RESOLUTION NO. 630

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE WHATCOM COUNTY PUBLIC UTILITY DISTRICT NO. 1 ESTABLISHING A POLICY AND PROCEDURE FOR PUBLIC ACCESS TO THE PUBLIC UTILITY DISTRICT’S PUBLIC RECORDS.

WHEREAS, it is the policy of the Commissioners of Whatcom County Public Utility District No. 1 (“PUD”), a municipal corporation, to make available to the public any and all identifiable PUD records, subject only to the exceptions contained in law, and to abide by the spirit and the intent of the Public Records Act;

WHEREAS, it is further the policy of the Commissioners of the PUD to impose a reasonable charge reflecting the actual costs to the PUD and collect a reasonable deposit when providing copies to the public; and

WHEREAS, the Commissioners of the PUD desire to establish policies and procedures with regard to handling those public records requests that may be made to the PUD.

NOW, THEREFORE, BE IT RESOLVED, that the policy and procedures for public access to PUD records attached as Exhibit A hereeto is hereby adopted.

ADOPTED by the Commission of Public Utility District No.1 of Whatcom County at its regular meeting held on the 28 day of June, 2011.

PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY

[Signature]
President/Commissioner

[Signature]
Secretary/Commissioner

[Signature]
Commissioner
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY
PUBLIC RECORDS POLICY AND PROCEDURE

INTRODUCTION

It is the policy of the Whatcom County Public Utility District No. 1 (the “PUD”) (Resolution No. 630) to make available to the public any and all records in its files except records that are exempt under the Public Records Act. It is further the policy of the PUD and its Commissioners to abide by the spirit and intent of any freedom of information legislation now existing or to be enacted.

BACKGROUND ON THE LAW

The Public Records Act, RCW 42.56, was passed by Initiative in 1973 and is written to promote full access to records held by agencies such as the PUD.

The term "public record" encompasses virtually any record in the possession of the PUD, and is defined in the statute as including:

Any writing containing information relating to the conduct of government or the performance of any government or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

The term “writing” is defined in the statute as:

“Writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all 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 records including existing data compilations from which information may be obtained or translated.

GENERAL

The PUD’s central office is located at 1705 Trigg Road, Ferndale, Washington.

Any person requesting access to public records of the PUD, or seeking assistance in making such a request should contact the public records officer of the PUD.

Public Records Officer
Address: 1705 Trigg Road, Ferndale, Washington 98248
Telephone number: 360-384-4288
Fax number: 360-384-4849

Information is also available at the PUD’s web site at: www.pudwhatcom.org.

The Public Records Officer is the staff person designated by the PUD General Manager. The Public Records Officer shall report to and be supervised by the PUD General Manager. In the absence of such appointment, the General Manager shall serve as the PUD’s Public Records Officer.

Although the Public Records Officer will oversee compliance with the Act, another PUD staff member may process the request. Therefore, these rules will refer to the Public Records Officer “or designee.” The Public Records Officer or designee and the PUD 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 essential functions of the PUD.
GENERAL INQUIRIES

Generally speaking, any citizen request about PUD operations or policy can be answered by the General Manager or other knowledgeable staff.

Media inquiries can be handled by the General Manager or his/her designee.

The Public Records Act allows the public to inspect and request copies of records. It does not require the PUD to answer specific inquiries or to create records in order to respond to a request.

TIMES FOR INSPECTION AND COPYING

Public records will be available for inspection and copying during the customary office hours of the PUD (Monday through Friday, excluding legal holidays, 8:00 a.m. through 5:00 p.m.), subject to availability of staff to ensure the protection of public records from damage or disorganization.

PUD responses regarding identifiable public records will be provided promptly, unless such action would excessively interfere with the essential functions of the PUD. Should the requested records be deemed exempt from disclosure, the requester will be notified in writing. The requesting person will be provided a list of those records that are withheld from disclosure, the specific exemption applicable, and a brief explanation of how the exemption applies to the record withheld. The PUD’s response may include a statement that additional time is needed to clarify the intent of the request, to locate and assemble the requested records, to notify third persons or agencies affected by the request, or to determine whether any of the records are exempt from disclosure.

As used herein, the word "promptly" shall mean within five (5) working days from the time a formal and recorded request for identifiable records is submitted by a requester.

INSPECTION

No fee will be charged for inspection of PUD records. Inspection shall be accomplished so as to protect PUD records from damage or disorganization. Records to be inspected will be provided in the format in which the records exist at the PUD, hard copy or electronic, without their creation into another format unless creation into another format is easier, less time-consuming for staff and less expensive for the requester and the PUD, such as scanning and emailing a record. Inspection may be delayed for a reasonable time to permit review of the record by the Public Records Officer, other PUD staff and/or PUD legal counsel to determine if the record contains any information exempted by law from disclosure. The requesting person will be notified when the review will be completed.

COPYING

The costs to be charged the requester for public records that are photocopied or faxed is hereby established at the rate of $0.15 per page for standard black and white photocopies, or at such higher rate as may be allowed by law.

The costs to be charged the requester for public records that are copied to a CD is hereby established at the rate of $0.60 per CD, or at such higher rate as may be allowed by law.

The public will be charged out-of-pocket costs for nonstandard copies (color copies, blueprints, or photographs), out-of-pocket costs for outside services, and out-of-pocket costs for postage and shipping.

The public will be charged the actual out-of-pocket costs for reproduction of records if the public has requested records and staff workload issues necessitate sending the records out to a reliable copy source for copying.

The PUD may require that the requester make a ten percent (10%) deposit of the estimated cost of providing copies when the PUD has estimated these costs will exceed one hundred dollars ($100.00).
No records will be released until the costs of the copies are paid to the PUD.

**APPEAL OF DENIAL TO DISCLOSE**

The requester may appeal a decision by the PUD to withhold a record to the PUD's Public Records Committee. The appeal must be filed within fourteen (14) working days of notification to withhold information. The Public Records Committee, consisting of the General Manager, a Commissioner, and a PUD attorney, will either affirm or reverse the denial within two (2) business days following the PUD's receipt of the appeal or within such other time as the PUD and the requestor mutually agree to.

**SALE OF EXTRA COPIES OF RECORDS**

The PUD occasionally has extra copies of records. To the extent that the PUD has extra copies of records, they will be made available to the public at the cost of the PUD. Once the supply is exhausted, the PUD will charge the normal cost of copying as provided above.

**FORM OF REQUEST**

All requests for access to PUD records will be recorded using the "Public Records Request Form" attached hereto. The form specifies what records are being requested, and will be forwarded to the Public Records Officer or other designee, who will review the request and ask the appropriate department to provide the records and fulfill the request. Once notified of the request, the Public Records Officer or other designee will monitor that the request is fulfilled in a timely manner.

A master file of all Public Records Request Forms will be maintained in the administrative office. If a particular record is repeatedly requested, PUD staff will make that record readily accessible for inspection and copying.

**COPIES FOR PUD BUSINESS**

The PUD may provide copies of records free of charge for PUD related business. Those persons requesting copies of records pursuant to the Washington Superior Court Civil Rules shall be treated the same as the public in general and will pay for copies at the rates quoted herein or as may be directed by the state legislature.

**EXEMPTIONS TO FULL PUBLIC DISCLOSURE**

There are a number of exemptions to disclosure of identifiable public records in Chapter 42.56 RCW that are relevant to the PUD. They include, but are not limited to, the following:

1. The residential addresses and telephone numbers of employees or volunteers which are held in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

2. Generally, the contents of real estate appraisals, made for or by the PUD relative to the acquisition or sale of property, until the projected or prospective sale is abandoned, or until such time as all of the property has been acquired or sold. But in no event will disclosure be denied for more than three (3) years after the appraisal.

3. Personal information in files maintained for employees, appointees, or elected officials of the PUD to the extent that disclosure would violate their right to privacy.

4. Valuable formulae, designs, drawings and research data obtained by the PUD within five (5) years of the request for disclosure when such disclosure would produce private gain and public loss.

5. Preliminary drafts, notes, recommendations and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except if that specific
record is publicly cited in connection with a PUD action (this exemption is narrowly defined and has a four part test to be applied).

6. RCW 42.56.070(9) prohibits disclosure of lists of individuals for commercial purposes. Non-commercial uses such as political mailing lists or non-profit charities may be given access.

7. Exemptions should typically be reviewed by PUD legal counsel to ensure that any withheld records meet the exemptions described in the Public Records Act. Any records withheld must be identified on an exemption log that describes the record being exempted and indicates the exemption relied upon for withholding the record.

8. Some public records requests call for information which is not exempt, but which might be of sensitive nature to a PUD customer; the PUD will strive to notify such affected PUD customers when it receives such a public records request. The affected customer or tenant may seek court protection under RCW 42.56.540 by demonstrating that such information would:

   a) clearly not be in the public interest, and
   b) would substantially and irreparably damage any person, or would
   c) substantially and irreparably damage vital government functions.

9. With the approval of the General Manager, the "Business Sensitive Record" cover sheet may be attached to a record to alert staff of the sensitive nature of that record.

SENSITIVE BUSINESS INFORMATION

The PUD, on occasion, receives proprietary or sensitive business information or other information that a private party may have a privacy interest in from prospective or current customers. The PUD will, consistent with the spirit and intent of the Public Records Act, allow the provider of the information to seek court protection pursuant to RCW 42.56.540 prior to PUD disclosure of such information.

INDEX OF RECORDS

The Commission finds that maintaining an index in accordance with RCW 42.56.070 would be unduly burdensome and interfere with the operations of the PUD inasmuch as such index would require additional staff and implementation of additional procedures. In accordance with RCW 42.56.070, the PUD will make available for public inspection and copying all indexes which are maintained by the PUD.

PUBLIC DISCLOSURE REQUEST FORM (see following pages)
PUBLIC UTILITY DISTRICT No. 1 of WHATCOM COUNTY
PUBLIC DISCLOSURE REQUEST FORM

Date: ______________________ Requested by: ______________________

Mailing Address: Street __________ City __________ State __________ ZIP __________

Telephone: ______________________ Fax: ______________________

For Inspection (no charge) ☐ To Be Copied: ☐ Please see charges on page 2
Specify Documents Requested (if needed, please continue on reverse side):

Pursuant to RCW 42.56.070 (9) Public Utility District No. 1 of Whatcom County is not authorized to provide public records consisting of a list of individuals for commercial use.

Are documents requested for Commercial Purposes? Yes ☐ No ☐

Inspection and copying of identifiable PUD documents or a response to this request shall be provided promptly and not to exceed five (5) working days. The staff person receiving this request shall also promptly notify the Public Records Officer and General Manager or designee of any anticipated delay and the reason for the delay. Should the requested information be deemed exempt from disclosure, the requestor shall be notified in writing.

BELOW FOR STAFF USE

Date/time request received at PUD ______________________ Received by ______________________ Forwarded to: ______________________
☐ Requested in Writing ☐ Requested by Phone ☐ Requested in Person

Documents sent to attorney for review? Yes ☐ No ☐ Date: ______________________

Date and time requester was notified documents were available for viewing: ______________________

Date and time requester reviewed documents: ______________________

Date copies provided, if requested: ______________________

Reason request denied, if applicable: ______________________

Other Comments: ______________________

Copy Charges: Photocopy (Standard Black & White) __________ @ $0.15 per page = $ __________
CD __________ @ $0.60 per CD = $ __________
Staff Time (copying/mailing/delivery) __________ @ $60.00 per hour = $ __________
Out-of-Pocket Cost for Outside Service: = $ __________
Out-of-Pocket Cost for Postage/Shipping: = $ __________

TOTAL CHARGE: = $ __________

Deposit – 10% (if total is over $100) Yes ☐ No ☐ Amount: $ __________
Date Paid __________ Cash ☐ Check ☐ Processed by: ______________________
Date Paid __________ Cash ☐ Check ☐ Processed by: ______________________
Copying Costs:

The PUD charges the requester for public records that are photocopied or faxed at the rate of $0.15 per page for standard black and white photocopies, or at such higher rate as may be allowed by law.

The PUD charges the requester for public records that are copied to a CD at the rate of $0.60 per CD, or such actual cost for the electronic form as contained in the District’s records should such record exist.

The PUD charges the cost of staff time to copy (photocopy, scan and copy to a CD or similar work for reproduction of requested document) and mail/deliver the requested public records. The District incurs a staff time cost of $60.00/hour for copying and mail/deliver of requested public records. The District will charge for copying and the mailing/shipping/delivery of public records at that rate to the requestor.

The PUD charges out-of-pocket costs for nonstandard copies (color copies, blueprints, or photographs), out-of-pocket costs for outside services, and out-of-pocket costs for postage and shipping.

The PUD charges the actual out-of-pocket costs for reproduction of records if the public has requested records and staff workload issues necessitate sending the records out to a reliable copy source for copying.

The PUD may require that the requester make a ten percent (10%) deposit of the estimated cost of providing copies when the PUD has estimated these costs will exceed one hundred dollars ($100.00).

No records will be released until the costs of the copies are paid to the PUD.