

# OPEN GOVERNMENT

## WASHINGTON LAWS

Port of Everett

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OPEN PUBLIC MEETINGS  
ACT  
(OPMA)  
RCW 42.30

## PURPOSE OF THE OPMA

“To allow the public to view the decision-making process ***at all stages.***”

*Cathcart v. Andersen*, (Washington Supreme Court, 1975)

“The people of this state do not yield their sovereignty to the agencies that serve them. ***The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.*** The people insist on remaining informed so that they may maintain control over the instruments that they have created.”

RCW 42.30.010

## REQUIREMENTS OF THE OPMA

“All **meetings** of the **governing body** of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency”. RCW 42.30.030

## WHAT IS A “MEETING”?

“Meeting” = meetings at which action is taken

“Action” = the transaction of official business, to include receiving public testimony, deliberating, discussing, considering, reviewing, and taking final action

“Final action” = collective decision in the positive or negative

## WHAT IS A “GOVERNING BODY”?

The policy or rule-making body of the public agency

OR

Any committee thereof when it acts on behalf of the body

## TIPS FOR E-MAILS

- If you want to provide information or documents via e-mail, esp. regarding a matter that may come before the Commission for a vote, have the first line of the e-mail clearly state: “For informational purposes only. Do not reply.”
- If you are on an e-mail chain with a majority of the Commission, don’t “reply all” unless it is very obvious the e-mail is for informational purposes only.
- An alternative: ask a staff person to e-mail the information or documents

## OTHER REQUIREMENTS OF THE OPMA: SPECIAL MEETINGS

- Written notice 24 hours in advance to:
  - Each Commission member
  - Each local newspaper of general circulation and local radio or TV station that has on file with the Port a written request to be notified
  - Agency website
  - Prominently displayed at main entrance
- Notice must specify time, place and business to be transacted



## OTHER REQUIREMENTS OF THE OPMA: EXECUTIVE SESSIONS

See checklist / handout.

## OTHER REQUIREMENTS OF THE OPMA: MISCELLANEOUS

- The time and place for regular meetings shall be set by resolution
- Minutes must be taken
- Can't require attendees to sign in
- No right to public comment; allowed to limit
- Certain procedures if a disruption occurs
- Posting of agendas online
- Training within 90 days of taking office & every 4 years

## RAMIFICATIONS

Civil penalty (personally) of \$500/\$1,000

Litigation + award of costs and attorney's fees

PUBLIC RECORDS ACT  
(PRA)  
RCW 42.56

## PURPOSE OF THE PRA

“The people of this state do not yield their sovereignty to the agencies that serve them. ***The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.*** The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed to promote this public policy and to assure that the public interest will be fully protected.”

RCW 42.56.030

## WHAT IS A “PUBLIC RECORD”?

- (1) A “writing”
- (2) Related to the conduct of government or the performance of any governmental or proprietary function, and
- (3) Prepared, owned, used, or retained by the agency

## PRA PROCEDURAL REQUIREMENTS

### General Agency Requirements

- Appoint a public records officer and make that information available to the public
- Adopt and publish procedures
- Publish list of exemptions to and prohibitions from disclosure
- Maintain an index of records
- Adopt a PRA copying fee schedule
- Provide a review procedure for denial of records
- **NEW IN 2017:** must “track” and keep a log
- **NEW IN 2017:** PRO must attend more in-depth training than required of electeds

## PRA PROCEDURAL REQUIREMENTS

Records Retention, RCW 40.14

- Records can only be legally destroyed in accordance with the local government CORE retention schedule
- Retain in original format



## PRA PROCEDURAL REQUIREMENTS

### Requirements of Requestors

- Not required to give a reason for the request
- Identity of the requestor may or may not be relevant, depending on type of request
- Must give “fair notice”
- No particular form required
- Records requested must be “identifiable”

## PRA PROCEDURAL REQUIREMENTS

### Agency Response Requirements

- Provide an **initial response** within 5 business days. It **must**
  1. Produce the requested record
  2. Provide a link to requested record on agency's website
  3. Acknowledge receipt and give reasonable estimate of the time needed
  4. Deny all or part of request
- Ask for **clarification**, if needed
- Perform an **adequate search**
- **Produce** records, if no exemption applies. May **charge** a fee.
- Specify reason for **denial**, if an exemption applies

## PRA EXEMPTIONS: GENERAL RULES

- May preclude **complete disclosure** OR may just require **redaction**
- Exemptions are **narrowly construed**
- No stand alone “**privacy**” exemption
- If challenged, agency bears burden of proving exemption applied
- Promise by agency to third party to keep information confidential is irrelevant

## PRA EXEMPTIONS: EXAMPLES

- Public employee & volunteer personal information
- Employee performance evaluations
- Personnel complaints and investigations
- Deliberative process materials and drafts
- Attorney/client privileged records
- Settlement agreements

## PRA PENALTIES

- Agency liability
  - Up to \$100 **per day**; higher if “bad faith”
- Personal liability
  - \$5,000 civil fine for intentional concealment
  - Felony charge

## QUIZ!

The Port hires a consultant to help resolve an issue with the boat launch. The consultant prepares a report to the agency. After reviewing the report and before receiving a public records request for the report, the agency returns all copies to the consultant.

Is it a public record?

## QUIZ!

A Port Commissioner's spouse is on the City of Everett's City Council. The land lease is coming up for renewal and was discussed in open session by both the Port Commission and the City Council at their latest public meetings. After the meetings, the Commissioner and his spouse discuss what transpired at their respective meetings.

OPMA violation?