

RESOLUTION NO. R2018-18
Public Records Disclosure Policy

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Executive Committee	06/07/2018	Recommend to Board	Desmond Brown, General Counsel
Board	06/28/2018	Final Action	Amy Jo Pearsall, Senior Legal Counsel Q'Deene Nagasawa, Public Records Officer

PROPOSED ACTION:

Adopting an updated Public Records Disclosure Policy and superseding Resolution No. R98-24.

KEY FEATURES SUMMARY

- Establishes a policy that outlines Sound Transit's rules and procedures for allowing the public to access identifiable, non-exempt agency records in a timely manner consistent with the provisions of the Public Records Act.
- Ensures that Sound Transit is in compliance with the public records disclosure requirements imposed by the Public Records Act.
- Confirms Sound Transit records will be maintained and made available for public inspection upon request in accordance with the Public Records Act and in accordance with the records retention schedule approved by the Washington State Division of Archives and Records Management.
- Permits Sound Transit to continue charging fees in accordance with the Public Records Act.

BACKGROUND

The Public Records Act requires public agencies to adopt and enforce reasonable rules and regulations to provide access to public records, to protect public records from damage or disorganization and to prevent excessive interference with other essential functions of the agency.

Since Sound Transit's current public records policy was adopted in 1998, the Public Records Act has evolved and new requirements have emerged. While Sound Transit's practices have evolved as the legal requirements have evolved, Sound Transit's policy needs to be updated to reflect the agencies current practices and to be compliant with recent state legislation.

While the core of Sound Transit's public records policy and practice remains the same, some updated features of this new policy include: (1) updating references to the current Public Records Act, which has been recodified as chapter 42.56 RCW; (2) clarifying that public records requests will be accepted regardless of format; (3) confirming that Sound Transit does not maintain a single index of public records because it is unnecessary, unduly burdensome and would interfere with Sound Transit's implementation of its system expansion; (4) and permitting Sound Transit to charge fees in accordance with the Public Records Act.

FISCAL INFORMATION

While there is no direct fiscal impact associated with the proposed action, the updated policy allows Sound Transit to continue to recoup some of the costs associated with compliance with the Public Records Act.

SMALL BUSINESS/DBE PARTICIPATION, APPRENTICESHIP UTILIZATION, AND TITLE VI COMPLIANCE

Not applicable to this action.

PUBLIC INVOLVEMENT

Not applicable to this action.

TIME CONSTRAINTS

A one-month delay would not create a significant impact.

PRIOR BOARD/COMMITTEE ACTIONS

Resolution 98-24: Established a Public Disclosure Request Policy as required by RCW 42.17.

ENVIRONMENTAL REVIEW

KH 5/30/2018

LEGAL REVIEW

AJP 6/1/2018



RESOLUTION NO. R2018-18

Public Records Disclosure Policy

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority adopting a Public Records Disclosure Policy relating to compliance with the Public Records Act and superseding Resolution No. R98-24.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under chapters 81.104 and 81.112 of the Revised Code of Washington (RCW) for the Pierce, King and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Sound Transit district on November 5, 1996, November 4, 2008 and November 8, 2016, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region; and

WHEREAS, the citizens of Washington State shall have full access to public records relating to the conduct of Sound Transit pursuant to chapter 42.56 RCW, commonly referred to as the Public Records Act; and

WHEREAS, the Public Records Act requires Sound Transit to adopt and enforce reasonable rules and regulations to facilitate access to public records; and

WHEREAS, requested records may be subject to exemption from disclosure under the Public Records Act or other statutes; and

WHEREAS, Sound Transit will charge fees to copy and provide public records not to exceed those permitted by the Public Records Act.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that Resolution No. R98-24 is hereby superseded with an updated Public Records Disclosure Policy, which is hereby adopted as follows:

1.0 Scope

- 1.1 This policy outlines Sound Transit's rules and procedures for allowing the public access to identifiable, non-exempt public records in a timely manner consistent with the requirements of the Public Records Act.
- 1.2 The 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 Sound Transit beyond those imposed by state and federal law.

2.0 Policy

- 2.1 **Public records.** Sound Transit shall make available for public inspection and copying all public records, unless the record falls within the exemptions of the Public Records Act or any other law that exempts or prohibits disclosure of specific information or records.

Exempt portions of an otherwise disclosable record shall be redacted, when necessary, before inspection or copying.

- 2.2 **Form of requests.** A records request may be accepted in any format presented, including a verbal request (in person or via phone) or written request (in any format). To facilitate the acceptance and routing of requests, Sound Transit encourages the public to make records requests in writing by the use of available electronic resources on Sound Transit's website or email whenever possible. Sound Transit provides a public records request form, which is available on Sound Transit's website. Requests must contain an adequate description of the requested records to allow for location of the requested records.
- 2.3 **Requests for lists of individuals.** Requests for public records that include lists of individuals require certification by the requestor that such lists shall not be used for commercial purposes.
- 2.4 **Responses.** Sound Transit responds promptly to public records requests and makes a reasonable effort to identify and locate all records pertaining to a request. Sound Transit provides public records relating to a request that exist at the time that a request is made. Initial and final responses from staff to requests for public records are made in writing and may be by letter or email.
 - 2.4.1 The deadline for Sound Transit's initial response to a records request is five business days after receipt of the request. Business days do not include weekends or holidays.
 - 2.4.2 Sound Transit's initial response will do one or more of the following:
 - 2.4.2.a Make the records available for inspection;
 - 2.4.2.b Provide copies of records, along with fees due if any;
 - 2.4.2.c Provide the requestor a link to records posted on Sound Transit's website;
 - 2.4.2.d Acknowledge that the request has been received and provide a reasonable estimate of when records will be available;
 - 2.4.2.e Contact the requestor via phone, fax, email or mail seeking clarification on the request; and/or
 - 2.4.2.f Deny the request.
 - 2.4.3 When possible, the initial response will include the requested records.
 - 2.4.4 Final responses shall include copies of the requested records or provide information to the requestor on how to arrange for inspection of the records.
 - 2.4.5 When records are withheld or redacted, Sound Transit shall inform the requestor in writing of the reason and provide the statutory citation supporting the exemption.
 - 2.4.6 Large or complex requests may be fulfilled through an installment process.
 - 2.4.7 Requestors may choose to inspect requested records before staff make copies and are encouraged to do so, especially when the volume of records is large. Requestors may make arrangements with agency public records staff to inspect records during normal business hours at a mutually convenient time. Staff shall make every effort to accommodate reasonable requests for appointment times while ensuring the security of public records during inspection.

- 2.4.8 All requests for public records shall be afforded the same treatment and consideration, without distinction among persons, and without regard to the intent of the request.
- 2.4.9 Responses to requests of public records, including responses by electronic mail, become public records in their own right, subject to the provisions of the Public Records Act and the retention requirements of the Office of the Secretary of State of Washington and shall be maintained accordingly.
- 2.5 **Clarifications.** As part of an initial response to a request, staff may ask a requestor for written or verbal clarification of a request to ensure proper identification and provision of the requested records.
- 2.5.1 Staff may work with a requestor to find ways to narrow a request. When a requestor agrees to narrow a request, nothing prevents the requestor from later expanding the request back to its original scope.
- 2.6 **Requestor response.** The public records officer may close a request after written notification to the requestor if:
- 2.6.1 After 30 days a request remains legally unclear, and the requestor has not responded to Sound Transit's request for clarification;
- 2.6.2 Responsive documents are ready for pickup or review and have been left abandoned or unclaimed for 30 days or longer after notification has been given; or
- 2.6.3 Payment has not been received after 30 days from the payment notification.
- 2.7 **Order of fulfillment.** Fulfillment of requests shall be processed in the order that provides the timeliest response. Requests may be fulfilled in the order of receipt as long as easily fulfilled requests are not postponed beyond a reasonable time behind larger or more complicated requests strictly because they were received later.
- 2.7.1 When a requestor simultaneously submits multiple, separate requests or makes one or more additional requests when previous requests remain open, staff may queue the requests in the order in which they were received. Staff is not required to work on an additional request by the same requestor until initial requests are completed and closed. Requestors shall inform Sound Transit if they want to reprioritize the fulfillment of their requests.
- 2.8 **Format of records.** Staff is not obligated to create electronic or other records or to convert electronic records into a format or medium in which the records are not already maintained. When asked by a requestor to convert an electronic record into a different format, staff is encouraged to do so when reasonable and technologically feasible, provided such conversion is not unduly burdensome and does not interfere with other essential agency functions. Requestors may request paper copies of electronic records subject to applicable copying charges adopted by Sound Transit.
- 2.9 **Records index.** Sound Transit is comprised of numerous departments, divisions, and subdivisions. Many of these department and divisions maintain separate databases and/or systems for indexing records based on Sound Transit's contract management approach to project development and operations. Due to Sound Transit's limited staff resources, the voluminous amount of documents associated with Sound Transit projects, and the diverse, complex records stored in multiple locations and in multiple databases, there is not one complete records index available for review. Pursuant to and consistent with RCW 42.56.070(4), it would be unduly burdensome and would interfere with Sound Transit's implementation of the high-capacity transportation system to maintain one index detailing

all public records. Sound Transit shall make available for public inspection and copying all indexes maintained for agency use, including the State Division of Archives and Records Management Local Government Records Retention Schedule.

- 2.10 **Exemptions.** Sound Transit adopts by reference the exemptions from public disclosure as contained in the Public Records Act, including any future amendments thereto or recodification thereof, along with any other exemption or exception to the Public Records Act provided by law. A list of exemptions will be available on Sound Transit's website. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions before providing the document and will include a redaction log explaining the reason for the redaction as required by RCW 42.56.210.
- 2.11 **Third-party notification.** If the requested records contain information that may affect the rights of others, before providing the records, the public records officer or designee may give notice and allow time for action by other parties.
- 2.12 **Administrative review of denial.** A requestor may ask for review of a decision to withhold or redact records deemed exempt from disclosure by submitting a written petition to the public records officer that includes a copy of or detailed description of the statement of withholding. Staff will promptly forward such request along with any relevant information to Sound Transit's general counsel, who shall consider the request and either reverse or affirm the denial within a reasonable time of receipt of the request. Sound Transit and the requestor may mutually agree to a longer period of time for consideration of a request for review. If the withholding or redaction is affirmed, the decision shall be considered Sound Transit's final action for the purposes of judicial review. If the decision to withhold or redact is reversed, the public records officer shall make the subject records available to the requestor for inspection in accordance with the provisions of this policy.
- 2.13 **Fees.** Sound Transit charges fees to copy and provide public records not to exceed those permitted by the Public Records Act. It would be unduly burdensome to calculate the actual costs for copying records for the following reasons: (1) Sound Transit does not have the resources to conduct a study to determine all of its actual copying costs; and (2) to conduct such a study would interfere with other essential agency functions. In addition, through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs as outlined in the Public Records Act. Sound Transit charges fees for the provision of responsive records totaling more than 10 pages and posts current fees on the Sound Transit website.
 - 2.13.1 There is no charge for inspection of records. Sound Transit shall make its facilities available to any person for inspection of public records except when Sound Transit operations would be unreasonably disrupted.
 - 2.13.2 Fees shall be waived for requests by a state or local agency.
 - 2.13.3 Fees shall be waived when the number of responsive records totals fewer than 10 pages of records or 10 emails that do not contain attachments. Such costs shall not be waived, however, when it appears that the request has been tailored to take advantage of this waiver.
 - 2.13.4 Sound Transit reserves the right to use an outside vendor for large-scale requests and odd-sized or larger color copies and to charge the requestor for those costs.

2.13.5 Copy charges may be remitted by any and all forms accepted by Sound Transit, which are currently cash, check or money order. Sound Transit's website will be kept up to date with available payment methods. A deposit of up to 10 percent of the estimated total cost may be required for large requests before records are copied. When requested records are provided on an installment basis, fees shall be collected for copies before provision of the next installment. Failure to pay for an installment shall place compilation of subsequent installments on hold, and the request may be considered abandoned.

2.13.6 If payment arrangements are not made within 30 days of notice that records are available, the entire request may be deemed abandoned and closed. A reasonable attempt shall be made to contact the requestor before deeming a request abandoned and closed.

2.14 **Implementation.** The chief executive officer shall develop procedures and designate a public records officer to implement the policies adopted herein pursuant to the Public Records Act to ensure public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. The current public records officer will be identified on Sound Transit's website pursuant to RCW 42.56.580. The public records officer shall have the following responsibilities:

2.14.1 Oversee compliance with disclosure laws;

2.14.2 Serve as the primary point of contact for public access to public records;

2.14.3 Serve as the single point of contact to coordinate Sound Transit's response when a request involves multiple record holders, is broad in scope or is otherwise complicated to fulfill;

2.14.4 Serve as a resource to staff on topics related to disclosure of public records;

2.14.5 Collect and analyze relevant information relating to Sound Transit's performance of public records disclosure;

2.14.6 Maintain Sound Transit's public records webpage; and

2.14.7 Maintain training as required by the Public Records Act.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on June 28, 2018.



Dave Somers
Board Chair

ATTEST:



Kathryn Flores
Board Administrator