

Via email

Date: February 20, 2025  
From: Richard E. Potter and John M. Gray  
To: Jilene Siegel, Office of the State Treasurer  
CC: Susan Dumph, Chair, Administrative Law Section, W.S.B.A.  
Subj.: WSR 25-02-073 and -091

On behalf of the Administrative Law Section of the Washington State Bar Association, we are interested in participating in your office's consideration of adopting a new rule that would implement the records index required by section RCW [42.56.070](#) (5) of the Public Records Act.

Based on your current online Public Records Index<sup>1</sup> it appears that your office issues only one of the four types of documents covered by that statute: "(e) Policy statements as defined in RCW [34.05.010](#) that were entered after June 30, 1990."<sup>2</sup>

Below we offer comments and suggestions as to your Office's current index rule and a new index rule specific to policy statements.

The current rule is WAC [210-06-120](#). It applies only to "State Treasurer's Office (Finance Committee)."<sup>3</sup> If there are other entities within the Office of the State Treasurer that issue policy statements and/or any of the three other types of documents listed in RCW 42.56.070(5), there need to be index rules that cover those documents.

The current WAC 210-06-120 has six subsections that list a large number of various types of documents that the Office will cover by indexes. Subsection (b) appears to name the "policy statements" that are covered by RCW 42.56.070 (5).

**WAC 210-06-120 Records index.**

(1) **Index.** The committee has available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since June 30, 1972:

"(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

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<sup>1</sup> <https://tre.wa.gov/public-records-index>

<sup>2</sup> In the Administrative Procedure Act, RCW [34.05.010](#) : (15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

See also RCW [34.05.230](#) Interpretive and policy statements and RCW [34.05.220](#) Rules for agency procedure—Indexes of opinions and statements.

<sup>3</sup> WSR 25-02-091 mentions both Title 210 WAC and Title 398 WAC. We see that the latter has practice and procedure rules for the Public Deposit Protection Commission, which does not contain a records index rule.

"(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;

"(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; and

"(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) **Availability.** The current index promulgated by the committee shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

[Order XII, § 210-06-120, filed 11/28/73.]

If your Office decides for reasons other than the index requirements of the Public Records Act or the Administrative Procedure Act to produce indexes of the other types of documents covered by the current rule, we would support that approach and, therefore, retaining this rule, updated as might be necessary. But compliance with RCW 42.56.070(5) should be covered by a new, separate rule.

The following excerpt from RCW 42.56.070(5) shows the requirements applicable to a policy statements index rule. (Line breaks and bullets have been added.)

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to,

- requirements for the form and content of the index,
- its location and availability to the public, and
- the schedule for revising or updating the index.

Below is a draft rule (with comments) for your consideration. It would apply to all entities within the Office of the State Treasurer that issue "policy statements."

RULE	COMMENTS
<b>WAC xxx-xx-xxx Policy statements index</b>	
(1) <b>Purpose.</b> This rule implements RCW 42.56.070(5) as it applies to [the agency]. Of the types of documents covered by that statute, [the agency] issues only policy statements as defined in RCW 34.05.010.	
(2) <b>Form and content of the index.</b> The index will list each policy statement by title, topics covered, adoption order number, date ranges of orders issuance (including any revisions), and by major agency program (if applicable).	Other identifying characteristics of a policy statement pertinent to the nature of the agency's operations should be added.
(3) <b>Revising and updating index.</b> Promptly on the issuance of any new policy statement, the statement will be added to the appropriate index. Promptly on the issuance of any revised policy statement, the revised statement will be added to the appropriate index.	For historical purposes, policy statements that have been replaced by revisions could remain in the index.
(a) Statements will be removed from an index when they no longer represent [the agency's] current position.	
(b) No less frequently than every [time period], [the agency] will review the index to ensure that they are current and complete.	To make sure the information provided to the public is current, this review should be frequent, e.g., no less than every 6 months.
(4) <b>Location and availability of indexes and records.</b> (a) The index and the records listed in it are located at [the agency's] office[s] at {address[es]}.	
(b) The index and the records listed in it are available for inspection and copying at [the agency's] office[s] during normal business hours, which are [state]. The process for obtaining such access is the same as for other public records, which is described in the agency's rule WAC xx-xx-yyy.	This implements the requirement of RCW <a href="#">42.56.070</a> (1) that the agency make available all (non-exempt) records to the public.
(c) The index and the records listed in it are posted on the agency's website at [url]. In the index, each record listed has a hotlink that leads to the full record.	This implements the requirement of RCW 42.56.070(1) that the agency make available all (non-exempt) records to the public. <sup>4</sup>  Best practice: cite to the specific indexes webpage, not just to the homepage. If only the home page is

<sup>4</sup> In the Public Records Act, see this note to RCW [42.56.520](#): Finding—2010 c 69: "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency websites. When an agency has made records available on its website, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [ [2010 c 69 s 1](#).]

	given, the agency should ensure that an obvious link to “Records indexes” is always on the homepage.
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We see that the Office has an index of policy statements available on its website at <https://tre.wa.gov/public-records-index>.

That index does not have all the identifying information recommended in part (2) of our draft rule.

Also, it does not have hotlinks to the documents. We tried finding a handful of the listed documents by using the search function on the Office’s website and did not find any of those statements.