

## Administrative Policy No. 05.09

**Subject:** Workplace Safety and Disclosure of Public Records  
Concerning Employee Workplace Sexual Harassment or  
Stalking Public Records Requests

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**Authorizing Source:** Chapter 373, Laws of 2019 (ESHB 1692)  
Chapter 42.56 RCW  
Public Records Act at RCW 42.56.660 – 42.56.675

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**Revised:**

**Approved By:** **Original signed by Lori Melchiori**  
Senior Director, Office of Policy and Rules

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### Purpose

The purpose of this appendix is to implement RCW 42.56.660 - 42.56.675 to help foster workplace safety at the Department of Social and Health Services by establishing procedures governing Public Records Act (PRA) (chapter 42.56 RCW) access to certain DSHS records concerning state employee claimants and victims of workplace sexual harassment and stalking.

The State Legislature found that:

- State agency employees operate in unique work environments in which there is a higher level of transparency surrounding their daily work activities.
- State agencies must act to protect the health and safety of state employees, but even more so when employees become the victims of sexual harassment or stalking.
- When a state agency employee is the target of sexual harassment or stalking, there is a significant risk to the employee's physical safety and well-being.
- Workplace safety is of paramount importance and the state has an interest in protecting against the inappropriate use of public resources to carry out actions of sexual harassment or stalking.

The State Legislature amended the PRA to support this policy with respect to disclosure of

certain state agency records. Therefore, DSHS will restrict disclosure and notify DSHS employee claimants and victims of workplace sexual harassment or stalking when the agency receives a PRA request for certain records concerning the DSHS employee claimants or victims, as provided in the PRA and this policy.

## Scope

This policy applies to all department programs and employees, and to all public records held by the Department of Social and Health Service (DSHS or Department). This policy does not apply when:

- Responding to discovery requests for records when DSHS is a party to litigation (see DSHS Administrative Policy 5.05 Management of the Litigation Discovery Process);
- Sharing records with partners to administer DSHS programs and coordinate services and benefits;
- Producing records under other statutes that govern access, to the extent they supersede the Public Records Act, including requests by clients for access to their protected health information under the HIPAA Privacy Rule;
- Providing general information; or
- Giving access to records when required by other law, data-sharing contracts, or business process.

## Definitions

### **Acting on behalf of alleged stalker or harasser (with respect to providing records):**

Providing records to persons acting on behalf of an alleged harasser or stalker and who are making PRA requests --- including but not limited to an attorney, union representative, other legal representative or agent. Other persons may be included as persons acting on behalf of an alleged harasser or stalker, depending upon the circumstances, such as a relative of the requester, or organizations that make PRA requests on behalf of individuals or persons.

**Agency employee:** An employee at the Department of Social and Health Services who has made a claim of workplace sexual harassment or stalking with DSHS, or is named as a victim in the claim.

### **Claim (of workplace sexual harassment or stalking), is either one or both of the following:**

1. A formal complaint filed pursuant to DSHS's personnel or other relevant procedures;  
or
2. Less formal complaints reported to DSHS personnel who have the responsibility as part of their job duties to follow-up on the allegations.

**Claimant:** A person who has filed or made a claim of alleged workplace sexual harassment or stalking or is named as a victim.

**Confidential information:** Information exempt or protected from disclosure by state or federal laws, including information about DSHS clients, employees, volunteers, interns, providers, or contractors.

**Consent:** Written permission to allow the department to disclose confidential information on a one-time or time-limited basis to a third party, including to a legislator, attorney, friend, or family member.

**Discipline:** An authorized employment compliance directive or decision under agency laws, rules and policies, addressing employee misconduct, imposed upon the alleged harasser or stalker, including but not limited to reductions in pay, suspensions, demotions, and dismissals. See Administrative Policy 18.40.

**DSHS public records officer:** The person designated as the public records officer for the department under RCW 42.56.580. The DSHS public records officer has primary responsibility for management, oversight, and monitoring of the department's public records request process.

**Exempt information:** Information protected by state or federal law from disclosure under the Public Records Act. These laws are called "exemptions". If an exemption applies to all or part of a record, the exempt content may be withheld or redacted. Not all exempt information is considered confidential. Some exemptions may be permissive rather than mandatory.

**HRD:** Human Resources Division staff.

**Immediately providing notice:** No later than five business days, if feasible. The time to provide notice may be adjusted depending upon the circumstances.

**Investigation:** When a person authorized by the agency is gathering facts and evidence on behalf of the department to determine whether a claim can be substantiated. Depending on the circumstances, Human Resources Division staff, a supervisor, an outside investigator, or other authorized person might conduct an investigation.

**Issued:** Discipline that has been imposed by a person with authority as part of their job duties to issue and levy the discipline.

**Lead public records coordinator (lead coordinator):** The person designated for each division, program, and administration to manage and direct the public records request processing within that organizational part of the department.

**List of agency employees:** A list of agency employees who are named as victims in workplace sexual harassment or stalking claims, prepared pursuant to RCW 42.56.675 and in order to administer RCW 42.56.660.

**Public Records Act (PRA):** Chapter 42.56 RCW.

**Public records request:** The process to seek access to public records held by the department, including client records. This term excludes requests under RCW 13.50, RCW 26.23.120, Chapter 70.02 RCW, the HIPAA Privacy Rule as covered by DSHS Administrative Policy 5.03 and other laws exclusively governing responses to records requests.

**Public records coordinator (coordinator):** A person designated to respond to public records requests within an administration, organizational unit, local office, region, program, or facility.

**Records concerning an agency employee:** Public records the contents of which have to do with an identifiable and specific department employee, and which relate to the employee's employment status as a particular individual. The records primarily concern the employee as an employee, not the department or general work. For example, a named employee's personnel or training files. Other public records concerning a department employee that could be used to "carry out actions of sexual harassment or stalking" may be included. "Records concerning an agency employee" do not include work product created by the department employee as part of his or her official duties.

**Requester:** The individual or entity seeking access to records under the Public Records Act.

**Stalking:** Stalking defined under any civil or criminal laws, including but not limited to RCW 9A.46.110 (criminal stalking), RCW 7.92.020 (stalking conduct). Stalking includes engaging in a course of conduct directed at a person that serves no legitimate purpose and seriously alarms, annoys or intimidates the person.

**Victim:** A person who, in a claim, is alleged to have been the target of workplace sexual harassment or stalking. A victim can be the claimant or another person listed in the claim as an alleged victim.

**Work days:** Monday through Friday, excluding legal holidays.

**Workplace sexual harassment:** Unwelcome language or conduct of a sexual nature, or language or conduct that is because of sex, when any one of three criteria is met:

- i. Such language or conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment (this can happen even if the complaining party is not the intended target of the sexual harassment);
- ii. Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or,
- iii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

## **Policy**

### **A. Responsibilities**

#### **1. Employee claimant or victim of workplace sexual harassment or stalking:**

Under this policy, a DSHS employee who is a claimant or victim of workplace sexual harassment or stalking must cooperate with the public records coordinator as needed for DSHS to process a public records request for the records concerning the employee that are addressed in RCW 42.56.660 - .675.

This cooperation includes but is not limited to:

- Immediately notifying the public records coordinator if the employee becomes aware the requester is the alleged harasser or stalker, someone acting on behalf of the alleged harasser or stalker, or a person who intends to use the requested records or information in the requested records to harass, stalk, threaten, or intimidate that agency employee.
- Complying with any deadlines set by the public records coordinator to provide information needed by the department to process the request.
- Immediately, but no fewer than five work days prior to the court hearing, notifying the public records coordinator if the employee has initiated a court action to enjoin disclosure. The employee must provide sufficient notice to the public records coordinator of the court proceeding under the relevant court rules and procedures.
- Immediately providing the public records coordinator and the Attorney General's Office a copy of any court order and all pleadings relevant to the public records request.
- Providing written consent to the public records coordinator to allow disclosure of the requested records to the alleged harasser or stalker if the employee has no objection to their release.
- Other actions identified by the public records coordinator or DSHS, which are needed to process the public records request or respond to court actions concerning the request.

If the employee who is a claimant or victim has concerns about release of the records being sought through procedures outside the PRA (discovery, subpoenas, etc.), the employee should promptly notify the public records coordinator and the department's legal counsel. The employee may also need to consult with private legal counsel.

## 2. **Human resources division staff including workplace investigators:**

Under this policy, HRD staff, including workplace investigators, will familiarize themselves with RCW 42.56.660 - .675.

- If staff maintain a list of employee claimants and victims of workplace sexual harassment or stalking disciplined by the department, staff will promptly notify the lead public records coordinator for their program or administration.
- When contacting and interviewing workplace harassment and stalking claimants and victims, investigators are encouraged to review public records issues. Depending upon the circumstances, investigators may wish to notify the claimant or victim of the procedures for written consent for disclosure upon a future receipt of a public records request, if such consent has not been previously provided. A claimant or victim could provide consent to release records related to the department's response to a future public records request of otherwise non-disclosable records from the alleged harasser or stalker, for records covered by RCW 42.56.660 - .675.

- If DSHS receives a public records request for records covered by RCW 42.56.660 - .675, HRD staff will work with the public records coordinator, if needed, to inform the employee claimant or victim of their right to consent to disclosure of such records to the alleged harasser or stalker unless notice has been previously waived in writing by the employee claimant or victim (thus the employee has also consented to release). HRD staff will also work with the public records coordinator to provide notice of a public records request for records covered by RCW 42.56.660 - .675 when the request is made by someone other than the alleged harasser or stalker, if assistance is needed.
- The department may place a copy of any signed consent form in the employee's personnel file and the specific public records request file.

### 3. **Public records coordinator or designee:**

Under this policy, the public records coordinator or the public records coordinator's designee will take these steps.

**Step 1.** Upon receipt of a request for public records seeking records concerning a named DSHS employee who may be a claimant or victim of workplace harassment or stalking and governed by RCW 42.56.660 - .675, the public records coordinator will determine if:

- (a) the department received a claim concerning the alleged harassment or stalking and there is a claimant or victim;
- (b) the department conducted an investigation as a result; and
- (c) the department issued discipline upon an agency employee as a result.
- (d) the request seeks a list of names of employee claimants or victims maintained by the department in order to administer RCW 42.56.660.

The public records coordinator may need to consult with HRD, employee supervisory staff, the claimant or victim, or other relevant staff including agency legal counsel, to ascertain this information.

**Step 2.** If the answer to **all** three items in Step 1 (a) through (c) above is "yes", the public records coordinator will make reasonable efforts to determine the true identity of the requester, and then **proceed to Step 3**.

If the answer to item (d) of Step 1 above is "yes", **the department will not disclose** the list of names pursuant to RCW 42.56.675.

If the answer to **any** of items in Step 1 (a) through (c), or separately Step 1 item (d) is "no", the public records coordinator will skip Step 3 and will **proceed directly to Step 4**.

**Step 3.** After the public records coordinator makes reasonable efforts to determine the true (actual) identity of the requester, the public records coordinator will proceed to Subsection Step 3 (a) or (b) below (choosing the applicable, relevant subsection).

- (a) **Requester is harasser or stalker.** If the public records coordinator, reasonably verifies that the requester is the person alleged to have harassed or stalked the agency employee claimant or victim, the records will not be released to the

requester under RCW 42.56.660(1), *unless* the department receives a valid court order requiring release or written consent for release by the claimant or victim. The public records coordinator will cite RCW 42.56.660(1) as the exemption from disclosure, along with other relevant exemptions (if any).

If the public records coordinator believes the requester is or may be acting on behalf of the alleged stalker or harasser, or intends to use the requested records to harass or stalk the agency employee claimant or victim, the public records coordinator will consult with the DSHS public records officer and the department's legal counsel.

The public records coordinator may work with HRD staff to inform the employee of their right to provide written consent to disclosure of the requested records, if the employee has not yet provided or refused consent. The department may place a copy of any signed consent form in the employee's personnel file and the specific public records request file.

The public records coordinator may also give notice of the public records request to the employee claimant or victim under RCW 42.56.540.

- (b) **Requester is not harasser or stalker.** If the public records coordinator reasonably verifies that the requester is someone other than the alleged harasser or stalker (or someone not covered by Step 3 (a) of this section), the public records coordinator will immediately provide notice of the public records request to the employee claimant or victim under RCW 42.56.660(2)(b). No notice is required if the employee claimant or victim has consented in writing to waiver of such notice, and thus also agrees to the release of the requested records concerning the employee.

The public records coordinator will inform the employee that absent a court order enjoining DSHS from disclosing records, the records will be disclosed unless exempt under some other law (other than RCW 42.56.660).

The public records coordinator will provide the employee a date by which the department must receive notice that the employee has initiated any court action to enjoin disclosure, giving the employee at least ten (10) work days to seek a court order to enjoin disclosure. Except for the five-day response letter required in RCW 42.56.520, the public records coordinator will suspend further processing of the part of the request for these records covered by RCW 42.56.660 during the pendency of the court action, and will not disclose those records during that time. RCW 42.56.660(2)(b). The public records coordinator will continue to process any other parts of the request, including review of the requested records that may be exempt under other laws.

If the public records coordinator does not receive notice that the employee has initiated an action under RCW 42.56.660 seeking to enjoin disclosure by the date set by the department, the public records coordinator will continue to process the

PRA request and may consider other relevant exemptions from disclosure (if any), prior to any release of the requested records. For example, certain department investigative records concerning harassment in employment are also addressed in the exemption at RCW 42.56.250(6).

If the public records coordinator timely receives a valid court order enjoining disclosure following the employee notice, DSHS will follow the terms of the court order, and/or seek review or clarification, if necessary.

If the employee's action seeking an injunction is dismissed without the court granting an injunction, and absent a stay, the public records coordinator will continue to process the public records request and may consider other relevant exemptions from disclosure (if any), prior to any release.

**Step 4.** If the answer to items (a) through (c), or separately for item (d), in Step 1 is "no", the public records coordinator may give notice of the PRA request to the employee under RCW 42.56.540, using the same third party notice procedures the department uses with other PRA requests.

The public records coordinator may take other reasonable steps and provide other notices with respect to a particular public records request.