

PORT OF KENNEWICK

RESOLUTION 2011-35

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING THE
PUBLIC RECORDS AND INFORMATION MANAGEMENT PROGRAM**

WHEREAS, the Public Records Act, RCW 42.56, requires public agencies to make identifiable, non-exempt public records available for inspection and copying upon request and to publish rules of procedure to inform the public how access to public records will be accomplished; and

WHEREAS, the purpose of the rules is to provide the public full and timely access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of efficient administration of our Port; and

WHEREAS, the Act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the Act, the Port will be guided by the provisions of the Act describing its purposes and interpretation.

NOW THEREFORE, BE IT RESOLVED that the Port of Kennewick Commission does hereby approve the Public Records and Information Management Program, as attached.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 23rd day of August 2011.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: 
SKIP NOVAKOVICH, President

By: 
DAVID HANSON, Vice President

By: 
GENE WAGNER, Secretary

**Port of Kennewick
Public Records and Information Management Program**

PUBLIC RECORDS ACT RULES

The Public Records Act, RCW 42.56, requires public agencies to make identifiable, non-exempt public records available for inspection and copying upon request and to publish rules of procedure to inform the public how access to public records will be accomplished. The following Rules for responding to public records/disclosure request are established.

The purpose of these rules is to provide the public full and timely access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of efficient administration of our Port. The Act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the Act, the Port will be guided by the provisions of the Act describing its purposes and interpretation.

Section 1. Definitions/Explanations

- a. **Public record.** A writing, regardless of physical form, containing information relating to the conduct of government or the performance of any governmental or proprietary function, prepared, owned, used or retained by the Port.
- b. **Writing.** Broadly defined, a writing means handwriting, typewriting, printing, photostating, photographing, and any other means of recording any form of communication, including, but not limited to, letters, words, pictures, sounds or symbols or their combinations; papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including data compilations from which information may be obtained or translated. An email is a writing.
- c. **Identifiable record.** An identifiable record is one in existence at the time the records request is made and that Port staff can reasonably locate.
- d. **Exempt record.** All agency records are available for review by the public unless they are specifically exempted or prohibited from disclosure by state law, either directly in RCW 42.56 or other statutes. The Municipal Research and Services Center maintains an up-to-date list of current exemptions and prohibitions on their website at www.mrsc.org/Publications/prdpub04.pdf (scroll to Appendix C).
- e. **Counter document.** A frequently requested document that is known to be public information and may be released without need to file a written public disclosure request.
- f. **E-mail.** Electronic mail is an informational transfer system which uses computers for sending and receiving messages. It is comprised of individual units of information divided into an "envelope" and the message contents. The envelope, or message header, contains the mailing address, routing instructions, transmission and receipt information, and other information the system needs to deliver the mail item correctly. Classification of emails as public records is dependent on the content of the message. Email messages are public records when they are created or received in the transaction of public business and retained as evidence of official actions.

Section 2. Description of Port Services

The Port of Kennewick is a Washington Special Purpose District, which goals are to create, structure jobs & economic development. These functions include, but are not limited to, maintaining public records. The Public Records Officer shall maintain descriptions of the Ports organization and the process through which the public may obtain information from the Port.

The Port of Kennewick's main office is located at 350 Clover Island Drive, Suite 200, Kennewick, WA 99336.

Section 3. Public Records Officer

Any person wishing to request access to public records or seeking assistance in making a request should contact the Port's Public Records Officer. The Public Records Officer has been designated by the Port of Kennewick's Board of Commissioners.

The Public Records Officer will oversee compliance with the Public Records Act, but may designate other Port staff members who may process requests for public records.

The Public Records Officer or his designees will provide the fullest assistance to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with the essential functions of the Port.

When using these Rules, references to the Public Records Officer should be interpreted to also include his designees.

- a. **Requests for records.** Requests to inspect or copy any records maintained by the Port, should be made to the Public Records Officer at:

Public Records Officer
Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, WA 99336

Telephone: 509-586-1186
FAX: 509-582-7678
E-mail: bscott@portofkennewick.org

- b. **Internet access to records.** Many records are available on the Port of Kennewick website at www.portofkennewick.org. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

Section 4. Availability of public records

- a. **Hours for inspection.** Public records are available for inspection and copying during the Port's normal business hours: Monday through Friday, 8:00 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m., excluding legal holidays. Port staff and the requestor may make mutually agreeable arrangements for times of inspection and copying.

- b. Place of inspection.** Records will be made available for inspection at the Port of Kennewick. Port staff and the requestor may make mutually agreeable arrangements for inspection if the particular records being sought are maintained at the Port office.

A requestor shall not take Port records from Port offices without permission of the Public Records Officer.

- c. Electronic access to records.** A variety of records are available on the Port's web site at www.portofkennewick.org
- d. Records index.** Maintaining a central index of Port records is unduly burdensome, costly, and would interfere with Port operations due to the number of complexity of records generated as a result of the wide range Port activities.
- e. Organization of records.** The Port will maintain records in a reasonably organized manner and will take reasonable actions to protect records from damage and disorganization.
- f. Retention of records.** The Port is not required to retain all records it creates or uses. The State Attorney General's Local Records Committee approves a general retention schedule for local agency records that is common to most agencies. Individual agencies may seek approval from the Local Records Committee for retention schedules specific to their agency or that, due to their particular business needs, must be kept longer than provided in the general schedule. The retention schedules for local agencies are available at www.secstate.wa.gov/archives/gs.aspx.

Retention schedules vary based on the content of the record.

Section 5. Making a request for public records

- a. Reasonable notice that the request is for public records.** A requestor must provide the Port with reasonable notice that the request being made is for public records. If a request is contained in a larger document unrelated to a public records request, the requestor should point out the public records request by labeling the front page of the document as containing a public records request or otherwise calling the request to the attention of the Public Records Officer to facilitate timely response to the request.
- b. Form.** Any person wishing to inspect or copy identifiable public records of the Port should make the request in writing in one of the following ways:
- on the provided request form (available at the website at www.portofkennewick.org);
 - by letter, fax, or e-mail addressed to the Public Records Officer.

The following information should be included in the request:

- Name and address of requestor;
- Other contact information, including telephone number and email address;
- Identification of the requested records adequate for the Public Records Officer to locate the records; and
- The date and time of day of the request.

The Port is not authorized to provide lists of individuals for commercial purposes.

- c. **Prioritization of records.** The Public Records Officer may ask a requestor to prioritize the records he or she is requesting so that the most important records may be provided first. A requestor need not prioritize a request.
- d. **Copies.** If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to make a deposit or pay for the copies, as further discussed in Section 10 below. Costs for copies are set out on the fee schedule published periodically by the Records Manager and made available at the Port, and on the Port's web site.
- e. **Oral Requests.** The Public Records Officer may accept requests for public records that contain the above information by telephone or in person. If an oral request is made, the Public Records Officer will confirm receipt of the information and the substance of the request in writing.
- f. **Requests made directly to Port departments.** Requests for public records other than identified "counter documents" that are made directly to departments shall be delivered to the Public Records Officer immediately upon receipt for coordinated processing.
- g. **Purpose of request.** A requestor need not state the purpose of the request. However, in an effort to clarify or prioritize a request and provide responsive records, the Public Records Officer may inquire about the nature or scope of the request. If the request is for a list of individuals, the Public Records Officer may ask the requestor if he/she intends to use the records for a commercial purpose. The Port is not authorized to provide lists of individuals for commercial purposes.

The Public Records Officer may also seek sufficient information to determine if another statute may prohibit disclosure.

- h. **Overbroad request.** The Port may not deny a request for identifiable public records solely because the request is overbroad. However, the Port may seek clarification, ask the requestor to prioritize the request so that the most important records are provided first, and/or communicate with the requestor to limit the size and complexity of the request. The Port may also provide the responsive records in installments over time.

When a request uses an inexact phrase such as "all records relating to", the Public Records Officer may interpret the request to be for records which directly and fairly address the topic.

When the requestor has found the records he or she is seeking, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

Section 6. Processing public records requests

- a. **Providing "fullest assistance".** These Rules and related policies and procedures identify how the Port will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requestors and provide the most timely possible action on public records requests.

All assistance necessary to help requestors locate particular responsive records shall be provided by the Public Records Officer, provided that the giving of such assistance does not unreasonably

disrupt the daily operations of the Port or other duties of any assisting employee(s) in other Port departments.

- b. Order for processing requests.** The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.
- c. Acknowledging receipt and fulfilling requests.** Within five business days of receipt of the request, the Public Records Officer will do one or more of the following:
 1. Make the record available for inspection or copying;
 2. If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
 3. Acknowledge that the request has been received and provide a reasonable estimate of when records will be available;
 4. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone; or
 5. Deny the request.

The Port may respond to a request to provide access to a public record by providing the requestor with a link to the Port's web site containing an electronic copy of that record if it can be determined that the requestor has internet access.

- d. Reasonable estimate of time to fully respond.** If not able to respond within the five business-day period, the Public Records Officer must provide a reasonable estimate of the time it will take to fully respond to the request. Additional time may be needed to clarify the scope of the request, locate and assemble the records, redact confidential information, prepare a withholding index, notify third party persons or agencies affected by the request and/or consult with the Port Attorney about whether the records are exempt from disclosure.

The Public Records Officer should briefly explain the basis for the time estimated to respond. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the changed circumstances that make it necessary.

- e. Notification that records are available.** The Public Records Officer will notify the requestor that the entire response, or an installment is available for inspection, and ask the requestor to contact the Port to arrange a mutually agreeable time for inspection. If the requestor seeks copies, the Public Records Officer should notify him or her of the projected costs and whether a deposit is required before making the copies.
- f. Consequences of failure to respond.** If the Port does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the Public Records Officer to determine the reason for failure to respond.
- g. Consequences of failure to clarify a request.** If the requestor does not respond to the Port's request for clarification within 30 days of the Port's request, the Public Records Officer may consider the request abandoned, send a letter closing the response to the requestor, and re-file the records.

- h. Consequences of disclosing a record in error.** The Port, and its officials or employees are not liable for loss or damage based on release of a public record if the Port, official or employee acted in good faith in attempting to comply with the Public Records Act.
- i. Searching for records.** The Port must conduct an objectively reasonable search for responsive records. The Public Records Officer will determine where responsive records are likely to be located to assemble the records.

After the records are located, the Public Records Officer should take reasonable steps to narrow down the number of records assembled to those that are responsive. The Port will not “bury” a requestor with non-responsive documents. However, the Public Records Officer is allowed to provide arguably, but not clearly, responsive records to allow the requestor to select the ones he or she wants, particularly if the requestor is unable or unwilling to help narrow the scope of the documents being sought.

- j. Preserving requested records.** If a requested record is scheduled shortly for destruction under the Port’s records retention schedule, the record cannot be destroyed until the public disclosure request has been resolved. Once a request has been closed, the Public Records Officer can destroy the record in accordance with the retention schedule.
- k. Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part (see Section 9).

If the Port believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld.

If only a portion of the record is determined to be exempt, the Public Records Officer will redact the exempt portions and provide the non-exempt portions (See Section 6(m) below).

- l. Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, prior to providing the records the Public Records Officer may give notice to those whose rights may be affected by the disclosure. Generally ten days notice will be given in order to make it possible to contact the requestor and ask him or her to revise the request or, if necessary, allow affected individuals to seek an order from a court to prevent or limit the disclosure. The notice to the affected person(s) will include a copy of the request.
- m. Redactions.** If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer will redact the exempt portions, provide the non-exempt portions, and indicate to the requestor why portions of the record are being redacted. For example, to prevent an unreasonable invasion of personal privacy, the Public Records Officer shall redact identifying details such as social security numbers when he/she makes available or publishes any public record. In each case, the justification for the deletion shall be explained in writing.
- n. Personal privacy and vital government interests.** When a public record is exempt from disclosure under the Public Records Act, the exemption does not apply if the information that might violate personal privacy or vital government interests can be deleted from the records being sought.

- o. Inspection of records.** To the extent possible due to other demands, the Public Records Officer shall promptly provide space to inspect public records at the Port. The requestor must claim or review the assembled records within thirty days of the Public Records Officer's notification that the records are available for inspection or copying. The Public Records Officer will notify the requestor in writing of this requirement and suggest that he or she contact the Port to make arrangements to claim or review the records.

If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period, or make other arrangements, the Public Records Officer may close the request and re-file the assembled records. Other public records requests can be processed before a subsequent request by the same person for the same or almost identical records, which will be processed as a new request. Members of the public may not remove documents from the viewing area or disassemble or alter any document.

- p. Providing copies of records.** The requestor shall indicate which documents he or she wishes to have copied using a mutually agreed upon non-permanent method of marking the desired records. After inspection is complete, the Public Records Officer will arrange for copying. Making a copy of an electronic record is considered copying and not creation of a new record.
- q. Providing records in installments.** When the request is for a large number of records, the Public Records Officer will provide access for inspection and copying in installments if he or she reasonably determines that it would be practical to provide the records in that way. If the requestor fails to inspect the entire set of records or one or more of the installments within 30 days, the Public Records Officer may stop searching for the remaining records and close the request.
- r. Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the Public Records Officer will indicate that the Port has completed a diligent search for the requested records and made any located non-exempt records available for inspection.
- s. Closing withdrawn or abandoned requests.** If the requestor withdraws the request, fails to fulfill his or her obligations to inspect the records, or fails to pay the deposit or final payment for the requested copies, the Public Records Officer will close the request and indicate to the requestor that the Port has closed the request. The Public Records Officer will document closure of the request and the conditions that led to closure.
- t. Later discovered documents.** If, after the Public Records Officer has informed the requestor that the Port has provided all available records, the Port becomes aware of additional responsive documents that existed on the date of the request, the Public Records Officer will promptly inform the requestor of the additional documents and provide them on an expedited basis.
- u. No duty to create records.** The Port is not obligated to create a new record to satisfy a records request; however, the Port may, in its discretion, create such a new record to fulfill the request where it may be easier for the Port to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request.
- v. No duty to supplement responses.** The Port is not obligated to hold current records requests open to respond to requests for records that may be created in the future. If a public record is created or comes into the possession of the Port after a request is received by the Port, it is not

responsive to the request and will not be provided. A new request must be made to obtain later-created public records.

Section 7. Processing requests for electronic records.

This Section will be further developed after publication of additional rules by the Attorney General relating to electronic records.

Section 8. Retention of records.

The Port will retain its records in accordance with retention schedules approved by the State Local Records Committee. Public records may not be destroyed per a retention schedule if a public records request or actual or anticipated litigation is pending.

Section 9. Exempt and prohibited disclosure of public records.

The Port is not required to permit public inspection and copying of records for which public disclosure of the record is prohibited, restricted or limited by state or federal statute or regulation.

- a. The Port of Kennewick is prohibited by statute from disclosing lists of individuals for commercial purposes.
- b. The Public Records Act, RCW 42.56, provides that a number of document types and information are prohibited from being disclosed or are exempt from public inspection and copying. A current list of these prohibitions and exemptions will be provided upon request by the Public Records Officer and is available on the Municipal Research and Services Center web site at www.mrsc.org/Publications/prdpub04.pdf
- c. In addition, other statutes may exempt or prohibit disclosure of other documents and information. A current list of these prohibitions and exemptions will be provided upon request by the Public Records Officer. Alternatively, the requestor may review a list of other statutes outside the Public Records Act that may prohibit or exempt disclosure of certain information from the Municipal Research and Services Center web site at www.mrsc.org/Publications/prdpubo4.pdf.
- d. The Port's failure to list an exemption shall not affect the effectiveness of the exemption.

Section 10. Costs of providing copies of public records.

Per state law, the Port is not allowed to charge for locating a public record or for making records available for review or inspection. The Port may charge, however, for the actual costs of copying public records.

- a. **Fee schedule.** The charge for standard black-and-white photocopies is fifteen cents per page.

The Records Officer will periodically update and post a fee schedule for various other nonstandard public records or those in other formats or media. The fee schedule may be found online at <http://www.portofkennewick.org>. A statement of the factors and manner used to determine the specific fees will be provided upon request to the Public Records Officer.

If the Port has to pay an outside firm for duplicating records in non-routine formats such as photographs, blueprints or tape recordings, the actual cost will be passed along to the requestor.

- b. **Certified copies.** Where the request is for a certified copy, an additional charge of one dollar may be applied to cover the additional expense and time required for certification.
- c. **Faxing and mailing charges.** The Port may also charge actual costs of long distance facsimile transmission and/or mailing, including the cost of the shipping container.
- d. **Sales tax.** The Port will not charge sales tax on copies of records.
- e. **Use of other copying services.** The Port is not required to copy records at its own facilities, and may determine to use a commercial copying center. The Port will make arrangements for the vendor to bill the requestor for the amount charged by the vendor. In event where the vendor will not bill, the Port will make arrangements for the requestor. In all cases, copies must be paid in advance or at time of pick up.
- f. **Deposit or payment by installments.** Before beginning to copy records, the Public Records Officer or designee may require a deposit of up to ten percent of the estimated costs of copying the records selected by a requestor. The Public Records Officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.
- g. **Method of payment.** Payment may be made by cash or money order to the Port of Kennewick.
- h. **Waiver of copying charges.** The Public Records Officer has the discretion to waive copying charges for small requests, or for individuals or government agencies doing business with the Port if the Public Records Officer determines that this action is in the best interest of the Port.

Section 11. Denials of requests for public records.

- a. **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 (including by e-mail) to the Public Records Officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request.
- b. **Consideration of petition for review.** The Public Records Officer shall promptly provide the petition and any other relevant information to the Port Attorney or his or her designee to conduct the review. The Port Attorney or his or her designee will promptly consider the petition and either affirm or reverse the denial within ten business days following the Port's receipt of the petition, or within such other time to which the Port and the requestor mutually agree.
- c. **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of ten business days after the initial denial regardless of any internal administrative appeal.