Open Government & Transparency Training

Presented in Ellensburg, Washington

July 22, 2015
Welcome & Introductions

Jan Jutte, Acting State Auditor
State Auditor’s Office Strategic Goals

Help governments work better, cost less and deliver higher value

Materials from these presentations will be online at our website: www.sao.wa.gov
The Local Government Performance Center offers:

- Online resource center with tools and examples at [www.sao.wa.gov/performancecenter](http://www.sao.wa.gov/performancecenter)
- Training on how to improve government services
- Customized on-site training sessions (on request, and within available resources)
**OPMA — PRACTICE TIPS**

**For Local Government Success**

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**OPMA — NOTICE REQUIREMENTS PRACTICE TIPS**

Under the Open Public Meetings Act (OPMA), to ensure that agency deliberations and other actions are conducted and taken openly, agencies are required to provide sufficient public notice of their meetings. Use these practice tips as a starting guide for OPMA notice requirements.

### Meeting Notice Requirements (RCW 42.30.015)

- **Public Notice:** Agencies must give public notice of their meetings. The notice must include the time, date, and place of the meeting, and a summary of the agenda items.

### Special Meetings (RCW 42.30.016)

- **Closed Meetings:** If a meeting is closed, the reasons for the closure must be stated in the notice.

### Notice and Agenda

**Agenda:** The agenda must include a complete list of items to be discussed and the time allocated for each item.

**Notice:** The notice must be given at least 24 hours before the meeting.

- **Exceptions:** Special meetings and emergency meetings can be held with shorter notice, as outlined in RCW 42.30.015.

### Other Requirements

- **Public Access:** The meeting must be open to the public unless it is a closed meeting.

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**OPMA — EXECUTIVE SESSIONS CHECKLIST**

For Local Government Success

- **Purpose:** The meeting must be held for the purpose of discussing matters specifically exempted from open public meetings (subject to the provisions of OPMA).

- **Legal Counsel:** Legal counsel must be present during the executive session.

### Executive Session

- **End Time:** The executive session must end within the time specified in the notice.

### Confidentiality

- **Confidential Information:** Any confidential information must be marked and properly identified in writing.

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**MRSC Resources**

- **PRA — AGENCY OBLIGATIONS**
  - **A STARTING POINT**
  - **CHECKLIST**
    - **For Local Government Success**
      - **Assign a Public Records Officer (PRO)**
        - Duties: Responsible for maintaining a public records manual, training employees, and ensuring compliance.
      - **Adopt a Local Public Records Act Policy**
        - Procedures: Establishes policies and procedures for handling requests for public records.
      - **Publish a List of Exemptions and Prohibitions Found Outside the PRA**
        - List: Includes exemptions and prohibitions not found in the PRA, such as trade secrets.
      - **Maintain a Index of Public Records**
        - Function: Helps locate records, ensure their completeness, and maintain them in an organized manner.
      - **Adopt a Fee Schedule**
        - Guidelines: Establishes fees for public records requests.

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**For more information, visit:**

- [WASA](http://www.wasa.org)
- [MRSC](http://www.mrsc.org)

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**PRA Training Requirements, Effective July 1, 2014**

- **General:** Open Government Training Act & A (15 min)
- **Specific:** Code of local government public records laws (15 min)
- **Additional:** Additional training (45 min)

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**PRA Training Requirements, Effective July 1, 2014**

**For more information, visit:**

- [WASA](http://www.wasa.org)
- [MRSC](http://www.mrsc.org)
Today’s topics

1. Open Public Meetings Act
2. Requests for Public Records
3. Records Management

The handout has information about additional resources on these topics.
Why is the Auditor’s Office providing training?
What the Legislative Declaration says:

. . . 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.
Scope of the law:

- All governing bodies of multimember boards must comply.
- However, some activities of governing bodies are not subject to the OPMA.
- The courts and the Legislature are not subject to the OPMA.
“Meeting” means gatherings at which action is taken.

- “Action” means the transaction of business that includes but is not limited to:
  - Receipt of public testimony
  - Deliberations
  - Discussions
  - Considerations
  - Reviews
  - Evaluations
  - Final actions

- Members are not required to be physically present
- OPMA applies even if the event is not titled a “meeting”
- No quorum = no meeting
“Final action” means: Vote or collective decision

Final action must occur in public meeting

Secret ballots not allowed
What is a “regular” meeting?

What is a “special” meeting?

What about an “emergency” meeting?
Executive sessions

- Closed to the public
- Limited in purpose
- Publicly announced
Other important issues to be aware of

Attendance & Comment

- Must be open to public
- No conditions on attendance
- If you permit public comment, you may develop your own procedures limiting comment time

Minutes

- They are required
- However, no required format
- Prompt and open to public view
What issues do we encounter?

- Quorum conducting business outside of an open public meeting.
- Improper executive sessions

Common documentation issues...

- Minutes of meeting did not document purposes of executive sessions or when it will conclude

Finally: If a quorum is present, do not proceed unless...
Penalties can be imposed if the meeting violates OPMA

To avoid problems, conduct and document meetings in compliance with OPMA
Any questions on the OPMA?
Next we address two closely related topics...

- What to do when a member of the public makes a request for public records under the provisions of Washington’s Public Records Act.

- It is much easier to respond to a request if you have a functioning records management system.
What is the Public Records Act?

- History of RCW 42.56

- Purpose: Give citizens full access to government

- Intent: Open government essential to free society

All government agencies and organizations must comply.
“Public record” defined

A writing containing information relating to the conduct of government or the performance of any governmental or proprietary function, prepared, owned, or retained by an entity...

RCW 42.56.010(3)

“Writing” defined

...means any form of communication or representation... from which information may be obtained or translated.

RCW 42.56.010(4)
Requests for Public Records

Does your organization...

1. Have a process for capturing records requests?
2. Have a method to track these requests?
3. Train every employee on how to recognize a request for public records?
4. Document this training?
The Attorney General’s Model Rules are...

- Available online
- Entities may adopt any portion as their own
- Based on outreach, but not binding
- Cited by courts
How the Public Records Act is applied

- Applies to state and local entities
- All records must be disclosed unless a law exempts record or information
- Courts are not subject to the Act
What do we **have to do** under the PRA?

- Appoint a public records officer
- Publish information on how to request records
- Establish policies and procedures
- Provide an index
Public records requests

- Can be in writing on entity’s form delivered by hand, emailed, web-based submission, or fax
- Can be made verbally, in person or by telephone

*A request for information is not a request for records.*

*Entities have no duty to create a record that does not exist.*
Requests for Public Records

Public records requests

- Must respond within 5 business days of receiving request
- Response must provide one of following:
  - Acknowledge you received request and an estimate of when it will be fulfilled
  - Fulfill request
  - Provide internet address and link
  - Seek clarification of request
  - Deny request with explanation for denial
Requests for Public Records

**Public records requests:** Seeking clarification

- Provides the fullest assistance to requestor
- Results in prompt disclosure by identifying only desired records
- Means the requestor receives and pays for only those records requested
Public records requests: Reasonable estimates

- Provide a reasonable estimate of response time in initial response
- What should a reasonable estimate consider:
  - Clarification needed
  - The resources needed to process the request
  - Any notices
Public records requests: Adequate searches

An entity:

- Bears the burden to show that search was adequate
- Should document how search was conducted and what terms were used
- Should not limit search to one or more locations if there are additional places where responsive records are likely to be found
- Must make records available during regular business hours at least 30 hours a week
Requests for Public Records

Electronic records

- PRA does not distinguish between electronic and paper records.
- Develop policies that address technology concerns

Consider making public records widely available electronically, especially those records that are commonly requested.
An example of email metadata

| From: | Cindy Evans <SAO/FIRST ADMINISTRATIVE GROUP/RECIPIENTS/EVANSC> |
| To: | Pete Donnell <donnellp@sao.wa.gov> |
| Subject: | Metadata Example |
| Sent: | 4/28/2014 5:15:30 PM +00:00 |

Pete:

The lazy brown fox jumped over the moon.

Cindy Evans
360.725.5585

Message Headers: 
Received: from SAOMXOLY001.sao-nt.wa.gov (fe80::119:a488:5187:e415) by SAOMXOLY007.sao-nt.wa.gov (fe80::54ae:bd93:a22f:1944%10) with mapi; Mon, 28 Apr 2014 10:15:31 -0700Content-Type: application/ms-tnef; name="winmail.dat"Content-Transfer-Encoding: binaryFrom: Cindy Evans <evansc@sao.wa.gov>To: Pete Donnell <donnellp@sao.wa.gov>Date: Mon, 28 Apr 2014 10:15:30 -0700Subject: Metadata ExampleThread-Topic: Metadata ExampleThread-Index: Ac9jBWaiCRUnqipXSWOPrUwpKOpz4w==Message-ID: <FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY001.sao-nt.wa.gov>Accept-Language: en-USContent-Language: en-USX-MS-Has-Attach:X-MS-Exchange-Organization-SCL: -1X-MS-TNEF-Correlator: <FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY001.sao-nt.wa.gov>MIME-Version: 1.0
### An example of email metadata

<table>
<thead>
<tr>
<th>Message Headers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received: from SAOMXOLY001.sao-nt.wa.gov ([fe80::119:a48:5187:e415]) by SAOMXOLY007.sao-nt.wa.gov ([fe80::54ae:bd93:a22f:1944%10]) with mapi; Mon, 28 Apr 2014 10:15:31 -0700</td>
</tr>
<tr>
<td>Content-Type: application/ms-tnef; name=&quot;winmail.dat&quot;</td>
</tr>
<tr>
<td>Content-Transfer-Encoding: binary</td>
</tr>
<tr>
<td>From: Cindy Evans <a href="mailto:evansc@sao.wa.gov">evansc@sao.wa.gov</a></td>
</tr>
<tr>
<td>To: Pete Donnell <a href="mailto:donnellp@sao.wa.gov">donnellp@sao.wa.gov</a></td>
</tr>
<tr>
<td>Date: Mon, 28 Apr 2014 10:15:30 -0700</td>
</tr>
<tr>
<td>Subject: Metadata Example</td>
</tr>
<tr>
<td>Thread-Topic: Metadata Example</td>
</tr>
<tr>
<td>Thread-Index: Ac9jBWaiCRUnqipXSWOPrUwpKOpz4w==</td>
</tr>
<tr>
<td>Message-ID: <a href="mailto:FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY001.sao-nt.wa.gov">FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY001.sao-nt.wa.gov</a></td>
</tr>
<tr>
<td>Accept-Language: en-US</td>
</tr>
<tr>
<td>Content-Language: en-USX-MS-Has-Attach:X-MS-Exchange-Organization-SCL: -1X-MS-TNEF-Correlator: <a href="mailto:FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY001.sao-nt.wa.gov">FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY001.sao-nt.wa.gov</a></td>
</tr>
<tr>
<td>MIME-Version: 1.0</td>
</tr>
</tbody>
</table>
Public records requests: Managing broad requests

- Work with requestors to narrow the scope
- Tell them about potential costs and deposits
- Supply records in installments
Public records requests: Fees

- Records must be free for inspection
- What can you charge for?
  - Determining reasonable or actual costs
  - Electronic records
Withholding a public record: What exemption applies

Exemptions from public disclosure are *narrowly construed* – for example:

- Personal information
- Education records
- Protected health care information

If you redact information, provide all but the expressly exempted information.
Withholding a public record: Maintain an exemption log
Explain the withholding of records by providing detail

### Records Withholding Log for PRR #00000 – Withheld employee applications

<table>
<thead>
<tr>
<th>DATE</th>
<th>TITLE OF DOCUMENT</th>
<th>TYPE OF DOCUMENT</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/23/07</td>
<td>State of Washington Employment Application [Electronic] for John Doe. (8 pages)</td>
<td>Personnel Form</td>
<td>Applications for public employment, including names of applicants, resumes and other related materials submitted with respect to an applicant are exempt from disclosure. RCW 42.56.250(2); RCW 42.56.050; and Resident Action Council v. Seattle Housing Authority, <em><strong>Wn.2d</strong></em>, 300 P.3d 376 (2013).</td>
</tr>
<tr>
<td>5/20/08</td>
<td>Academic Transcripts for John Doe. (1 page)</td>
<td>Transcript</td>
<td>Applications for public employment, including names of applicants, resumes and other related materials submitted with respect to an applicant are exempt from disclosure. RCW 42.56.250(2); RCW 42.56.050; and Resident Action Council v. Seattle Housing Authority, <em><strong>Wn.2d</strong></em>, 300 P.3d 376 (2013).</td>
</tr>
</tbody>
</table>
Another example of an exemption log

### Records Withholding Log for PRR #00000 - Attachments to emails withheld

<table>
<thead>
<tr>
<th>EMAIL DATE</th>
<th>TITLE</th>
<th>TYPE</th>
<th>AUTHOR</th>
<th>RECIPIENT</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/2/2010 (1:15 PM)</td>
<td>Deleted attachments to email with subject: “FW:EmploymentApp”</td>
<td>Application Materials</td>
<td>Jane Doe</td>
<td>John Smith</td>
<td>Applications for public employment, including names of applicants, resumes and other related materials submitted with respect to an applicant are exempt from disclosure. RCW 42.56.250(2); RCW 42.56.050; and Resident Action Council v. Seattle Housing Authority, Resident Action Council v. Seattle Housing Authority, <em><strong>Wn.2d</strong></em>, 300 P.3d 376 (2013).</td>
</tr>
</tbody>
</table>
Requests for Public Records

There is liability around the Public Records Act...

- Potential for lawsuits
- Burden of proof is on the organization

Good risk management:

Understand the law and apply it correctly
Any questions on PRA?

Records management is our final topic.
Records Management

You will be better able to comply with requests made under the Public Records Act if you have a functioning records management system.

Your first public record is your birth certificate.

You need it on occasion, and it is helpful to be able to find it when you do.
The best laid plans of mice and men are filed here somewhere . . .

Apologies to Robert Burns.
Do you and your employees know:

1. What records your organization creates?
2. Is there a list of records and where they are stored?
3. How long should a record be kept?
Identify your transitory records

Public records that only document information of temporary, short-term value. These records are:

- **Not** needed as evidence of a business transaction

  and

- **Not** covered by a more specific records series

*Examples include:*

  - Drafts of letters or spreadsheets
  - Routing slips
  - Voice messages
  - Shorthand notes after transcription
  - Voided architectural drawings
Training helps employees manage records properly

1. Make records management a priority. Training should begin on day one.

2. After the first training, staff should know that:
   - A record cannot be destroyed unless its retention period has passed
   - An email is a public record subject to records retention requirements
   - What to do when a public records request has been made
Additional training resources

Washington State Archives:

Records Management – Local Government

- Where to find the records management website: www.sos.wa.gov/archives/RecordsManagement/records_local.aspx
- Email address for questions – archives@sos.wa.gov
- Phone number for questions – (360) 586-1492
Any questions on Records Management?
Additional resources:

- Local Government Performance Center Best Practices
  PRA and OPMA handouts

- MRSC’s The Open Public Meetings Act – How it Applies to Washington Cities, Counties, and Special Purpose Districts (Report Number 30, May 2012)
Wrapping it up...

Visit our website at www.sao.wa.gov

Please remember to sign out

The certificate of completion and this presentation will be emailed to you.