

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO

2010-01

ORDINANCE ESTABLISHING GUIDELINES FOR THE DISCLOSURE OF PUBLIC
RECORDS

WHEREAS, On November 7, 1972, the people of the State of Washington approved Initiative Measure No. 276, declaring public policy to be for the full access to information concerning the conduct of government; and

WHEREAS, Initiative Measure No. 276 is now codified as a portion of Chapter 42.56 of the Revised Code of Washington (RCW) and mandates broad disclosure of public records; and

WHEREAS, The Public Records Act (chapter 42.56 RCW) and the Attorney General's Office Model Rules (Chapter 44-14 WAC) provide Counties the guidelines to: adopt rules of procedure consistent with the intent of the Public Records Act; provide full public access to public records; protect public records from damage or disorganization; and prevent excessive interference with essential County functions; and

WHEREAS, Chapter 42.56 RCW requires all public agencies to maintain and make available a current general index of public records; and

WHEREAS, RCW 42.56.070(4) provides that if maintaining such an index would be unduly burdensome or interfere with agency operation, a County must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome; and

WHEREAS, The Kittitas County Board of County Commissioners, by passing this Ordinance, is issuing and publishing the order and stating in KCC 2.55.030(3) the reasons why a County general index of public records would be unduly burdensome; and

WHEREAS, The Kittitas County Board of County Commissioners held a public hearing on January 19, 2010 to hear public comment on the proposed public disclosure ordinance; and

WHEREAS, The Kittitas County Board of County Commissioners supports the policy of the Public Records Act in providing citizens with broad access to public records.

NOW, THEREFORE, BE IT RESOLVED that Title 2 of Kittitas County Code is amended to include the following Chapter 2.55 KCC.

KCC 2.55 Public Records Disclosure

2.55.010 Authority and Purpose.

1. Chapter 42.56 RCW, the Public Records Act ("act"), requires Kittitas County to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public records" as 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 Kittitas County.
2. The purpose of the act is to:
 - a. provide the public full access to identifiable records concerning the conduct of government, yet remaining mindful of individuals' privacy rights;
 - b. protect public records from damage or disorganization;
 - c. attempt to prevent excessive interference with essential governmental functions.
3. The purpose of these rules is to establish procedures and inform the public as to how Kittitas County ("County") will give assistance in providing full access to public records. These rules incorporate best practices for compliance with the act and are based upon the Model Rules of the Washington State Attorney General.
4. All County departments, divisions, bureaus, boards, committees, commissions and officers will follow these procedures.

2.55.020 Agency Description - Contact Information - Public Records Officer.

1. As a political subdivision of the State of Washington, the County is an agency subject to the act. The County offices, departments, bureaus, boards, committees, commissions, elected officials, and other agencies of the County are also agencies subject to the act. For the purpose of these rules, the term "County" includes any applicable County agency. The term "County agency" refers to and includes all County Offices and Departments. Any person seeking access to public records or assistance with making a public records request of the County, shall contact the public records officer of the applicable County agency. For example, when seeking records from the Kittitas County Assessor's Office, the requestor would contact the public records officer or the officer's designee at the Assessor's office. Court files and other records at the judiciary may not be subject to the Public Records Act or to this Ordinance, at least to the extent set forth in *Nast v. Michels*, 107 Wn.2d 300 (1986) and *Spokane & Eastern Lawyer v. Tompkins*, 136 Wn.App. 616 (2007), and disclosure of such records may be subject to the common law and to applicable court rules and orders. Therefore, these rules do not address access to court records.
2. A list of addresses, telephone and fax numbers of public records officers for agencies of Kittitas County are posted on the County's website.
3. The applicable public records officer or designee will oversee compliance with the act and facilitate identification of records which are available for disclosure. The term "designee" is included in the term "public records officer" and herein incorporated by reference for the purpose of these rules.

2.55.030 Availability of Public Records.

1. **Records available on County Website.** Many records are available on the Kittitas County website. Requesters are encouraged to view any documents available on the website before submitting a records request.
2. **Hours for Inspection of Records.** Public records are available for inspection and copying during the County's normal business hours and may be viewed at the County agency holding such records.
3. **Records Index.**
 - a. **General County Records Index.** No general County records index exists. The Kittitas County Board of County Commissioners finds that maintaining a general index is unduly burdensome and would interfere with agency operations for the County and its agencies. Kittitas County employees generate hundreds of records on a daily basis that include final opinions and orders made in the adjudication of cases, 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. Virtually every County agency would be required to devote at least one full-time employee 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 records are forwarded to the designated employees for indexing and communicating with the designated employee regarding the purposes of the records would be substantial. Due to the lack of available resources to devote to such an endeavor, creating an index would be unduly burdensome and would unduly interfere with agency operations.
 - b. **County Agencies Records Index.** Any indexes County agencies have created for departmental use must be provided.
4. **Protection of Records.** The County will take reasonable steps to protect records from damage and disorganization. A requester shall not take original records from County offices.
5. **Backup and security copies.**
 - a. In order to prevent excessive interference with essential functions of the County, the County shall not search backup or security systems for copies of public records when the originals of such records have been identified, located and are available for inspection and/or copying.
 - b. Access to public records does not include access to County computer systems or terminals except for those terminals, if any, which may be specifically designated for public use.

2.55.040 Making a Request for Public Records.

1. Persons wishing to inspect or obtain copies of public records of any County agency shall make the request in writing using the County's standard request form and deliver it by U.S. mail, fax, email, or in person. The requester can also fill one out at the applicable County agency. The form shall be made available at each County agency and on-line at the County's website. The request should be addressed to the public records officer of the applicable County agency. The public records officer will document any requests received verbally. Any verbal requester will receive a copy of this County policy along with the responsive documents to the request. All requests should 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 description of the public records adequate to locate the records;
 - e. date and time of day of the request; and
 - f. signature of the requester.
2. Persons seeking public records for inspection and copying from a County agency may seek assistance from the public records officer of the applicable department.
 3. If the requester wishes the County to make copies of the records instead of simply providing for inspection, the requester shall so indicate and shall make arrangements to pay for the copies. The requester shall pay a deposit of 10 percent of the copy cost estimated by the public records officer for large requests. Fees are set pursuant to KCC 2.55.070.
 4. Persons seeking public records that include a list of individuals must sign a declaration under penalty of perjury certifying that the records will not be used for any commercial purpose (profit-expecting activity) prohibited by RCW 42.56.070(9) unless otherwise specifically authorized by other law. If the requester does not sign the declaration, the County will not provide the list.
 5. Persons requesting public records prohibited from disclosure by other laws under particular circumstances must sign a declaration under penalty of perjury certifying facts sufficient to convince the public records officer that legal requirements for disclosure have been met.

2.55.050 Processing of Public Records Requests - General.

1. **Acknowledging Receipt of Request.** Within five (5) business days of receiving a request, the public records officer will do one or more of the following:
 - a. Make the records available for inspection or copying;
 - b. Provide in writing and mailed, emailed, or delivered to the requester, a reasonable estimate of time when records will be available;
 - c. Ask for a clarification from the requester if a request is unclear or does not sufficiently identify the records. Such clarification may be sought and provided by telephone, but it is desirable to confirm such clarifications in writing. The public records officer may revise the estimate of when records will be available based on this clarification;
 - d. Deny the request, in whole or in part, with a written explanation as to why the request was denied.
2. **Failure to Respond.** The County intends to comply and honor all public disclosure requests to the greatest extent possible. If the County has failed to respond to a request for public disclosure, agencies would like citizens to let the designated public records officer know so the County can have the opportunity to provide the information that is wanted.
3. **Protecting Rights of Others.** In the event that the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to those third parties. Such notice should be given to make it possible for those affected persons to either:
 - a. contact the requester and ask him or her to revise the request; or
 - b. 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.

4. **Records Exempt from Disclosure.** Some records are exempt or prohibited from disclosure by law, either in whole or in part. If the County believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption for withholding the record or the portion of the record. If only a portion of a record is exempt from disclosure but the remainder is not, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requester why portions of the record are being redacted.
5. **Inspection of Records.**
 - a. Consistent with other demands, the County shall promptly provide space to inspect public records.
 - b. The County agency will notify the requester that he or she should contact the agency to make arrangements to claim or review the records. If the requester fails to:
 - (i) claim or review the records within a 30-day period; or
 - (ii) make other arrangements satisfactory to the County, the County may close the request and re-file the assembled records.
6. **Providing Copies of Records.** After inspection is complete, the public records officer will provide the requested copies or arrange for copying upon a deposit of at least 10 percent of the estimated copy cost.
7. **Providing Records in Installments.** If a request is for a large number of records, the public records officer may inform the requester that the records will be provided for inspection and copying in installments. Copy charges of the preceding installment will be paid completely before the next installment is produced. If, within 30 days of availability to the requestor, the requester fails to:
 - a. inspect the entire set of records or one or more installments; or
 - b. pay the balance of the copying cost of any installment,

the public records officer may discontinue any remaining search and close the request. The requester will be notified that due to the failure to respond to the readied documents responsive to the request, the public disclosure request will be closed and the requester may submit a new request if desired.
8. **Closing Withdrawn or Abandoned Request.** When the requester either:
 - a. withdraws the request; or
 - b. fails to inspect the records; or
 - c. fails to pay the required deposit or final payment,

the public records officer will close the request and so inform the requester. Subsequently, the County will not provide any copies to the requester until the requester has paid any unpaid bill for previously requested copies.
9. **Later Discovered Documents.** After the County has provided all available records, if the County becomes aware of additional responsive documents that existed at the time of the request, it will promptly inform the requester of the additional documents and provide them on a reasonable basis. The County is not obligated by law to provide records that were created after the request nor will the County accept or treat a request as an on-going disclosure obligation beyond the date of request.

10. **Protection of Records and Essential Governmental Functions.**
- a. Public records shall be made available without disrupting essential functions of the agencies. Any County employee who believes responding to a public records request will excessively interfere with other essential agency functions shall consult with his or her supervisor.
 - b. 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.
 - c. With regard to copying, prearrangement is recommended so that it can be accommodated within other requirements of the work schedule. The precise time must remain flexible and will depend upon the work schedule for that day.
 - d. With regard to video or audio recordings, the requester must make prior arrangements for review. A staff member will be assigned to operate the County recording equipment necessary to either listen to or rerecord the original recording tape to protect originals. 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.
 - e. Review of other original records shall be done only in the immediate presence of and under the supervision of a County 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.

2.55.060 Exemptions.

1. The act provides exemptions for certain types of documents from public inspection and copying. In addition, documents are exempt from disclosure if any other Washington statute exempts or prohibits disclosure. Exemptions outside the act that restrict the availability of some documents held by the County for inspection and copying include, but are not limited to, those set forth for in the most recent list posted on the web site of the Municipal Research Service Center, www.mrsc.org/Publications/pr09.pdf, Appendix C, and which is incorporated herein by reference. The list is available for inspection and copying from the applicable public records officer.
2. The County is prohibited by statute from disclosing lists of individuals for commercial purposes.
3. If the public records request falls within one of the exceptions to the law requiring disclosure, a formal written request for the record must be made. The formal written request helps the County make sure that its decision to disclose or withhold a public record is made properly and that the requester obtains the appropriate public records.
4. Some of the records of the County are protected by the attorney-client privilege and/or the attorney work product doctrine. The Prosecuting Attorney, in the course of representing County elected officials or agencies may, at times, possess materials or copies of materials from such agencies that are exempt from disclosure.
5. Pursuant to RCW 42.56, when the County makes available or publishes any public record, it reserves the right to delete identifying details when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by law. The public records officer will explain such deletion in writing.

2.55.070 Costs of Providing Copies of Public Records.

1. No fee will be charged for the inspection of a public record.

2. No fee will be charged for searching for public records, redacting portions of the record which are exempt from disclosure, or preparing an index of exempt documents.
3. If a request is sent to a private copy shop for copying, the fee shall be the actual charge imposed for copying, plus applicable taxes and shipping costs.
4. Payment shall be made by exact cash or by check/money order payable to "Kittitas County." The public records officer may require that all charges be paid in advance of the release of the copies.
5. The public records officer may waive the fee for pages fewer than what is the applicable County agency's minimum page limit where the request was submitted.
6. The fee for providing copies of certain public records may be set by state statute or County ordinance. For example, state law sets the fee for death certificates (RCW 70.58.107); court papers (RCW 3.62.060) (Chapter 36.18 RCW and CR 17(4)); duplication of electronic tapes of a court proceeding (RCW 3.62.060); traffic accident reports (RCW 46.52.085); criminal history information (RCW 10.97.100); and various fees of County Officers (RCW 36.18). Kittitas County Code sets fees for recording certain documents with the Auditor's Office (KCC 2.56). Where County code, state or federal law sets a fee for providing a copy of a record, that fee will be charged.
7. At the option of the public records officer, electronic records may be printed out prior to copying and delivery. If the electronic record is large and not capable of being printed out, then the document may be provided electronically in the format in which the record is maintained by the County or in Adobe PDF format. There is no obligation of the County to convert an electronic record to a different format.
8. **Fee Schedule.** Unless a fee is fixed by another federal, state or county ordinance, the following fee schedule is applicable:
 - 8-1/2 by 14 or smaller B/W copies: \$0.15 per page
 - 8-1/2 by 14 or smaller B/W computer printouts \$0.15 per page
 - Oversized or color copies/computer printouts \$1.00 per page
 - Color maps \$5.00 per square foot
 - All items sent to private copy shop: Actual charge plus postage and delivery
 - Tapes or compact disc \$1.00 for each tape or compact disc plus the time for copying the information
 - DVD \$1.50 for each DVD plus the time for copying the information
 - Postage is actual charge for mailing copies of requested records
 - Fax (8-1/2 by 11 only) \$1.00 per page
 - Envelopes \$1.00 each
 - Electronic records sent by e-mail No charge*

* except, a scanning fee of \$0.10 per page may be charged when the requested documents are not already available in electronic format
9. **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. In addition, there shall be a \$.10 per page conversion charge to convert documents into a PDF.
10. **Costs of Mailing.** The County will also charge actual mailing costs, including the cost of the shipping container or envelope if the requester requests mailing.

11. **Waiver of Payment.** The County may waive the cost of copying and mailing.
12. **Outside Contracts for Copying.** The applicable agency may arrange for copying by County contractors charged with preserving and protecting public records, instead of copying requested records using County services. In such event, the cost of copying shall be the contract charges, and such charges shall be paid by the requester directly to the County. The requester must pay the copy estimate first before copying will take place. 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.
13. **Repetitive Contracts.** The Kittitas County Board of County Commissioners 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 Chapter, but shall not supersede or conflict with applicable state law.

2.55.080 Review of Denial of Public Records.

1. **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 Prosecuting Attorney's Office for a review of the decision. When applicable, the petition should include a copy of or reasonably identify the written statement by the public records officer denying the request.
2. **Consideration of Petition of Review.** The public records officer shall promptly provide any relevant information to the Prosecuting Attorney's Office to review the decision. The Prosecuting Attorney's Office shall either affirm or reverse the denial within five business days following the receipt of the petition, or within such other time as is mutually agreeable to the County and the requester. The requester shall waive the accrual of RCW 42.56.550 damages during this review period.
3. **Judicial Review.** Any person may obtain judicial review of a public records request denial pursuant to RCW 42.56.550 at the conclusion of the five business days following the initial denial regardless of any internal administrative appeal.

2.55.090 Disclaimer of Liability.

Neither the County nor any officer, employee, official or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon a release of Public Records if the person releasing the records acted in good faith in attempting to comply with this policy.

This policy is not intended to expand or restrict the rights of disclosure or privacy as they exist under state and federal law. Despite the use of any mandatory terms such as "shall," nothing in this policy is intended to impose mandatory duties on the County beyond those imposed by state and federal law.

2.55.100 Severability.


If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter or the application of the Chapter to other persons or circumstances shall not be affected.

ADOPTED this 19th day of January 2010.

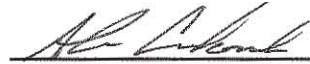
**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**



Mark McClain, Chairman



Paul Jewell, Vice-Chairman



Alan Crankovich, Commissioner

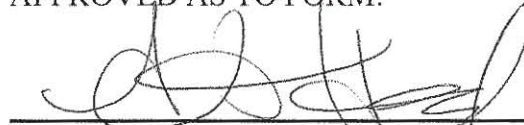


CLERK OF THE BOARD



Julie A. Kjorsvik

APPROVED AS TO FORM:



Stephanie Happold, Deputy Prosecuting Attorney
WSBA#38112