



Cedar Law PLLC
Solutions for Schools
& Families

Litigation Under the Public Records Act

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Types of Litigation Covered

RCW 42.56.550(1)

- brought by a person who has been denied inspection or copy
- brought in the Superior Court of the county where the record is kept
- agency must “show cause” why it refused
- burden of proof is on the agency

RCW 42.56.550(2)

- brought by a person who believes agency hasn't made reasonable estimate of time
- Brought in the Superior Court of the county where the record is kept
- Agency may be required to “show” estimate was reasonable
- Burden of proof is on the agency

Types of Litigation Covered continued

Under both review is de novo, records can be evaluated in camera, and hearing can be conducted on affidavit.

Right to penalties, costs, and fees if plaintiff prevails.

Venue is appropriate in two nearest counties if the lawsuit is filed against a county.

Must be filed within one year of claim of exemption or last production of record on partial or installment basis.

Your Agency Has Been Sued – Now What?

The Best Defense is a Good Offense

Operate on the assumption that your file will have to speak for itself

Your file should contain:

- All correspondence – both internal and external – write all correspondence with litigation in mind
- All records documenting your search – search log, email votes, etc.
- All records produced in their original format
- All records produced in the format in which they were produced
- Make sure that ALL correspondence refers to the PRR number

Stages of Litigation

Filing and Service
Answer
Discovery
Mediation/Settlement
Hearings/Trial
Appeal

Filing and Service

- There are specific rules governing filing and service
- If you receive a lawsuit, make sure your Legal Liaison Officer knows about it
- Make a note of how you got it (hand delivered by someone, through the mail, etc.)

Answer

- Opportunity to admit or deny the allegations made in the complaint
- Time-sensitive
- Attorney will work with you to get the facts
- Oftentimes, neither admit nor deny
- This is not the agency's opportunity to make its case

Discovery

- Interrogatories
- Requests for production
- Requests for admission
- Fact witness deposition
- CR 30(b)(6) deposition

Rogs, RFPs, & RFAs

- Interrogatories (Rogs)
 - Questions that have to be answered – if it was a request you processed, you will likely be asked to help answer
- Requests for Production (RFPs)
 - Documents that have to be produced – if it was a request you processed, you will likely be asked to provide records
- Requests for Admission (RFAs)
 - Statements that have to be admitted or denied – if it was a request you processed you will likely be asked to help answer

Fact witness deposition

- Meet with your lawyer beforehand
- Handout review
- You are in control
- “I cannot recall at this time” is perfectly acceptable

CR 30(b)(6) Deposition

- Referred to as a “speaking agent” deposition
- Your answers bind the agency
- You are expected to know all of the answers – requires work from you up front
- Keep good records
- You can’t be too prepared – you can bring in notes, but expect to share!
- Handout review

Mediation/Settlement

- Resolution outside of court
- You may be invited to the mediation or you may be expected to prep the person who is going
- What does mediation look like?
- How long does it take?
- What happens if it is unsuccessful on that day?
- How is mediation different from settlement?
- In general, liability is not admitted in settlement
- Confidentiality clauses are unacceptable

Hearings/Trial

- Usually resolved before trial on a motion
 - A motion to show cause brought by the Plaintiff
 - A motion for summary judgement brought by either party
 - A motion to dismiss brought by the Defendant
- Your declaration will be needed – detailing everything you did as well as your training history, education, and experience
- If it goes to trial, it's a trial before a judge – you may have to testify

Appeal

- PRA cases are usually appealed – by either party
- Appeal record relies on what happened at the lower court
- So the trial court file needs to be complete!
- You will likely not be involved
- You may be consulted about whether a case should be appealed
 - Think about your own agency as well as others
 - “Bad facts make bad law”

Questions?

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