



# Public Records Act

for Washington Cities,  
Counties, and Special  
Purpose Districts

Last Updated:  
**March 2019**

## Revision History

### March 2019

- **Exemptions and Prohibitions:** Updated list of common prohibitions and exemptions relevant to local governments outside the PRA
- **Appendix A:** Added PRA related online resources
- **Appendix C:** Updated lists of state and federal exemptions and prohibition statutes not listed in the PRA

## Public Records Act

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## Foreword

Because the legislature routinely updates the Public Records Act statutes, and because the courts issue many decisions each year interpreting the statutes, MRSC has chosen to update this publication as needed. The electronic version available here is our latest version. If you like to use a printed copy, we recommend that you print a new copy periodically, so that you have the benefit of the most recent updates.

Washington's public disclosure laws apply to all Washington governments, including counties, cities, towns, and special purpose districts. We first produced this publication in 1996 due to the large volume of inquiries that the Municipal Research and Services Center (MRSC) received over the years concerning public disclosure. Since that time, numerous exemptions have been added to the public disclosure statutes and the courts have issued many decisions which affect the application of the statutes. We updated this publication in 2004 to reflect those changes.

Effective July 1, 2006 almost all of the public records disclosure statutes, now called the Public Records Act, were recodified, necessitating another revision of this publication in 2006. The disclosure statutes used to be codified in chapter 42.17 RCW, but were recodified to a new chapter 42.56 RCW. Conversion tables for the statutes are in Appendix B of this publication and will help you understand references to the statutory numbering you might come across in earlier court decisions and other documents discussing the public records laws. Also included in the conversion tables, and in the main text of this publication, are citations to the Public Records Act Model Rules (which now include rules specifically related to electronic records). Those Model Rules are located in chapter 44-14 of the Washington Administrative Code.

This material is intended for use by local government employees and officials, and we have presented it in a format that we hope will be easy to use and understand. For further research, we have provided the reader with footnotes and appendices.

Special acknowledgment is given to Jim Doherty, Legal Consultant, who prepared the original publication and oversaw this revision.



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## Introduction

In 1972 the voters in state of Washington adopted Initiative 276, which required that most records maintained by state, county, and city governments be made available to members of the public. The public disclosure statutes have been frequently revised over the past three decades. The latest revision of the disclosure statutes are found in [chapter 42.56 RCW](#), and are referred to as the **Public Records Act**.<sup>1</sup> Although the public records disclosure statutes do not apply to judicial records (case files),<sup>2</sup> the legislature has specifically extended their coverage to state legislative records.<sup>3</sup> In addition, the public records disclosure statutes apply equally to “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.”<sup>4</sup> This publication will refer to these units of government collectively as “local government” or “local agency.”

This publication discusses all of the statutory disclosure exemptions which are relevant to local governments, as well as the mandatory procedures for responding to a public records disclosure request. Throughout the text are questions and answers relating to diverse public disclosure issues; they reflect the broad range of public dis-

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<sup>1</sup>See [RCW 42.56.020](#).

<sup>2</sup>See *Nast v. Michels*, 107 Wn.2d 300 (1986) (holding that the Public Disclosure Act did not provide access to court case files, instead, the public disclosure of court case files is governed by other Washington statutes and past court decisions, i.e., common law); accord *Beuhler v. Small*, 115 Wn. App. 914, 918 (2003) (finding that the trial court properly concluded that the PDA did not grant the plaintiff a right to access a judge’s computer files); see also, *In re Personal Restraint of Gentry*, 137 Wn.2d 378, 389–90 (1999) (holding that under GR 15(c)(2)(B), case records would not be sealed from the public, because the defendant’s right to a fair trial was not imperiled nor was sealing the motions necessary to prevent a serious and imminent threat to any compelling interest). Also see *Dreiling v. Jain*, 151 Wn.2d 900 (2004) and [WAC 44-14-01001](#) and *Spokane & E. Lawyer v. Tompkins*, 136 Wn. App. 616 (2007) and [WAC 44-14-01001](#). On 10/15/2009 the Washington Supreme Court upheld the *Nast* decision in *City of Federal Way v. Koenig*.

<sup>3</sup>[RCW 42.56.010\(2\)](#).

<sup>4</sup>*Telford v. Thurston County Bd. of Comm’rs*, 95 Wn. App. 149, 152 (1999), review denied 138 Wn.2d 1015 (1999). In determining whether an organization is a public agency under the PDA, the appeals court has adopted a four factor balancing test: “The factors are: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government.” See also Michael R. Kenyon and Stephen R. King, “Government Contractors and the Washington Public Disclosure Act: When Private Documents Become Public Records,” *Legal Notes Information Bulletin No. 509* (2001) (analysis of public agency determinations). See also [WAC 44-14-01001](#).

closure questions answered by MRSC over the years. Because this publication is directed toward a wide audience of local government officials and employees, many of the citations to legal authority are located in the footnotes, rather than in the body of the text.

Appendix A has sample local government policies, ordinances, and forms related to public disclosure. Appendix B has the RCW conversion tables that will assist with the 2006 statutory renumbering (included with the conversion tables are citations to the corresponding sections of the Public Records Act Model Rules). Appendix C is a list of state laws, other than those in [chapter 42.56 RCW](#), affecting confidentiality and disclosure of public records.

Do not be surprised if you have a public disclosure question which is not discussed in this publication. Disclosure issues are almost as numerous as the public records in your custody. MRSC also has helpful Public Records Act information on our website, including:

- [Public Records Act Court Decision](#),
- OPMA and [PRA Practice Tips and Checklists](#).

If you need additional assistance when analyzing disclosure questions, please contact your legal counsel or MRSC.

**Question:** Does the federal Freedom of Information Act govern public access to any local government records?

**Answer:** No. The federal Freedom of Information Act applies only to federal agencies and the records maintained by those agencies. However, state courts will, in appropriate situations, look to the federal Freedom of Information Act and case law interpreting that act when interpreting similar provisions in the state public disclosure statutes.<sup>5</sup>

## Concerning the Public Records Act Model Rules

In 2005, the state legislature directed the Attorney General to adopt advisory “model rules” for state and local agencies.<sup>6</sup> These Model Rules are now published in the Washington Administrative Code at [chapter 44-14](#). Though the current version of the Model Rules deals mostly with disclosure procedures, there are instructive comments regarding some specific disclosure exemptions, such as the right to privacy, the attorney-client privilege, and the deliberative process exemption. The legislature granted the Attorney General the discretion to periodically revise the Model Rules.

*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 WAC sections quoted below are taken from the “Introductory Comments” to the Model Rules, and provide some explanation for their purpose and role.

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<sup>5</sup>*Servais v. Port of Bellingham*, 127 Wn.2d 820, 835 (1995); see also *PAWS v. UW*, 125 Wn.2d 243, 265 (1994).

<sup>6</sup>RCW 42.56.570.

**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 44-14-00002 - Format of model rules.**

We are publishing the model rules with comments. The comments have five-digit WAC numbers such as WAS 44-14-04001. The model rules themselves have three-digit WAC numbers such as 44-14-040.

The comments are designed to explain the basis and rationale for the rules themselves as well as to provide broader context and legal guidance. . . .

**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.

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.

## **Public Records Exemption Accountability Committee**

In 2007 the legislature created a public records exemption accountability committee.<sup>7</sup> This broad-based group is charged with reviewing the existing exemptions and annually submitting their recommendations to the governor, attorney general, and to the appropriate committees of the house of representatives and the senate.

## Government Records: Local Government's Duty to Provide Access

Local government agencies are required, within five days of receiving a public disclosure request, to respond by (1) providing the requested record; (2) providing an internet address and link on the agency's website to the specific records requested, except that if the requestor notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requestor to view copies using an agency computer; (3) acknowledging receipt of the request and providing a reasonable estimate of the time required to fill the request; or (4) denying the request.<sup>8</sup> Given limited budgets and staff, local agencies tend to have all available resources invested in day-to-day running of the agency. Requests for disclosure of public records often occur at inconveniently busy times. Despite the extra burden that disclosure requests place on busy agency staff, every government official and employee should be reminded of the strongly-worded language that was incorporated into the public disclosure act:

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.<sup>9</sup>

When passed in 1972, Initiative 276 contained a similar public policy statement:

It is hereby declared by the sovereign people to be the public policy of the state of Washington: . . . (11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on

every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.<sup>10</sup>

Both the state legislature and the voters of Washington are clear about their position on public disclosure: the citizens of this state have a right to know almost all of the details of how local and state governments are run. The courts have enforced this policy by liberally construing the Act's disclosure provisions and narrowly construing its exemptions.<sup>11</sup>

Working for local government is like working inside a goldfish bowl. Almost everything is open to public scrutiny. It is the duty of agency staff to respond to public disclosure requests efficiently and graciously since the public is not only your client, but also your employer. Although agency staff may become annoyed at a disclosure request because of the time it takes to locate records, or because the records may disclose a mistake or improper action, the following statutory provision should serve as a reminder of the importance of open government:

Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials and others.<sup>12</sup>

From a practical standpoint, dealing with requests in a responsive and courteous manner minimizes public distrust of government, thus preventing a public disclosure request from escalating into an expensive and time consuming legal event.

**Question:** Must the city disclose a letter of resignation from a disgruntled employee when the letter consists of a rambling tirade in which the employee criticizes his supervisor, the mayor and the council for a number of decisions?

**Answer:** The letter must be disclosed. The city may redact from the letter only information which is covered by a specific statutory exemption.

## Acting in Good Faith – Disclosing a Record in Error

All requests for public records must be examined carefully, and all requested records must be provided except for those records which are clearly exempt from disclosure. A court will look favorably on a good faith attempt to comply with the public disclosure act if an employee discloses a public record, and later analysis or court decision shows it should not have been disclosed. In such a circumstance, a local government may be immune from liability:

No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.<sup>13</sup>

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<sup>10</sup>RCW 42.17.010.

<sup>11</sup>*Limstrom v. Ladenburg*, 136 Wn.2d 595, 604 (1998) (citing RCW 42.17.251).

<sup>12</sup>RCW 42.56.550(3).

<sup>13</sup>RCW 42.56.060.

In order to act *in good faith*, local government employees and officials making disclosure decisions must be familiar with the public disclosure requirements and the many exemptions contained in the statutes.

## Acting in Good Faith – Penalties, Attorney’s Fees, and Costs

Acting in “good faith” will not absolve an agency from the imposition of court costs, attorney fees, and potential penalties for erroneously withholding public records, but can be taken into consideration by a judge when determining the amount of penalties. RCW 42.56.550(4) provides:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an 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.

Note that prior to July of 2011 the above statute required that the minimum penalty for wrongfully withholding a record was \$5 per day. Many of the court decisions dealing with penalties stressed that mandatory provision. Keep that statutory amendment in mind if you review prior court decisions or articles dealing with PRA penalties.

Legal advice should be sought in situations where statutory requirements seem unclear. Fortunately, court decisions and attorney general opinions are available for guidance in this complex field. The Public Records Act statutes, along with the Open Public Meetings Act,<sup>18</sup> provide the foundation for open government. Such openness encourages public participation and awareness, and helps dispel fears that local governments are not responsible or responsive to the people.

### **Question:** Must local government agencies disclose copies of their bank records?

**Answer:** Yes. Bank records concern public funds and should be disclosed upon request. There is one exception: If the agency’s bank accounts are kept in such a way that disclosure of a particular account record would reveal exempt tax information, then that data should not be disclosed. For instance, if a jurisdiction has only two or three motels, disclosure of hotel/motel tax revenue could enable a person to estimate the income of a particular taxpayer.

## What Are Public Records?

A “public record” is defined 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.<sup>14</sup>

“Writing” is also defined in the disclosure statutes:

“Writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.<sup>15</sup>

Whether private business records can relate to “conduct of government” has not been addressed by Washington courts.<sup>16</sup> However, the Washington Supreme Court has held that where “records relate to the conduct of . . . [a public agency] . . . and to its governmental function. . . . [T]he records are ‘public records’ within the scope of the public records act.”<sup>17</sup>

Local governments are not required to create documents in order to comply with a request for specific information.<sup>18</sup> Rather, they must produce existing records for review and copying. Also, local governments are not obligated to compile information from various records so that information is in a form that is more useful to the requestor. For example, if someone wants records concerning the time it took the city fire department to respond to residential fires occurring between midnight and 6:00 a.m. over a two-year period,

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<sup>18</sup>Citizens for Fair Share, 117 Wn. App. at 435 (citing *Smith v. Okanogan County*, 100 Wn. App. 7, 13–14 (2000)). See also [WAC 44-14-04003\(6\)](#).

the city only needs to provide copies of existing records.<sup>19</sup> City employees are not required to do research for private individuals.<sup>20</sup>

**Question:** Is the city clerk required to provide information over the phone to a newspaper reporter who is asking “what occurred at the council meeting last night?”

**Answer:** This is not a public disclosure request, because the caller is not asking to review or copy a public record. There is no legal obligation to provide oral information concerning what occurred at the meeting. However, the reporter may request a copy of the minutes of the meeting after they are prepared. It is an administrative decision whether city staff should answer oral requests for non-record information. See also [WAC 44-14-04002\(2\)](#).

## Electronic Data and Records

Increasing amounts of public information are now contained in electronic format, rather than on paper. Public disclosure laws apply to electronic data.<sup>21</sup> The state legislature formed a Public Information Access Policy Task Force in 1994 to examine the issue of providing broad public access to government records by electronic means. After reviewing the recommendations of the task force, the legislature passed legislation strongly encouraging expansion of electronic access to public records:

Broad public access to state and local government records and information has potential for expanding citizen access to that information and for improving government services. Electronic methods for locating and transferring information can improve linkages between and among citizens, organizations, businesses, and governments. Information must be managed with great care to meet the objectives of citizens and their governments.

It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public.<sup>22</sup>

E-mail in particular has been the topic of many questions regarding public records. According to the State Archivist, who is responsible for creating public record retention guidelines,

Individual E-mail messages may be public records with legally mandated retention requirements, or may be information with no retention value. E-mail messages are public records when they are created or received in the transaction of public business and re-

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<sup>19</sup>*Smith*, 100 Wn. App. at 18.

<sup>20</sup>*Bonamy v. City of Seattle*, 92 Wn. App. 403, 409 (1993).

<sup>21</sup>See Isabel R. Safora, “Municipal Policies on Internet Usage & E-mail Document Retention,” Legal Notes Information Bulletin No. 497, §§ VI–VII (1997) (discussing application of the PDA to e-mail and retention).

<sup>22</sup>[RCW 43.105.250](#).

tained as evidence of official policies, actions, decisions, or transactions. Such messages must be identified, filed, and retained just like records in other formats.<sup>23</sup>

For guidance, the State Archivist lists the following e-mail messages that are usually public records and must be retained:

- Policy and procedure directives.
- Correspondence or memoranda related to official public business.
- Agendas and minutes of meetings.
- Documents relating to legal or audit issues.
- Messages which document agency actions, decisions, operations and responsibilities.
- Documents that initiate, authorize or complete a business transaction.
- Drafts of documents that are circulated for comment or approval.
- Final reports or recommendations.
- Appointment calendars.
- E-mail distribution lists.
- Routine information requests.
- Other messages sent or received that relate to the transaction of local government business.<sup>24</sup>

Conversely, the State Archivist lists the following e-mail messages which are usually administrative materials with no retention value:

- Information-only copies, or extracts of documents distributed for reference or convenience, such as announcements or bulletins.
- Phone message slips that do not contain information that may constitute a public record.
- Copies of published materials.
- Informational copies.
- Preliminary drafts.
- Routing slips.<sup>25</sup>

Additional information and guidance for determining whether e-mail is a public record can be found in *Records Management Guidelines for All Local Government Agencies*, a publication by the State Archives Division of the Washington Secretary of State, and available online at <http://www.secstate.wa.gov/archives/gs.aspx>.

The Model Rules have been amended to include a section on electronic records. See WAC 44-14-050, and the comments to that provision found at WAC 44-14-05001 through WAC 44-14-05005. We recommend that you read those provisions carefully. The same basic requirements for responding to paper records also apply to electronic records.

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<sup>23</sup>Wash. Secretary of State, *Local Government Agencies of Washington State: Records Management Guidelines*, p. S-62, updated 1/05, available at <http://www.secstate.wa.gov/archives/gs.aspx>.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

# Determining What Must Be Disclosed Under the Public Records Act

There are three questions a local agency must consider when responding to a request for disclosure. First, are the requested records exempt from disclosure or prohibited from being disclosed? Second, if they are exempt, can information be deleted from the record so it might still be released? Third, if the records are not exempt, should information be deleted that would constitute an unreasonable invasion of privacy if disclosed?

## Specific Exemptions and Prohibitions

All agency records are available for review by the public unless they are specifically exempted<sup>26</sup> or prohibited from disclosure by the statutes. If no statutory exemption or prohibition covers the requested record, it must be disclosed.<sup>27</sup> This section discusses exemptions listed in RCW 42.56.230 through 42.56.480. However, there are numerous other exemptions and disclosure prohibitions located elsewhere in the statutes that are relevant for local governments. Appendix C of this publication contains a listing of the many disclosure exemptions and prohibitions that are not located in the Public Records Act (chapter 42.56 RCW). Some of those additional exemptions and prohibitions are discussed in chapter 5 of this publication.

The public disclosure act provides that exemptions are to be narrowly construed; consequently, the courts have consistently ruled that only information specifically exempted can be withheld from public disclosure.<sup>28</sup>

**Note:** If, after reviewing the statutes, you are unsure whether a document meets the exemption criteria, consult with your department head or legal counsel.

The italicized statutory sections below are taken directly from the statutes and pertain to local governments. The records designated below are exempt from disclosure.

### **RCW 42.56.230 Personal information.**

*The following personal information is exempt from public inspection and copying under this chapter:*

- (1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.*
- (2) Personal information, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care*

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<sup>26</sup>Exemptions are permissive, not mandatory. WAC 44-14-06002(1) and AGO 1980 No. 1.

<sup>27</sup>RCW 42.56.070; see also PAWS, 125 Wn.2d at 257-61.

<sup>28</sup>RCW 42.56.030; *Brouillet v. Cowles Pub.*, 114 Wn.2d 788, 793 (1990). (“The public disclosure act mandates disclosure of all public records not falling under specific exemptions delineated in the act. In keeping with the act’s policy, we construe exemptions from mandatory disclosure narrowly.”)

# 4

## CHAPTER FOUR

*services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;*

This exemption, which became effective in January 2012, applies to contact information for minors who may be participating in programs offered by local government agencies. In the past such information (except for social security numbers) had to be disclosed.

*(3) 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.*

This “personal information” exemption concerns personnel files. Since some of the information in employee personnel files may be protected by the employee’s right to privacy, careful scrutiny should precede any decision to disclose those records. Files of retired employees are also covered by this provision.<sup>29</sup> Additional analysis of personnel records disclosure and right to privacy issues are found later in this chapter and in chapter 7.

**Question:** Must a local agency disclose, upon request, copies of phone bills, which contain unlisted phone numbers placed on the bills as a result of personal calls made by local agency employees?

**Answer:** Yes. No exemption applies. The phone calls may be personal or private, but because billing records of the calls are not part of the employees’ personnel files, neither [RCW 42.56.230](#) or [42.56.250\(3\)](#) apply. This is the case even if the phone bills include unlisted phone numbers of local agency employees. Many cities and counties allow employees to make personal calls from their work phones, but there is no exemption which allows the local governments to delete unlisted numbers from their phone bills. If a city or county employee wishes to maintain confidentiality of an unlisted phone number, calls to that number should not be made

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<sup>29</sup>*Seattle Fire Fighters v. Hollister*, 48 Wn. App. 129, at 134 (1987).

from their work phone phone.

*(4) 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 (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.*

Agencies should be very cautious about the release of any *taxpayer* information. This exemption does not prohibit disclosure of basic tax information such as the totals of various tax revenues; it only prohibits disclosure of information which can be identified with a particular taxpayer.

*(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by government or other law.*

### **RCW 42.56.240 Investigative, law enforcement, and crime victims.**

*The following investigative, law enforcement, and crime victim information is exempt from public disclosure and copying under this chapter:*

*(1) 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 to effective law enforcement or for the protection of any person's right to privacy;*

The Washington Supreme Court has held that an active police investigation file, in its entirety, is exempt from disclosure under the Act's "effective law enforcement" exemption, unless the law enforcement agency decides that specific information is not essential to solving the case.<sup>30</sup> The court will not second guess a law enforcement agency's decision not to disclose information contained in an open investigation file. This effectively bars challenges to law enforcement agency disclosure determinations with respect to such materials. Some factors the prosecutor should consider include whether disclosure might inadvertently compromise apprehension of a suspect, divulge sophisticated police investigative techniques, or disrupt the sharing of information between law enforcement agencies.<sup>31</sup>

However, if a suspect has already been arrested and the matter referred to the prosecutor for a charging decision, information contained in the investigative file is disclosable unless disclosure would impede effective law enforcement. Under these circumstances, the court is more willing to look at what should be disclosed to the public.

As with any disclosable record, information concerning sexual offenses, some health matters, and certain other private details can be deleted when disclosing police investigation reports in order

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<sup>30</sup>*Newman v. King County*, 133 Wn.2d 565, 574 (1997).

<sup>31</sup>*Cowles Pub. Co. v. Spokane Police Dept., City of Spokane*, 139 Wn.2d 472, 478 (1999).

to protect a person's right to privacy. See the information concerning redaction later in this chapter.

*(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;*

The exemption listed here, allows agencies to delete details from police investigation reports which identify witnesses or victims of crimes, but only if disclosure would endanger any person's life, physical safety, or property.

*(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);*

*(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies, and*

The above exemption refers to concealed pistol licenses.

*(5) Information revealing the identity of child victims of sexual assault who are under the age of eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.<sup>32</sup>*

The intent of this exemption is to allow witnesses and victims of crimes to make statements to police officers without fear that their identity will be made available to the public. A related statute, RCW 10.97.130, prohibits the release of the names of juveniles who are victims of sex crimes.

### **RCW 42.56.250 Employment and licensing.**

The following employment and licensing information is exempt from public inspection and copying under this chapter:

*(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;*

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<sup>32</sup>See *Koenig v. City of Des Moines*, 158 Wn.2d 173.

This exemption enables local governments to keep private their employment testing materials, questions and answers. This is crucial for local governments which use standardized tests for civil service or other city recruitment.

*(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;*

This exemption enables individuals to apply for local government employment without worrying about disclosure of their application, or of the fact that they are seeking 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 broad wording of this exemption appears to cover not only resumes or application materials of current job applicants, but also such materials submitted to the local government in connection with current or past local government employees. There is no case law confirming whether the exemption should be interpreted so expansively. If the resume and other materials are in a current employee's personnel file, [RCW 42.56.230\(2\)](#) would also apply. However, it would be rare that the "right to privacy" protection of that subsection would apply to the types of information typically contained in resumes and related documents.

This statutory section also protects from disclosure employment application records which contain information submitted to a local government by prior employers in response to requests for information about an applicant.<sup>33</sup>

**Question:** If requested, must a local government disclose a record containing the names of those who have notified the local government that they would like to be considered for appointment to a vacant council position?

**Answer:** The names should probably be disclosed. The individuals are not applying for "local government employment" as that would normally be understood.

*(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in [RCW 74.39A.240](#);*

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<sup>33</sup>See [RCW 4.24.730](#), enacted in 2005, regarding an employee's or former employee's right to inspect written records of their employer or former employer indicating to which prospective employers they have provided employment information.

This is the only disclosure exemption specifically referring to individuals who are working with the local government in a volunteer capacity. It is conceivable that a court interpreting other disclosure statutes, that are applicable to records relating to employees, might apply those statutes to volunteers.

*(4) Information which identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed;*

*(5) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment; and*

*(6) [This subsection is not relevant for local government agencies.]*

#### **RCW 42.56.260 Real estate appraisals.**

*Except as is provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale relates is sold, are exempt from disclosure under this chapter. In no event shall disclosure be denied for more than three years after the appraisal.*

This exemption allows local governments to keep appraisal information away from public scrutiny while negotiating a potential purchase or sale. Local government legislative bodies may review and discuss confidential appraisal information in an executive session,<sup>34</sup> and the councilmembers or commissioners are prohibited from disclosing that information.<sup>35</sup>

#### **RCW 42.56.270 Financial, commercial, and proprietary information.**

*The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:*

*(1) 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 one, the Washington Supreme Court found that the cash flow analysis of port properties prepared for a port's sole use in negotiations with

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<sup>34</sup>RCW 42.30.110(1)(b), (c).

<sup>35</sup>RCW 42.23.070(4).

prospective joint venture partners was within the research data exemption.<sup>36</sup> In another case, the court found that a university's research data relating to intellectual property was exempt from disclosure.<sup>37</sup> In both decisions, the requesting party was denied his public disclosure request, because he would have profited and the government would have incurred a loss.

By contrast, in a court of appeals decision the court 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.<sup>38</sup> The city was unable to show a public loss resulting from the disclosure of the requested research.

MRSC has been asked whether this exemption applies to blueprints or other architectural drawings submitted to a city's building department for review. It is doubtful that the exemption would often apply, because disclosure would not necessarily cause both "private gain and public loss." Also, even though the person who submitted the materials has a copyright interest in the documents, disclosure is not automatically prohibited. A court has held that an individual with a copyright interest in public records is not an indispensable party in an action to compel disclosure, and those requesting copies of the materials may be entitled to the records if the facts meet the "fair use doctrine."<sup>39</sup> Consequently, MRSC has recommended that when there is a disclosure request for these types of materials, the agency should immediately notify the person who submitted the documents or architectural drawings to allow the person with a copyright interest the option of seeking a court order prohibiting disclosure.<sup>40</sup>

In connection with the public bidding process, local governments often obtain information which bidders would not voluntarily divulge to their competitors. Such information may be exempt, if the "public loss" factor can be met.<sup>41</sup> In any event, it would be wise to promptly notify a bidder if the city receives a request for such records.

[The exemptions listed in subsections 2 through 11 of RCW 42.56.270 have limited applicability to local government records.]

### **RCW 42.56.280 Preliminary drafts, notes, recommendations, intra-agency memorandums.**<sup>42</sup>

*Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter,*

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<sup>36</sup>*Servais v. Port of Bellingham*, 127 Wn.2d 820 (1995).

<sup>37</sup>PAWS, 125 Wn.2d at 243.

<sup>38</sup>*Spokane Research & Defense Fund v. City of Spokane*, 96 Wn. App. 568, 575-77 (1999), rev. denied, 140 Wn.2d 1001 (2000).

<sup>39</sup>*Lindberg v. County of Kitsap*, 133 Wn.2d 729, 745 (1997) (holding that "[a] copyright interest in the documents does not of itself make the owner an indispensable party to a lawsuit demanding under a public disclosure statute the right to have copies or to make copies of them").

<sup>40</sup>The procedure for such court review is outlined in RCW 42.17.540.

<sup>41</sup>See generally, Rocco N. Treppiedi, "Disclosing Proprietary Information Obtained in Competitive Bidding," Legal Notes Information Bulletin No. 432 (1985); Kyle J. Crews, "Second Update on Public Disclosure, Public Bidding Documents," Legal Notes Information Bulletin No. 491 (1995).

<sup>42</sup>See WAC 44-14-06002(4) in the Model Rules for comments on this "deliberative process" exemption.

*except that a specific record shall not be exempt when publicly cited by an agency in connection with any given action.*

This exemption applies to records connected with the deliberative process. Only records containing opinions or recommendations are exempt. Factual materials which are being considered as background material on a particular issue or problem are not exempt. For example, if a city treasurer or finance officer prepares a financial report for the mayor detailing the status of the city's expenditures for the current budget year, that document is not exempt from disclosure. Conversely, if that report contains recommendations for fiscal policy changes, any portions containing the recommendations would be exempt from disclosure. Also, memos concerning possible fiscal policy changes written between a mayor, finance officer, or department heads are exempt. This exemption does not apply after the policies or recommendations set forth in the requested document(s) have been implemented.<sup>43</sup>

The Washington Supreme Court has determined that before an agency is entitled to rely on this exemption, it must show (1) that the records contain pre-decisional opinions or recommendations of subordinates expressed as part of a deliberative process; (2) that disclosure would be injurious to the deliberative or consultative function of the process; (3) that disclosure would inhibit the flow of recommendations, observations, and opinions; and (4) that the materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on which a decision is based.<sup>44</sup>

A subsequently decided case has discussed how this “deliberative process” exemption would apply to a preliminary list of issues to be addressed in collective bargaining negotiations.<sup>45</sup>

**Question:** Are a clerk's handwritten notes, which are used to prepare the formal council minutes, exempt from disclosure? How about unapproved drafts of the minutes?

**Answer:** Neither are exempt. The clerk is merely making notes of what is said and done by the council at an open, public meeting. We recommend that any preliminary drafts of council minutes which are provided to the public be clearly labeled as preliminary drafts.

**RCW 42.56.290 Agency party to controversy.<sup>46</sup>**

*Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior court are exempt from disclosure under this chapter.*

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<sup>43</sup>Dawson, 120 Wn.2d at 793.

<sup>44</sup>PAWS, 125 Wn.2d at 256.

<sup>45</sup>*ACLU v. City of Seattle*, 121 Wn. App. 544 (2004), and the subsequent unreported decision with the same name, decided by the Court of Appeals on 7/20/2009.

<sup>46</sup>See WAC 44-14-06002(3) in the Model Rules for comments on the attorney-client privilege.

This exemption concerns attorney work product. The term “controversy” refers to pending litigation, threatened litigation, and completed litigation.<sup>47</sup> Whenever a local government is involved in a current or potential legal controversy, disclosure of any related documents should be discussed and reviewed carefully with the local government attorney.

Some attorneys provide detailed billing statements that may include entries that show an attorney’s “work product” or litigation strategy. The legislature adopted an “intent” statute providing guidance on billing statements sent to public agencies by their legal counsel, whether in-house or not – see RCW 42.56.904.<sup>48</sup>

The Attorney General has posted a “guidance document” concerning the attorney-client privilege and the work product doctrine on the Attorney General’s web page dealing with the Model Rules – see [www.atg.wa.gov/records/modelrules](http://www.atg.wa.gov/records/modelrules).

**Question:** Must a local government disclose a “separation agreement” entered into with an employee in order 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.)

**Answer:** 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. Furthermore, the public has a legitimate interest in the details of a settlement agreement involving the government’s conduct of its affairs and the expenditure of public funds.<sup>49</sup>

### **RCW 42.56.300 Archeological sites.**

*Records, maps or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites are exempt from disclosure under this chapter.*

### **RCW 42.56.310 Library records.**

*Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter.*

### **RCW 42.56.320 Educational information.** [Not relevant for cities and counties.]

### **RCW 42.56.330 Public utilities and transportation.**

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<sup>47</sup>Dawson, 120 Wn.2d at 791; see also *O’Connor v. Wash. State Dept. of Social & Health Services*, 143 Wn.2d 895, 912 (2001) (holding that records relevant to a controversy to which an agency is a party are exempt if those records would not be available to another party under superior court rules of pretrial discovery).

<sup>48</sup>See also, *West v. Thurston County*, 144 Wn. App. 573 (2008) and *Yakima County v. Herald-Republic*, 170 Wn.2d 775 (2011).

<sup>49</sup>See *Yakima Newspapers v. Yakima*, 77 Wn. App. 319 (1995).

The following information relating to public utilities and transportation is exempt from disclosure under this chapter: [Subsection (1) is not relevant for local government agencies.]

(2) *The residential addresses and, 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.*

**Question:** Must the city disclose the amount owed by a utility customer, and whether the account is delinquent or not?

**Answer:** Yes. Records showing the amount owed by a utility customer, and whether the account is delinquent must be produced in response to a public records request; however, customer-specific utility usage and billing information in increments less than a billing cycle is exempt. As well, the customer's residential address, phone numbers and email address are also exempt.

**Question:** Would the [RCW 42.56.330](#) exemption prohibit a city from providing a mailing list of its utility customers to the directly adjacent city? (The neighboring city is going to be undertaking some major utility construction which will temporarily impact utility customers in the other city. It wants to mail out notices to the impacted residents of that city.)

**Answer:** This is not a request for public disclosure, but disclosure to another municipality. Consequently, there is no statutory reason to prevent one city from providing this information to another city.

(3) *The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or services; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;*

(4) *The personally identifying information or current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;*

(5) *The personally identifying information of persons who acquire and use transit passes ...;*

(6) [Deals with motor carrier intelligent transportation system information - not relevant for local government agencies.]

*(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls ....*

**RCW 42.56.335 Public utility districts and municipally owned utilities – Restrictions on access by law enforcement authorities.**

The above subsection concerns police agencies' inspection of electrical consumption records that might indicate a drug growing operation in a particular residence or structure.

**RCW 42.56.340 Timeshare, condominium, etc. owner lists.**

This exemption relates to information held by the state department of licensing.

**RCW 42.56.350 Health professionals.**

This exemption deals with information about health care professionals held by the state department of health.

**RCW 42.56.360 Health care.**

*(1) The following health care information is exempt from disclosure under this chapter:*

[Subsections (a) through (e) and (g) deal with information held by the state board of health or state board of pharmacy, and are not relevant for local governments.]

*(f) Except for published statistical compilations and reports relating to infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170. . . .*

*(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.*

**RCW 42.56.370 Domestic Violence Program, rape crisis center clients.**

*Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030 are exempt from disclosure under this chapter.*

**RCW 42.56.380 Agriculture and livestock.**

This exemption deals with information held by state agencies, not local governments.

**RCW 42.56.390 Emergency or transitional housing.**

*Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor to substantiate a claim for property tax exemption under RCW 84.36.043 are exempt from disclosure under this chapter.*

**RCW 42.56.400 Insurance and financial institutions.**

This exemption concerns records held by state agencies, not local governments.

**RCW 42.56.410 Employment security department records.**

*Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter.*

**RCW 42.56.420 Security.**

The following information relating to security is exempt from disclosure under this chapter:

*(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:*

*(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and*

*(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.*

*(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety;*

*(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;*

*(4) Information regarding the 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*

*(5) The security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180.*

**RCW 42.56.430 Fish and wildlife.**

This exemption mostly concerns records held by state agencies and is not relevant for local governments, except for subsection (2), dealing with information regarding sensitive wildlife data, such as data concerning the nesting sites of endangered species, or information concerning species that are threatened but have a commercial or black market value.

**RCW 42.56.440 Veterans' discharge papers – Exceptions.**

County auditors dealing with veterans' discharge papers need to read this statute carefully.

**RCW 42.56.450 Check cashers and sellers licensing applications.**

This exemption deals with records held by the state director of financial institutions and is not relevant for local governments.

**RCW 42.56.460 Fireworks.**

*All records obtained and all reports produced as required by state fireworks law, chapter 70.77 RCW, are exempt from disclosure under this chapter.*

**RCW 42.56.470 Correctional industries workers.**

This exemption is not relevant for local governments.

**RCW 42.56.480 Inactive programs.**

This exemption is not relevant for local governments.

## **Exempt Records and Redaction**

The preceding section looked at specific records that are exempt from disclosure. Once a record is found to be exempt, the local agency must determine whether personal information can be deleted from the exempt record so that it might still be released.

The requirement that exempt material be deleted and the rest of the record disclosed, is sometimes referred to as *redaction*.<sup>50</sup> This section deals only with redaction pertaining to the exemptions listed in the Public Records Act.

Having determined that a record is exempt from disclosure under the Public Records Act, RCW 42.56.210(1) provides that “the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate *personal privacy* or *vital government interests*, can be deleted from the specific record sought (emphasis added).” Therefore, exemptions will not bar disclosure of records, where the local agency can delete information that would violate (1) personal privacy or (2) vital government interests.

### 1. Redacting Information, Disclosure of Which Would Violate Personal Privacy

The terms “right to privacy,” “right of privacy,” “privacy,” or “personal privacy,” are found throughout the Public Records Act.<sup>51</sup> In 1978 the state supreme court defined the right to privacy in Washington to be coincident with the common law:

One who gives publicity to a matter concerning the private life of another is subject to liability if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.<sup>52</sup>

The court cited the following explanation as illustrative of the type of facts protected by 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 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. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.<sup>53</sup>

In 1987 the legislature adopted this statement of the law, and it is now codified as RCW 42.56.050:

A person’s “right to privacy” . . . is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

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<sup>50</sup>The Model Rules discuss redaction at WAC 44-14-04004(b)(i).

<sup>51</sup>There is no general “privacy” exemption. See WAC 44-14-06002(2).

<sup>52</sup>Hearst v. Hoppe, 90 Wn.2d 123, 135-36 (1978) (adopting Restatement (Second) of Torts § 652D, at 383 (1977)).

<sup>53</sup>Hearst, 90 Wn.2d at 136.

Both the “offensiveness” and “legitimate concern” elements must be met before information may be redacted from a record.

The Washington courts have applied this rule on several occasions. In one case the court held that “under Washington’s public records act, the names of police officers, without simultaneous release of other identifying information such as home addresses, residential telephone numbers, and social security numbers cannot be considered “highly offensive.” . . . ”<sup>54</sup> Additionally, a legitimate public concern existed because “. . . police officers are public employees, paid with public tax dollars. They are granted a great deal of power, authority, and discretion in the performance of their duties.”<sup>55</sup>

In 2005 the court of appeals provided a wide-ranging analysis of the right to privacy in regard to public employee personnel records when it examined disclosure issues involving teachers and records of allegations of misconduct of a sexual nature.<sup>56</sup>

In another appeals case regarding employee identification numbers, the appeals court held that the “. . . release of employees’ identification numbers would be *highly offensive*, because disclosure could lead to public scrutiny of individuals concerning *information unrelated to any governmental operation* and impermissible invasions of privacy. . . . ”<sup>57</sup> However, the release of employee names would not be similarly offensive or lead to such invasions of privacy; rather, disclosure of employee names would “allow public scrutiny of government.”<sup>58</sup>

In general, performance evaluations of public employees that do not contain particular incidents of misconduct are presumed to be highly offensive and of small public concern.<sup>59</sup> However, this does not apply to the position of city manager, because the “. . . performance of the City Manager’s job is a legitimate subject of public interest . . . [he or she] . . . cannot reasonably expect that evaluations of the performance of his or her public duties will not be subject to public disclosure.”<sup>60</sup> Therefore, while the courts generally view non-particularized evaluations as highly offensive, there is an overriding legitimate public concern in the case of city managers.

### **Question:** Are public employee time sheets (time cards) public records which must be disclosed?

**Answer:** Yes, but any personal information such as social security numbers, addresses, or phone numbers should be deleted before release.<sup>61</sup>

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<sup>54</sup>King County v. Sheehan, 114 Wn. App. 325, 346 (2002).

<sup>55</sup>*Id.* at 347.

<sup>56</sup>Bellevue John Does 1-11 v. Bellevue School District #405, 129 Wn. App. 832.

<sup>57</sup>Tacoma Pub. Library v. Woessner, 90 Wn. App. 205, 221-22 (1998) (emphasis added).

<sup>58</sup>*Id.*

<sup>59</sup>Dawson, 120 Wn.2d at 797; accord Spokane Research & Defense Fund v. City of Spokane, 99 Wn. App. 452, 456 (2000).

<sup>60</sup>Spokane Research & Defense Fund, 99 Wn. App. at 457.

<sup>61</sup>See RCW 42.56.230(3) and 42.56.250(3); Woessner, 90 Wn. App. at 224 (holding that it was permissible to redact employee identification numbers from a report but employee names should not have been redacted).

**Question:** Are the salaries of local government employees a public record which must be disclosed?

**Answer:** Yes, there is no exemption which applies to such information. The public has a right to know how its monies are spent.<sup>62</sup> Data regarding tax deductions or other voluntary deductions should be deleted before disclosure.

**Comment:** This provision is not a general privacy exemption. The private information protected under RCW 42.56.050 is limited to “the right to privacy in certain public records” and the provision does not “create any right of privacy beyond those rights that are specified in this chapter [the Public Records Act] as express exemptions.”

## 2. Redacting Information, Disclosure of Which Would Violate a Vital Government Interest

The term “vital government interest” is not defined in the Public Records Act. A helpful discussion of that term is contained in a 1976 attorney general letter opinion,<sup>63</sup> which opined that the descriptive term “vital” gives a more restrictive meaning to the phrase than if the legislature had used the term “important.”

A similar term “vital government functions” is used in RCW 42.56.540, and it may be useful by analogy. That statute authorizes a superior court to prohibit disclosure of public records if the court finds

“ . . . that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions.”

**Comment:** A local agency may be exposed to liability for violating an individual’s privacy rights if it makes the wrong determination about whether private information should be redacted. As a precaution, an agency should contact the individual who is the subject of the records request. This notification will provide an opportunity for that individual to seek a court order prohibiting the disclosure.

## Redacting Information in Records Made Available to the Public

When a public record is not exempt under the specific provisions in the Public Records Act, a local agency must still examine the document to see if any portions are exempt or prohibited from disclosure.

Though there is no general privacy exemption, a few specific exemptions incorporate privacy as one of the elements, such as personal information in employee files.<sup>64</sup> If some information is clearly exempt or prohibited from disclosure, that information must be redacted from the record.

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<sup>62</sup>See AGO 1973 No. 4. For a discussion of an opposing view, see pp. 12-8 through 12-10 in the article by Kyle J. Crews cited in Appendix A.

<sup>63</sup>AGLO 1976 No. 47, at p. 6.

<sup>64</sup>See WAC 44-14-06002(2) and AGO 1998 No. 12.

This redaction provision is similar to that provided in RCW 42.56.210(1) except that it applies to all public documents. If a record contains both information which should be disclosed, and some which is exempt from disclosure, a local government is generally required to delete the exempt information from the record and disclose the rest. For example, if there is a request for records concerning the hours worked during a certain month by a particular local government employee, the local government should redact all exempt, personal information which might also be contained in the records, such as the home phone number or home address, personal e-mail address, personal wireless phone number, and social security number – the rest of the record must be disclosed.<sup>65</sup>

The redaction requirement applies to all but a few specifically excepted public records. The state supreme court has held that if another statute “(1) does not conflict with the Act [Public Records Act], and (2) either exempts or prohibits disclosure of specific records in their entirety, then (3) the information may be withheld in its entirety notwithstanding the redaction requirement.”<sup>66</sup> As an example, an agency may refuse to disclose employee medical records which it has on file, in its entirety.<sup>67</sup> No redaction requirement applies here because of the specific statutory prohibition provided for medical records.

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<sup>65</sup>RCW 42.56.250.

<sup>66</sup>PAWS, 125 Wn.2d at 262.

<sup>67</sup>See chapter 70.02 RCW.

# Exemptions and Prohibitions Outside the Public Records Act

In addition to the many exemptions provided in the Public Records Act, [chapter 42.56 RCW](#), the legislature has enacted numerous laws which prohibit or exempt the disclosure of other classes of information. The prohibitions and exemptions relevant to local governments include:

- Addresses of victims of domestic violence. [Chapter 40.24 RCW](#).
- Medical records. [Chapter 70.02 RCW](#).<sup>68</sup> This exemption applies to medical records in an employee's personnel file,<sup>69</sup> and also to medical records prepared by ambulance EMTs, who are health care providers under [chapter 18.73 RCW](#).
- Information regarding organized crime. [RCW 43.43.856](#).
- Traffic accident reports. [RCW 46.52.080](#).<sup>70</sup>
- Industrial insurance (workers' compensation) claim files and records. [RCW 51.28.070](#).
- Information identifying child victims under eighteen who are victims of sexual assault. [RCW 10.97.130](#).<sup>71</sup> (This is similar to the [RCW 42.56.240\(5\)](#) exemption.)
- Tax return records and other tax information. [RCW 82.32.330](#).<sup>72</sup> Note, however, that [RCW 84.40.020](#) provides that property tax assessments and all supporting documents are specifically open to public inspection during the regular office hours of the county assessor's office.
- Uniform Trade Secrets Act. [Chapter 19.108 RCW](#) and [RCW 4.24.601](#).
- Records obtained and reports produced pursuant to the state fireworks law. [Chapter 70.77 RCW](#) (also see [RCW 42.56.460](#)).

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<sup>68</sup>See Model Rules [WAC 44-14-06002\(1\)](#).

<sup>69</sup>"It is the public policy of this state that a patient's interest 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\(4\)](#). In *Seattle Fire Fighters v. Hollister*, 48 Wn. App. 129, review denied, 108 Wn.2d 1033 (1987), the court ordered disclosure of disability records of retired fire fighters and police officers, but the case was decided prior to passage of [chapter 70.02 RCW](#). Medical records which are part of the disability files are probably prohibited from disclosure.

<sup>70</sup>The traffic accident reports exempted by this statute are primarily those prepared by drivers or passengers in the vehicles - see [RCW 46.52.030](#). Traffic accident reports prepared by law enforcement officers are generally not exempt. See *Guillen v. Pierce County*, 144 Wn.2d 696 (2001); [AGO 2001 No. 8](#); *Pierce County v. Guillen*, 537 U.S. 129 (2003); and "Pierce County v. Guillen: Practical Answers to Privileged Questions", *Gonzaga Law Review*, Vol. 39, No. 2, p. 219.

<sup>71</sup>Such information is not subject to release to the press or public without the permission of the child victim or the child's legal guardian. [RCW 10.97.130](#).

<sup>72</sup>This confidentiality statute is incorporated into the public disclosure statutes by direct reference. See [RCW 42.56.230\(3\)](#).

# 5 CHAPTER FIVE

- Driving license records of individuals which show traffic violations, convictions and accidents. RCW 46.52.120 and RCW 46.52.130.<sup>73</sup>
- Records concerning issuance of confidential license plates, driver's license or identicaid for undercover law enforcement work. RCW 46.08.066.<sup>74</sup> (Incorporated into the PRA in RCW 42.56.230(7)(c)).
- Court records are not subject to the Act (see *City of Federal Way v. Koenig*); public access to court records is governed by General Rule (GR) 22, GR 31 and GR 31.1<sup>75</sup>
- Disclosure of names and addresses of individual vehicle owners by the county auditor or agency authorized by the state department of licensing must follow the requirements of RCW 46.12.635.
- A private electronic authentication key in the possession of a local agency is exempt from public inspection and copying. RCW 68.50.105.
- Autopsy and post mortem report and records may be inspected only by the personal representative of the decedent, any family member, the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or the department of labor and industries in certain cases. RCW 68.50.105.
- Records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies, except that (1) law enforcement may use booking photographs to assist them in conducting investigations of crimes, and (2) photographs and information concerning

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<sup>73</sup>Records concerning traffic violations and most minor traffic offenses are not covered by the disclosure prohibitions of chapter 10.97 RCW, the Criminal Records Privacy Act. See RCW 10.97.030(1)(d), (e) (defining the term criminal history records information).

<sup>74</sup>Though this statute is not written as a disclosure exemption, the use of the word "confidential" in the statute would be meaningless if records concerning the issuance of the license plates were available for public inspection and copying.

<sup>75</sup>See *Nast*, 107 Wn.2d at 304.

a person convicted of a sex offense as defined in RCW 9.94A.030 may be disseminated. RCW 70.48.100.

- When a city or county sends a report concerning the termination of a police officer to the Criminal Justice Training Commission, the personnel action report in the commission's files is prohibited from disclosure, but that same record when in the custody of the jurisdiction that employed the officer is not exempt or prohibited from disclosure. RCW 43.101.135 and 43.101.400(1).
- Counties administering the state's public assistance programs are prohibited from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the program. RCW 74.04.060.

There are also specific statutory exemptions and prohibitions regarding records available to, or maintained by, law enforcement agencies. These are discussed in Chapter 6. A more complete listing of exemptions and prohibitions, other than the exemptions included in chapter 42.56 RCW, is provided in Appendix C.

**Question:** Can a record become confidential because a public employee promises someone that the information will be kept confidential?

**Answer:** No. Public employees and officials do not have the authority to promise confidentiality for records unless a specific statute authorizes confidentiality.<sup>76</sup>

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<sup>76</sup>RCW 42.56.070(1); see also AGO 1983 No. 9; AGO 1986 No. 7; *Van Buren v. Miller*, 22 Wn. App. 836 (1979); *Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30 (1989).

# Criminal History, Juvenile, Sexual Offense, Jail and Inmate, and Law Enforcement Records

## Criminal History Records – Chapter 10.97 RCW

There are numerous statutes governing disclosure of specific records maintained by or available to law enforcement agencies. The Criminal Records Privacy Act, chapter 10.97 RCW, provides the rules concerning disclosure of *criminal history record information*.<sup>77</sup> These records include computerized information of the type typically included in a “rap sheet.” Data concerning adult *convictions* must be disclosed upon request, but data concerning *arrests* may be prohibited from disclosure, depending upon the factors outlined in several sections of chapter 10.97 RCW.<sup>78</sup> Note that the policy behind the Criminal Records Privacy Act is not at all like the policy statement in the public disclosure statutes:

The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, *confidentiality*, and *security* of criminal history record information and victim, witness, and complainant record information as defined in this chapter.<sup>79</sup>

## Juvenile Records – Chapter 13.50 RCW

Disclosure of data concerning juvenile offenses and dispositions, and juvenile data not related to offenses, is governed by chapter 13.50 RCW.<sup>80</sup> Before release of any juvenile data, the statutes should be reviewed. Note that parents or guardians do not have an automatic right to all of the records concerning a juvenile who is in their charge.<sup>81</sup>

## Sexual Offender Information – Chapter 4.24 RCW

Special statutes governing disclosure of data concerning sexual offenders were enacted in 1990, and amended several times since then.<sup>82</sup> Local governments are authorized to release *relevant and necessary information* regarding sex offenders to the public when the release of the information is *necessary for public protection*. A local government is protected from suit by a sexual offender when such information is released, as long as the disclosure is done properly:

An elected public official, public employee, or public agency . . . is immune from civil liability for damages for any discretionary decision to release relevant and necessary in-

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<sup>77</sup>RCW 10.97.030(1) defines criminal history record information in fairly broad terms, but the word “notations” in the definition supports the view that the chapter deals only with the types of information collected in computerized criminal history systems; see also Heidi Ann Horst, “Defensive Driving Through the Intersection of the Public Disclosure Act and the Criminal Records Act,” Legal Notes Information Bulletin No. 512 (2002) (a detailed analysis of the Criminal Records Privacy Act).

<sup>78</sup>See *Hudgens v. Renton*, 49 Wn. App. 842 (1987); James Pidduck, “Confidentiality of Police Personnel and Other Police Records,” Legal Notes Information Bulletin No. 458 (1989).

<sup>79</sup>RCW 10.97.010 (emphasis added).

<sup>80</sup>See *Deer v. DSHS*, 122 Wn. App. 84 (2004).

<sup>81</sup>See *Id.* and RCW 13.50.050 and 13.50.100.

<sup>82</sup>See RCW 4.24.550 and 4.24.555.

formation, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith.<sup>83</sup>

Whenever a local government is considering release of such information to the public, legal counsel should be consulted to make sure that the disclosure is done properly.<sup>84</sup>

### **Jail and Inmate Records – Chapter 70.48 RCW**

RCW 70.48.100 governs disclosure of jail records and inmate records.

### **Law Enforcement Records**

Records in a police department or sheriff's office that are not prohibited from disclosure by the Criminal Records Privacy Act,<sup>85</sup> or records that are not covered by other specific disclosure exemption statutes, must be made available for inspection and copying. Though there is an exemption at RCW 42.56.240(1) which protects many *police investigative records* from disclosure, law enforcement personnel files and administrative files are subject to the same disclosure rules as apply to other local agencies. Personnel files are discussed in more detail in chapter 7.

Issues relating to disclosure of law enforcement records are often complex and require careful analysis. Legal counsel should not hesitate to consult colleagues and review relevant presentations from WAPA or WSAMA training sessions.

Police and emergency responders have special provisions allowing them to make visual and or audio recordings, in some circumstances without the approval of the person being recorded – see RCW 9.73.090. The video and sound recordings made by police officers are not exempted or prohibited from disclosure, but subsection (1) (c) of the statute provides that they may not be disclosed “. . . until final disposition of any criminal or civil litigation which arises from the event or events which were recorded.”

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<sup>83</sup>RCW 4.24.550(7).

<sup>84</sup>See *State v. Ward*, 123 Wn.2d 488 (1994) (providing some guidance on appropriate disclosure).

<sup>85</sup>See chapter 10.97 RCW.

**Question:** Can a city release to the local newspaper a weekly list providing the names of all those arrested in the city during the past week, along with the reason for the arrest, and the actual charges which have been filed?

**Answer:** Yes, release of basic information concerning pending criminal matters is specifically allowed.<sup>86</sup>

**Question:** Is the tape of a 911 telephone call a public record which must be disclosed upon request?

**Answer:** Yes. However, certain portions may be deleted if they fall under one of the specific exemptions, such as the name of a child victim of assault. RCW 9.73.070 provides that 911 calls are not covered by the general privacy rights which apply to other telephonic communications.<sup>87</sup>

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<sup>86</sup>RCW 10.97.050(2).

<sup>87</sup>See also AGO 1988 No. 11.

## Personnel Records

There are numerous disclosure issues concerning personnel records. A fair number of these issues have been addressed by the state appellate courts. Newspapers and private individuals frequently seek access to records of misconduct by local government employees or local government officials, and the limits concerning disclosure of personnel records have been challenged on numerous occasions. Local governments often have a difficult time with these requests since failure to disclose may be contested in the courts.

If a local government does decide to disclose certain personnel records, the subject employee may feel that his or her privacy rights have been violated. Having decided that information will be disclosed, it is good practice to notify the employee that there has been a request for disclosure of information in the employee's personnel file. The employee may then seek to block disclosure by using the procedure provided in [RCW 42.56.540](#). These are the types of difficult disclosure issues which should be carefully reviewed with legal counsel.

Personnel files frequently contain information which is exempt or prohibited from disclosure, these include:

- Applications for public employment;<sup>88</sup>
- Residential addresses and telephone numbers; personal wireless phone numbers; personal e-mail addresses; and social security numbers;<sup>89</sup>
- Performance evaluations which do not discuss specific instances of misconduct;<sup>90</sup>
- Medical information;<sup>91</sup>
- Industrial insurance (workers' compensation) claim files and records;<sup>92</sup>
- Employee identification numbers;<sup>93</sup> and
- Federal tax withholding data.<sup>94</sup>

**Question:** 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?

**Answer:** 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 sus-

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<sup>88</sup>[RCW 42.56.250\(2\)](#).

<sup>89</sup>[RCW 42.56.250\(3\)](#).

<sup>90</sup>Dawson, 120 Wn.2d at 797.

<sup>91</sup>All employment entrance medical examination records and all medical examination records of current employees should be collected and maintained in separate medical files. This is either required, or strongly encouraged, by federal regulations promulgated pursuant to the EEOC and ADA.; see also [chapter 70.02 RCW](#) (regarding disclosure of medical records).

<sup>92</sup>[RCW 51.28.070](#).

<sup>93</sup>Woessner, 90 Wn App. at 221.

<sup>94</sup>[RCW 42.56.230\(4\)\(b\)](#).

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## CHAPTER SEVEN

tained.<sup>95</sup>

**Question:** The local newspaper has requested a list of all city employees terminated last year due to failing the random drug testing program required by federal law for employees whose jobs require a commercial driver's license. Must a city turn over a list of those employees?

**Answer:** Yes, if the city already has a record, in list form, containing the names of the terminated employees. If the city does not have a record in list form it is not required to create a list. However, the newspaper has the right to inspect records containing the names of terminated employees and records concerning serious on-the-job misconduct by city employees. Since drug usage by employees in certain safety-sensitive positions is clearly prohibited by city policy and federal law, and because the public has a legitimate interest in serious on-the-job misconduct, the city may release the names of the terminated employees. The city should not release records of any individual drug test or drug treatment obtained by a city employee, but must disclose records revealing that an employee in a safety-sensitive position was terminated for drug usage. A city can contact the terminated employees (and also the city employees' labor union) to notify them of the city's intent to disclose the information, and of their right to seek a court order blocking disclosure.

**Question:** Must civil service eligibility lists be disclosed upon request?

**Answer:** Yes, there is no statute which exempts eligibility lists from disclosure.

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<sup>95</sup>See Dawson, 120 Wn.2d at 797 (specific instances of misconduct must be disclosed); Spokane Police Guild, 112 Wn.2d at 38-39.

## Inspection by Local Government Officials and Employees

Inspection of personnel files by agency officials or employees is not, strictly speaking, a *public* disclosure issue. But, because of the recognized privacy rights concerning such information, access to personnel files by agency officials or employees should be scrutinized in a manner similar to public disclosure law.

To the extent possible, personnel records should be maintained as private records. Access to personnel files should be limited to only those local government employees who are needed to maintain the files and those who have a legitimate need for access. A city council or a board of county commissioners may adopt a policy specifying which officials and employees have general access to personnel files. In a small city or town, this would be the city clerk. In the personnel office of larger jurisdictions, this would be handled by a designated employee or human resources department staff.

Councilmembers, commissioners, and other local government officials do not have the right to randomly access local government personnel files. Access should be limited to only those personnel records which they need in order to perform their official functions. Public officials and other local government employees have no special right to access employee personnel records if the access is not necessary for the performance of their public duties.

## Employee Inspection of Personnel File

Local government employees have the right to inspect their own personnel files at least once each year, and they have the right to challenge the accuracy of information in their files.<sup>96</sup>

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<sup>96</sup>RCW 49.12.240 and RCW 49.12.250.

# Identity and Motivation of Persons Requesting Records or Lists – Does it Matter?

The identity and motivation of a person seeking to obtain a copy of a public record is generally not relevant to the determination of whether the record must be disclosed. This is true whether the individual seeking the record is doing so for private purposes, or for “public” purposes. RCW 42.56.080 stresses this point:

. . . Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons.

A 2002 Washington Court of Appeals decision has held that an agency is prohibited from inquiring into the proposed use of the information requested for disclosure.<sup>97</sup> Except in the relatively rare situations where a statute distinguishes among persons entitled to have access to records, identity and motivation are not to be considered in the disclosure process.

## Prisoner Injunction Provision – 2009 Legislation

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. If you encounter a situation that you think might qualify, read the statute carefully.<sup>98</sup> More detail regarding the prisoner injunction bill can be read at: [www.mrsc.org/focus/opengovadvisor/opengov0509.aspx](http://www.mrsc.org/focus/opengovadvisor/opengov0509.aspx).

## Lists of Individuals Requested for Commercial Purposes

Private entities (e.g., commercial firms) may copy and inspect public records that are not exempt. However, an agency is prohibited from disclosing lists of individuals if the requester intends to make commercial use of the list. RCW 42.56.070(9) provides:

This chapter shall not be construed as giving authority to any agency . . . to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies . . . shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor (sic): PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under . . . the Administrative Procedure Act.

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<sup>97</sup>Sheehan, 114 Wn. App. at 341 (holding that the Act prohibits inquiry into the purpose for the request; therefore, it also prohibits balancing the intended use against interests in effective law enforcement).

<sup>98</sup>RCW 42.56.565.

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## CHAPTER EIGHT

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.”<sup>99</sup>

RCW 42.56.070 does not prohibit access to raw data from which a person could construct his own list of individuals for commercial purposes.<sup>100</sup> 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.<sup>101</sup> Therefore, lists of private companies which have commercial value for targeted advertising must be disclosed upon request.

**Question:** Must the city disclose copies of all the current business licenses issued by the city, if requested for commercial purposes? (The business license forms contain, among other data, the names and addresses of the businesses and individuals to whom the licenses were issued.)

**Answer:** Yes. This is a request for the raw data. A requestor could use the forms to compile a list of individuals and addresses, but that does not prohibit disclosure of the raw data. A list of the names and addresses of all the businesses licensed by the city would also have to be disclosed. If the city maintains a separate list of the names and addresses of all the individuals (natural persons) to whom business licenses were issued, or all the individuals who applied for business licenses, that list should not be disclosed.

**Question:** Must a city or county disclose a list of the companies which have requested bid packets for a public works project? (The requestor is an employee of another company considering bidding on the project.)

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<sup>99</sup>AGO 1998 No. 2, 4. Also see WAC 44-14-06002(6).

<sup>100</sup>AGO 1975 No. 15, 7.

<sup>101</sup>See generally AGO 1975 No. 15 (analyzing access to lists of individuals under RCW 42.56.070).

**Answer:** Yes. No exemption applies. Even though the requestor is asking for a list, and has a commercial purpose, the request is not for a list of natural persons. The identity of the requestor is not relevant.

**Question:** Must the city disclose the address list which the city uses for mailing the city newsletter to city residents? (The list does not have the names of the occupants at the addresses; instead, the mailing list just indicates “resident.”) Does it make any difference if the request is from the local chamber of commerce, a retail business, or a person campaigning for public office?

**Answer:** The list must be disclosed to anyone requesting it. Motivation is not relevant, and RCW 42.56.070(9) does not apply, because the list is not a list of natural persons. If the list contained the names of the residents, as well as their addresses, it could be provided to a political candidate to be used for a campaign mailing, since an election campaign would not be considered to be a commercial purpose.<sup>102</sup> The list with names cannot be provided to a retail business.

**Question:** Must the city disclose a list containing the names and addresses of all city residents who are delinquent in their LID payments? (The person requesting the list is from a company which provides home equity loans.)

**Answer:** Because RCW 42.17.260(9) exempts from disclosure a list containing the names of natural persons when the list is requested for commercial purposes, the city should disclose the list, deleting the names, and providing only the addresses.

## Electrical Utility Records Sought by Police

If police are seeking evidence of criminal conduct in 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 true.<sup>103</sup> No fishing expeditions are allowed.<sup>104</sup>

In a state supreme court case, the court held that though a private individual may request and obtain a copy of the electric bill for a specific residence, a policeman seeking evidence of a marijuana growing operation can only obtain that same record if he first provides a written statement concerning his reasonable belief that the information is relevant to the investigation of a possible crime.<sup>105</sup>

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<sup>102</sup>See Graham E. Johnson, “The Prohibition On Using Public Facilities To Assist Election Campaigns,” Legal Notes Information Bulletin No. 458, p. 211 (1989).

<sup>103</sup>RCW 42.56.335.

<sup>104</sup>*State v. Cole*, 128 Wn.2d 262, 290 (1995).

<sup>105</sup>*Matter of Maxfield*, 133 Wn.2d 332, 341-42 (1997).

## Geographic Information Systems (GIS) Data Requested for Commercial or Non-commercial Purposes<sup>106</sup>

Many cities and counties in Washington have spent considerable time and effort compiling GIS data in order to facilitate planning and managing their jurisdictions. GIS data often includes maps of sewer and water lines, hazardous liquid transmission pipelines, natural gas pipelines (both transmission and distribution lines), federal census data, property values, wetlands and other critical areas, locations of power distribution lines, zoning data, and other geographically related information.

Utilizing special computer software, it is possible to make maps and compile information from selected parts of the database. Because GIS data is costly to assemble and has commercial value for those working in land development and related businesses, cities have required payment for disclosure of GIS data, particularly when specialized skills and time are involved in manipulating the data to provide the specific information of interest to the requestor.

Even if the requestor of GIS data intends to market the data to others for a profit, such motivation is not statutorily recognized as a basis for denying disclosure. GIS data may be considered “research data,” but it would not be exempt under RCW 42.56.270(1) because disclosure would not result in any “public loss.”

Remember that some GIS data may be exempted or prohibited from disclosure by state law; for example, maps or other information identifying the location of archaeological sites (to avoid looting or depredation of such site).<sup>107</sup>

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<sup>106</sup>See Laurie Flinn Connelly, “Update on Public Disclosure after PAWS, GIS Data, Litigation Disclosure; Trade Secrets Act,” Legal Notes Information Bulletin No. 489 (1995); Kyle J. Crews, “A Second Update on Public Disclosure, Public Bidding Documents: E-Mail, GIS Data, Public Employment Records,” Legal Notes Information Bulletin No. 491 (1995), available at <http://www.mrsc.org/subjects/planning/gis/update2.aspx>.

<sup>107</sup>RCW 42.56.300.

# Procedures for Making Records Available for Public Inspection

## Public Records Officer – [RCW 42.56.580](#)

“Each state and local government agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency’s compliance with the public records disclosure requirements of this chapter.”<sup>108</sup>

## Index of Records – [RCW 42.56.070](#)

Local governments are required to maintain and make available a current index of local government records listed in [RCW 42.56.070\(3\)](#).<sup>109</sup> If maintaining an index would be unduly burdensome, a local government must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome. All indexes maintained by local government must be made available. Appendix A contains sample local government policies and ordinances which require department heads to prepare and maintain an index of public records maintained by their respective departments.

## List of Exemption and Prohibition Statutes Not Contained in Chapter 42.56 RCW

[RCW 42.56.070\(2\)](#) provides:

For informational purposes each agency shall publish and maintain a current list containing every law, other than those listed in this chapter [[chapter 42.56 RCW](#)] 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.

Appendix C of this publication contains a list of the statutory exemptions and prohibitions not contained in [chapter 42.56 RCW](#). MRSC will keep updating this appendix on our website. If you become aware of additions or corrections that should be made to the list, please notify one of the staff attorneys at MRSC. Some of the exemptions and prohibitions on the list concern public record information that may not be relevant for your jurisdiction. For instance, cities would not normally have records regarding marriage license applications or adoption records.

Model Rule [WAC 44-14-040](#) and the comments to that provision, [WAC 44-14-04001](#) through [44-14-04007](#), provide an excellent overview of the process for responding to public records disclosure requests. Those provisions should be the basis for staff training on the disclosure process.

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<sup>108</sup>Also see [WAC 44-14-020](#) and comments.

<sup>109</sup>[WAC 44-14-030](#) and [44-14-03003](#) contain additional guidance.

### Form of Request – RCW 42.56.100

Although the public disclosure statutes do not require that requests for inspection or copying of records be in writing, local governments may adopt reasonable rules concerning disclosure requests. RCW 42.56.100 specifically provides that requests received by mail for copies of identifiable public records must be honored. Telephonic requests are not specifically discussed in the statute, but they should be processed in the same manner as any other type of request for public documents.<sup>110</sup> Because an agency is given latitude to devise public records request procedures, it is not unreasonable to ask that a requesting party fill out a standard request form.

### Protection of Public Records and Agency Functions – RCW 42.56.100

Agencies are to adopt reasonable rules to assure:

- Full public access to public records;
- Protection of public records from damage or disorganization; and
- Prevention of interference with essential functions of local governments.

In addition to RCW 42.56.100, WAC 434-615-010 provides that public records shall be “. . . delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, and otherwise managed . . .” as expressly provided for by state law and regulation.

**Question:** Should a local government agency allow a member of the public to take records out of the building, to review them overnight, or to copy them somewhere else?

**Answer:** The potential for loss or damage to the records exists, and for that reason all records should remain in the agency’s custody. Members of the public must be allowed to examine records at the

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<sup>110</sup>See WAC 44-14-03006 for lengthy comments regarding issues involving the form of a disclosure request.

agency, but they cannot take the actual records from the building. Adopting a policy on this matter makes it easier for a local agency to inform members of the public of this quite reasonable rule.

## **Times for Inspection and Copying – RCW 42.56.090**

Records must be available for inspection during a local agency's regular business hours. If an agency does not have regular business hours of at least thirty hours each week, hours for inspection and copying must be set between 9 a.m. and noon, and 1 p.m. and 4 p.m. during the week-day, unless the person making the request agrees on a different time.

## **Charges for Copying – RCW 42.56.070(7), (8) and RCW 42.56.120 <sup>111</sup>**

Local governments are not allowed to charge for the staff time spent in locating a public record, or for making a record available for inspection.<sup>112</sup> A local government may, however, charge for the actual costs connected with copying public records, *including the staff time spent making the copies*.<sup>113</sup> A local government cannot charge more than fifteen cents a page for photocopying unless it has calculated its actual costs per page and determined that it is greater than fifteen cents.<sup>114</sup> Actual costs for postage and delivery can be included, as well as the cost of any envelopes.<sup>115</sup> If a local government has to pay an outside source for making duplicates of records such as photographs, blueprints or tape recordings, those costs must be charged to the requestor.

Note that there are statutes outside chapter 42.56 RCW that authorize local agencies to set fees for providing information, or for photocopying specific public records. These statutes are not part of the public disclosure act and are not subject to the cost limitations imposed by RCW 42.56.120.<sup>116</sup> Here are some examples:<sup>117</sup>

- RCW 46.52.085 authorizes cities, counties and state agencies to set a fee to cover the costs of furnishing copies of traffic accident reports. This statute allows a local government to set a standard fee for providing copies of those reports, regardless of the number of pages involved in any particular request. For instance, the Washington State Patrol charges a set fee for copies of traffic accident reports.
- RCW 10.97.100 authorizes police departments to collect reasonable fees for the dissemination of criminal history record information.
- RCW 3.62.060 and RCW 3.62.065 authorize municipal courts, and municipal departments of district courts, to charge specific fees for various services, including duplication of part or all of the electronic tape or tapes of a court proceeding.
- RCW 36.18.040(1)(t) authorizes sheriffs to collect fees “[f]or the reproduction of audio, visual, or photographic material, to include magnetic microfilming, the actual cost including personnel time.”

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<sup>111</sup>See WAC 44-14-070 and 44-14-07001 for a concise description of allowed charges.

<sup>112</sup>RCW 42.56.120.

<sup>113</sup>RCW 42.56.070(7)(b).

<sup>114</sup>See RCW 42.56.070(8) and RCW 42.56.120.

<sup>115</sup>RCW 42.56.070(7)(a).

<sup>116</sup>RCW 42.56.130.

<sup>117</sup>These same examples are listed in WAC 44-14-07004.

- [RCW 70.58.107](#) authorizes local registrars to collect fees for birth certificates and death certificates.
- [RCW 41.08.040](#) and [RCW 41.12.040](#) require cities to provide free copies of their police and fire civil service rules.

## Deposits and Responding in Installments – [RCW 42.56.120](#)<sup>118</sup>

Legislation in 2005 now specifically authorizes deposits and authorizes responding in installments:

An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.

**Question:** How should a local government handle a request for a duplicate copy of a tape recording of a council meeting or a public hearing?

**Answer:** Because there is a possibility that the original tape will be mishandled or lost, the local government should not provide the original of the tape to the requestor and allow that individual to make a copy. Instead, the local government should make the duplicate tape, or contract with a reputable company to make a duplicate, and charge the requestor the actual cost of duplication.

**Question:** Should sales tax be charged and collected when a local government charges a fee for making copies of records pursuant to a public records disclosure request?

**Answer:** No, such charges are exempt from the imposition of sales tax. See [RCW 82.12.02525](#).<sup>119</sup> Note that this sales tax exemption only applies to copies provided pursuant to a PRA disclosure request, so the sales tax exemption does not apply to courts when they make copies pursuant to a request for records under the common law – see footnote 2 of this publication for the legal citations to cases that have determined that courts are not “agencies” under the PRA.

## Prompt Responses Required – [RCW 42.56.520](#)

Within five business days of receiving a request for a public record, a local agency must respond by either:

- Providing for inspection and/or copying of the record;

<sup>118</sup>See [WAC 44-14-07006](#) for comments on this process.

<sup>119</sup>Sales tax can be passed on to a records requestor when the copying is done by an outside vendor. [WAC 44-14-07001\(6\)](#).

- Providing an internet address and link on the agency’s website to the specific records requested (if the individual does not have internet access, then the agency must provide copies 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 respond; or
- Denying the request. If a request is denied, a written statement must accompany the denial setting out the specific reasons therefore.

Note that although responses must be made within five days, another statute requires local governments to “provide for the fullest assistance to inquirers and the most timely possible action on requests for information.”<sup>120</sup> Failure to provide a written response within the five day period can result in a civil award of statutory penalties.<sup>121</sup>

## Additional Time for Response – RCW 42.56.520

Additional time to respond to a request may be based upon the need to:

- Clarify the intent of the request;
- Locate and assemble the information requested;
- Notify third parties or agencies affected by the request; or
- Determine whether any of the information is exempt and whether a denial should be made as to all, or part, of the request.

**Question:** If a local agency has copies of public records of another public agency in its possession, does the local agency or the other agency make the disclosure decision?

**Answer:** The agency which possesses the records makes the disclosure decision by following the regular disclosure statutes.<sup>122</sup> The other agency can be consulted and, if they object to a local agency’s intent to disclose, can seek a court order blocking disclosure, as allowed by RCW 42.56.540.

## Unclear Request for Information – RCW 42.56.520

If a local government receives an unclear request for records, it may seek clarification from the requestor. If clarification is not received, the records request should be denied, with the reason clearly stated.<sup>123</sup>

## Denial of Request for Records Disclosure – RCW 42.56.520

A written statement of the reasons for denying a request for disclosure must be provided to the requestor, regardless of the reason for the denial. The denial:

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<sup>120</sup>RCW 42.56.100 (emphasis added).

<sup>121</sup>See RCW 42.56.550(4); *Doe I v. Washington State Patrol*, 80 Wn. App. 296 (1996).

<sup>122</sup>See Spokane Police Guild, 112 Wn.2d at 37-38.

<sup>123</sup>See *Bonamy v. City of Seattle*, 92 Wn. App. 403, 411 (1998); *Hangartner v. City of Seattle*, 151 Wn.2d 439 (2004).

. . . shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.<sup>124</sup>

The state Supreme Court has stressed the need for all local governments to provide a clear exemption log providing the following information: (1) a description of the document that the local government is claiming to be exempt; (2) the date of the document; (3) the author or sender of the document; (4) the recipient(s) of the document; (5) the number of pages claimed as exempt; and (6) the specific exemption relied upon, with an explanation of how the exemption applies to the withheld document.<sup>125</sup>

In a 2000 court of appeals case, the court held that an agency does not need to provide requested information within five days, rather, it must respond to a request within five days and provide a reasonable time at which the requested information will be disclosed.<sup>126</sup> The court also held that an agency is not required to provide the requested records in a piecemeal fashion; consequently, the agency may wait until all the information is gathered before disclosing the requested record.<sup>127</sup>

Local governments are required to adopt procedures for prompt review of decisions denying inspection. Depending upon the size of a local government, review might be by a department legal counsel. Because denials can result in litigation, a local government should make sure that denial is based on a good faith interpretation of the statutes. A denial decision is final at the end of the second business day following the denial of inspection. After that date, an individual can file a lawsuit in superior court to challenge the denial.<sup>128</sup>

## **Local Government-Initiated Court Action to Prevent Disclosure – RCW 42.56.540**

A local government may take the offensive when dealing with a request for inspection. Under RCW 42.56.540, a local government may seek court protection to enjoin the release of a record that is not exempt under the Act, if the local government can show that (1) the requested information is “clearly not . . . in the public interest” and (2) that disclosure will “irreparably damage any person, or would substantially and irreparably damage vital governmental functions.”

Like the right to privacy under RCW 42.56.050, this provision is not a general exemption to the Act – the Act provides only for specific statutory exemptions. Instead, RCW 42.56.540 is a procedural provision creating an injunctive remedy. Therefore, whether a record should be protected from inspection under RCW 42.56.540 can only be argued in a superior court injunction proceeding; this reasoning cannot be used as the basis for an agency to deny disclosure outside of an injunction proceeding.

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<sup>124</sup>RCW 42.56.210(3); see also RCW 42.56.520; PAWS, 125 Wn.2d at 257-61.

<sup>125</sup>*Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525 (2009).

<sup>126</sup>*Ockerman v. King County Dept. of Developmental & Envtl. Servs.*, 102 Wn. App. 212, 218 (2000).

<sup>127</sup>*Id.* at 218-19. See also WAC 44-14-040(8).

<sup>128</sup>One option suggested in the Model Rules is to consider alternative dispute resolution – see WAC 44-14-08003.

A local government may also notify the person who is named in the record or the person to whom the record specifically pertains, that a request for disclosure has been made and the local government intends to disclose the record(s). The purpose of notification is to allow the named individual the option of seeking a superior court injunction blocking disclosure.<sup>129</sup> An individual has the option of filing in either their county of residence, or in the county where the record is maintained.

## **Judicial Review of Local Agency Action – RCW 42.56.550**

If a person is denied an opportunity to inspect and copy a public record held by a local government, he or she may bring a motion in the superior court of the county where the record is maintained to require the local agency to explain, or show cause, why it has denied inspection. The local agency has the burden of proving that the denial is in accordance with a statute which either exempts or prohibits disclosure in whole or in part.

Also, if a person believes that a local government has not made a reasonable estimate of the time needed to respond to a disclosure request, he or she may file a motion requiring a local government to explain the reasonableness of its estimate.

When a court reviews a local government disclosure action:

- Review will be de novo, i.e., the court will review the facts anew and is not bound to accept any factual determination made by the agency, nor is the court required to give any deference to the agency's decision;
- The court is required to take into account the broad public policy favoring disclosure, even though disclosure might cause inconvenience or embarrassment to public officials or others.<sup>130</sup>

## **Penalties, Attorney's Fees, and Costs If Local Government Loses in Court – RCW 42.56.550(4)**

The wording of RCW 42.56.550(4) is mandatory in regard to costs, including attorney fees (note the phrase "shall be awarded" in the first sentence below), but discretionary in regard to penalties.

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an 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.

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<sup>129</sup>See generally, Doe I, 80 Wn. App. at 301 (applying RCW 42.56.540).

<sup>130</sup>Even extreme inconvenience does not excuse a city from the requirement of strict compliance with the PDA. *Zink v. City of Mesa*, 140 Wn. App. 328 (2007).

Prior to July of 2011, monetary penalties were also mandatory. Because the statutory amendment now enables judges to use their discretion in regard to penalties, local governments should carefully document their efforts to comply with the requirements of the PRA. Conversely, do not expect leniency from the court if there is evidence that a local government agency willfully tried to delay or avoid disclosing records when no exemption or prohibition applied.

# Retention and Destruction of Public Records

Although detailed requirements for retention and destruction are not covered in this publication, general information about that process is provided below.

Local government agencies own the records in their possession, subject to the right of the public to inspect and obtain copies of those records.<sup>131</sup> The public record retention and destruction process is governed by chapter 40.14 RCW and several chapters in title 434 WAC, notably chapters 434-630, 464-635, 464-640, 464-660, and 464-662.

The State Archivist is the head of the Division of Archives and Records Management in the Office of the Secretary of State. The Archivist's office, along with a state records committee, is responsible for developing retention schedules for all public records.<sup>132</sup> The Archivist's office publishes a local government records retention schedule which can be obtained from its website at <http://www.secstate.wa.gov/archives/ga.aspx> or by calling (360) 753-5485. Copies of the current retention schedule may also be borrowed from the MRSC library or downloaded from the MRSC website <http://www.secstate.wa.gov/archives/ga.aspx>.

In addition to the information provided by the State Archivist's office, counties and municipalities will find the following publication useful, "Deleting Criminal History Record Information in Washington a.k.a. Expungements," by Cheryl Carlson, Assistant City Attorney for the City of Tacoma.<sup>133</sup>

The Model Rules contain comments regarding records retention at WAC 44-14-03005.

**Note:** Under RCW 42.56.100, if a public records request is made at a time when the record exists but is scheduled for destruction in the near future, the local government cannot destroy or erase the record until the disclosure request is resolved.

Criminal penalties including fines and imprisonment will be assessed for the intentional destruction of public records.<sup>134</sup>

## Preservation of Electronic Public Records

Progress brings complexity, and that is nowhere more evident than in the numerous issues starting to arise in regard to electronic public records. Chapter 434-662 WAC deals with the preservation of electronic public records, including such troubling issues as e-mails, maintaining metadata,<sup>135</sup> and the application of the public records act to websites maintained by public agencies. Those responsible for managing public records should read that chapter carefully and

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<sup>131</sup>RCW 40.14.020; also see WAC 44-14-03004 see also WAC 434-615-020.

<sup>132</sup>RCW 40.14.050.

<sup>133</sup>Legal Notes Information Bulletin No. 503 (1999).

<sup>134</sup>See RCW 40.16.010; RCW 40.16.020.

<sup>135</sup>See *O'Neill v. Shoreline*, 145 Wn. App. 913 (2008) for an example of how the loss of metadata can have serious consequences.

discuss the details with the supervisor or person who manages the computer systems for the jurisdiction.

Note that the administrative rules referenced above were adopted by the state archivist through the Secretary of State's office. The rules are mandatory, unlike the "Model Rules" drafted by the attorney general and published in chapter 44-14 WAC. The Model Rules deal with the recommended procedures for public records disclosure, whether the records are paper, electronic, or in any other form. See WAC 44-14-050 regarding the recommended procedures for disclosing electronic records.

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## CHAPTER TEN

## Appendix A: Recommended Resources

MRSC has numerous resources that can help state and local government agencies comply with the Public Records Act (PRA). Below is a selection of resources available on our website:

- Public Records Act – Basic PRA overview with selected examples of local PRA policies and procedures
- 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.
- Public Records Act Court Decisions – Significant state appellate court decisions concerning PRA
- Law Enforcement Records Management and Disclosure – Series of webpages to help police and sheriff departments manage their records and comply with PRA and other statutes.
- PRA & Records Management Technology Guide – Downloadable guide offering key questions to consider before purchasing records management software, an overview of software options, suggested guidelines for evaluating and selecting software, and more.
- 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

Table 1: Chapter 42.17 RCW to Chapter 42.56 RCW

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
<u>42.17.020</u>	<u>42.56.010</u>	<u>44-14-01001</u>
<u>42.17.250</u>	<u>42.56.040</u>	<u>44-14-02001</u>
<u>42.17.251</u>	<u>42.56.030</u>	<u>44-14-01003</u> <u>44-14-06002</u>
<u>42.17.253</u>	New**	<u>44-14-020</u> <u>44-14-02002</u>
<u>42.17.255</u>	<u>42.56.050</u>	<u>44-14-06002(2)</u>
<u>42.17.258</u>	<u>42.56.060</u>	<u>44-14-01003</u> <u>44-14-04003</u>
<u>42.17.260</u>	<u>42.56.070</u>	<u>44-14-03003</u>
<u>42.17.260(1)</u>	<u>42.56.070</u>	<u>44-14-010</u> <u>44-14-06002</u>
<u>42.17.260(2)</u>	<u>42.56.070(2)</u>	<u>44-14-010</u> <u>44-14-060</u> <u>44-14-06001</u>
<u>42.17.260(7)</u>	<u>42.56.070(7)</u>	<u>44-14-07001</u>
<u>42.17.260(9)</u>	<u>42.56.070(9)</u>	<u>44-14-03006</u> <u>44-14-06002(6)</u>
<u>42.17.270</u>	<u>42.56.080</u>	<u>44-14-01002</u> <u>44-14-03006</u> <u>44-14-04002</u> <u>44-14-04003</u> <u>44-14-04006</u>
<u>42.17.280</u>	<u>42.56.090</u>	<u>44-14-03002</u> <u>44-14-04005</u>
<u>42.17.290</u>	<u>42.56.100</u>	<u>44-14-01002</u> <u>44-14-04001</u> <u>44-14-03004</u> <u>44-14-04003</u> <u>44-14-04006</u>
<u>42.17.295</u>	<u>42.56.110</u>	

<b>PDA (until 7/1/06)</b>	<b>PRA (after 7/1/06)</b>	<b>WAC Model Rules</b>
<u>42.17.300</u>	<u>42.56.120</u>	<u>44-14-04005</u> <u>44-14-070</u> <u>44-14-07001</u>
<u>42.17.305</u>	<u>42.56.130</u>	
<u>42.17.310</u>	<u>42.56.210</u>	<u>44-14-04004</u> <u>44-14-06002</u>
<u>42.17.310(1)(a)</u>	<u>42.56.230</u>	
<u>42.17.310(1)(b)</u>	<u>42.56.230</u>	
<u>42.17.310(1)(c)</u>	<u>42.56.230</u>	
<u>42.17.310(1)(d)</u>	<u>42.56.240</u>	
<u>42.17.310(1)(e)</u>	<u>42.56.240</u>	
<u>42.17.310(1)(f)</u>	<u>42.56.250</u>	
<u>42.17.310(1)(g)</u>	<u>42.56.250</u>	
<u>42.17.310(1)(h)</u>	<u>42.56.270</u>	
<u>42.17.310(1)(i)</u>	<u>42.56.280</u>	<u>44-14-06002(4)</u>
<u>42.17.310(1)(j)</u>	<u>42.56.290</u>	<u>44-14-06002(3)</u>
<u>42.17.310(1)(k)</u>	<u>42.56.300</u>	
<u>42.17.310(1)(l)</u>	<u>42.56.310</u>	
<u>42.17.310(1)(m)</u>	<u>42.56.270</u>	
<u>42.17.310(1)(n)</u>	<u>42.56.480</u>	
<u>42.17.310(1)(o)</u>	<u>42.56.270</u>	
<u>42.17.310(1)(p)</u>	<u>42.56.320</u>	
<u>42.17.310(1)(q)</u>	<u>42.56.330</u>	
<u>42.17.310(1)*</u>	<u>42.56.270</u>	
<u>42.17.310(1)(s)</u>	<u>42.56.340</u>	
<u>42.17.310(1)(t)</u>	<u>42.56.250</u>	
<u>42.17.310(1)(u)</u>	<u>42.56.250</u>	
<u>42.17.310(1)(v)</u>	<u>42.56.330</u>	
<u>42.17.310(1)(w)</u>	<u>42.56.350</u>	
<u>42.17.310(1)(x)</u>	<u>42.56.360</u>	
<u>42.17.310(1)(y)</u>	<u>42.56.360</u>	
<u>42.17.310(1)(z)</u>	<u>42.56.270</u>	
<u>42.17.310(1)(aa)</u>	<u>42.56.270</u>	
<u>42.17.310(1)(bb)</u>	<u>42.56.270</u>	
<u>42.17.310(1)(cc)</u>	<u>42.56.370</u>	
<u>42.17.310(1)(dd)</u>	<u>42.56.250</u>	
<u>42.17.310(1)(ee)</u>	<u>42.56.250</u>	

<b>PDA (until 7/1/06)</b>	<b>PRA (after 7/1/06)</b>	<b>WAC Model Rules</b>
42.17.310(1)(ff)	<u>42.56.380</u>	
42.17.310(1)(gg)	<u>42.56.270</u>	
42.17.310(1)(hh)	<u>42.56.360</u>	
42.17.310(1)(ii)	<u>42.56.480</u>	
42.17.310(1)(jj)	<u>42.56.270</u>	
42.17.310(1)(kk)	<u>42.56.390</u>	
42.17.310(1)(ll)	<u>42.56.330</u>	
42.17.310(1)(mm)	<u>42.56.330</u>	
42.17.310(1)(nn)	<u>42.56.330</u>	
42.17.310(1)(oo)	<u>42.56.360</u>	
42.17.310(1)(pp)	<u>42.56.400</u>	
42.17.310(1)(qq)	<u>42.56.320</u>	
42.17.310(1)(rr)	<u>42.56.240</u>	
42.17.310(1)(ss)	<u>42.56.230</u>	
42.17.310(1)(tt)	<u>42.56.270</u>	
42.17.310(1)(uu)	<u>42.56.410</u>	
42.17.310(1)(vv)	<u>42.56.320</u>	
42.17.310(1)(ww)	<u>42.56.420</u>	
42.17.310(1)(xx)	<u>42.56.430</u>	
42.17.310(1)(yy)	<u>42.56.430</u>	
42.17.310(1)(zz)	<u>42.56.430</u>	
42.17.310(1)(aaa)	<u>42.56.440</u>	
42.17.310(1)(bbb)	<u>42.56.420</u>	
42.17.310(1)(ccc)	<u>42.56.420</u>	
42.17.310(1)(ddd)	<u>42.56.420</u>	
42.17.310(1)(eee)	<u>42.56.400</u>	
42.17.310(1)(fff)	<u>42.56.270</u>	
42.17.310(1)(ggg)	<u>42.56.330</u>	
42.17.310(1)(hhh)	<u>42.56.270</u>	
42.17.310(1)(iii)	New**	
42.17.310(1)(jjj)	<u>42.56.270</u> ++	
42.17.310(1)(jjj)	<u>42.56.380</u> ++	
42.17.310(1)(kkk)	<u>42.56.380</u>	
<u>42.17.311</u>	<u>42.56.510</u>	
<u>42.17.312</u>	<u>42.56.360</u>	
<u>42.17.313</u>	<u>42.56.450</u>	

<b>PDA (until 7/1/06)</b>	<b>PRA (after 7/1/06)</b>	<b>WAC Model Rules</b>
<u>41.17.314</u>	<u>42.56.330</u>	
<u>42.17.315</u>	<u>42.56.320</u>	
<u>42.16.316</u>	<u>42.56.360</u>	
<u>42.17.317</u>	<u>42.56.380</u>	
<u>42.17.318</u>	<u>42.56.240</u>	
<u>42.17.319</u>	<u>42.56.270</u>	
<u>42.17.31901</u>	<u>42.56.240</u>	
<u>42.17.31902</u>	<u>42.56.360</u>	
<u>42.17.31903</u>	<u>42.56.400</u>	
<u>42.17.31904</u>	<u>42.56.400</u>	
<u>42.17.31905</u>	<u>42.56.400</u>	
<u>42.17.31906</u>	<u>42.56.460</u>	
<u>42.17.31907</u>	<u>42.56.380</u>	
<u>42.17.31908</u>	<u>42.56.400</u>	
<u>42.17.31909</u>	<u>42.56.380</u>	
<u>42.17.31910</u>	<u>42.56.360</u>	
<u>42.17.31911</u>	<u>42.56.400</u>	
<u>42.17.31912</u>	<u>42.56.330</u>	
<u>42.17.31913</u>	<u>42.56.250</u>	
<u>42.17.31914</u>	<u>42.56.420</u>	
<u>42.17.31915</u>	<u>42.56.400</u>	
<u>42.17.31916</u>	<u>42.56.400</u>	
<u>42.17.31917</u>	<u>42.56.400</u>	
<u>42.17.31918</u>	<u>42.56.380</u>	
<u>42.17.31919</u>	<u>42.56.380</u>	
<u>42.17.31920</u>	<u>42.56.480</u>	
<u>42.17.31921</u>	<u>42.56.470</u>	
<u>42.17.31922</u>	New**	
<u>42.17.31923</u>	New**	
<u>42.17.320</u>	<u>42.56.520</u>	<u>44-14-04003</u> <u>44-14-08001</u> <u>44-14-08004</u>
<u>42.17.325</u>	<u>42.56.530</u>	<u>44-14-08002</u>
<u>42.17.330</u>	<u>42.56.540</u>	<u>44-14-04003</u> <u>44-14-08004(5)</u>

<b>PDA (until 7/1/06)</b>	<b>PRA (after 7/1/06)</b>	<b>WAC Model Rules</b>
<u>42.17.340</u>	<u>42.56.550</u>	<u>44-14-01003</u> <u>44-14-04001</u> <u>44-14-04003</u> <u>44-14-08004</u>
<u>42.17.341</u>	<u>42.56.560</u>	
<u>42.17.348</u>	<u>42.56.570</u>	
New	<u>42.56.020</u>	
New	<u>42.56.900</u>	
New	<u>42.56.901</u>	
New	<u>42.56.902</u>	

\*\* Not yet recodified, see Laws of 2006, chapter 209 §§15 & 16

++ Laws of 2006 chapter 75, §2 and chapter 302, §11 both added a subsection (jjj) to 42.17.310(1)

Table 2: Chapter 42.56 RCW to Chapter 42.17 RCW

PRA (after 7/1/06)	PDA (until 7/1/06)	WAC Model Rules
<u>42.56.010</u>	<u>42.17.010</u>	
<u>42.56.020</u>	New	<u>44-14-00004</u>
<u>42.56.030</u>	<u>42.17.251</u>	<u>44-14-01003</u> <u>44-14-06002</u>
<u>42.56.040</u>	<u>42.17.250</u>	<u>44-14-02001</u>
<u>42.56.050</u>	<u>42.17.255</u>	<u>44-14-06002(2)</u>
<u>42.56.060</u>	<u>42.17.258</u>	<u>44-14-01003</u> <u>44-14-04003</u>
<u>42.56.070</u>	<u>42.17.260</u>	<u>44-14-03003</u>
42.56.070(1)	42.17.260(1)	<u>44-14-010</u> <u>44-14-06002</u>
42.56.070(2)	42.17.260(2)	<u>44-14-010</u> <u>44-14-060</u> <u>44-14-06001</u>
42.56.070(3)	42.17.260(3)	<u>44-14-030</u> <u>44-14-03003</u>
42.56.070(4)	42.17.260(4)	<u>44-14-030</u> <u>44-14-03003</u>
42.56.070(7)	42.17.260(7)	<u>44-14-07001</u>
42.56.070(9)	42.17.260(9)	<u>44-14-03006</u> <u>44-14-06002(6)</u>
<u>42.56.080</u>	<u>42.17.270</u>	<u>44-14-01002</u> <u>44-14-03006</u> <u>44-14-04004</u> <u>44-14-04002</u> <u>44-14-04003</u> <u>44-14-04005</u> <u>44-14-4006</u>
<u>42.56.090</u>	<u>42.17.280</u>	<u>44-14-03002</u> <u>44-14-04005</u>
<u>42.56.100</u>	<u>42.17.290</u>	<u>44-14-01002</u> <u>44-14-03004</u> <u>44-14-04001</u> <u>44-14-04003</u> <u>44-14-04005</u> <u>44-14-04006</u>
<u>42.56.110</u>	<u>42.17.295</u>	

<b>PRA (after 7/1/06)</b>	<b>PDA (until 7/1/06)</b>	<b>WAC Model Rules</b>
<u>42.56.120</u>	<u>42.17.300</u>	<u>44-14-04005</u> <u>44-14-070</u> <u>44-14-07001</u>
<u>42.56.130</u>	<u>42.17.305</u>	
<u>42.56.210(1)</u>	<u>42.17.310(2)</u>	<u>44-14-04004</u>
<u>42.56.210(2)</u>	<u>42.17.310(3)</u>	
<u>42.56.210(3)</u>	<u>42.17.310(4)</u>	<u>44-14-04004</u> <u>44-14-06002</u>
<u>42.56.230</u>	<u>42.17.310(1)(a)</u> <u>42.17.310(1)(b)</u> <u>42.17.310(1)(c)</u> <u>42.17.310(1)(ss)</u>	
<u>42.56.240</u>	<u>42.17.310(1)d)</u> <u>42.17.310(1)(e)</u> <u>42.17.310(1)(rr)</u> <u>42.17.318</u> <u>42.17.31901</u>	
<u>42.56.250</u>	<u>42.17.310(1)(f)</u> <u>42.17.310(1)(t)</u> <u>42.17.310(1)(u)</u> <u>42.17.310(1)(dd)</u> <u>42.17.310(1)(ee)</u> <u>42.17.31913</u>	
<u>42.56.260</u>	<u>42.17.310(1)(g)</u>	
<u>42.56.270</u>	<u>42.17.310(1)(h)</u> <u>42.17.310(1)(m)</u> <u>42.17.310(1)(o)</u> <u>42.17.310(1)(r)</u> <u>42.17.310(1)(z)</u> <u>42.17.310(1)(aa)</u> <u>42.17.310(1)(bb)</u> <u>42.17.310(1)(gg)</u> <u>42.17.310(1)(jj)</u> <u>42.17.310(1)(tt)</u> <u>42.17.310(1)(fff)</u> <u>42.17.310(1)(hhh)</u> <u>42.17.319</u>	
<u>42.56.280</u>	<u>42.17.310(1)(i)</u>	<u>44-14-06002(4)</u>
<u>42.56.290</u>	<u>42.17.310(1)(j)</u>	<u>44-14-06002(3)</u>
<u>42.56.300</u>	<u>42.17.310(1)(k)</u>	

<b>PRA (after 7/1/06)</b>	<b>PDA (until 7/1/06)</b>	<b>WAC Model Rules</b>
<u>42.56.310</u>	<u>42.17.310(1)(l)</u>	
<u>42.56.320</u>	<u>42.17.310(1)(p)</u> <u>42.17.310(1)(qq)</u> <u>42.17.310(1)(vv)</u> <u>42.17.315</u>	
<u>42.56.330</u>	<u>42.17.310(1)(q)</u> <u>42.17.310(1)(v)</u> <u>42.17.310(1)(ll)</u> <u>42.17.310(1)(mm)</u> <u>42.17.310(1)(nn)</u> <u>42.17.310(1)(ggg)</u> <u>42.17.314</u> <u>42.17.31912</u>	
<u>42.56.340</u>	<u>42.17.310(1)(s)</u>	
<u>42.56.350</u>	<u>42.17.310(1)(w)</u>	
<u>42.56.360</u>	<u>42.17.310(1)(x)</u> <u>42.17.310(1)(y)</u> <u>42.17.310(1)(hh)</u> <u>42.17.310(1)(oo)</u> <u>42.17.312</u> <u>42.17.316</u> <u>42.17.31902</u> <u>42.17.31910</u>	
<u>42.56.370</u>	<u>42.17.310(1)(cc)</u>	
<u>42.56.380</u>	<u>42.17.310(1)(ff)</u> <u>42.17.317</u> <u>42.17.31907</u> <u>42.17.31909</u> <u>42.17.31918</u> <u>42.17.31919</u>	
<u>42.56.390</u>	<u>42.17.310(1)(kk)</u>	

<b>PRA (after 7/1/06)</b>	<b>PDA (until 7/1/06)</b>	<b>WAC Model Rules</b>
<u>42.56.400</u>	42.17.310(1)(pp) 42.17.310(1)(eee) <u>42.17.31903</u> <u>42.17.31904</u> <u>42.17.31905</u> <u>42.17.31908</u> <u>42.17.31911</u> <u>42.17.31915</u> <u>42.17.31916</u> <u>42.17.31917</u>	
<u>42.56.410</u>	<u>42.17.310(1)(uu)</u>	
<u>42.56.420</u>	<u>42.17.310(1)(ww)</u> ; <u>42.17.310(1)(bbb)</u> ; <u>42.17.310(1)(ccc)</u> ; <u>42.17.310(1)(ddd)</u> ; <u>42.17.31914</u>	
<u>42.56.430</u>	<u>42.17.310(1)(xx)</u> <u>42.17.310(1)(yy)</u> <u>42.17.310(1)(zz)</u>	
<u>42.56.440</u>	<u>42.17.310(1)(aaa)</u>	
	<u>42.17.313</u>	
<u>42.56.460</u>	<u>42.17.31906</u>	
<u>42.56.470</u>	<u>42.17.31921</u>	
<u>42.56.480</u>	<u>42.17.310(1)(n)</u> <u>42.17.310(1)(ii)</u> <u>42.17.31920</u>	
<u>42.56.510</u>	<u>42.17.311</u>	
<u>42.56.520</u>	<u>42.17.320</u>	<u>44-14-04003</u> <u>44-14-08001</u> <u>44-14-08004</u>
<u>42.56.530</u>	<u>42.17.325</u>	
<u>42.56.540</u>	<u>42.17.330</u>	<u>44-14-04003</u> <u>44-14-08004(5)</u>
<u>42.56.550</u>	<u>42.17.340</u>	<u>44-14-01003</u> <u>44-14-04001</u> <u>44-14-04003</u> <u>44-14-08004</u>
<u>42.56.560</u>	<u>42.17.341</u>	
<u>42.56.570</u>	<u>42.17.348</u>	
<u>42.56.900</u>	New	

<b>PRA (after 7/1/06)</b>	<b>PDA (until 7/1/06)</b>	<b>WAC Model Rules</b>
<u>42.56.901</u>	<u>42.17.963</u>	
<u>42.56.902</u>	New	

**Laws of 2006 amending sections**

Chapters and (section amended):

8, §210 (.400) & §112 (.360);

84, §17 (.400); 86 §1 (.300); 171, §8 (.270); 183, §37 (.270);

209, §7 (.270) & §8 (.330); 284, §17 (400); 302, §12 (.270); 330, §26 (.380); 338, §5 (.270); 341, §6 (.270); 369, §2 (.270)

**Laws of 2006 adding new sections**

Chapter 25 §3;

Chapter 209, §§15 & 16 (recodifying 42.17.253; 42.17.310(1) (iii); 42.17.31922; & 42.17.31923)

# 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 USC § 2721 - 2725	Driver and License Plate Information
18 USC § 923(g); Public Law 112-55, div. B, title II, 125 STAT. 609	Firearms trace data provided to local law enforcement by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
20 USC § 1232g	Family Education Rights and Privacy Act
23 USC § 409	Evidence of certain accident reports
42 USC § 290dd-2	Confidentiality of Substance Abuse Records
42 USC § 405(c)(2)(C)(viii) (I)	Limits on Use and Disclosure of Social Security Numbers.
42 USC § 654(26)	State Plans for Child Support
42 USC § 671(a)(8)	State Plans for Foster Care and Adoption Assistance
42 USC § 1396a(7)	State Plans for Medical Assistance
42 USC § 5106a	Grants to States for Child Abuse and Neglect Prevention and Treatment Programs
7 CFR § 272.1(c)	Food Stamp Applicants and Recipients
34 CFR § 361.38	State Vocational Rehabilitation Services Programs

42 CFR § Part 2 (2.1 - 2.67)	Confidentiality of Alcohol and Drug Abuse Patient Records
42 CFR § 431.300 - 307	Safeguarding Information on Applicants and Recipients of Medical Assistance
42 CFR § 483.420	Client Protections for Intermediate Care Facilities for Individuals with Intellectual Disabilities
45 CFR § 160-164	HIPAA Privacy Rule