure procedure.))~~) Processing requests for public records. (~~((1) The public disclosure officer shall review file materials prior to disclosure.~~

~~(2) If the file does not contain materials exempt from disclosure, the public disclosure officer shall ensure full disclosure.~~

~~(3) If the file does contain materials exempt from disclosure, the public disclosure officer shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption or reason applies. The remaining, nonexempt materials shall be fully disclosed.)~~ (1) Providing fullest

assistance. The Washington state criminal justice training commission is charged by statute with adopting rules which provide for how it shall "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 requestors, and provide the "most timely possible action" on public records requests. The public records

officer or designee shall process requests in the order they are received and allowing for the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection;

(b) Provide the requested records (or provide a bill for the records if applicable) to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) Deny the request, and provide a statutory explanation as to the reason for the denial.

(3) **Consequences of failure to respond.** If the Washington state criminal justice training commission 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 the failure to respond.

(4) **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. This notice is given so affected persons may seek an order from a court to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the Washington state criminal justice training commission believes that a record is exempt from disclosure and should be withheld, the public records officer or designee 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 a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the Washington state criminal justice training commission will 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 without approval from the public records officer or designee. The requestor will indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the Washington state criminal justice training commission's notification to him or her that the records are available for inspection or copying. The Washington state criminal justice training commission will notify the requestor in writing of this requirement and inform the requestor that he or she is to contact the agency 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 Washington state criminal justice training commission 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 almost identical records, which may be processed as a new request.

(7) **Providing copies of records.** After inspection is complete or in lieu of inspection, the public records officer or designee will make the requested copies or arrange for copying and provide them to the requestor.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be more practical. If, within thirty days, the requestor fails to inspect one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **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 the Washington state criminal justice training commission has completed the request and provided all available (nonexempt) records.

(10) **Closing withdrawn or abandoned request.** When the requestor 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 requestor that the Washington

state criminal justice training commission has closed the request and refile the assembled records.

(11) **Later discovered documents.** If, after the Washington state criminal justice training commission has informed the requestor that it has provided all available records, the Washington state criminal justice training commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-02-090, filed 8/4/00, effective 9/4/00.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-02-020	Definitions.
WAC 139-02-030	Public records available.
WAC 139-02-060	Disclosure to client's representative.
WAC 139-02-080	Protection of public records.
WAC 139-02-100	Qualifications on nondisclosure.
WAC 139-02-110	Records index.

Submit written comments, regarding the change(s) to a rule, to:

Sonja Hirsch, Confidential Secretary
Washington State Criminal Justice Training Commission
19010 1st Avenue South
Burien, WA 98148
Phone: 206/835-7372
Email: shirsch@cjtc.state.wa.us

Comments must be received by **Friday, May 22, 2009**

Next opportunity for public/stakeholder comments will be at CJTC on:
June 10, 2009 at 10:00 AM
19010 1st Avenue South, Burien, WA 98148