Overview

The Public Records Act (PRA) requires all state and local agencies to make, with some specific exemptions, all public records they retain available to the public. The public disclosure guidelines and resources that follow contain the Standard Operating Procedures (SOPs) designed to assist Residential Care Services (RCS) staff with the public disclosure process and to help facilitate PRA adherence.

RCS Public Disclosure & Discovery (PDD) unit is responsible for maintaining the public facility locator websites displaying long term care facilities' regulatory compliance documents, addressing records requests from the public, Attorney General's Office, interagency requests, discovery, subpoenas, attorneys, and other state agencies. The PDD unit also manages the maintenance, retention, and disposition of RCS' public records.

Authority:

- 45 CFR § Parts 160, 162, and 164 (HITECH Act), HIPAA Privacy Rules
- Chapter 42.56 RCW – Public Records Act
- RCW 74.42.430 – Written Policy Guidelines
- WAC 365-18-100 – Ombuds Record Access
- DSHS Administrative Policy 2.07 – Office of Communications Policy
- DSHS Administrative Policy 5.02 – Public Records Requests
- RCS Standard Operating Procedure, Chapter 23 – Central Files
- DSHS Record Retention Schedules by Unit
- Public Disclosure Resources (ALTSA Intranet)

These procedures are not covered by DSHS Administrative Policies as they are specific to RCS. These procedures will be reviewed for compliance and accuracy at least every five years.

Contacts

- RCS Policy Unit General Contact, RCSPolicy@dshs.wa.gov
- RCS Quality Improvement Unit General Contact, ImproveRCS@dshs.wa.gov

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Part I: Requests for Records, Information: RCS Staff

Overview

This chapter contains the SOPs that RCS Staff who work outside of the PDD unit are required to follow when receiving record and information requests.

Supervisor Responsibilities

1. Train new staff and ensure they can demonstrate they understand the procedure.
2. Conduct periodic reviews of this procedure to ensure staff are following it correctly.

A. Request for Records

Procedure

1. All records requests received by RCS staff outside the PDD unit should be emailed to the PDD unit at PDD@dshs.wa.gov immediately upon receipt. By law, a requester must be responded to within five working (business) days of their request. This is five working days (WD) from receipt of the request by the Department of Social and Health Services (DSHS), not from when PDD receives the request. For this reason, the immediate forwarding of any records requests to PDD is of utmost importance.
2. Requests for records may be made to RCS in any format, including by phone, in hardcopy, in person, or by email.
3. If you receive a request in hardcopy, scan the request, and email to PDD. The original hard copy of the request should be sent via campus mail to MS: 45600 (Public Disclosure & Discovery Unit).
4. If a request is received verbally, make sure you note the requestor's full name and contact information (email preferred, but physical address is also acceptable). Also note the type(s) of records being requested and as many relevant names, dates, locations, facility numbers, and/or intake numbers as possible. Email this information to PDD, reviewing the accuracy of the information you are providing.
5. All RCS staff have a duty to assist in the production of records for a records request. Staff must identify for PDD what records are responsive to the request such as Electronic Working Papers (EWP), emails, Statement of Deficiency (SOD)/Attestation, Room Lists, Floor Plans, Disclosure of Services, etc. If/when PDD staff contact you to search for records, track your time spent searching and the locations searched. When you notify PDD that your search for records is complete, also include your time spent working on the request.
6. Employees have no expectation of privacy in public records that have been created within the scope of their employment.
7. If requested by PDD, RCS staff are responsible for searching and producing to the PDD unit their emails that have not been vaulted yet (less than 45 days old), as well any information that may be stored on their state-issued personal electronic devices. If no responsive public records exist, then an affidavit to that effect may be issued.

8. Special circumstances:
   a. Long-Term Care Ombuds Program (LTCOP): WAC 365-18-100(5) provides specific record access to the LTCOP. Contact the PPD unit for direction.
   b. Insurance Companies regarding Nursing Homes (NH) and Adult Family Homes (AFH):
      - If the request is for: records, the nature and frequency of complaints about the facility, how many fines have been imposed, or whether fines were paid, or any information which requires gathering of records, review and redaction of the requested information, refer the call to Headquarters (HQ) Public Disclosure Staff at CC360) 725- 2316 or PDD@dshs.wa.gov.
      - If the request is for: the number of beds, the effective date of the license, status of the license, name of the provider, location of the facility, Medicaid contracted services, or any general information that is not included in the web locator, refer the call to Business Operations and Analysis Unit (BOAU) general number at (360) 725-3700 or RCSBOA@dshs.wa.gov.
9. A Memorandum of Understanding (MOU) is an agreement between the Aging and Long-Term Support Administration (ALTSA) and other DSHS entities and the AAG's office. Data Sharing Agreement (DSA) or Data Use Agreement (DUA) is an agreement between other state and federal entities. The MOU, DSA or DUA determines what information the PDD can release to another state agency to meet the 'minimum necessary standard' under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. For this reason, PDD is unable to provide full sets of working papers. Therefore, it must be determined which specific documents are being requested when a request is received for working papers. The MOU's related to Public Disclosure include the following entities, such as the following: Adult Protective Services (APS), Home and Community Services (HCS), Developmental Disabilities Administration (DDA), Medicaid Fraud Control Division (MFCD), and the Attorney General (ATG). The DSA includes the following entities: Department of Health (DOH) and the Ombuds. The DUA includes the Center for Medicare and Medicaid Services (CMS) Minimum Data Set (MDS).
10. When PDD unit requests records from a regional office, the documents are to be sent to PDD in the following address: Q:\RCS-PD-Field. The PDD staff do not have access to regional SharePoint sites. Due to the size and volume of the records email is not a secure or efficient way to submit the records, and it causes additional redaction by PDD when responding to request for emailed information that have the attachments.

    Note: If a unit Administrative Assistant (AA) does not have permissions to this folder they will need to submit a HelpDesk ticket to obtain permissions.

11. If the field receives a request for a different appointing authority, such as other divisions in ALTSA, those requests need to be forwarded to the PDD@dshs.wa.gov. They will record receipt of the records request and forward the request to the PD staff in those divisions.

B. Requests for Information

In this section, "information" refers to collected facts or data about a specific topic that is not subject to state or federal disclosure laws. Requests for information differ from public disclosure requests in that the requested information is available without legal authority being required. Additionally, it does not provide access to public records.

1. RCS staff should respond to all information requests as courteously and in as timely a manner as possible.
2. Some examples of information requests may be RCS publications, manuals, and licensing information (e.g., effective date of license, name of provider, location of facility, Medicaid contracted services, etc.).
3. If RCS staff receive a request for information that meets the definition of "request for information," the request should *not* be forwarded to the Public Disclosure Program Manager, but to the relevant Subject Matter Expert (SME).

   Example: requests for data would be directed to the Quality System, Data and Performance Unit, and requests for information on facility enforcement actions would be directed to the Complaint and Enforcement Unit.

4. Requests for information about a facility in one region: The Regional Administrator (RA), Field Manager (FM), or designee will call the requestor and verbally provide the factual regulatory compliance information. It is not necessary to retain and/or document the request or the response.
5. Requests for information that involves multiple regions: Forward the request for information to the RCS Public Disclosure Unit PDD@dshs.wa.gov and staff from this unit will review the request and forward to the appropriate staff.
6. If the RA, FM, or designee provides a written response to an information request, then the region should retain a copy of the information request and response, and forward to RCS PDD@dshs.wa.gov for retention in the correspondence section of the facility central file.
7. If you are unsure, whether providing verbal information will violate any privacy or confidentiality laws, please contact the RCS Public Disclosure Program Manager at PDD@dshs.wa.gov for guidance.

Part II: Requests for Records, Information: PDD Staff

Overview

This section applies to Public, Discovery, and Central Files Unit staff (Central Files, Record Retention and Record Management).

Procedure

1. Determine which public records are being sought. Clarify with the requester, if necessary. Always confirm your understanding of the disclosure request with the requester.
2. Within five business days of receipt of a public records request (the day of receipt is Day 0), DSHS must respond in one of the following ways:
   a. Produce responsive public records;
   b. Acknowledge receipt of the request and provide an estimated date for first response;
   c. Provide an internet address and link to the specific records requested;
   d. Seek clarification of an unclear request; or
   e. Deny the request in writing, noting the reason(s) for denial.
3. Document and track all records requests in the Agency Records Request Tracking System (ARRTS).
4. With narrow exemptions (Public Records Act - Exemptions), RCS is legally obligated to produce all existing, responsive, identifiable, public records.
5. Refer to WAC 365-18-100 and RCW 74.42.430 for specific record access rights for the Long-Term Care Ombuds Program (LTCOP).
6. RCS is not required to create new documents in response to a records request.
7. Redact or withhold only information that is exempt from public disclosure under RCW 42.56.210(2) and WAC 388-01-120.
8. When providing responsive records, bates stamp and clearly identify the documents.
9. Give internal appeal rights when responding to a records request.

Part III: Requests from Attorney General

Overview

This section contains the SOP that all RCS staff are required to follow. The Attorney General (ATG) has been assigned to advise and defend RCS, and therefore, all documents provided to them should be free of redactions.

Procedure

1. Requests from the Attorney General
   a. All requests from the ATG, including requests regarding Administrative Appeal records, are responded to directly by the RCS Public Disclosure & Discovery (PDD) unit.
   b. All requests from the ATG must be forwarded to PDD@dshs.wa.gov immediately upon receipt.

Supervisor Responsibilities

1. Train new staff and ensure they can demonstrate they understand the procedure.
2. Conduct periodic reviews of this procedure to ensure staff are following it correctly.

Part IV: Appendices

A. Glossary of Terms

Adult Family Home (AFH) – State licensed residential homes to care for two to eight vulnerable adults who may have mental health, dementia, and/or developmental disability/special needs. The homes are private businesses providing each person with a room, meals, laundry, supervision, assistance with activities of daily living, and personal care. Some provide nursing or other special care and services.
Agency – State agency.
Assisted Living Facility (ALF) – State licensed facilities providing basic services assuming general responsibility for the safety and well-being of vulnerable adults. ALFs allow the vulnerable adults to live an independent lifestyle in a community setting while receiving necessary services from a qualified workforce. ALFs can vary in size and ownership from a family-operated 7-bed facility to a corporation-based facility with 150+ beds. ALFs may provide intermittent nursing services or serve vulnerable adults with mental health needs, developmental disabilities, or dementia.
Attestation – A witnessed declaration executing an instrument in his or her presence according to the formalities required by law.
Certified Community Residential Services and Supports (CCRSS) – Includes Supported Living (SL), Group Homes (GH), and Group Training Homes (GTH). These are residential services provided to individuals who are eligible clients of the Developmental Disabilities Administration (DDA). Supported living clients are vulnerable adults living in their own homes in the community. The client or legal representative owns, rents, or leases the home.
Code of Federal Regulation (CFR) – The Departments and Agencies of the Federal Government providing codification of the general and permanent rules published in the Federal Register.
Department – This term refers to the Washington state Department of Social and Health Services (DSHS).
Enhanced Services Facilities (ESF) – means a facility that provides support and services to persons for whom acute inpatient treatment is not medically necessary. RCW 70.97.010.
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) – The Social Security Act created this optional Medicaid benefit to fund "institutions" (four or more beds) for individuals with intellectual disabilities. The Secretary defines this as providing "active treatment."
Medicaid Fraud Control Division (MFCD) – This statewide division is based in Olympia and includes a branch of four staff in Spokane to focus on Eastern Washington. MFCD investigates and prosecutes the criminal abuse and neglect of vulnerable adults in Medicaid-funded facilities and fraud perpetrated by health care providers against the Medicaid system.
Minimum Data Set (**MDS)** – a core set of screening, clinical assessment, and functional status elements, including common definitions and coding categories that form the foundation of the comprehensive assessment for all residents of long-term care facilities certified to participate in Medicare and Medicaid and for patients receiving SNF services in non-critical access hospitals with a swing bed agreement.

Nursing home (NH) – A term that can include both 24-hour Skilled Nursing Facilities (SNF) and Nursing Facilities (NF). SNFs are those that participate in both Medicare and Medicaid. NFs are those that participate in Medicaid only.
Record – any document or recorded information regardless of physical form or characteristics created, sent, organized, or received by the agency in the course of public business.
Record management – the practice of formally managing records in a file system (electronic or paper) including classifying, capturing, storing, and disposal.
Revised Code of Washington (RCW) – The compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriation acts.
Statement of deficiencies (SOD) – The official, publicly-disclosable, written report document from RCS staff that identifies violations of statute(s) and/or regulation(s), failed facility practice(s) and relevant findings found during a complaint/incident investigation conducted at an any setting regulated by RCS. Included in SODs for AFHs, ALFs, and ESFs is an attestation statement the entity signs and dates indicating the projected correction date for the cited deficient practice. The SOD is a legal document available to the public on request.
Washington Administrative Code (WAC) – Regulations of executive branch agencies issued by authority of statutes. Similar to legislation and the Constitution, regulations are a source of primary law in Washington State. The WAC codifies the regulations arranging them by subject or agency.
Working days (business days) – defined as Monday through Friday, excluding federal and state holidays.

B. Acronym List

AA	Administrative Assistant
AAG	Assistant Attorney General
AFH	Adult Family Homes
ALF	Assisted Living Facilities
ALTSA	Aging and Long-Term Support Administration
APS	Adult Protective Services
ARRTS	Agency Records Request Tracking System
ATG	Attorney General
BOAU	Business Operations and Analysis Unit
CCRSS	Certified Community Residential Services and Supports
CFR	Code of Federal Regulations
CMS	Centers for Medicare and Medicaid Services
DDA	Developmental Disabilities Administration
DOH	Department of Health
DSA	Data Sharing Agreement
DSHS	Department of Social and Health Services
DUA	Data Use Agreement
eCFR	Electronic Code of Federal Regulation
ESF	Enhanced Services Facilities
EWP	Electronic Working Papers
FM	Field Manager
HCS	Home and Community Services
HIPAA	Health Insurance Portability and Accountability Act
HQ	Headquarters
ICF/IID	Intermediate Care Facilities for Individuals with Intellectual Disabilities
LTCOP	Long-Term Care Ombuds Program
MDS	Minimum Data Set
MFCD	Medicaid Fraud Control Division
MOU	Memorandum of Understanding
NH	Nursing Homes
PDD	Public Disclosure and Discovery
PRA	Public Records Act
RA	Regional Administrator
RCS	Residential Care Services
RCW	Revised Code of Washington
SME	Subject Matter Expert
SOD	Statement of Deficiency
SOP	Standard Operating Procedures
WAC	Washington Administrative Code

C. Change Log

Eff. Date	Chapter/ Section #	Description of Change	Reason for Change	Communication and Training Plan
05/23/2024	Part III ATG Requests	Guidance updated	Inform staff of current process	MB R24-046
07/28/2023	Full Chapter	Updates to requirements, transition to new format	Updated Expectations	MB R23-065
09/20/2019	Full Chapter	Establishment of chapter	Establishment of chapter	MB R19-069