

– OPEN GOVERNMENT –
PUBLIC RECORDS OFFICER

Washington State
Public Records Act, RCW 42.56

Washington State Public Records Act and Management of Agency Information
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This document does not constitute legal advice.
Please direct questions to the Agency Attorney.



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PUBLIC RECORDS OFFICER

According to RCW 42.56 the designated Public Records Officer (PRO) is the agency contact for the public for records requests and disclosure of agency records. The PRO is required to take a variety of training to oversee compliance of the agency. The PRO should be familiar with records management best practices on the creation, use, maintenance and disposition of all public records. RCW 42.56.152 requires the Public Records Officer to:

- Complete a training course regarding the provisions of chapter 42.56 RCW, Public Records Act within ninety days and refresher courses at intervals of no more than four years.
- Complete a training course regarding the provisions of chapter 40.14 RCW, Preservation and Destruction of Public Records.
- Attend training addressing particular issues related to electronic records and information including retention, production and disclosure, including updating and improving technology information services.
 - The Office of the Secretary of State offers several trainings on management and retention of electronic records. Vendors can provide similar and other relevant information, such as cloud computing and automatic retention capture.
 - The Office of the Secretary of State and vendors, such as FreeDoc®, provide trainings on records production and disclosure of electronic records including but not limited to those addressing electronic records generally, as well as those addressing production and disclosure of texts, social media records and records provided through portals
 - The Office of the Secretary of State and vendors, such as FreeDoc®, provide trainings on how the agency can update and improve technologies while assisting the agency in the management and production of public records. Examples of trainings covering updating and improving technology include presentations on obtaining and improved use of portals, electronic redaction tools, e-discovery software, improving search functions to assist in the management and



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production of public records, information governance, enterprise content management technologies, and texting, social media, website retention and capture software programs.

Other training programs may cover best practices for improving the use of current agency technologies to make them more robust. Topics such as improving the function of agency websites, posting more commonly requested agency records on the website and improving search functions to assist the public and requesters find posted records more quickly and easily are some examples.

The Public Records Officer must complete training no later than ninety days after assuming responsibilities of this position. The PRO must complete refresher training at intervals of no more than four years, as long as they maintain the designation. FreeDoc® highly recommends more frequent training. Case law, legislation and evolving technologies prompting changes and updates drive this. The minimum training requirement under Washington State law is four-years.

Training must be consistent with chapter 44-14 WAC, Public Records Act - Models Rules put forth by the Office of the Attorney General for compliance with the Public Records Act. Training may be completed remotely with technology, including but not limited to internet-based training, taken in person or through other formats from more than one source. Any person delegated to assist with these duties is highly encouraged by FreeDoc® to take the same levels of training.

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 the risk of lawsuits and associated litigation costs. As the Supreme Court 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).



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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).

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

ADDITIONAL RESOURCES

Resources on the following page, from the Washington Office of the Secretary of State, are provided for convenient review and use by your agency.

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.



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- [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?](#)