



Washington State Auditor's Office

Troy Kelley

Independence • Respect • Integrity

Open Government & Transparency Training

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

The screenshot shows the homepage of the Washington State Auditor's Office. At the top left is the state seal. The header includes the text "Washington State Auditor Troy Kelley" and the motto "Independence • Respect • Integrity". A search bar and "Sign In/Sign Up" link are in the top right. A navigation menu contains "About Us", "Local Government", "State Government", "Investigations", "General Information", and "Search Reports". A featured article titled "Open Government" includes a photo of Troy Kelley and a link to an announcement. A sidebar on the left highlights "About Us" with sub-links for "Local Government", "State Government", and "Investigations". The main content area under "About Us" includes sections for "Our mission and goals", "Who audits the Auditor?", and "Careers".

The Local Government Performance Center offers:

- Online resource center with tools and examples at 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 displays the website for the Washington State Auditor, Troy Kelley, with the tagline "Independence • Respect • Integrity". The navigation menu includes "About Us", "Local Government", "State Government", "Investigations", "General Information", and "Search Reports". The "Local Government Performance Center" section is active, showing "Center Resources".

Key features of the website include:

- Search Functionality:** A search bar with a "Search" button and filters for "Template/Tool", "Leading Practice", "Toolkit", "Training", "Guidance", "Example", and "Research/Audit".
- Resource Cards:** Three featured resources are shown:
 - Leading Practices in Financial Management:** A "Leading Practice" resource with a lightbulb icon, describing a report for the City of Lynnwood.
 - Internal Controls Checklist for Local Governments:** A "Template/Tool" resource with a wrench icon, describing a self-assessment checklist.
 - Communication and Citizen Participation Techniques:** A "Toolkit" resource with a briefcase icon, describing techniques from the MRSC.
- Category and Topic Lists:** A sidebar on the right lists categories like "Evaluating Services and Operations" and "Managing and Improving Performance", and topics such as "Budgeting for Outcomes (7)", "Citizen Participation (16)", and "Strategic Planning (5)".
- Navigation and Social Media:** A top navigation bar and social media icons for Facebook, Twitter, LinkedIn, YouTube, and RSS are present.

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?

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

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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

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**.

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

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



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The main content area is titled "Public Records" and features a sidebar with links to "General Information", "Public Records" (selected), "Contractor Opportunities", "Media Resources", and "Auditing Resources".

The main text includes the following sections:

- 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](#).
- 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.
- 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
 - ▶ You can send your request by mail to:

Attn: Mary Leider, Public Records Officer
State Auditor's Office

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.

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



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

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">1. "WinZip Pro EmploymentApp.docx" – Word document containing State application for employment for John Doe (4 pages).2. "John – Letter of interest.docx" - Word Document Title "Letter of Interest" for John Doe. (2 pages).3. "John Doe – transcript.docx" - Word Document Title "University transcript" for John Doe. (4 pages).	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).

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?

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

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
- 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.