

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE (WCC) 1.32 , PUBLIC RECORDS, TO DELETE PROVISIONS RELATED TO EXHAUSTION OF ADMINISTRATIVE REMEDIES

WHEREAS, Chapter 1.32 WCC, Public Records, was adopted in Ordinance No. 2018-034 on June 5, 2018; and

WHEREAS, in December 2019 the Washington Supreme Court in *Kilduff v. San Juan County* ruled that an agency could not require that a public records requestor exhaust administrative remedies prior to bringing suit under the Public Records Act (PRA); and

WHEREAS, WCC 1.32.070(d) and (e) currently require a requestor to exhaust administrative remedies prior to bringing suit under the PRA.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 1.32.070 is hereby amended as outline in the attached Exhibit A.

ADOPTED this ____ day of _____, 2020.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Satpal Sidhu,
County Executive

() Approved () Denied

Date Signed: _____

1 EXHIBIT A

2 Chapter 1.32
3 PUBLIC RECORDS

4 Sections:

- 5 1.32.010 Purpose.
- 6 1.32.020 Construction.
- 7 1.32.030 Disclosure of public records required.
- 8 1.32.040 Public records officer.
- 9 1.32.050 Public records request.
- 10 1.32.060 Lists of individuals.
- 11 1.32.070 Review of denial and exhaustion of administrative remedies.
- 12 1.32.080 Charges for records.
- 13 1.32.090 Exemptions.
- 14 1.32.100 Index of public records.

15 1.32.010 Purpose.

16 The purpose of this chapter is to ensure compliance with the provisions of Chapter [42.56](#) RCW and other
17 applicable law relating to disclosure of public records. (Ord. 2018-034 Exh. A).

18 1.32.020 Construction.

19 The provisions of this chapter shall be liberally construed to provide public access to public records
20 concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the
21 efficient administration of government. (Ord. 2018-034 Exh. A).

22 1.32.030 Disclosure of public records required.

23 The county council, the county executive, and each county department, agency, division, board, office,
24 commission, or other county entity shall make available for public inspection and copying all public
25 records the disclosure of which is required by Chapter [42.56](#) RCW or other law. (Ord. 2018-034 Exh. A).

26 1.32.040 Public records officer.

27 A. The county executive shall appoint a public records officer who shall provide centralized oversight,
28 guidance and leadership to fulfill public records requests for the county.

29 B. Subject to subsection C of this section, the public records officer shall:

30 1. Serve as a point contact for members of the public in requesting disclosure of public records; provided,
31 that requests may also be presented to county offices and departments;

32 2. Oversee compliance with the public disclosure requirements of this chapter; and

1 3. Adopt such policies and procedures as may be necessary to carry out the provisions of this chapter
2 consistent with applicable laws.

3 C. The public records officer shall publish his or her name and contact information in a way reasonably
4 calculated to provide notice to the public, such as posting at the county's primary place of business,
5 posting on the county's internet site, or including in county publications.

6 D. The department head will establish and follow rules for records management in their department. The
7 department head will designate a contact for public records requests. (Ord. 2018-034 Exh. A).

8 **1.32.050 Public records request.**

9 A. The public records officer shall provide a set of uniform public disclosure request forms for use
10 throughout the executive and legislative branches of county government. All requests for public records
11 shall be presented in writing to the public records officer or to the public records designee of the
12 department, agency, division, board, office, commission, or other county entity believed to be responsible
13 for the records being requested. The request shall include the following:

14 1. The name and contact information of the person making the request for the record;

15 2. Reasonable notice that the request is for the disclosure of public records pursuant to the Public
16 Records Act; and

17 3. Identification of the requested records by reference to names, title, subject matter, and time frames, or
18 other means adequate for the public records officer or public records designee to locate the requested
19 records.

20 B. Upon receiving a request, the public records officer or public records designee shall document the date
21 the request was received.

22 C. Departments and offices of elected or appointed officials having records that have customarily been
23 open to public inspection and/or copying may, at the option of the heads of such departments or offices,
24 permit inspection and copying without requiring such requests in writing. (Ord. 2018-034 Exh. A).

25 **1.32.060 Lists of individuals.**

26 In the case of a request for records that may contain a list of individuals, prior to receiving the records, the
27 person making the request must furnish an affidavit stating either:

- 1 A. That he/she is not requesting the list for commercial purposes; or
2 B. That he/she is specifically authorized or directed by law to obtain the list of individuals for commercial
3 purposes, and that identifies such law. (Ord. 2018-034 Exh. A).

4 ~~1.32.070 Review of denial and exhaustion of administrative remedies.~~

5 A. Any person who objects to the initial denial or partial denial of a request for a public record subject to
6 Chapter [42.56](#) RCW may petition in writing (including email) to the public records officer for a review of
7 that decision. The petition shall include a copy of or reasonably identify the decision denying the request.

8 B. The public records officer shall promptly provide the petition and other relevant information to the
9 prosecuting attorney or his/her designee.

10 C. The prosecuting attorney or designee shall consider the petition and affirm or reverse the denial within
11 two business days after the public records officer's receipt of the petition, or within such other time as the
12 county and the requestor may mutually agree.

13 ~~D. Administrative remedies shall not be considered exhausted until the prosecuting attorney or designee
14 has made a written decision, or until the close of the second business day following receipt of the written
15 request for review of the action of the public records officer, whichever occurs first.~~

16 ~~E. For purposes of the public disclosure laws, the action of the public records officer becomes final only
17 after the review conducted under this section has been completed. No lawsuit to review the action taken,
18 compel the production of a public record, or impose a penalty, costs, or attorney fees shall be brought
19 before the administrative remedies set out in this section have been exhausted by the party seeking the
20 record.~~ (Ord. 2018-034 Exh. A).

21 ~~1.32.080 Charges for records.~~

22 A. No fee shall be charged for the inspection of public records under this chapter.

23 B. No fee shall be charged for locating public documents and making them available for copying.

24 C. Pursuant to RCW [42.56.120](#)(2)(b), the county is not calculating all actual costs for copying records
25 because to do so would be unduly burdensome for the following reasons:

26 1. The county does not have the resources to conduct a study to determine actual copying costs for all of
27 its records;

1 2. To conduct such a study would interfere with other essential agency functions. Therefore, the county
2 shall charge fees for copies of records pursuant to the default fees in RCW 42.56.120(2)(b) and (c).

3 D. The county shall charge fees for customized services pursuant to RCW [42.56.120\(3\)](#).

4 E. In addition to the fees and charges in subsections C and D of this section, the department may also
5 require a deposit not to exceed 10 percent of the estimated cost of providing copies for a request. If the
6 department makes a request available on a partial or installment basis, the agency may charge for each
7 part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the
8 department is not obligated to fulfill the balance of the request. (Ord. 2018-034 Exh. A).

9 [1.32.090 Exemptions.](#)

10 Public records that are not subject to disclosure under state law, that are described as exempt by Chapter
11 [42.56](#) RCW, or that are required to be withheld by any other law are exempt from disclosure under this
12 chapter. (Ord. 2018-034 Exh. A).

13 [1.32.100 Index of public records.](#)

14 A. Whatcom County government is comprised of many departments, agencies, divisions, boards, offices,
15 and commissions which maintain separate records and incompatible record-keeping systems. The
16 county's records are voluminous, diverse, complex and stored in multiple locations and in multiple
17 incompatible data bases. Therefore, it would be unduly burdensome and costly to the taxpayers, and
18 would substantially interfere with effective and timely county operations, to develop an index of those
19 records identified in RCW [42.56.070\(3\)](#).

20 B. No county department, agency, division, board, office, commission, or other county entity is required to
21 maintain an index of public records conforming to the requirements of RCW [42.56.070\(3\)](#).

22 C. Any index maintained by an individual department, agency, division, board, office, commission, or
23 other county entity shall be made available for public inspection and copying unless exempt from
24 disclosure or made confidential by law. (Ord. 2018-034 Exh. A).

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