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# Public Records & Open Public Meetings

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# What will we cover?

- **Public Records Act**
  - Fundamentals
  - Best practices
  - Recent case highlights
  - Records retention
- **Open Public Meetings Act**
  - A meeting is a meeting....
  - Regular vs. Special
  - Violations

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# Public Records Act (PRA)

## Chapter 42.56 RCW

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

The act is “liberally construe[d]...to promote the public interest.” *West v. City of Tacoma*, 12 Wn. App. 2d 45, 79, 456 P.3d 894 (2020).

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# Okay, but what does it mean for my city?

- Adopt/publish reasonable regulations that provide for the fullest assistance to requestors and timely action on requests. WAC 44-14-01002
- Appoint a Public Records Officer (PRO. But, the PRO is not required to fulfill every request and you do not have to hire a new staff member). WAC 44-14-0200.
- Train the PRO and agency governing body. Annual training for Council and staff. Lots of resources are available for this. [www.atg.wa.gov/OpenGovernmentTraining.aspx](http://www.atg.wa.gov/OpenGovernmentTraining.aspx)
- Maintain and publish list of “other statute” exemptions.
- Maintain public records index.
- Adopt a fee schedule.
- Track, log and report public records request information.
- Retain and maintain records in accordance with state retention schedules.

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# We know what a record is...

## A public record is:

1. “any writing”;
2. “information relating to the conduct of government or the performance of any governmental or proprietary function”; and which is
3. “prepared, owned, used, or retained by any state or local agency”

But my drafts were just for me...No.

That text message was not supposed to see the light of day...Doesn't matter.

Compliance training is critical to avoid these types of issues.

See WAC 44-14-03001.

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# Writing – yes, it’s basically everything

“handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof...” etc. etc.

Social media postings, text messages, emails.

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# Relating to the conduct of government

Purely personal records without any connection to government conduct are not public records, but that should be rare, and such a dispute requires close inspection...

“For example, a record showing the existence of a purely personal email sent by an agency employee on an agency computer would probably be a ‘public record,’ even if the contents of the email itself were not.” WAC 44-14-03001(2).

Consider *Tiberino v. Spokane County*, 103 Wn. App. 680, 13 P.3d 1104 (2000).

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# Prepared, owned, used, or retained

This can include home computers, personal cell phones, personal email accounts, social media accounts, etcetera “[w]hen the records are prepared, owned, used or retained within the scope of the employee’s or official’s employment....” WAC 44-14-03001(3).

“[T]he onus remains with an agency to perform an adequate search for records, but the ‘agency employees are responsible for searching their files, devices, and accounts for records responsive’ to a PRA request.” *Valderrama v. City of Sammamish*, 33 Wn. App. 2d 318, 326, 561 P.3d 288, 296 (2024) (quoting *Nissen v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (2015)). *Nissen* affidavits should describe the nature and extent of the employee’s or official’s search, including what devices and accounts were searched and what search terms were utilized.

Enacting policies can be critical to prevent missteps and avoid litigation.



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# What kind of policies should we consider? WAC 44-14-03001

- Consider providing employees or officials agency-issued devices.
- Limit or prohibit use of home computers, personal devices or personal accounts for agency business.
- Have legislative bodies consider policies restricting member usage of social media accounts.
- Social media solutions? PageFreezer?

These are not perfect, but with training and cooperation you can hope to avoid expensive litigation.

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# Request for records

## Format does not matter.

1. Email
2. Letter
3. In person
4. Over the phone
5. Council meeting
6. Etcetera

The key here is to have all staff trained as to the importance of documenting and forwarding the request to your public records officer.

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# We received a request, now what?

- You must respond within 5 days, clarify the request (if relevant).
- Provide the records if available.
- If not readily available, provide reasonable estimate of time required to respond.
- Search for and locate records, assemble records, determine exemptions, provide third party notification (if relevant).
- Provide records; installments are okay if needed.
- Close the request.
- Document the process, record time spent responding, etcetera.

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# Conduct an adequate search

What is adequate depends on the facts of each case. *Valderrama v. City of Sammamish*, 33 Wn. App. 2d 318, 326, 561 P.3d 288 (2024).

- More than perfunctory. Reasonably calculated to uncover all relevant documents.
- But, “an agency need search only those places where a responsive record is ‘*reasonably likely*’ to be found, not ‘every possible place a record may conceivably’ exist.” *Id.* (quoting *Neigh. All. of Spokane County v. Spokane County*, 172 Wn.2d 702, 720, 261 P.3d 119 (2011)).
- Remember, the “agency bears the burden of showing beyond material doubt that it conducted an adequate search.” *Id.*

# Valderrama v. City of Sammamish, 33 Wn. App. 2d 318, 561 P.3d 288 (2024)

43 *Nissen* affidavits and hundreds of documents over numerous installments. Provided screenshots of messages from social media sites, voicemails, WhatsApp transcripts, etc. Communicated with requestor and reopened the request after closing it once.

**Lesson: Spend the time to train your employees and council, spend the necessary time on each request, seek advice from your in-house attorneys and outside counsel when necessary about how to properly respond, and constantly communicate with a requestor because when you end up in court, and you will, you just might avoid penalties and attorney fees.**

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# Promptness & Installments

“An agency may also disclose the relevant records to the requestor ‘on a partial or installment basis as [the] records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure.’” *Soule v. State by and through Bob Ferguson*, 59172-3-II (April 1, 2025) (unpublished).

- 30,000 pages
- 17 installments
- Two years

“Although the length of time the entire process took may have appeared long, in our review of the record, all of the AGO’s actions that contributed to this duration were consistent with what the PRA allows. Nothing in the record supports Soule’s contention that the AGO’s delay in producing his records was somehow deliberate or purposeful.”

Documentation and communication is key.

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# Factors impacting response times

- Scope of request (breadth and types of records).
- Staff workloads.
- Clarification required?
- Third-party notice needed?
- Number of requests already in progress.

Triage the request and communicate early and often with the requestor. Although the need for the records does not require a faster response, it may be a factor when a court is looking at imposing penalties.

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# Exemptions

*There are a lot but...*

The Public Records Act will be liberally construed to promote the public interest, so it follows that exemptions are narrowly construed.

Exemptions must be authorized in law – look at the PRA for exemptions, but remember there are other laws, state and federal, that contain exemptions and prohibitions. The following link is a helpful, but non-exhaustive list of other statutes in Appendix C: [Public Records Act for Washington Cities, Counties, and Special Purpose Districts](#)

If and when an exemption does apply:

- Provide a log identifying the type of record withheld or redacted, the date of the document, the number of pages being withheld, the author and/or recipient of the document, and the specific exemption relied on in addition to a brief explanation of how the exemption applies to the given record. WAC 44-14-04004.



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# Side note: HB 1934

## *Amendment to RCW 42.56.250*

Modifies an existing Public Records Act exemption related to investigations of unfair practices or workplace discrimination or harassment to require the agency, prior to disclosure of the investigative records, to also redact the images, employee agency job titles, email addresses, and phone numbers of complainants, accusers, and witnesses, and alter their voices on audio recorded during the investigation while retaining inflection and tone.

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# Closing Letter Must be Sufficient

***Cousins v. State*, 3 Wn.3d 19, 546 P.3d 415 (2024).**

“[A] sufficient closing letter will ordinarily trigger the PRA’s one-year statute of limitations pursuant to *Belenski’s* final, definitive response test.” *Id.* at 49.

“Sufficient closing letters must be written in plain language targeted to a lay audience and should include at least the following information:

- (1) How the PRA request was fulfilled and why the agency is now closing the request,
- (2) That the PRA’s one-year statute of limitations to seek judicial review has started to run because the agency does not intent to further address the request, and
- (3) That the requester may ask follow-up questions within a reasonable time frame, which may be explicitly specified by the agency.” *Id.* at 50.

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# PRA Pitfalls

- Inadequate searches.
- Denial of opportunity to inspect or copy a public record.
- Claiming exemptions that do not apply or simply misconstruing an exemption. (When in doubt, and if litigation seems likely, consider the risk and provide an analysis to the client).
- Failure to provide reasonable estimate of time or the estimate is unreasonable.

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# PRA Penalties

- Court can impose civil penalties up to \$100 per day per record to be awarded to the requestor.
- Court may group records together for penalty assessments—or may calculate penalty on a per page basis.
- Court may consider the size of the agency and often analyzes the amount of the assessment per resident on a per capita basis.
- No proof of damages is required.
- Must consider any mitigating or aggravating factors that may reduce or increase a penalty.
- Failure to provide 5-day letter not subject to penalties.
- In addition to attorneys' fees that may be awarded to prevailing requestor.
- Penalty awards reviewed by appeals courts using an “abuse of discretion” standard.
- Generally, no liability for disclosing records, absent statutory obligation to not disclose.

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# Records Retention, ch. 40.14 RCW

- [Managing City Records | WA Secretary of State](#)
  - List of different retention schedules associated with local governments.
- Each retention schedule has categories and subcategories describing the type of record, substance, disposition schedules and requirements for archiving.
- Utilize the search function in the different schedules to determine whether the type of record in question can be destroyed.
- Many records are transitory, i.e., can be destroyed after they are no longer needed for agency business.
- However, records that are subject to an existing public records request or are subject to ongoing or reasonably anticipated litigation must not be destroyed.
  - When you get a litigation hold request or a public records request, make staff and your PRO aware.

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# Open Public Meetings Act, ch. 42.30 RCW

- ▶ All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in the OPMA.
- ▶ Public agencies are encouraged to provide for the increased ability of the public to observe and participate in the meetings of governing bodies through real-time telephonic, electronic, internet, or other readily available means of remote access that do not require an additional cost to access the meeting.
- ▶ RCW 42.30.030.

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# What is a governing body?

- ▶ "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.
- ▶ RCW 42.30.040(2).

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# Quiz

- ▶ **Can three City Councilmembers, assuming a seven member body, meet at Starbucks to discuss a particular issue without violating the OPMA?**
- A) No, because they did not publish an agenda.
- B) Yes, but only if the Barista or patrons are allowed to comment.
- C) Probably, if they avoid discussing the matter with a fourth councilmember.



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# Serial meetings

- ▶ Requires collective intent to meet. *Citizens Alliance v. San Juan County*, 184 Wn.2d 428, 359 P.3d 753 (2015).
- ▶ Passive receipt of information alone is not a violation of the OPMA. *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 27 P.3d 1208 (2001).
- ▶ Do we really want to have that fight though?
- ▶ Best practice is whenever possible, conduct the City's business at open public meetings.

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# Is this a serial meeting?

**A resident sends every councilmember an email regarding the City's approach to crime. Three members discuss the email at their next police task force meeting.**

Probably not. A majority of the council received the information, but only three had the intent to discuss the matter collectively. Even so, councilmembers should be instructed to not reply all to the email or expand the conversation to include a fourth councilmember.

As always, best practice is to bring up the topic at the next council meeting.

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# Next question

**Council leadership would like to invite one councilmember to join their weekly leadership team meetings. To keep things fair, they plan to invite a different member each week. Will this create risk of an OPMA violation?**

Likely – at least if they ever want to discuss the same topics with different rotating councilmembers.

Timing does not matter, so if discussion, deliberation, consideration, etcetera on a topic occurs one week and the same topic is then brought up with a different group the following week, then a quorum will have taken action on the topic.

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# Regular Meetings

- ▶ Time and place of regular meetings must be identified. RCW 42.30.060; 42.30.070, 42.30.077, 35.18.170, 35A.12.110.
- ▶ Agendas must be available no later than 24 hours in advance of the start time of the meeting.
- ▶ Councilmembers may attend remotely so long as there is a physical location for the meeting open to the public. Emergency exceptions to physical locations exist. RCW 42.30.230.
- ▶ Must allow comments at any regular meeting where final action is taken. This can be oral testimony at the meeting or written testimony submitted before the meeting. RCW 42.30.240.

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# Special Meetings

- ▶ Not regularly scheduled meetings.
- ▶ Called by presiding officer or majority of members. Notice must be delivered to all members (personal delivery, mail, fax, email). Member can waive notice in writing or simply show up.
- ▶ Must be delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting.
- ▶ Posted on agency website, main entrance of principal location, and meeting site if not at principal location.
- ▶ Notices must be posted and delivered 24 hours in advance.
- ▶ No public comment required, but final disposition cannot be taken on any matter not listed on the notice.

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# Executive Sessions – RCW 42.30.110

- ▶ To receive and evaluate complaints or charges brought against a public officer or employee – however, upon the request of such officer or employee, a public hearing or meeting open to the public shall be conducted upon such complaint or charge.
- ▶ To consider the selection of a site or acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.
- ▶ To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price....
- ▶ Litigation or potential litigation. See RCW 42.30.110(i) for more details...

State the purpose and the time the executive session will be over. Do not come back before that time and conduct business.

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# Violations

- ▶ **Actions are null and void.**
- ▶ **Each member of the governing body who knowingly attends a meeting in violation of the OPMA is subject to personal liability; \$500 civil penalty for first offense; \$1,000 for second offense.**
- ▶ **Costs and attorney fees for those who prevail against an agency for OPMA violation.**



THANK YOU.

*Questions?*

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