

**Joint Board Meeting
May 9, 2022**

Action Item: Approve ORCA Public Records Disclosure Policy

Purpose: The purpose of the ORCA Public Records Disclosure Policy is to establish standards for the coordination and fulfillment of public disclosure requests relating to the ORCA system.

Background: Features of this policy include centralized tracking of ORCA-related public records requests and establishment of roles and responsibilities of the ROOT and ORCA Agencies.

Pursuant to this policy, public records requests will continue to be managed by the Agency to which the disclosure request is addressed, and the ROOT will coordinate the regional response to ORCA-related public disclosure requests received by Sound Transit or in the event an Agency requests assistance with a regional ORCA response.

Recommendation: The ORCA Director and Business Managers recommend approval of the ORCA Public Records Disclosure Policy for the ORCA system operations.

ORCA Public Records Disclosure Policy

This policy is adopted by the Joint Board pursuant to Section 4.4.15 of the ORCA System Interlocal Cooperation Agreement (“Interlocal Agreement”) for implementation by the Agencies who are participants in the ORCA regional fare system.

1.0 PURPOSE

- 1.1. To establish an ORCA Public Records Disclosure Policy that creates standards for the coordination and fulfillment of public disclosure requests relating to the ORCA system.
- 1.2. To establish a consolidated log managed by the ROOT to record the request and the subsequent actions in executing public disclosure requests relating to the ORCA system.
- 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.
- 1.4. To confirm that each Agency that receives a request to fulfill a public disclosure request from the ROOT will provide help and/or documentation within the agreed timeline for any such request.

2.0 REFERENCES

- 2.1. RCW 42.56 Washington State Public Records Act
- 2.2. ORCA System Interlocal Cooperation Agreement, dated June 13, 2019
- 2.3. ORCA Records Management Policy and Procedure

3.0 DEFINITIONS

- 3.1. “Agencies” mean those transportation agencies who are current signatories to the ORCA System Interlocal Cooperation Agreement including: City of Everett, Community Transit, King County, Kitsap Transit, Pierce Transit, Sound Transit and Washington State Ferries.
- 3.2. “myORCA Portal” means the intranet site for accessing electronic copies of most ORCA Regional Records that is created and maintained under this Policy.
- 3.3. “Lead Agency for Business Accounts” means the agency designated under the Master Agreement (Business Accounts), as approved by the Joint Board.
- 3.4. “ORCA System Interlocal Cooperation Agreement” (or “2019 Interlocal Agreement”) means the agreement dated June 13, 2019 between the Agencies for the development, operation and maintenance of the regional fare system known as “ORCA.”
- 3.5. “ORCA Regional Records” mean the ORCA records managed by the ROOT 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 myORCA Portal include primary records submitted by the ROOT 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 ROOT on the myORCA Portal to track ORCA-related Public Disclosure Requests. ORCA-related court orders including 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 and the ROOT who is responsible for receiving, coordinating, and responding to all public disclosure requests addressed to the Agency or the ROOT.
- 3.9. "Regional ORCA Operations Team (ROOT)" means the centrally managed dedicated team responsible for planning, administration, management, and operations of the ORCA system.
- 3.10. "ROOT Public Records Officer" means the Regional Business Manager designated to manage regional ORCA public record requests under the ROOT Operations Agreement.

4.0 SCOPE

- 4.1. This Policy applies to the ORCA Regional Records managed by the ROOT. The ORCA Regional Records do not include all ORCA records that are kept by the Agencies.
- 4.2. Pursuant to Section 16.10 of the Interlocal Agreement, each Agency will be responsible for responding to public disclosure requests addressed to the Agency in accordance with the Public Records 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 ROOT's Public Records Officer who shall, among other functions, serve as an information resource for Agencies considering requests for ORCA-related records.

- 4.5. The ROOT 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.

5.0 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 the response and fulfillment of the request, including coordination with the ROOT if needed, for any documents maintained on the myORCA Portal.
- 5.2. The ROOT will coordinate the regional response to ORCA-related public disclosure requests received by Sound Transit or in the event an Agency requests assistance with a regional ORCA response. If a request is transferred from receiving Agency to another Agency for response, the requestor must be notified.
- 5.3. The ROOT will maintain a consolidated tracking mechanism on the myORCA Portal for all requests where a regional response is necessary. The Agencies are responsible for submitting applicable responses to the ROOT 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 ROOT may communicate with the receiving Agency regarding the disclosure of the record and will coordinate with their respective legal counsel if necessary.
- 5.5. If an Agency receives a public disclosure request for any of the materials in the Contract Documentation, the Agency will forward the request to the ROOT, who shall administer the request in accordance with this Policy
- 5.6. 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 ROOT 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.

6.0 ROLES AND RESPONSIBILITIES

- 6.1. Agencies

- 6.1.1 Individual Agencies are responsible for records requests when (1) a records request is directed to an Agency, or (2) an Agency serves as the Lead Agency for a business account. In either of those circumstances, 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 requestor.
 - 6.1.1.2 Conduct a search for responsive records within the Agency.
 - 6.1.1.3 When applicable, consult with the ROOT 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 ROOT 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 6.2.4.
 - 6.1.1.6 After a disclosure is made, the Agency will provide the ROOT with a description or summary of the records request for the Public Disclosure Request Log.
- 6.1.2 If agreed to by the ROOT and the requestor, the request may be transferred to Sound Transit's Public Record Officer 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 ROOT to assist in responding to a public disclosure request directed to another Agency.
- 6.1.4 An Agency 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 Agency does not identify a potential issue, the Agency may proceed to respond to the requestor.

6.1.5 If an Agency 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, with the ROOT Public Records Officer and 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 ROOT Public Records Officer

6.2.1 The assigned ROOT Public Records Officer will review ORCA-related Public Record Requests submitted to Sound Transit to determine if the response will be:

6.2.1.1 Handled by the ROOT as a regional response, or

6.2.1.2 Redirected for handling by an Agency or agencies as agency-specific response.

6.2.2 The ROOT Public Records Officer will establish a log of all previous public disclosure requests and the responses made by the Agencies. The log will be maintained on the myORCA Portal, and made available to the Agencies.

6.2.3 The ROOT Public Records Officer may 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 ROOT Public Records Officer does not identify a potential issue, the Agency may proceed to respond to the requestor.

6.2.4 If the ROOT Public Records Officer 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.

6.2.5 The ROOT Public Records Officer may conduct training and develop additional business procedures for implementing this Policy.