



# Working with Requesters

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# Overview

- Who is WCOG
- What we teach requesters
- How to work with requesters
  - While saving agency costs



## *Independent, Non-partisan, Non-profit*

“Dedicated to promoting and defending the people’s right to know in matters of public interest and in the conduct of the public’s business. The Coalition’s driving vision is to help foster open government processes, supervised by an informed and engaged citizenry, which is the cornerstone of democracy.”



# What does WCOG do?

## Education

Forums, speakers, CLEs,  
Web Site, Help Line, Op-Eds



## Litigation

Amicus briefs and  
public interest lawsuits



**WCOG**



## Legislation

Legislative Agenda, Bill  
Tracking, Testimony



## Recognition

Madison, Andersen, Key,  
Ballard-Thompson, and  
Bunting Awards

# WCOG Areas of Interest

- **Public Records Preservation and Access**
- **Open Public Meetings**
- Open Courts  
*(Article I, Section 10)*
- Open legislative processes
- Personal Finance Disclosure for candidates and officials
- Campaign Finance Disclosure
- Lobbyist Activities Disclosure
- Executive, Legislative, Municipal Ethics Acts
- State and Local Whistleblower Acts
- Administrative Procedures Act – Open Rulemaking Process
- Public input provisions of GMA, SEPA, SMA, etc.
- Appearance of Fairness

# WCOG cares about PRA costs!

- We're taxpayers, too
- We want the PRA to work for everyone
- The biggest threat to access to public records is a damaging legislative response to agency demands to “do something” about high compliance costs
  - That translates into helping agencies control costs while complying with the law
  - And trying to “moderate” the “frequent flyers”

# What Does WCOG Teach Requesters?

- Foundational principles
- Basics of retention and disclosure
  - Definition of public record, retention schedules, statutory procedures, how much can be charged, exemptions
- How to make a public records request
- How the PRA is enforced



IN CONGRESS, JULY 4, 1776.

# The Declaration of Independence

**“That to secure these rights,  
governments are instituted among  
men, deriving their just powers  
from the consent of the  
governed. That whenever any  
form of government becomes  
destructive to these ends, it is  
the right of the people to alter  
or to abolish it...”**

# Article I.

## Declaration of Rights.

### SECTION 1 POLITICAL POWER.

All political power is inherent in the people, and **governments derive their just powers from the consent of the governed**, and are established to protect and maintain individual rights.

# James Madison

A portrait of James Madison, an American statesman, is visible in the background of the slide. He is shown from the chest up, wearing a white cravat and a dark coat, with his right hand resting on his chin.

**“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.**

***Knowledge will forever govern ignorance:* And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”**

“The people of this state do not yield their sovereignty to the agencies which 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 retain control over the instruments they have created.”

*RCW 42.30.010 and RCW 42.56.030*

“The people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings”

“Public confidence in government at all levels is essential and must be promoted by all possible means”

“Public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions”

“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”

“Provide full public access to public records”

“Provide for the fullest assistance to inquirers”

“The most timely possible action on requests for information”

“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”

# What is a Public Record?

“Public record” includes **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 40.14 – Archives

- All records must be preserved
  - Typically at least six years
- Records committee (archivist, auditor, attorney general, governor's rep) determines “retention schedule”
- State archives – powers and duties
- RCW 40.16 defines penalties
  - *Felony* to destroy or forge records

# Local Records Retention Schedules

- <http://www.sos.wa.gov>, Archives, Records Management, Services to Local Agencies, Records Retention Schedules
- Search Database by type of agency, record category, etc
- “Local Government Common Records Retention Schedule”
  - Records common across all types of agencies
- “Local Government General Records Retention Schedule”
  - Records found in specific agencies: Assessors, Auditors, Clerks, Treasurers, District and Municipal Courts, Health, Law Enforcement, Hospital Districts, Utilities, Schools

# State Records Retention Schedules

- <http://www.sos.wa.gov>, Archives, Records Management, Services to State Agencies, Records Retention Schedules
- Search Database by type of agency, record category, etc
- “State Government General Records Retention Schedule”
  - Records common across all types of agencies
- Records Retention Schedules for Specific State Government Agencies
  - Records found in specific agencies: Community and Technical Colleges, Board of Accountancy, Technology, Agriculture, Ecology, Enterprise Services, Fish and Wildlife, L&I, DSHS, Health Care Authority, Military, OFM, Governor, Treasurer, OSPI, State Auditor, UW, UW Medicine, ...

# What's in a Retention Schedule?

- Description of Records (official “name”)
- Disposition Authority Number (DAN)
- Retention and Disposition Action
  - How long records must be kept
  - What to do with them at end of period
- Designation
  - Archival (Appraisal Required, Permanent Retention); Essential, Possibly Essential, Non-Essential; Migration; etc.
- Index

# Sample Retention Schedule Page

## 1.3 EXECUTIVE LEVEL RECORDS

*The activity relating to the executive level of an agency, including records which document the policies, procedures, and administration of an agency. Records created at this level are designated 'Archival' and must be transferred to the Washington State Archives after their retention has been satisfied. This activity does not include routine office records or program level records.*

DESCRIPTION OF RECORDS	DISPOSITION AUTHORITY NUMBER (DAN)	RETENTION AND DISPOSITION ACTION	DESIGNATION
<b><i>Interpretive and Policy Statements</i></b> Official statements of policy adopted by an agency, board or commission. Includes an agency's interpretation of a statute, rule or other provision of law, of a court decision, or of an agency order.	GS 10010 Rev. 0	<b>Retain</b> for 3 years after superseded <i>then</i> <b>Transfer</b> to Washington State Archives for appraisal and selective retention.	<b>ARCHIVAL</b> (Appraisal Required) <b>ESSENTIAL</b>
<b><i>Minutes and Files of Policy-Setting Meetings</i></b> Minutes, agendas, and meeting files of the governing body of an agency or of meetings that formulate policy, rules or regulations for an agency or a number of agencies. May include multi-media recordings.	GS 10004 Rev. 0	<b>Retain</b> for 6 years after date of document <i>then</i> <b>Transfer</b> to Washington State Archives for appraisal and selective retention.	<b>ARCHIVAL</b> (Appraisal Required) <b>ESSENTIAL</b>
<b><i>Papers of Executive Direction</i></b> A record of formal statements at the executive level of an agency, in regard to agency policy, actions, and mission. May include issuances, directives, records of briefings and presentations of policy in any form.	GS 10005 Rev. 0	<b>Retain</b> for 4 years after date of document <i>then</i> <b>Transfer</b> to Washington State Archives for appraisal and selective retention.	<b>ARCHIVAL</b> (Appraisal Required) <b>ESSENTIAL</b>

# RCW 42.56 – Public Records Act

- All records must be available for inspection and copying *unless* exempt from disclosure
- Cannot discriminate based on requester
- Prompt response required
  - Initial response within 5 days
  - Provide records or link to where can be found on web site
  - Deny access with statutory exemption and brief description of how applies to record
  - Reasonable estimate of time needed



# Costs

- Cannot be charged for locating, searching, reviewing, or redacting records
- No cost to *inspect* records
  - You can copy, scan, or photograph records yourself (so long as no damage or disorganization)
- Can be charged for copies made by agency
  - 15 cents per page for standard 8.5x11 single-sided black and white copies
  - Actual cost for all other copies, including media, labor, and equipment cost for the actual copying work
    - Agency must be able to document actual cost
    - Can charge for scanning paper documents to electronic
  - Actual cost for packaging and postage if mailed

# Over 400 Exemptions!

# Over 400 Exemptions!



# Should a record be exempt?

- Is it more in the public interest than not that the record be not disclosed (for a period of time)?
  - e.g., appraisals, employment applications, test answers...
- Is it necessary to protect the trade secrets or competitiveness of a regulated business?
- Is it necessary to protect the privacy (as defined in RCW 42.56.050) of an individual?
- Is it necessary to encourage provision of information to the government that would otherwise not be provided?
  - e.g. personal email addresses
- Is it necessary to prevent or deter crime?
  - e.g. security plans, credit card numbers, passwords...

# Sunshine Committee

- Created in 2007
- 13 Members
  - Governor, Auditor, Attorney General representatives
  - Two Senators, two House members
  - Local government, Media representatives
  - Four members of the public
- *Mission:* Review all exemptions and recommend continuation, modification, or termination
- Meets at least quarterly
- Reports to the legislature every November 15
- [www.sunshinecommittee.com](http://www.sunshinecommittee.com)

# How to Make a Request (1)

- <http://www.washingtoncog.org/agencyrequests.php>
- Verify records are actually public records
- Check if records are exempt
  - *Optional* (this is agency's responsibility)
- Check if records already posted online
- Put the request in writing and cite RCW 42.56
  - Don't bury request in a long letter – make it obvious
  - Avoid being adversarial – relationships matter
- Address request to the Public Records Officer
  - Can often find name or email on agency web site
- Provide date of request
- Provide name, address, and contact information

# How to Make a Request (2)

- Identify specific records being requested
  - Also identify records you *don't* want
  - Be clear and concise – vague or overbroad requests take longer, cost more, and waste your time and theirs
- Tell the agency the purpose of request
  - *Optional*, but can help get desired records faster
- Inspect records, or have copies made?
  - Format of copies - paper, CD, PDF, email, etc.
  - Maximum cost willing to pay without approval
- Will you accept or prefer installments?
- Remind agency you want an exemption log
- Respond to requests for clarification or deposits, and pick up installments, or request may be cancelled
- Follow up if agency doesn't meet commitments
  - Initial response required within five business days

# PRA Enforcement

- **RCW 42.56.550(4)** – Agencies liable for requester's attorney fees and court costs, plus penalties of up to \$100 per day per record (Superior Court)
- **RCW 42.52.050(4)** – Intentional concealment of records by a *state* officer or employee is an *ethics violation*; civil penalty up to \$5,000 (Ethics Board)
- **RCW 40.16.020** – Intentional concealment of records is a *class B felony* (Prosecutor)
- **RCW 42.20.080** – *Gross misdemeanor* to willfully disobey any provision of law regulating official conduct
- **RCW 42.20.100** – *Misdemeanor* to willfully neglect to perform any duty enjoined by law upon any public officer or other person holding any public trust or employment
- Ask for intervention by Open Government Ombudsman

# **How to Work With Requesters**

# Have a Positive Attitude

- Responding to public records requests is an opportunity, not a burden
  - Something public wants to know more about
  - Get in front of potential hot issues
  - Develop good-faith positive relationships
- Quality of response reflects on agency leadership and how much they care
  - Be responsive and sensitive to public opinion
  - Don't raise questions about "cover up"

# Have a Positive Attitude

- 42.56.100 requires it!
  - “fullest assistance to inquirers and the most timely possible action on requests”
- Train employees about citizen’s right to access
  - Free online training available
- Treat requesters fairly and impartially
  - As vital customers, not harassers



# Adopt Rules

- RCW 42.56.100 requires it!
  - “Agencies ***shall*** adopt and enforce reasonable rules and regulations... to prevent excessive interference with other essential functions of the agency”
- Post rules online
  - So requesters know what to expect
- Kirkland ordinance is an example

# Budget for PRA Requests

- Establish a budget for PRA handling
  - It's an essential function of *every* agency
  - We budget for every other essential function
- Track performance and budget
  - Update to ensure keeping up with demand
- Establish rules to stretch out production during peaks in demand
  - Must be “reasonable”
- Help requesters understand limitations

# Post Records Online Proactively

- Take the time to identify the records of greatest interest to your customers
- 42.56.520 allows agencies to provide a web link to requesters rather than produce copies
- Need a good index or keyword search to make it useful
- Can reduce number of requests submitted

# Index and Pre-Process Records

- Indexes are required by 42.56.070(3)
  - At least identify types of records and locations
- Reduces the time to locate records
- Pre-tag records
  - Exempt or potentially exempt
  - Segregate exempt content when possible
  - Plan for later disclosure!
- Put index online
  - Requesters can use the index to narrow and refine their requests

# Centralize Archives

- Records should be on servers, not on individual computers
  - PST files are *NOT* your friend
  - Enact policy against personal email accounts
- Automatic backup
  - And easier disaster recovery
- Automatic archiving and retention
  - Don't depend on trusting every employee
- Easier to search all records when needed
- Requesters get records faster

# Request Clarification

- 42.56.520 allows agencies to request clarification of vague or ill-defined requests
- Request can be cancelled if requester fails to respond to request for clarification
- Work with requester to narrow request
  - Explain the time and resources required for production of broad requests
  - A cooperative attitude will often be responded to with cooperation

# Produce Records in Installments

- Don't make unnecessary boxes of copies!
- 42.56.080 allows installments
- 42.56.120 allows agencies to cancel a request if an installment is not picked up
- Requesters usually prefer to get *some* records sooner rather than wait for all
- Requesters may cancel the rest of their request if they find what they're looking for

# Don't Keep Records Too Long

- Don't keep forever just because it's easy
- Understand records retention schedule
- Require destruction or transfer on time
  - Unless specific reason to keep
  - Unless subject to a records request
- Saves storage cost
- Reduces search, review, redaction time
- Requesters don't want stale records
  - Just costs them more



# Produce Electronic Copies

- Reduces costs of paper, toner, handling, maintenance, storage
- Output direct to PDF if possible
  - Keeps the text searchable
- Scan paper records to PDF
  - But don't print them out just to scan them
  - Enable OCR embedding if possible
    - Readable by people with visual impairment
- Email, post online, or send on CD/DVD
- Requesters happier with lower cost and searchability of records

# Deposits for Copies

- 42.56.120 allows agencies to require a deposit up to 10% of the cost of copies
  - Don't make thousands of paper copies in the first or only installment
- Agencies can cancel the request if the deposit isn't paid
- Be consistent, not discriminatory
- Be smart – can cost more to process payment than you get in revenue

# Don't Insist on Every Exemption

- Legal review is expensive
- Most exemptions are discretionary, not mandatory (confidential records, etc.)
- 42.56.060 protects agency from liability for good-faith attempts to comply with PRA
- 42.56.520 and 540 allow agencies to inform persons named in records
  - Let them seek an injunction if they really care about disclosure

# Post Requested Records Online

- Public records requests are themselves public records, including the records produced
- If one requester found records interesting, chances are others will as well
  - May avoid future duplicative requests
- Helps the public see the good work the agency is doing in responding to requests



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