

PUBLIC RECORDS DENIALS

A GUIDE TO REVIEWS OF STATE AGENCY DENIALS OF PUBLIC RECORDS

WHAT IS THE ATTORNEY GENERAL'S ROLE REGARDING PUBLIC RECORDS REQUESTS THAT HAVE BEEN DENIED BY A STATE AGENCY?

When a state agency denies access to a public record and cites an exemption from public disclosure, the Attorney General has the authority to review the agency's denial under RCW 42.56.530. Upon request, the Attorney General's Office shall provide a written opinion on whether the record is exempt from public disclosure. This review provides citizens the opportunity to obtain a second, independent review of their public records requests without going to court. This review is not binding upon the requester, or upon the state agency that is the subject of the review.

WHAT PUBLIC RECORDS DENIALS ARE APPROPRIATE FOR REVIEW BY THE ATTORNEY GENERAL?

The Attorney General shall review a denial of a public records request when:

- The agency denying access to a public record is a state department, board, commission, or office, and
- The state agency's reason for denying access is that the record is exempt from public disclosure requirements, and the agency cites an exemption, and
- The state agency has sent the requester a final decision denying the records requested. If the agency offers a procedure for an internal review of the public records officer's decision to a higher level within that same agency, the requester must first follow the agency procedure.

WHAT PUBLIC RECORDS DENIALS ARE NOT APPROPRIATE FOR REVIEW BY THE ATTORNEY GENERAL?

The Attorney General may not issue an opinion in the following circumstances:

- The agency denying access to a public record is a local agency or municipality, for example, a city, county, or a school district, or any boards or commissions within those local or county governments.
- The "agency" denying the record is a court.
- The state agency did not respond to the record request. The requester should contact the agency again to make sure the agency received the record request.
- The requester believes that the estimated time-frame given by the state agency for completing its response is incorrect.
- The state agency responded to the request, and has informed the requester that it has no records that fit the description in the request.
- A court order states that the specific individual requesting the record is not allowed to see the record.
- The records are related to pending litigation and the requester is also seeking the same records through the litigation procedures. In this case, disclosure issues can be resolved by the judge presiding over that litigation and the Attorney General's Office will place the request "on hold" pending the outcome of the litigation.
- The person requesting a review by the Attorney General does not cooperate with the review process, such as by failing to provide information necessary to allow the review to proceed.

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HOW DO I REQUEST ATTORNEY GENERAL REVIEW OF A STATE AGENCY PUBLIC RECORDS DENIAL?

- Review these guidelines describing what public records denials the Attorney General is authorized to review.
- If your situation is appropriate for Attorney General review, submit a written request to:

Office of the Attorney General
Attn: Public Records Review
P.O. Box 40100
Olympia, WA 98504-0100

- Include copies of your initial record request to the state agency, the agency's response denying your request, your request for internal review, the agency's final response, and any other correspondence to or from the agency regarding your request.

HOW DOES THE ATTORNEY GENERAL PROCESS A REQUEST FOR REVIEW OF A STATE AGENCY PUBLIC RECORDS DENIAL?

- If the request is appropriate for review under the criteria set out above, the Office will assign an Assistant Attorney General to respond to the request. The attorney will not be the attorney who regularly advises the state agency that is the subject of the review.
- The specific time frame to conduct the review will depend upon the complexity of the issues involved, the need to obtain information from the requester or the agency, and the volume of requests received.
- The assigned attorney will research the law. In addition, the attorney may interview either the requester and/or the staff of the agency that denied the request.
- The person requesting the review must cooperate by providing information, so that the assigned attorney is able to complete the review.
- The assigned attorney will write a letter to the requester stating whether the attorney agrees or disagrees with the agency's decision to deny a record based upon the exemption cited by the agency.



- The agency also receives a copy of the assigned attorney's review. The agency is not required to follow the opinion set forth in the letter. If the agency decides to provide access to records as the result of the opinion, the agency will contact the requester directly.
- Yes. A person who has been denied an opportunity to inspect or copy a public record may bring a lawsuit under RCW 42.56.550 against the agency in the superior court where the record is maintained. This court remedy is available to individuals regardless of whether they have requested Attorney General review. However, the attorney assigned to conduct the review will stop that review once the attorney is informed the matter is in court.
- If the individual requesting records is involved in litigation with the agency, the court rules may provide a means for obtaining access to the records.
- An action under RCW 42.56.550 must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. The Attorney General review pursuant to RCW 42.56.530 does not toll the one-year statute of limitations.

For more information, visit our web site at www.atg.wa.gov/consumer or call 1-800-5514636

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE