

<b>CLEARANCES</b>	<b>Initial</b>	<b>Date</b>	<b>Date Received in Council Office</b>	<b>Agenda Date</b>	<b>Assigned to:</b>
Originator:	Frakes/Bur	5/2/2018		5/22/2018	Introduction
Division Head:					
Dept. Head:	<i>W.B.D.</i>	<i>5.2.18</i>			
Prosecutor:	<i>JNF</i>	<i>5/3/18</i>			
Purchasing/Budget:					
Executive:					

**TITLE OF DOCUMENT:**  
 Ordinance establishing WCC 1.32, adopting rules re: disclosure of public records

**ATTACHMENTS:**  
 Ordinance

SEPA review required?    (    ) Yes    (    ) NO SEPA review completed?    (    ) Yes    (    ) NO	Should Clerk schedule a hearing?    (    ) Yes    ( <input checked="" type="checkbox"/> ) NO Requested Date:
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*  
 Ordinance establishing Whatcom County Code 1.32, adopting rules regarding compliance with Chapter 42.56 RCW, Public Records Act

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<b>Related County Contract #:</b>	<b>Related File Numbers:</b>	<b>Ordinance or Resolution Number:</b>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).

**ORDINANCE NO. \_\_\_\_\_**

**ESTABLISHING WHATCOM COUNTY CODE 1.32, PUBLIC RECORDS**

**WHEREAS**, the people of the State of Washington, by Initiative Measure No. 276 (approved November 7, 1972), declared public policy to be for the full access to public records concerning the conduct of government; and

**WHEREAS**, Initiative Measure No. 276, codified as a portion of Chapter 42.56 RCW, mandates broad disclosure of public records, subject to exception found in that law and elsewhere; and

**WHEREAS**, every local agency is required to adopt rules regarding compliance with Chapter 42.56 RCW; and

**WHEREAS**, the local procedures should be codified in a chapter of the Whatcom County Code.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that Whatcom County Code Chapter 1.32, Public Records, is hereby established as outlined in Exhibit A to this ordinance.

**BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance..

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

APPROVED as to form:

  
\_\_\_\_\_  
Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Rud Browne, Chairperson

\_\_\_\_\_  
Jack Louws, Executive

( ) Approved ( ) Denied

Date: \_\_\_\_\_

1 **Chapter 1.32**  
2 **Public Records**

3  
4 **1.32.010 Purpose.**

5 The purpose of this chapter is to ensure compliance with the provisions of Chapter  
6 42.56 RCW and other applicable law relating to disclosure of public records.

7  
8 **1.32.020 Construction.**

9 The provisions of this chapter shall be liberally construed to provide public access to public  
10 records concerning the conduct of government, mindful of individuals' privacy rights and the  
11 desirability of the efficient administration of government.

12  
13 **1.32.030 Disclosure of Public Records Required.**

14 The County Council, the County Executive, and each County department, agency, division,  
15 board, office, commission, or other County entity shall make available for public inspection  
16 and copying all public records the disclosure of which is required by chapter 42.56 RCW or  
17 other law.

18  
19 **1.32.040 Public Records Officer.**

20 (1) The County Executive shall appoint a public records officer who shall provide centralized  
21 oversight, guidance and leadership to fulfill public records request for the county.

22 (2) Subject to subsection (3) of this section, the public records officer shall:

23 (a) Serve as a point contact for members of the public in requesting disclosure of  
24 public records, provided that requests may also be presented to County offices and  
25 departments.

26 (b) Oversee compliance with the public disclosure requirements of this chapter; and

27 (c) Adopt such policies and procedures as may be necessary to carry out the  
28 provisions of this chapter consistent with applicable laws.

29 (3) Final decision-making authority over public disclosure of records of the County Council  
30 shall be vested in the chairperson of the County Council or the chairperson's designee.

31 (4) The public records officer shall publish his or her name and contact information in a way  
32 reasonably calculated to provide notice to the public, such as posting at the County's  
33 primary place of business, posting on the County's internet site, or including in County  
34 publications.

35 (5) The department head will establish and follow rules for records management in their  
36 department. The department head will designate a contact for public record requests.

37  
38 **1.32.050 Public Records Request.**

39 (1) The public records officer shall provide a set of uniform public disclosure request forms  
40 for use throughout the executive and legislative branches of county government. All  
41 requests for public records shall be presented in writing to the public records officer or to  
42 the public records designee of the department, agency, division, board, office, commission,  
43 or other County entity believed to be responsible for the records being requested. The  
44 request shall include the following:

45 (a) The name and contact information of the person making the request for the  
46 record;

47 (b) Reasonable notice that the request is for the disclosure of public records pursuant  
48 to the public records act;

49 (c) Identification of the requested records by reference to names, title, subject matter,  
50 and time frames, or other means adequate for the public disclosure officer or public  
51 records designee to locate the requested records; and

1 (2) Upon receiving a request, the public records officer or public records designee shall  
2 document the date the request was received.

3 (3) Departments and offices of elected or appointed officials having records that have  
4 customarily been open to public inspection and/or copying may, at the option of the heads  
5 of such departments or offices, permit inspection and copying without requiring such  
6 requests in writing.  
7

8 **1.32.060 Lists of Individuals.**

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

11 (1) That he/she is not requesting the list for commercial purposes; or

12 (2) That he/she is specifically authorized or directed by law to obtain the list of individuals  
13 for commercial purposes, and that identifies such law.  
14

15 **1.32.070 Review of Denial and Exhaustion of Administrative Remedies.**

16 (1) Any person who objects to the initial denial or partial denial of a request for a public  
17 record subject to chapter 42.56 RCW may petition in writing (including e-mail) to the public  
18 records officer for a review of that decision. The petition shall include a copy of or  
19 reasonably identify the decision denying the request.

20 (2) The public records officer shall promptly provide the petition and other relevant  
21 information to the Prosecuting Attorney or his/her designee.

22 (3) The Prosecuting Attorney or designee shall consider the petition and affirm or reverse  
23 the denial within two business days after the public records officer's receipt of the petition,  
24 or within such other time as the County and the requestor may mutually agree.

25 (4) Administrative remedies shall not be considered exhausted until the Prosecuting  
26 Attorney or designee has made a written decision, or until the close of the second business  
27 day following receipt of the written request for review of the action of the public records  
28 officer, whichever occurs first.

29 (5) For purposes of the public disclosure laws, the action of the public records officer  
30 becomes final only after the review conducted under this section has been completed. No  
31 lawsuit to review the action taken, compel the production of a public record, or impose a  
32 penalty, costs, or attorney fees shall be brought before the administrative remedies set out  
33 in this section have been exhausted by the party seeking the record.  
34

35 **1.32.080 Charges for Records.**

36 (1) No fee shall be charged for the inspection of public records under this chapter.

37 (2) No fee shall be charged for locating public documents and making them available for  
38 copying.

39 (3) Pursuant to RCW 42.56.120 (2)(b), the County is not calculating all actual costs for  
40 copying records because to do so would be unduly burdensome for the following reasons:

41 (a) The County does not have the resources to conduct a study to determine actual  
42 copying costs for all of its records;

43 (b) To conduct such a study would interfere with other essential agency functions.

44 Therefore, the County shall charge fees for copies of records pursuant to the default  
45 fees in RCW 42.56.120(2)(b) and (c).

46 (4) The County shall charge fees for customized services pursuant to RCW 42.56.120(3).

47 (5) In addition to the fees and charges in subsections (3) and (4) above, the department  
48 may also require a deposit not to exceed ten percent of the estimated cost of providing  
49 copies for a request. If the department makes a request available on a partial or installment  
50 basis, the agency may charge for each part of the request as it is provided. If an installment  
51 of a records request is not claimed or reviewed, the department is not obligated to fulfill the  
52 balance of the request.

1 **1.32.090 Exemptions.**

2 Public records that are not subject to disclosure under state law, that are described as  
3 exempt by chapter 42.56 RCW, or that are required to be withheld by any other law, are  
4 exempt from disclosure under this chapter.  
5

6 **1.32.100 Index of Public Records.**

7 (1) Whatcom County government is comprised of many departments, agencies, divisions,  
8 boards, offices, and commissions which maintain separate records and incompatible record-  
9 keeping systems. The County's records are voluminous, diverse, complex and stored in  
10 multiple locations and in multiple incompatible data bases. Therefore, it would be unduly  
11 burdensome and costly to the taxpayers, and would substantially interfere with effective  
12 and timely County operations, to develop an index of those records identified in  
13 RCW 42.56.070(3).

14 (2) No County department, agency, division, board, office, commission, or other County  
15 entity is required to maintain an index of public records conforming to the requirements of  
16 RCW 42.56.070(3).

17 (3) Any index maintained by an individual department, agency, division, board, office,  
18 commission, or other County entity shall be made available for public inspection and  
19 copying unless exempt from disclosure or made confidential by law.  
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21