



Preparing for PRA Litigation

Lessons learned from the trenches and recent developments in the law

October 27, 2022
WAPRO Fall Conference

Tim Reynolds
Pacifica Law Group

Phase 1: Setting up shop

Policy and Framework

- **Establish detailed policies and procedures**
 - But sometimes less is more (retention, PRA exemptions, evolving law)
- **Records management**
 - Text messages
 - Social media
 - Records retention schedules
- **Charging for records**
 - Charge in accordance with RCW 42.56.070(7) and .120(b)

Resources and Training

- **Ensure agency is dedicating enough resources**
 - Example: *Cantu v. Yakima School Dist. No. 7*, 514 P.3d 661 (2022)
 - Consider dedicated software
- **Multiple people should be trained and available as needed**
 - Not just the PRO
 - All staff should be aware of basics
- **Request tracking**
 - The most problematic PRA lawsuits start with losing track of requests
 - Calendar deadlines
 - Ensure multiple people are monitoring

Phase 2: Responding to requests

Initial reviews

- **Fair notice**
 - If in doubt, assume—but don't concede—it's a PRA request
- **Reasonable estimate**
 - Estimate to first installment, not to completion or to providing estimate
 - Avoid the same estimate for all requests
 - Check policy, update if appropriate
- **Ambiguous requests**
 - Seek clarification, confirmation, or provide interpretation and opportunity to object
 - Do not adopt unreasonably narrow interpretation

Reasonable search

- **Connect with relevant staff**
 - Identify potential custodians, types of records
 - Certifications for personal devices
- **Use comprehensive search terms**
 - Synonyms and wild cards
 - Nicknames and initials
 - Err on side of caution
- **Follow leads**

Closing requests

- **Don't rush**
 - No liability if continuing to work diligently on request
- **Ensure everything has been provided before closing**
 - Reassess searches
 - Ensure more than one person has reviewed and confirmed
- **Offer requestor chance to object or confirm**
 - Get requestor's buy-in



Phase 3: Responding to a lawsuit

Get legal counsel

- **Get lawyer involved immediately**
 - 20 days to answer in state court
- **Be completely candid with legal counsel**
 - Flag weaknesses
- **Establish good rapport with counsel**
 - Case could take a lot of time
 - Plaintiff could keep making requests

Gather your facts

- **Be prepared to provide:**
 - All correspondence with requestor
 - Tracking data
 - All searches conducted
 - All records produced, redacted and originals
 - All exemption logs
- **Evaluate whether everything has been provided**
 - Reassess searches
 - Consider supplemental searches

Analyze your position

- **Consider stopping the clock**
 - Reassess searches
 - Dig your heels, defend and supplement, or ask for mercy?
- **Consider settlement**
 - Cost to correct and supplement?
 - Cost to litigate?
 - Potential penalties and fees?
- **Consider offer of judgment**
 - Potential to cut off fees liability
 - Puts pressure on the Plaintiff
 - Can be refreshed

Penalty Analysis

- **Courts have broad discretion**
 - Days, number of records, daily rate
 - Comparable precedents
 - Presumptive cap based on size of agency
- **Risk of bad faith finding**
 - Can be based on circumstantial evidence or credibility assessment
- **Cost-benefit analysis**
 - Penalties, fees, *and* litigation costs
 - Deterring nuisance lawsuits
 - Avoiding bad optics

Questions?



Preparing for PRA Litigation

Lessons learned from the trenches and recent developments in the law

October 27, 2022
WAPRO Fall Conference

Tim Reynolds
Pacifica Law Group