



**Snohomish County
Auditor's Office**
Performance Audit Division

AUDIT FOLLOW UP: PUBLIC DISCLOSURE

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1 BACKGROUND

This performance audit on the public disclosure process was completed in March of 2005. It was requested by the past Chair of the Public Disclosure Committee (PDC) as a result of concerns about the “unfunded mandate” presented by state public disclosure laws and what were perceived to be growing financial impacts on the County. The audit found:

- In 2004 \$1.4 million was spent on formal and informal public disclosure requests
- Public disclosure requests have tripled since 2001
- There is inconsistent adherence to some laws and procedures

Public Disclosure Model Rules

At the end of 2005 the Washington State Attorney General developed new model rules¹ for public disclosure and recommended that they be adopted by local governments.

Public Records Act

In 1972 the voters in Washington State adopted Initiative 276, which required that most records maintained by state, county, and city governments be made available to members of the public. As of July 2006, the latest revisions of the disclosure statutes are found in RCW 42.56 and are now referred to as the Public Records Act.

¹ WAC 44-14 Public Records Act – Model Rules

Terminology

In the initial audit report, Public Disclosure Officer (PDO) referred to the individuals in each department who were responsible for responding to public disclosure requests. The individuals who were before referred to as PDOs are now referred to as Public Records Specialists (PRS). In addition, the model rules now refer to a county's lead public disclosure agent as the Public Records Officer (PRO). Snohomish County's PRO is the Director of the Department of Information Services. "The committee" in this document refers to the Public Disclosure Committee.

Color Coding

The Office of Performance Audit Services uses the following color system to show progress on audit recommendations:

	The audit recommendation has been addressed or the issue has been resolved by alternate means.
	Resolution of this audit recommendation has been initiated or clear plans are in place to resolve the issue.
	No progress has been made toward addressing the recommendation.

2 OBJECTIVES, SCOPE, AND METHODOLOGY

The purpose of this audit follow up is to determine if the recommendations made by the Performance Auditor in the Public Disclosure Audit were addressed.

We obtained this information through:

- Review of draft County public disclosure policies and procedures
- Review of WAC 44-14: Public Records Act—Model Rules
- Meetings and email correspondence with County officials

3 FOLLOW UP

The Department of Information Services and Public Disclosure Committee Members have addressed the primary issues raised by the performance audit. Four of the six recommendations were fully addressed. Of the two recommendations that were partially addressed, one is a long term goal for which groundwork is currently being laid. A summary of recommendation accomplishment is shown in the chart below:

Rec Number	Was the recommendation addressed?
1	Informational
2	Yes
3	Yes
4	Yes
5	Yes
6	Partial
7	Partial

The recommendations are summarized in the descriptions below. Complete language of the recommendations can be found in Appendix A.

3.1 Policy, Procedure, and Code – Recommendation 2

This recommendation was partially addressed. The audit recommended that ten changes and/or clarifications be made in policy and procedures or Snohomish County Code.

Consistent use of forms	Require attendance at training and activities
Clarify when referral to the Prosecuting Attorney is appropriate	Charge mailing costs
Calculate, justify, and post fees for non-standard copying	Notify owners of proprietary information when requested through public disclosure
Add policy regarding requested materials scheduled for destruction	Clarify policy regarding using non-county duplication equipment
Clarify policy regarding electronic records	Conduct training with any changes in policy or code

The actions taken by Snohomish County on these issues are as follows:

- Consistent Use of Forms- Standardized request forms are available to all PRSs. Public disclosure requests are delivered to the County by email, telephone, fax, letter, or in-person. The committee reports that new policy will require PRSs to put verbal requests in writing using the appropriate request form and to forward the request to the responsible department. The committee does not require that written requests be duplicated on forms provided that all the information required to fulfill the request is included in the written request.
- Referral to the Prosecuting Attorney- This has not been written into code or policy, but the issue has been addressed by other means. Deputy Prosecuting Attorneys state that referrals to their office have been more targeted. They believe that this may have improved for two reasons; first, PRSs have more depth of experience since the original audit, and

second, public disclosure scenarios are frequently reviewed in committee meetings.

- Non-Standard Copies- Many departments have the cost and justification posted on counters or listed on websites. For non-standard items the cost of the item itself is charged. This may vary across departments depending on the equipment used to produce the item. The committee is revisiting this issue to ensure standardization.
- Requested Materials Scheduled for Destruction- Draft policies and procedures include steps for dealing with items that are scheduled for destruction.
- Electronic Records- Electronic records have not been addressed in the draft policy. The committee reports that a document is provided in electronic format unless it is unduly cumbersome to do so.
- Attendance- The auditors withdraw this recommendation. According to the committee, attendance is still high. No requirements for attendance are in place in policy or County Code.
- Charge Mailing Costs- The new model rules state that mailing costs are to be charged to the requestor.
- Notify Owners of Requested Proprietary Information- The committee notes that it is common practice for owners of proprietary information to be notified before the information is released to the public. It has not yet been added into County Code or the draft policies and procedures but is being reviewed by the Prosecuting Attorney.
- Non-County Duplication Equipment- This issue is not specifically addressed in policy or code. According to the committee, duplication equipment in the form of digital cameras and other portable devices not requiring a power supply may be brought in by the requestor.
- Training- A training sub committee has been established to ensure that PRSs are well informed and sufficiently trained.

3.2 Nonspecific Public Disclosure Requests – Recommendation 3

PRSs have addressed the recommendation aimed at ensuring that requests are sufficiently specific. Draft policies and procedures state that clarification regarding the requests should be made. According to the committee, PRSs often communicate with requestors before disclosure requests are filled for clarification of questions and identification of required documents. The training sub-committee has been formed to develop better procedures to reduce liability for interfering with the person's request.

3.3 Cost of Requests – Recommendation 4

PRSs have addressed the audit recommendation focused on providing initial cost estimates to requestors. According to the committee, copy cost information is provided to requestors at the time of the request. The requestor is also informed that they may inspect the records at no charge.

3.4 Multiple Department Requests – Recommendation 5

The PRO and PRSs have addressed the recommendation regarding coordination of requests where information may be dispersed across departments. According to draft policies and procedures all formal disclosure requests are to be forwarded to the PRO and any departments that may need notification. The PRO coordinates and appoints a lead agency for multi department requests.

3.5 Records – Recommendation 6

The PRO has partially addressed the recommendation aimed at beginning activity toward a comprehensive records management system. These activities should include development of records policy, staff training, and organization of existing records. Steps have been taken in this direction and there is a long term plan for comprehensive records management.

3.6 Time Spent – Recommendation 7

The committee has partially followed the audit recommendation concerning record keeping. Records are kept to varying degrees of specificity from department to department. Tracking of the total number of requests made to different departments by month and by quarter are centrally kept, but time spent is not tracked.

3.7 State-Level Legislative Actions – Recommendation 1

This recommendation was intended to be items for consideration rather than actions recommended for implementation. The County has not actively sought legislative change to date but is still considering doing so. The audit recommended that Snohomish County consider six areas:

Mitigate "Nuisance" Requests	Judicial vs. Public Disclosure Processes
Allow Non-Refundable Deposits	Clarify "Draft" and "Index"
Allow Charges for Staff Time	Add Exemptions

Snohomish County adopted RCW 42-56 through Amended Ordinance 06-019, effective July 1, 2006, which addresses some of the recommendations for change made in the initial report:

- "Nuisance" Requests- According to the model rules it is not permissible for Public Records Specialists to refuse requests for being too broad in scope.
- Non-Refundable Deposits- The model rules allow for deposits, but not non-refundable deposits.
- Charging for Staff Time- The model rules prohibit charging for staff time on top of the charge per copy.

Areas recommended for legislative action not addressed by the model rules include:

- Judicial vs. Public Disclosure in Ongoing Litigation- This was not addressed by the model rules or by the County.
- Clarify “Draft” and “Index”- Although the model rules further explained many of the terms used in the RCW, these two terms were not clarified.
- Add Exemptions- The exemptions recommended in the audit were not addressed by the model rules and are expanded on a case by case basis.

4 APPENDICES

4.1 Appendix A

Recommendation 1

There are many opportunities to clarify, modify or add to the current RCWs that govern public disclosure. We recommend that the Executive and Council evaluate these opportunities and begin to draft and/or support legislation in the next session.

- Develop a viable process to seek relief from nuisance requests in the courts.
- Allow for a non-refundable deposit for copy requests in some circumstances.
- Allow counties to charge for staff time searching and preparation of documents.
- In ongoing litigation, assure that the judicial process is used in lieu of public disclosure processes.
- Clarify:
 - The definition of “draft” as used in RCW 42.17.310(i)²
 - The scope of an “index” as stated in RCW 42.17.260
- Add the following exemptions:
 - Protect intellectual property of non-employees
 - Strengthen sanctions for violation of non-commercial use of information gathered through PDRs
 - Protect addresses of all citizens in some cases, not just employees
 - Protect employee photos from disclosure
 - Protect phone and email requests and other sensitive information for employees who are DV victims

Recommendation 2

- Require attendance at Public Disclosure Committee trainings and activities in order to continue to build skills and maintain consistency. It should be noted that attendance at committee meetings is currently high and that PDO commitment to the public disclosure process is highly regarded.
- Public disclosure forms should be consistently used for formal PDRs. Snohomish County Code (SCC) 2.51.050 states that, “All requests for public records shall be made by completing a form that is substantially similar to that provided by the Executive.” Executive Procedure #3 states that forms, “should be used whenever possible.” Currently, staff do not consistently use these forms.

² Ordinance 2.51.120 was adopted by Snohomish County Council on 1-31-05 exempting the County from maintaining indexes.

- Describe which PDRs should be referred to the Prosecuting Attorney and when.
- Calculate, justify and post the fees to be charged for non-standard items such as color copies, copies larger than 8.5x11, CDs, tapes, DVDs, maps, and photos.
- Require that mailing costs be charged.
- Require that the owner of proprietary information be notified before the information is released by the County to allow them time to take the issue to court if they wish.
- Clarify policy regarding electronic records and the provision of records to requestors in electronic formats.
- Determine if it is allowable for requestors to bring their own duplication equipment onto County premises.
- RCW 42.17.290 requires that if a document has been requested but is scheduled for destruction it must be held and may not be destroyed until the issue has been resolved. A policy and procedure should be developed to meet this mandate.

Any changes to policy, procedure and County Code should be followed by ongoing training for PDOs.

Recommendation 3

As some departments are currently doing, staff should assist requestors in completing the public disclosure forms in person or by phone or email contact. Staff can determine the specific question and assist requestors in targeting the documents that will most efficiently and pointedly respond to their questions. Narrowing of requests should be put in writing by the requestor. During this process, PDOs should never refuse a request or question the requestor's need for or motivations regarding requested information. Further training is needed to avoid increasing liability exposure in this process.

Recommendation 4

As many departments are already doing, PDOs should make personal, phone or email contact with requestors prior to responding to requests to estimate for the requestor the volume of the documents requested and the cost for duplication of those records. SCC 2.51.100 allows for advance charging for records. In large volume requests the PDO should require, at minimum, a deposit for records copied. PDOs should also inform the requestor that records will be made available for inspection at no cost.

Recommendation 5

As sometimes occurs, all formal PDRs other than "specific" requests should be announced in a group email to the PDOs of each department/office. If the same request has gone to multiple parties or if responsive documents reside in two or more departments/offices a "lead" PDO should be identified to coordinate all communication, correspondence, timeliness and documentation for the request.

Recommendation 6

We recommend that Snohomish County Council and Executive focus on development of a comprehensive records management system. Governing code and policy/procedure should be developed and work should begin including all departments to train staff and pull records into a cohesive system.

Recommendation 7

Two PDOs, the Prosecuting Attorney's Criminal Division and Public Works have been keeping detailed time logs. Many other PDOs have been keeping good records that do not include time calculations. If PDOs collected this data carefully for two years the County could make some informed decisions regarding the structure of the public disclosure system and budgeting/planning for these costs.