


Puget Sound  
Finance Officers Association

Public Records Requests

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Objectives

- Understand the Public Records Act
- Recognize a public records request
- Identify public records
- Know how to process a request
- Know risks associated with failing to comply with the Public Records Act

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### Intent of the People – 1972 Initiative RCW 42.56.030

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 and its exemptions narrowly construed to promote this public policy.

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## Public Records Act Overview

- “Each **agency**...shall make available for public inspection and copying all **public records**, unless...[an] exempt[ion]...prohibits disclosure.” RCW 42.56.070(1)
- **Agency** includes all state and local agencies. RCW 42.56.010(1)
  - Includes all agency offices, departments, boards, commissions, etc.
  - DOES NOT include task forces formed btwn agencies by interlocal
    - Must submit request to each member agency for that agency's records
  - DOES include new municipal corporation formed by interlocal
- **Public Record** means any “writing...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...” RCW 42.56.010(3)
  - **Writing** includes “every...means of recording any form of communication or representation...” RCW 42.56.010(4)
- **Copy** is not defined in the statute
  - Public record includes electronic version of record, including “metadata”
  - If requested, produce in electronic form, if reasonable and feasible to do so

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## General Agency Obligations Under Public Records Act

- Must provide the “**fullest assistance**” to requesters to help them identify records they are seeking
- Perform a search of records that is **reasonably calculated** to locate all responsive records
- For records that are withheld, **identify** them and **provide an explanation**, based on law, as to why records were withheld
- Provide responsive records as **timely** as possible

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## Failure to Meet Obligations Under the Public Records Act

- Agency can be liable:
  - if records are improperly withheld
  - if records were not provided timely
  - for violating the “5-day Rule”
  - for not identifying withheld records
  - for not providing explanation of lawful basis for withholding of record
- If agency is found to have violated the Public Records Act, **MUST** pay DAILY PENALTIES for every day record withheld & ATTORNEYS’ FEES

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## Penalties for Violation

- **\$0 to \$100 per day, per record**

Aggravate	Mitigate
Delayed response	Unclear request
Lack of strict compliance w/PRA procedures & exemptions	Prompt response, legitimate follow-up or clarification
Lack of proper training/supervision	Good faith, honest, timely, strict compliance w/PRA procedures & exceptions
Unreasonableness of explanation for noncompliance	Proper training/supervision
Negligent, reckless, wanton, bad faith, or intentional noncompliance	Reasonableness of explanation for noncompliance
Dishonesty	Helpfulness of agency to requester
Public importance of issue, if foreseeable by agency	Existence of agency system to track and retrieve public records
Actual foreseeable personal economic loss to requester	
Amount \$ needed to deter future misconduct	

- **May overlap, may not apply equally, non-exclusive, no one controls**

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## Penalties for Violation

- **PRA requires a penalty “for each day”**
  - Calculated from day of request until day produced—No time out
    - # of days X # of records = daily penalty
  - Court has discretion in how to define “record” and how to value penalty
    - Per page
    - Per request
    - Categorize/group documents
      - Value categories differently
      - Categorize, then value per page
    - Any other conceivable way
  - In assessing penalty, court **MUST** consider the stated aggravating and mitigating factors
- **Attorney Fees & Costs** – Not just if denied record
- **NOTE:** There is no liability or course of action under the PRA for release of records in good faith that otherwise could have been withheld.

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## Examples of Penalties

- **City of Kent** = Settlements of \$70,000 (*missed electronic records and misplaced paper record*) and \$10,000 (*overlooked request in "clarification"*)
- **Sample Judgments**
  - Univ. of WA = \$723,290.50 (\$0.50 per pg. penalty)
    - *Delayed response, improper exemption and withholding*
  - State of WA L&I = \$502,827.40 + atty fees of \$43,000 (\$0.01 per pg., \$0.02 per pg., \$0.25 per pg., \$1 per pg., \$5 per pg.)
    - *Delayed response, improper exemption and withholding, delay and improper TRO notification*
  - City of Marysville = \$143,700 (\$40, \$70, \$90 per batch)
    - *Consultant emails, improper exemption and withholding, improper search, deliberate action to avoid producing*
  - Thurston County Dept. of Corrections = \$45,000 + atty fees of \$128,000 (\$45 per day X 2 categories and \$45 per day x 6 categories)
    - *Inadequate search*
  - City of Seattle = \$19,665 (\$45 per day)
    - *Improper exemption and withholding*
  - City of Roy = \$12,550 (\$50 per pg.)
    - *No 5-day ltr, delayed response, improper exemption and withholding*

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## What is a Public Record?

- Assume everything is a record.
- All records of an agency are *presumed* to be "public records" subject to disclosure.
- Even if you don't possess it—enough that you used, reviewed, or referred to it.
  - Used = Information that is: (1) employed for; (2) applied to; or (3) made instrumental to a governmental end or purpose.
    - A nexus between the information and an agency's decision-making process.
  - Examples: Plans never possessed by public utility, emails of consultant hired under contract.

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## What is a Public Record?

Any record – in any form - prepared, owned, used or retained by an agency relating to the conduct/performance of government.

Consider **ALL** of these (paper and electronic) when producing records in response to PRR:

- Email and Voicemail
- WORD, Excel, Access Documents
- Spreadsheets
- Plans, Maps, PDFs
- Software Screen Shots
- Video or Audio Recording
- Databases and Links (KIVA, Tiburon, Oracle, LawBase, JDE)
- Microfiche
- Handwritten Notes
- Employee Working Files
- Meeting Notices and Meeting Notes
- Calendars (Outlook and Bound/Paper/Day-Planner Version)
- Post-It Notes
- Etc.

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## What is **Not** a Public Record?

- Records that **don't relate** to the conduct of government or the performance of any governmental or proprietary function
  - Likely VERY limited
    - Email example: Content not a public record, but remainder of email likely is a public record
  - Still produce records to Records Administrator who will decide, or contact your agency's legal advisor

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## Common Sense Advice

- **Don't** create a record you would not want to see on the front page of the paper!
  - Writing
  - Recording
    - Email
    - Pictures
  - Tweets or Posts
- Consider whether to mix business communication with personal communication

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## Even Though a Record, Exemption May Apply

- While a record, some information on the record is exempt from disclosure, for example:
  - Employee personal addresses, phone numbers, dependent information
  - Social security numbers
  - Medical records
  - Attorney-client privileged communication
  - Some criminal records (victims, juveniles, etc.)
- But – **MUST** tell requestor what records, in whole or part, are not disclosed and why they are exempt
  - Statute of limitations & impact of silent withholding
    - 1 yr. from claim of exemption or last production of record
- If concern exists regarding release of a record, flag it for extra attention by Records Administrator

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## Personal Electronic Devices and Social Media

- Content may be record if it relates to agency business
  - Agency-issued **or** personal cell phone, computer, tablet, etc.
    - Texts
    - Emails
    - Word, Excel, other documents, etc.
  - Personal Facebook, Twitter, Instagram, etc.
    - May also become record with repeated personal use on agency time or with agency equipment, even if content is not related to agency business
- Employee personal privacy: only if (1) highly offensive to reasonable person, **and** (2) not of legitimate public concern.

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## Identifying a Request

- Usually in writing, but not required
- Can be made orally (If so, ask for it in writing)
- Beware of hidden requests
  - Information that necessarily includes records
  - "Can I get a copy of that?"
  - "Can I see the file?"
  - Freedom of Information Act (FOIA)

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## Existing Records Only

- Public Records Act requires agency produce records that exist at time request is made
  - No requirement to create records
  - No requirement to answer questions
  - No requirement to explain records
  - Caveat: Agency is required to provide “fullest assistance,” which may require Q&A, and sometimes creating a record may be more beneficial to all.
- If a request is vague or confusing, advise Records Administrator **IMMEDIATELY** who will obtain clarification and determine exact records being sought
- If data can be pulled from a database, agency may need to produce a report or screen shots from that database
  - Creating record vs. translating record

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## Request Made & Response Process- Records Administrator

- Records Administrator in Clerk’s Office
  - Point of contact and control of **ALL** records requests
- Records Administrator designated by Council to:
  - Receive requests,
  - Manage clarification and response process,
  - Coordinate w/departments and obtain responsive records,
  - Communicate w/requesters,
  - Determine exemptions and make redactions, and
  - Disclose records.
- “Over-the-counter” records exempt from process:
  - 10 pages/10 minutes – Documents routine in nature or designated by department
    - Instructions or blank forms
    - Documents or pamphlets
    - Council and committee meeting agendas
    - Pages from our municipal code, ordinances, and resolutions

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## Request Made & Response Process- Records Administrator

- Records Administrator receives request
  - From requester or forwarded **immediately** by department
  - Received electronically, by mail, email, or in-person
- **Within 5 days**, the Records Administrator **must**:
  - Provide requested record; or
  - Request clarification; or
  - Acknowledge receipt of request and provide estimate when records will be available; or
  - Deny request.
- Records Administrator distributes request to departments that may hold responsive records
  - Records Coordinators

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## Response Process—Departments

- Carefully and closely read the request to determine responsive records
  - If unclear in **any way**, contact Records Administrator and ask for clarification
  - Provide what is requested—not too broadly, not too narrowly
- Don't "interpret" the request
- Don't "assume" you know what requester wants
- Don't produce only what you think "should" be disclosed
- Don't withhold what you think is exempt—Provide all records to Records Administrator
  - Flag any concerning information
- Don't ask requester "why" records are needed
  - Can only ask to determine if exemption applies

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## Response Process—Departments

- Departments must gather **ALL** responsive records and deliver to Records Administrator
  - Project file, working file, personal file
  - All department divisions
  - Consultant, contractor, or third-party file
  - Notes
  - Duplicates
  - Consider if email search needed
- Advise Records Administrator where other records may be located
- If no records, advise Records Administrator and return routing slip

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## Response Process—Records Administrator Produces Department's Records

- Reviews records to determine if complete
  - May require additional work from department
- Determines if any exemptions apply
- Makes any redactions
- Prepares exemption log that identifies:
  - Any record withheld (whole or part)
  - Legal basis that allows
  - How legal basis applies to record and withholding
- Notifies requester that records are available for copying or inspection

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## Records or Information?

For Chandler Bay Apartments....

1. Copies of Certificate of Occupancy Permits (27 buildings, 1 clubhouse, constructed circa 1989)
2. Are there any demolition permits for this property or history of buildings on this site before 1989?
3. Are there any building code violations?
4. What is zoning? Is it legal?
5. Any history of install or removal of petroleum related USTs? (Fire and Building Department)
6. Fire Department: Date of last inspection?
7. When was the area incorporated into Kent?

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## Sample Requests – What Records Are Sought?

- I am requesting all of Jane Doe's emails from April 2, 2012 – December 21, 2012
- Please provide a copy of all records regarding police case #13-1234
- Please provide a copy of police case #13-1234
- Please provide a copy of the police report in case #13-1234
- Please provide a copy of all records regarding John Doe
- I would like a copy of any disciplinary records for Officer Jane Doe
- Please provide me with a list of all salaries of all agency employees
- I would like a copy of Jane Doe's personnel file

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CLEARANCE CHECKLIST									
Application	Scope	Address	Owner	Profess	Applicant	Quantity	Fee Calc	Checklist	Fee Paid
Permit Type: FVS4	It: 2063414	Project:	Date: 21-JUL-2006						
APN: 3522059154	27918 152 AVE SE	KENT							
X Activity	Description	Assgd To	Target End Date	Decision	By	Decision Date	Nodes - Beg	End	Cmt
<input type="checkbox"/> E-RESUB	Engineering Resubmittal	JSTO	05-OCT-2006	CANCEL	JSTO	03-OCT-2006	4	5	<input checked="" type="checkbox"/>
<input type="checkbox"/> F-RESUB	Fire Resubmittal	ERID	05-OCT-2006	DONE	ERID	27-SEP-2006	4	5	<input checked="" type="checkbox"/>
<input type="checkbox"/> P-RESUB	PS Resubmittal	MGIL	05-OCT-2006	HOLD	MGIL	22-SEP-2006	4	5	<input checked="" type="checkbox"/>
<input type="checkbox"/> P-CLETTER	Consolidation Letter	CBAR	04-OCT-2006	DONE	CBAR	03-OCT-2006	5	6	<input checked="" type="checkbox"/>
<input type="checkbox"/> E-FEE	Engineering-Add Fees	JSTO	04-OCT-2006	DONE	JSTO	04-OCT-2006	6	7	<input checked="" type="checkbox"/>
<input type="checkbox"/> HOLDVR	Hold For Resubmittal	AMCC	05-OCT-2006	DONE	AMCC	20-OCT-2006	7	8	<input checked="" type="checkbox"/>
<input type="checkbox"/> D-RESUB	Building Services Resubmittal	AMCC	03-NOV-2006	CANCEL	AMCC	20-OCT-2006	8	9	<input checked="" type="checkbox"/>
<input type="checkbox"/> E-RESUB	Engineering Resubmittal	JSTO	03-NOV-2006	HOLD	JSTO	02-NOV-2006	8	9	<input checked="" type="checkbox"/>
<input type="checkbox"/> F-RESUB	Fire Resubmittal	AMCC	03-NOV-2006	CANCEL	AMCC	20-OCT-2006	8	9	<input checked="" type="checkbox"/>
<input type="checkbox"/> P-RESUB	PS Resubmittal	MGIL	03-NOV-2006	DONE	MGIL	14-DEC-2006	8	9	<input checked="" type="checkbox"/>
<input type="checkbox"/> HOLDVA	Hold Administrative Items	JSTO	21-DEC-2006	DONE	JSTO	19-DEC-2006	9	10	<input checked="" type="checkbox"/>
<input type="checkbox"/> HOLDVR	Hold For Resubmittal	PCBIN	20-DEC-2006	DONE	JSTO	20-DEC-2006	10	11	<input checked="" type="checkbox"/>
<input type="checkbox"/> P-CLETTER	Consolidation Letter	CBAR	21-DEC-2006	CANCEL	CHOL	20-DEC-2006	11	12	<input checked="" type="checkbox"/>
<input type="checkbox"/> HOLDVR	Hold For Resubmittal	AMCC	21-DEC-2006	DONE	AMCC	21-DEC-2006	12	13	<input checked="" type="checkbox"/>
Dept: CD    Dur: 1    Comment: PER MGIL NEED ROUTING. <input type="checkbox"/> All Activities Stat: DONE    Dur Type: C <input type="checkbox"/> Only Available									
<input type="button" value="Permit Signoff"/> <input type="button" value="Activity Point"/> <input type="button" value="Add Activity"/> <input type="button" value="Assign Activities"/>									

COMMENTS			
FVS4	2063414	Prop:	Prop Dev: DRVSC    Enter Date: 21-JUL-06
By	Date	Comments	
JBEA	07-MAY-2007	ZONING FEES CALCULATED @ \$333.00 (BOTTOM OF THE SLIDING SCALE FOR 4 HRS OF REVIEW TIME) PER CAND.	
Print on Permit		<input type="checkbox"/>	
By	Date		
AMCC	21-DEC-2006	LM W/MGIL TO CONTACT ME IF THE CHECKLIST NEEDS TO INCLUDE BLDG OR FIRE. MGIL** LM W/JSTO TO CONTACT ME IF HE HAS ANY QUESTIONS REGARDING THE ROUTING. JSTO HAD PUT A HOLDVR IN, BUT SIGNED IT OFF. JSTO OUT OF OFFICE, SO INCLUDED IN ROUTING.	
Print on Permit		<input type="checkbox"/>	
By	Date		
JSTO	20-DEC-2006	Please note redline comments on approved construction plans regarding sidewalk transitions, stop sign location, and stop sign mounting height. 6/12/8 Jim S. and Brad H. inspected inside second floor. nothing going on. 11/3/8 owner at PW ctr. desires to continue this permit and install necessary road improvements (BH)	
Print on Permit		<input checked="" type="checkbox"/>	
By	Date		
JSTO	07-DEC-2006	could move in if he had his CD, but the new parking lot could not be opened for use until proper permits and inspections were done on this permit. We also talked about the curb and stop sign, and they agreed that they would revise their plans according to my last correction letter. Per a follow-up voicemail that afternoon, they expect their architect to deliver that plan on Tuesday.	
Print on Permit		<input type="checkbox"/>	

City of Kent  
Redaction / Withholding Log for PRR #6789

Date of Document	Document Description	Redacted	Withheld	Page(s) Withheld	Exemption Authority	How Exemption Applies to Document
2/3/14	Driver's license photographs of six individuals used by Police as photo montage for witness identification of suspect in Case Report 14-57890		X	2	RCW 42.56.240(1) RCW 46.20.118(1) 18 USC 2721 18 USC 2725	These documents are photographs obtained by law enforcement in its investigation from DOL's database, are exempt from disclosure under state and federal law and have therefore been withheld from disclosure.
2/1/14	City of Kent Police Case Report 14-57890, Supplement No. 0006	X			RCW 42.56.240(1)	This document contains a driver's license number that was provided to law enforcement in the course of its investigation. A driver's license number is personal information that is exempt from disclosure in order to protect the subject person's right to privacy, and such information has therefore been redacted.
2/1/14	City of Kent Police Case Report 14-57890, Supplement No. 0006	X			RCW 42.56.240(1) 42 USC 405	This document contains a person's social security number obtained by law enforcement in its investigation. State and federal law prohibit disclosure of a person's social security number and such information has been redacted.
2/6/14	Email from John Smith, Assistant City Attorney, to Bob Jones, re "Case Report 14-57890"	X			RCW 5.60.060(2) RCW 42.56.290	This document is protected by the attorney-client privilege exemption because it is communication between client and legal counsel, or counsel's agent, for the purpose of obtaining legal advice. Such privileged communication has therefore been redacted.
	Attachment to e-mail dated 2/6/14 from John Smith, Assistant City Attorney to Bob Jones, re "Case Report 14-57890"		X	6	RCW 5.60.060(2) RCW 42.56.290	This document is protected by the attorney-client privilege exemption because it was exchanged between client and legal counsel for the purpose of obtaining legal advice. Because privileged communications could not be redacted, the document has been withheld from disclosure.
2/2/14	City of Kent Police Case Report 14-57890, Supplement No. 0008	X			RCW 46.12.635 18 USC 2721	The name or address of an individual vehicle owner when obtained from state motor vehicle records is exempt from disclosure, and such information has been redacted.

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## REMEMBER YOUR PUBLIC RECORDS RESPONSE DUTIES

- Provide **ALL** responsive records, even if exempt, to the Record's Administrator in as **timely** a fashion as possible...it must be a priority
  - Train your staff to make public records disclosure a priority, and to respond timely and thoroughly
- Perform a **search** of records that is **reasonably calculated to locate all responsive records**
- Provide the **fullest assistance** to requesters to help them identify the records they are seeking
- **IT'S THE LAW, AND PENALTIES FOR VIOLATIONS ARE SEVERE!**