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Public Records Act Basics & More

Morning Session



Disclaimer: MRSC is a statewide resource that provides general legal, finance, and policy guidance to support local government entities in Washington State pursuant to Chapter 43.110 RCW. MRSC content is for informational purposes only and is not intended as legal advice, nor as a substitute for the legal advice of an attorney. You should contact your own legal counsel if you have a question regarding your legal rights or any other legal issue.

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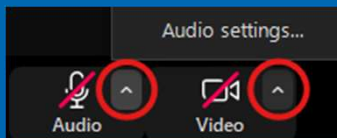
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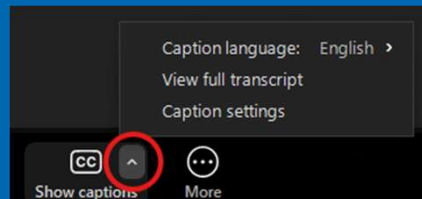
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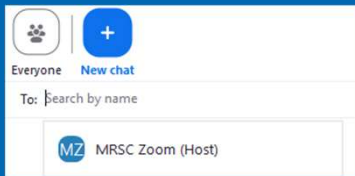


Zoom: Reactions and Chat

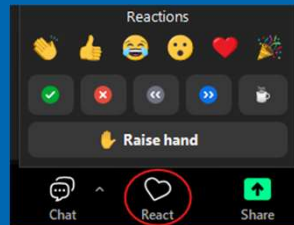
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Please be prepared to unmute your microphone if your hand is raised

AM Session Agenda

- **9:00 - 10:30**
PRA Basics
- **10:30 - 10:45**
Break
- **10:45 - 12:00**
Basics Continued
Interactive Discussion



Polling Question

How long have you worked with public records requests and responses?

- A. Less than 1 year
- B. 1-5 years
- C. 6-10 years
- D. So long I know that the save icon is a floppy disk!

PRA Basics

Public Records Act passed in 1972

Codified at chapter 42.56 RCW

- Significant statutory amendments
- Lots of case law



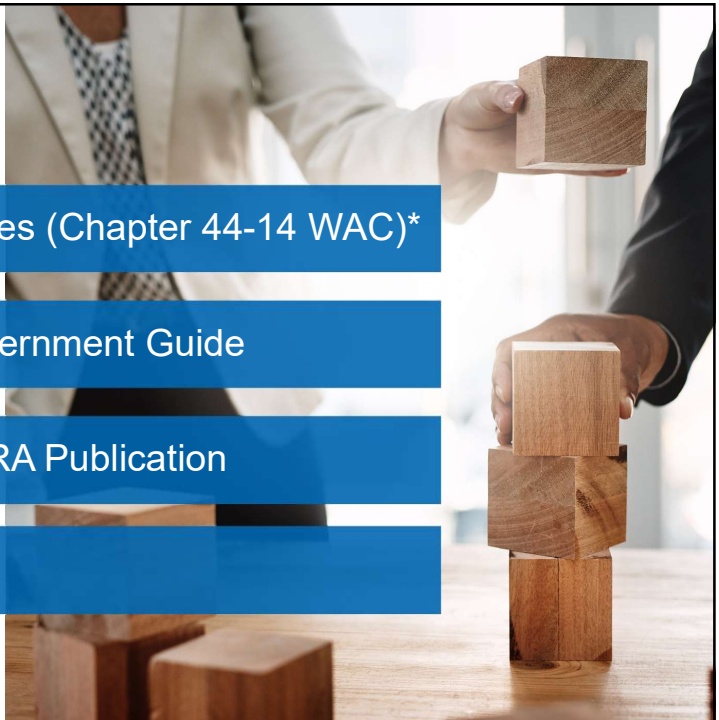
PRA “Helpers”

Attorney General Model Rules (Chapter 44-14 WAC)*

Attorney General Open Government Guide

MRSC PRA Web Page & PRA Publication

WAPRO Tool Kit



PRA – AGENCY OBLIGATIONS: A STARTING POINT



Checklist FOR LOCAL GOVERNMENTS



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PRA – AGENCY OBLIGATIONS: A STARTING POINT CHECKLIST FOR LOCAL GOVERNMENTS

Page 1 of 1

Assign and Publicly Identify a Public Records Officer (PRO)

Post the PRO's name and contact information at the agency's place of business, on the agency's website (if any), or in any relevant publications. RCW 42.56.580.

1 1

PRA – AGENCY OBLIGATIONS: A STARTING POINT



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PRA – AGENCY OBLIGATIONS: A STARTING POINT CHECKLIST FOR LOCAL GOVERNMENTS

Page 1 of 1

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**proposed rule changes*

PRA – AGENCY OBLIGATIONS: A STARTING POINT



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PRA – AGENCY OBLIGATIONS: A STARTING POINT



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**proposed rule change*

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Adopt a PRA Fee Schedule

Establish fees for PRA costs, including costs for hard copies, electronic copies, and mailing costs. RCW 42.56.070 and RCW 42.56.120.

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PRA Training Requirements

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Polling Question

In the last few years, has your local agency:

- A. Reviewed and updated the Fee Schedule
- B. Reviewed and updated the Adopted Policy
- C. Maaaaaybe? I'm not sure? I don't think we have a fee schedule?

PRA Basic Rule

Agencies shall make available for inspection and copying all public records, unless exempt or disclosure is prohibited

RCW 42.56.070



How Does an Agency Ensure Compliance with the PRA's Basic Rule?

Adopt Policies

General PRA Policies

Electronic Records

- Email
- Text Messaging
- Social Media

Use of Personal Device or Account



What is a Public Record?

Almost everything...

“[V]irtually any record related to the conduct of government.”
O’Neill v. Shoreline,
170 Wn.2d 138 (2010)

“This broad construction is deliberate and meant to give the public access to information about every aspect of state and local government.” *Nissen v. Pierce County*, 183 Wn.2d 863 (2015).

What is a Public Record?

Any writing containing information:

Related to the
conduct of
government

The performance of
any governmental or
proprietary function

Prepared, owned,
used, or retained
by the agency

regardless of physical form or characteristics

RCW 42.56.010

Chat Question

Was it a Public Record?

Have you ever wondered whether something was a public record? What was it?

(Keep it short!)

What is a Writing?

“Writing” means:

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, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including **existing data compilations from which information may be obtained or translated**

RCW 42.56.010(4)

What is a Public Record?

All agency-related records on **agency** devices, servers, accounts, and files, including ones not typically thought of:



Voicemail



Social Media



Notes



Calendar

Personal Notes



Yacobellis v. Bellingham, 55 Wn. App 706 (1989)

Test is whether the notes:

- Are created solely for the government official's or employee's convenience or to refresh the official's or employee's memory
- Are maintained in a way indicating a private purpose
- Are not circulated or intended for distribution within agency channels
- Are not under agency control
- Can be discarded at the writer's sole discretion

Personal Emails on Agency Email Account



Tiberino v. Spokane County, 103 Wash. App 680 (2004)

- Test is whether the personal email ended up being “used” by the agency, then it can become a public record

Union-Related Emails on Agency Email Account



SEIU Local 925 v. UW, 193 Wn. 2d 860 (2019)

- Not a public record unless discuss work conditions or other public business

What is a Public Record?

May encompass agency-related records on **personal** devices and accounts, including:



Agency-Related Emails on Personal Accounts
(*West v. Vermillion*, 196 Wn.App 627 (2016))



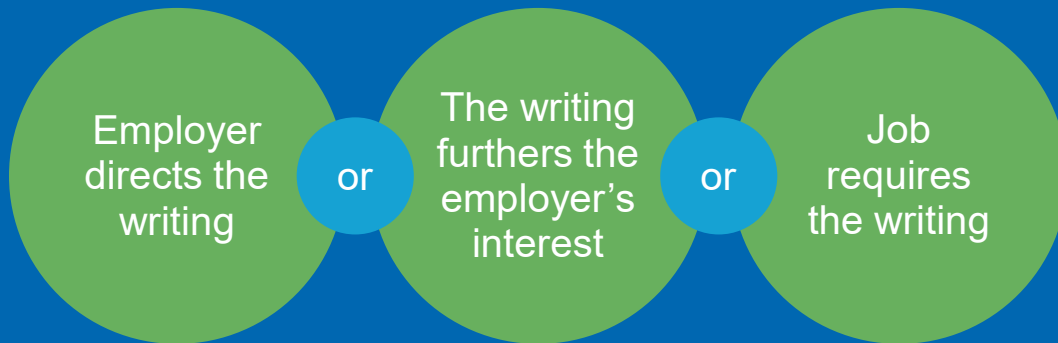
Agency-Related Text Messages on Personal Phones
(*Nissen v. Pierce Co.*, 183 Wn.2d 863 (2015))



Agency-Related Social Media Posts on Personal Accounts (*West v. Puyallup*, 2 Wn.App. 2d 586 (2018))

Scope of Employment?

If record resides on a personal device or account, apply “scope of employment” test:



Polling Question

An agency is recruiting for an open position. An employee shares the link to this position on their PERSONAL LinkedIn account. Which of the following facts would cause the link on the personal account to fall within the employee's "scope of employment"?

- A. The Agency specifically asks the employee to share the link on their personal account.
- B. The Employee is the head of Human Resources and is expected to recruit for open positions.
- C. The Employee voluntarily shares the link because they want to help out the agency any way they can.

Scope of Employment?



Texting about work-related matters from personal cell phone

Nissen v. Pierce Co.



Texting spouse about working late

Nissen v. Pierce Co.

Scope of Employment?



Emailing on a personal account, even if account was originally created for private or campaign use

West v. Vermillion



Posting general agency information on personal Facebook account
Caution: Comments/Engaging

West v. Puyallup

Polling Question

To secure your agency's email server, your agency has adopted two-factor authentication. When you sign-in, a secure sign-in code is sent via text to your personal phone. You have two minutes to enter that code into your email account before the code expires, otherwise you cannot access your work email.

Is that text a public record? Which prong(s) of the scope of employment test is met?

Consultant/Contractor Records



Is the consultant acting as the “functional equivalent” of an agency employee?

Apply Functional Equivalent Balancing Test (Telford Test):

- The extent the entity performed a government function
- The extent public funds paid for the activity
- The extent of government involvement or regulation
- Whether the government created the entity

Chat Question

City contracts with a non-profit to provide social support services to the unhoused population. The contract specifies the exact nature of the services to be provided.

Applying the Telford test, which records of the non-profit might be considered records of the city?



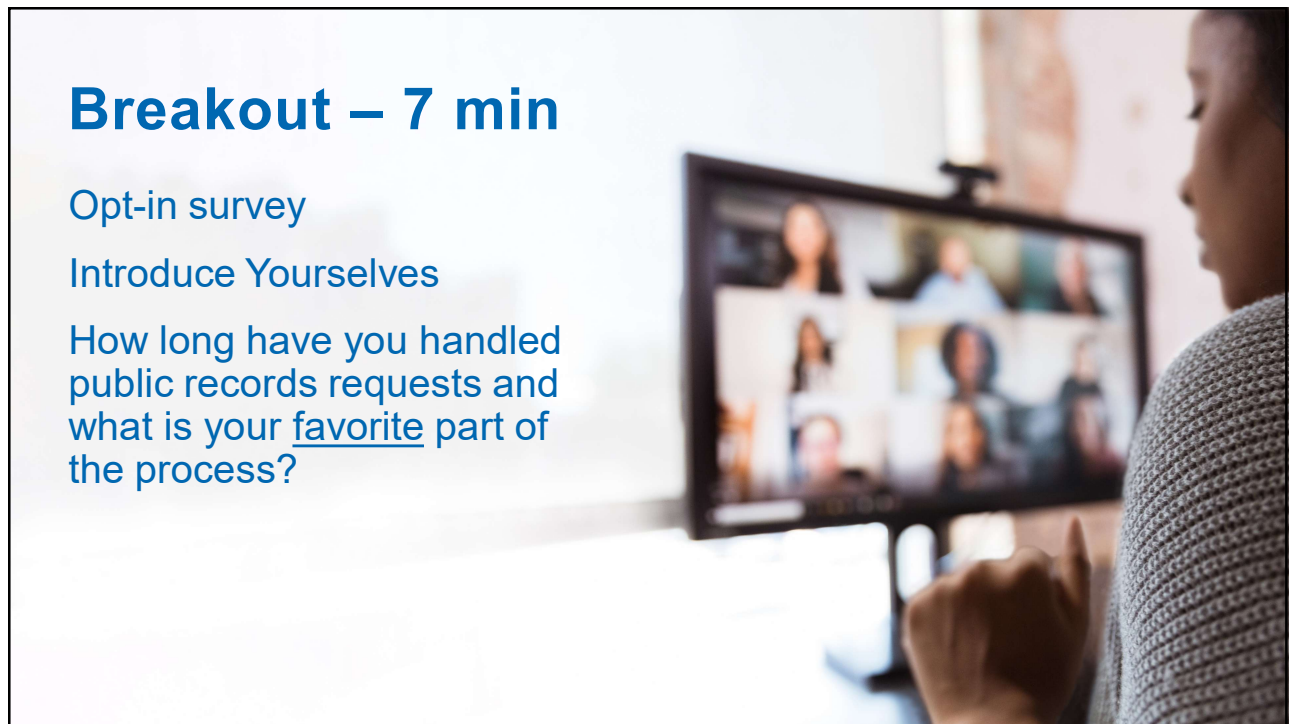
15 Minute Break

Breakout – 7 min

Opt-in survey

Introduce Yourself

How long have you handled public records requests and what is your favorite part of the process?



Proper Management and Retention of Records

Proper Management of Records

- Chapter 40.14 governs the retention, preservation and lawful destruction of public records
- Public records are public property; agencies are the custodians of this public property
- All public records shall be and remain the property of the state of Washington (RCW 40.14.020)
- Mutilating, destroying, concealing, erasing, obliterating or falsifying a public record = felony! (RCW 40.16.010 & RCW 40.16.020)
- **Proposed Model Rule Change:** Take steps to secure in a timely manner public records held on private devices and accounts



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Menu

Managing City Records

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Retention Schedules & Managing Records

Destroying Non-Archival Records

Appraisal & Transferring Archival Records

How to Scan and Go Paperless

Get Help with a Local Records Grant

Records Management Training and Consultations

Improving Your Agency's RM Program

Disaster Preparedness and Response

Help with Public Records Requests

LOOKING FOR...

- [Draft Revisions to CORE Schedule v.5.1](#)
- [Draft Revisions to Economic Development and Transport Schedule v.1.3](#)
- [Draft Revisions to Law Enforcement Schedule v.9.0 + Emergency Communications 911 Schedule v.2.0](#)
- [Records Retention Schedules](#)
- [Laws and Rules](#)



This schedule applies to: All Local Government Agencies

Scope of records retention schedule

This records retention schedule authorizes the destruction/transfer of public records documenting the common functions and activities of local government agencies (such as counties, cities, towns, special purpose districts, etc.). It is to be used in conjunction with the other approved schedules that relate to the unique functions of the agency.

Disposition of public records

Public records covered by records series within this records retention schedule (regardless of format) must be retained for the minimum retention period as specified in this schedule. Washington State Archives strongly recommends the disposition of public records at the end of their minimum retention period for the efficient and effective management of agency resources.

Public records designated as "Archival (Permanent Retention)" must not be destroyed. Records designated as "Archival (Appraisal Required)" must be appraised by the Washington State Archives before disposition. Public records must not be destroyed if they are subject to ongoing or reasonably anticipated litigation. Such public records must be managed in accordance with the agency's policies and procedures for legal holds. Public records must not be destroyed if they are subject to an existing public records request in accordance with chapter 42.56 RCW. Such public records must be managed in accordance with the agency's policies and procedures for public records requests.

Revocation of previously issued records retention schedules

All previous versions of the Local Government Common Records Retention Schedule are revoked. Local government agencies must ensure that the retention and disposition of public records is in accordance with current, approved records retention schedules.

Authority

This records retention schedule was approved by the Local Records Committee in accordance with RCW 40.14.070 on October 2, 2024.

A.P. Rose

For the State Auditor: Al Rose

Matt Kernutt

For the Attorney General: Matt Kernutt

Heather Hirota

The State Archivist: Heather Hirota

DISPOSITION AUTHORITY NUMBER (DAI)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS50-04B- Rev. 1	<p>Recruitment</p> <p>Records relating to the process of recruiting, interviewing, selection, and hiring of employees. Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Employment requisitions (position specifications, needs analysis, requests to fill, desired qualifications, etc.); • Personnel Action Request/notice (PAR) development; • Job announcements and postings; • Applications, resumes, test results and background check (including applicants screened but not interviewed); • Applicant lists, eligibility lists, applicant profile data (including test results); • Interview questions and tests; • Screening, scoring, ranking and selection criteria; • Related correspondence/communications. <p>Excludes records covered by:</p> <ul style="list-style-type: none"> • <i>Apprenticeship - Program Administration (DAN GS50-04B)</i> • <i>Employee Work History (DAN GS50-04B-06).</i> 	<p>Retain for 3 years after position filled/recruitment effort terminated <i>then</i> Destroy.</p>	<p>NON-ARCHIVAL NON-ESSENTIAL OFM</p>

GS50-05A-10
Rev. 1

Franchise Requests – Granted by Agen
Records relating to franchise agreemer
the use of public streets, bridges or oth
the surface of the ground, for the prov
electricity, water, sewer, etc.], railroad
accordance with RCW 35A.47.040 and
negotiations, final agreement and relat
Excludes franchises granted to the age

Retain for 6 years after
termination or withdrawal of
franchise agreement
then
**Transfer to Washington State
Archives for permanent
retention.**

ARCHIVAL
(Permanent Retention)
ESSENTIAL
OPR

/AL
ention)
IAL

Get Rid of ROT

Redundant

Outdated/Obsolete

Trivial Records

6. RECORDS WITH MINIMAL RETENTION VALUE (TRANSITORY RECORDS)

This section covers records created or received by the agency which are typically of short-term, temporary informational use.

		RETENTION AND DISPOSITION ACTION		
DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS		DESIGNATION	
GS50-02-04 Rev. 2	<p><i>Secondary (Duplicate) Copies</i> Copies of records (created or received), <u>provided</u> the agency retains its primary record in accordance with the current approved minimum retention period.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Data extracts and printouts from agency information systems; • Cc's of emails, <u>provided</u> the agency is retaining its primary copy of the email; • Convenience/reference copies of records; • Duplicate and near-duplicate images/photographs, <u>provided</u> the selected image/photograph documenting the occasion/object is retained. <p>Excludes records which are the agency's only copy of the record, even if it is the only copy of the record.</p>	<p>Retain until no longer needed for agency business then Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM	4 8

Polling Question

Which of the following could you probably delete or destroy today?

- A. CC emails announcing a co-worker's adoption of a child
- B. A clerk's personal handwritten notes of a meeting that have already been typed up
- C. Extra copies of flyers for the local 2018 farmers' market
- D. Text of temporary security access code

End of Retention Period

At the end of the retention period, there are two options*:

- 1 Destroy the record
- 2 Transfer the records to archives

*Unless there is a litigation hold or an open PRA request encompassing the records

Washington State Archives Trainings

Includes Recorded Trainings:


- Basics of Managing Records, Personnel, Hospital, Law Enforcement, Payroll, School, Financial, etc.
- Scanning and Tossing – Imaging Requirements
- How to Apply for a Local Records Grant

Upcoming Live Webinars:

- Oct 22/ Nov 12– Basics of Managing Records Webinar
- Organizing Digital Records, “Virtual Office Hours”, etc.

<https://www.sos.wa.gov/archives/help-government-agencies/records-management-training>

https://leg.wa.gov/studies-audits-and-reports/performance-audits/public-records/



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Public records reporting

Public agencies whose public records costs exceed \$100,000 must report information about cost, staff time, response time, and other metrics. JLARC maintains an online reporting tool to collect the data. This page provides links and other resources for agencies.

Who should report

- **Required:** Agencies with public records costs over \$100,000 must report information.
- **Optional:** Agencies with lower public records costs may report. We encourage you to let us know that you had lower costs, even if you don't report other information.

The deadline


By law, you must report by July 1 each year. We may extend the deadline as needed.

What we do with the information

State law requires us to collect the data. We compile the information into a report and present it to the Joint Legislative Audit and Review Committee (JLARC) each year.

Learn more

- Send questions to JLARCPublicRecStudy@leg.wa.gov
- Subscribe to [the GovDelivery email list](#)



Contact us

[Subscribe to public records email list](#)

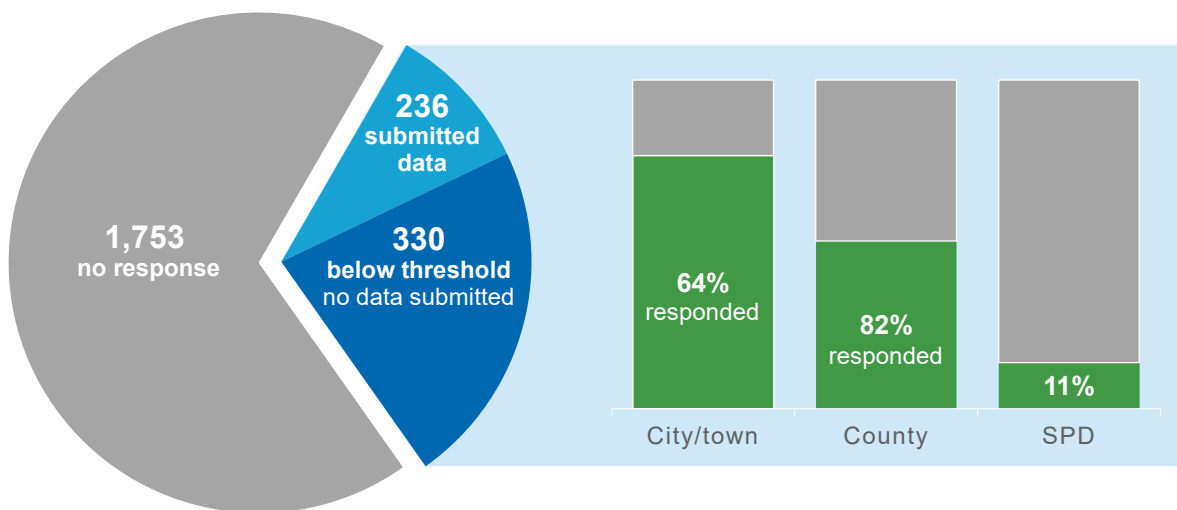
EMAIL
JLARCPublicRecStudy@leg.wa.gov

PHONE
360-786-5171

SOCIAL MEDIA
[YouTube](#) [LinkedIn](#)

[Related links](#)

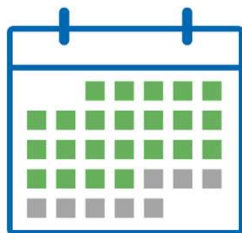
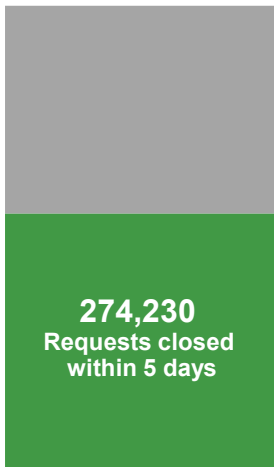
WA Agencies Subject to PRA in 2024



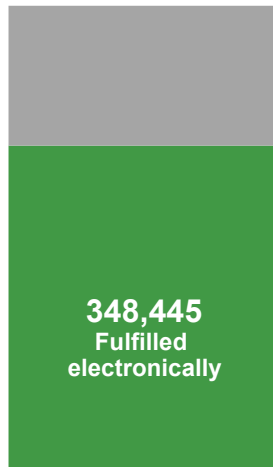
Data From 236 Reporting Agencies



483,861 Requests Received



24 Days
Average to
final disposition



348,445
Fulfilled
electronically



2,050
Average requests
per agency
(range: 0 - 36,530)

Responding to Requests



Data From 236 Reporting Agencies

- 1.7 million hours
- \$127 million spent
- \$1.5 recovered in copy costs
- \$6 million spent on litigation (won/lost/settled)



Local Public Records Transparency Report

[9.13.21 Regular Board Meeting – YouTube.](#)

- 10-minute discussion of the written report begins at 43:30
- Board member feedback at 46:50
- Quotes:
 - Favorably reflects on the department and team
 - Wow! I had really no sense of the volume of work
 - I was caught off guard about all that goes into this and the tremendous cost

Sequim School District



BoardDocs Pro | 9.7.21 Public Records Transparency | Post Attendee - Zoom

go.boarddocs.com/wa/sequim/Board.nst/files/CENMFAS56858/5file/9.7.21%20Public%20Records%20Transparency%20Report.pdf

9.7.21 Public Records Transparency Report.pdf | 4 / 23 | 150%

reports to the Superintendent and/or the School Board, outcome determination letters, appeals, and/or grievances. This includes all records related to the settlement of Ms. St. George's lawsuit against the District, Riccobene, Kromm, and Catherine Shea.

(8) All records related to any investigators undertaken by any third-party investigator related to any complaints against or by District employees concerning any topic, regardless of if the third-party investigator's work was funded by the District or the Washington Schools Risk Management Pool (WRMSP), conducted within the last five years. This includes, but not limited to, all complaints, investigative records and notes, investigation reports, reports to the Superintendent and/or the School Board, outcome determination letters, appeals, and/or grievances. rconnected in any way to the investigations. This also includes, but is not limited to, records associated with investigations by Amy Klosterman and Chris Burton conducted or completed within the 2020-2021 school year. Also includes Kathleen Haggard and Shawn Flood.

2021-09-13 18:48:45

Questions



Thank You!
(See you at 1:00 pm!)



The event will continue shortly! In the meantime:

- Make sure you are muted, and your webcam is off
- Set Zoom to Full Screen to see all the features
This is done in the “View Options” above

Public Records Act Basics & More

Afternoon Session



Disclaimer: MRSC is a statewide resource that provides general legal, finance, and policy guidance to support local government entities in Washington State pursuant to Chapter 43.110 RCW. MRSC content is for informational purposes only and is not intended as legal advice, nor as a substitute for the legal advice of an attorney. You should contact your own legal counsel if you have a question regarding your legal rights or any other legal issue.

PM Session Agenda

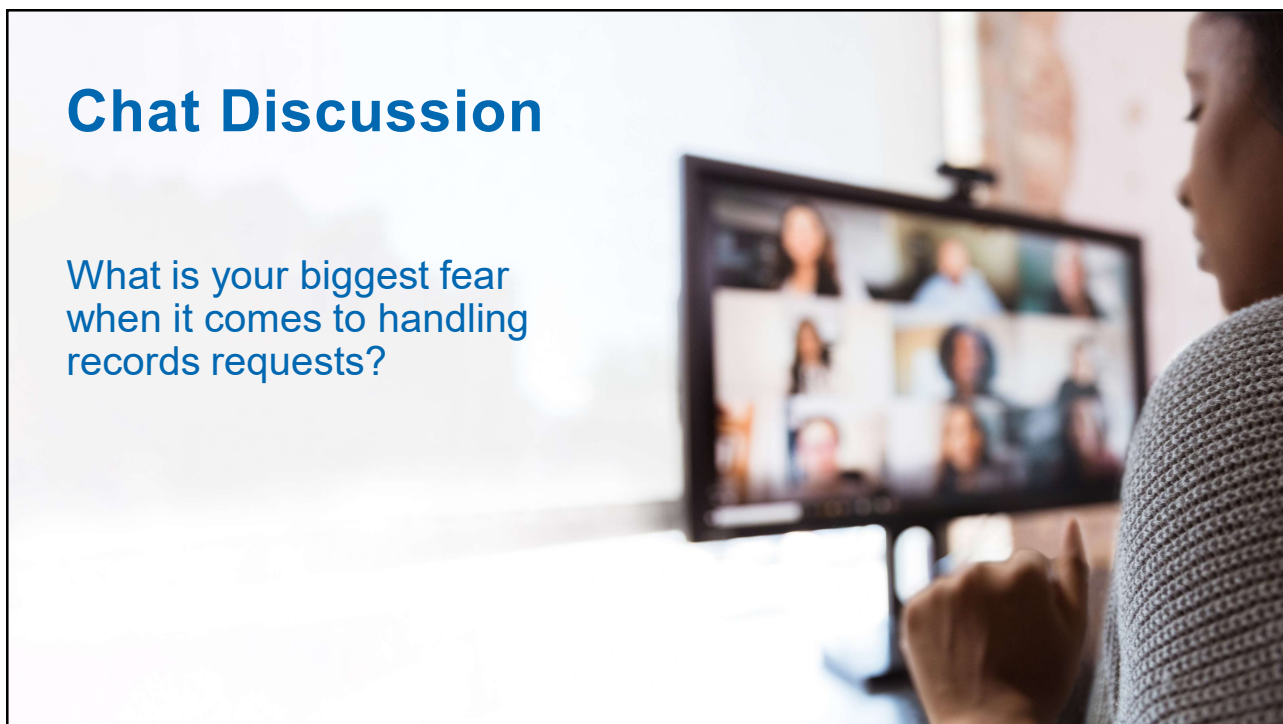
- **1:00 - 2:15**
Five Steps to a Response, Pt. 1
- **2:15 - 2:30**
Break
- **2:30 - 3:30**
Five Steps to a Response, Pt. 2
- **3:30 - 4:00**
Questions & Discussions

Reminder: For technical support, select "MRSC Host" in the chat or call (206) 625-1300 ex. 19.



Chat Discussion

What is your biggest fear when it comes to handling records requests?



5 Steps in PRA Request Response



Request



- Tracking Log
- Calendar Significant Dates
- PRA Request Number
- 5 Day Response (RCW 42.56.520)
- Incorrect Agency
- Document Preservation / Hold Notice

Request Tracking Log

Agency Name:
 Start Date of Log:
 Completion Date of Log:

Log of Public Record Requests

Identity of Requestor	Date Received	Text of Original Request	Description and Number of Records Produced in Response:	Description of Records Redacted or Withheld:	Reasons for Redactions or Withholding (RCWs/other statutes):	Date of Final Disposition of Request:

Note: Agencies must maintain a log of public records requests under RCW 40.14.026(4). Request logs must be retained for two years after the request has been fulfilled, then the log can be destroyed. DAN GS2010-014. This template is set up to track requests on an annual basis so the entire log can be deleted two years after creation.

Sample Request Tracking Log Available in WAPRO Toolkit

Request: 5-Day Response

✓ Calendar 5-day response (and, later, installments)

- ✓ Send 5 (business) day response:
- Make records available (inspection or copies)
 - Provide link to record on agency's own website
 - Provide time estimate
 - Request clarification
 - Deny the request

Provide Reasonable Estimate of Time*



Consider the following factors:

- Volume of records requested
- Number of staff who may have responsive records
- Whether records are kept in multiple locations
- Whether exemptions apply; and the need for legal review
- Whether third party notice is required or recommended
- Where the request falls in the request queue

Request: 5-Day Response

✓ Calendar 5-day response (and, later, installments)

- ✓ Send 5 (business) day response:
- Make records available (inspection or copies)
 - Provide link records on agency's own website
 - Provide time estimate
 - Request clarification
 - Deny the request

I Can Deny a Request for Records?

Request for ALL OR SUBSTANTIALLY ALL of an agency's records can be denied. Not a request for an identifiable public record. But, requestor can ask for all records on a particular topic, keyword, or name.

Failure to CLARIFY a completely unclear request. If parts are clear, must respond to those clear parts and can deny remainder.



I Can Deny a Request for Records?

BOT Requests can be denied if: same requestor has made multiple bot requests to agency within a 24-hour period, if agency establishes that responding to multiple requests would cause excessive interference with agency functions

Request for LIST OF INDIVIDUALS for a Commercial Purpose



Request for list of individuals?

Agency has a duty to investigate if it has some indication the list might be used for a commercial purpose.

A requestor's affirmation is not sufficient to satisfy the agency's obligation to investigate.

Agency cannot meet obligation to investigate without knowing the real identity of the requestor.



Polling Question

You receive a request for the sign-in sheet for the city pool. Which of the following might be an indication that the request requires further investigation?

- A. The requestor is a nonprofit with a reputation for public outreach
- B. The requestor is known to operate a gym
- C. The requestor is a community member that keeps an eye on use of public facilities
- D. The requestor is anonymous

What if request is sent to the incorrect agency?

- Inform the requestor
- No legal obligation to forward the request

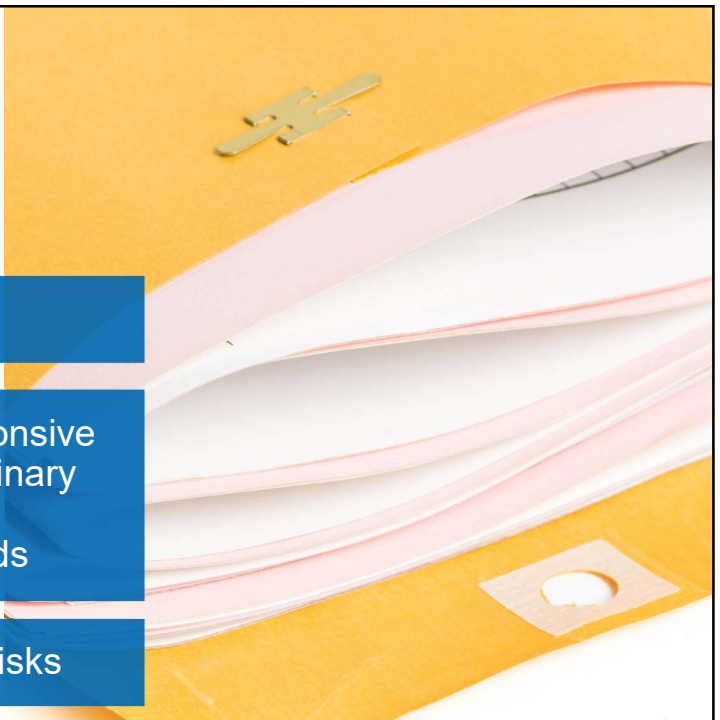
Request

Document Hold

Notify key staff of request

Direct staff to maintain responsive records and suspend all ordinary destruction and recycling of potentially responsive records

WARNING – Autodeletion Risks



The Request

Document Hold

Sample PRA
Hold Memo
Available in
WAPRO Toolkit

PRA HOLD MEMO

To: *{Enter Recipients}*

From: *{Enter Author}*

Date: *{Enter Date}*

Re: Public Records Hold Regarding *{Enter general topic, records request #, or requestor name}*

{Enter name of requestor} has filed the following request for records:

{Summarize records request or state full text of request}

If any potentially responsive records are in your possession, **you must now maintain these records and suspend all ordinary destruction and recycling procedures of the potentially responsive records.** This includes email, voicemail, any other electronic media, handwritten notes, and drafts of documents related to or referring to the subject of the request. By way of example, relevant records that must be retained could include, but would not be limited to:

- *{Enter examples of potentially responsive records}*

If in doubt about whether a record is responsive, please retain it because destruction of responsive records may create liability for the *{Enter name of agency}*. All records affected by this hold must be retained until you receive written notification from me that the records are to be collected or that the hold is lifted.

You have received this memo because we believe that you may have responsive records. Please forward this memo to anyone to whom it was not addressed that you believe may also have responsive records and inform me that you have taken that action. If you do not have records affected by this hold, you are not required to take any further action. If you have any questions about your obligations, please contact me at *{Enter email and phone number}*.

Request



- ✓ Tracking Log
- ✓ Calendar Significant Dates
- ✓ PRA Request Number
- ✓ 5 Day Response (RCW 42.56.520)
- ✓ Incorrect Agency
- ✓ Document Preservation / Hold Notice

Search



- Search Plan: Who, What, Where, When
- Search Requirements
- Document Search - Check Lists
- Private Devices
- Metadata
- Installments

PRA – PERFORMING AN ADEQUATE SEARCH FOR RECORDS



Practice Tips

FOR LOCAL GOVERNMENTS



The Public Records Act (PRA), [chapter 42.56 RCW](#), requires that agencies perform an adequate search to locate records responsive to a public records request. The PRA itself doesn't provide detailed provisions on how to conduct an adequate search. Rather, such requirements can be found in court decisions interpreting the PRA, including *Neighborhood Alliance v. Spokane County* (2011), *Block v. Gold Bar* (2015), *Nissen v. Pierce County* (2015), *Rufin v. City of Seattle* (2020), and *West v. City of Tacoma* (2020). These practice tips are based on such case law. Use these tips to guide your agency's search for responsive records. For more information and resources visit mrsc.org/prs.

ADOPT A STANDARD METHODOLOGY TO SEARCH FOR RECORDS

(This methodology will apply to each search.)

- **Document records organization.** Understand how each department within your agency organizes and retains its records.
- **Implement an effective system for locating and collecting responsive records.** With an effective system in place, an agency can more efficiently find records responsive to a PRA request and more easily defend itself against a challenge that its search for records was inadequate, especially in situations in which the agency finds no records responsive to a PRA request.

How Do I Conduct a Reasonable Search?

1 Document your search



Polling Question

You receive a request for "All records related to Building Permit #2021-2290." Where would you **NOT** search for responsive records?

- A. The paper building permit files
- B. The working files of the permit reviewer
- C. Any digital network or database files, including public access website
- D. Public and Private email accounts, chat logs, social media, and other comm channels
- E. The emergency back-up server files

Search Checklist

Search Locations	Search Conducted	Records Located	Search Date	Search Terms Used <i>(for electronic records searches)</i>	Time Spent Searching and Collecting Records in Each Location
Calendars <i>(Paper or Electronic)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Databases Description:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Emails	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Paper Files	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Shared Drives Description:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Social Media Accounts	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Text Messages	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Thumb Drive or CDs	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Other Description:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			

Internal Records Search Tracking Log
 This template tracking form can be utilized by agency staff involved in the agency's search for records. It records the agency's search process, which the agency can rely on to show it conducted an adequate search.

Sample Search Checklist Available in WAPRO Toolkit

Employee Name: _____ Employee Signature: _____ Date: _____

How Do I Conduct a Reasonable Search?

- 1 Document your search
- 2 Refine your search terms
- 3 Search every location a record is likely to be located
- 4 Follow obvious leads



Search

Private Device Declaration

Sample Declaration Available in WAPRO Toolkit

DECLARATION OF PUBLIC OFFICIAL/EMPLOYEE RE SEARCH OF PERSONAL DEVICE/ACCOUNT

I, Susan Smith, Councilmember for the Agency, do hereby certify that I completed the following search of my personal devices and personal accounts on March 27, 2018:

- I searched the following accounts and devices:
 - Personal Gmail Account (ssmith2018@gmail.com)
 - Text Messages on Personal Cell Phone
- I used the following individual search terms independent of each other:
 - "city hall"
 - "location"
- I searched for records within the following dates: January 1, 2017-December 31, 2017

The search was performed in order to provide records responsive to the following Public Records Request ("Request"):

"All emails and text messages from 2017 to and from all councilmembers regarding the proposed location of a new city hall."

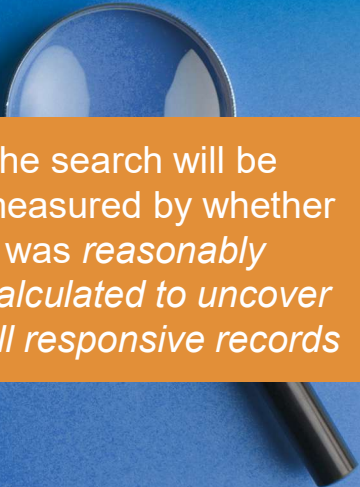
I hereby certify that the only personal devices and accounts I use to communicate for agency business are my Gmail account and the text messaging feature on my personal cell phone. I further certify that I have provided to the Agency PRO all responsive emails located in my Gmail account and all responsive text messages located on my personal cell phone as a result of my search. I hereby certify that any other email messages in my Gmail account and any other text messages on my personal cell phone, other than those I have provided pursuant to the Request, are either personal in nature (and therefore not public records) or are not responsive to the Request.

Signed and dated this ___ day of _____, _____ at _____, _____.

Signature

How Do I Conduct a Reasonable Search?

- 1 Document your search
- 2 Refine your search terms
- 3 Search every location a record is likely to be located
- 4 Follow obvious leads



The search will be measured by whether it was *reasonably calculated to uncover all responsive records*

Search Metadata

Metadata must be specifically requested

Request for record in native electronic format by its nature encompasses metadata

Is it possible to produce metadata for:

- Text messages?
- Social media posts?
- Website?

Is it reasonable or technically feasible to produce metadata for these types of records?

Search Installments

Installments are your friend

10% deposit up front

Collect costs per installment

Consider request abandoned if don't pay for or review installment



Search



- ✓ Search Plan: Who, What, Where, When
- ✓ Search Requirements
- ✓ Document Search - Check Lists
- ✓ Private Devices
- ✓ Metadata
- ✓ Installments

Review



- Review Each Document
- Exemptions
 - PRA Specific
 - Other Statutes (State or Federal)
- Exemption/ Withholding Log
- 3rd Party Notice



The Review

Is record responsive?

Is record or information exempt or confidential?

- PRA
- Other statutes (state and fed)

Review Sunshine Committee's list of exemptions in PRA and other RCWs: <https://www.atg.wa.gov/sunshine-committee>

Personnel Exemptions

RCW 42.56.250 – Employment and Licensing personal information

- Applicant resumes, etc.
- Specifically listed personal information
- Certain Photographs

RCW 42.56.230(3) – Employee information disclosure would violate right to privacy

- Certain Performance Reviews and Payroll deductions
- Could include Medical information, ADA, HIPAA, Workers Comp., WA Healthcare Information

RCW 42.56.230(5) - Certain financial information, including driver's license

Law Enforcement and Investigation Exemptions

RCW 42.56.240 – Investigative, Law Enforcement records

- Open or essential to effective law enforcement; witness
 - Vehicle information of undercover LEOs, RCW 42.56.230(7)(c)
- Juvenile records, Chapters 13.34, 13.50 RCW
- Criminal history records, Chapter 10.97
- Child victims of sexual assault, RCW 10.52.100, 10.97.130
- Medical, Ch. 70.02, and Postmortem Records, RCW 68.50.105

Attorney-Client and Confidential Exemptions

RCW 5.60.060 – Privileged Communications, attorney-client

RCW 42.56.290 – Agency party to controversy, attorney
work product

RCW 42.56.270 – Financial, commercial, and proprietary info

RCW 42.56.230(5) – Financial Information

Can I exempt something based on a person's right to privacy?

- How to apply the invasion of privacy test in exemptions?
- Answer: Must be “highly offensive” AND “not of a legitimate concern to the public”
- Third-party court order

Chat Question

Which exemptions or prohibitions have you had difficulty applying?





**If something is EXEMPT,
should I withhold it entirely?**

Not if it can be REDACTED.
RCW 42.56.210(1)

Review

Exemption Log

Sample
Exemption Log
Available in
WAPRO Toolkit

RECORDS PROVIDED WITH REDACTIONS

Document Type	Page # (Bates numbering)	Code*
Email	5	1A
Payroll record	12	7E
Employment offer letter	13	11A
Internal misconduct investigation	25	24

*Refer to Exemption Key

RECORDS WITHHELD IN THEIR ENTIRETY

Document Type / Description	Document Date	# of Pages	Author	Recipient	Code*
Application for employment	January 2017	2	Jim Williams	Agency HR Director Patty Gray	22
Resume	January 2017	1	N/A	N/A	22
Test questions used to administer employment examination	February 2017	5	Jane Smith	N/A	23A
Test scoring keys used for employment examination	February 2017	1	Jane Smith	N/A	23B
Memo	August 2017	2	Agency Attorney Nicholas Wolf	Agency HR Director Patty Gray	1A

Review Exemption Log

EXEMPTION KEY

Attorney-Client Privilege, 1A–1E	Deliberative Process, 10	Passport Number, 38
Attorney Work Product, 2A–2D	Employee/Volunteer Records, 11–21	Records Related to Real Estate Acquisition or Sale of Property, 39A–39C
Computer & Telecommunication Network Information, 3A–4G	Employment Records, 22–23	Security, 40A–40B
Confidential Informants, 5A–5B	Internal Investigation Records, 24–26	Social Security Number, 41
Copyright & Trade Secrets Information, 6A–6B	Investigative Records & Intelligence Information, 27–30	Taxpayer Information, 42–43
Credit Card, Bank & Other Financial Information, 7A–7H	Juvenile Records, 31–32	Utility Customers, 44
Criminal Records Privacy Act & Background Checks, 8–9	Medical Records, 33	Miscellaneous, 45–51

Code	Applicable Exemption	The cited exemption applies because the redacted/withheld information includes the following:
Attorney-Client Privilege		
1A-1D	RCW 42.56.070(1); RCW 5.60.060(2)(a). Communication between client and attorney for the purpose of obtaining or providing legal advice is exempt.	1A: Communication between client and attorney to obtain or provide legal advice 1B: Communication between attorney and client regarding litigation 1C: Communication between attorneys regarding litigation 1D: Communication between attorneys regarding client advice
1E	RCW 42.56.070(1); RCW 5.60.060(2)(a). Communication between members of client agency for purpose of gathering information to obtain legal advice or convey attorney/client communications is exempt.	Communications between clients to gather information for attorney

Sample Exemption Log Available in WAPRO Toolkit

Review*

Third Party Notice

Mandatory for Employee Records, RCW 42.56.250(2).

Optional for all Others, RCW 42.56.540.

Sample Third Party Notice Available in WAPRO Toolkit

ABC Contractor
654 Western Avenue
City, WA 99999

5/1/2018

Dear ABC Contractor:

The Agency has received a public records request for records that pertain to your company.

Pursuant to RCW 42.56.540, we are providing you with third party notice of this public records request. A copy of the records request and responsive public records that pertain to your company are enclosed for your review.

The Public Disclosure Staff have thoroughly reviewed these responsive records and concluded that no exemptions apply. Therefore, we are prepared to release the records to the requestor.

The Public Records Act allows a court to prevent release or examination of public records upon request by an affected third party if release or examination of the records would not be in the public interest and would substantially and irreparably damage any person. If you desire legal guidance on the Public Records Act and how to obtain a court injunction prohibiting release of the records, you need to contact your own legal counsel. You must obtain and the Agency needs to be served with a court order blocking release of the records within fourteen business days from the date of this letter. If we have not been served with the court order within fourteen business days, the records will be released. In addition, you must ensure that all necessary parties (including the requestor) have been joined in your action, should you choose to seek an injunction.

If you have any questions or concerns, please contact my office at 206-209-5264 or jdoe@wa-pro.org.

Sincerely,
Jane Doe
Records Officer

Polling Question

You receive a records request for architectural plans that have a copyright stamp affixed to them. How should you respond?

- A. Provide the records. Once documents are in a permit file they are public records that are subject to disclosure.
- B. Ask the requestor about the purpose of the request to ensure they do not intend to make commercial use of the plans.
- C. Deny the request because the plans are subject to copyright and should not be duplicated.
- D. Provide third party notice to the architect so they can have an opportunity to seek an injunction (perhaps based on trade secret claim).

Review



- ✓ Review Each Document
- ✓ Exemptions
- ✓ PRA Specific
- ✓ Other Statutes (State or Federal)
- ✓ Exemption/ Withholding Log
- ✓ 3rd Party Notice

Delivery



- Fee Schedule
- Links
- Numbering and Tracking
- Methods of Records Delivery
- Preservation and Retention

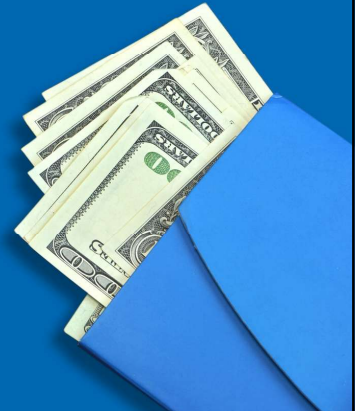
What Can I Charge to Copy Records?

All agencies need to adopt a PRA **fee schedule** in order to charge for copying costs, RCW 42.56.070(7) and RCW 42.56.120.

Adopt actual costs
(fee study required)

or

Adopt default statutory costs
(**unduly burdensome** finding)



Methods of Delivery



- Email (not recommended for large productions)
- Flash Drive/CD/DVD
- Portal, e.g. GovQA
- Hard copies
- Review on-site
- Links to YOUR agency website

Delivery Preservation/Retention



WASHINGTON
Secretary of State
Washington State Archives

Local Government Common Records Retention Schedule (CORE)
Version 5.0 (October 2024)

5.4 PUBLIC DISCLOSURE/RECORDS REQUESTS

The activity of responding to public records requests in accordance with the Public Records Act (chapter 42.56 RCW) or Court Rule GR 31.1 Access to Administrative Records.

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2010-014 Rev. 4	<p>Public Disclosure/Records Requests</p> <p>Records relating to requests from the general public for access to the agency's public records in accordance with chapter 42.56 RCW or GR 31.1.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> Internal and external correspondence relating to the request; Records documenting the public records provided to the requestor (copies or lists of the records provided, etc.); Records documenting the public records (or portions) withheld (exemption logs, copies of portions redacted, etc.); Records documenting administrative reviews relating to the request; Tracking logs. <p>Excludes:</p> <ul style="list-style-type: none"> Records that are the subject of the public records request (which must be retained in accordance with the applicable records series); Records covered by <i>Provision of Advice, Assistance, or Information (DAN GS2010-001)</i>. 	<p>Retain for 2 years after public records request fulfilled</p> <p><i>then</i></p> <p>Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OPR

Delivery Preservation / Retention

WAC 44-14-04006

Closing request and documenting compliance.

(3) **Retain copy of records provided.** In some cases, particularly for commonly requested records, it may be wise for the agency to keep a separate copy of the records it copied and provided in response to a request. A growing number of requests are for a copy of the records provided to another requestor, which can easily be fulfilled if the agency retains a copy of the records provided to the first requestor. The copy of the records provided should be retained for the period of time consistent with the agency's retention schedules for records related to disclosure of documents.

Delivery



- ✓ Fee Schedule
- ✓ Links
- ✓ Numbering and Tracking
- ✓ Methods of Records Delivery
- ✓ Preservation and Retention

Closure



- ✓ Document Completion Date – internal and external
- ✓ Identify Retention/ Disposition Date
- ✓ Prepare Electronic and Hard Copy Files for Storage

Closing letter* – Be specific!



Closing Letter - Plain language targeted to a lay audience saying:

- How the request was fulfilled and why it is being closed
- 1-year statute of limitations starts because agency does not intend to further address the request
- Requestor may ask follow-up questions in a reasonable time (doesn't restart the clock – **but be clear!**)

Chat Question

Scenario: After sending the official closing letter on a large and detailed request, you come across additional responsive records.

What do you do?

You Have Closed Your Request

One year statute of limitations for a PRA lawsuit

- What happens? Superior Court hearing may be heard on affidavits. If public agency loses:
 - Penalties and attorney fees – per day, per record or page
 - Mitigating/aggravating penalty factors (not exclusive)
 - Discretion to take into account size and resources
- If win:
 - No monetary recovery for agency unless frivolous
- Always the potential for **ongoing litigation** through appeals

The *Yousoufian* Factors

Non-exclusive factors likely to reduce statutory penalty:

(1) the lack of clarity of the PRA request; (2) an agency's prompt response or legitimate follow-up inquiry for clarification; (3) good faith, honest, timely, and strict compliance with all the PRA procedural requirements and exceptions; (4) proper training and supervision of personnel; (5) reasonableness of any explanation for noncompliance; (6) helpfulness of the agency to the requestor; and (7) the existence of systems to track and retrieve public records.

Non-exclusive factors likely to increase statutory penalty:

(1) a delayed response, especially in circumstances making time of the essence; (2) lack of strict compliance with all the PRA procedural requirements and exceptions; (3) lack of proper training and supervision of personnel and response; (4) unreasonableness of any explanation for noncompliance; (5) negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA; (6) dishonesty; (7) potential for public harm, including economic loss or loss of governmental accountability; (8) personal economic loss; and (9) a penalty amount necessary to deter future misconduct considering the size of the agency and the facts of the case.

Case Study

Cantu v. Yakima Sch. Dist. No 7



Summary timeline

Oct 2016 – original request

Nov 2016 – Late initial response – no 5-day letter.

Jan 2017 – follow-up and clarification

Feb 2017 – IT runs search

- PRO could not open files, did not ask for help.

- Board member emails not searched

No communications for 10 months

Valuable Resources



AG's Office:

- [Open Government Guide](#)
- [Model Rules*](#)
- [Local Govt Consultation Program](#)

State Archivist:

- Retention Schedules
- Grant Program
- Tip Sheets & Online Videos/Training

WAPRO:

- Conferences and Toolkit

MRSC:

- PRA Tip Sheets
- PRA Webpage and PRA Case Law Updates
- PRA & Records Management Tech Guide
- Live and On-Demand Deep Dives

WMCA (more than city clerks!)

WACCC (county clerks)

LEIRA (law enforcement records)

Questions



Thank You!

Please complete the post-webinar survey

