

THE PUBLIC RECORDS ACT (PRA) *RCW 42.56* and RECORDS MANAGEMENT *RCW 40.14*

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Adapted for the Washington State
Boundary Review Board for King County
(WSBRBKC)
June 2023



The intent of the people

- ▶ The people of this state do not yield their sovereignty to the agencies that serve them.
- ▶ The people have not given public employees the right to decide what is good for people to know and what is not good for them to know.
- ▶ 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.

RCW 42.56.030

Who's records are they?

- ▶ The residents of the state of Washington own them.
- ▶ "All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter."

RCW 40.14.020



What is a public record?

- ▶ Any writing
 - ▶ Relating to the conduct/performance of any governmental or proprietary function
 - ▶ Prepared, owned, used or retained by any state or local agency

RCW 42.56.010(3)

How is “writing” defined?

- ▶ “‘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.”

RCW 42.56.010(4)

Types of records

Any writing relating to the conduct/performance of any governmental or proprietary function. Basically, anything prepared, owned, used or retained by a public agency.

- ▶ Agendas
- ▶ CAD files
- ▶ Calendars
- ▶ Contracts
- ▶ Databases
- ▶ Emails
- ▶ Faxes
- ▶ Forms
- ▶ Invoices
- ▶ Letters
- ▶ Meeting minutes
- ▶ Notes
- ▶ Ordinances
- ▶ Paper/hard copy
- ▶ PDFs
- ▶ Photographs
- ▶ PowerPoint presentations
- ▶ Public comment forms
- ▶ Receipts
- ▶ Spreadsheets
- ▶ Text messages
- ▶ Videos
- ▶ Voicemails
- ▶ Word documents

Regarding records held on personal devices only:

An employee's communication is within the scope of employment only "when the job requires it, the employer directs it, or it furthers the employer's interest."

Nissen v. Pierce County 183 Wash.2d 863 (2015)

Recognizing a public records request (PRR)

- ▶ Public records requests do **NOT** have to be in writing.
- ▶ Anytime you see or hear the following words, acronyms, or similar phrases, consider the request to be a PRR and forward to the Executive Secretary:
 - ▶ “public records request” or “PRR”
 - ▶ “public disclosure request” or “PDR”
 - ▶ “Freedom of Information Act Request” or “FOIA”
 - ▶ “formal records requests”
 - ▶ “copies of...”
 - ▶ “all records regarding...”
- ▶ Be aware of hidden requests.



Legal requirements in response to a public records request (PRR):

- ▶ Agencies are required to promptly make available for inspection and copying all identifiable public records unless the record falls within the specific exemptions of the Act or another statute. *RCW 42.56.070*
- ▶ Agencies shall provide the fullest assistance to requestors. *RCW 42.56.100*
- ▶ An agency must perform an adequate search in all places it reasonably believes a record could be. *Neighborhood Alliance v. Spokane County*
- ▶ A response is required in writing within five business days. *RCW 42.56.520*

The five-day response must:

- ▶ Provide for inspection and/or a copy the record(s) requested; and/or
- ▶ Provide the internet address and link on the agency's web site to the specific record(s) 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); and/or
- ▶ Acknowledge receipt of the request and provide a reasonable estimate of the time needed to respond; and/or
- ▶ Seek clarification for a request that is unclear. If portions of the request are clear, the agency must respond to those portions; or
- ▶ Deny the request in accordance with the law. A written statement must accompany the denial setting out the specific reasons for the denial.

RCW 42.56.520

The PRA does not require

- ▶ Agencies to:
 - ▶ Create records, or
 - ▶ Respond to requests for information, or
 - ▶ Explain records
- ▶ Requestors to:
 - ▶ State their reason for the request.
 - ▶ **Exception:** If the request is for a list of individuals for a "commercial purpose." *RCW 42.56.070(8)*
 - ▶ Provide their names.
 - ▶ **Exception:** If the request is for records only available to certain individuals (e.g., medical records, autopsy reports, etc.)

Legal requirements of you

- ▶ You are a steward of the public's records.
- ▶ **Every record that you create or use to conduct WSBRBKC business is subject to the requirements in the PRA.**
- ▶ If you receive a request, **inform the Executive Secretary** as soon as possible, so that they can respond within the five-day window.

Legal requirements of you

- ▶ When you are contacted by the Executive Secretary re a PRR:
 - ▶ Read the request immediately.
 - ▶ Conduct a thorough search.
 - ▶ Provide all responsive records to the Executive Secretary.
 - ▶ Even if you think it can legally be withheld or another records custodian will produce the same record.
 - ▶ It is the responsibility of a Public Records Officer “PRO” is to review records and apply any exemptions to withhold or redact. You can alert the Executive Secretary or the assigned PRO to any concerns you might have about certain records you suspect might have sensitive information.
 - ▶ It is illegal to destroy public records, even if you find them to be inflammatory or embarrassing.

Conducting WSBRBKC business on personal devices

- ▶ Use of personal devices (e.g., phones, tablets, computers, etc.) and personal accounts (e.g., email, social media, etc.) to conduct WSBRBKC business *is* considered a public record.
- ▶ As a records custodian, you are required to provide **ALL** responsive public records from your personal devices.
- ▶ Personal information comingled in WSBRBKC-related email using *can* be considered a public record and disclosed.
 - ▶ Example:
“Committee Chair, here is the link to the article I mentioned at the meeting for further discussion: [LINK](#)
p.s. Are you coming to my BBQ at my house Saturday? Bring a bottle of wine of your choice. My address is: 123 Lane Street, Seattle, WA”

Nissen v. Pierce County 183 Wash.2d 863 (2015)

Exemptions

- ▶ Agencies must identify each record withheld or redacted, and the legal justification for doing so (e.g., exemption log). A requestor may sue based upon an agency's failure to provide the justification.
- ▶ If only a portion of a document is exempt, that portion may be redacted. The remainder of the document must be released.
- ▶ Exemptions should be narrowly applied, as case law historically has ruled in favor of the requestor.

RCW 42.56.210(3)

Exemptions: Attorney Client Privilege

- ▶ Exempts a client's request for legal advice, legal advice the attorney provides, and the client's questions about that advice.
- ▶ The client must intend for the communication to be confidential.
- ▶ Does not exempt client records just because the attorney is cc'd.

Exemptions: Personnel Records

- ▶ All applications for public employment, including the names of applicants, resumes and other related materials submitted with respect to an applicant.
- ▶ When held in personnel-related records or volunteer rosters: the residential addresses, residential telephone numbers, personal cell phone numbers, personal e-mail addresses, social security numbers, driver's license numbers, identicaid numbers, and emergency contact information of employees or volunteers of a public agency.
- ▶ When held in personnel-related records or volunteer rosters: names and dates of birth are exempt for dependents of employees and volunteers.

RCW 42.56.250



Risks associated with failure to comply with the PRA

- ▶ Strict liability standard; no exceptions for acting in good faith.
- ▶ If the requestor prevails in a court case, they are entitled to penalties of up to \$100 per day per page, plus attorney's fees.

Records with retention value

- ▶ Records management is based in RCW 40.14
- ▶ Record WSBRBKC functions and provide evidence of WSBRBKC business transactions.
- ▶ Are needed to provide information about actions related to WSBRBKC projects and activities.
- ▶ Must be available and accessible for at least the full length of their retention period.
- ▶ Retained based on content of record not type of record.
- ▶ WSBRBKC Retention Schedule is based off the Local Government Common Retention Schedule (CORE) that is published by the Washington State Archives.
 - ▶ [https://www2.sos.wa.gov/_assets/archives/recordsmanagement/local-government-common-records-retention-schedule-core-v.4.2-\(august-2021\).pdf](https://www2.sos.wa.gov/_assets/archives/recordsmanagement/local-government-common-records-retention-schedule-core-v.4.2-(august-2021).pdf)

Transitory records

- ▶ Have a short or no retention period.
- ▶ May be in the form of drafts or notes.
- ▶ Are not needed to document decisions/actions of your office.
- ▶ Are not required for legal, fiscal, historical or administrative purposes.
- ▶ **Are still subject to litigation, public disclosure or audit requests if they have not been destroyed.**

WSBRBKC retention schedule

Disposition
Authority
Number
(DAN)

Title and Description	Cutoff	Retention Period	Disposition Authority Number (DAN)	Archival Status
CONTRACTS, AGREEMENTS AND WARRANTIES - Records that result from the activity of managing contracts and agreements entered into by the agency and one or more parties that set out terms and conditions to which the signing parties agree or submit. Includes all post-award records needed to interpret, modify or adjust, monitor, or further negotiate original contract, such as change orders, compliance monitoring, addendums or other official contract supporting documentation.	Completion of transaction or termination/ expiration of instrument	6 years	GS50-01-11R4	Not Archival
GENERAL OFFICE ACCOUNTING - Originals and copies of office accounting records, including documentation of accounts payable and accounts receivable activities.	End of Calendar Year	6 years	Combo Rule FIN-01-001	Not Archival
GENERAL OFFICE COMMUNICATIONS AND STAFF MEETINGS - This category represents records created, received and used when communicating within and outside the county on general topics related to the business of the county and the conduct of general office staff meetings. Records may include but not limited to: general correspondence (not executive, elected officials or department heads); meeting minutes and agendas (not governing or advisory council, commissioner board); calendars; administrative procedures and instructions (not official agency policy); working files containing copies of information for reference (not governing, advisory, executive); forms and templates; training availability announcements and notices; mailing lists; travel arrangement; meeting arrangement.	End of Calendar Year	2 years	Combo Rule ACO-01-001	Not Archival
JURISDICTIONAL BOUNDARY CHANGE FILES-OFFICIAL - Official documentation of the agency's legal jurisdictional boundary, changes to its boundary (including annexation or incorporation), and related records documenting locations and physical features within the agency's jurisdiction. Records may include, but are not limited to: Drawings, maps, photographs (prints, slides, negatives, digital images), aerial photos; Surveys, land survey field books; Geological data/geotechnical reports.	Adoption of boundary change	2 years	GS50-16-09R1	Permanent / Archival
MEETINGS/PROJECTS-GENERAL ADVISORY COUNCILS, COMMISSIONS, COMMITTEES AND BOARDS - This category covers the function of managing the official records for advisory councils, commissions, committees or boards. Records include but are not limited to: agenda packets and all related materials, audio/visual recordings of meetings, correspondence, meeting minutes, and documents produced by the advisory body such as reports, policy drafts and transmittals to governing bodies. Advisory body members' personal notes, memos and correspondence (e-mail) with the advisory body should be retained as ACO-01-001, General Office Communications and Staff Meetings.	End of Calendar Year	6 years	GS2012-027	Potentially Archival
PROJECT FILES - This category covers county projects not covered by more specific categories.	Completion of project	6 years	GS50-01-39R1	Potentially Archival
RESEARCH/PROGRAM REPORTS, STUDIES, SURVEYS, MODELS AND ANALYSES - This category includes research reports, studies, surveys, models and analyses that are not covered by a more specific category.	Obsolete or Superseded	6 years	GS50-01-32R1	Potentially Archival

PRA resources

- ▶ Chapter 42.56 RCW
<https://apps.leg.wa.gov/rcw/default.aspx?cite=42.56>
- ▶ Washington State Attorney General's Office - Open Government Training
<https://www.atg.wa.gov/opengovernmenttraining.aspx>
- ▶ Municipal Research and Services Center - Public Records Act
<https://mrsc.org/explore-topics/legal/open-government/public-records-act>

Records management resources

- ▶ King County Records Management Program
 - ▶ <https://kingcounty.gov/depts/records-licensing/records-management.aspx>
- ▶ Washington State Attorney General's Office - Open Government Training - Records Management
 - ▶ <https://www.atg.wa.gov/lesson-4-records-management-and-retention-basics-rcw-4014>

