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Disclosure of Records		

1. PURPOSE AND SCOPE

The purpose of the Disclosure of Records Protocol is to provide a means to protect and disclose records shared between the Washington State Department of Ecology (“Ecology”) and the U.S. Coast Guard Thirteenth District (“USCG”) to the extent allowed by each agency’s laws and regulations.

Ecology and the USCG understand that Washington’s Public Records Act, chapter 42.56 RCW, is liberally construed in favor of disclosure of public records and that records prepared, owned, used, or retained by Ecology may only be withheld from disclosure under narrowly interpreted exemptions contained either in the Act or other laws. It is further understood that under the holding of Newman v. King County, 133 Wn.2d 565, 947 P.2d 712 (1997), investigative records may be protected from disclosure while the investigation remains open only if enforcement proceedings are anticipated.

In cases where Ecology would be obligated under state disclosure laws and regulations to disclose USCG shared records otherwise protected from disclosure under the Freedom of Information Act (5 USC 552), the USCG will provide Ecology access to such records by means of inspection.

Instructions and policies contained in this protocol apply to all records exchanged in compliance with any protocol developed to implement the Memorandum of Agreement on Oil Pollution Prevention and Response between the state of Washington and the Commander, Thirteenth Coast Guard District, executed on June 26, 2007.

2. AUTHORITIES AND REFERENCES

Memorandum of Agreement on Pollution Prevention and Response between the Commander Thirteenth Coast Guard District and the state of Washington executed on June 26, 2007, Sections II, IV, V, VI, VII, VIII, and IX involve the sharing of records that are subject to disclosure under applicable state and federal law.

Ecology

Statutes

RCW 42.17.010

RCW 42.17.020

*RCW 42.56.040 through
42.56.570*

RCW 42.56.550

RCW 5.60.060

Declaration of Policy

Definitions

Public Disclosure

Civil remedies and sanctions

Attorney-Client Privilege

Physician-Patient Privilege

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Regulations

WAC 173-03

WAC 44-14

Public Records

Public Records Act – Model Rules

Agency Policies

10-30

10-30-01

10-30-01a

Responding to Requests for Ecology Records

Disclosing Public Records

Disclosing Ecology Public Records

USCG

Statutes

5 USC Sec. 552

5 USC Sec. 552a

Freedom of Information Act

Privacy Act

Regulations

49 CFR, Part 7

49 CFR, Part 1520

Public Availability of Information

Protection of Sensitive Security Information

Agency Policies

COMDTINST M5260.3

COMDTINST M5510.23

COMDTINST 5510.22

Freedom of Information Act and Privacy Act Manual

Classified Information Management Program

Original Classified Authority

3. EFFECTIVE DATE AND POINTS OF CONTACT

This protocol will become effective on signature of both parties to this protocol.

The following persons will serve as points of contact for questions concerning this protocol and its implementation:

Ecology

Enforcement Coordinator, Spills Program

Phone: 360-407-7504

Fax: 360-407-7288

Mailing Address: Washington Department of Ecology, Spills Program, P.O. Box 47600, Olympia, Washington 98504-7600

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USCG

Freedom of Information Officer, Sector Seattle

Phone: 206-217-6251

Fax: 206-217-6213

Mailing Address: Commander Sector Seattle, 1519 Alaskan Way South, Building 4, Seattle, WA 98134-1192

Freedom of Information Officer, Sector Portland

Phone: 503-240-9312

Fax: 503-240-9345

Mailing Address: Commander, Sector Portland, 6767 North Basin Avenue, Portland, OR 97217

4. DEFINITIONS

For the purpose of this protocol and actions taken under this protocol, the following definitions apply:

- *Investigative record* is a public record compiled as a result of an investigation focused on a particular party concerning a specific allegation of a violation of a law or rule, which is essential to effective law enforcement.
- *Public record* means a record that is disclosable under Washington State or U.S. law or rule.
- *Record* means a writing, drawing, map, recording, tape, film, photograph, digital file, computer file, or other means by which information is preserved.

5. POLICIES

It is the policy of the USCG and Ecology to:

- Leverage their limited resources and provide effective efficiencies by sharing information to the maximum extent allowed by each agency's respective laws, rules, regulations and policies.
- Fully share records, facts, and data that are historical and do not contain preliminary opinions, notes, or other work product not cited in the final resolution of the matter.
- Prevent unreasonable invasion of personal privacy to the maximum extent allowed by the respective law, rule, regulation, and policy of each agency.

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- Protect from disclosure any record compiled for law enforcement purposes, if the investigation or proceeding involves a possible violation of criminal law and there is reason to believe:
 - The subject is unaware of the investigation; and
 - Disclosure could reasonably be expected to interfere with enforcement proceedings.

It is the policy of Ecology to:

- Protect from disclosure any investigative record until an enforcement action based on the investigation has been issued.
- Initiate the following procedure for requests for disclosure of any record that the USCG has requested to remain undisclosed:
 - Notify the USCG point of contact as soon as possible after receipt of the request.
 - Withhold disclosure until ordered to do so by Washington State's Public Disclosure Commission or Office of the Attorney General.

It is the policy of the USCG to:

- Identify any federal privilege or law other than the Federal Freedom of Information Act (5 USC 552) that prohibits or limits disclosure of a record shared with Ecology.
- Withhold any classified or Sensitive Security Information (SSI) that cannot be shared with Ecology.
 - *Sensitive Safety Information is a specific category of information that requires protection against indiscriminate handling. Release of SSI to federal, state, or local enforcement officials, or to federal intelligence agencies is permissible only when there is written authorization signed by the originating office or program manager and agreement from receiving officials that the information may not be further disseminated without express written authorization or released to the public.*
- Consult with other federal Agencies (e.g. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP)) that may limit further dissemination of their information prior to sharing such information with Ecology. USCG will consult with those agencies to ascertain the extent to which those agencies' information can be shared with Ecology.

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- To provide Ecology access, by means of inspection, to any other information that may not be exempt under state law, regulation, or policy, but is exempt under the federal Freedom of Information Act or Privacy Act. The USCG FOIA Officer will be consulted to determine the extent and form by which such information can be shared.

6. MEASURES OF EFFECTIVENESS:

- Protocol implementation progress regarding protection and disclosure of information between agencies will be compiled and discussed at quarterly Ecology/USCG coordination meetings.

7. APPROVAL



W. T. DEVEREAUX
Captain, U. S. Coast Guard
Thirteenth Coast Guard District
Chief, Prevention Division



DALE JENSEN
Program Manager
Spill Prevention, Preparedness, and
Response Program
Washington Department of Ecology

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