

# Overview of Open Government in Washington State: Open Public Records and Open Public Meetings



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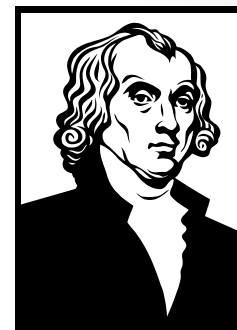
Prepared by Washington State Attorney General's Office

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# Historical Open Government Principles

"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...." ~ *James Madison*



"...a nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people." ~ *John F. Kennedy*



"It has been said time and again in our history by political and other observers that an informed and active electorate is an essential ingredient, if not the *sine qua non*\* in regard to a socially effective and desirable continuation of our democratic form of representative government."

~ *Washington State Supreme Court*

\**indispensable action*

# Open Government Laws are often called “Transparency Laws” or “Sunshine Laws”



This is because they “shine light” on government. U.S. Supreme Court Justice Louis Brandeis once famously said, “*Sunlight is the best disinfectant.*”



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***Transparency builds public confidence in government.***

# Washington - Two Different Statutes

## Open Public Records

**RCW 42.56**

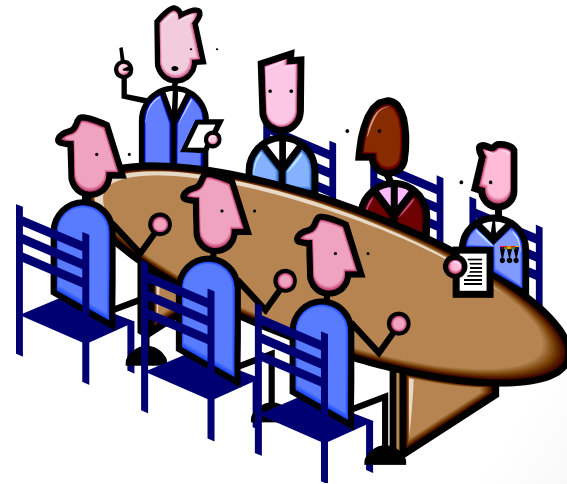
Public Records Act  
(PRA)



## Open Public Meetings

**RCW 42.30**

Open Public Meetings Act  
(OPMA)



# Intent



## Open Public Records

- “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.”
- The “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.”

## Open Public Meetings

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# History

## Open Public Records

- PRA passed via Initiative 276 in 1972. Formerly in RCW 42.17 – now RCW 42.56.
- Applies to all public agencies, state and local.
- Does not apply to courts.
- Limited application to Legislature.
- Applies to “public records” which are defined to include “writings.”
- Records are open unless there is an exemption authorized by law.



## Open Public Meetings

- OPMA passed in 1971. RCW 42.30. Minutes requirement in another law - RCW 42.32.
- Applies to all multimember public agency boards and commission governing bodies, and their committees.
- Does not apply to courts.
- Does not apply to Legislature.
- Requires meetings of governing body to be open gavel-to-gavel, unless there is an exception authorized by law.



# Touchstone:



## Open Public Records

- Records of public agencies are presumed open.
- PRA is to be liberally construed.
- Records or information in records can be withheld only by law (e.g. exemption in law).

## Open Public Meetings

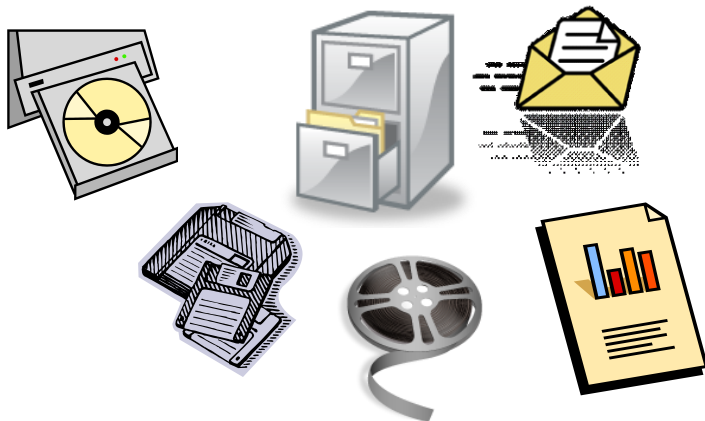
- Meetings of agencies subject to the OPMA are presumed open.
- OPMA is to be liberally construed.
- Meetings or parts of meetings can be closed only by law (e.g. executive sessions).

# Scope

## Open Public Records

PRA applies to “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.”

- Includes paper records, electronic records, emails, overheads, photographs, CDs, microfiche, etc.



## Open Public Meetings

OPMA applies to **multi-member public state and local agencies**, as follows:

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.





# Withholding Records or Closing Meetings



## Open Public Records

- Withholding a public record or some information in a public record must be authorized by law.
- Only the exempt information can be withheld.
- Agency must cite basis and give brief explanation.
- Exemptions from disclosure must be narrowly construed.

## Open Public Meetings

- Closing a meeting or part of a meeting subject to OPMA must be authorized by law – e.g., for listed purposes in OPMA.
- Agency must provide reason where required, e.g., announce reason for going into executive session.

# Enforcement & Penalties



## Open Public Records

- PRA enforced by courts, for claims listed in PRA.
- RCW 42.56.550, .565
  - Court can impose statutory penalties to be awarded to requester.
  - Court will order payment of requester's attorneys fees & costs.
  - Court can also order disclosure of all or part of withheld record, or non-disclosure of part or all of record.

## Open Public Meetings

- OPMA enforced by courts, for claims listed in OPMA.
- RCW 42.30.120, .130.
  - Court can impose a \$100 civil penalty against each member.
  - Court will award costs and attorney fees to a successful party seeking the remedy.
  - Action taken at an improperly closed meeting can be declared null and void.

# Risk Management Tips



## Open Public Records

*Agencies should:*

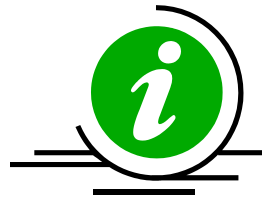
- Establish a culture of compliance with the PRA, beginning with agency leadership and support.
- Review their PRA procedures.
- Review available resources; institute best practices.
- Keep updated on current developments in PRA; correctly apply law.
- Consult with agency's legal counsel.
- Train appropriate staff and officials about the PRA's requirements.
  - > Legislature enacted training requirements in 2014. Chap. 66, 2014 Laws.
  - > State Supreme Court said evidence of PRA training for agency staff can reduce penalties, & lack of training can increase penalties.

## Open Public Meetings

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- Review their OPMA procedures.
- Review available resources; institute best practices.
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# Information



## Open Public Records

- Attorney General's Office has appointed Assistant Attorney General for Open Government to provide information about the PRA.
- AGO has issued Model Rules.
- AGO may provide technical assistance and training.
- AGO has an online Open Government Deskbook and other materials and resources on its website, including training resources.
- AGO can review exemption from disclosure cited in state agency records, and issue informal opinion.
- AGO can issue formal opinions (for qualified requesters).

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