

– OPEN GOVERNMENT –
GOVERNING BODIES, ELECTED AND APPOINTED
OFFICIALS

Washington State
Public Records Act, RCW 42.56

Washington State Public Records Act and Management of Agency Information
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Please direct questions to the Agency Attorney.



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INTRODUCTION – OPEN GOVERNMENT REQUIREMENTS

One of the obligations of open government is to conduct operations and functions in an open and transparent manner. Washington State Public Record laws provide a framework for compliance and transparency into the management of public records. These are described in the Public Records Act, RCW 42.56. Washington State laws for open public meetings are detailed in RCW 42.30, Open Public Meetings Act. These are commonly referred to as 'sunshine laws'. Sunshine laws require transparency and disclosure in all levels of government, making the records (including documents, emails, text messages, audio/video files and data) that reflect the actions and decisions of government (meetings, voting, deliberations, etc.) and all official actions available for public observation, participation and inspection.

All elected officials, members of governing bodies, and agency staff are legally compelled to comply with all aspects of the Public Records Act, with retention of all records and communications according to records retention schedules approved by the State and Local Government Records Committees.

The Open Government Trainings Act (ESB5964) mandates public officials and agency records officers to receive training. Violations of the Open Public Meetings Act can result in lawsuits. These lawsuits have been brought against both the agency and individuals involved for personal liability when attending a meeting or communicating issues about agency business. This includes the use of email and text messaging, when done outside of the requirements. Courts also determine outcomes from such meetings null and void, and have awarded both costs and attorney fees to individuals seeking a successful remedy.

Violation of the Public Records Act can result in breakdown of public confidence in government, and an accompanying judicial award of financial penalties and personal imprisonment.



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RCW 40.16.010 allows fines and imprisonment for destroying public records before the legal permissible date. (Former Selah City Supervisor ordered to pay \$65,474.00 in restitution for attempting to wipe electronic files from his laptop.)

Washington State courts have issued numerous fines against government agencies over the last decade for non-compliance to the Public Records Act. (Department of Social and Health Services [DSHS] for \$650,000 [Wright v. DSHS]. In addition, the agency reached a settlement with Wright for \$2.85 million).

Ignorance of the law provides no defense for its violation. Training can assist with compliance and is an important part of risk management. Training embeds compliance into everyday workflow and sets the foundation for individual behavior. Training reduces risks of lawsuits and associated litigation costs. As the Washington State Supreme Court has explained, *"An agency's compliance with the Public Records Act is only as reliable as the weakest link in the chain. If an agency employee along the line fails to comply, the agency's response will be incomplete, if not illegal."* (*Progressive Animal Welfare Society v. University of Washington*).

MEMBERS OF GOVERNING BODIES

Members of a governing body, such as councils, boards and commissions must receive Open Public Meetings Act training on chapter 42.30 RCW and on the Public Records Act (RCW 42.56). Committees or other policy or rule making bodies of the agency must take the same training if they act on behalf of a governing body, conduct hearings or take testimony or public comment. Members of informal advisory bodies not meeting the definition of public agency according to RCW 42.30.020 are not required to take training.

RCW 42.30.205 mandates the aforementioned members must receive training no later than 90 days after they take their oath of office or assume his or her duties. Training may be taken before she or he is sworn in or assume duties of the office. Individuals must also receive refresher training at intervals of no more than four years, so long as he or she is a member of a governing body. The Office of the Attorney General, Office of the Secretary of State and FreeDoc® highly recommend more frequent and specific training. These are the minimum requirements set by



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Washington State law. Both legislation and best practices are prone to change more frequently than this prescribed time frame. It is prudent to incorporate the most recent information in trainings.

If a member of a governing body is also an elected local official, he or she must receive Open Public Meetings Act training on chapter 42.30 RCW, RCW 42.56 Public Records Act training and records retention training on understanding and applying mandates of RCW 40.14 Preservation and Destruction of Public Records. The Office of the Attorney General, Office of the Secretary of State and FreeDoc® can provide this training.

ELECTED AND APPOINTED OFFICIALS

Washington State Engrossed Senate Bill 5964 established the Open Government Trainings Act. Each agency elected official and each person appointed to fill a vacancy must complete a training course regarding RCW 42.56, Public Records Act. The law includes:

- The definition of a public record.
- Common exemptions from public records disclosure.
- Public disclosure processes.
- Training.
- Protections of public records.

They must also complete a training course relating to the provisions of chapter 40.14 RCW, Preservation and Destruction of Public Records. This law:

- Defines and classifies public records.
- Describes the function, duties and responsibilities of the State Archivist.
- Identifies the duties of public officials.
- Explains the roles of the Secretary of State Archives and Records Management division.
- Communicates the power and duties of records officers.
- Provides for the legal destruction and disposition of public records.
- Describes legislative records use and access.



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All training must be completed within ninety days of taking the oath of office or assumption of duties as a public official. This includes training taken before individuals are sworn in or assumption of official duties. Refresher training must be completed within four years as long as he or she holds the office. Again, FreeDoc® highly recommends more frequent training as case law, legislation and evolving technologies prompts more frequent changes and updates to the laws. The four-year interval is the minimum requirement by Washington State law.

Training must be consistent with the Office of the Attorney General's Model Rules, chapter 44-14 WAC, for compliance with the Public Records Act. It may be completed remotely with technology, but not limited to internet-based training. The Model Rules provides information on 'best practices', includes a review of the requirements set forth in the Public Records Act, basic retention requirements, what is a records retention schedule and a brief description of what schedule(s) apply to each of the departments, as an example.

If an elected local official is also a member of a governing body, the official must receive both open public meetings and records trainings. The Office of the Attorney General and vendors, such as FreeDoc®, can provide this training.

In regards to the Public Records Act, documented training of agency officials and staff in the proper use, management and caretaking of public records has been shown to reduce penalties (*Yousoufian v. Office of Ron Sims - 2010*).

ADDITIONAL RESOURCES

These resources are from the Washington Attorney General's Office and the Office of the Secretary of State and are provided for convenient review and use by your agency.

These links to training can assist with compliance along with other sources to consider:

- [Office of the Attorney General Open Government Training.](#)
- [Office of the Secretary of State Open Government Training.](#)

WASHINGTON STATE ARCHIVES ADVICE SHEETS

Washington State Archives advice sheets (FAQs) summarize proper records management:

- [What is a Public Record?](#)
- [Are Emails Public Records?](#)

- **Are Emails Public Records?**

“YES”

Any email or text messages regarding agency business meets the definition of a public record (RCW 40.14.010).

- **ARE AGENCY EMAILS AND TEXTS SENT WITH A PERSONAL EMAIL ACCOUNT OR CELLPHONE A PUBLIC RECORD?**

“YES”

All agency communication is a public record. Emails and texts are subject to the PRA, whether or not the account or device is owned by the person or the agency;

NOTE - Any device (agency or personal) used to communicate agency business is subject to full and unlimited discovery and disclosure of the device and all of its contents.

- [How Long Do Emails Need to be Kept?](#)
- [Keep the Last Email or All Emails in the Thread?](#)
- [Text Messages.](#)
- [Text Messages and Public Records - The Basics.](#)
- [How Long Do Voicemails Need to be Kept?](#)
- [Examples of Common Records with Minimal Retention.](#)
- [What Does “Until No Longer Needed for Agency Business” Mean?](#)