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CONCISE EXPLANATORY STATEMENT

Adopting WAC 44-06-092
and
Repealing WAC 44-06-090

PUBLIC RECORDS ACT COPY FEES

February 9, 2018

To: Interested Persons

From: Christina Beusch, Deputy Attorney General

Subject: Concise Explanatory Statement for Adoption of WAC 44-06-092 and Repeal of WAC 44-06-090

I. Introduction

This document has been prepared in compliance with RCW 34.05.325, the concise explanatory statement requirement of the Administrative Procedure Act. Included are: (1) the reasons for adopting the rule, (2) a description of the differences between the proposed rule and the text of the final rule, and (3) a summary of all comments received and responses to comments.

II. Statutory Authority

Effective July 23, 2017 the Legislature amended RCW 42.56.120 to require that before an agency uses the amended statutory default copy fee schedule, an agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The Attorney General's Office (AGO) is adopting a new rule to accomplish this purpose and is repealing an outdated rule. The statutory authority for this rulemaking is RCW 42.56.100; RCW 42.56.040(1)(d); RCW 42.56.120(2) (b); RCW 43.10.110

III. Reason for Adoption

The reason for this rulemaking is to implement the Legislature's new statutory default fee schedule for copying public records, provide fee waivers in certain circumstances, and explain payment procedures.

IV. Differences Between the Proposed Rule and Final Rule

There are no substantive differences between the proposed rule and the final rule.

V. Summary of All Comments Received and Responses to Comments

Only one written comment was submitted. No one appeared at the rulemaking hearing to testify.

The single comment addressed the portion of the rule that permits the public records officer to require that the payment for copies be in the exact amount charged and, in the case of cash payments, provides the public records officer discretion to determine the denomination of bills and coins that will be accepted. The commenter believes the agency should be required to make change and should not provide discretion to the public records officer regarding the denomination of the bills and coins used for cash payment.

The public records unit of the AGO may forward payments to the agency's fiscal unit, but has no authority or ability to engage directly in financial transactions with a requester. The time and transaction costs to make change or issue refunds by check would be exceedingly high and unduly burdensome. Before records are made available, requesters are informed of the exact amount of the payment required, so they are prepared to pay the proper amount.

The public records officer is provided the discretion to determine the denomination of bills and coins used for cash payment because of a prior experience where a requester insisted on making payment by mail in pennies sealed in packing tape. Despite repeated requests to make payment in another form or in other denominations of bills or coins, the requester refused, even though the cost to mail the pennies was greater than the cost of the records. It took excessive staff time to disassemble the taped pennies and process the payment. The agency is required to treat all requesters the same and cannot waive fees simply because a requester is not cooperative. This rule will provide the public records officer discretion in an exceptional circumstance to require a requester to comply with reasonable payment procedures in order to obtain records.

The agency considered the comment but did not alter the proposed rule.