



# Washington State Auditor's Office

Independence • Respect • Integrity

## Open Government & Transparency Training

Presented in Ellensburg, Washington

July 22, 2015

## Welcome & Introductions

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# 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](http://www.sao.wa.gov)

The screenshot displays the Washington State Auditor's Office website. At the top left is the state seal, followed by the text "Washington State Auditor's Office". To the right is a search bar and a "Sign In/Sign Up" button. Below these are social media icons for Facebook, Twitter, LinkedIn, YouTube, and a plus sign. A navigation menu contains links for "About Us", "Local Government", "State Government", "Investigations", "Resources", and "Search Reports". The main content area features a banner titled "Respect" with the text "We work in partnership with state and local officials to make better government the bottom line." and a carousel of five images. Below the banner is a sidebar menu with "About Us" selected, and the main content area displays the "About Us" page with sections for "Our mission and goals", "Who audits the Auditor?", "Careers", and "Contact Us".

# Local Government Performance Center

## 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)

The screenshot shows the website for the Washington State Auditor's Office Local Government Performance Center. The header includes the state seal, the office name, a search bar, and social media links. A navigation menu lists: About Us, Local Government, State Government, Investigations, Resources, and Search Reports. Below this is a sub-menu for the Local Government Performance Center, including About The Center, Lean Academy, and Training. The main content area is titled "Resource Database" and features three tabs: "Evaluating Services and Operations", "Managing and Improving Performance", and "Communicating With Citizens". A search bar is present, along with filters for Template/Tool, Leading Practice, Toolkit, Training, Guidance, Case Study, Example, and Research/Audit. Two case studies are displayed: "Kittitas County Building Permits" and "Grant County Prevention and Recovery Center", each with a "Download" button and a "share this link" option. A right-hand sidebar lists categories and topics with counts, such as "Budgeting for Outcomes (8)", "Citizen Participation (16)", and "Performance Measurement (33)".



## 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?**

# Open Public Meetings Act

## **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.

# Open Public Meetings Act

## 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.

# Open Public Meetings Act

## “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

# Open Public Meetings Act

**“Final action” means: Vote or collective decision**

Final action must occur in public meeting

Secret ballots not allowed



# Open Public Meetings Act

What is a “regular” meeting?

What is a “special” meeting?

What about an “emergency” meeting?

2014 General Board Schedule				
Meeting	Date	Location	Actions	Responsible
Board	1/7/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Present and discuss budget	Finance Committee
			Approve operating budget	Board
			Upcoming regional events calendar	Events Committee
Board	2/4/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Review, approve events plan	Board
			Review, approve annual meeting agenda and presentation	Executive Director, Board
			Evaluation of manager	Executive Committee in Executive Session
Annual membership	3/4/2014	Smith School Gymnasium	Review and approve minutes	Board
			Presentation to members	Executive Director
			Call for events volunteers	Events Committee, members

# Open Public Meetings Act

## Executive sessions

- Closed to the public
- Limited in purpose
- Publicly announced

Meeting	Date	Location	Actions	Responsible
Board	1/7/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Present and discuss budget	Finance Committee
			Approve operating budget	Board
			Upcoming regional events calendar	Events Committee
Board	2/4/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Review, approve events plan	Board
			Review, approve annual meeting agenda and presentation	Executive Director, Board
			Evaluation of manager	Executive Committee in Executive Session
Annual membership	3/4/2014	Smith School Gymnasium	Review and approve minutes	Board
			Presentation to members	Executive Director
			Call for events volunteers	Events Committee, members

## 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

# Open Public Meetings Act

## 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...

# Open Public Meetings Act

**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**.

# Requests for Public Records

## 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.**

# Requests for Public Records

## **“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?

# Requests for Public Records

## **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

# Public Records 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



The screenshot shows the Washington State Auditor's Office website. The header includes the state seal, the office name, a search bar, and social media links. A navigation menu contains links for About Us, Local Government, State Government, Investigations, Resources, and Search Reports. The main content area is titled "Public Records" and features a sidebar with a "Public Records" menu. The main text explains the definition of a public record, provides information on request responses, and lists resources for finding audit reports. It also includes a section for asking for more information and contact details for the Public Records Officer.

Washington State Auditor's Office

Search

Sign In/Sign Up

About Us Local Government State Government Investigations Resources Search Reports

Public Records

Resources

Public Records

- ▶ Records Request Responses
- ▶ Policy Details
- ▶ Request Records

Local Government Resources

Media Resources

Auditing Resources

What information is part of "the public record?"

A "public record" is any state or local record related to the conduct of government or the performance of a governmental function, prepared or used or retained by any state or local agency. The Washington State Office of the Attorney General summarizes clearly what public records are on its [public records](#) web page. The actual state law is set out in all its detail on the Legislature's web page for the [Public Records Act](#).

Are you looking for a specific public records request response?

We have a page for [recent public records request responses](#). All responses to information will be placed on this page. For specific records not included on this page, you will still need to fill out a public records request form.

Where can I get information about the results of your audits?

The State Auditor's Office publishes reports on our audits and investigations.

- ▶ Audit reports released from January 2005 to the present are available on our website. [Search current reports](#).
- ▶ Earlier reports are available from the Washington State Archives. View them at the Secretary of State's Digital Archives website at [www.digitalarchives.wa.gov](#), or request a report from the State Archives by emailing [research@sos.wa.gov](mailto:research@sos.wa.gov).

If the information you are interested in does not appear fully in the report, you may ask to see additional data through a public records request. You can also request other kinds of information about the State Auditor's Office. Read the [full list of records](#) (pdf, 46kb) we keep.

I would like to ask for more information

We are committed to responding to all requests for public records promptly. It will help us find what you are looking for if you give us a detailed description of the records you are requesting.

You can read our [policy on public records](#), or read the [full policy](#) (pdf, 46kb).

- ▶ You can electronically submit a [public records request form](#)
- ▶ You can email your request to us at [PublicRecords@sao.wa.gov](mailto:PublicRecords@sao.wa.gov)
- ▶ You can send your request by mail to:

Attn: **Mary Leider, Public Records Officer**

# Public Records Act

## 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

# Requests for Public Records

## 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

# Requests for Public Records

## 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

# Requests for Public Records

## An example of email metadata

From:	Cindy Evans <SAO/FIRST ADMINISTRATIVE GROUP/RECIPIENTS/EVANS<
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
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# Requests for Public Records

## An example of email metadata

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
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# Requests for Public Records

## **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

# Requests for Public 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.

# Requests for Public Records

**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

DATE	TITLE OF DOCUMENT	TYPE OF DOCUMENT	EXPLANATION
3/23/07	State of Washington Employment Application [Electronic] for John Doe. (8 pages)	Personnel Form	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, ___ Wn.2d ___, 300 P.3d 376 (2013).
5/20/08	Academic Transcripts for John Doe. (1 page)	Transcript	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, ___ Wn.2d ___, 300 P.3d 376 (2013).

# Requests for Public Records

## Another example of an exemption log

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

EMAIL DATE	TITLE	TYPE	AUTHOR	RECIPIENT	EXPLANATION
2/2/2010 (1:15 PM)	<p>Deleted attachments to email with subject: "FW:EmploymentApp"</p> <ol style="list-style-type: none"><li>1. "WinZip Pro EmploymentApp.docx" – Word document containing State application for employment for John Doe (4 pages).</li><li>2. "John – Letter of interest.docx" - Word Document Title "Letter of Interest" for John Doe. (2 pages).</li><li>3. "John Doe – transcript.docx" - Word Document Title "University transcript" for John Doe. (4 pages).</li></ol>	Application Materials	Jane Doe	John Smith	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, ___Wn.2d___, 300 P.3d 376 (2013).

# 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.



# Records Management

**The best laid plans of mice and men  
are filed here  
somewhere . . .**



*Apologies to Robert Burns.*

# Records Management

## **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?

# Records Management

## 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*

# Records Management

## 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

# Records Management

## 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](http://www.sos.wa.gov/archives/RecordsManagement/records_local.aspx)
- Email address for questions – [archives@sos.wa.gov](mailto: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](http://www.sao.wa.gov)

Please remember to sign out

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