

# 2017 Amendments to Public Records Laws



---

*Infrastructure Assistance Coordinating Council*

*October 26, 2017 - Wenatchee, WA*

*Presenter:*

*Nancy Krier, Assistant Attorney General for Open Government*



# Outline



- I. Brief overview of Public Records Act
- II. 2017 Amendments to PRA
- III. Data collection and reporting
- III. New public records fees/procedures
- IV. Other provisions
- VI. Questions

# Brief Overview of Public Records Act

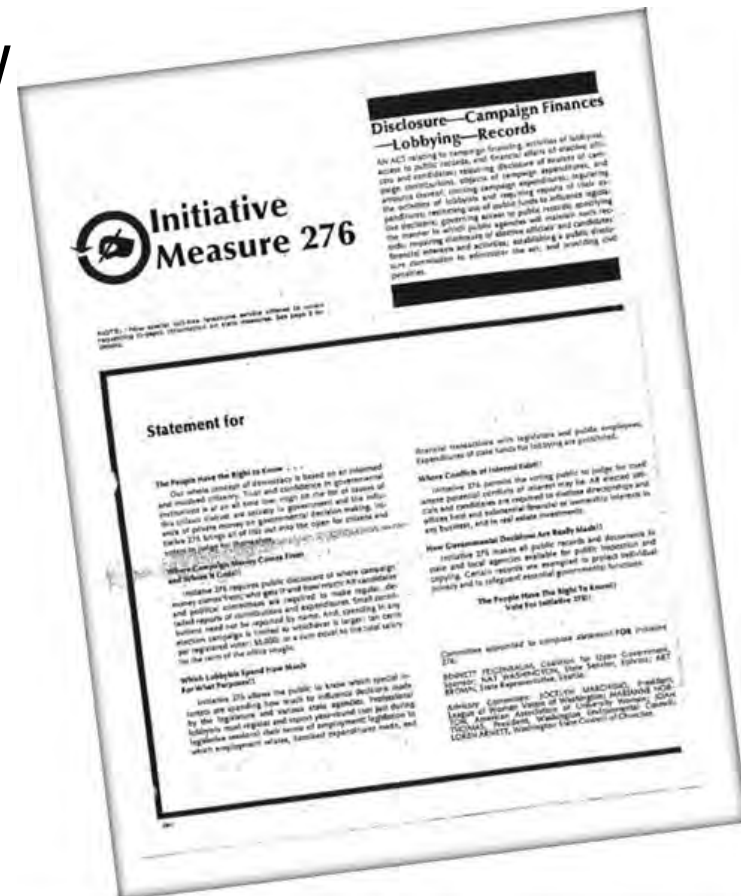


# Washington's Open Public Records Act (PRA)

- Passed in 1972 – Initiative 276
- RCW 42.56 (formerly RCW 42.17)

---

*Most recent amendments –  
ESHB 1594  
(Chap. 303, 2017 Laws);  
EHB 1595 (Chap. 304,  
2017 Laws)*



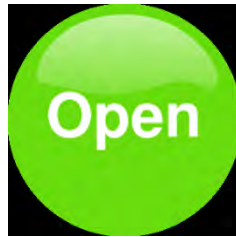
# Purpose

- “The people do not yield their sovereignty to the agencies which serve them.”
- “The people, in delegating authority, do not give 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 they may retain control over the instruments they have created.”

~ *RCW 42.56.030 (PRA)*



# Touchstone:



- Public records of government agencies are presumed open.
- Records or information in records can be withheld only by law (e.g. exemption in law). Exemptions must be “narrowly construed.”

~ RCW 42.56.030



# Public Record



**“Public record”** means:

- 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.”

~ RCW 42.56.030

# Writing

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

~ RCW 42.56.030

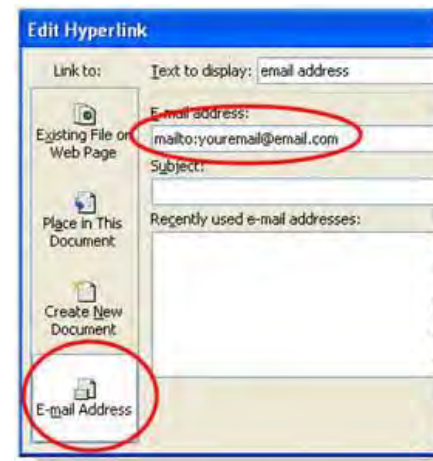
- So, “public record” is broadly defined.





# Note: Public Records Include...

...records of agency business when they are created or retained by agency employees or officials on **home computers or devices, or in non-agency email accounts or files.**



# General PRA Procedures



Under PRA, agencies must:

- Appoint a **public records officer**.
- Publish **procedures** describing certain agency organization, operations, rules of procedure, and other items listed in PRA that:
  - Provide full public access to public records,
  - Protect public records from damage/disorganization
  - Prevent excessive interference with other agency functions.
  - Provide **fullest assistance** to requesters
  - Provide most timely possible action on requests.
- Publish **fee schedule**. See upcoming slide.
- Maintain a **list of laws** the agency believes exempts or prohibits disclosure.
- Provide certain **indexes** of records.
- Make non-exempt records **available for inspection and copying during customary business hours** for a minimum of 30 hours per week, excluding holidays.
  - ❖ Post customary business hours on the agency's website and make hours known by other public means.



~ RCW 42.56.040, RCW 42.56.070 - .090, RCW 42.56.580, RCW 42.56.580.

# Agency Responses to Requests

- The agency has **five business days** to respond to a public records request.



- Agency response can:
  - Acknowledge receipt of the request and provide a reasonable estimate to respond;** or
  - Fulfill the request;** or
  - Provide an internet address and link** to the records on the agency's website (which fulfills part or all of the request); or
  - Seek clarification** (still need to give estimate of time)\*; or,
  - Deny** the request with an accompanying written statement of the specific **reasons**.

~ RCW 42.56.520



\*ESHB 1594 (eff. July 23, 2017) – if request unclear, give estimate to greatest extent possible

respond

# Enforcement & Penalties



- PRA enforced by **courts** for claims listed in PRA.
- A court can impose **civil penalties**. No proof of “damages” required.
- A court is to consider **factors** in requiring an agency to pay a penalty.
- Plus, a court will award the prevailing requester’s **attorneys fees and costs**.
- Special penalty provisions and court procedures apply to lawsuits involving inmate requests.

~ RCW 42.56.550, RCW 42.56.565; *Yousoufian v. Sims*

# Your attention please ....

Examples of Public Records Act penalty orders, judgments and settlements following lawsuits by requesters alleging PRA violations by a public agency.  
(Does NOT include attorneys fees and costs in all cases).


- **\$600,000** – Snohomish County
- **\$575,000** – Snohomish County
- **\$550,000** – Clallam County
- **\$502,827** – L & I (*upheld by State Supreme Court*)
- **\$500,000** – Board of Accountancy (*global settlement of 7 lawsuits and 15 PRA disputes*)
- **\$488,000** – Bainbridge Island (*\$350,000 penalty, remainder is attorneys fees/costs*)
- **\$371,340** – King County
- **\$192,000** – LCB (*included other open government claims*)
- **\$187,000** – Port of Olympia
- **\$175,000** – Mesa (*reduced from \$353,000 - possible appeal*)
- **\$174,000** – Seattle
- **\$150,000** – Jefferson County
- **\$100,000** – Shoreline (*with attorneys fees, total amount was more than \$500,000*)
- **\$100,000** – Spokane County
- **\$85,000** – San Juan County
- **\$50,000** – City of Tacoma
- **\$45,000** – Kennewick
- **\$45,000** – Everett
- **\$45,000** – Port of Vancouver

- 
- **\$723,290** – UW (*reversed on appeal*)
  - **\$649,896** – DSHS (*reversed on appeal*)



# ESHB 1594; EHB 1595 (2017)



- Legislative work group met in summer and fall 2016.
  - These two bills passed in 2017; effective July 23, 2017.
  - **Now codified** in chapter 42.56 RCW, available online:  
<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56>
  - Also chapter 40.14 RCW (records retention):  
<http://app.leg.wa.gov/RCW/default.aspx?cite=40.14>
-  **(See summary of bills)**
- Several RCW citations amended. Check your agency's PRA materials to see if they are current.
  - Attorney General's Office Model Rules and other AGO materials are also being updated.



# New PRA Definition Exclusion – Records of Certain Volunteers

- Records of **certain volunteers** are excluded from the definition of “public record.” They are:
  - Records not otherwise required to be retained
  - and are held by volunteers who
    - (a) do not serve in an administrative capacity,
    - (b) have not been appointed by the agency to an agency board, commission or internship, and
    - (c) do not have a supervisory role or delegated agency authority.



~ RCW 42.56.010(3)



# New PRA Procedures



- **Ordinances.** Local agencies should consult AGO Model Rules in developing PRA ordinances.
- **Format for requests.**
  - No official format is required.
  - Agencies can recommend requesters use their form or web page.
  - Must accept in person requests made during normal office hours.
  - Request must be for “identifiable” records. (Upcoming slide.)
  - No “bot” requests if certain criteria met. (Upcoming slide.)





# New Language Regarding Requests

- “A public records request must be for **identifiable records.**”
  - “A request for all or substantially all records, prepared, owned, use or retained by an agency is not a valid request for identifiable records under this chapter,
  - “Provided that a request for all records regarding a particular topic or containing a particular keyword or name shall **not** be considered a request for all of an agency’s records.”



~ RCW 42.56.080(1)

# Requests (Cont.)



- An agency may deny a **“bot” request**, under the criteria in the bill.
  - A “bot” request is one of multiple requests from a requestor to the agency within a 24 hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential function of the agency.
  - “Bot” request means a request for public records that an agency reasonably believes was automatically generated by a computer program or script.



~ RCW 42.56.080(2)

# New Fees Procedures



- **Copy fee schedule:**

- ❖ Agencies can charge **actual costs** (following certain procedures & **notice/public hearing**) or
- ❖ **Default statutory costs** (following a declaration of undue burden in **rule**; list of costs in statute).
- ❖ **Alternative flat fee up to \$2** for entire request (see details in statute)



- Court action can be brought to challenge agency's estimate of fees.
- Need to give requester summary of applicable charges upon request.



~ RCW 42.56.070(7); RCW 42.56.120; RCW 42.56.550

# New Clarification/Estimate of Time Language

- The agency has five business days to respond to a public records request.
  1. Acknowledge receipt of the request and provide a reasonable estimate to respond; or
  2. Fulfill the request; or
  3. Provide an internet address and link to the records on the agency's website (which fulfills part or all of the request); or
  4. Acknowledging that the agency has received the request and asking the requestor to provide clarification for a request that is unclear, **and providing, to the greatest extent possible, a reasonable estimate of the time the agency will require to respond to the request if it is not clarified;** or,
  5. Deny the request with an accompanying written statement of the specific reasons.



~ RCW 42.56.520



# More New Clarification Language

- An agency can seek clarification of a request if it is **not reasonably clear**, or does not request “**identifiable records**.”
- If requester does not respond to request for clarification, and the request is entirely unclear, the agency may close the request.

**Agency must respond  
to parts of request that are clear.**



respond



# New PRA Training



- “Open Government Trainings Act”: RCW 42.56.150, RCW 42.56.152, RCW 42.30.205. (Within 90 days; no later than 4-year refresher). New training requirement for **public records officers** – RCW 42.56.152:

**(5) Training must address particular issues related to the retention, production, and disclosure of electronic documents, including updating and improving technology information services.**



**New!**



**(See Q & A.)**

# New Programs & Studies

## – ESHB 1594



- The AGO may provide records **consultation** services for local governments. *(Program being developed)*. RCW 42.56 – PRA. Ends June 2020. RCW 42.56.570(5).
- The State Archives can provide a local government **consultation/training program** on records retention. RCW 42.56.570(6). Ends June 2020.
- The State Archives will provide a **local government competitive grant program** for one-time investments to improve technology information systems for records management/retention/production and training. *(Program being developed)*. RCW 40.14.026. Ends June 2020.
  - See June 2017 State Archives “Records Management Advice”
- The State Archives will conduct an **open records portal study**, due to the Legislature September 2018.
  - Work group formed.



# New Records Procedures

## – RCW 40.14



- **Log.** Agency must keep a log of PRA requests
  - identity of requester if provided
  - date of receipt
  - text of request
  - description of records produced
  - description of records redacted/withheld and reasons, and
  - date of final disposition.



- **Data collection & reporting.** Agencies having PRA staff and legal costs of more than \$100,000/year must report 17 data points about their agencies' PRA requests to the Joint Legislative Audit and Review Committee (JLARC).





# More Resources About 2017 Public Records Laws

- **Attorney General's Office Open Government Web Site**
  - **Open Government Training Page**
  - <http://www.atg.wa.gov/open-government-training>
  - Lesson 2 – Public Records Act
    - PRA Video **New!**
    - Links to summaries of 1594/1595
    - List of other laws enacted in 2017 which affect agency records
    - Supplemental Q & A on additional training requirement (electronic records) for Public Records Officers

## LESSON 2: OPEN PUBLIC RECORDS – RCW 42.56



- Office of the Attorney General PowerPoint – Open Public Records ([PowerPoint](#) / [PDF](#))

### Other Resources:

- [2017 Legislative Update \(Records\)](#)
- [2017 Legislative Update \(1594/1595\)](#)
- [2017 Legislative Update \(1595/Fees\)](#)

## Summary of [ESHB 1594](#) (Improving Public Records Administration)

[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

### DEFINITION

- **PUBLIC RECORD.** Section 1 amends the “public record” definition in the Public Records Act (PRA) at RCW 42.56.010(3) to exclude records that are not otherwise required to be retained and are held by volunteers who (a) do not serve in an administrative capacity; (b) have not been appointed by the agency to an agency board, commission or internship; and, (c) do not have a sup

### TRAINING

- **PUBLIC RECORDS OFFICER TRAINING.** Section 2 amends th in RCW 42.56.152 to require training on “particular issues r of electronic documents, including updating and improving

### RECORDS PROCEDURES

- **5-DAY RESPONSE – REQUEST FOR CLARIFICATION.** Sect permitted agency response to a PRA request within the receipt and request for clarification, “and, providing to the of time” the agency will require to respond to the request i and the requester fails to respond, the agency need not re to those portions of a request that are clear.

## Summary of [EHB 1595](#)

### (Concerning Costs Associated With Responding to Public Records Requests)

[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

### COPY FEES

- **ACTUAL COSTS - COPYING FEES - ELECTRONIC RECORDS; HEARING.** Section 1 amends RCW 42.56.070(7) in the Public Records Act (PRA) to provide that:
  - Agencies may establish a statement of the actual costs that it charges for photocopies and now to include “electronically produced copies.”
  - “Actual costs” for copies may now also include the “actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage processing service” and the cost of transmitting electronic records (including the use of a physical media device).
  - The statement of costs may be adopted only after providing notice and a public hearing.
- **ACTUAL COSTS - COPYING FEES – CALCULATIONS.** Section 3 amends RCW 42.56.120 to provide that when calculating copy fees, “the agency shall use the most reasonable cost-efficient method available to the agency.” It also provides that actual costs may be imposed only in accordance with RCW 42.56.070(7) (see amendments in Section 1), and in accordance with the statement of factors and manner used to determine actual costs.

## 2017 Legislative Sessions

### New Laws Regarding Public Agency Records

*Note: The list below contains links to and brief summaries of bills enacted during the 2017 regular and first, second and third special sessions of the Washington State Legislature. See links for session laws and effective dates. This is not an exhaustive list. Consult the Legislature's [website](#) for bills introduced, bill language including amendments, full history of a bill including companion bills, public hearing information, and other information.*



Bill No.	Title/Summary • RCWs	Session Law
<b>HOUSE</b>		
<a href="#">1043</a>	Addressing nonpublic personal health information • Office of Insurance Commissioner – RCW 48.02; RCW 48.02.020	Chap. 193, 2017 Laws.











Bob Ferguson

## ATTORNEY GENERAL OF WASHINGTON

### 2014 Open Government Trainings Act Supplemental Information – 2017 Amendment

The Open Government Trainings Act was enacted by the 2014 Washington State Legislature, effective July 1, 2014. Chap. 66, 2014 Laws ([Engrossed Senate Bill 5964](#)). It was codified at RCW 42.56.150 (records training for local elected and statewide elected officials), RCW 42.56.152 (records training for public records officers), and RCW 42.30.205 (open meetings training for governing bodies). In March 2014, the Attorney General's Office provided an "Open Government trainings Act Q & A" guide on the office's [Open Government Training web page](#), describing the training requirements.

The Legislature amended the training law in 2017 for public records officers, to include additional training on [\(Engrossed Substitute\)](#) the 2014 Q & A guide supplement begins with

<b>SUMMARY: COSTS FOR COPIES UNDER PUBLIC RECORDS ACT – RCW 42.56</b> <b>AGENCY OPTIONS PURSUANT TO <a href="#">EHB 1595</a> (CHAP. 304, LAWS OF 2017)</b> <i>Effective July 23, 2017; Summary Only – See Statutes for Details</i>					
CHARGING ACTUAL COSTS	CHARGING STATUTORY DEFAULT FEES	CHARGING ALTERNATIVE FLAT FEE	CHARGING PURSUANT TO ALTERNATIVE FEE ARRANGEMENT	CHARGING FOR CUSTOMIZED ACCESS SERVICE	WAIVING CHARGES (FEES)
					
Agency can charge its actual costs directly incident to copying including: <ul style="list-style-type: none"> <li>• Paper and per page cost for use of agency copying equipment</li> <li>• Electronic production or file transfer of the record</li> <li>• Use of any cloud-based data storage and processing service</li> <li>• Costs directly incident to shipping including postage or delivery charges and cost of container or envelope</li> </ul>	Agency can assess costs per the statutory fee schedule: <ul style="list-style-type: none"> <li>• 15 cents/page paper</li> <li>• 10 cents/page scanned into electronic format</li> <li>• 5 cents/4 files or attachments and provided by electronic delivery</li> <li>• 10 cents/gigabyte of electronic records transmission</li> <li>• Actual costs of storage media, container, envelope;</li> </ul>	Agency can charge alternative flat fee of up to \$2 for a request (rather than actual costs or default fees).	Agency can do an alternative fee arrangement, or in response to voluminous or frequently occurring requests.	Agency can charge up to actual costs for providing customized access services.	Agency can waive charges (fees).

# Thank you!



# 2017 Legislative Sessions

## New Laws Regarding Public Agency Records

*Note: The list below contains links to and brief summaries of bills enacted during the 2017 regular and first, second and third special sessions of the Washington State Legislature. See links for session laws and effective dates. This is not an exhaustive list. Consult the Legislature's [website](#) for bills introduced, bill language including amendments, full history of a bill including companion bills, public hearing information, and other information.*



Bill No.	Title/Summary <ul style="list-style-type: none"><li>RCWs</li></ul>	Session Law
<b>HOUSE</b>		
<a href="#">1043</a>	Addressing nonpublic personal health information <ul style="list-style-type: none"><li>Office of Insurance Commissioner – RCW 48.02; RCW 42.56.400</li></ul>	Chap. 193, 2017 Laws.
<a href="#">1105</a>	Concerning passenger-carrying vehicles for railroad employees <ul style="list-style-type: none"><li>RCW 42.56.330; RCW 81.61</li></ul>	Chap. 333, 2017 Laws.
<a href="#">1109</a>	Supporting victims of sexual assault <ul style="list-style-type: none"><li>RCW 43.101 – Criminal Justice Training Commission</li></ul>	Chap. 290, 2017 Laws.
<a href="#">1337</a>	Relating to the interstate medical licensure compact <ul style="list-style-type: none"><li>RCW 42.56</li></ul>	Chap. 195, 2017 Laws.
<a href="#">1462</a>	Adding authority to the department of agriculture to regulate sanitary processing of marijuana-infused edibles <ul style="list-style-type: none"><li>RCW 42.56; RCW 69.07</li></ul>	Chap. 138, 2017 Laws.
<a href="#">1465</a>	Exempting from public disclosure certain information regarding reports on wolf depredations <ul style="list-style-type: none"><li>RCW 42.56.430; new section in RCW 42.56; RCW 77.12.885</li></ul>	Chap. 246, 2017 Laws.
<a href="#">1477</a>	Concerning disclosure of health-related information with persons with a close relationship with a patient <ul style="list-style-type: none"><li>RCW 70.02</li></ul>	Chap. 298, 2017 Laws.
<a href="#">1493</a>	Concerning biometric identifiers <ul style="list-style-type: none"><li>See also <a href="#">HB 1717</a>, <a href="#">HB 2213</a></li><li>Title 19 RCW</li></ul>	Chap. 299, 2017 Laws.
<a href="#">1501</a>	Protecting law enforcement and the public from persons who illegally attempt to obtain firearms <ul style="list-style-type: none"><li>RCW 42.56</li></ul>	Chap. 261, 2017 Laws.

<a href="#">1594</a>	Improving public records administration <ul style="list-style-type: none"> <li>RCW 42.56.010, 42.56.152, RCW 42.56.520, RCW 42.56.570, RCW 40.14, RCW 36.22.175</li> </ul>	Chap. 303, 2017 Laws.
<a href="#">1595</a>	Concerning costs associated with responding to public records requests <ul style="list-style-type: none"> <li>RCW 42.56.070, RCW 42.56.080, RCW 42.56.120, RCW 42.56.130, RCW 42.56.550</li> </ul>	Chap. 304, 2017 Laws.
<a href="#">1661</a>	Creating the department of children, youth, and families. <ul style="list-style-type: none"> <li>RCW 42.56.230; Other provisions</li> </ul>	Chap. 6, 2017 Laws 3 <sup>rd</sup> Sp. Sess.
<a href="#">1717</a>	Concerning state agency collection, use, and retention of biometric identifiers <ul style="list-style-type: none"> <li>See also <a href="#">HB 1493</a>; <a href="#">HB 2213</a></li> <li>Title 40 RCW</li> </ul>	Chap. 306, 2017 Laws.
<a href="#">1732</a>	Concerning the confidentiality of educator professional growth plans <ul style="list-style-type: none"> <li>RCW 42.56.250</li> </ul>	Chap. 16, 2017 Laws.
<a href="#">1816</a>	Concerning information sharing related to implementation of the homeless youth prevention and protection act of 2015 <ul style="list-style-type: none"> <li>RCW 48.185C; RCW 13.50.010</li> </ul>	Chap. 277, 2017 Laws.
<a href="#">1829</a>	Concerning the exemption from public disclosure of information regarding public and private computer and telecommunications networks <ul style="list-style-type: none"> <li>RCW 42.56.420</li> </ul>	Chap. 149, 2017 Laws.
<a href="#">1965</a>	Standardizing the collection and distribution of criminal records <ul style="list-style-type: none"> <li>RCW 9.41; RCW 9A.44; RCW 43.43</li> </ul>	Chap. 174, 2017 Laws.
<a href="#">2005</a>	Improving the business climate in this state by simplifying the administration of municipal general business licenses. <ul style="list-style-type: none"> <li>Reference to RCW 42.56; Title 35 RCW</li> </ul>	Chap. 209, 2017 Laws.
<a href="#">2213</a>	Concerning state agency collection, use, and retention of biometric identifiers. <ul style="list-style-type: none"> <li>See also <a href="#">HB 1493</a>; <a href="#">HB 1717</a></li> <li>Title 40 RCW</li> </ul>	Chap. 1, 2017 Laws 2 <sup>nd</sup> Sp. Sess.







## SENATE

<a href="#">5031</a>	Addressing licensing and enforcement provisions applicable to money transmitters and currency exchanges under the uniform money services act. <ul style="list-style-type: none"> <li>RCW 19.230</li> </ul>	Chap. 30, 2017 Laws.
<a href="#">5039</a>	Adopting the uniform electronic legal material act <ul style="list-style-type: none"> <li>Title 1 RCW</li> </ul>	Chap. 106, 2017 Laws.
<a href="#">5131</a>	Addressing provisions concerning marijuana with respect to research licenses, local authority notifications, the retail licensing application process, processor wholesale events, and jurisdictional requirements <ul style="list-style-type: none"> <li>RCW 42.56.270; RCW 69.50; RCW 69.51A</li> </ul>	Chap. 317, 2017 Laws.
<a href="#">5173</a>	Concerning loss prevention reviews by state agencies <ul style="list-style-type: none"> <li>RCW 43.19</li> </ul>	Chap. 318, 2017 Laws.
<a href="#">5207</a>	Concerning the public disclosure of global positioning system data corresponding to residential addresses of public employees and volunteers <ul style="list-style-type: none"> <li>RCW 42.56.250</li> </ul>	Chap. 38, 2017 Laws.
<a href="#">5316</a>	Concerning the removal of provisions that are no longer necessary for continued publication in the Revised Code of Washington. <ul style="list-style-type: none"> <li>Decodifies RCW 42.56.901, .902, .903</li> </ul>	Chap. 25, 2017 Laws 3 <sup>rd</sup> Sp. Sess.
<a href="#">5343</a>	Concerning notice sent by and certain release of information affecting registered tow truck operators <ul style="list-style-type: none"> <li>RCW 46.55.110; RCW 46.52.130</li> </ul>	Chap. 43, 2017 Laws.
<a href="#">5358</a>	Improving tax and licensing laws administered by the department of revenue, but not including changes to tax laws that are estimated to affect state or local tax collections as reflected in any fiscal note prepared and approved under the process established in chapter 43.88A RCW <ul style="list-style-type: none"> <li>RCW 84.08; RCW 19.02.115</li> </ul>	Chap. 323, 2017 Laws.
<a href="#">5435</a>	Specifying to whom information and records related to mental health services may be disclosed for the purposes of care coordination and treatment <ul style="list-style-type: none"> <li>RCW 70.02.230</li> </ul>	Chap. 325, 2017 Laws.
<a href="#">5761</a>	Exempting certain confidential fish and shellfish harvest information from disclosure under chapter 42.56 RCW, the public records act <ul style="list-style-type: none"> <li>RCW 42.56.430</li> </ul>	Chap. 71, 2017 Laws.
<a href="#">5764</a>	Concerning higher education records <ul style="list-style-type: none"> <li>RCW 42.56.240; RCW 28B.112</li> </ul>	Chap. 72, 2017 Laws.

# SUMMARY: COSTS FOR COPIES UNDER PUBLIC RECORDS ACT – RCW 42.56

## AGENCY OPTIONS PURSUANT TO [EHB 1595](#) (CHAP. 304, LAWS OF 2017)

Effective July 23, 2017; Summary Only – See Statutes for Details

CHARGING ACTUAL COSTS	CHARGING STATUTORY DEFAULT FEES	CHARGING ALTERNATIVE FLAT FEE	CHARGING PURSUANT TO ALTERNATIVE FEE ARRANGEMENT	CHARGING FOR CUSTOMIZED ACCESS SERVICE	WAIVING CHARGES (FEES)
					
<p>Agency can charge its <b>actual costs</b> directly incident to copying including:</p> <ul style="list-style-type: none"> <li>Paper and per page cost for use of agency copying equipment</li> <li>Electronic production or file transfer of the record</li> <li>Use of any cloud-based data storage and processing service</li> <li>Costs directly incident to shipping including postage or delivery charges and cost of container or envelope</li> <li>Costs of transmitting the records in electronic format including the cost of any transmission charge and use of any physical media device provided by agency.</li> </ul>	<p>Agency can assess costs per the <b>statutory fee schedule</b>:</p> <ul style="list-style-type: none"> <li>15 cents/page paper</li> <li>10 cents/page scanned into electronic format</li> <li>5 cents/4 files or attachments and provided by electronic delivery</li> <li>10 cents/gigabyte of electronic records transmission</li> <li>Actual costs of storage media, container, envelope; postage/delivery charge.</li> <li>Charges can be combined if more than one type of charge applies.</li> </ul>	<p>Agency can charge <b>alternative flat fee</b> of <b>up to \$2</b> for a request (rather than actual costs or default fees).</p>	<p>Agency can do an <b>alternative fee arrangement</b>, or in response to <b>voluminous or frequently occurring requests</b>.</p>	<p>Agency can charge up to <b>actual costs</b> for providing <b>customized access services</b>.</p>	<p>Agency can <b>waive</b> charges (fees).</p>
<p><b>REQUIREMENTS:</b></p> <p>(1) Agency must have a <b>statement</b> of the factors and manner it used to determine actual costs. Per page costs cannot exceed actual costs.</p> <p>(2) Can charge actual costs in the statement only after <b>notice and a public hearing</b>.</p> <p>(3) Use the most reasonable cost-efficient method available at the agency as part of normal operations.</p> <p>(4) Can include staff time to copy and send the records.</p> <p>(5) Cannot include staff salaries, benefits or other general administrative or overhead unless directly related to actual costs of copying.</p> <p>(6) Cannot charge for records routinely posted on website unless requester asks for copies through other means.</p>	<p><b>REQUIREMENTS:</b></p> <p>(1) Agency must have a <b>rule or regulation</b> declaring the reasons calculating actual costs would be unduly burdensome.</p> <p>(2) Use the most reasonable cost-efficient method available at the agency as part of normal operations.</p> <p>(3) Cannot charge for records routinely posted on website unless requester asks for copies through other means.</p>	<p><b>REQUIREMENTS:</b></p> <p>(1) Agency must reasonably <b>estimate and document</b> that the costs are clearly equal to or more than \$2.</p> <p>(2) An additional flat fee or statutory default fee cannot be assessed after first installment (\$2 is the limit for the entire request).</p> <p>(3) Cannot charge for records routinely posted on website unless requester asks for copies through other means.</p>	<p><b>REQUIREMENT:</b></p> <p>Agency is to have a <b>contract, memorandum of understanding or other agreement</b> with the requester.</p>	<p><b>REQUIREMENTS:</b></p> <p>(1) Agency <b>estimates</b> that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes.</p> <p>(2) Agency must <b>give requester estimate and other information</b>. See statute.</p>	<p><b>REQUIREMENT:</b></p> <p>Agency may waive charges (fees) pursuant to its <b>rules and regulations</b>.</p>
RCW 42.56.070(7)(a) and (b); RCW 42.56.120(1) and (2)(a) and (e)	RCW 42.56.120(2)(b), (c) and (e)	RCW 42.56.120(2)(d) and (e)	RCW 42.56.140(4)	RCW 42.56.120(3) and (4)	RCW 42.56.120(4)



## Summary of **ESHB 1594** (Improving Public Records Administration)

*[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]*

### **DEFINITION**

- **PUBLIC RECORD.** Section 1 amends the “public record” definition in the Public Records Act (PRA) at RCW 42.56.010(3) to exclude records that are not otherwise required to be retained and are held by volunteers who (a) do not serve in an administrative capacity; (b) have not been appointed by the agency to an agency board, commission or internship; and, (c) do not have a supervisory role or delegated agency authority.

### **TRAINING**

- **PUBLIC RECORDS OFFICER TRAINING.** Section 2 amends the training requirement for public records officers in RCW 42.56.152 to require training on “particular issues related to the retention, production and disclosure of electronic documents, including updating and improving technology information services.”

### **RECORDS PROCEDURES**

- **5-DAY RESPONSE – REQUEST FOR CLARIFICATION.** Section 3 amends RCW 42.56.520 to provide that a permitted agency response to a PRA request within the 5-business day period is an acknowledgment of receipt and request for clarification, “and, providing to the greatest extent possible, a reasonable estimate of time” the agency will require to respond to the request if it is not clarified. If the entire request is unclear and the requester fails to respond, the agency need not respond to it. However, the agency must respond to those portions of a request that are clear.
- **PRA REQUESTS - LOGS.** Section 6 adds a new section in RCW 40.14 (records retention) that requires public agencies to maintain a log of public records requests to include for each request the identity of the requester (if provided), date of receipt, text of request, description of records produced, description of records redacted/withheld and the reasons, and date of final disposition. The logs must be retained per the agency’s records retention schedule and are a public record the PRA.
- **LOCAL AGENCY PRA ORDINANCES - ATTORNEY GENERAL’S OFFICE MODEL RULES.** Section 4 amends RCW 42.56.570 to provide that local agencies should consult the Attorney General’s Office (AGO) Model Rules when establishing local PRA ordinances.
- **PRA REQUESTS – DATA COLLECTION AND REPORTING.** Section 6 adds a new section in RCW 40.14 that requires public agencies “with actual staff and legal costs associated with fulfilling public records requests of at least \$100,000 during the prior fiscal year” to report to the Joint Legislative Audit and Review Committee (JLARC) 17 different data points about the agency’s PRA requests. Agencies that incur lower PRA costs (less than \$100,000) may report the data. JLARC must consult with state and local agencies to develop a reporting method and define metrics.

The data to be reported includes: leading practices and processes for records management/retention including technology upgrades and what percentage were implemented by the agency, average length of time to acknowledge receipt of a PRA request, proportion of requests where the agency responded in 5 days compared to where agency provided an estimated response time beyond 5 days, comparison of agency’s average initial estimate with actual time when all records were disclosed including whether the agency sent subsequent estimates, number of clarifications requested, number of requests denied and most common reasons, number of requests abandoned, requester types, which portion of requests were fulfilled electronically, numbers of requests where agency was required to scan records, estimated staff time spent on each individual request, estimated costs including costs for staff compensation and legal review and an average cost per request, number of PRA/other public records claims (by type of claim and exemption), litigation costs including penalties, costs for managing and retaining records (including staff compensation, equipment), expenses recovered by the agency from requesters, and a measure of requester satisfaction. JLARC will report to the Legislature by Dec. 1, 2019.

## Summary of [ESHB 1594](#) (Cont.)

*[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]*

### PROGRAMS

- **RECORDS CONSULTATION PROGRAMS.** Section 4 amends RCW 42.56.570 to establish records consultation programs. An AGO program is established for local governments, addressing responding to records requests, seeking additional resources for technology, and mitigating liability and costs of compliance. A Secretary of State (State Archives) program is established for consultation and training on improving records retention practices for local governments. The programs end June 30, 2020. Funding is through a new county document recording \$1 surcharge deposited in the local government archives account (per Section 5 - amending RCW 40.14.024; and, Section 7 – amending RCW 36.22.175, which per Section 10 expires June 30, 2020). JLARC will review the programs and report to the Legislature by Dec. 1, 2019 (per Section 6 – new section in RCW 40.14).
- **LOCAL GOVERNMENT COMPETITIVE GRANT PROGRAM.** Section 6 adds a new section to RCW 40.14 that creates a local agency competitive grant program, administered by the State Archives, for one-time investments to improve technology information systems for records retention, management, disclosure and related training, through June 30, 2020. The program is funded through a new county document recording \$1 surcharge deposited in the local government archives account (per Section 5 - amending RCW 40.14.024; and, Section 7 – amending RCW 36.22.175, which per Section 10 expires June 30, 2020). JLARC will review the programs and report to the Legislature by Dec. 1, 2019 (per Section 6 – new section in RCW 40.14).

### STUDY

- **OPEN RECORDS PORTAL STUDY.** Sections 8 and 9 provide for an open records portal study. The bill does not identify where these sections will be codified. Subject to appropriation, the State Archives must hire a consultant to study the feasibility of implementing a statewide open records portal through which a requester can request and receive a response to a PRA request through a single internet web site. The State Archives will convene a stakeholder group to develop the study's scope and direction. A report is due to the Legislature by Sept. 1, 2018.

## Summary of [EHB 1595](#) (Concerning Costs Associated With Responding to Public Records Requests)

*[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]*

### **COPY FEES**

- **ACTUAL COSTS - COPYING FEES - ELECTRONIC RECORDS; HEARING.** Section 1 amends RCW 42.56.070(7) in the Public Records Act (PRA) to provide that:
  - Agencies may establish a statement of the actual costs that it charges for photocopies and now to include “electronically produced copies.”
  - “Actual costs” for copies may now also include the “actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage processing service” and the cost of transmitting electronic records (including the use of a physical media device).
  - The statement of costs may be adopted only after providing notice and a public hearing.
- **ACTUAL COSTS - COPYING FEES – CALCULATIONS.** Section 3 amends RCW 42.56.120 to provide that when calculating copy fees, “the agency shall use the most reasonable cost-efficient method available to the agency.” It also provides that actual costs may be imposed only in accordance with RCW 42.56.070(7) (see amendments in Section 1), and in accordance with the statement of factors and manner used to determine actual costs.
- **ACTUAL COSTS - CUSTOMIZED SERVICE CHARGE.** Section 3 amends RCW 42.56.120 to provide that an agency may additionally impose the actual costs of a “customized service charge” when the request would require the use of IT expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes. The agency must notify the requester and take other steps if it will be doing a customized service. An agency can require an advance 10 percent deposit.
- **ACTUAL COSTS VS. PRA DEFAULT FEE SCHEDULE – RULE DECLARATION.** Section 3 amends RCW 42.56.120 to provide that an agency need not calculate actual copying costs “if it has rules or regulations declaring the reasons doing so would be unduly burdensome.” In that case, the agency can use the PRA default fee schedule. See next bullet.
- **PRA DEFAULT FEE SCHEDULE.** Section 3 amends RCW 42.56.120 to provide a PRA default copying fee schedule (including an optional flat fee), under which the agency may charge:

PRA Fee Schedule	
Actual cost	Customized service charge (in addition to fees for copies – see copying fees below).
<b>Copies:</b>	
15 cents /page	Photocopies, printed copies of electronic records when requested by the requester, or for the use of agency equipment to make photocopies.
10 cents /page	Scanned records, or use of agency equipment for scanning.
5 cents /each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
10 cents /gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices.
Actual cost	Any container or envelope used to mail copies.
Actual cost	Postage or delivery charges.
↑ Copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request	
<b>Option for Copies:</b>	
Up to \$2 flat fee	As an alternative to the copy charges above, an agency may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees shall not be charged for subsequent installments.

## Summary of [EHB 1595](#) (Cont.)

[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

### COPY FEES (cont.)

- **NO FEE - RECORDS ROUTINELY POSTED ON AGENCY WEB SITE.** Section 3 amends RCW 42.56.120 to provide that an agency shall not charge for access to or downloading of records it routinely posts on its web site prior to the receipt of a request, unless the requester has specifically asked that the agency provide records through other means.
- **FEE ESTIMATE.** Section 3 amends RCW 42.56.120 to provide that upon request an agency must provide a summary of the applicable charges before copies are made and the requester may revise the request to reduce the number of copies, thus the applicable charges. See also Section 5 (new court action challenging estimate of fees, amending RCW 42.56.550).
- **FEE WAIVER - RULES.** Section 3 amends RCW 42.56.120 to provide that an agency may waive any charge “pursuant to agency rules and regulations.”
- **OTHER FEE ARRANGEMENTS.** Section 3 amends RCW 42.56.120 to provide that an agency may enter into a contract, memorandum of understanding or other agreement with a requester for an alternative fee arrangement, or in response to a voluminous or frequently occurring request.
- **FEES IN OTHER STATUTES.** Section 4 amends RCW 42.56.130, which provides that PRA fees in RCW 42.56.070(7) and (8) and 42.56.120 do not supersede other statutory provisions for copying fees, and the amendment extends that provision to electronically produced copies.
- **NEW COURT ACTION – CHALLENGING FEE ESTIMATE.** Section 5 amends RCW 42.56.550 to permit a requester to file a superior court motion when the requester believes the agency has not made a “reasonable estimate of the charges to produce copies of public records.”

### RECORDS PROCEDURES

- **REQUESTS – FORMAT.** Section 2 amends RCW 42.56.080 to provide that “No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.”
- **REQUESTS – BOTS.** Section 2 amends RCW 42.56.080 to provide that an agency may deny a “bot” request (a request that an agency reasonably believes was automatically generated by a computer program or script), when it is one of multiple requests from the requester received within a 24 hour period. The agency must establish that responding would cause excessive interference with other agency essential functions.
- **REQUESTS - IDENTIFIABLE RECORDS.** Section 2 amends RCW 42.56.080 to provide that PRA requests must be for “identifiable” records. A request for all or substantially all of an agency’s records is not a valid PRA request, “provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency’s records.”
- **REQUESTS – RECEIPT.** Section 2 amends RCW 42.56.080 to require agencies to honor PRA requests received “in person during an agency’s normal office hours” or by email.
- **PROVIDING COPIES - ELECTRONIC RECORD TRANSLATIONS, PAPER SCANS.** Section 3 amends RCW 42.56.120 to provide that translating a record into an alternative electronic format at the request of the requester or scanning a paper record is not creating a new record.



**Bob Ferguson**

## **ATTORNEY GENERAL OF WASHINGTON**

---

### **2014 Open Government Trainings Act Supplemental Information – 2017 Amendment**

The Open Government Trainings Act was enacted by the 2014 Washington State Legislature, effective July 1, 2014. Chap. 66, 2014 Laws ([Engrossed Senate Bill 5964](#)). It was codified at RCW 42.56.150 (records training for local elected and statewide elected officials), RCW 42.56.152 (records training for public records officers), and RCW 42.30.205 (open meetings training for governing bodies). In March 2014, the Attorney General's Office provided an "Open Government trainings Act Q & A" guide on the office's [Open Government Training web page](#), describing the training requirements.

The Legislature amended the training law in 2017 for public records officers, to include additional training on electronic records and technology. Section 2, Chap. 303, 2017 Laws ([Engrossed Substitute House Bill 1594](#)). Here is information about that new law, supplementing the 2014 Q & A guide. The 2014 Q & A guide ended with Question # 22. Therefore, this supplement begins with Question # 23.

#### **23. Why did the Legislature enact this new law in 2017 to amend the training that is required for public records officers?**



*Answer:* The 2017 State Legislature revised many public records laws as part of an update of public records laws generally and in particular to address electronic records. Section 2 of Engrossed Substitute House Bill 1594 similarly amended the training requirement for public records officers in RCW 42.56.152.

---

#### **24. What is the additional new training requirement for public records officers?**



*Answer:* RCW 42.56.152 requires:

- (1) Public records officers designated under RCW 42.56.580 and records officers designated under RCW 40.14.040 must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.
- (2) Public records officers must:
  - (a) Complete training no later than ninety days after assuming responsibilities as a public records officer or records manager; and
  - (b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.
- (3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training.

ESHB 1594 [Section 2] amended RCW 42.56.152, adding a **new subsection (5)**:

**(5) Training must address particular issues related to the retention, production, and disclosure of electronic documents, including updating and improving technology information services.**

Therefore, the answer to Question # 11 in the 2014 Q & A guide is hereby revised to add this information.



## 25. **When is the new training requirement effective?**

*Answer:* July 23, 2017. This means:

- New public records officers **hired on or after July 23, 2017** need to receive training covering the Public Records Act and records retention laws [subsection (1) of RCW 42.56.152] and the electronic documents/technology information services training [subsection (5) of RCW 42.56.152]. They must receive this training no later than 90 days after assuming their responsibilities as a public records officer or records manager.
- Public records officers **hired before July 23, 2017 but who do not yet need refresher training** will need to receive training on electronic documents/technology information services training [subsection (5) of RCW 42.56.152].
  - If they have already received the training required in subsection (5) of RCW 42.56.152, they have complied with the new law. See question # 26 below for more details on what is required in subsection (5).
  - If they have not yet received all the training required in subsection (5) of RCW 42.56.152, they should obtain this training as soon as they can. See question # 26 below for more details on what is required in subsection (5). *Note:* Even if these public records officers have received training on this topic prior to July 23, they should review new laws covering electronic records in both ESHB 1594 (linked above) as well as [Engrossed House Bill 1595](#) (Chap. 304, 2017 Laws) (effective July 23, 2017), if they have not already done so. A summary of both ESHB 1594 and EHB 1595 will be made available on the Attorney General's Office Open Government Training web page (linked above).
- Public records officers **hired before July 23, 2017 and who are now due for refresher training** need to receive training covering the Public Records Act and records retention laws [subsection (1) of RCW 42.56.152] and the electronic documents/technology information services training [subsection (5) of RCW 42.56.152]. They must receive this training no more than four years after they received their initial training that was required under the 2014 law.



---

26. What kinds of training sessions satisfy the new training requirement in subsection (5) of RCW 42.56.152?



*Answer:* The new law requires that public records officers' training must address particular issues related to three components: (a) **retention** of electronic documents, (b) **production and disclosure** of electronic documents, and (c) **updating and improving technology information services**.

The new law is otherwise flexible; public records officers should look for trainings that best fit their agencies and their training needs. And, as with the 2014 law, trainings can also be taken in person, online, by video, or through other formats.

To illustrate, if a public records officer has already received training on records retention (and he/she is not scheduled for a refresher training), but not on production and disclosure of electronic records then he/she will want to look for opportunities to obtain that training component. If a public records officer has already received training on updating and improving technology information services (and he/she is not scheduled for a refresher), but needs training on redaction of electronic records (production and disclosure of electronic documents) then he/she will want to look for opportunities to obtain that training component.

Here are a few examples of trainings that address these components. These examples are illustrative only; other trainings could also satisfy the requirements. In addition, a training session may satisfy more than one component.

- **(a) Retention.** The [Secretary of State – State Archives](#) has several training seminars and advice sheets on management and retention of electronic records.

Attending these types of trainings plus reviewing the advice sheets will satisfy the retention component.

- **(b) Production and Disclosure.** Various sponsors may provide trainings on records production and disclosure of electronic records including but not limited to those addressing electronic records generally, as well as those addressing production and disclosure of texts, social media records, and records provided through portals. Another training may also cover new provisions regarding production and disclosure of electronic records in 2017 laws.

Attending these types of trainings will satisfy the production and disclosure component.

- **(c) Updating and Improving Technology Information Services.** Various sponsors may provide trainings on how agencies can update and improve technologies that also assist public agencies in the management and production of their public records.

Examples of trainings that cover updating and improving technology include presentations on obtaining and improved use of: portals (GovQA and NextRequest and similar technologies), electronic redaction tools (Adobe Acrobat X Pro, Informative Graphics Redact-it, RapidRedact and similar technologies), e-discovery

software (Exterro and similar technologies), texting/social media/website retention and capture software programs (SMARSH and similar technologies), and the like.\* Another example is a training session covering information governance and enterprise content management technologies.

Other training programs may cover best practices for improving the use of *current* agency technologies, to make them more robust. Those trainings might cover, for example, topics such as improving the function of agency websites and enabling public records requests to be made through the website, posting more commonly requested agency records on the website, and improving search functions to assist the public and requesters find posted records more quickly and easily.

Attending these types of trainings will satisfy the updating and improving technology information services component.

*(\*The Attorney General's Office is not endorsing or recommending a specific product; these are illustrative examples only. An agency's public records officer may want to consider training on other relevant technologies, or on improving uses of the agency's current technology.)*



**27. Where can a public records officer obtain the new training?**

*Answer:* See questions # 12 and # 13 in the 2014 Q & A guide. In sum, the law does not require a public records officer to receive training from only one source, and, for example, training may be taken in-person, online, by video, or via a webinar. The law remains flexible in how a public records officer receives the training.

The Attorney General's Office, the Secretary of State – State Archives and the Municipal Research and Services Center anticipate providing more information on their web sites on trainings that cover the components of the new law, as training opportunities become available. In addition, agencies or organizations can arrange their own training sessions. For example, a public records officer in Agency A seeking training on obtaining and using a portal may arrange to obtain such training from a public records officer in City B because City B is currently using a portal. Or, the Association of Washington Cities or the Washington State Association of Counties might arrange for a webinar for cities'/counties' public records officers, or the Washington Association of Public Records Officers might offer training for state and local public records officers. Or, there may be other examples.



---

**28. Who can we contact for more information?**



*Answer:* You may contact the Attorney General's Office:  
Nancy Krier  
Assistant Attorney General for Open Government  
(360) 586-7842  
[Nancyk1@atg.wa.gov](mailto:Nancyk1@atg.wa.gov)  
Attorney General's Office Open Government Training Page:  
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>

\* \* \*

Information about State Archives records management and retention training  
for state and local agencies is available at:  
<http://www.sos.wa.gov/archives/RecordsManagement/>  
Agencies can contact the State Archives by email at [recordsmanagement@sos.wa.gov](mailto:recordsmanagement@sos.wa.gov)  
or by telephone at (360) 586-4901.