

– OPEN GOVERNMENT –
STAFF, CONTRACTORS AND VOLUNTEERS

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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INTRODUCTION – OPEN GOVERNMENT REQUIREMENTS STAFF, CONTRACTORS, AND VOLUNTEERS

Agency officials, employees, contractors and volunteers who create, maintain and use public records not listed in the 2014 Open Government Trainings Act (ESB5964) are not required to receive records management training. However, this Act requires very minimal training, and more importantly these individuals directly reduce or add to the burden upon the agency to maintain its records and information. Training on the laws and compliance is a best practice, even if not specifically required by the Washington State. Education provisions transparency in government and reduces risk to the agency. The Office of the Attorney General, the Office of the Secretary of State and FreeDoc® highly recommend the agency provide or arrange for public records training for all personnel at the time of onboarding and require subsequent annual refresher training. This training should be related to CW 42.56 Public Records Act and RCW 40.14 Preservation and Destruction of Public Records, at a minimum.

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 noted, *“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*).

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).



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In regards to the Public Records Act, documentation of training by agency officials and staff is very important. Training in the proper use, management and caretaking of public records has been shown to successfully reduce the size and extent of judicial award and penalty (*Yousoufian v. Office of Ron Sims* - 2010) when an agency was found to provide incomplete response to a public records request (PRR).

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;



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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?](#)

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