

# COLUMBIA RIVER GORGE COMMISSION

## Chapter 350

### Division 12

#### Public Records

As Amended Through April 1, 2008.

#### **350-12-001. Definitions for 350-12-001 to 350-12-008.**

- (1) "Person" includes any natural person, corporation, partnership, firm or association.
- (2) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by the commission regardless of physical form or characteristics.
- (3) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

#### **350-12-002. Right to inspect public records.**

Every person has a right to inspect any public record of the commission, except as otherwise expressly provided by 350-12-008.

#### **350-12-003. Index of certain records.**

- (1) The commission shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated.
  - (a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
  - (b) Those statements of policy and interpretations of policy, statutes, and the Constitution which have been adopted by the commission;
  - (c) Administrative staff manuals and instructions to staff that affect a member of the public;
  - (d) Planning policies and goals, and interim and final planning decisions;
  - (e) Factual staff reports, and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from

tests, studies, reports, or surveys, whether conducted by public employees or others;

- (f) Correspondence and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The commission need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

- (a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and
- (b) Make available for public inspection and copying all indexes maintained for agency use.

**350-12-004. Times for inspection and copying.**

(1) Public records shall be available for inspection and copying during the customary office hours of the commission. Provided, that if the commission does not have the customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the commission or its representative agree on a different time.

**350-12-005. Forms of public records.**

(1) The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) If a public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

**350-12-006. Fees.**

(1) The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.

(2) If the Commission makes a request available on a partial or installment basis, the Commission may charge for each part of the request as it is provided. If an installment of a

records request is not claimed or reviewed, the Commission is not obligated to fulfill the balance of the request.

**350-12-007. Fulfilling requests.**

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond and an estimate of the fees that the requester must pay as a condition of receiving the public records; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

**350-12-008. Public records exempt from disclosure.**

(1) The following public records are exempt from disclosure under 350-12-001 to 350-12-008 unless the public interest requires disclosure in the particular instance:

- (a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;
- (b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

- (c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:
  - (A) The arrested person's name, age, residence, employment, marital status and similar biographical information;
  - (B) The offense with which the arrested person is charged;
  - (C) The conditions of release;
  - (D) The identity of and biographical information concerning both complaining party and victim;
  - (E) The identity of the investigation and arresting agency and the length of the investigation;
  - (F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;
  - (G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.
- (d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;
- (e) Information relating to the appraisal of real estate prior to its acquisition;
- (f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;
- (g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;
- (h) Investigatory information relating to any complaint filed relating to unfair labor practices;
- (i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

- (j) A personnel discipline action, or materials or documents supporting that action.
- (k) Sensitive fish, wildlife, and plant data. Sensitive fish, wildlife, and plant data may be released to the following entities and their agents for fish, wildlife, plant, and land management purposes, or scientific research needs: Governments agencies, public utilities, and accredited colleges and universities. Sensitive fish, wildlife, and plant data may be released to tribal governments. Sensitive fish, wildlife, and plant data may also be released to the owner, lessee, or right-of-way or easement holder of private land to which the data pertains. The release of sensitive fish, wildlife, and plant data may be subject to a confidentiality agreement, except upon release of sensitive fish, wildlife, and plant data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish, wildlife, and plant data does not include data related to reports of predatory wildlife posted on the Washington Department of Fish of Wildlife's internet web site. Sensitive fish, wildlife, and plant data must meet at least one of the following criteria as applied by the Gorge Commission:
  - (1) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;
  - (2) Radio frequencies used in or locational data generated by telemetry studies;
  - (3) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:
    - (A) The species has a known commercial or black market value;
    - (B) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;
    - (C) There is a known demand to visit, take, or disturb the species; or
    - (D) The species has an extremely limited distribution and concentration.
- (l) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:
  - (1) An individual;
  - (2) Buildings or other property; or

(3) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-12-001 to 350-12-008:

- (a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;
- (b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;
- (c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;
- (d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;
- (e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;
- (f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.
- (g) Information about review or approval of programs relating to the security of:
  - (1) Generation, storage or conveyance of:
    - (A) Electricity;
    - (B) Gas in liquefied or gaseous form;
    - (C) Hazardous substances as defined by Oregon or Washington state law;
    - (D) Petroleum products;
    - (E) Sewage; or
    - (F) Water;

- (2) Telecommunications systems, including cellular, wireless or radio systems.
- (3) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(i) Information gathered for the purpose of preparing a small business impact statement or an analysis of significant rules as required by the states' rulemaking requirements that can be identified to a particular business.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-12-008(1) and (2), public records that are more than 25 years old shall be available for inspection

(6) Notwithstanding 350-12-001 through 350-12-008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

**350-12-009. Public records officer.**

The Commission's Executive Director or her appointee shall serve as the Commission's public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the Commission's compliance with the public records disclosure requirement of this division.