

NEW SECTION

**WAC 220-120-09000A Calculation of actual costs of producing copies of public records declared to be unduly burdensome – adoption of statutory fee schedule.**

Notwithstanding the provisions of chapter 220-120 WAC, effective July 23, 2017, until further notice the following rules apply:

- (1) Pursuant to RCW 42.56.120(2), as amended by Chapter 304, by Laws of 2017, sec. 3, the Washington State Department of Fish and Wildlife declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.
- (2) The Washington State Department of Fish and Wildlife may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by Chapter 304, by Laws of 2017, sec. 3.

## Attachment

Under the Public Records Act (PRA), agencies have the ability to charge a requester for certain costs associated with providing copies of records in response to the requester's public records request. In the 2017 legislative session, the Legislature amended the provision of the PRA that governs charges for providing public records. Under the law prior to the 2017 amendments, agencies could only charge for photocopies, not scanned records and other electronic records. But the majority of records are now provided in electronic format. The 2017 amendments allow agencies to charge requesters for things like scanning records, providing electronic records via email or other electronic delivery means, and providing records on a CD or thumb drive.

HB 1595, passed in the 2017 legislative session, amended RCW 42.56.120, the provision of the PRA that governs agency charges to requesters for providing copies of public records. These amendments in HB 1595 were designed to modernize this provision to reflect changes in the way agencies provide copies of records to requesters.

HB 1595 becomes law on July 23, 2017 and a rule must be in place that establishes the actual costs of producing records, or a rule must be in place that declares the calculation of actual costs would be "unduly burdensome". Otherwise an agency would not be able to impose fees on PRA requestors. WDFW is taking the latter approach and will declare that it will be "unduly burdensome" to calculate actual costs and will file an emergency rule. This declaration will allow WDFW to utilize the statutory default fee schedule created by the Legislature in the 2017 amendments starting on July 23, 2017, the date the legislation goes into effect, and to be in full compliance with the PRA, as amended. The agency will be filing a preproposal statement of inquiry to begin the permanent rulemaking process.