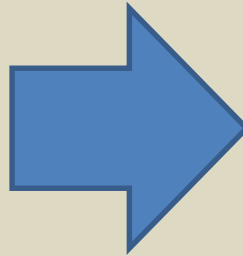


AGO Public Records Consultation Program

Best Practices, Resources and Avoiding Liability



WAPRO SPRING TRAINING

Prepared by Washington State Attorney General's Office



Local Government Public Records Consultation Program

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Local Government Public Records Consultation Program

RCW 42.56.570

Assist local government agencies in developing PRA best practices on:

- Responding to records requests;
- Seeking additional public and private resources for developing and updating technology information services; and
- Mitigating liability and costs of compliance.

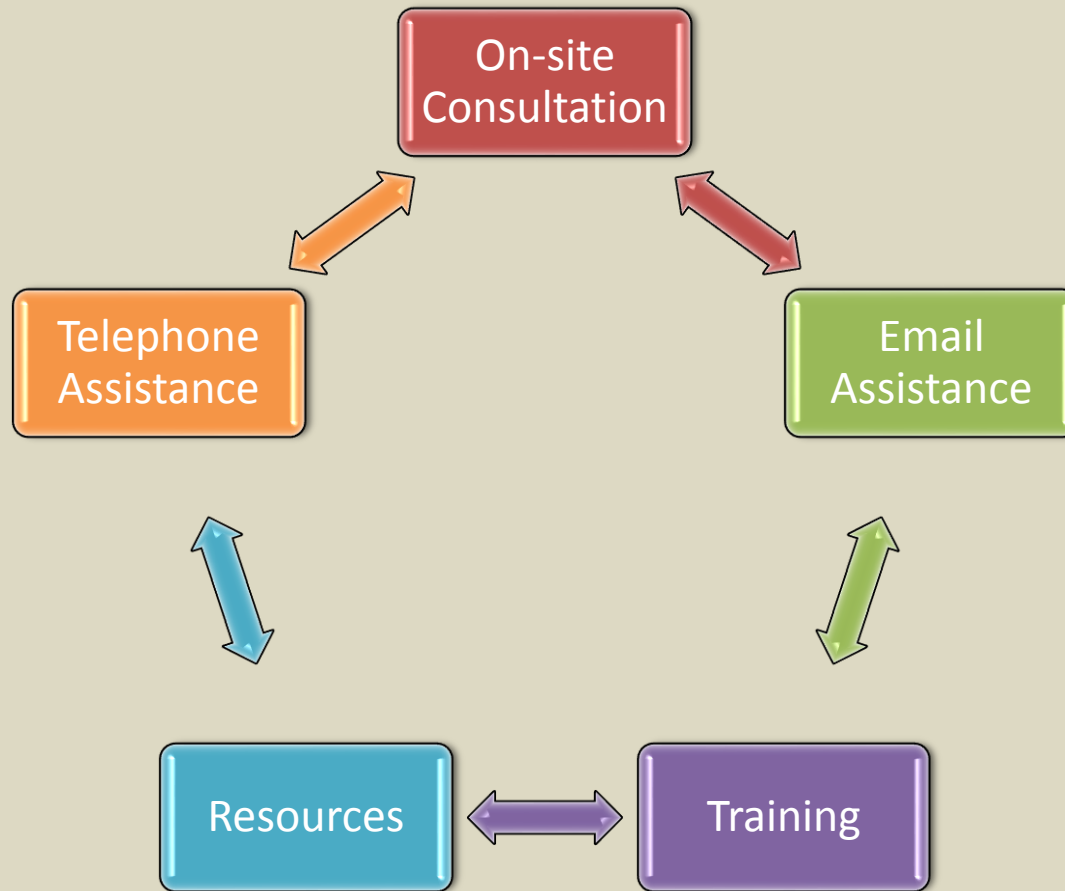
WHO

Any Local Government Agency

Cities, Counties, Towns, Water Districts, School Districts, Hospital Districts, Prosecutor Offices, Weed Control District, Police & Sheriff, Special Purpose Districts, Utilities

WHY

Consultation Services



The AGO can not give legal advice.

On-site Consultation

Assessment Tool

1. General
2. Policy
3. Fee Structure
4. Receipt/Intake
5. Managing Requests
6. Records Search
7. Exemptions
8. Correspondence
9. Legal Proceedings
10. JLARC Reporting
11. Records Management

Telephone Assistance

Email Assistance

- Types of Questions and Issues -

**Electronic Fee Schedule
Policies**

Application of Exemptions

Records Management
(email and electronic documents)

Request Tracking and Processing

Personal Devices

JLARC Reporting

“Private” Social Media and Email

PRA Procedures and Policies



Under PRA, agencies must:

- Publish **fee schedule**. (See Below)
RCW 42.56.070
- Maintain a **list of laws** the agency believes exempts or prohibits disclosure.
RCW 42.56.070
- Provide certain **indexes** of records.
RCW 42.56.070
- Make non-exempt records available for inspection and copying during customary business hours for **a minimum of 30 hours per week**, excluding holidays.
 - ❖ Post customary business hours on the agency's website and make hours known by other public means.
RCW 42.56.090

PRA Procedures and Policies



Under PRA, agencies must:

- Appoint a **public records officer**.

RCW 42.56.580

- Prominently Display and Make available for inspection and copying
 - (a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;
 - (b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;
 - (c) Rules of procedure;
 - (d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
 - (e) Each amendment or revision to, or repeal of any of the foregoing.

RCW 42.56.040

- AGO Model Rules - WAC 44.14 –Updated
Good opportunity to update policies.

Fees



SUMMARY: COSTS FOR COPIES UNDER PUBLIC RECORDS ACT – RCW 42.56 AGENCY OPTIONS PURSUANT TO FHB 1595 (CHAP. 304, LAWS OF 2017) Effective July 23, 2017; Summary Only – See Statutes for Details					
CHARGING ACTUAL COSTS	CHARGING STATUTORY DEFAULT FEES	CHARGING ALTERNATIVE FLAT FEE	CHARGING PURSUANT TO ALTERNATIVE FEE ARRANGEMENT	CHARGING FOR CUSTOMIZED ACCESS SERVICE	WAIVING CHARGES (FEES)
 Agency can charge its actual costs directly incident to copying including: • Paper and per page cost for use of agency copying equipment • Electronic production or file transfer of the record • Use of any cloud-based data storage and processing service • Costs directly incident to shipping including postage or delivery charges and cost of container or envelope • Costs of transmitting the records in electronic format including the cost of any transmission charge and use of any physical media device provided by agency. REQUIREMENTS: (1) Agency must have a statement of the factors and manner it used to determine actual costs. Per page costs cannot exceed actual costs. (2) Can charge actual costs in the statement only after notice and a public hearing. (3) Use the most reasonable cost-efficient method available at the agency as part of normal operations. (4) Cannot include staff salaries, benefits or other general administrative or overhead unless directly related to actual costs of copying. Can include staff time to copy and send the records. (5) Cannot charge for records routinely posted on website unless requester asks for copies through other means. RCW 42.56.070(7)(a) and (b); RCW 42.56.120(1) and (2)(a) and (c)	 Agency can assess costs per the statutory fee schedule: • 13 cents/page paper • 10 cents/page scanned into electronic format • 3 cents/4 files or attachments and provided by electronic delivery • 10 cents/gigabyte of electronic records transmission • Actual costs of storage media, container, envelope; postage/delivery charge • Charges can be combined if more than one type of charge applies. REQUIREMENTS: (1) Agency must have a rule or regulation declaring the reasons calculating actual costs would be unduly burdensome. (2) Use the most reasonable cost-efficient method available at the agency as part of normal operations. (3) Cannot charge for records routinely posted on website unless requester asks for copies through other means.	 Agency can charge alternative flat fee of up to \$2 for a request (rather than actual costs or default fees). REQUIREMENTS: (1) Agency must reasonably estimate and document that the costs are clearly equal to or more than \$2. (2) An additional flat fee or statutory default fee cannot be assessed after first installment (\$2 is the limit for the entire request). (3) Cannot charge for records routinely posted on website unless requester asks for copies through other means.	 Agency can do an alternative fee arrangement, or in response to voluminous or frequently occurring requests. REQUIREMENT: Agency is to have a contract, memorandum of understanding or other agreement with the requester.	 Agency can charge up to actual costs for providing customized access services. REQUIREMENTS: (1) Agency estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. (2) Agency must give requester estimate and other information. See statute.	 Agency can waive charges (fees). REQUIREMENT: Agency may waive charges (fees) pursuant to its rules and regulations.
RCW 42.56.070(7)(a) and (b); RCW 42.56.120(1) and (2)(a) and (c)	RCW 42.56.120(2)(b), (c) and (e)	RCW 42.56.120(2)(d) and (c)	RCW 42.56.120(4)	RCW 42.56.120(3) and (4)	RCW 42.56.120(4)

August 7, 2017

Training

Email – Effective Searches and Filtering For Requested Records

Use of Software to Simplify Redaction and Exemption Logs

Small Workgroups for Best Practice Development

Resources

Policy Examples

Sample Letters

Moving Forward

Increased Cross Agency Services

Consultation Program is not intended to work alone.

The AGO may collaborate with the chief information officer, the state archivist, and other relevant agencies and organizations in developing and managing the program.

RCW 42.56.570

Records Management vs PRA Best Practices

State Archives

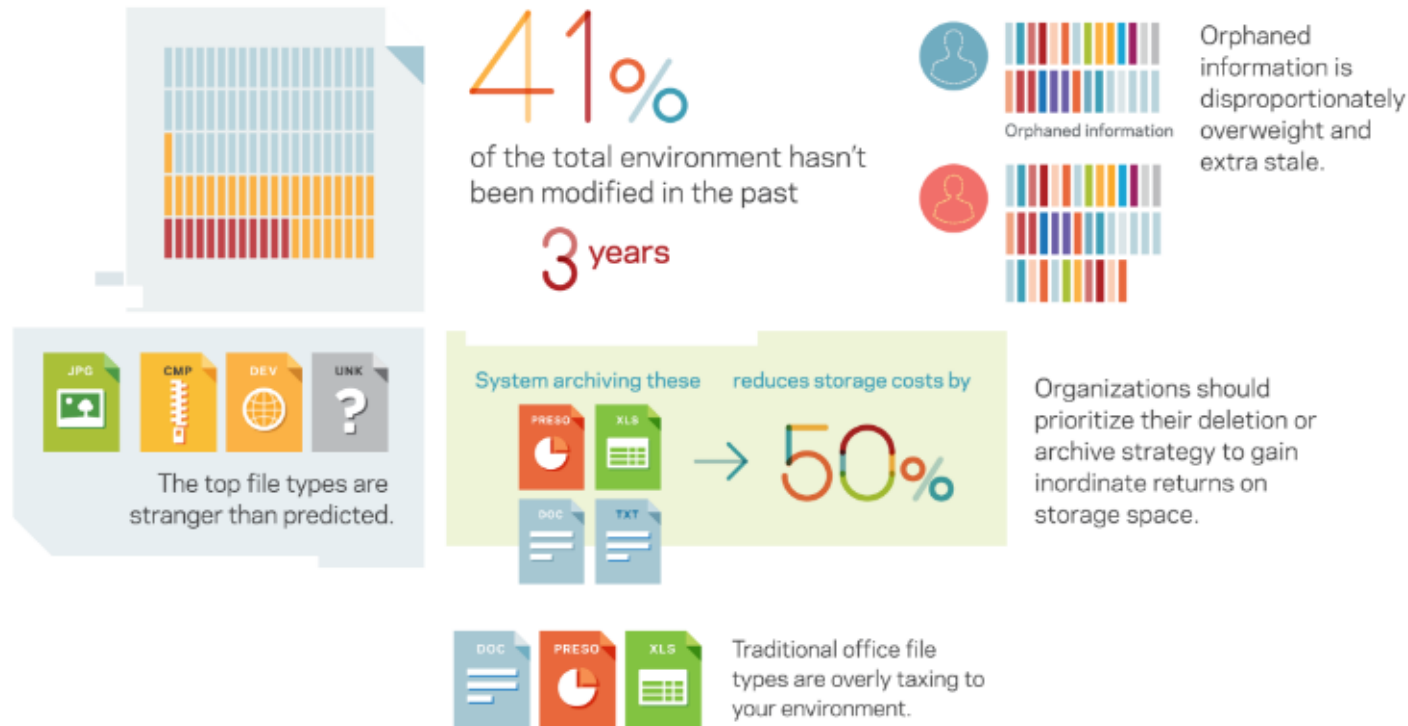
*Attorney General's
Office*

Four trainings provided in association with MRSC.

Electronic Records Retention and Production



Today's Data Environment



Electronic Documents Retention, Production and Disclosure



Searches



- An agency must conduct an **adequate search** for responsive records.
- The search should be **reasonably** calculated to uncover responsive records.
- The search should follow obvious leads to possible locations where records are likely to be found.
- If responsive public records are on or in employees'/officials' personal devices, personal accounts, or personal files, those must be searched, too.
- The focal point of the judicial inquiry is the agency's search process, not the outcome of the search.
- The agency bears the burden of proof to show the adequacy of the search.

~ RCW 42.56.520; *Neighborhood Alliance of Spokane v. Spokane County*; *Hobbs v. State*; *Block v. City of Gold Bar*; *Nissen v. Pierce County*.

Electronic Records Production & Disclosure

– Updating & Improving Technology Information Services

- Agencies can consider making their websites - **current technology** - more **robust**. Examples:

- Posting more *commonly requested records*.
- Posting information about how to *search for* records.
- Posting more information about how to *request* records (agency's PRA procedures, fee schedule, request form, contact information for Public Records Officer, etc.).



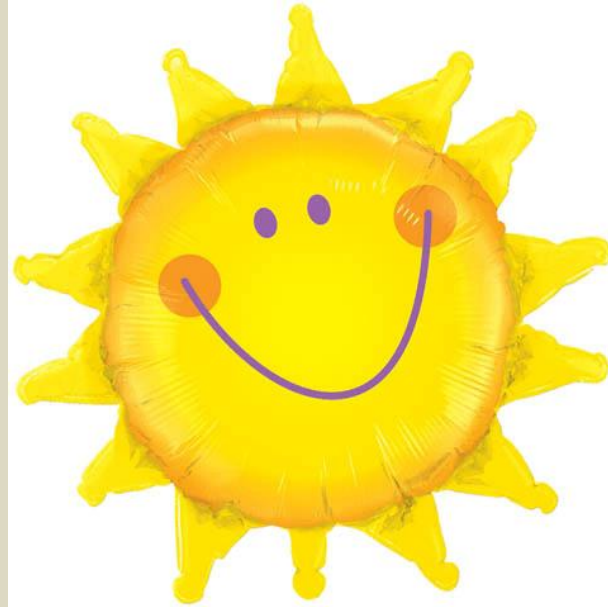
- Agencies can consider **new technology** purchases to assist them in retaining/producing records.



- **Examples:** Portals; electronic redaction tools; texting/website capture and retention software; other software.
- **Master state contracts:** Several vendors awarded statewide master contracts for retention - “Enterprise Content Management Systems.” State, & local agencies can use. More information on State Archives website and Department of Enterprise Services website.
- Local government grants (State Archives). RCW 40.14.026.



Thank you!



Any Questions?