

**Joint Board Meeting
March 11, 2019**

Action Item: Approve ORCA Public Records Disclosure Policy Revisions

Background: Per the ILA Section 4.1.1.7 the agencies will respond to public disclosure requests, as required by the Public Disclosure Act (RCW 42.56), and coordinate agency responses with other agencies and the Regional Program Administrator pursuant to guidelines adopted by the Joint Board.

The Joint Board adopted the ORCA Public Records Disclosure Policy on September 12, 2011, and approved revisions on October 10, 2016, and on November 13, 2017.

The current proposed revisions update agency and regional responsibilities.

These revisions have been through legal review.

Recommendation: The Site Managers recommend approval of the revised ORCA Public Records Disclosure Policy, attached hereto.

ORCA Public Records Disclosure Policy

This policy is adopted by the Joint Board pursuant to Section 4.1.1.7 of the 2009 Amended and Restated Interlocal Cooperation Agreement (“Interlocal Agreement”) for implementation by the Agencies who are participants in the ORCA Regional Fare Coordination Program.

1. PURPOSE

- 1.1. To establish an ORCA Public Records Disclosure Policy that creates standard procedures for the coordination and fulfillment of public disclosure requests relating to the ORCA program.
- 1.2. To establish a consolidated log managed by the ORCA Regional Program Administrator (RPA) to record the request and the subsequent actions in executing public disclosure requests relating to the ORCA program.
- 1.3. To confirm that each Agency that receives a request for disclosure of ORCA-related records is responsible for responding to the request and assumes all costs, penalties, attorney's fees and liabilities arising from its acts and omissions related to the request as provided in Section 15.4 of the Amended and Restated Interlocal Cooperation Agreement.
- 1.4. [To confirm that each Agency that receives a request to fulfill a public disclosure request from the RPA or designee, will provide assistance and/or documentation within the agreed timeline for any such request.](#)

2. REFERENCES

- 2.1. RCW 42.56 Washington State Public Disclosure Act
- 2.2. ORCA Amended and Restated Interlocal Cooperation Agreement, dated April 14, 2009
- 2.3. ORCA Records Management Policy and Procedure

3. DEFINITIONS

- 3.1. “Agencies” mean those transportation agencies who are current signatories to the Amended and Restated Interlocal Cooperation Agreement including: Everett Transit, Community Transit, King County Metro, Kitsap Transit, Pierce Transit, Sound Transit and Washington State Ferries.
- 3.2. “Amended and Restated Interlocal Cooperation Agreement” (or “Interlocal Agreement”) means the agreement dated April 14, 2009 between the Agencies for the development, operation and maintenance of the Regional Fare Coordination System known as “ORCA.”

- 3.3. "ORCA Records Center" means the electronic website for accessing electronic copies of ORCA Regional Records that is created and maintained under this Policy.
- 3.4. "ORCA Regional Program Administrator" (RPA) means the person designated and authorized by the ORCA Joint Board that performs the duties of the ORCA Regional Program Administrator under the 2009 Amended and Restated Interlocal Cooperation Agreement between the Agencies.
- 3.5. "ORCA Regional Records" mean the ORCA records managed by the ORCA Regional Program Administrator and may include any paper, email, voicemail, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, meeting current industry International Organization for Standards (ISO) specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, as defined in RCW 42.56.010(3) and (4), that have been made by or received by the ORCA program or by the Agencies. ORCA Regional Records maintained on the ORCA Records website include primary records submitted by the ORCA Regional Program Administrator and secondary record copies submitted by the Agencies.
- 3.6. "Public Disclosure Request" means, as required by Washington State Law (RCW.42.56), that upon request, identifiable public records be made available for public inspection and copying.
- 3.7. "Public Disclosure Request Log" means the tracking mechanism maintained by the ORCA Regional Program Administrator to the ORCA Records Center to track ORCA-related Public Disclosure Requests. [ORCA-related Search Warrants or Subpoenas are also tracked in this log.](#)
- 3.8. "Public Records Officer" or "Public Disclosure Officer" means the formally identified representative from each Agency who is responsible for receiving, coordinating and responding to all public disclosure requests addressed to the Agency.

4. SCOPE

- 4.1. This Policy applies to the ORCA Regional Records managed by the ORCA Regional Program Administrator. The ORCA Regional Records do not include all ORCA records that are kept by the Agencies.
- 4.2. Pursuant to Section 17.12 of the Amended and Restated Interlocal Cooperation Agreement, each Agency will be responsible for responding to public disclosure requests addressed to the Agency in accordance with the Public Disclosure Act (RCW 42.56).
- 4.3. Each Agency that receives a request for disclosure of ORCA-related records is responsible for responding to the request and assumes all costs, penalties, attorney's fees and liabilities arising from its acts and omissions related to the request. Provided, however, such costs, penalties, attorney's fees and liabilities will be shared by all

Agencies if an Agency acts in good faith and the Joint Board authorizes a sharing among all Agencies.

- 4.4. The Agencies will strive to provide responses to requests for ORCA-related records that are lawful regardless of which Agency receives the request. To that end, each Agency and its Public Records Officer will coordinate record requests received by the Agency with the RPA who shall, among other functions, serve as an information resource for Agencies considering requests for ORCA-related records.
- 4.5. The RPA will maintain a log of all public disclosure requests received for ORCA Regional Records, and assist the other Agencies in responding to public disclosure requests for ORCA Regional Records as provided in this Policy.

5. GENERAL PROCEDURES

- 5.1. Public Disclosure Requests will continue to be managed by the Agency to which the disclosure request is addressed. The receiving Agency will be responsible for ~~coordinating~~ the response and fulfillment of the request, including coordination with the RPA, if needed, for any unless the requestor agrees to allow the request to be handled by the RPA, and if the version of the documents maintained requested in the ORCA Regional Records Center.
- 5.2. The RPA will coordinate the ORCA regional response to ORCA-related public disclosure requests received by Sound Transit or in the event by an Agencyies requests assistance with a regional ORCA response. If a request is transferred from receiving Agency to another Agency for response, the requester must be notified.
- 5.3. The RPA will maintain ~~and establish~~ a consolidated tracking mechanism on the ORCA Records Center ~~to track the status of for~~ all requests ~~made~~ where a regional response is necessary. The Agencies are responsible for submitting applicable responses to the RPA for tracking in the Public Disclosure Request Log.
- 5.4. The formal response to the requestor of the public disclosure request will be coordinated through each Agency's identified Public Records Officer. The RPA may communicate with the receiving Agency regarding the disclosure of the record and will coordinate with their respective legal counsel if necessary.

6. ROLES AND RESPONSIBILITIES

6.1. Agencies

6.1.1. If a records request is directed to an Agency, the Agency's identified Public Records Officer or representative as directed by the Public Records Officer, shall:

6.1.1.1. Send the required "5 day letter" to the requester.

6.1.1.2. Conduct a search for responsive records within the Agency.

- 6.1.1.3. [When applicable, c](#)Consult with the RPA to determine if same or similar requests have been the subject of another Agency's response and determine potential issues or exemptions that might be asserted.
- 6.1.1.4. If there are any privacy issues associated with the release of the record, the Agency handling the request will consult with legal counsel to determine if the record sought is exempt under RCW 42.56.330(5) or other state law and whether the record should be withheld from disclosure.
- 6.1.1.5. If there are any security issues associated with the release of the record, consult with the RPA and appropriate staff. If a security issue is identified, the Agency handling the request will consult with legal counsel to determine if the record sought is exempt under RCW 42.56 or other state law. If the Agency determines that no exemption applies and the disclosure of a record is deemed a security risk, the other Agencies shall be notified and the Agencies may ask the Joint Board to make a risk sharing decision under Section 4.3 or Section 6.2.3.
- 6.1.1.6. After a disclosure is made, the Agency will provide the RPA with the list of documents that have been disclosed for the Public Disclosure Request Log.

6.1.2. If agreed to by the [RPA and the](#) requestor, the request may be transferred to [Sound Transit's Public Record Officer](#) ~~the RPA~~ for handling. Otherwise the Agency will respond within the established time limits in a manner that is consistent with the law and these procedures.

6.1.3. An Agency may be contacted by the RPA to assist in responding to a public disclosure request directed to another Agency.

6.2. ORCA Regional Program Administrator

[6.2.1. The RPA will review ORCA-related Public Record Requests submitted to Sound Transit to determine if the response will be:](#)

[6.2.1.1.1. Handled by the RPA as a regional response, or,](#)

[6.2.1.1.2. Redirected for handling by an Agency or agencies as agency-specific response.](#)

~~6.2.1.~~[6.2.2.](#) The RPA will establish a log of all previous public disclosure requests and the responses made by the Agencies. The log will be maintained on the ORCA Records Center SharePoint site, and made available to the Agencies.

~~6.2.2.~~[6.2.3.](#) The RPA will consult with legal counsel and determine if there are any issues and resolve those issues within the time established by the Agency for a

response. If the RPA does not identify a potential issue, the Agency may proceed to respond to the requester.

~~6.2.3.~~6.2.4. If the RPA or their legal counsel identify a potential issue related to the security of the ORCA system or a litigation risk, they shall confer amongst themselves and with other Agency attorneys and agree on a resolution. If a legal issue arises that cannot be resolved by the Agency attorneys, the attorneys may communicate with the Joint Board. The Joint Board may agree to indemnify and cover the expenses of the Agency who becomes involved in litigation concerning the request.

~~6.2.4.~~6.2.5. The RPA may conduct training and develop additional business procedures for implementing this Policy.

6.3. Vendor's Materials

6.3.1 If the request is for a document or portion of a document created by a third-party vendor, which may be covered by a statutory trademark or trade secret exemption, the vendor should be notified and given the opportunity to respond to the request. The vendor will be allowed to redact information that reasonably fits within the available statutory exemptions under RCW 42.56, the Public Disclosure Act, or other applicable law. The RPA will consult with legal counsel in determining whether the information is exempt. If it is determined that a requested redaction is not supported by a statutory exemption, the vendor will be notified and given an opportunity to bring an action for a protective order.