



Public Records 101

Overview

What are we going to cover today?

- Washington State’s public records laws (RCW 40.14 and RCW 42.56)
- Basics of records management
- The Public Records Act

Preservation and Destruction of Public Records

Public records shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance to the provisions of RCW 40.14

Public records are to be protected and preserved by both state and local governments.

Public records include:

- All records made by or received by any agency in the State of Washington
- In the connection with the transaction of public business
- Regardless of physical form or characteristics

Managing Public Records

Good records management promotes open and accountable government, increases efficiency, and saves money!

- When records are easily accessible and lawfully disposed of it increases public trust and confidence in government.
- Reduces costs associated with litigation, records storage, and IT costs.
- Maintains continuity of operations during staff changes or in the event of a disaster.

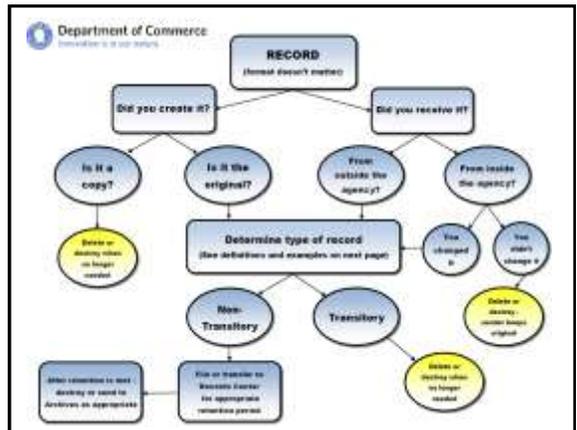
What do I keep and for how long?

All records, **regardless of format**, have a retention value based on their content, function or purpose.

Records that do not document the conduct of business have no retention value and should be deleted or destroyed when no longer needed.

Records with an “archival” retention value must be kept forever.

All state and local government agencies have retention schedules that are approved by the Secretary of State’s Office.



Examples

Transitory Records - Records that have no legal, fiscal, audit, historical, or business value. Examples include, but are not limited to:

- Social announcements
- Newsletters, catalogs, and informational announcements received from outside of the agency
- Convenience copies of records that are used solely for reference
- Requests for routine agency information such as business hours or phone numbers
- Duplicate copies of records when the primary record has been retained
- Junk mail/spam

Non-Transitory Records - Records that document the conduct of agency business and operations. Examples include, but are not limited to:

- Reports
- Project files
- Policies
- Records showing decisions or commitments
- Contracts
- Meeting minutes
- Legal or fiscal matters
- Agency provided advice
- Solicitation of public input



Destruction of Public Records

Agencies should document the destruction of all public records except for those records with a minimum retention value of "retain until no longer needed for agency business".

Destruction logs must be retained for the life of your agency.

When a Public Records Act request is received all responsive records **MUST** be preserved, even if a record has met its retention value.

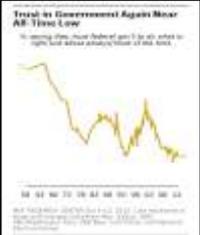
More information about the records management can be found at the Secretary of State's website: <http://www.sos.wa.gov/archives/>.



The Public Records Act

The Public Records Act (PRA) is found under RCW 42.56

- The PRA was passed by initiative in 1972.
- All state and local government agencies must comply with the PRA.
- All records of an agency are presumed to be subject to disclosure.




Intent

Public Disclosure and Democracy

The PRA rests on the important principle that open and transparent government is essential to representative democracy. The PRA states:

- "The people of this state do not yield their sovereignty to the agencies that serve them."
- "The people insist on remaining informed so that they may maintain control over the instruments that they have created."
- "This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected."

In short, the intent of the law is to keep government accountable to the people it serves.



Legal Obligations

The Public Records Act Requires Broad Disclosure

- The PRA requires that agencies provide access to public records to the FULLEST extent possible.
- All public records are presumed disclosable.
- An agency must have a specific legal exemption (RCW or Federal statute) in order to withhold any portion of a record.

"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 or others." – RCW 42.56.550(3)



Availability of Public Records

- Each agency must appoint a public records officer and publish the officer's name and contact info.
- Policies and procedures for submitting public records requests must also be published.
- Records must be available for inspection during customary business hours.



What is a public record?

RCW 42.56.010(2)

Any "writing" relating to the conduct of government or the performance of any governmental or proprietary function that is prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

This means that records:

- can come in any format.
- may not be "official" agency records.
- may not have been created by your agency.
- may not be related in any way to agency operations

(e.g., A personal email sent from your agency email account may be subject to public disclosure.)

What is a public record?

Public Records on personal devices are still public records!

- Location is not a determining factor of whether a record is public.
- If you use personal devices to conduct agency business, your personal devices could become subject to a search.
- Keep agency business on agency-issued computers and devices. Keep personal matters on personal computers and devices.

What is a public records request?

A Public Records Request can come in any form. No specific format is required:

- Agency form
- Via email
- Through a letter
- Over the phone

The request should contain reasonable notice that it is a public records request. Some common request terms that would provide reasonable notice:

- Public record
- Public disclosure
- FOIA or Freedom of Information Act
- Official request

What is a public records request?

The request must be for an identifiable record:

- An identifiable record is a record that staff can reasonably locate.
- The requester is not required to identify the record exactly, but should provide some description of the record.
- A request for information in general is not a public disclosure request.
- An agency is not required to conduct legal research for a requester.
- There is no duty to create a record in order to respond to a request.
- An agency must only provide access to public records in existence at the time of the request. There is no duty to supplement responses with future created records.
- An agency cannot deny a request because it is "overbroad".

Who makes requests?

ANYONE can request records under the PRA

- Attorneys
- Media
- Public
- Inmates
- Staff

Agencies are not permitted to distinguish among requesters.

Requesters do not have to explain or provide a reason for requesting records.

How do we respond?

Agencies must respond to requests within five business days.

The initial response must include one of the following:

- Provide the records (or a link to the portion of a website that contains the records).
- Provide a reasonable estimate of time to produce the records.
- Request clarification.
- Deny the request either in whole or in part, including an explanation of the denial.

What is a reasonable estimate of time?

Agencies may need additional time to respond to requests

- To assemble and review the records.
- To provide third party notice to persons named in the records.
- To redact exempt information and create an exemption log.
- Based on the complexity and number of other outstanding requests, agency resources, and other agency essential functions.

An agency should not use the same time estimate for every request. The reason for the additional time needed should be briefly explained in the initial response.

What records can be withheld?

All exemptions must be construed narrowly in favor of disclosure. When in doubt, give it out!

Some examples of exempt information include:

- Personal information in files maintained for public employees.
- Applications for public employment
- Attorney advice or work product
- Financial account numbers (credit card numbers, bank account numbers)

Information should be redacted instead of withholding the entire record whenever possible.

When a record is redacted or withheld, an exemption log must be provided to the requester including a brief explanation of how the exemption applies to the record.

What fees may be charged?

Agencies may charge \$0.15 per page for paper copies of records.

- Agencies can charge "actual costs" related to copying or shipping.
- No charge for staff time spent searching for or reviewing records.
- No charge for electronic records produced electronically.
- May charge a scanning fee if actual costs have been determined.
- May require a 10% deposit for large requests.
- May withhold additional installments of records until a previous installment has been paid for.

Agency Liability

RCW 42.56.550

Under the PRA, agencies have the burden to prove compliance. If an agency is found to have violated the Act, penalties, attorney fees, and costs can be mandatory. Penalty amounts are assessed at the Court's discretion in any amount, up to \$100 per day, for each day the requester was denied their right to a record. The penalty period can include a lengthy time spent in the court process.

The PRA demands strict compliance! Even accidental or good faith mistakes can cost your agency (and ultimately taxpayers) money in penalties, fees, and awards.

Agency Liability

Common reasons penalties are awarded

- An inadequate search resulting in records not being produced (known as silent withholding).
- An improper claim of exemption for the legal basis a record was redacted or withheld.
- An inadequate explanation of the legal basis for redaction or withholding of a record.
- Missed deadlines.

Employee Liability

What are my personal obligations?

Under the Ethics in Public Service Act "no state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released." – RCW 42.52.050.

"Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office.....is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both." – RCW 40.16.020

Tips to Assist in PRA Compliance

- Always keep your communications respectful and professional. If you do not want to see it on the front page of a newspaper, do not put it in writing!
- Remember that as public employees, public disclosure and records management are part of our jobs.
- Follow records retention guidelines. Eliminating unnecessary records enables you to locate responsive records more quickly.
- Elected Officials and Public Records Officers must attend training.



Resources

RCW 42.56
Attorney General's Model Rules
RCW 40.14

Questions?

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