

**WAC 44-14-05001 Access to electronic records.** The Public Records Act does not distinguish between access to paper and electronic records. Instead, the act explicitly includes electronic records within its coverage. The definition of "public record" includes a "writing," which in turn includes "existing data compilations from which information may be obtained or translated." RCW 42.56.010(4)<sup>1</sup>. Many agency records are now in an electronic format. Many of these electronic formats such as Windows® products are generally available and are designed to operate with other computers to quickly and efficiently locate and transfer information. Providing electronic records can be cheaper and easier for an agency than paper records. Furthermore, RCW 43.105.351 provides: "It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public."

In general, an agency should provide electronic records in an electronic format if requested in that format, if it is reasonable and feasible to do so.<sup>2</sup> While not required, an agency may translate a record into an alternative electronic format at the request of the requestor if it is reasonable and feasible to do so, and that action does not create a new public record for the purposes of the act. RCW 42.56.120(1). For example, an agency may scan a paper record to make an electronic copy, and that action does not create a new public record. *Id.* An agency can provide links to specific records on the agency's public internet web site. RCW 42.56.520. An agency shall not impose copy charges for access to or downloading records that the agency routinely posts on its internet web site prior to the receipt of a request unless the requestor has specifically requested that the agency provide copies of such records by other means. RCW 42.56.120 (2)(e).

Reasonableness and technical feasibility are the touchstones for providing electronic records. An agency should provide reasonably locatable electronic public records in either their original generally commercially available format (such as an Acrobat PDF® file) or, if the records are not in a generally commercially available format, the agency should provide them in a reasonably translatable electronic format if possible. In the rare cases when the requested electronic records are not reasonably locatable, or are not in a generally commercially available format or are not reasonably translatable into one, the agency might consider customized access.

Delivering electronic records can be accomplished in several ways or a combination of ways. For example, an agency may post records on the agency's internet web site and provide the requestor links to specific documents; make a computer terminal available at the agency so a requestor can inspect electronic records and designate specific ones for copying; send records by email; copy records onto a CD, DVD or thumb drive and mail it to the requestor or make it available for pickup; upload records to a cloud-based server, including to a file transfer protocol (FTP) site and send the requestor a link to the site; provide records through an agency portal; or, through other means. Practices may vary among agencies in how they deliver records in an electronic format; the act does not mandate only one method and the courts have said agencies have some discretion in establishing their reasonable procedures under the act.<sup>3</sup> Finally, other delivery issues may be relevant to a particular agency or request. For example,

there may be limits with the agency's email system or the requestor's email account with respect to the volume, size or types of emails and attachments that can be sent or received.

What is reasonable and technically feasible for copying and delivery of electronic records in one situation or for one agency may not be in another. Not all agencies, especially smaller units of local government, have the electronic resources of larger agencies and some of the generalizations in these model rules may not apply every time. If an agency initially believes it cannot provide electronic records in an electronic format, it should confer with the requestor and the two parties should attempt to cooperatively resolve any technical difficulties. See WAC 44-14-05003. It is usually a purely technical question whether an agency can provide electronic records in a particular format in a specific case.

An agency is not required to buy new software, hardware or licenses to process a request for production or delivery of public records. However, an agency lacking resources to provide, redact or deliver more records electronically may want to consider seeking funding or other arrangements in an effort to obtain such technologies. See RCW 43.105.355 (state and local agencies); RCW 40.14.026 (local agencies - competitive grant program).

Notes:

<sup>1</sup>See also *Fisher Broadcasting v. City of Seattle*, 180 Wn.2d 515, 326 P.3d 688 (2014) (database discussion).

<sup>2</sup>*Mechling v. City of Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009) ("[T]here is no provision in the PDA [PRA] that expressly requires a governmental agency to provide records in electronic form. ... [a]lthough the City has no express obligation to provide the requested email records in an electronic format, consistent with the statutory duty to provide the fullest assistance and the model rules, on remand the trial court shall determine whether it is reasonable and feasible for the City to do so."); *Mitchell v. Dep't of Corr.*, 164 Wn. App. 597 (2011) ("Nothing in the PRA obligates an agency to disclose records electronically.")

<sup>3</sup>*Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978).

[Statutory Authority: RCW 42.56.570. WSR 18-06-051, § 44-14-05001, filed 3/2/18, effective 4/2/18. Statutory Authority: 2005 c 483 § 4, amending RCW 42.56.570. WSR 07-13-058, § 44-14-05001, filed 6/15/07, effective 7/16/07.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.