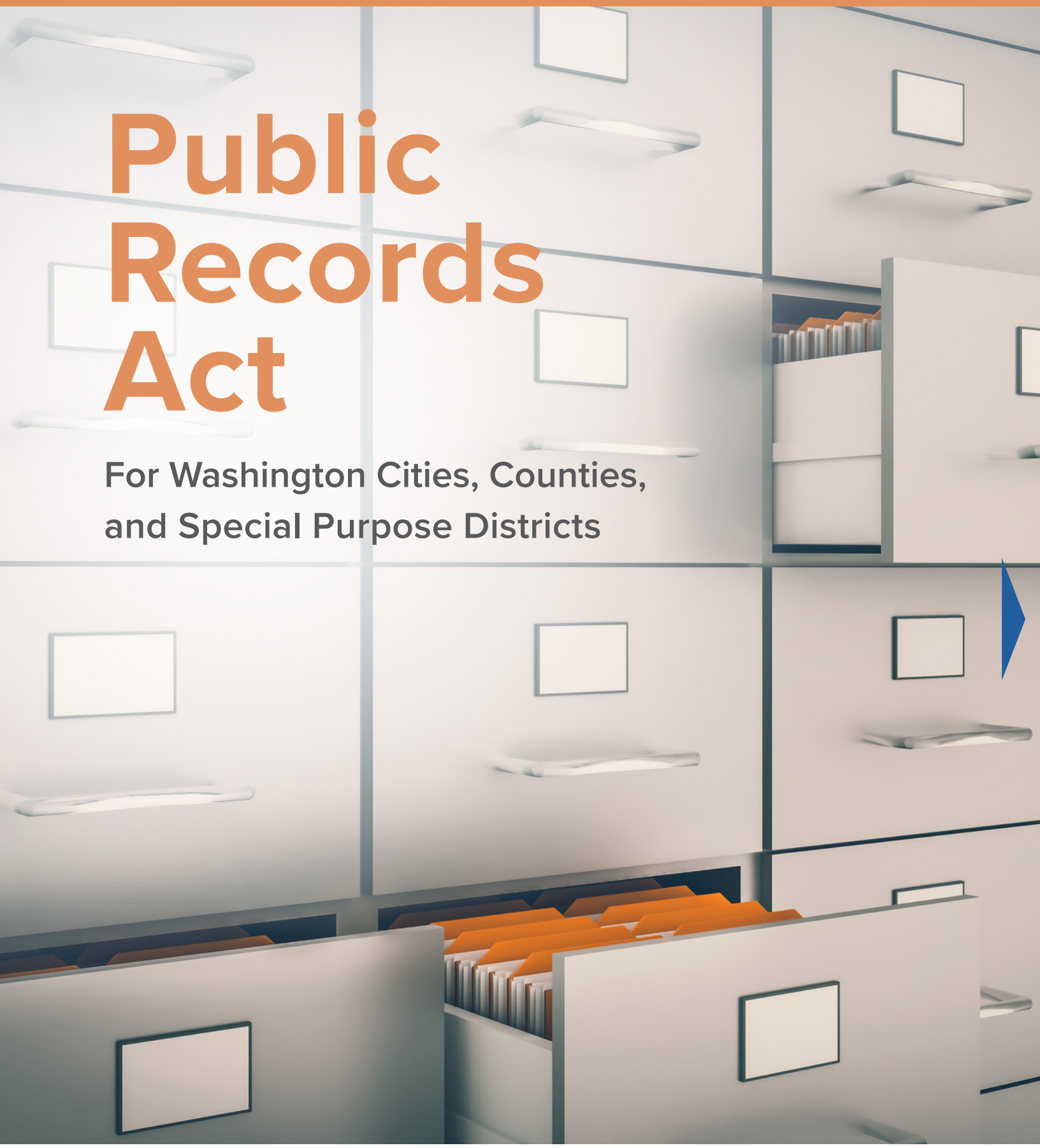
DECEMBER 2025

Public Records Act

For Washington Cities, Counties, and Special Purpose Districts



MRSC

Public Records Act

DISCLAIMER

The content of this publication 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.

MRSC Mission

Trusted guidance and services supporting local government success.

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Revision History

MRSC does our best to update this publication every year to reflect any new legislation or other relevant information impacting city and town revenues. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact mrsc@mrsc.org. To make sure you have the most recent version, please go to mrsc.org/publications.

DATE	SUMMARY
December 2025	Entire document reviewed, re-written, and re-published in its entirety

Contents

Introduction

BACKGROUND AND PURPOSE

In 1972, voters in Washington State approved Initiative 276, which required that all records maintained by public agencies be made available to the public upon request, with very narrow statutory exemptions. Now known as the Public Records Act (PRA), the state's public disclosure statutes have evolved over time. The current version of the law is codified at chapter 42.56 RCW. The intent of the PRA is to facilitate open and transparent government. It accomplishes this by mandating that the people have broad and timely access to public records. The public policy behind the PRA is explicitly stated in RCW 42.56.030:

> 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. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

The PRA's basic mandate is for public agencies to make records available on request for inspection or copying. This publication describes in detail what the statutory obligations are for public agencies and how agencies should respond to public records requests.

WHO MUST COMPLY WITH THE PRA?

The PRA applies to "every state office, department, division, bureau, board, commission, or other state agency" in Washington as well as "every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency" (RCW 42.56.010(1)). We use the term "agency" throughout this publication to mean local governments unless we specify that we are talking about state agencies.

Notably, the PRA does not apply to judicial records because the judiciary is not a "state or local agency" within the meaning of the PRA. See *City of Federal Way v. Koenig* (2009). Instead, public access to judicial records is governed by three court rules promulgated by the Washington Supreme Court – GR 22, GR 31, and GR 31.1.

The corollary law for public access to federal public records is the Freedom of Information Act (FOIA). Sometimes requesters use "FOIA" and "PRA" interchangeably when referring to requests for public records. Technically, the PRA applies to Washington State public agencies and FOIA applies to federal agencies; however, a public agency should treat a request for records the same regardless of which term a requestor uses.

Questions may arise whether the records of non-governmental entities (such as nonprofit corporations or government contractors) are subject to disclosure under the PRA. The section on Records Held by Private Entities covers the relevant analysis in more detail.

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WHAT RECORDS ARE SUBJECT TO THE PRA?

A public record is defined in RCW 42.56.010(3) as any writing that is prepared, owned, used, or retained by any state or local government agency that contains information related to government conduct or the performance of any governmental or proprietary function.

The courts interpret this language very broadly, finding that it encompasses "virtually any record related to the conduct of government." See *O'Neill v. City of Shoreline* (2010).

More detail on how to determine whether something is a public record can be found under the chapter What Is a Public Record? in this publication.

INTERPRETING THE PRA

The Public Records Act (chapter 42.56 RCW) should not be read in isolation. There has been significant litigation surrounding the PRA, and decades of court decisions inform how agencies should be interpreting their obligations under the PRA. This publication includes citations to relevant case law and analysis where applicable. See also MRSC's Public Records Act Court Decisions webpage. Likewise, agencies can refer to the Washington State Attorney General's Model Rules on Public Disclosure (chapter 44-14 WAC) for guidance on how to evaluate and respond to specific types of requests.

In 2005, the state legislature directed the Attorney General to adopt advisory "Model Rules" for state and local agencies. While chapter 42.56 RCW provides the statutory framework for the disclosure of public records, the Model Rules provide practical, non-binding, advisory guidance on many issues that may not be clear in the language of the PRA itself.

Cities and counties should review the Model Rules and determine whether they wish to incorporate some or all of the Model Rules into their own local disclosure procedures or policies.

THE IMPORTANCE OF COMPLIANCE

Agency compliance with the PRA is important not only because it furthers the basic principle that the people's government be open and transparent, but also because public agencies face the potential for significant financial liability if they improperly withhold records or otherwise fail to comply with the PRA.

Financial penalties can include fines, attorneys' fees, staff time, and other costs associated with litigation (RCW 42.56.550(4)). See more in the Judicial Review section of this document.

HOW TO USE THIS PUBLICATION

The goal of this publication is to assist local agencies in meeting their obligations to the public under the PRA. Readers should use this publication in conjunction with MRSC's Public Records Act online resources.

This publication provides general guidance and should not be construed as legal advice. Ultimately, agencies will need to consult with their attorneys regarding how to respond to specific records requests.

This publication will first provide an overview of the PRA, agencies' procedural obligations, and helpful tips and insights on processing records requests. The second half of this publication reviews common exemptions. The appendices include other helpful resources.

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What Is a Public Record?

Washington has one of the broadest and most inclusive definitions of "public record" in the country, which incorporates nearly every record that pertains to government. Not only is the statutory definition itself broad, but courts interpret that definition quite broadly as well. In *Nissen v. Pierce County* (2015), the court noted,"[t]his broad construction is deliberate and meant to give the public access to information about every aspect of state and local government."

The State Attorney General's Office has produced a helpful flowchart to assist when determining whether a record is a "Public Record" under the PRA.

DEFINITION OF A PUBLIC RECORD

A "public record" is defined in RCW 42.56.010(2) to include:

> [...] any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

While this definition is broad, it is still necessary to meet all of the elements within the definition for a record to be considered a "public record." One of those elements is whether something is considered a "writing."

"Writing" is defined by the PRA in RCW 42.56.010(3) to include:

> [...} 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.

From this definition we see that pretty much any technology used to capture and express communication that pertains to the conduct of government will cause a record to meet the definition of a public record – regardless of where that record may be stored or retained.

Another element to consider is the subject matter of the record. If the record is in any way related to governmental activity, i.e., "relating to the conduct of government or the performance of any governmental or proprietary function," it would fall within this element. This could include records regarding personnel, property management, agency correspondence, public outreach, regulatory activity, legislative activity, and more. However, if a record only discusses personal or other private business it will generally not meet this element of the definition.

Caution: It is possible for an entirely private or personal record to become a public record if the agency ends up using that record in the conduct of government, for example as part of a personnel action.

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The final element of the definition is whether the record was "prepared, owned, used or retained" by that agency, as discussed below.

RECORDS ON AGENCY DEVICES AND ACCOUNTS

It is prudent to assume that all records created or stored on agency devices or accounts or created, stored or published on social media accounts by a public agency are public records as they are likely "prepared, owned, used, or retained" in the conduct of government. That said, the courts have made it clear that the controlling factor of determining whether a record is a public record is the *nature* of that record, not where the record was created or stored.

In *Tiberino v. Spokane County* (2000), the court held that personal emails created by an agency employee using their work email account would not have been public records *but for* the fact that the personal emails were subsequently used by the county in a disciplinary action against the employee. In a more recent case, the Washington Supreme Court emphasized that the mere creation and retention of union-related emails on agency devices and accounts did not cause them to automatically be public records. It was necessary, instead, to review the content of the emails to see if they discussed the conduct of government (*SEIU Local 925 v. UW* (2019)).

RECORDS ON PERSONAL DEVICES AND ACCOUNTS

An additional test applies when a record is located on a personal device or account. In addition to the other elements of the definition of a public record, it is necessary to look to consider whether the record was prepared or used within an agency employee or official's "scope of employment" or official duties. To determine whether a record was created within the scope of employment and is thus a "public record," a court will look at whether at least one of the following three things are true:

- The job required the creation of the record, e.g. text message, email, or social media post;
- The employer directed the creation of the record; and/or
- The creation of the record furthered the employer's interests.

A series of cases have clarified that text messages on personal cell phones (*Nissen v. Pierce County* (2015)), emails in personal email accounts (*West v. Vermillion* (2016)), and social media posts on personal accounts (*West v. Puyallup* (2018)) may be subject to the PRA if the creation or receipt of the text message, email, social media post met any one of these three elements.

Practice Tip: Agencies should adopt employee and official policies around the use of personal devices and accounts for public business. See MRSC's Electronic Records Policy Tool Kit for examples.

RECORDS HELD BY PRIVATE ENTITIES

Records created and/or held by a private business or other non-governmental entity may be subject to the PRA when the entity is determined to be the "functional equivalent" of a public agency (*Fortgang v. Woodland Park Zoo* (2017) or is otherwise acting at the direction of a public agency (*Cedar Grove Composting v. City of Marysville* (2015)). To determine whether an otherwise private entity is considered the functional equivalent of a government agency, courts will apply a four-factor balancing test from *Telford v. Thurston County Board of Commissioners* (1999).

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The factors are:

- Whether the entity performs a governmental function;
- The level of government funding the entity receives;
- The extent of government involvement or regulation in the entity's activities; and
- Whether the entity was created by the government.

This is a very fact-specific analysis, and some courts will give greater weight to different facts, so it is important to work with an attorney if there is ever a concern of whether the PRA applies to a particular private entity.

Practice Tip: MRSC recommends that a contract between an agency and a private entity (e.g., a consultant, nonprofit, or business) explicitly define the public records obligations of the entity, if any, so there is clarity about what records may be subject to disclosure under the PRA. While private entities can be sued and forced to turn over public records in their possession, it helps ease the working relationships if expectations are laid out in advance.

Agency Obligations Under the PRA

In the interest of transparency and the people's ability to "maintain control over the instruments that they have created" (chapter 42.56 RCW), the Public Records Act (PRA) requires agencies to make their records available for public inspection with limited exemptions. To ensure compliance with this objective, the PRA places several procedural obligations upon agencies. These obligations are reviewed in more detail below.

ADOPT POLICIES AND PROCEDURES

Technically, the first statutory obligation placed on agencies listed in the PRA is the "Duty to Publish Procedures" (RCW 42.56.040). Local agencies must display and make available the policies and procedures on how and from whom the public may obtain information and copies of records. Of course, the agency must adopt those policies and procedures before they are published. Policies are generally adopted via ordinance or resolution by the legislative body of the agency. Example policies and procedures are available on MRSC's Public Records Act Basics webpage.

These published policies must also contain the specific rules of procedure agencies will follow as they meet PRA disclosure obligations. These rules should be designed to provide for "the fullest assistance" and "most timely possible action on requests" without causing "excessive interference with other essential functions of the agency" (RCW 42.56.100). It is in accordance with these published rules and procedures that agencies per RCW 42.56.070(1) then:

> [...] make available for public inspection and copying all public records, unless the record falls within the specific exemptions of [the Public Records Act], or other statute which exempts or prohibits disclosure of specific information or records.

Many agencies adopt policies and procedures based on the Attorney General's Model Rules (chapter 44-14 WAC). Though the current version of the Model Rules deals mostly with disclosure procedures, there are also instructive comments regarding some specific disclosure exemptions, such as the right to privacy, the attorney-client privilege, and the deliberative process exemption. The Attorney General has the discretion to revise the Model Rules and periodically does so in response to court decisions and legislative changes.

The Washington Administrative Code (WAC) sections quoted below are taken from the "Introductory Comments" to the Model Rules and provide some explanation of their purpose and role.

> WAC 44-14-00001 – Statutory Authority and Purpose.
>
> The overall goal of the model rules is to establish a culture of compliance among agencies and a culture of cooperation among requestors by standardizing best practices throughout the state. The attorney general encourages state and local agencies to adopt the model rules (but not necessarily the comments) by regulation or ordinance.
>
> WAC 44-14-00003 – Model Rules and Comments are Nonbinding.
>
> The model rules, and the comments accompanying them, are advisory only and do not bind any agency. Accordingly, many of the comments to the model rules use the word "should" or "may" to describe what an agency or requestor is encouraged to do. The use of the words 'should' or 'may' are permissive, not mandatory, and are not intended to create any legal duty.

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> While the model rules and comments are nonbinding, they should be carefully considered by requestors and agencies. The model rules and comments were adopted after extensive statewide hearings and voluminous comments from a wide variety of interested parties.

Though these rules are nonbinding, the PRA directs agencies to "consult" the Model Rules when establishing their local ordinances (RCW 42.56.570(4)), and courts will cite to the Model Rules with the expectation that the processes explained within them were followed. See, e.g., *Forbes v. City of Gold Bar* (2012).

An agency's adopted policies and procedures should also reflect actual circumstances that are unique to that agency. For examples of agency PRA policies and procedures, see MRSC's Public Records Act Basics webpage.

IDENTIFY THE PUBLIC RECORDS OFFICER

Next, the PRA requires that agencies "appoint and publicly identify" a public records officer (PRO) (RCW 42.56.580). The officer serves as a public point of contact and oversees the agency's compliance with the PRA. Often, this responsibility is assigned to the clerk, attorney, or other administrative professional and the designation appears within the adopted policies. Some larger jurisdictions are able to have a designated PRO whose sole responsibility is to oversee the agency's records, but in most situations the PRO duties are only one of an employee's many job duties.

Some jurisdictions may have more than one PRO. This is particularly true in counties because the separately constitutionally elected officials manage and oversee their own records. Therefore, they may designate their own PRO to process and respond to requests. However, some county elected officials opt to rely on the same PRO designated by the executive branch. The statute also allows agencies to appoint an employee or official of another agency as the designated PRO. This is particularly useful for smaller agencies that have limited staff and resources and could be accomplished through an interlocal agreement or a contract for services between the agencies.

The name and contact information of the agency's current designated PRO is required to be made available in a reasonably calculated way to provide notice to the public about whom they may direct their records requests to. Examples of how agencies can make this information available are: posting at the local agency's place of business, posting on the agency's website, and/or including the information in agency publications and communications.

Note that while the statute requires agencies to identify their designated PRO for the purposes of records requests, the public are *not required* to direct inquiries to this person. This is discussed in more detail in Receiving and Tracking a Records Request section of this document.

LIST OF NON-PRA EXEMPTIONS

The PRA directs agencies to publish and maintain a list of "other" statutory exemptions or prohibitions on disclosure in addition to those contained within Chapter 42.56 RCW that the agency intends to rely upon (RCW 42.56.070(2)). These "other statutes" can include Washington laws, federal laws and regulations, and the state and federal constitutions. Many jurisdictions opt to incorporate the list of RCWs annually updated by the Office of the Code Revisor (available on the Attorney General's website) into their adopted PRA policies.

Caution: MRSC previously maintained a list of other RCWs as an appendix to a prior version of this publication. Many jurisdictions adopted that appendix by reference in their own policies. However, to avoid duplication with the Code Revisor, MRSC no longer maintains that list of Washington statutes. Agencies should review their adopted policies to be sure they incorporate by reference the most up to date list from the Office of the Code Revisor. MRSC does still maintain a limited list of federal statutes and regulations that have been found to apply to Washington public records, which is attached as Appendix C to this publication.

Note that any listing of potential exemptions is for informational purposes only and the absence of such a list or the absence of a particular exemption on an adopted list does not prevent an agency from relying upon that exemption.

INDEX OF RECORDS

The PRA requires that local agencies maintain a current index of their records (including correspondence) created after January 1, 1973 (RCW 42.56.070(3)). This index must be made available to the public, even if it is only partially complete. There is no statutory guidance on what information an index should include, but arguably it should contain sufficient information to assist requestors in pointing to the exact records they seek such as keywords and subject matter of the record and where it is located.

But this is where the 50-year-old PRA begins to show its age. The last type of record listed in the statute, "correspondence," is almost impossible to index in the current age of digital communication, plus other electronic records are constantly being updated and changed, like search histories and database records. Accordingly, the statute was amended to allow local agencies to make a formal finding that maintenance of such an index would be "unduly burdensome or interfere with agency operations" (RCW 42.56.070(4)).

Often, this finding appears in the agency's adopted PRA policies and must include an explanation of why and to what extent compliance would be difficult. That said, if the agency does maintain an index, even if it only contains a subset of all of the agency's records, it must still be made available to the public.

In summary, if maintaining even partial indices, an agency must comply with RCW 42.56.070(3). Note that while failure to publish or maintain indices without a finding that doing so would be unduly burdensome is technically a violation of the PRA, the PRA does not explicitly provide a means for someone to bring a court case against the agency on this basis alone.

AGENCY OFFICE HOURS FOR IN-PERSON INSPECTION

The PRA requires that records be made available for inspection during the "customary office hours" of the agency "for a minimum of thirty hours per week," excluding holidays, unless the requestor and the agency agree otherwise (RCW 42.56.090). Compliance with this requirement may be difficult for smaller agencies that do not keep that many on-site in-person office hours. One option is to offer at least a 30-hour window during which the requestor can schedule an appointment to inspect records so staff can be available on-site, although the agency needs to be careful not to unduly limit the length of the appointment (WAC 44-14-03002). The customary business hours must be posted on the agency's website and made available by other means to provide the public with notice, such as posted at a customer service desk or included on record request forms.

PROVIDE PROCESS FOR LOCAL REVIEW OF DENIALS

Local agencies are required to "establish mechanisms," i.e. adopt a procedure, for the internal review of any decision that denies inspection of a record (RCW 42.56.520(4)). Note that an agency claiming that a record is subject to an exemption or prohibited from disclosure is considered a denial under the PRA. Per the statute, this is meant to be a very quick process, and any review is deemed completed at the end of the second business day following the denial. This review, if requested, is typically completed by the agency attorney. A requestor is not required to make use of the agency's denial review process before going to court under RCW 42.56.550. See *Kilduff v. San Juan County* (2019). However, having this process available to requestors may stave off court challenges and give agencies an opportunity to correct any inadvertent errors. This is discussed further in the section in this document titled Internal Agency Review.

MANDATORY TRAINING

Two groups of local government representatives are required to receive PRA training: local elected officials and the agency's designated PRO (RCW 42.56.150 and RCW 42.56.152 respectively).

Local elected officials and those appointed to fill vacancies in elected office must receive PRA training that also includes discussion of the official's record retention obligations under chapter 40.14 RCW. Officials are required to complete PRA training either before they assume office or within 90 days of assuming their duties. Officials must take refresher training at intervals of no more than four years.

PROs must receive PRA training that covers the topics of retention, production, and disclosure of electronic documents, including updating and improving technology information services. PROs are required to complete their PRA training within 90 days of assuming their duties and take refresher training at intervals of no more than four years.

While the PRA requires this training, it does not indicate how compliance with this obligation should be documented. MRSC recommends obtaining a certificate of completion from the person or agency conducting the training, as well as ensuring that the local elected official or PRO has a duplicate copy on file should there be a need to prove the requisite training has been completed. Compliance expectations and documentation should be addressed in the agency's adopted PRA policies.

Note: In addition to in-depth all-day trainings that meet this training requirement for PROs, MRSC partners with the Association of Washington Cities to provide a 40-minute PRA training that meets the obligations for elected officials. The Attorney General's Office also provides online Open Government Training for elected officials and PROs that includes the PRA Basics. More information is available on MRSC's Public Records Act page.

The PRA does not mandate training for any other local government officials, employees (including IT professionals), or appointees; however, MRSC highly recommends agencies ensure all public employees, officials, and appointees receive records training. Such training will ensure that others can identify requests that come in through untraditional means, explain records retention obligations, assist the designated PRO in their duties, and also helps demonstrate to the courts an agency's commitment to complying with the PRA. The agency's training expectation for other officials, employees, or appointees should be addressed in both the agency's adopted PRA policies and any applicable personnel policies.

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Agency Obligations Under Other Statutes

The PRA is not the only statute that creates records-based obligations for local agencies. Chapter 40.14 RCW, originally adopted in 1957, controls the preservation, storage, transfer, destruction, disposal, and management of public records and includes agency obligations to document and report their compliance with the PRA. Note that since these obligations are in a different statute, any failure to comply with these statutes is *not* a violation of the PRA itself but may become relevant during the penalty phase if a court concludes that an agency did violate a provision of the PRA.

PRESERVATION/RETENTION OF RECORDS

Public records are technically the property of the state of Washington, held in trust for its people (RCW 40.14.020). Officials and employees have no private property rights to public records, and outgoing officials and employees are required by law to turn over all records in their possession to their successors. While state agencies are required to designate records officers to oversee the maintenance, preservation, and disposition of their records, there is not a similar explicit requirement for local governments (RCW 40.14.040). However, many local government agencies charge their public records officer designated under the PRA with this responsibility. IT professionals will likely also be an important part of the records management team.

Agencies, officials, and employees are prohibited from destroying records any sooner than provided by established retention schedules. The Local Government Records Retention Schedules (CORE) and other retention schedules are developed and approved by a records committee and published by the State Archivist at the Division of Archives and Records Management (The Archives) within the Secretary of State's office (RCW 40.14.050-.070). The retention schedules contain categories of records with examples of the records that fit within those categories. A disposition authority number (DAN) is assigned to each category. Each category has a defined retention period that sets the minimum length a record must be maintained, along with a directive of how the record is to be disposed of at the end of that period (e.g. whether destroyed or transferred to another state agency). The schedules also indicate whether or not the record is archival and/or essential, and thus may have additional handling requirements.

The CORE provides the retention schedules of the common records most agencies maintain. The State Archivist also maintains at least 27 other schedules that apply to the unique categories of records held by specific types of agencies and departments. For example, one schedule applies to the records of Housing Authorities while another applies to Law Enforcement records. The Archives' website lists and periodically updates the unique, agency-specific retention schedules. Any question of whether a record is subject to a particular schedule, or category within that schedule, should be directed to the Division of Archives or applicable regional archivist.

Practice Tip: The state archivist also maintains many resources for the maintenance, preservation, and disposition of records based on the specific type of government entity. These include tip sheets, webinars, one-on-one consultation, and certain grant programs.

Note that as an alternative to destruction, an agency is allowed to donate records of historical value (records created 70 or more years ago) to a state library, local library, historical society, genealogical society, or similar society or organization (RCW 40.14.070(3)). There is no authority to gift such records to any other person or entity.

Caution: Once an agency has disposed of a record in accordance with the schedules and has ensured there are no duplicate copies of the records in the agency's possession or control, the agency is no longer obligated to disclose the record in response to a records request. However, if the agency does still have the record, or a copy of the record, it must disclose the record – even if the record is long past its retention period (RCW 42.56.100). The agency cannot then dispose of the record until the pending request is closed.

Caution: Willfully and unlawfully mutilating, destroying, concealing, erasing, obliterating, or falsifying a public record is a felony (RCW 40.16.010 and 40.16.020). Purposely destroying a public record before its scheduled date with knowledge that destruction is premature is potentially subject to criminal prosecution.

TRACKING RECORDS REQUESTS

Agencies are required to maintain a log of all public records requests submitted to and processed by the agency (RCW 40.14.026). The statute lists out the specific information that must be tracked, including the identity of the requestor (if provided), the date received, the test of the request itself, how the request was fulfilled, and the date the request was closed.

The log itself is a public record subject to a retention schedule and disclosure requirements. Tracking logs are discussed in more detail in the section of this document titled Tracking a Request.

REPORTING REQUIREMENTS

Agencies that expend more than $100,000 annually on staff and legal costs associated with fulfilling public records requests are required to report certain metrics to the Joint Legislative Audit and Review Committee (JLARC) (RCW 40.14.026(5)). These metrics include, for example, the number of requests received, the time taken to fulfill the requests, the number of requests denied in full or in part, the total agency staff time spent on requests, estimated costs (including litigation costs and records management costs), and any money the agency receives from requestors, such as copy fees.

By July 1st, agencies are expected to report their data for the previous calendar year to JLARC's reporting system. JLARC then assembles the data into a report presented to the legislature the following January. The legislature then uses this information to inform its decisions related to records legislation. The reporting system, complete datasets, and yearly reports are available on JLARC's public records reporting website.

While only agencies that spend over $100,000 a year are required to track and report these metrics, all agencies are encouraged to voluntarily track and report their data to JLARC and their local decision makers. This data can inform the allocation of staff and financial resources.

Practice Tip: Some jurisdictions combine the metrics from the tracking log with the reporting metrics into a single electronic document or platform. This may be easier with some of the records request processing software and platforms, but may become unwieldy with a single spreadsheet.

Tips for Starting the Process

PROVIDE THE "FULLEST ASSISTANCE"

RCW 42.56.100 requires agencies to "provide for the fullest assistance to inquirers." That said, the statute also allows agencies to adopt reasonable rules and regulations to prevent records requests from creating excessive interference with the agency's other essential functions (*Hearst Corp. v. Hoppe* (1978)).

Agencies can establish a preferred process for the public to request records (e.g. web portal instead of postal service). However, the agency cannot require the public to use that process. As such, the agency must accept records requests that do not utilize the preferred process (*O'Dea v. City of Tacoma* (2021)).

Agencies can also establish a preferred process for delivering records to requestors. However, the agency must at least consider if it is reasonable and technically feasible to deliver the records via the requestor's preferred delivery method when that method is not the agency's preferred one (*Mechling v. City of Monroe* (2009)).

Agencies are not required to provide multiple copies of the same record to a requestor, even if the requestor wants the copies delivered to several additional individuals (*Silva v. King County* (2005)).

Agencies are also not required to create new records, but have the discretion to do so under the Model Rules. Sometimes it is more convenient to create a summary document instead of redact and produce original records (WAC 44-14-04003(6)). In situations like that, the agency may choose to create a record (the summary document). When an agency creates a new document of its own volition, the agency should first verify with, and obtain a written agreement from, the requestor that they will accept the new record and do not want the original/source documents.

ASSUME DISCLOSURE

Almost every record in an agency's possession will be subject to disclosure, with limited exemptions that may apply. It is tempting, particularly when sensitive information is involved, to start from a position of – "are we required to disclose this record?" Instead, agencies should start from the position that the record will likely be disclosed and *then* determine whether any law exempts or prohibits disclosure of all or part of the record(s). The PRA contains strong language in RCW 42.56.030 that is in favor of disclosure:

> 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 they have created.** The public records subdivision of this chapter shall be liberally construed and its **exemptions narrowly construed to promote this public policy**.

In line with this, the courts have consistently held that the only information which can be withheld from public disclosure is information which is specifically exempted by statute or other law. See e.g. *Brouillet v. Cowles Publishing Co.* (1990). Further, the courts interpret PRA exemptions narrowly. And if exempted information can be redacted from a record, the agency is required to produce the non-exempt portion of the record with the exempt information redacted.

Receiving and Tracking a Records Request

HOW ARE RECORDS REQUESTS RECEIVED?

Agencies receive requests for records in numerous ways (e.g., via records management "portal" systems, verbally, in writing, electronically, and more). As mentioned in the previous section on Provide the "Fullest Assistance," the default requirement under RCW 42.56.080(2) is that the agency must accept and process requests regardless of how they are received.

RCW 42.56.100 directs agencies to adopt rules that provide for full access to public records while preventing damage to those records and avoiding excessive interference with the agency's other essential functions. This section specifically says that requests received by "mail" for copies of identifiable public records must be honored. This requirement was added in 1975, but has not been updated since then to account for changes in technology. So, requests received by other means, such as phone, email, or social media are not specifically discussed in the statute.

Because an agency is given latitude to devise public records request procedures, it is reasonable to ask that a requesting party fill out a standard request form. But agencies should train their staff to recognize and accept a request for documents regardless of how that request is received.

DOES IDENTITY AND MOTIVATION MATTER?

Except in the specific situation where a statute entitles certain persons or entities to access particular records, the identity and motivation of the requestor are not to be considered by the agency in the PRA disclosure process (see Special Circumstances Related to Certain Requestors in the next section). This is true whether the individual seeking the record is doing so for private or public purposes. The one notable exception when motivation does matter is when the request is asking for a list of individuals to be used for commercial purposes, discussed in the section List of Individuals for Commercial Purposes.

A 2002 Washington Court of Appeals decision (*King County v. Sheehan* (2002)) confirmed that, when one of the statutory exceptions does not apply, an agency is prohibited from inquiring into the proposed use of the information requested for disclosure.

This means that regardless of who the requestor is – a lawyer, another agency, the media, or even one of the agency's own elected officials – they have the same access to records under the PRA as any member of the public. Further, agencies cannot require requestors to identify themselves (i.e., requestors are allowed to remain anonymous) unless they are seeking records that are only available to certain persons, news media, or agencies, or are seeking a list of individuals to be used for commercial purposes. (RCW 42.56.080).

Examples of other statutes outside of the PRA that entitle certain persons to records not otherwise available to members of the public include, but are not limited to:

- Records pertaining to a juvenile from a juvenile justice or care agency, the juvenile and their parents would be entitled to such records under RCW 13.50.100(7);
- Employees' annual access to review their own personnel file (RCW 49.12.240); and
- Information and records to be shared with unions during labor agreement negotiations (RCW 41.56.035).

SPECIAL CIRCUMSTANCES RELATED TO CERTAIN REQUESTORS

Government Agency Requests

Importantly, other government agencies may have specific or general statutory authority to request or demand records outside the PRA. For example, RCW 49.12.050 authorizes the Department of Labor and Industries to obtain a list of all employees from every employer, including public employers, in the state.

If the requesting government agency has statutory authority to obtain the records, then its request would not be processed as a PRA records request. In those instances, timelines and copying charge requirements under the PRA would not apply, although many jurisdictions still track whenever they provide records to any other agency. Sometimes an agency may have a data sharing agreement with another agency that controls the exchange of sensitive records, such as a multi-agency law enforcement task force (RCW 39.34.240).

Other times, government agencies do make their requests under the PRA. In those circumstances, all of the same PRA processing provisions would apply. Note that agencies should consider still charging for copies provided under the PRA. A statute known as the "Local Government Accountancy Act" (RCW 43.09.210) requires that local governments receive the "true and full value" for all property transferred from one department or public entity/agency to another. Because of this, agencies should include a section in their records policies that addresses interagency record production.

Internal Agency Requests

When a request for records comes from an agency employee or official, the agency needs to determine whether the request relates to agency work. If the records requested are not relevant to their scope of duties, then the request should likely be processed as a PRA request. If the employee or official needs the record for their official business, then the records should be shared without the formality of the PRA process. Some jurisdictions have adopted policies that address employee and official access to records. Note that records that are circulated for official business can still be redacted to limit the risk of inadvertent disclosure of otherwise exempt information.

News Media

Members of the news media, as defined in RCW 5.68.010(5), have greater access to certain personally identifying information about public employees and volunteers under RCW 42.56.250 than the public does. Washington court decisions limit this access to news media outlets wherein the news organization has a legal identity separate from the individual making the request (*Green v. Pierce County* (2021)).

Prisoner Injunction Provision

A local government agency may file a court action in superior court to obtain a court order (injunction) prohibiting a prisoner from filing public records disclosure requests if the intent of the disclosure requests is to harass or intimidate an agency or its employees. There are clear standards for the types of evidence the agency must present to obtain the injunction. So long as the injunction is in place, the agency can deny additional requests made by the prisoner. See RCW 42.56.565.

TRACKING A REQUEST

As mentioned previously, RCW 40.14.026(4) requires each agency to maintain a log of its public records requests.

At a minimum, this log must include:

- The identity of the requestor if provided;
- The date the request was received;
- The text of the original request;
- A description of the records produced in response to the request;
- A description of the records redacted or withheld and the reasons therefore;
- And the date of the final disposition, i.e. closure, of the request.

It is common to include additional information in the tracking log such as an assigned unique identifier, estimated installments dates, processing milestones, etc.

Practice Tip: MRSC recommends assigning each request a unique identifier such as a number/year or other code and listing it in the tracking log. Including this identifier in the tracking log, on all correspondence, and on any copies eventually produced will help the agency track and document its compliance with the PRA. It may also help track and differentiate multiple requests from a single requestor.

The log itself is a public record subject to a two-year record retention schedule. The log must be produced in response to a records request but note that there may be exemptions that should be applied, especially if the log contains any names of students, employees, victims, or witnesses. Further, names listed in the "identity of the requestor" might be considered a "list of individuals" under the commercial purposes prohibition. These exemptions are discussed more in the section on Lists of Individuals for Commercial Purposes.

Reviewing a Request and the Initial Response

Once a public agency receives a records request, the PRO or designated staff must review it and develop a plan for responding. The following key threshold questions will help an agency determine a path forward.

INVESTIGATING A REQUEST – THRESHOLD QUESTIONS

What Is the Requestor Asking For?

When an agency receives a records request, staff must determine what the requestor is asking for. It is important to not be too legalistic or to interpret the request too narrowly. Consider whether there is mutual understanding about the terms used by the requestor (e.g., if the term "personnel file" is used, do the PRO, requestor, and other agency staff have a common understanding of the scope of what is included in a personnel file?). This initial review will help determine how and where to conduct the search for responsive records or whether clarification is needed.

Is It a Request for Identifiable Records?

A requestor must make a request for identifiable records (RCW 42.56.080). An "identifiable record" is a record that exists at the time of the request and one which an agency can locate. Requests for information and questions posed to an agency without reference to specific records are not considered requests for identifiable records under the PRA. See *Bonamy v. Seattle* (1998). Likewise, a request for all, or substantially all, records prepared, owned, used, or retained by an agency is not considered a request for identifiable records (RCW 42.56.080(1)). Additionally, if a request requires a PRO or agency employee to read every agency record in order to determine whether any of the records are responsive to the request, then it is not a request for an identifiable record. That said, a requestor can ask for all records related to a particular topic, keyword, project, or official, for example. Also, agencies should beware of digital records. If an electronic search of all of the agency records can be conducted with the keyword, then courts do consider it to be a request for an identifiable record. Additional examples related to "identifiable records" can be found in the Model Rules at WAC 44-14-04002.

Note that agencies cannot deny a request that may be very big or "overbroad" (RCW 42.56.080). So long as the request contains some limitation in the scope of the request such that it is not a request for substantially all of an agency's records, it is a valid request.

Is the Requestor Asking the Agency to Create a Record that Does Not Exist?

There is no obligation in the PRA for an agency to create a record in response to a public records request.

For example, a requestor may ask an agency to compile a report with information they are interested in reviewing. If this report does not exist at the time the request is made, the agency is not legally obligated to create it under the PRA. With that said, if a requestor could otherwise obtain the desired information by requesting individual records, and it is easier to run a report or create a spreadsheet than producing the individual records, the agency could offer to create the report if the requestor agrees.

What if an existing record contains some, but not all, of the information requested? The agency should produce the record that it does have, even if it does not contain everything the requestor is seeking. For example, a requestor may seek a vendor list with X, Y, and Z, information included. If the agency has a vendor list but it only contains "X", it should produce that list.

Is It a "Standing" Request for Records?

Because an identifiable record is one that exists at the time of the request, a requestor may not make a standing or ongoing request for records. For example, a requestor could not ask for "all correspondence to date between Jane Doe and Councilmember Smith and any future correspondence between Jane Doe and Councilmember Smith through the end of this fiscal year." In this example, the agency should provide any existing correspondence but should explain to the requestor that the agency is under no obligation to provide future correspondence and as such, the requestor would have to make subsequent requests for additional correspondence that may occur.

Is It a "Bot" Request?

If the same requestor has made multiple automated requests to an agency within a 24-hour period, and if an agency establishes that responding to multiple requests would cause excessive interference with agency functions, it can deny the request (RCW 42.56.080(3)). These are sometimes referred to as "bot" requests and were used by some requestors as an attempt to get around limitations on standing requests. The legislature added this provision to avoid excessive interference in agency functions. As a practical matter, these are not frequently an issue for an agency.

Is the Request Directed to the Correct Agency?

Sometimes a request for records will be directed to the wrong agency. If it is, the agency should inform the requestor and close the request. The agency has no duty to try to obtain the records from another agency or to forward the request. In *Limstrom v. Ladenburg (Limstrom II)* (1998) the court noted: "On its face the Act does not require, and we do not interpret it to require, an agency to go outside its own records and resources to try to identify or locate the record requested." In a more recent, unpublished decision, the Washington Court of Appeals held that a county had no duty to produce records held by the superior court (*Cortland v. Lewis County* (2020)).

There is a difference between a request being directed to the wrong agency and a request involving records not currently held by the agency. The US District Court for the Western District of Washington held in *Contreraz v. City of Tacoma* (2024) that a city had an obligation to produce records held in the database of another agency when the city created the records and used the database on a daily basis. The city could not simply refer the requestor to the other agency because the database was housed under that agency.

LIST OF INDIVIDUALS FOR COMMERCIAL PURPOSES

Of special consideration at this point in evaluating a request is whether the requestor is seeking a list of individuals that may be used for commercial purposes.

RCW 42.56.070(8) prohibits agencies from giving, selling, or providing "access to lists of individuals requested for commercial purposes" unless authorized by law. This provision prohibits disclosure "[...] if the requester has a commercial purpose and intends to directly contact or personally affect the individuals named in the list" (AGO 1998 No. 2 and WAC 44-14-06002(6)).

The commercial purpose prohibition only applies to requests for "lists of individuals." It does not apply to a set of records or other lists that a requestor might use to gather information that they could potentially use for commercial purposes. See AGO 1975 No. 15. As an example, an agency could not inquire as to why a requestor is seeking a copy of the front page of all active permit applications filed with the city, even though the agency knows that the requestor could compile a list of names from those records.

In addition, this provision does not prohibit disclosure of lists of businesses, corporations, or partnerships; the statute only prohibits disclosure of lists of natural persons. See AGO 1975 No. 15. Therefore, lists of private companies that have commercial value for targeted advertising must be disclosed upon request. Likewise, a list of individuals requested for political purposes does not fall within this prohibition as the list is not sought for "commercial purposes." See *Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss* (2019).

A list of other information, like property, that happens to have names associated with the information is not a "list of individuals." However, if the information is in an electronic record, such as an Excel spreadsheet, that can be sorted to display lists of individuals, the prohibition applies. See AGO 2019 No. 3. Another example of a potentially "sortable" list may include copies of an agency's public records request log.

An investigation into whether to disclose a list of individuals is one of the only times agencies are authorized to inquire into the identity and motivation of the requestor. In *SEIU Healthcare 775NW v. State* (2016), the court held that an agency must investigate when it has some indication that a requested list might be used for a commercial purpose. The court also held that:

> [M]erely requiring an affirmation from the requesting party is not sufficient to satisfy an agency's obligation to investigate under [RCW 42.56.070(8)]. When under the specific case facts an agency has an obligation to investigate, it must at least require a party requesting a list of individuals to state the purpose of the request.

The court provided three factors to consider when determining whether to investigate:

- The identity of the requestor;
- The nature of the record requested; and
- Any other information that is available to the agency.

When an agency has reviewed the factors above and made a preliminary determination that the request may be for a commercial purpose, the agency is to notify the requestor that, under RCW 42.56.070(8), a preliminary determination has been made that the records are being sought for a commercial purpose and, as such, the requestor needs to explain why this preliminary determination is incorrect. In other words, the burden shifts from the agency to the requestor to show they are entitled to the list.

Here is a sample affidavit template developed by the Attorney General's Office that an agency could ask a requestor to complete. If the agency ultimately decides to withhold some or all of a list based on the affidavit, it should do so in consultation with the agency's attorney in order to discuss potential liability.

Practice Tip: Consider producing the list with individual names redacted and explaining the prohibition, but also invite the requestor to provide the information necessary for the agency to investigate whether the unredacted list can also be disclosed.

Must the city disclose the address list that it uses to mail newsletters to city residents when the list does not include the names of the occupants residing at the addresses and instead only refers to them as "resident"? Does it make a difference if the request is from the local chamber of commerce, a retail business, or a person campaigning for public office?

The list must be disclosed to anyone requesting it. Motivation is not relevant, and RCW 42.56.070(8) does not apply, because the list only identifies individuals as "resident" and thus is not a list of natural persons. If the list contained the residents' names along with their addresses, it could probably not be provided to a retail business, but it could be provided to a political candidate for campaign mailing, since an election campaign would not be considered a commercial purpose.

Must the city disclose a list containing the names and addresses of all city residents who are delinquent in their Local Improvement District (LID) payments when the requestor is an employee of a company that provides home equity loans?

As it appears the request is likely for commercial purposes, the city should disclose the list, redacting the names pursuant to RCW 42.56.070(8), and provide only the addresses. The city should provide an opportunity for the requestor to submit an affidavit rebutting the city's conclusion that the request is for commercial purposes.

Does the agency have to fulfill an anonymous request for a list of individuals for commercial purposes?

No. The agency is *required* to investigate whether a list of individuals will be used for a commercial purpose. MRSC believes the agency cannot conduct an adequate investigation if it does not know the requestor's identity.

INTERPRETING THE REQUEST

Does the Request Need Clarification?

Sometimes all or portions of a records request are unclear. If so, an agency can ask the requestor to clarify. In fact, requesting clarification is one of the agency's options in providing an initial response to a records request (i.e., The Five-Day Response Letter section) (RCW 42.56.520). An agency should put a deadline on a request for clarification, such as "If you have not responded to our request for clarification by [date], we will assume you do not want to provide clarification and as such, we will process your request as submitted."

If portions of the request are clear, an agency should respond to those portions while waiting for clarification on the unclear sections.

If no clarification is received and the entire request is unclear, then the agency must send a closing letter indicating that it asked for clarification by a certain date, the requestor did not provide it, and the request is now closed. See more in the Closing Letter section of this document.

Caution: Note that rarely is an entire request so unclear that an agency cannot respond. A court will expect an agency to try to respond.

Could the Request Be Narrowed?

In some situations, such as when a very broad request for records is received, an agency may choose to reach out to the requestor to see whether they are willing to narrow their request. A conversation with the requestor could reveal that they do not actually want certain types of records that would have otherwise been considered a responsive record based on the original request. Likewise, if an agency runs an initial keyword search and discovers that the request would produce a large volume of responsive records, it could inform the requestor of the large response and ask whether the requestor wants to proceed with the original request or if they want to narrow/modify the request using a date range, alternative keywords, etc. This approach is sometimes called a "sample pull." Importantly, the requestor is under no obligation to narrow or modify a request for identifiable records. If the requestor agrees to narrow the request, be sure to confirm in writing.

Caution: An agency does not satisfy its obligation to provide an initial response to a request for records within five days by asking if a request may be narrowed. See more in The Five-Day Response Letter section of this document.

INITIAL PROCESSING OF THE REQUEST

Issuing a Preservation Hold

Once an agency receives a request, any responsive records may not be destroyed, even if they could otherwise be destroyed under the applicable retention schedules. After receipt of a request, the PRO should notify relevant staff and put a hold on the retention/destruction schedule. The hold informs staff that they need to suspend their ordinary destruction and archiving of any records that may be responsive to the request. The PRO should also work with IT staff to stop any automatic electronic record disposal on accounts where there are likely responsive records.

Notice to Employees

Does the request likely include records found exclusively in a current or former employee's personnel, payroll, supervisor, or training file records?

If the request is for information or records located exclusively in an employee's personnel, payroll, supervisor, or training file, then an agency is required to give notice to the employee and to any applicable union representative, regardless of whether the agency ends up releasing a record (RCW 42.56.250(2)). We discuss this more in the section Mandatory Notice to Employees of this document but mention it here as the statute requires the agency to provide notice "upon receipt" of the request, likely to avoid an unreasonable delay in the release of records.

The Five-Day Response Letter (i.e., Initial Agency Response)

Agencies are required by RCW 42.56.520 to provide an initial response to a public records request within five business days of receiving the request. The five days are five *business* days—weekends and holidays are excluded. "Day one" of the five-day count begins the next business day after receipt of the records request. So, if an agency receives a request on a Tuesday, Wednesday will be day one as long as that Wednesday is not a holiday. Assuming there were no intervening holidays, the following Tuesday would be the deadline for a five-day response.

MRSC recommends that an agency's PRA policies include a statement about what happens if a records request is submitted after business hours. MRSC has advised that a records request submitted after business hours is not "received" until the next business day, and therefore "day one" starts on the business day following the day it is considered "received."

Pursuant to RCW 42.56.520, an agency may satisfy the requirement to provide a response within five days by doing any one of the following:

- **Providing the record(s)** (i.e., fulfilling the request).
- **Providing an internet address and link to the specific records requested on the agency's website.** The link must be to the requested records on the agency's own website. The link may not direct the requestor to an outside party's website and an agency may not make a requestor search for the records online. If the individual does not have internet access, then the agency must provide copies of the records or allow the requestor to view the records using an agency computer.
- **Acknowledging receipt of the request and providing a reasonable estimate of the time necessary to provide the records** (or at least the first installment of records). It is insufficient to only state that the agency needs more time to respond. There must also be an estimate for when the records (or an initial installment of records) will be available. See below for more information.
- **Acknowledging receipt of the request; seeking clarification if the request is unclear; and providing, to the greatest extent possible, a reasonable estimate of time necessary to respond if the request is or is not clarified.** If the requestor does not respond to the agency's clarification request, and the entire request is unclear, an agency need not further respond to the request other than to formally close the request. If portions of the request are clear, however, the agency must respond to those portions.
- **Denying the request.** See more in the section Deny and Close a Request.

Estimating a Reasonable Response Time

If the request cannot be fulfilled within five days, the five-day letter must provide an estimate of the time it will take the agency to fulfill the request. If the agency is fulfilling the request in installments, it must provide at least an estimate of time it will take to complete the first installment, but it is not required to provide an estimate for the entire production. See *Health Pros Northwest, Inc. v. State* (2019).

The time estimates must be "reasonable." In determining reasonableness, agencies should consider the following factors:

- volume of records requested;
- number of staff who may possess responsive records;
- whether records are kept in multiple locations;
- whether exemptions apply and the difficulty of redactions;
- extent of legal review required to determine potential exemptions or responsiveness;
- whether third-party or employee notice is required; and
- where the request falls in the request queue.

Some agencies have adopted rules for prioritizing requests; others have adopted rules that say how many hours a week or day they will spend processing requests. These policies should also be considered when providing a reasonable estimate of the time to respond. See MRSC's Public Records Act Basics page for examples of these policies from agencies across the state.

The Model Rules say the following at WAC 44-14-04003(7) about providing a reasonable estimate of time to respond:

> An agency should either fulfill the request within the estimated time or, if warranted, communicate with the requestor about clarifications or the need for a revised estimate. An agency should not ignore a request and then continuously send extended estimates. Routine extensions with little or no action to fulfill the request would show that the previous estimates were not "reasonable." Extended estimates are appropriate when the circumstances have changed (such as an increase in other requests or discovering that the request will require extensive redaction). An estimate can be revised when appropriate, but unwarranted serial extensions deny a requestor access to public records.

If the agency knows it will miss a self-imposed deadline, MRSC recommends explaining to the requestor why there is a delay and then setting a new date for records to be produced. If an agency is sued for denying access to records due to delay, courts like to see regular communication with requestors on these issues.

Deny and Close a Request

Sometimes, although infrequently, an agency will need to deny a request at the outset without producing any records. To summarize, an agency may deny a request if:

- The request has been sent to the wrong agency;
- The request is totally unclear (this is rare) and the requestor has not responded to the agency's inquiries for clarification;
- The request is for information, not an identifiable record; or
- The request is for all, or substantially all, of an agency's records.

If an agency has a basis for denying a request at this point in the process, it must provide a written statement of explanation in a closing letter. See more in the section Closing Letter.

Note that, while typically later in the process, withholding or redacting a record because an exemption applies is also considered a denial for purposes of judicial review. However, indicating that there are no responsive records after performing a search is not the same as denying access to records.

Searching for and Gathering Records

CONDUCTING AN ADEQUATE SEARCH FOR PUBLIC RECORDS

The PRA requires that agencies perform an adequate search to locate records responsive to a public records request.

The PRA itself does not provide detailed instructions on how to conduct an adequate search. Instead, those requirements can be found in court decisions interpreting the PRA, including *Neighborhood Alliance v. Spokane County* (2011) and *Block v. City of Gold Bar* (2015). Those cases direct agencies to:

- Conduct the search in a manner that is reasonably calculated to uncover all relevant documents;
- Consider all locations where responsive records are likely located; and
- Follow obvious leads as they are uncovered.

As technology and file management systems continue to evolve, responsive public records might be located in many different locations and formats. This is why it is essential to develop a search plan, especially for larger and more complex requests.

TIPS ON SEARCHING FOR RECORDS

Use a Checklist and Develop Search Terms

MRSC recommends that agencies develop and use a search checklist. Using a checklist will help plan a specific search. It should be used as a basis to have conversations with staff and elected officials, especially the agency's IT department. That conversation should identify the physical and digital locations of records that might be responsive. It is also a good time to discuss and generate electronic search terms.

The search checklist is only a guide, and the agency should not limit itself to the original checklist. Make it an iterative process in which agency staff are comfortable chasing leads developed as they find records. Agencies can also share their checklist with the requestor and ask if the requestor suggests other search terms or possible record locations.

In developing search terms, consider the possibility that a subject may be referred to in multiple ways. For example, in a planning development or a public works project, files could be listed by address, owner name, construction company name, or some other nicknames that may have changed over time. Another example is in student records where a child may be referred to by their full name or by the initials.

For electronic records, balance casting a wide search net with the need to review the search results. Too narrow of an interpretation of the request can lead to an inadequate search. See, e.g., *Cantu v. Yakima School District No. 7* (2022). At a minimum, consider the use of Boolean search operators that will find variations on a search term. For example, using the "*" operator, as in "develop*", will return results containing words such as "development," "developer," and "developing."

Consider developing standard search locations and/or search terms for commonly requested records. For an example of this type of standard search outline, see MRSC's PRA Adequate Search tip sheet.

Manage Time and Resources

RCW 42.56.100 requires agencies to adopt reasonable rules to provide full public access to public records while protecting those records from damage or disorganization and preventing excess interference with other essential functions of the agency. Some agencies classify requests by volume and complexity, and also specify how much time per week or day they will spend processing requests. See examples of public records request policies from Bainbridge Island (2024) and Snohomish County (2017).

Search in Installments

Remember that the PRA allows an agency to provide records in installments (RCW 42.56.120(4)). Using installments may allow the agency to "pause" its search while waiting to see if the requestor reviews or accepts delivery of the first installment. If an agency chooses to do this, notify the requestor that the agency will provide records in installments and give them a reasonable estimate of the time when the first installment will be available.

As discussed in the section of this publication called Installments and Deposits, the agency can close the request as abandoned if a requestor does not pay for copies or review or collect the copies by the established deadline.

Document the Search

Using the agency's search checklist, document where the agency searched and what terms were used. If there was a location on the checklist that was not searched, document the rationale behind this decision. For example, if the checklist said staff might look in the public works file, an appropriate reason not to do so would be if the application was never reviewed by public works. Documentation of the search process will help the agency in meeting its burden to prove that the search was adequate.

PLACES TO SEARCH FOR RECORDS

Agency Email Records

Searching email mailboxes for records responsive to a records request is a particularly challenging task given the volume of emails sent and received by staff and officials. Consider investing in software that allows certain staff members to search all agency emails and find responsive records.

Examples of such software include Barracuda and Commvault; see our PRA & Records Management Technology Guide for additional software options.

If an agency does not have the budget to invest in such software or have the capability to search all agency emails, consider using an email voting tool. This kind of tool allows the PRO to efficiently survey staff and officials on whether they have responsive emails as well as other issues related to records requests.

Practice Tip: Microsoft Outlook has a "voting function" that can be included in an email, which allows the email recipient to vote "Yes," "No," or "Maybe" regarding whether they have responsive records. To learn how to use the Outlook voting function, refer to MRSC's Microsoft Outlook Voting Function tip sheet.

"Old" Equipment

Consider looking for records that may be stored on computer equipment used by former officers and employees, as well as equipment that is no longer being used because it has been replaced. If agency policy is that equipment is backed up and wiped when an officer or employee leaves or when the equipment is no longer used because of upgrades, it may be reasonable not to search on that equipment. But be careful to document the policy and that the policy is being followed. Otherwise, make sure that old equipment is searched if records may be stored there.

Agency Databases

Information in databases is stored as discrete inputs organized by the database software. Those individual inputs, or pieces of data, are themselves public records, and if the agency can generate a report from those fields using "off the shelf" software, it must do so. If providing the information requires custom programming, the agency may still be required to produce the custom report, but it can charge the requestor for the cost of the custom programming (RCW42.56.120(3)). While agencies are not required to create records that do not exist on the day of a request, extracting data from a database into a new spreadsheet or other report is not considered the creation of a new record – rather it is the effort the agency must take to make the existing data available for inspection.

Server Back-Up Files

While we have no clear guidance from the courts or the Attorney General's Office, MRSC believes there are legitimate arguments that local governments are not obligated to open and restore back-up server files to perform a search for responsive records unless there is reason to believe that a copy of an otherwise missing record can be found within the back-up server file. This position is based on what a court would likely consider to be "reasonable" in the specific context. If an agency gets a specific request to access the server back up and recover a particular file, it should be ready and willing to do so, but should also consider whether a customized service charge for providing access is appropriate. See RCW 42.56.120(3).

If someone asks for the backup file itself, that is likely the equivalent of asking for "all records" which means it is not a request for identifiable records.

MRSC understands from talking with IT professionals and the State Archivist, the purpose of server back-up files is disaster recovery for the agency's computer and network systems. It is essentially a "moment in time" snapshot of the agency's entire computer and network system. That file contains not only documents, but sensitive information about the agency's computer and network systems. Revealing server organization and file locations would be a significant cybersecurity risk and arguably the basis for asserting an exemption under RCW 42.56.420(4). An agency could also argue that production of a "back up" may excessively interfere with agency functions in violation of RCW 42.56.100 because it would require having sufficient infrastructure to restore the entire system before removing and redacting otherwise exemption information from the entirety of the file.

Caution: This analysis of back-up server files has not been tested in court and, if an agency chose this route, it would need to be very well supported with a declaration explaining in laypeople terms the nature of the back-up file, the security risk if disclosed, and the feasibility of search and/or redaction.

Metadata

Electronic records have a vast trove of digital information that is stored "behind the scenes." This is data that is not immediately apparent when viewing an electronic record in its default status. This information is often referred to as "metadata" – because it is data about the data that is visible. Metadata could include, for instance:

- When the record was originally created;
- The original and subsequent authors;
- The number of times the document has been edited and by whom;
- File storage locations;
- Server IP addresses, and more.

The agency is required to produce non-exempt metadata if requested, and if producing it is reasonably and technologically feasible (*Mechling v. City of Monroe* (2009) and *O'Neill v. City of Shoreline* (2010)). The requestor must ask for metadata. They may do so by asking for it specifically, or by asking for electronic records in their "native" or original format.

Personal Devices and Accounts

Records related to agency business are public records regardless of where they were created or stored – that includes on personal devices and in personal email or social media accounts. However, there are practical and legal challenges to having agency staff perform a centralized search for responsive records that reside on an employee's or official's personal device or personal account.

Washington Courts recognize this and have said that the agency can reasonably rely on the employee or official to perform their own search of their device or account. See *Valderrama v. City of Sammamish* (2024). The employee or official then certifies that they have done the search by signing an affidavit or declaration that details the extent and nature of their search. The affidavit or declaration must be "reasonably detailed" and "nonconclusory," and should describe the accounts, devices and locations searched and the names and search terms used to locate responsive records. An agency's affidavits are entitled to a presumption of good faith.

See *Nissen v. Pierce County* (2015) for more guidance on what constitutes an adequate search of personal devices and personal email accounts.

Reviewing and Redacting Gathered Records

Before records can be provided to a requestor, they must be reviewed for responsiveness and potential withholding or redaction. This section defines responsiveness in the context of the PRA, provides a high-level overview of exemptions and withholdings, and covers best practices for redacting and creating exemption/withholding logs or communications.

DETERMINING WHETHER A RECORD IS RESPONSIVE

The first part of the records review process is determining if each record found is actually responsive to the request. What does it mean for a record to be "responsive"? A responsive record fits squarely within the requestor's request. When a request is narrow or limited to specific documents, this should be fairly easy to determine.

But with larger or broadly worded requests, a more expansive scope of records may need to be gathered and then reviewed. For example, when gathering potentially responsive electronic records using keyword or Boolean search terms, it's likely that not all records retrieved will be relevant. For instance, searching using the term "public records" will bring up many irrelevant records since most public officials have it in their disclaimer footer so it appears in every email they send.

Practice Tip: In keeping with the directive to provide the fullest assistance, inundating a requestor with non-responsive documents or charging a requestor for records they did not ask for is discouraged. At the same time, be careful about being too exacting in interpreting a request. When in doubt whether a record is responsive, the risk adverse approach is to provide it to the requestor.

It is important to review the entire record to determine responsiveness. A careful review will not only ensure an agency is not providing non-responsive records, but also that staff are not overlooking other potentially responsive material. For example, it can be tempting to just look at the subject line of a memo or email and believe it to be responsive, but this practice can lead to errors. It is common, especially in email chains, for the content of a record to depart from the original subject matter. The body of the email, as well as other types of documents, may also contain "breadcrumbs," like references to other relevant materials or attachments, that should be followed to find additional records. Failure to follow obvious leads could result in a court finding that the search for responsive records was not adequate.

REVIEWING RECORDS FOR POTENTIAL EXEMPTIONS FROM DISCLOSURE

MRSC is often asked whether a certain public record is subject to disclosure, i.e., must the record be released to the requestor. As the PRA explains, every agency "shall make available for public inspection and copying all public records, unless the record" is a list of individuals requested for commercial purposes, falls within the specific exemptions of the PRA itself, or is exempt based on an "other statute which exempts or prohibits disclosure of specific information or records" (RCW 42.56.070(1)). The presumption is that a record is public and subject to disclosure. Agencies bear the burden of proving whether an exemption applies. We go into more detail in the section on Exemptions Commonly Used by Local Governments, but there are certain underlying concepts related to the process of asserting exemptions that we explore here.

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Maintaining a Working List of Commonly Applied Exemptions

While the PRA includes many exemptions listed in Chapter 42.56 RCW, there are many other statutes that an agency can cite to justify withholding all or part of a public record. It can be difficult to track down these other exemptions. This is likely why agencies are required to create and make available to the public a list of commonly applied exemptions, other than those listed in the PRA, "that the agency believes exempts or prohibits disclosure of specific information or records of the agency"(RCW 42.56.070(2)). To meet this obligation, many agencies simply incorporate into their PRA policies the list of exemptions found in state statutes that the Code Reviser is required to prepare every year for the Sunshine Committee (a.k.a. "public records exemptions accountability committee") (RCW2.56.140(7)). However, as of 2024, that list is over 30 pages long and includes many agency-specific exemptions that have no relevance for local governments.

Ideally, an agency should develop its own working list of exemptions that it uses often. This list could be customized based on the types of records the agency maintains, and the nature of requests it commonly receives. Such a list is helpful for two major reasons. The first is that a shorter list can be very helpful to records staff as they review records. To the extent that an agency has document review software, there should be a "key" for staff to consult as they review records and apply exemptions. Of course, staff will need to be generally aware of other potentially sensitive information and should be trained on how to identify other less common exemptions that might apply.

The second reason is to better inform the public and shape requestor expectations. If the list is made easily available, perhaps along with the agency's adopted procedures and fee schedule (ideally on a website), an agency can potentially reduce the amount of friction that results when someone seeks a record that will not be disclosed. It may also provide some assurance to the subject of the record that their information would likely not be disclosed. For example, if an agency regularly receives requests for employee "payroll information," a list of all the information and records that will and will not be disclosed may assist the requestor in determining whether the information they are seeking will actually be released. In the meantime, employees will know that their employer cannot be compelled to disclose certain listed information.

Special Considerations for Reviewing Electronic Records

When it comes to reviewing electronic records, especially records in their native format (as opposed to those that have been converted to another format, like "pdf"), records staff need to take additional review precautions. As discussed in the Metadata section of this publication above, electronic records in their native format include "metadata," or data about the data that one could theoretically locate within the record. Some of that metadata information may be subject to an exemption.

Records staff should work with their IT professionals to identify the types of information that may exist as metadata within electronic records.

Caution: If a file allows a person to view different versions of a record, such as prior drafts and tracked changes, all of these versions should be reviewed before the original record is released in case there . Agencies should be especially mindful if an attorney was involved in the document drafting process (in which case the information may be protected as attorney work product) or if the agency works with individuals whose identity is protected (like witnesses, victims, welfare recipients, and juveniles.)

Another difficult aspect of working with original electronic records involves how information can be redacted from an electronic record without altering the original, which is discussed below.

REDACTING RECORDS

Records staff may be tempted to hold back the full record if an exemption applies. However, an agency cannot rely on an exemption to withhold an entire record if the protected information "can be deleted from the specific records sought" (RCW 42.56.210(1)). We refer to this deletion of information as "redaction."

But what does it mean to "redact" a record? To redact means to hide or remove the content that is subject to a PRA or other statutory exemption. From a practical standpoint, how one hides or removes information depends on the nature of the record itself, but keep in mind that whatever process is followed, the original record must remain intact and unaltered.

Caution: It is a felony to intentionally and unlawfully "remove, alter, mutilate, destroy, conceal, or obliterate" a public record! (RCW 40.16.010 and RCW 40.16.020).

Redacting Paper Records

Because it is illegal to alter an original paper document, the first step in redacting a paper record is to make a photocopy or digital scan. This copy of the record can now be altered for redaction purposes. Note that an agency cannot charge the requestor for any photocopies made solely for the purpose of applying redactions if the copy will not be provided to the requestor.

For paper photocopies, the method of redaction needs to completely obscure the text. This may require a second photocopy after the redaction is applied. Remember, if you can hold the paper record to the light and still see the redacted text, you have not completed the redaction. Likewise, any physically applied marks need to cover all parts of the text. If the tops or bottoms of letters can be seen, and then guessed, then the information has not been effectively redacted.

Additionally, we recommend a method that demonstrates the text was hidden intentionally. For paper copies, use a colored marker instead of white liquid paper. Liquid paper can make redactions invisible after photocopying, making it unclear if sections were blank in the original record or were later redacted. This is especially important for forms to clearly communicate what was redacted versus never filled out. Alternatively, a black box can be drawn around the whited-out area and/or redaction codes labeled overtop.

Redacting Electronic Records

As mentioned above, it is impossible to remove or obscure information in an electronic record without altering the record. One secure way to redact electronic records is to convert the file to pdf, which creates a static image of the record, and use redaction tools in software like Adobe Acrobat Pro or E-Discovery to remove the necessary information. (Note that free versions of most software do not come with these advanced tools). Converting to pdf will also likely remove any metadata or prior digital versions. If the requestor is seeking the records with metadata, then staff will need to work with IT professionals to extract the metadata for disclosure along with the pdf of the record, to the extent it is reasonable and technically feasible to do so.

Make sure that the digital tool actually removes the text from the electronic document. A known mistake is to use a mark out tool that seems to completely obscure the text, but it is actually a 100% opaque or "black"

highlighter software setting. The digital information is still below and can be viewed by a different user by removing the highlighter.

Again, reviewing staff should also be careful if the agency uses versioning software, where multiple versions are overlaid in the same electronic file, or if the file can be viewed with tracked changes or comments visible. By converting the document to pdf, only what is visible in the original record at the time of conversion will be visible in the final pdf.

If an agency lacks the software to convert the electronic record, staff may need to consider printing out the document and then physically redacting it as one would a paper record. This could happen, for instance, if redactions would modify a spreadsheet formula. Alternatively, after consultation with the requestor, staff may need to create an entirely new record that does not contain the exempt information but is still responsive to the request – such as running a new report from a database with non-exempt parameters.

PROVIDING AN EXPLANATION OF EXEMPTIONS APPLIED (E.G., EXEMPTION LOG OR LETTER)

If a record is redacted or withheld in its entirety, the agency needs to identify the specific statute(s) authorizing redaction or withholding and provide a brief explanation of how the exemption applies to the withheld record (RCW 42.56.210(3)). This identification is commonly done using an exemption log, but other methods are allowable as long as they meet the statutory requirement. This identification must provide sufficient explanatory information for requestors to determine whether the exemptions are properly invoked. The log or other explanation should include the type of information that would enable a records requester to make a threshold determination of whether the agency properly claimed the exemption. See *Block v. City of Gold Bar* (2015).

An exemption log typically consists of a table that includes a description of the record, a statement whether the record is withheld in its entirety or if only portions have been redacted, page numbers of the redactions, and a brief description of and statutory citation for the exemption. For an example of an exemption log that can be modified for an agency's use, see MRSC's sample exemption log.

For smaller requests, a detailed letter explaining any redactions or withholdings can be used instead. Another option is to apply the redaction code directly to the document and include a key for reference. However, an agency's attorney should review this approach, as some exemptions might require more detailed explanations than can be provided in a simple key.

An agency must identify each page of a record where information has been redacted and specify the basis for each redaction. For example, the redaction of an employee's residential address on page five would be one entry. The redaction of the same employee's social security number on page seven would be a separate entry. If multiple redactions are on the same page, we recommend creating separate entries for each redaction in order to provide a sufficient explanation for each redaction.

Practice Tip: We recommend using a process known as Bates stamping, a method of sequentially numbering pages with a reference number that automatically advances on each page. Many software programs (e.g., Adobe Acrobat) also have a feature to add sequential numbering. This is especially helpful when managing a high volume of documents. For paper copies, there are physical stamps that automatically advance the number for each page.

If more than one statutory provision could apply to prohibit or limit disclosure, each should be included in the exemption log. The requestor challenging an exemption needs to be put on notice of why a record (or portion thereof) is being withheld before they file a complaint in court. Courts do not look kindly on late arguments that another exemption not listed in the exemption log might apply.

Caution: If an agency uses an exemption key or a cheat sheet for frequently used exemptions, make sure that the statutory citations are up to date. For example, in 2023 the legislature re-numbered RCW 42.56.250, which contains many employment-related exemptions, and changed most paragraph numbers to letters. Moreover, if an agency uses a software program to auto-generate an exemption log, take steps to ensure the output is sufficiently detailed.

OPTIONAL (AKA THIRD-PARTY) NOTICE TO INTERESTED PERSONS REGARDING DISCLOSURE

An agency has the option of notifying interested parties before the agency releases records that may name or pertain to an individual(s) or private interest. (RCW 42.56.540). This notice allows any person named in a record or to whom the record pertains, an opportunity to ask a court to issue an order (i.e., "injunction") to prevent an agency from releasing a record. Practitioners and courts sometimes refer to this optional notice as "third-party" notice. For more, see the section of this publication called Injunction Challenges.

This option to provide notice is particularly useful in circumstances where an agency may be unsure how or if an exemption would apply or when there is sensitive information about an individual(s).

The Washington Supreme Court affirmed this practice when it explained that "[t]he person who is the subject of the public record is in the best position to identify what interest, if any, they hold that could be invaded as a result of disclosure of the public records" (*Does v. Seattle Police Dep't* (2025)). The option to provide notice under RCW 42.56.540 is the best mechanism for the agency to inform the subject of the pending request so that individual may seek a court injunction on that basis.

Caution: An agency will generally be immune from liability if an otherwise exempt record is released in good faith under the Public Records Act (PRA) (RCW 42.56.060). However, penalties may apply if the exemption or prohibition on release is based on a different statute (e.g., violations of the Criminal Privacy Act could result in civil and criminal penalties, see Chapter 10.97 RCW.)

Procedure for Providing Third-Party Notice and Time to Respond

When deciding whether to notify an interested person under the optional notice provisions at RCW 42.56.540, consider whether releasing the record could cause embarrassment, involve constitutional privacy concerns, or affect the financial interests of the individual or organization.

Once an agency decides to give notice, they should promptly do so to avoid claims of an unreasonable delay by the records requestor. As a best practice, the notice should include the text or a copy of the request, a description of the records likely to be released, the identity or contact information of the requestor, and a deadline by which the agency will release the requested record if the interested person does not act.

The typical practice is to allow ten calendar days from the date of the notice for the third party to go to court and obtain what is called a "preliminary injunction." An agency should be aware of its local court's requirements, some courts may only hear motions for injunctions on specific days (e.g., every other Friday), in which case a longer period should be the agency's standard practice. The notice should include a clear deadline by when the interested person must act. For instance, the notice might state, "If this office does not receive a court-issued injunction by 8 a.m. on February 6th, the record will be released immediately." An agency should also avoid delaying the release of responsive records based solely on the third party's intent or promise to file for an injunction; this is not sufficient grounds and could also be considered an unreasonable delay.

Some jurisdictions also provide a copy of the likely-to-be-produced records (with redactions) so the third party can make an informed decision about whether to challenge the production. This is discretionary.

Finally, always inform the requestor that third-party notice has been given.

We recommend that agencies develop an official policy for when and for how long to provide third-party notice. This will hopefully provide clarity and consistency in making the decision to give optional notice.

Practice Tip: When providing notice to federal agencies, an agency may need to allow more time, such as 20 days, for them to file injunctions. Ask them to notify the agency as soon as possible if they do not object to disclosure.

MANDATORY NOTICE TO EMPLOYEES

As mentioned above, providing notice to interested persons may be mandatory in certain circumstances. One such circumstance is when an agency receives "a request for information located exclusively in an employee's personnel, payroll, supervisor, or training file" (RCW 42.56.250(2)). Upon receipt of such a request, the agency must provide notice to the employee, any union representing the employee, and the requestor.

The mandatory notice requirement is limited to requests for information that is "exclusively" in the relevant files. Arguably, if the information is also available elsewhere, then the agency is not required to provide notice although it may be a good practice to exercise the option to provide notice under RCW 42.56.540 regardless. It is unclear whether this mandatory notice also applies to former employees, so again, it may be a good practice to use the option to provide notice anyway.

Mandatory notices must state:

- The date of the request;
- The nature of the requested record relating to the employee;
- That the agency will release any information in the record which is not exempt at least ten days from the date the notice is made; and
- That the employee may seek to enjoin release of the records under RCW 42.56.540.

This mandatory notice requirement applies regardless of whether any exemption might apply. Note that the notice should be provided as soon as feasible to avoid an unreasonably delay in the release of records.

Practice Tip: While the statute only requires that the notice inform the employee of the number of days after the date of the notice that the records will be disclosed, we recommend agencies include a specific date the records will be released if the employee does not present the agency with an injunction order from the court. For more, see the section of this publication called Injunction Challenges.

Producing and Delivering Records

The Public Records Act (PRA) protects the public's right to inspect and copy records without interfering with local government agencies' operations or records preservation. Specifically:

- RCW 42.56.100 requires agencies to adopt reasonable rules to provide full public access to records while protecting records from damage or disorganization and preventing excessive interference with other essential local government functions.
- RCW 42.56.080(2) provides that public records shall be accessible for inspection and copying and made promptly available, in installments if necessary.
- RCW 42.56.090 requires public records to be available for inspection and copying during customary business hours for at least 30 hours per week, with hours posted on the agency's website and publicly communicated, unless an alternative time is agreed upon.

Once an agency has gathered and reviewed responsive records, it must make these records available to the requestor, who can opt to inspect the records on site or obtain digital or paper copies. The agency should adopt policies on how records will be made available for inspection and copying and make that policy easily available to requestors. A clear policy can frame requestors' expectations and help ensure equal treatment of requestors.

Further, it is important to provide an explanation for any records that are being withheld or redacted at the time of delivery.

INSTALLMENTS AND DEPOSITS

There are two important tools available to agencies when managing larger requests – installments and deposits.

RCW 42.56.080(2) authorizes agencies to produce records "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," and RCW 42.56.120(4) provides that, if a requestor fails to claim or review an installments of records, the agency is not obligated to fulfill the balance of the request.

Additionally, RCW 42.56.120(4) permits an agency to estimate, in advance, the total copy cost for a production. Based on this estimate, agencies may require a 10% deposit to be paid in advance. The estimate can include a customized service charge. The section on Copying Charges – Agency Options and Limitations below goes into more detail.

If the advance deposit is not paid within a reasonable time or an installment is not claimed or inspected, the agency can deem the request abandoned and close the request, as discussed more in the section Abandoned Requests.

METHODS OF DELIVERY

As noted in WAC 44-14-04004(2), an agency should provide the copies in the format and manner requested by the requestor if reasonable and feasible. If the agency cannot comply, it should be prepared to explain why and to offer an alternative.

In-Person Inspection

An agency can make records available for in-person inspection using several methods. Paper records and files can simply be set aside for viewing, although the agency may need to set a time limit for how long the records are pulled out of place to avoid interference with records filing and storage. This option is only available if no redactions are necessary.

If redactions are necessary, the agency will need to make copies to apply the redactions. Note that the agency cannot charge for these "inspection" copies unless the requestor opts to take these copies with them.

For in-person inspection of electronic records, the agency will need to find a method that allows inspection but still protects the security of the agency's IT systems. A laptop or other terminal with access to the records, but not additional agency systems, is one possibility.

Caution: The requestor should not be allowed to attach or connect any of their own electronic storage devices—e.g., USB drives, external hard drives, wireless/Bluetooth phone connections—to agency devices. This poses a significant IT security risk.

An agency should not allow the requestor to take original paper or electronic records out of the building, as there is potential for loss or damage. While the public can examine the records at the agency or make copies, the records must remain in the agency's custody. The requestor can also use their own equipment to make copies, scans, or photographs, however it may be necessary to have staff monitor the requestor's review to ensure proper treatment of records. As discussed in the section Agency Office Hours for In-Person Inspection, records should be available during an agency's customary office hours but it may be necessary to schedule an appointment so staff can be available. Again, in the interest of providing "fullest assistance" to the requestor, it is important not to be unduly restrictive in the timing and length of the appointment.

Paper Copies

Records staff can prepare paper copies or set originals aside for the requestor to make copies using agency facilities. In both cases, the agency can charge for the physical paper and the use of the machine. Copy charges are discussed in more detail below. Note that the agency cannot charge for intermediate copies of records that are generated only for redaction purposes.

It may be necessary to send certain records out for professional copying. This may occur with very high-volume records productions or large dimension records, i.e., building plans. In cases like these, the agency should be sure that the adopted copy charge fee schedule includes an "actual cost" fee for specialized copy services. However, the agency should not incur these costs until after informing the requestor of the estimated charge.

Some requestors may ask for paper copies of electronic records. If possible, the agency should provide the copies in the format and manner requested. However, providing paper copies may not be feasible if a requestor is seeking an electronic record in native format or with its metadata.

Delivery of Paper Copies

To deliver paper copies, the agency can either mail the records at a cost to the requestor, or the requestor can pick up the copies from the agency's office. When mailing records, the agency can charge for the cost – like postage or envelopes. The agency should decide whether or in which circumstances to utilize certified mail

with tracking. The requestor should be informed that if they fail to pay for or pick up the copies, their request will be deemed abandoned, as discussed in the section on Abandoned Requests.

Electronic or Digital Copies

The vast majority of an agency's records are likely in digital or electronic format. These records may have always existed in digital form, or they may have started out as paper records that were digitized for retention. In many instances, the agency will be able to simply copy the electronic record "as is" to comply with the requestor's preferred method of delivery, discussed further below.

However, it may occasionally be necessary to convert the digital record to another format to make it accessible to the requestor. For example, if the requestor does not have Microsoft Outlook, they may not be able to view email records provided in a "pst" format. Instead, the agency may need to convert to a universal reader format, like "pdf." If the electronic record happens to be data stored within a database, it may be necessary to run a new report or data compilation or otherwise provide customized electronic access services. This is not considered the creation of a new public record; rather, it is part of the process necessary to make the record available to the requestor.

When it comes to electronic records that are under the control of third parties, like social media, the agency will need to take steps to retain its own copy via a capture tool. This obligation to retain a copy exists regardless of whether the agency receives a request for the record and it is this retained copy that should be made available to requestors. See State Archives' Strategies for Managing Social Media Records Retention. Agencies do not meet their obligation to "make records available" by directing a requestor to a third-party website or digital platform that the agency does not control.

Delivery of Electronic Records

There are several different methods of delivering electronic records. Many jurisdictions use record request portals to upload records to a unique digital location that allows the requestor to download copies. Be sure the platform is completely separate from the agency's electronic record management system. Sharing links via One Drive, Microsoft Teams, Google Docs, etc., exposes the original digital records as well as the file storage system to potential cyberattack or alteration.

Another method, particularly for large requests, is to save the records to an external storage device, like a portable hard drive or USB memory stick, that can be mailed to or picked up by the requestor. As discussed below, agencies can charge for storage devices, as well as for mailing costs, in addition to the digital copies themselves. Again, for IT security reasons, never attach a digital storage device to an agency computer that has not been under the control of the agency since purchase.

If the records already exist on an agency-controlled website, the agency can simply provide direct links to the records – likely via an email. See RCW 2.56.520(1)(b). An agency cannot charge for providing links to records that are already available online unless the requestor specifically asks for the record in a different format (RCW 42.56.120(2)(e)). Note that the link must be directly to the record itself. It is not sufficient to link to an agency's online database directing the requestor to search for the records themselves. And again, an agency does not meet its statutory obligation to make records available by only providing a link to a third-party website it does not control.

Caution: Emails with multiple links in the body often get flagged as potentially dangerous and may be filtered to junk email folders. Be sure to send a separate follow up email without links to confirm receipt of the original email.

Finally, while a common practice, care must be taken when delivering digital records as email attachments. Often, these attachments exceed the allowable file size, sometimes resulting in delivery failures that may not bounce back for several hours. Still, breaking up multiple attachments into several emails invites more potential for human and computer error. MRSC recommends limiting email attachment sizes to less than 20 MB and/or if the entire production or installment can be accomplished with a single email, confirm receipt with a follow-up email. Otherwise, we recommend choosing one of the alternatives detailed above.

Practice Tip: When it comes to digital records, particularly in instances where there is no charge for the record, we recommend using a delivery method that indicates if the records have been claimed within a reasonable timeframe. These may include an online records portal or document exchange platform that logs access and download history.

COPYING CHARGES – AGENCY OPTIONS AND LIMITATIONS

Unless another statute provides otherwise, the Public Records Act sets forth how and when public agencies may charge a requestor for costs associated with fulfilling a public records request. See RCW 42.56.120 and RCW 42.56.070(7). Importantly, an agency may only charge for the actual cost of the physical or digital copies produced to the requestor, which may include the cost of staff time in creating the copies, as discussed more below.

Agencies may not charge for many aspects of the records production process, such as time spent searching, documenting, reviewing, or redacting records (with the exception of Body Worn Camera recordings, referenced below). Further, agencies cannot charge for on-site inspection of records, links to records publicly available on the agency's website, or copies made for applying redactions or preparing records for inspection (that the requestor does not take with them).

An agency is not required to charge for copies of public records, although we recommend that an agency do so. If an agency does charge for copies, it must do so pursuant to an adopted fee schedule (RCW 42.56.070(7)). RCW 42.56.070(7) and RCW 42.56.120 set forth an agency's options for charging copying fees, which also authorizes agencies to collect costs on a rolling basis if records are produced to the requestor in installments. See also WAC 44-14-070 and 44-14-07001. An agency must formally adopt copying charge policies, even if it opts for the default costs laid out in the statute, and those copy policies must be available to the public.

Note: An agency has discretion to waive any copying charges pursuant to adopted rules. Agencies should be careful that any policy to waive charges is either equally available to all or is structured in a manner to avoid the constitutional prohibition against the gift of public funds. Note that some agencies have a policy to only charge for records that would exceed some minimum dollar threshold (e.g., $2, $3, or $5). This is to avoid an administrative burden, as the cost of collection may exceed the fee recovered.

Below are the three primary methods for establishing copying costs allowed by the PRA. For a good overview of charges, see this one-page summary prepared by the Washington State Attorney General's Office.

Option 1: Actual Cost

Agencies can charge the actual cost incurred for providing copies by adopting a statement of costs, after notice and a public hearing (RCW 42.56.070(7)). Choosing this method requires agencies to identify the actual cost of providing copies by conducting a fee study.

For hard copies, actual cost includes:

- The cost of paper,
- The per-page cost for use of agency copying equipment,
- The cost of postage or delivery charges and the container used for delivery, and
- Staff time to *copy* and *send* the requested public records.

For electronic copies, actual cost includes:

- The cost of electronic production or file transfer of a record,
- The use of cloud-based storage and processing services,
- The transmission of records in electronic format, including the transmission charge and the media device used for delivery, and
- Staff time to *copy* and *send* the requested public records.

Again, if the records are provided via a link to the agency's website where the records are already publicly available, the agency cannot charge for the provision of that link.

Option 2: Statutory Default Charges

Alternatively, if agency policy establishes that calculating actual costs would be unduly burdensome, it can adopt the statutory default charges listed in RCW 42.56.120:

- 15 cents/page for photocopies or printed copies of electronic records,
- 10 cents/page for records scanned into electronic format,
- Five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system,
- 10 cents/gigabyte for transmitting records electronically,
- The actual cost of the digital storage media/device, container used to mail the copies, and postage or delivery charges, and
- A customized service charge for requests that would require information technology expertise to prepare data or provide customized electronic access.

Option 3: Flat Fee Up to $2 per Request

An agency also has the option to charge a flat fee of up to $2 per request as an alternative to actual or default costs if it estimates the copying cost for the request are equal or more than $2. This flat fee can only be charged once per request, not per installment (RCW 42.56.120(2)(d)).

Note: Sales tax may not be charged for copies made in response to a public records request, as these charges are exempt under RCW 82.12.02525.

Charges Associated with Law Enforcement Records

In addition to the authority to charge for copying within the PRA, there are also several statutes specific to law enforcement agencies that allow for different types of cost recovery beyond the typical charges in the PRA:

- **Body Worn Camera Redaction:** RCW 42.56.240(14) allows agencies to charge for staff time spent redacting body worn camera video recordings for requestors other than those set forth in subsection (14)(e) of the statute. These charges are in addition to the regular costs allowed under RCW 42.56.070(7).
- **Criminal History Records Information:** RCW 10.97.100 allows criminal justice agencies to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons.
- **Traffic Accident Reports:** RCW 46.52.085 allows law enforcement agencies to adopt a standard fee to cover the costs of furnishing copies of traffic accident reports, regardless of the number of pages in the report.
- **Sheriff Department Audio, Visual, or Photographic Material:** RCW 36.18.040(1)(t) allows sheriffs to collect fees for the reproduction of audio, visual, or photographic material, including the actual cost of personnel time.

Closing a Request and Afterwards

An agency can close a request when:

- It has provided all the responsive records, with or without applying exemptions;
- It has a basis for denial of the request (e.g., the agency is not the correct agency that holds the requested records; the request is a request for information or is not a request for identifiable records; the request is for personal records that are not public records, the request was for all or substantially all of the agency's records, etc.);
- The requestor failed to clarify an entirely unclear request; or
- The records request has been abandoned or withdrawn.

ABANDONED REQUESTS

There are times when an agency can deem a PRA request abandoned (RCW 42.56.120(4)). This may occur when a requestor fails to pay the advance deposit, pick up the responsive records or an installment, pay for the requested records or an installment, or provide contact information for delivery purposes.

The PRA Model Rules at WAC 44-14-04005 addresses inspection of records and abandonment. The rules suggest adopting a policy that allows a 30-day timeframe for reviewing or claiming the records before the request is deemed abandoned. After a request is deemed abandoned, the agency can formally close it and is no longer bound by the records retention requirements of the PRA prohibiting the scheduled destruction of a requested record (RCW 42.56.100).

Agencies can avoid wasting staff time by adopting policies and procedures that require the requestor to be an active participant in the records fulfillment process by making a deposit payment or taking delivery of an installment. This is one reason MRSC recommends adopting a policy to charge for copies. If an agency does not charge for copies, it may not be able to utilize the 10% deposit option.

If the request is deemed abandoned, it is important to formally close the request and send a closing letter.

Practice Tip: To document abandonment when producing records in installments, an agency should be diligent about numbering the installments and tracking them in a log. Agencies should also keep track of whether an installment has been picked up, downloaded, and/or paid for.

CLOSING LETTER

To formally close a request and start the time period during which a person can file a suit against the agency claiming records were wrongfully withheld, e.g., the "statute of limitations," the agency must issue a final, definitive response that is "sufficient to put [the requestor] on notice that the [agency] did not intend to disclose records or further address this request." See *Belenski v. Jefferson County* (2015). This "final, definitive response" must contain certain elements articulated by the Supreme Court in *Cousins v. Dept. of Corrections* (2024).

First, the letter must be in plain language that can be understood by a lay audience. This means there should be little to no legal jargon in the letter.

Next, the letter must explain how the request was fulfilled and why the agency is now closing the request. Some examples of proposed language may include:

- "All responsive records have been produced and the request is now closed."
- "Due to nonpayment of copy charges for the previous installment, your request is now closed."
- "We notified you on [date] that you needed to inspect or pick up your records by [due date]. You have not done so, and your request is now closed."
- "On [date] we told you that your request was unclear and requested clarification by [due date]. We did not hear from you. Because you did not clarify your request and it is entirely unclear, by law we are not required to further respond to your request. Your request is now closed."

Practice Tip: Agencies are encouraged to communicate to the requestor what they can expect and what actions the requestor needs to take to obtain records. However, a "final, definitive response" is one that states that the request is now closed. Explaining that a request *will be* closed in the future if the requestor fails to act in some manner (pick up copies, make a payment, clarify the request) does not meet this standard. See *Soule v. State of Washington* (2024).

Next, the agency must inform the requestor that the PRA's one-year statute of limitations for a requestor to seek judicial review has started to run and that the agency does not intend to further address the request. The statute of limitations is discussed in more detail below.

Consistent with WAC 44-14-04006, the agency must also invite the requestor to ask follow-up questions about how the agency has responded to the request. The agency can specify a reasonable time frame during which the requestor should ask such follow-up questions. Importantly, the agency must *actually* respond to those questions. Additionally, if the agency does not intend to do anything else with the request, then it must explicitly inform the requestor and indicate that the request is still closed. Alternatively, the agency can respond that it will conduct a further search for responsive records but the agency should be aware that this may pause the clock on the statute of limitations.

MRSC also recommends that agencies inform requestors of their right to seek internal review of any denials of requests per RCW 42.56.520(4) (local governments) or RCW 42.56.530 (state agencies), as well as invite requestors to submit a new request now that the current request is closed.

If additional records are discovered after a request is closed, e.g. in response to questions raised by the requestor or by coming across the records during other work, they should be produced to the requestor in an expedited manner with an explanation of whether the request remains closed (i.e., the statute of limitations continues to run) or if the agency is reopening the request and further records are likely to be produced. See WAC 44-14-040(13).

Practice Tip: Developing templates for closing letters is a great way to ensure that all the important information is included, however all templates should be approved by the agency attorney to ensure compliance with the PRA.

AFTER A REQUEST IS CLOSED – HOUSEKEEPING

Once a records request is closed, there are several "housekeeping" duties an agency needs to complete.

First, an agency should update its PRA tracking log as required by RCW 40.14.026(4) and discussed in Receiving and Tracking a Records Request. This includes "a description of the records produced in response to the request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request," i.e., the issuance of the closing letter.

While there is no statutory guidance on the form this log should take, very large requests will likely result in very large entries to the log. Consider linking the log to separate documents, such as the exemption log or the file where all duplicate copies may be retained, to meet the statutory requirements. Regardless, the tracking log should describe the collected records in enough detail that someone could recreate the response if necessary. Be sure any other work-flow tracking checklists or forms are fully complete so that the process of responding to the request is well documented.

Next, an agency needs to organize and prepare for the retention of any records related to the request and that document the agency's compliance with the PRA. These records must be retained for at least two years after the request is fulfilled—longer if any litigation follows. See Local Government Common Records Retention Schedule, GS2010-014, *Public Disclosure/Records Requests*. This includes, but is not limited to:

- 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.

Note that the list of records required to be retained explicitly excludes copies of the records produced; however, as noted in WAC 44-14-04006(3), there may be other business reasons to keep a duplicate of all copies of records produced to the requestor:

> 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.

Caution: It is common to receive requests for records that were previously produced for another requestor. Before doing so, it is very important to review and update any exemptions previously applied. It may be necessary to either remove or add exemptions. This may happen when either the original requestor or the new requestor was the subject of the record and so certain exemptions designed to protect their privacy need to be reconsidered. A new exemption log or letter should also be prepared for the new requestor.

Finally, the agency should assign a "destruction or disposition date" for the retained records related to the request. This is the date on which the records are eligible for destruction. We suggest organizing the tracking logs by calendar year for more effective planning. For example, all the records associated with a request closed

sometime in 2025 could be safely destroyed January 1, 2028. However, if litigation is pending, the agency must put a hold on any destruction of related records.

AGENCY AND JUDICIAL REVIEW

There are two important ways agency decisions related to a public records request can be reviewed. The first is an internal review and the second is a court or "judicial" review.

Internal Agency Review

Pursuant to RCW 42.56.520(4), agencies are required to "establish mechanisms for the most prompt possible review of decisions denying inspection." This is intended to be an informal and fairly quick internal process to enable an agency to reconsider its denial. Often the agency attorney is identified as the person that will review any denials upon request. The statute states that the internal "review shall be deemed completed at the end of the second business day following the denial of inspection," so the opportunity to cure any errors in the denial is very brief.

Note that while agencies are required to have the "mechanisms" for internal review, requestors are not and cannot be required to take advantage of this opportunity for internal review before filing a court case for judicial review of a denial (*Kilduff v. San Juan County* (2019)).

Judicial Review

There are several types of judicial review procedures available—some may occur while a request is still being processed by the agency while other challenges may only occur after a request is closed. Additionally, some challenges may only be brought by the requestor, while other challenges may be brought by interested parties.

Injunction Challenges

The PRA authorizes any agency or a person named in a record or to whom the record pertains to seek an injunction order from the superior court to prevent an agency from disclosing a record in response to a pending records request (RCW 42.56.540). As mentioned before, agencies may opt to provide notice to a third party who may be interested in whether a record(s) is disclosed or not. This injunction procedure is the only option available to those interested parties to seek a court order preventing disclosure of certain records.

To be successful, the party seeking the injunction order must first show that an exemption or prohibition on the disclosure of the record or information applies. Then the party must also prove both that disclosure would:

- Clearly not be in the public interest, *and*
- Substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

Such challenges typically arise after an agency provides notice to interested persons, as allowed by this statute, although receiving notice is not a prerequisite for filing for an injunction. Requestors may also intervene and become a party in these challenges.

Agency Declaratory Judgment Action

While not specifically referenced in chapter 42.56 RCW, the courts have acknowledged that agencies have the right to seek a declaratory judgement order under the Uniform Declaratory Judgment Act (UDJA), chapter 7.24 RCW. See *Benton County v. Zink* (2015). While there are significant limits on the availability of the UDJA, courts

have found that when an agency is faced with an existing request for records under the PRA and the real potential for a lawsuit, it has the necessary standing to seek a declaratory judgment that it has complied with the PRA. The procedures for obtaining a declaratory judgment are controlled by the UDJA, not the PRA.

Requestor Challenges

There are two types of judicial review initiated by the requestor.

The first type authorizes a requestor to file a motion in superior court challenging the reasonableness of an agency's estimate of the time required to respond to a request or the estimate of the charges to provide copies (RCW 42.56.550(2)). These challenges may be brought as soon as the agency provides its estimate. The burden of proof is on the agency to show that its estimate was reasonable. This is why it is important to contemporaneously develop documentation that justifies the estimates.

The second, and perhaps most litigated, option is to file a motion in superior court challenging any denial to inspect or copy a public record (RCW 42.56.550(1)). These challenges can be brought once an agency denies access to a record. In most circumstances, the denial cannot be challenged until the agency has stated it will refuse to produce the record or information. Typically, this occurs in the closing letter. Even if interim exemption logs or letters are provided for installments (a recommend practice), "the agency does not deny access to the records until it finishes producing all responsive records." See *Hobbs v. State* (2014) and *Cortland v. Lewis County* (2020). That said, a "lack of diligence" in processing a request can be deemed a "constructive denial," allowing the requestor to bring a case even while records are being produced. See *Cantu v. Yakima School District No. 7* (2022).

Again, the burden of proof is on the agency to demonstrate that the refusal to permit inspection or copying (i.e., to withhold or deny access) was consistent with a statutory exemption or prohibition on the release of the record.

Procedure and Penalties of Judicial Review

As discussed above, there is a one-year statute of limitations for bringing a lawsuit pursuant to the PRA after the request has been closed (RCW 42.56.550(6)). This period is strictly enforced and will be measured from the day after the agency sends its "final, definitive response." See *Bogen v. City of Bremerton* (2021).

When a court reviews a local government disclosure action, it will review the facts anew (de novo) and is not bound to accept any factual determination made by the agency, nor give any deference to the agency's decision. To prevent otherwise exempt information from being reviewed in public, the courts may examine any record "in camera," which means behind closed doors with no parties present (RCW 42.56.550(3)). The court may also conduct a hearing based solely on affidavits and declarations, meaning it does not need to take live testimony.

When reviewing agency action, the court is required to consider the broad public policy favoring disclosure, even though disclosure might cause inconvenience or embarrassment to public officials or others. Even extreme inconvenience, such as very large or broad requests, does not excuse an agency from compliance with the PRA. See *Zink v. City of Mesa* (2007).

If a public agency prevails, there is no monetary recovery unless the claim brought by the requestor is determined to be frivolous, which is a very high bar to meet.

If the court finds the requestor prevailed against the agency to compel production of a record or finds the original estimate of time to produce was unreasonable, the agency must pay the requestor's court costs, including attorney fees (RCW 42.56.550(4)). If the requestor prevails on the question of the estimate of costs,

they are not entitled to attorney fees. If the case was originally brought by an interested third party seeking an injunction to prevent the agency from disclosing the records, but the requestor eventually prevails, there is no monetary recovery against the agency.

Additionally, per RCW 42.56.550(4), the court may also decide to award the prevailing requestor a penalty "amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record." This is a per-day/ per-record penalty calculation.

A non-exclusive list of factors for a court to consider as either likely to reduce or increase a penalty was laid out in *Yousoufian v. Sims* (2010) and includes:

Non-exclusive factors likely to REDUCE statutory penalty include:	Non-exclusive factors likely to INCREASE statutory penalty include:
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. Hlpfulness of the agency to the requestor; and 7. The existence of systems to track and retrieve public records.	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.

When determining the penalty amount necessary to deter future misconduct, it may also be appropriate for a court to take into account the size and financial resources of the agency. See *Zink v. City of Mesa* (2018).

The purpose of these penalties is to focus on overall agency culpability due to an overarching concern for deterrence. See, e.g., *Cantu v. Yakima School District No. 7* (2022). If the agency otherwise complied with the requirements of the PRA but mistakenly overlooked a responsive document, it "should be sanctioned less severely than an agency that intentionally withheld known records and then lied in its response to avoid embarrassment" (*Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane* (2011)).

Remember, the PRA requires reasonable thoroughness and diligence, not absolute perfection. See, e.g., *Freedom Foundation v. DSHS* (2019).

Exemptions Commonly Used by Local Governments

While the Public Records Act (PRA) contains numerous exemptions, only some are commonly used by local governments. This chapter will provide an overview of these more commonly used PRA exemptions, as well as the exemptions/prohibitions found in "other statutes" (a phrase used in RCW 42.56.070(1) to indicate that reasons to withhold records are also contained in other state and federal laws).

For an additional review of PRA and other statutory exemptions and prohibitions, see Chapter 2 of the Open Government Resource Manual published by the Washington State Office of the Attorney General. Readers may also be interested in reviewing MRSC's page Exemptions and Prohibitions for Local Government Records and the "Exemptions and Prohibitions" section of the Public Records Act FAQs page.

A GENERAL NOTE ON PRIVACY AND "PERSONAL" INFORMATION

Inherent in many of the specific exemptions in the PRA is the legislature's attempt to balance personal privacy interests against the need for public transparency in government. For example, exemptions for certain personal information of public employees such as residential addresses and personal cell phone numbers are expressly included within the PRA and are intended to protect an individual's privacy interests as well as the public's interest in the efficient administration of government by attracting and retaining well-qualified public employees. See RCW 42.56.250(1)(d).

However, the legislature has been clear that the PRA itself does not contain a general "right to privacy" in public records or information unless the right to privacy is explicitly referenced in the statute. See RCW 42.56.050. There are only three exemptions in the PRA that explicitly reference a person's right to privacy. These are:

- **Personal information in files maintained for employees, appointees, or elected officials** of any public agency *to the extent that disclosure would violate their right to privacy* (RCW 42.56.230(3)); and
- **Specific intelligence information** and **specific investigative records** compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential [...] *for the protection of any person's right to privacy* (RCW 42.56.240(1)); and
- **Information required of any taxpayer in connection with the assessment or collection of any tax** if the disclosure of the information to other persons would [...] *violate the taxpayer's right to privacy* or result in unfair competitive disadvantage to the taxpayer (RCW 42.56.230(4)).

That said, this "right to privacy" does not encompass everything someone might consider "private" or embarrassing in these three categories of records. Rather, RCW 42.56.050 narrowly defines the violation of a person's right to privacy to be only if the disclosed information is *both*:

1. Highly offensive to a reasonable person; *and*
2. Not of legitimate concern to the public.

What does it mean for disclosure to be "highly offensive to a reasonable person"? If disclosure would only be "offensive" and not "highly offensive," an exemption invoking a person's right to privacy would not apply (*Brouillet, et al., v. Cowles Publishing Company* (1990)). This is because the "right to privacy" under the PRA "will

not protect everything that an individual would prefer to keep private" (*Predisik v. Spokane School Dist. No. 81* (2015)). Instead, the court in Predisik noted that "a person has a right to privacy under the PRA only in matters concerning the private life." The court referred to the Restatement 2nd of Torts summary of the right to privacy:

> Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget.

This is the type of information the disclosure of which might reasonably be considered "highly offensive." But even then, if there is a legitimate concern to the public, the exemption would not apply (*Brouillet, et al., v. Cowles Publishing Company* (1990)).

Information of "legitimate" concern to the public means information that is of "reasonable" concern. For example, courts have held that disclosure of employee performance evaluations which do not discuss any specific instances of misconduct would be "highly offensive" under the two-part privacy test because "employee evaluations qualify as personal information that bears on the competence of the subject employees." And for most employment positions, those performance evaluations are of "small public concern" and therefore meet the second prong of the privacy test. See *Dawson v. Daly* (1993). However, a court has held that a city manager's performance evaluation must be disclosed because that information is of legitimate concern to the public. The court concluded a city manager is "not like other employees" because it is the "city's chief executive officer, its leader and a public figure. The performance of the city manager's job is a legitimate subject of public interest and public debate" (*Spokane Research & Defense Fund v. City of Spokane* (2000)).

Unfortunately for records professionals, the application of the privacy right under the PRA depends upon the unique facts of a situation and is not amenable to a bright-line rule (*Predisik v. Spokane School District No. 81* (2015)). At best, we can look to past court cases with similar facts. Because applying this exemption and the privacy test will be a fact-specific exercise, it should be done in consultation with the agency attorney. If there is a question, the risk-adverse approach would be to provide the interested party notice of the potential disclosure under RCW 42.56.540.

Notably, general rights to privacy do exist outside the PRA in "other statutes," specifically the state and federal constitutions (RCW 42.56.070(1)). However, there is no duty on a public agency to defend and protect an individual's alleged right to privacy in public records under the state or federal constitutions. Instead, as explained by the Washington Supreme Court, it is sufficient for an agency to provide notice to an individual under RCW 42.56.540, allowing the individual the opportunity to seek a court injunction preventing the release of the records. See *Does v. Seattle Police Department* (2025).

Note: Importantly, the PRA often exempts "personal" information. This is not necessarily the same as "private" information and has a different definition. "Personal information" is information that is "peculiar or proper to private concerns" (*Lindeman v. Kelso School Dist. No. 458* (2007)). Some exemptions explicitly list or provide examples of what is considered "personal information" and others narrow the scope to "personally identifying information."

PUBLIC EMPLOYEE RECORDS

There are several exemptions applicable to personnel and public employment-related records. Generally, the exemptions apply to records related to both current and former employees. See *Seattle Fire Fighters Union, Local No. 27 v. Hollister* (1987) and *Belenski v. Jefferson County* (2015). Often these exemptions apply to both records held by the employing agency as well as other agencies that handle employment-related records, like the retirement system or workers compensation.

Again, there is an obligation on agencies to provide notice to employees and their union representatives (where applicable) of any request for information contained exclusively within their employment files (RCW 42.56.250(2)). See the section Mandatory Notice to Employees for more.

The following sections will provide an overview of the types of employment and employee-related information and records that are exempt and/or protected, and those that are typically subject to disclosure.

Employee Hiring (Application Materials, etc.)

The PRA includes employment-related exemptions that broadly protect materials submitted as part of the hiring process. See RCW 42.56.250. The exemptions enable individuals to apply for local government employment without worrying about disclosure of their applications or the fact that they are seeking other employment. This exemption applies to all non-elective local government positions, including administrative positions, such as city manager, or professional positions, such as city attorney or city engineer. The exemption explicitly excludes applications to fill vacancies for elected offices. Further, it only refers to employment positions and does not appear to apply to other volunteer positions like citizen advisory committees or planning commissions.

The following information is exempt in the employee hiring context:

- **Test questions, scoring keys, and other examination data** used to administer a license, employment, or academic examination (RCW 42.56.250(1)(a)).
- **Applications for public employment,** including applicant names, resumes, and other related materials submitted with respect to an applicant (e.g., information submitted by prior employers in response to requests for information about an applicant). (RCW 42.56.250(1)(b)). See also *Beltran v. Dep't Social & Health Services* (1999). To the extent applicant names appear in other documents, like calendar invites, interview schedules, interviewer notes, etc., they should be redacted.
- **Background checks and pre-employment polygraphs** are included within the meaning of "other materials submitted with respect to an applicant" at RCW 42.56.250(1)(b). See *Sheats v. East Wenatchee* (2018).
- **Employment entrance medical examination records and pre-employment psychological evaluations,** if the evaluation is in the nature of a medical evaluation. Note that these records should be maintained with heightened confidentiality in separate medical files. See RCW 70.02.020 (*Disclosure by Health Care Provider),* WAC 162-22-090(4) (which covers disability-related medical records), and the federal Americans with Disabilities Act (ADA), specifically 29 C.F.R. § 1630.14(b)(1) and (d)(4)(i). The Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the ADA, discusses when a psychological examination is considered to be a "medical" examination in its enforcement guidance on Preemployment Disability-Related Questions and Medical Examinations.

Note: Some agencies interpret RCW 42.56.250(1)(a) to protect interview notes and reference check notes, but others do not. The most risk-averse approach is to not apply the exemption to interview notes and reference check notes, given the PRA liability for wrongfully withholding a record; however, the answer is not clear, so the agency attorney should be consulted on applicability of the exemption. To the extent the notes identify an applicant by name, the name should be redacted. For a more detailed discussion, see the question on MRSC's FAQ, Are interview notes or reference check notes exempt?

Employee/Official Personal Information – Right to Privacy

The PRA includes a general exemption protecting personal information about employees, appointees, or elected officials stored in public agency files *to the extent that disclosure would violate their right to privacy* (RCW 42.56.230(3)).

As noted in the section A General Note on Privacy and "Personal" Information, a person's right to privacy is invaded or violated if a disclosure would:

- Be highly offensive to a reasonable person; *and*
- Is not of legitimate concern to the public (RCW 42.56.050).

Application of this employee/official personal information exemption involves three separate considerations:

- whether the records contain personal information;
- whether the public employees have a privacy interest in that personal information; and
- whether disclosure of that personal information would violate their right to privacy (*Predisik v. Spokane School District No. 81* (2015)).

Courts have defined "personal information" as "information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general" *(Bellevue John Does 1-11 v. Bellevue School Dist.* (2008)). The right of privacy applies "only to the intimate details of one's personal and private life," in contrast to actions that take place in the public (*Dawson v. Daly* (1993)).

While not an exhaustive list, below are some examples of cases where the courts have applied the privacy test in the context of employee information. Note that the application of this exemption will be highly fact-dependent and should be reviewed with the agency's attorney.

Courts have held the following records and information **are exempt** from disclosure:

- **Routine performance evaluations of employees which do not discuss specific instances of misconduct.** Disclosure of information between a public employee and supervisor generally serves no legitimate public interest and would interfere with maintaining a candid and open employee evaluation process if made public to anyone upon request. Courts have determined release of these evaluations is presumed to be highly offensive. See *Dawson v. Daly* (1993) (performance evaluations of deputy prosecutor), *Church of the Divine Earth v. Tacoma* (2020) (performance evaluations of public works and planning department heads), and *Brown v. Seattle Public Schools* (1993) (performance evaluations of former school principal). However, a court has held evaluations of a City Manager, essentially the chief executive officer or leader of the city, are of legitimate public interest (*Spokane Research & Defense Fund v. City of Spokane* (2000)). See more in MRSC's FAQ, Are performance reviews exempt?

- **Identities of employees who are subject to unsubstantiated allegations of sexual misconduct.** One factor in determining whether information is of legitimate concern to the public, in context of right-to-privacy exemption, is whether the information is true or false. Generally, the public has no legitimate interest in finding out the names of people who have been falsely accused. Note, however, that the remaining non-identifying portions of the investigatory report should be disclosed (*Bellevue John Does 1-11 v. Bellevue School Dist.* (2008)). See also *Bainbridge Island Police Guild v. City of Puyallup* (2011). For a more detailed analysis, see MRSC's FAQ, Are disciplinary records exempt?
- **Portions of employee's emails and text messages that are unrelated to the conduct of government and solely related to the intimate personal details of an employee's life.** There is a legitimate public interest in the amount of time a public employee spends on personal matters, but not in the content of those personal emails or phone calls or conversations (*Tiberino v. Spokane County* (2000)).

The following information is **not exempt** from disclosure:

- **Salary and benefit information of public employees.** The disclosure of employee names paired with benefits would allow public scrutiny of the government and ensure that the government is not paying one employee twice or funneling money to non-existent employees (*Tacoma Pub. Library v. Woessner* (1998)).
- **List of names and ranks of law enforcement officers.** It is not highly offensive to disclose the fact of public employment, even if that information could be linked with other publicly available information that could reveal private information about the officers (*King County v. Sheehan* (2002)).
- **Employees' public conduct.** The disclosure of a police officer's involvement in a bachelor party or strip show at a private club was not considered highly offensive, as it occurred in front of more than 40 people (*Spokane Police Guild v. State Liquor Control Board* (1989)). Likewise, disclosure of the identities of officers that participated in the highly public and televised events of January 6, 2021, at the United States Capitol, was not "highly offensive" where the officers took no steps to hide or obscure their identities (*Does v. Seattle Police Department* (2025)).
- **Records relating to substantiated employee misconduct.** These records are considered to be of legitimate public interest, even if they may cause embarrassment to the employee involved. Misconduct, whether on duty or off, that "bears on ability to perform" public duties is "not private, intimate, personal details" of a state patrol officer's life, but rather is an issue of public concern (*Cowles Publ'g Co. v. State Patrol* (1988)). See also *Brouillet v. Cowles Publishing Co.* (1990) (records regarding the revocation of teacher certifications are a matter of public concern). Similarly, in *Morgan v. City of Federal Way* (2009), the court held that investigations into and confirmation of inappropriate behavior by a municipal court judge were of significant public interest and subject to disclosure. The fact that the judge disputed the allegations did not mean they were unsubstantiated. For a more detailed analysis, see MRSC's FAQ, Are disciplinary records exempt?
- **Records showing pending investigations of public employees related to alleged misconduct.** The mere fact that an investigation is open and an employee is on administrative leave is not protected under the privacy test (*Predisik v. Spokane School District No. 81* (2015)). Note, however, that the subsequently adopted exemption at RCW 42.56.250(1)(f) may apply to protect open investigative records depending on if the investigation is related to unfair work practices or discrimination or harassment.
- **Performance evaluation of a city manager/agency leader.** In a council-manager code city where the city manager is the most senior executive leader and a public figure, the public has a legitimate interest in the disclosure of the city manager's performance review (*Spokane Research & Defense Fund v. City of Spokane* (2000)). Contrast this to performance evaluations of other public employees, including senior department heads, which do meet the privacy test (see above).

- **Settlement agreements, except for personal details that may meet the privacy test.** Settlement agreements between employees and their employer are of legitimate public concern and must be disclosed, even if they were intended to be confidential. But some personal information in a settlement agreement may be exempt from production under a public records request based on the right to privacy or other specific exemptions. (*Yakima Newspapers, Inc. v. City of Yakima* (1995)).

The local newspaper heard that one of the city shop employees was disciplined for repairing his personal vehicle in the city shop. The newspaper has requested a copy of the investigation report prepared by the employee's supervisor, and a copy of the letter of discipline which was placed in the employee's personnel file. Should the records be disclosed?

Yes. The state supreme court has determined that the public has a legitimate interest in records concerning acts of misconduct by city employees which have been investigated and sustained (*Dawson v. Daly* (1993)).

What if an employee or former employee requests their own records that would otherwise be confidential or exempt from disclosure?

If the information is part of an employee's personnel file (as defined in RCW 42.56.240(2)), the employee has a legal right to inspect the file annually. See RCW 49.12.240-.250. The right extends to former employees, as well. Any copies of those records are to be processed in accordance with the procedures and requirements set forth in the PRA. RCW 42.56.250(2).

More generally, when it comes to requests submitted by the subject of a record, there is non-binding language in a PRA case that indicates that "all requesters would be entitled to their own identifying information" (*City of Fife v. Hicks* (2015)). This weighs in favor of an agency exercising its discretion to not redact personal information (after taking steps to confirm the requestor is indeed who they claim to be).

Employee/Official Personal Information – Specific Exemptions

This part identifies the sections of the PRA and "other statutes" where personal information of employees is specifically exempt from disclosure. Note that some of the exemptions only apply to records when they are maintained in certain places, such as personnel files. It will be important to read each exemption/prohibition carefully.

Personal Identifying Information

RCW 42.56.250(1)(d) expressly protects the following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

- Residential addresses,
- Residential telephone numbers,
- Personal wireless telephone numbers,
- Personal email addresses,

- Social security numbers,
- Driver's license numbers,
- Identicard numbers,
- Payroll deductions including the amount and identification of the deduction,
- Emergency contact information of employees or volunteers of a public agency,
- The names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

Note: Records professionals might be tempted to apply the exemptions at RCW 42.56.250(1)(d) to other records – like emails from members of the public or residential addresses included on a meeting sign-in sheet. However, these specific exemptions for personal information only apply to employees, officials, and volunteers. There may be other exemptions that protect some personal information of private individuals (e.g., related to taxpayer information or utility billing), but agencies cannot rely on this exemption to withhold information related to those other than public employees/officials/volunteers. Likewise, it matters where this information is located. In *Mechling v. City of Monroe* (2009), personal email addresses of city councilmembers used to conduct city business were found not to be exempt, because they were not considered personnel or employment-related records—which is a component of the statutory exemption. When it comes to applying exemptions, context matters.

Photographs and Month and Year of Birth in a Personnel File

RCW 42.56.250(1)(h) protects photographs and month and year of birth in personnel files of employees or volunteers of a public agency, except that the news media as defined in RCW 5.68.010(5) can gain access to this information. See *Green v. Pierce County* (2021). This likely applies to copies of badge photographs.

Practice Tip: If records responsive to a request include full dates of birth, consider asking the requestor to narrow their request to exclude employees' full date of birth so that redactions can be applied in a much faster manner (rather than having to redact the month and year individually).

Personal Identifying Information of Survivors of Sexual Assault/Domestic Abuse/Harassment

In order to protect employees and their dependents that may be survivors of domestic violence, sexual assault, sexual abuse, stalking, or harassment, or if they participate in the address confidential program under chapter 40.24 RCW, RCW 42.56.250(1)(i) exempts the employee's name and other personally identifying information including but not limited to birthdate, job title, addresses of work stations and locations, work email address, work phone number, bargaining unit, or other similar information. The documentation needed to support asserting this exemption is also exempt from disclosure. This exemption also applies if the identifying information appears in lists and directories of employees.

Tax/Payroll Information

RCW 42.56.230(4)(b) protects an employee's federal tax withholding data to the extent disclosure would violate their right to privacy. And RCW 42.56.250(1)(d) exempts payroll deductions including the amount and identification of the deduction.

For more information, see MRSC's FAQ, Is an employee's personnel file and payroll record exempt?

Religious Affiliation

RCW 42.56.235 exempts all records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.

Practice Tip: While the wording of the exemption implies an entire record is exempt, the practice is to only redact the religious affiliation information.

Financial Information

If an agency has any of the following financial information related to an employee, it is exempt from disclosure under RCW 42.56.230(5):

- Credit card numbers,
- Debit card numbers,
- Electronic check numbers,
- Card expiration dates,
- Bank, and other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law (RCW 42.56.230(5)). The definition of "financial information" in RCW 9.35.005 includes account numbers and balances, transaction information, codes, passwords, driver's license numbers, and other information held for account access or transaction initiation.

Workplace Complaints – Investigatory Records

Workplace investigations into allegations of harassment or discrimination are exempt in their entirety while the investigation is active and ongoing (RCW 42.56.250(1)(f)). Once the investigation is complete, certain identifying information of complainants, other accusers, and witnesses must be redacted, unless they consent to the disclosure. Agencies must redact the names, images, employee agency job titles, email addresses, and phone numbers of complainants, other accusers, and witnesses. Any voice recordings may only be disclosed if the recording can be "altered while retaining inflection and tone."

Note: The exemption appears to potentially apply to the identifying information of non-employee "other accusers or witnesses," so long as there is a "complaining employee."

Employee Health-Related Information

Health-related information might be maintained in employee records for various reasons. An agency could have health-related records to support a reasonable accommodation request sought by an employee under the Americans with Disabilities Act (ADA). An agency could have a proof of vaccination, results of a required medical or psychological examination, results of mandatory drug-testing, or records to support entitled leave, for example.

Several state and federal laws come into play when evaluating the confidentiality and/or disclosure requirements for employee health-related information and medical records.

For a discussion of health care records in other contexts (e.g., public agency as provider or agency in possession of private health-related information), see the sections Health Care Information When Public Agency is Health Care Provider and Health Related Information of Private Individuals below.

Employee Health-Related Information – Right to Privacy

With regard to an employee's medical records or other health-related information, agencies may be able to apply RCW 42.56.230(3), which exempts personal information in files maintained for employees, to the extent that disclosure would violate their right to privacy. See the section Employee/Official Personal Information – Right to Privacy, above. The agency would need to determine that the two prong privacy test (i.e., the information is both highly offensive and of no legitimate interest to the public) is met. Employee health-related records would typically be considered of no legitimate interest to the public, but disclosure must be highly offensive, as well. Note that for most employee health information that may be in possession of a public agency, other more specific statutory exemptions and confidentiality provisions may be easier to apply – but this provision could be a backup to fill in when there is ambiguity in applying these other exemptions, discussed next.

Medical Records

RCW 42.56.360 is the PRA exemption covering health care records, although most of the subsections relate to specific records held by state agencies and are not applicable to local governments. However, RCW 42.56.360(2) generally references chapter 70.02 RCW (known as the Health Care Information Act, or HCIA), which relates to the public inspection and copying of health care information of patients.

RCW 70.02.020 of the HCIA prohibits a *health care provider* from disclosing health care information about a patient to any other person without the patient's written authorization. Health care information is defined as information that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care (RCW 70.02.010(17)).

While most local government agencies would not be considered health care providers (with some limited exceptions, e.g., public hospital districts, certain public health districts, and emergency medical services), the HCIA does provide that:

> [P]ersons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interests in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers (RCW 70.02.005(4)).

We are aware that this section is cited as an "other statute" that agencies rely on to withhold medical records they may have in their possession—even when they are not the original health care provider.

Caution: Before citing RCW 70.02.005(4) and RCW 42.56.360(2) as an exemption, agencies should confirm whether the records contain "health care information" as defined in the HCIA, i.e., whether the information directly relates to the patient's health care. In *Hines v. Todd Pacific Shipyards Corp.* (2005) the court held that the confidentiality protections of chapter 70.02 RCW did not apply to employer-mandated drug testing results. Likewise, psychological evaluations performed with the intent to get leniency in sentencing from the court were not protected from disclosure under chapter 70.02 RCW (*John Does v. Department of Corrections* (2018)). In both situations, the records were generated primarily for purposes other than a patient seeking medical care. If records do not meet the definition of health care information, then the agency would need to determine whether a different exemption applies (e.g., RCW 42.56.230(3) related to an employee's right to privacy or ADA protections).

Reasonable Accommodations and Required Medical Examinations – Americans with Disabilities Act (ADA)

There are confidentiality provisions within the Americans with Disabilities Act (ADA) (considered an "other statute" under RCW 42.56.070(1)). If there is medical or health care information provided to an employer that is part of a workplace disability accommodation or required medical examination/disclosure (either pre-employment or ongoing employment), federal law protects that information under the ADA at 42 U.S.C. § 12112(d)(3)(b). See also 29 C.F.R. § 1630.14(c)(1). Examples of required medical examinations could include law enforcement medical and psychological examinations, as well as vision exams for employees operating equipment requiring a commercial driver's license. Records covered by these provisions are entirely exempt from disclosure and only a limited set of people are entitled to access the information. For more information about the confidentiality requirements, see these resources:

- U.S. Equal Employment Opportunity Commission: The ADA: A Primer for Small Business
- Great Lakes ADA Center: Confidentiality Requirements Under the ADA (2018)

Practice Tip: Both state and federal law require that medical files be kept separate from personnel files and in a secure manner with limited access. See WAC 162-22-090(4) (which covers disability-related medical records) and the federal ADA at 29 C.F.R. § 1630.14 (more broadly covering medical examinations, not just disability-related records) (42 U.S.C. § 12112(d)(3)(b)).

Drug Testing Results (Typically Not Exempt)

As noted above, in *Hines v. Todd Pacific Shipyards Corp.* (2005) the court held that the confidentiality protections of chapter 70.02 RCW did not apply to employer-mandated drug testing results. Mandatory tests for illegal drugs or post-incident intoxication testing are also not considered the type of medical examination which would be treated as confidential under the ADA. See the U.S. Equal Employment Opportunity Commission's The ADA: A Primer for Small Business. In the absence of a specific exemption, an agency could consider applying the employee privacy analysis to determine whether all or a portion of drug testing results would be subject to disclosure. A test revealing illegal drug use would likely not meet this standard since illegal drug use by a public employee would be a legitimate concern to the public. However, there may be an argument

that the results of any drug testing not associated with a specific incident that reveals the presence of legal or prescription drugs should be protected under the right to privacy analysis.

Workers Compensation/Industrial Insurance Files

All information contained in Department of Labor and Industry (LNI) claim files and records of injured workers is confidential under RCW 51.28.070(1):

> Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant.

See also RCW 51.16.070(2) which protects information in an employer's records for assessment and collection of premiums.

Even if that information is extracted into other records, that information does not necessarily lose its confidential status. See *Baxter v. WWU* (2021).

Federal Family Medical Leave Act (FMLA) Certifications

Records and documents relating to certifications, recertifications, or medical histories of empolyees or employees' family members, created for purposes of the Federal Family Medical Leave Act (FMLA), are confidential and shall be maintained in separate files/records from the usual personnel files. See 29 C.F.R. § 825.500(g).

Washington State Paid Family and Medical Leave Act (PFMLA) Records

Information contained in files and records pertaining to an employee under the Washington Paid Family and Medical Leave Act (PFMLA) are confidential and not subject to disclosure, other than to public employees in the performance of their official duties, except as provided in chapter 50A.25 RCW—which sets out the limited circumstances when the otherwise private and confidential information can be made available to other parties. See RCW 50A.05.020(4).

Employment Security Department Records

RCW 42.56.410 exempts from disclosure records originally created by the Employment Security Department (ESD) and subject to chapter 50.13 RCW (Unemployment Compensation) that have been provided to another organization (including public employers) for operational purposes. RCW 50.13.110(2) specifically prohibits the disclosure of records obtained from ESD. That said, RCW 50.13.040(1) entitles an individual to all records and information concerning that individual originally held by ESD. If staff have taken steps to confirm the identity of the requestor is in fact the individual who is the subject of the ESD records, an agency likely does not have an obligation to assert the confidentiality in RCW 50.13.110(2) and could release the record to the requestor.

ESD also oversees Washington's Paid Family Medical Leave Act (PFML). Information contained in files and records pertaining to an employee under Washington's PFML is confidential and not open to public inspection, except as provided in chapter 50A.25 RCW (RCW 50A.05.020(4)).

PERSONAL AND FINANCIAL INFORMATION (NON-EMPLOYEE/OFFICIAL)

Personal information exemptions applicable to public agency employees, officials, and volunteers are covered in detail in the section Public Employee Records in this document. In addition, there are protections for other members of the public found within an agency's public records. Many of these are listed in RCW 42.56.230 covering "personal information."

Some personal information exemptions are specific to categories of individuals (e.g., students, public health/institution patients, children and family members in childcare or program settings, utility customers) while others are more broadly applicable (e.g., financial information of any individual). Below are some of the specific exemptions that may be relevant to local government agencies. Review RCW 42.56.230 for a full list of personal information exemptions.

Student Information

Personal information in files maintained for students in public schools is exempt (RCW 42.56.230(1)). Outside of those files, personal information of current and former students in any records pertaining to the student, *including correspondence*, is exempt (RCW 42.56.230(2)(a)(iii)). The federal Family Educational Rights and Privacy Act (FERPA) will also control the release of student information.

Child Information

Personal information of children enrolled in licensed childcare facilities in files maintained by the Department of Children Youth and Families and by any other public or nonprofit program serving or applying to children or students, including parks and recreation and after-school programs, is exempt. For family members or guardians of these children, their personal information is exempt if they have the same last name as the child or if they live at the same address and the disclosure would reveal otherwise exempt personal information of the child. Emergency contact information may be produced in emergency situations (RCW 42.56.230(2)).

Taxpayer Information

The PRA exempts taxpayer information required of any taxpayer in connection with the assessment or collection of taxes when prohibited by certain listed statutes, or where disclosure would violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer (RCW 42.56.230(4)).

Regarding the specific statutes listed in the exemption at RCW 42.56.230(4), RCW 82.32.330 is probably the most common statute relied upon to withhold tax records. That statute provides that tax returns and other tax information about a specific or identifiable taxpayer are confidential and may not be disclosed, subject to specific exceptions. RCW 35.102.145 is also listed which provides that "a city that imposes a business and occupation tax may by ordinance provide that return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330." At RCW 42.56.210(1), the PRA provides that taxpayer information exempt under the listed statutes is not subject to redaction, but instead the record can be withheld in its entirety.

Taxpayer information is also exempt if disclosure would violate the taxpayer's right to privacy or cause unfair competitive disadvantage. Applying the two-step privacy test, Washington courts have interpreted this provision in a handful of decisions. In *Van Buren v. Miller* (1979), the court determined that certain information relied upon by the assessor to make valuation is not private (e.g., the names of agricultural lessors and lessees) and that percentage crop sharing information is not the equivalent to income information. See also *Hearst Corp. v. Hoppe* (1978), where information in valuation folios did not include highly private information like "any

income data on any property, depreciation figures on commercial property, site plans which show floor plans of any structure, data unrelated to value or assessment, information pertaining to access to any premises or to security measures or devices on any premises."

In Hoppe v. King County (2011), the court held that disclosure of proprietary business information of a corporate taxpayer *would* result in unfair competitive disadvantage to a taxpayer. The court also held that redaction was not possible to prevent unfair competitive disadvantage, and that the records could be withheld in their entirety.

Note: RCW 84.40.020 provides that, except for confidential income data, property tax assessments and all supporting documents are specifically open to public inspection during the regular office hours of the county assessor's office.

Financial Information

Under RCW 42.56.230(5), the following financial information is considered "personal information" and exempt from disclosure:

- Credit card numbers,
- Debit card numbers,
- Electronic check numbers,
- Credit or debit card expiration dates,
- Bank, and other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law. The definition of "financial information" in RCW 9.35.005 includes account numbers and balances, transaction information, codes, passwords, driver's license numbers, and other information held for account access or transaction initiation.

Note: MRSC has been asked whether RCW 42.56.230(5) can be used to withhold public agency bank account and other sensitive financial information. It's not clear that an agency's information can be considered "personal information" such that this exemption would apply. However, if the disclosure of the information would allow improper access to public accounts, the security exemption in RCW 42.56.420 may apply.

Utility Customer Information

Under the PRA, much of the customer information contained in utility account records is exempt from disclosure. Specifically, RCW 42.56.330(2) exempts:

> The addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

Notably, this exemption does not apply to the names and account numbers of utility customers, the amount owed by a utility customer, their associated billing/usage information for *entire* billing cycles, and whether their account is delinquent.

What if the request is from law enforcement?

Under RCW 42.56.335, if police are seeking to obtain evidence of criminal conduct from records of electrical use, they must provide the utility with a written statement indicating that they suspect a specific person of a crime, and that the records could help to determine whether this suspicion is justified. No fishing expeditions are allowed (*State v. Cole* (1995)).

For example, in a state supreme court case, the court held that a private individual may request and obtain a copy of the electric bill for a specific residence, but a police officer seeking evidence of a marijuana-growing operation can only obtain that same record if they first provide a written statement concerning their reasonable belief that the information is relevant to the investigation of a possible crime (*Matter of Maxfield* (1997)).

Practice Tip: When responding to a request related to utility customer information, keep in mind the commercial purposes prohibition related to lists of individuals at RCW 42.56.070(8). See more on how to investigate whether a requestor may be seeking records for commercial purposes at List of Individuals for Commercial Purposes.

Library Records

RCW 42.56.310 protects from disclosure library records that are kept to track use of libraries and their resources that identify or could be used to identify a library user.

Religious Affiliation

RCW 42.56.235 exempts all records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.

Practice Tip: While the wording of the exemption implies an entire record is exempt, the practice is to only redact the religious affiliation information.

Health Care Information When Public Agency is Health Care Provider

Most local government agencies are not health care providers as defined in the Health Care Information Act (HCIA), chapter 70.02 RCW. The exception is public hospital districts organized under chapter 70.44 RCW, and potentially some public health districts/departments when offering patient services or emergency medical services (EMS). These specialized agencies or departments will generally be familiar with their responsibilities related to health care information and patient records.

The PRA exemption related to health care at RCW 42.56.360(2) provides that "chapter 70.02 RCW applies to public inspection and copying of health care information of patients."

RCW 70.02.020 controls when a health care provider can disclose health care information about a patient to any other person without the patient's written authorization. Health care information is defined as information that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care (RCW 70.02.010(17)). Courts have interpreted RCW 42.56.360(2) to mean that "health care information" is exempt under the PRA. See *Doe G v. Dept. Of Corrections* (2018). Importantly, the exemption does not apply if the record was created for purposes other than providing health care.

There is also the federal Health Information Portability and Accountability Act (HIPAA) which establishes similar protections for patient records and standards for health care providers regarding health information.

One important consideration for public agencies who are health care providers is that if health care information can be de-identified (i.e., the patient's name and any identifying information removed), then the record can be released. RCW 70.02.010(6) defines "deidentified" as health information that "does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual."

The HIPAA de-identification standard in 45 C.F.R. § 164.514 is:

> Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information [...]

The regulation sets forth 18 types of identifiers. As a practical matter, de-identification of health care information/records is only appropriate when a request is not seeking a specific person's or patient's records. This means that requests for records of specific persons or patients, de-identification would not be sufficient to protect patient privacy. Instead, the entire record should be withheld.

Here are some additional resources for those agencies who are health care providers under the HCIA:

- Washington State Attorney General's Office: Open Government Resource Manual at Chapter 2.2F
- Washington State Healthcare Authority: Washington Confidentiality Toolkit for Providers (2025) – The sections on allowed disclosures are particularly helpful.
- Washington State Hospital Association:
  - Hospital and Law Enforcement Guide to Health Care Related Disclosure (2023)
  - Washington Health Law Manual: Chapter 1 – Healthcare Information and Confidentiality (2016)

Health Related Information of Private Individuals

Public agencies who are not health care providers under chapter 70.02 RCW may still end up in possession of health-related information of private individuals in various circumstances. Three common circumstances would be related to law enforcement (e.g., emergency response and criminal investigations), 911 dispatch services, and ADA accessibility/accommodation requests from the public. Note that this is not an exhaustive list and there are many ways health-related information might come into an agency's possession.

Law Enforcement

Medical and health-related records and information in possession of law enforcement are covered in MRSC's Disclosure of Medical and Postmortem Law Enforcement Records (part of MRSC's Law Enforcement Records Tool Kit), as well as Washington State Hospital Association's Hospital and Law Enforcement Guide to Health

Care Related Disclosure (2023). In particular, RCW 42.56.240(1) related to investigatory records may apply to protect a person's privacy.

911 Dispatch

Health-related information collected by a 911 dispatch or call center would likely not be protected "health care information" under chapter 70.02 RCW and RCW 42.56.360(2), although there is not yet a court decision interpreting the provision in that context. Information given to a 911 dispatch during a call for emergency services does not fall within the definition of "health care information" at RCW 70.02.010(17), unless one were to argue that because dispatch is passing the information along to medical providers, it "directly relates to the patient's health care."

There may nonetheless be privacy protections for what might be considered "unpleasant or disgraceful or humiliating" medical information – under either constitutional privacy protections or RCW 42.56.240(1) privacy related to law enforcement. Health-related conditions likely to be protected under a privacy analysis include social "stigma" medical conditions such as AIDS, Hepatitis, MRSA, STIs, Leprosy, and certain mental health conditions.

However, RCW 42.56.240(1) applies only to certain types of investigative agencies—in particular law enforcement. There are no court decisions on whether an independent 911 dispatch agency/call center is considered "law enforcement" for purposes of applying this exemption. We recommend consulting with the agency's attorney to discuss options in the context of 911 dispatch.

ADA Public Accommodation Requests

Unlike Title III which applies to employee records, Title II of the Americans with Disabilities Act (ADA), which applies to state and local government provision of public services, does not have specific confidentiality requirements for disability accommodations. Further, there does not appear to be PRA privacy exemption that might apply to this information. For this reason, agencies should not require a person who is requesting an accommodation to disclose the exact nature of their disability or diagnosis, but rather ask what work or task would the served by the accommodation. Title II would apply in situations where a member of the public requests accommodations for a sight or hearing impairment at a public meeting, for example.

GENERAL GOVERNMENT OPERATIONS

In creating the exemptions listed in the PRA, the legislature has attempted to balance the need for public transparency versus protecting the confidentiality and privacy of certain information and governmental interests. In keeping with this, some exemptions and prohibitions protect certain categories of information/ records the disclosure of which could negatively impact the functions and purpose of the public agency. Below are some of the more commonly used exemptions that serve this purpose.

Drafts or "Deliberative Process" Exemption

Preliminary drafts, notes, recommendations, and intra-agency memorandums expressing opinions or formulating policies are exempt under RCW 42.56.280. The purpose of the exemption, named the "deliberative process" exemption by the courts, is "to safeguard the free exchange of ideas, recommendations, and opinions *prior to decision" (Hearst Corp. v. Hoppe* (1978)), "to protect the 'give and take' of deliberations that are necessary to agency decision-making and to formulate agency policy" *(ACLU v. City of Seattle* (2004)).

This is how the Washington Supreme Court in *PAWS v. Univ. of Washington* (1994) has described the test to determine whether a record is covered by this exemption:

> In order to rely on this exemption, an agency must show that the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy recommendations and opinions and not raw factual data on which a decision is based.

Importantly, the exemption no longer applies once an agency makes a final decision on the proposed issue/policy. In the context of labor negotiations, the Washington Supreme Court in *Citizen Action Defense Fund v. Washington State Office of Financial Management* (2025) held that for a collective bargaining agreement (CBA) between the state and bargaining units representing state employees, the deliberative process exemption in RCW 42.56.280 does not expire until funding for the CBA has been approved by the state legislature—consistent with the statutory scheme for approving a CBA by the state. It distinguished the holding in *West v. Port of Olympia* (2008) where the court held that the exemption applied only until the results of the policy-making process were presented to the port commission for adoption. In *West*, all the decisions were to be made by the port commission, whereas in the *Citizen Action* case, the approval process was divided between the governor's office and the legislature. The statutory scheme for CBA approval determined when implementation occurred such that the deliberative process exemption would no longer apply. The court considered the purpose of the exemption, which was to protect the policy-making process all the way through to implementation of the policy.

Here are five issues to keep in mind when applying the exemption:

1. Matters that are factual are not covered by the exemption, so redaction rather than complete exemption of the record might be required (*Brouillet v. Cowles Publishing Co.* (1990)).
2. The exemption is not limited to intra-agency documents prepared by a government agency; it can apply to documents prepared by persons from outside the governmental agency (*ACLU v. City of Seattle* (2004)).
3. Documents concerning the implementation of policy are not covered by the exemption (*Cowles Publ'g Co. v. City of Spokane* (1993)).
4. The exemption does not apply once the policies or recommendations contained in the records are implemented (*Brouillet v. Cowles Publishing Co.* (1990) and *Cowles Publishing Co. v. Spokane* (1993)).
5. If the document is publicly cited in connection with an agency action, the exemption no longer applies (*Overlake Fund v. City of Bellevue* (1991)).

For more, see MRSC's FAQ, Are draft documents exempt from disclosure?

Attorney Work Product and Attorney-Client Privilege

An attorney's work product is exempt under RCW 42.56.290 and attorney-client privileged communications are exempt under RCW 5.60.060(2)(a) (considered an "other statute" that exempts or prohibits disclosure (RCW 42.56.070(1)).

Agencies will need to consult with their attorneys to determine whether the work product or attorney-client communications privilege applies to specific records. A local government may not assert the work product or attorney-client privilege simply because an attorney created a record or was included in a communication. The communication or record must meet the legal definition of work product or attorney-client privileged communication – and that privilege must not have been waived. For more detailed information, see the

Washington State Attorney General's Office Public Records: The Attorney-Client Privilege and Work Product Doctrine – Guidance on Recurring Issues (2004).

The attorney work product and attorney-client privilege are covered in more detail below.

Practice Tip: Keep an eye out for attorney work product and attorney-client communication in comments and drafts of agency documents that reflect attorney review.

Attorney Work Product

An attorney's "work product" is exempt under RCW 42.56.290. If an agency is a party to a controversy, the agency may withhold records that normally would be privileged under litigation discovery rules (i.e., materials protected from discovery pursuant to CR 26). A "controversy" covered by this exemption includes threatened, actual, or completed litigation (*Dawson v. Daly* (1993)).

A record is considered work product if an attorney prepares it in confidence and in anticipation of litigation, or if it is prepared by another individual at the attorney's request. In *Soter v. Cowles Publishing* (2007), a newspaper sought records generated by a private investigator hired by a school district's attorney. The court held that the records were properly withheld as work product, even though prepared by someone other than the attorney.

The fact that a document has a litigation and a nonlitigation purpose (i.e., a dual-purpose document) does not mean it fails to qualify for work product protection. In *Denney v. City of Richland* (2022), the court held that workplace investigation reports prepared for the purpose of investigating an employee's discrimination, harassment, and retaliation complaints were protected as "work product," even though they were also prepared pursuant to city policy. The court applied a two-part test to determine if the document qualified as work product, i.e., whether the document in question was really created in anticipation of litigation. One first asks whether the individual who prepared or ordered preparation of the document subjectively did so with the intent of preparing for litigation. If yes, then the question is whether the subjective anticipation of litigation was objectively reasonable.

Generally, attorney billing statements as a whole are not protected by the "work product" exemption. However, some attorneys provide detailed billing statements that may include entries that show an attorney's "work product" or litigation strategy. Only those portions of the billing statement that meet the work product or controversy standard can be redacted.

The legislature adopted an "intent" statute providing guidance on billing statements sent to public agencies by their legal counsel, whether in-house or not. RCW 42.56.904 provides:

> It is the intent of the legislature to clarify that no reasonable construction of chapter 42.56 RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

In *San Juan County v. Washington Coalition for Open Government* (2023), the court held that the county properly redacted the detailed descriptions within the attorney invoices under the controversy exemption at RCW 42.56.290, consistent with the legislature's statement of intent at RCW 42.56.904.

Must a local government disclose a "separation agreement" entered into with an employee to settle a claim and avoid litigation? (The terms of the agreement were worked out by the council in an executive session, with the assistance of the local government attorney.)

The agreement must be disclosed. The relevant controversy exemption does not apply in this situation, because this document would be available to a party under the rules of pretrial discovery (*Yakima Newspapers v. Yakima* (1995)). However, the attorney's comments on drafts of the agreement and legal advice on accepting the settlement agreement will be protected.

Attorney-Client Privileged Communications

Attorney-client privileged communications are exempt under RCW 5.60.060(2)(a), considered an "other statute" that exempts or prohibits disclosure under RCW 42.56.070(1). The privilege can be asserted only where the records reflect:

1. A communication;
2. Made between privileged persons (i.e., the attorney and client);
3. In confidence; and
4. For the purpose of obtaining or providing legal assistance for the client.

See *Hangartner v. City of Seattle* (2004).

Once a third party, such as another agency, is included in that communication, the privilege is generally considered waived. In the context of local government, this usually means that to preserve the attorney–client privilege, communications should be restricted to only the attorney(s) and relevant staff and officials within the local government.

However, one exception to the general rule is the common interest doctrine, which provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those within the group. See, e.g., *Sanders v. State* (2010).

The Washington State Court of Appeals held that the common interest doctrine can apply as between two or more public agencies. In *Kittitas County v. Allphin* (2016), the court wrote:

> The common interest or joint defense privilege applies where (1) the communication was made by separate parties in the course of a matter of common interest or joint defense; (2) the communication was designed to further that effort; and (3) the privilege has not been waived. [...] A written agreement regarding the privilege is not required, but the parties must invoke the privilege: they must intend and agree to undertake a joint defense effort.

Mediation Communications

Pursuant to RCW 42.56.600**,** communications in the context of mediation that are privileged under chapter 7.07 RCW are exempt from production. RCW 7.07.070 states:

> Unless subject to chapter 42.30 RCW, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

Chapter 42.30 RCW is the Open Public Meetings Act (OPMA). So, records associated with portions of a mediation that might occur at an open public meeting would not be eligible for this exemption.

Once executed, a settlement agreement arising from a mediation is a disclosable public record. See *Yakima Newspapers, Inc. v. City of Yakima* (1995).

Security of Information, Technology, and Physical Infrastructure

RCW 42.56.420 exempts records based on the impact disclosure may have on an agency's physical, technological, or information security, including as related to terrorist acts. Each of the six subsections includes specific types of information, so an agency should work closely with its legal counsel in determining whether an exemption applies in any given circumstance. The most utilized exemptions by local governments are probably subsections (1) and (4).

The general categories of records exempted under RCW 42.56.420 (as summarized from the statute) include:

1. **Records assembled, prepared, or maintained to respond to criminal terrorist acts,** when release could significantly disrupt the conduct of government and are substantially likely to threaten public safety, including specific and unique vulnerability assessments or response or deployment plans, as well as the underlying data compiled in preparation of or essential the vulnerability assessments or response or deployment plans.
2. **Vulnerability assessments and emergency or escape response plans** at correctional facilities or certain secure treatment facilities, the disclosure of which would have a substantial likelihood of threatening the security of such facilities.
3. Information compiled to develop comprehensive **safe school plans**, to the extent the information identifies specific vulnerabilities of school districts or individual schools.
4. Information about the **infrastructure and security of computer and telecommunications networks** that, if released, would increase risk to their confidentiality, integrity or availability, including security passwords, security access codes and programs, access codes for secure software applications.
5. **System security and emergency preparedness plans** for transportation systems.
6. **Personally identifiable and security information of employees of private cloud service providers** which have entered into a Criminal Justice Information Systems (CJIS) agreement.

Security of Physical Infrastructure

Washington courts have applied the exemption at RCW 42.56.420(1) in a couple of cases. In *Northwest Gas Association v. Washington Utilities and Transportation Commission* (2007), the court of appeals interpreted RCW 42.56.420(1) to exempt detailed maps/shape files of underground pipelines from disclosure even though the data was not initially compiled to combat terrorism – it was still maintained for that purpose. More than twenty industry representatives asserted that the gas pipeline system was part of critical energy infrastructure, and that incapacity or destruction of the system would have potentially catastrophic consequences. The court

found there was potential of significant dangers to public safety if detailed data was disclosed to pranksters, saboteurs, or terrorists.

However, in *Does v. King County* (2015), the court of appeals rejected application of the exemption to campus surveillance footage that depicted a campus shooting and events leading up to the incident, despite the university's contention that disclosure could enable future individuals to successfully evade its surveillance security system or would encourage similar crimes. The court held that the university did not meet its burden in showing that disclosure of the video footage resulted in a "substantial likelihood of threatening public safety."

Is security footage exempt?

In most circumstances, no. Once the security camera recordings are created, they are public records, and no specific exemption applies to the recordings – including RCW 42.56.420. Note that jail and corrections facilities' footage may be exempt (or should be redacted) if (1) any inmates are captured on the footage (see inmate confidentiality provisions at RCW 70.48.100); or if (2) nondisclosure is essential for effective law enforcement under RCW 42.56.240(1) See *Gronquist v. Department of Corrections* (2013) and *Fischer v. Department of Corrections* (2011).

Although there have been no relevant court decisions yet, it may be possible to argue that the security exemption could be applied to withhold building plans for correctional facilities, secure treatment facilities, and schools, to the extent such plans are part of vulnerability assessment and emergency plans under RCW 42.56.420(2) and (3). Likewise, any maps or plans that are part of transportation security or emergency preparedness plans may be exempt (RCW 42.56.420(5)).

Security of Computer, IT, and Telecommunications Networks

As mentioned above, RCW 42.56.420(4) exempts:

> Information regarding the public and private infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of security, information technology infrastructure, or assets

There are no court decisions interpreting RCW 42.56.420(4); however, the plain language supports applying the exemption to a broad range of IT-related infrastructure and security information, including passwords and other information that may expose an agency to a cyberattack or security breach. Some jurisdictions rely on this exemption to redact metadata – especially of emails. Use of this exemption should be utilized only after consultation with IT professionals and the agency attorney.

Real Estate Appraisals and Other Real Estate Records

The PRA provides a time-limited exemption for real estate appraisals and certain other real estate records. Pursuant to RCW 42.56.260, the following documents relating to an agency's real estate transactions are exempt from disclosure:

- Except as provided by chapter 8.26 RCW (relocation assistance), the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property

- Documents prepared for the purpose of considering the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price, including records prepared for executive session pursuant to RCW 42.30.110(1)(b) of the Open Public Meetings Act (OPMA);
- Documents prepared for the purpose of considering the minimum price of real estate that will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price, including records prepared for executive session pursuant to RCW 42.30.110(1)(c) of the OPMA.

Again, this exemption is time limited. RCW 42.56.260(2) provides:

> The exemptions in this section do not apply when disclosure is mandated by another statute or after the project or prospective project is abandoned or all properties that are part of the project have been purchased, sold, or leased. No appraisal may be withheld for more than three years.

This exemption allows local governments to keep appraisal information away from public scrutiny while negotiating a potential purchase or sale. Relatedly, local government legislative bodies may review and discuss confidential appraisal information in an executive session pursuant to RCW 42.30.110(1)(b). Members of a governing body are prohibited from disclosing that information (RCW 42.23.070(4)).

In *Ekelmann v. City of Poulsbo* (2022), the court held that the City of Poulsbo properly exempted real estate appraisal documents and redacted sales price information with respect to property acquired for a road improvement project pursuant to RCW 42.56.260, even where another statute gives property owners access to appraisal information for their property when involved in a public works project. Even though property owners were authorized access to their *own* property appraisal pursuant to state law, this did not mean that any other individual had a right to access the information under the PRA.

Financial, Commercial, and Proprietary Information (Government Owned)

RCW 42.56.270 protects certain financial, commercial, and proprietary information in possession of public agencies. The purpose of the exemption is to prevent unfair private gain derived from the exploitation of potentially valuable intellectual property placed in the public domain for a public benefit (*Robbins, Geller, Rudman & Dowd v. State* (2014)). Most, though not all, records that would potentially fall within this exemption will be third-party (i.e., private) records in possession of the agency. For a more detailed discussion of how the financial, commercial, and proprietary information exemptions apply to third-party/private records, see the section of this document titled Business-Related Exemptions below.

RCW 42.56.270(1) is most often cited in the context of government records (the other subsections have limited applicability to local government records). Per the plain meaning of the statute, the exemption may be claimed by either the government or a private party. RCW 42.56.270(1) exempts:

> Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

Several cases have interpreted this exemption in the context of government records. In one, the Washington Supreme Court found that a cash flow analysis of port properties prepared for the port's sole use in negotiations with prospective joint venture partners was within the research data exemption (*Servais v. Port of Bellingham* (1995)). In another case, the court found that a university's research data relating to intellectual property was exempt from disclosure (*PAWS v. University of Washington* (1994)). In both decisions, the

requesting parties were denied their public disclosure request, because they would have profited and the government would have incurred a loss.

By contrast, the court of appeals found that documents used by professors and accountants hired by the city, to perform credit and financial analysis for the city's loan guarantee for private shopping center development, were not exempt. The city was unable to show a public loss resulting from the disclosure of the requested research (*Spokane Research & Defense Fund v. City of Spokane* (1999)).

Civil Code Enforcement Investigative Records and Complainant Identities

The PRA exempts certain investigatory records from disclosure, along with certain information contained within such records. See RCW 42.56.240. This is a frequently utilized exemption in the criminal law enforcement context and is covered in detail in MRSC's Disclosure of Law Enforcement Investigative Records page. This section will focus on the application of the exemption at RCW 42.56.240(1) and (2) in the context of civil code enforcement.

MRSC takes the position that civil code enforcement can be considered "law enforcement" for the purposes of RCW 42.56.240(1) and (2). This position is supported in part by footnote 2 in *Wade's Eastside Gun Shop v. L&I* (2016) where the court pointed out that "civil law enforcement agencies, which enforce the law and impose sanctions for illegal conduct, may benefit from the investigative records exemption."

Investigative Records – Effective Law Enforcement and Right to Privacy

The exemption at RCW 42.56.240(1) protects specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, the nondisclosure of which is either:

- Essential to effective law enforcement; or
- For the protection of any person's right to privacy.

While this exemption can be applied in both the criminal and civil context, how this looks in practice will be different—with the application in the criminal context likely being much broader. In particular, the Washington Supreme Court has held that an active police investigation file, in its entirety, is presumed to be exempt from disclosure under the PRA's "effective law enforcement" exemption so as not to tip-off the subject of an investigation, unless the law enforcement agency decides that specific information is not essential to solving the case (*Newman v. King County* (1997)). This is often referred to as a "categorical" exemption for the investigation file. For more, see the section on "Open Investigations" in the Law Enforcement Records Tool Kit.

However, there is not an equivalent categorical exemption in the civil enforcement context. In a case involving a state agency investigating violations of safety laws, the Washington Supreme Court found that the same risk of disclosing sensitive information in a criminal context does not exist in the civil context where the subject is almost always aware of the investigation (*Wade's Eastside Gun Shop v. Department of Labor and Industries* (2016)). The court found the agency could not rely on a categorical exemption under RCW 42.56.240(1) for records related to civil law enforcement activities such as safety violations. In that case, the employers knew that they were being investigated so the nondisclosure could not be claimed to be essential to effective law enforcement. See also *Brouillet v. Cowles Publishing Co* (1990) (revocation of teacher certificates was not exempt).

Even though there is no categorical exemption for an open civil enforcement file, specific information within the file or certain records might be subject to the exemption if an agency could make the case that nondisclosure of that information is essential for effective law enforcement.

As for the application of a person's right to privacy in civil investigation records, the same privacy analysis as for criminal investigation likely applies. In the context of code enforcement, disclosure of photographs of residential interiors or living conditions may rise to the level of being "highly offensive." For a detailed discussion of how to apply the right to privacy exemption at RCW 42.56.240(1), see Disclosure of Law Enforcement Investigative Records, as well as the General Note on Privacy and "Personal" Information section above.

Given the lack of court cases, any application of the exemption at RCW 42.56.240(1) in the civil code enforcement context should be done in consultation with the agency attorney.

Records Revealing Complainant, Witness, or Victim Identity (RCW 42.56.240(2))

As stated above, RCW 42.56.240(2) allows agencies to redact identifying information provided to an investigative, law enforcement, or penology agency that may reveal the identity of witnesses, victims, or complainants under two circumstances:

- Where disclosure would endanger any person's life, physical safety or property; or
- If, at the time a complaint is filed, the complainant, victim, or witness indicates a desire for disclosure or nondisclosure.

The request for nondisclosure comes up frequently in the context of local government code enforcement. Often, a local government's code violation complaint form will include a place for a complainant to request anonymity/non-disclosure of their identity (e.g., by checking a box). If, at the time the complaint is submitted, a request for non-disclosure is made, an agency can redact the identity of the person making the complaint.

If such a preference is not made at the time of the complaint, the agency must "make an affirmative showing that disclosure entails a potential threat to safety or property" (*Sargent v. Seattle Police Department* (2013)).

Regarding redaction of identifying information where a person's life, physical safety or property would be endangered, an agency may be better off providing third-party notice under RCW 42.56.540 to give that person the opportunity to seek an injunction rather than the agency asserting that exemption on someone's behalf (unless there is clear evidence of endangerment in the complaint or other records).

Archaeological Site Information

RCW 42.56.300 exempts archaeological records, maps or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites. This may come up in the public works, building permit, or planning contexts.

Law Enforcement Records

There are various exemptions, prohibitions, and requirements that relate to law enforcement records. MRSC's Law Enforcement Records Tool Kit provides information and analysis about records disclosure requirements for the following types of records:

- Investigative Records – Open investigations and investigative records essential to effective law enforcement or a person's right to privacy.
- Criminal History and Arrest Records – Conviction data, non-conviction data, and rap sheets.
- Juvenile Records – Criminal and non-criminal juvenile records.
- Medical and Postmortem Records

- Personal Identifying Information – Driver's license numbers, Social Security numbers, dates of birth, and victim or witness identity.
- Traffic Accident and Vehicle Records
- Video Footage – Includes dashcams and body cameras.
- Exemptions and Prohibitions – Addresses other common exemptions and prohibitions in law enforcement-related records: booking photos, concealed pistol license applications, confidential informants, abuse of vulnerable adults, and intelligence information.

BUSINESS-RELATED EXEMPTIONS

The following exemptions are often difficult to apply as they tend to involve facts outside of the agency's knowledge. When dealing with these kind of records, consider providing third-party notice as discussed in the section Optional (aka Third-Party) Notice to Interested Persons Regarding Disclosure.

Financial, Commercial, and Proprietary Information (Private Parties)

Courts have interpreted the exemptions at RCW 42.56.270 (including RCW 42.56.270(1)) discussed above in the section Financial, Commercial, and Proprietary Information (Government Owned), as potentially applying to both agency records and non-agency records in the possession of the agency. A private party may assert the exemption, even if a public agency elects not to, by seeking a court order as discussed in the section Injunction Challenges (*Robbins, Geller, Rudman & Dowd v. State* (2014)).

Additionally, private parties are most likely to assert (or urge a public agency to assert) the exemption at RCW 42.56.270(11), which exempts:

> Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

Importantly, this exemption only applies to "vendors." It does not apply in situations where the interested party is not a "vendor" to the government. An example of when this exemption may be raised is in connection with the public bidding process. Local governments often obtain information which bidders would not voluntarily divulge to their competitors. MRSC recommends providing notice to a bidder pursuant to RCW 42.56.540 if an agency thinks a private party may want to claim this exemption.

Trade Secrets: Chapter 19.108 RCW

While a vendor's trade secrets are explicitly exempt under RCW 42.56.270(11), intellectual and proprietary information may also be more broadly exempt under the Washington Trade Secrets Act, chapter 19.108 RCW (*Servais v. Port of Bellingham* (1995)). This Act qualifies as an "other statute" under RCW 42.56.070(1) (*Progressive Animal Welfare Soc'y v. UW* (1994) (PAWS II).

There is a sizable body of caselaw around whether certain information is considered a trade secret under the Trade Secret Act, but only a few examples of its application in the PRA context.

In one case, information submitted by a law firm in response to the request for qualifications and quotations from the Washington State Investment Board was held not to be exempt as a trade secret under RCW

19.108.010(4) because it was not shown to be unique, innovative or novel or that sufficient steps had been taken to protect the secrecy of the information (*Robbins, Geller, Rudman & Dowd, LLP v. Office of Attorney General* (2014)).

In another case, *Lyft, Inc. v. City of Seattle* (2018), there was a public records request for data reports filed by "transportation networking companies" Uber and Lyft with the City of Seattle. Uber and Lyft considered at least some of the data to be trade secrets. Specifically, the companies tried to protect "zip code reports," which includes, among other things, the percentage and number of rides picked up in each zip code and the pick-up and drop-off zip codes for each ride.

The court said it was a "close call," but it upheld a trial court finding that the reports did constitute trade secrets. However, the court ruled that the reports were still subject to disclosure under the Public Records Act due to the nature of the case. If a private party seeks an injunction to prevent disclosure of a record, it must show that not only does an exemption apply, but that disclosure is not in the public interest (RCW 42.56.540). In a 5-4 decision, the court found that this standard was not met and reversed the trial court's grant of a permanent injunction.

Practice Tip: As discussed in the section on Judicial Review, the threshold to obtain an injunction from a court is much higher than asserting the exemption in the first place. There may be certain situations where an agency may be willing to assert an exemption that protects a third party's trade secrets in exchange for that party being willing to defend against any challenges against that assertion. This is a policy decision that should be made in consultation with the agency attorney.

Copyrighted Materials: 17 U.S.C. § 106

Agencies may need to consider federal copyright laws when providing copies of records that are subject to copyright protection under 17 U.S.C. § 106. This issue may arise where private entities have copyrighted their work, such as blueprints or architectural plans.

However, even if a person has a copyright interest in materials submitted to a public agency, disclosure is not automatically prohibited. A court has held that those requesting copies of copyrighted materials may be entitled to the records if the facts meet the "fair use doctrine" exemption to the federal Copyright Act (*Lindberg v. County of Kitsap* (1997)). Such a determination requires asking what purpose the requestor intends to use the copyrighted material, which seems to run counter to RCW 42.56.080(2) which prohibits agencies from inquiring why a requestor wants a certain record, except in certain circumstances. Unfortunately, the court did not resolve that issue.

Consequently, MRSC has recommended that when there is a disclosure request for these types of materials, the agency should provide third-party notice under RCW 42.56.540 to the person who submitted the documents.

Appendix A: Recommended Resources

MRSC has numerous resources that can help state and local government agencies comply with the Public Records Act (PRA). For a complete list of all resources available in our website, see our Public Records & PRA page. Below is a selection of some of these resources:

- Electronic Records Policy Tool Kit – Series of webpages providing sample policy language options and guidance for the various facets of electronic records retention, management, and disclosure, including email, text, and social media.
- Law Enforcement Records Tool Kit – Series of webpages to help police and sheriff departments manage their records and comply with PRA and other statutes.
- Public Records Act Basics – PRA overview with selected examples of local PRA policies and procedures.
- PRA Practice Tips and Checklists – Helpful tips and short checklists providing practical guidance.
- Public Records Act Court Decisions – Significant state appellate court decisions concerning PRA.
- Recent blog posts about PRA – Articles written by MRSC staff and contributors about specific aspects of the PRA, including new legislation and court decisions. Articles are listed in reverse chronological order, with the most recent first.

Appendix B: Cross-Reference Guide for 2006 Recodification

The following table is provided for historical cross-reference. Since 2006, several statutes have since been renumbered, reorganized, or repealed.

Table 1: Chapter 42.17 RCW to Chapter 42.56 RCW

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.020	42.56.010	44-14-01001
42.17.250	42.56.040	44-14-02001
42.17.251	42.56.030	44-14-01003 44-14-06002
42.17.253	42.56.580	44-14-020 44-14-02002
42.17.255	42.56.050	44-14-06002(2)
42.17.258	42.56.060	44-14-01003 44-14-04003
42.17.260	42.56.070	44-14-03003
42.17.260(1)	42.56.070	44-14-010 44-14-06002
42.17.260(2)	42.56.070(2)	44-14-010 44-14-060 44-14-06001
42.17.260(7)	42.56.070(7)	44-14-07001
42.17.260(9)	42.56.070(9)	44-14-03006 44-14-06002(6)
42.17.270	42.56.080	44-14-01002 44-14-03006 44-14-04002 44-14-04003 44-14-04006
42.17.280	42.56.090	44-14-03002 44-14-04005
42.17.290	42.56.100	44-14-01002 44-14-04001 44-14-03004 44-14-04003 44-14-04006

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PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.295	42.56.110	
42.17.300	42.56.120	44-14-04005 44-14-070 44-14-07001
42.17.305	42.56.130	
42.17.310	42.56.210	44-14-04004 44-14-06002
42.17.310(1)(a)	42.56.230	
42.17.310(1)(b)	42.56.230	
42.17.310(1)(c)	42.56.230	
42.17.310(1)(d)	42.56.240	
42.17.310(1)(e)	42.56.240	
42.17.310(1)(f)	42.56.250	
42.17.310(1)(g)	42.56.250	
42.17.310(1)(h)	42.56.270	
42.17.310(1)(i)	42.56.280	44-14-06002(4)
42.17.310(1)(j)	42.56.290	44-14-06002(3)
42.17.310(1)(k)	42.56.300	
42.17.310(1)(l)	42.56.310	
42.17.310(1)(m)	42.56.270	
42.17.310(1)(n)	repealed	
42.17.310(1)(o)	42.56.270	
42.17.310(1)(p)	42.56.320	
42.17.310(1)(q)	42.56.330	
42.17.310(1)(r)	42.56.270	
42.17.310(1)(s)	repealed	
42.17.310(1)(t)	42.56.250	
42.17.310(1)(u)	42.56.250	
42.17.310(1)(v)	42.56.330	
42.17.310(1)(w)	42.56.350	
42.17.310(1)(x)	42.56.360	
42.17.310(1)(y)	42.56.360	
42.17.310(1)(z)	42.56.270	
42.17.310(1)(aa)	42.56.270	
42.17.310(1)(bb)	42.56.270	
42.17.310(1)(cc)	42.56.370	
42.17.310(1)(dd)	42.56.250	

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.310(1)(ee)	42.56.250	
42.17.310(1)(ff)	42.56.380	
42.17.310(1)(gg)	42.56.270	
42.17.310(1)(hh)	42.56.360	
42.17.310(1)(ii)	repealed	
42.17.310(1)(jj)	42.56.270	
42.17.310(1)(kk)	42.56.390	
42.17.310(1)(ll)	42.56.330	
42.17.310(1)(mm)	42.56.330	
42.17.310(1)(nn)	42.56.330	
42.17.310(1)(oo)	42.56.360	
42.17.310(1)(pp)	42.56.400	
42.17.310(1)(qq)	42.56.320	
42.17.310(1)(rr)	42.56.240	
42.17.310(1)(ss)	42.56.230	
42.17.310(1)(tt)	42.56.270	
42.17.310(1)(uu)	42.56.410	
42.17.310(1)(vv)	42.56.320	
42.17.310(1)(ww)	42.56.420	
42.17.310(1)(xx)	42.56.430	
42.17.310(1)(yy)	42.56.430	
42.17.310(1)(zz)	42.56.430	
42.17.310(1)(aaa)	42.56.440	
42.17.310(1)(bbb)	42.56.420	
42.17.310(1)(ccc)	42.56.420	
42.17.310(1)(ddd)	42.56.420	
42.17.310(1)(eee)	42.56.400	
42.17.310(1)(fff)	42.56.270	
42.17.310(1)(ggg)	42.56.330	
42.17.310(1)(hhh)	42.56.270	
42.17.310(1)(iii)	42.56.210	
42.17.310(1)(jjj)	42.56.270	
42.17.310(1)(jjj)	42.56.380	
42.17.310(1)(kkk)	42.56.380	
42.17.311	42.56.510	
42.17.312	42.56.360	
42.17.313	42.56.450	
41.17.314	42.56.330	

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.315	42.56.320	
42.16.316	42.56.360	
42.17.317	42.56.380	
42.17.318	42.56.240	
42.17.319	42.56.270	
42.17.31901	42.56.240	
42.17.31902	42.56.360	
42.17.31903	42.56.400	
42.17.31904	42.56.400	
42.17.31905	42.56.400	
42.17.31906	42.56.460	
42.17.31907	42.56.380	
42.17.31908	42.56.400	
42.17.31909	42.56.380	
42.17.31910	42.56.360	
42.17.31911	42.56.400	
42.17.31912	42.56.330	
42.17.31913	42.56.250	
42.17.31914	42.56.420	
42.17.31915	42.56.400	
42.17.31916	42.56.400	
42.17.31917	42.56.400	
42.17.31918	42.56.380	
42.17.31919	42.56.380	
42.17.31920	repealed	
42.17.31921	42.56.470	
42.17.31922	42.56.590	
42.17.31923	42.56.610	
42.17.320	42.56.520	44-14-04003 44-14-08001 44-14-08004
42.17.325	42.56.530	44-14-08002
42.17.330	42.56.540	44-14-04003 44-14-08004(5)

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.340	42.56.550	44-14-01003 44-14-04001 44-14-04003 44-14-08004
42.17.341	42.56.560	
42.17.348	42.56.570	
New	42.56.020	
New	42.56.900	

Appendix C: Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW

RCW 42.56.070(2) requires an agency to:

> [...] publish and maintain a current list containing every law, other than those listed in the PRA, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

The following list provides exemptions and prohibition statutes not listed in the PRA.

Washington State Statutes

See the Attorney General's Sunshine Committee webpage for the most up-to-date list of public disclosure exemptions. It is created annually by the Code Reviser's Office.

Selected Federal Confidentiality Statutes and Rules

MRSC will periodically update this list. The date of the last update is reflected in the cover.

18 U.S.C. § 2721 - 2725	Driver and License Plate Information
18 U.S.C. § 923(g); Public Law 112-55, div. B, title II, 125 STAT. 609	"Tiahrt Amendment" – Firearms trace data provided to local law enforcement by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
20 U.S.C. § 1232g	Family Education Rights and Privacy Act
23 U.S.C. § 407	Evidence of certain accident reports
42 U.S.C. § 290dd-2	Confidentiality of Substance Abuse Records
42 U.S.C. § 405(c)(2)(C)(viii) (I)	Limits on Use and Disclosure of Social Security Numbers
42 U.S.C. § 654(26)	State Plans for Child Support
42 U.S.C. § 671(a)(8)	State Plans for Foster Care and Adoption Assistance
42 U.S.C. § 1396a(7)	State Plans for Medical Assistance
42 U.S.C. § 5106a	Grants to States for Child Abuse and Neglect Prevention and Treatment Programs
7 C.F.R. § 272.1(c)	Food Stamp Applicants and Recipients
34 C.F.R. § 361.38	State Vocational Rehabilitation Services Programs
42 C.F.R. Part 2 (2.1 - 2.67)	Confidentiality of Alcohol and Drug Abuse Patient Records
42 C.F.R. § 431.300 - 307	Safeguarding Information on Applicants and Recipients of Medical Assistance
42 C.F.R. § 483.420	Client Protections for Intermediate Care Facilities for Individuals with Intellectual Disabilities
45 C.F.R. § 160-164	HIPAA Privacy Rule

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Other Potential Federal Confidentiality Statutes and Rules. Note that these provisions have not been fully analyzed in the context of Washington's Public Records Act.

Citation	Summary
5 U.S.C. § 552a	*Privacy Act of 1974* – Applies if a local government operates a federally funded program or receives federal records; limits use and disclosure of personal data.
26 U.S.C. § 6103	Prohibits local governments from disclosing federal tax return information unless expressly authorized.
38 U.S.C. § 7332	Applies if local governments work with VA health programs; requires consent before releasing records related to substance use, HIV, or sickle cell.
42 U.S.C. § 241(d)	*Certificates of Confidentiality* – Researchers at the local level receiving federal funds may protect identifiable research participant data from forced disclosure.
21 C.F.R. Part 21	FDA's rules on privacy under the Privacy Act; applies if local governments work with or receive regulated medical product data.
CIPSEA (Title V, EGov Act of 2002)	Protects the confidentiality of statistical data collected under federal authority; relevant to local governments involved in federal data collection.
Cybersecurity Information Sharing Act of 2015	Requires privacy protections when local governments participate in federal cybersecurity threat-sharing activities.

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