

PUBLIC RECORDS 101



RCW 42.56

The left side of the slide features a light gray background with two wavy, vertical lines. The outer line is yellow, and the inner line is white, creating a layered, organic shape.

INTRODUCTION

DISCLAIMER

Today's training presentation is for educational and training purposes and does not serve as legal guidance.

Public records staff should consult with their own agency's legal advisor.

THE PUBLIC RECORDS ACT

Passed by an initiative of the people of the state in 1972.

Currently codified in chapter 42.56 RCW.

Contains a strong public mandate in favor of open government.

All public records of an agency are presumed to be subject to disclosure.

Agencies must respond promptly and provide the fullest assistance to requesters.

SPECIFIC REQUIREMENTS

- Appointment of a Public Records Officer (RCW 42.56.580)
- Adoption of procedures for handling requests (RCW 42.56.040)
- Publish a list of exemptions to disclosure not found in the PRA (RCW 42.56.070)
- Maintain an index of records unless determined to be unduly burdensome (RCW 42.56.070)
- Adopt a PRA copy fee schedule (RCW 42.56.070 and RCW 42.56.120)
- Procedures for review of denials (RCW 42.56.530 and RCW 42.56.520)
- Required PRA & records retention training for PROs and Records Officers (RCW 42.56.152)

DEFINITION OF A PUBLIC RECORD

A “public record” includes:

1. Any writing
2. Containing information relating to the conduct of government or the performance of any governmental or proprietary function
3. Prepared, owned, used or retained by any state or local agency
4. Regardless of physical form or characteristics. RCW 42.56.010(3).

Term is defined very broadly, “encompassing virtually any record related to the conduct of government.” *O’Neill v. City of Shoreline*, 170 Wn.2d 138 (2010).

**WE
WORK
IN A
FISHBOWL**



Electronic and Non-Electronic

- Letters
- Emails
- Text Messages
- Instant Messaging (Teams!)
- Word Documents
- Spreadsheets
- Calendars
- Voicemails
- Websites
- Photographs, Videos, Audio Files
- Social Media
- Resolutions and Ordinances
- Draft Documents
- Contracts

TYPES OF RECORDS

MAKING A REQUEST: THINGS TO KNOW

- **No Particular Format for Requests**

- The requester must give “fair notice” that a request is being made
- Can be made to any employee
- Can be in an email
- Can be made verbally (these should be memorialized in writing)
- Train your staff to recognize PRA requests and to send them to your public records officer

- **Purpose of Request**

- People are not required to give a reason for the request, unless the request is for lists of individuals for commercial purposes.

- **Identity of Requestor**

- We cannot distinguish between requestors and must make records available to “any person”. (RCW 42.56.080)

DUTY OF REQUESTERS

“Identifiable Records” Requirement

- To obtain records under the PRA, a requestor must ask for existing “identifiable records”.
 - This means that the requestor provides a “reasonable description” of the record to allow us to locate it.
- The requestor does not need to identify the record with exact precision.
- A request for information is not a public records request.

FEES FOR PROVIDING PUBLIC RECORDS

No fee for inspection

No charge for search time

No charge for time spent reviewing/redacting (except sometimes for body worn cameras)

Agency can do a fee study and charge actual costs for copies OR agencies that adopt rules/regulations declaring that calculating actual costs would be unduly burdensome can charge the “default” fees in RCW 42.56.120(2)

STATUTORY “DEFAULT” FEES

RCW 42.56.120(2)

Type of Copies	Charge for Copies
Photocopies, printed copies of electronic records when requested, use of agency equipment to make copies	15 cents per page
Scanned records, use of agency equipment for scanning	10 cents per page
Records uploaded to email, or cloud based data storage service, or other means of electronic delivery	5 cents per each 4 electronic files or attachments
Records transmitted in electronic format or for use of agency equipment to send records electronically	10 cents per gigabyte
Digital media storage or devices	Actual cost
Any container or envelope used to mail copies	Actual cost
Postage or delivery charges	Actual cost

COMPLIANCE IS A TEAM EFFORT

Public Records Officers

Agency Staff

Records Custodians

IT Staff

Agency Attorney

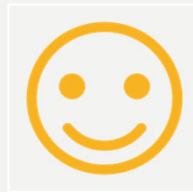
TIPS FOR WORKING AS A PRO



Follow a game plan



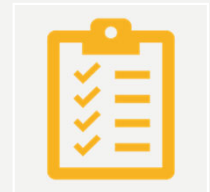
Training in legal
requirements and
practical skills



Practice good
customer service



Promote and
demonstrate an
atmosphere of
transparency and
cooperation



Document
everything

BASIC FRAMEWORK FOR PROCESSING REQUESTS

Analyze	Analyze request – ensure that you have a clear understanding – or seek clarification
Acknowledge	Acknowledge request within 5 days
Initiate	Initiate search
Gather	Gather records
Review	Review records
Produce	Produce records (potentially in installments)
Close	Close the request

PROCEDURAL REQUIREMENTS: LOG OF REQUESTS (RCW 40.14.026)

Agencies are required to maintain a log of public records requests submitted.



The log must include:

Identity of the requester (if provided)	Date the request was received	Text of the original request	Description of the records produced in response	Description of the records redacted or withheld, and the reasons why	Date of the final disposition of the request
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The log itself is a public record subject to disclosure under the PRA

PRA PROCEDURAL REQUIREMENTS: PROMPT RESPONSES REQUIRED

[RCW 42.56.520]

- Within 5 business days of receipt of the request, an agency must respond in one of these ways:
 - Provide the record; OR
 - Provide an internet address and link on the agency's website to the specific records requested (unless the requester said they cannot access the records through the internet); OR
 - Acknowledge receipt of the request, and provide a reasonable estimate of the time needed to respond to the request; OR
 - Acknowledge receipt of the request, ask for clarification on any portion that is unclear, and provide, to the greatest extent possible, a reasonable estimate of the time needed to respond if the request is not clarified; OR
 - Deny the request.
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5-DAY LETTER BEST PRACTICES



Include the following:

Date the request was received by your agency (this may not be the date the PRO received it)

Records requested

Time frame needed for follow up

Tracking number



WAPRO has samples and templates available in the [Toolkit](#)

Based on:

- Size of request
- Location of records/number of custodians
- Likelihood of exemptions and redactions
- Available staff, number of other requests

An agency can revise its estimate

**“REASONABLE”
TIME
ESTIMATE**

THIRD PARTY NOTIFICATION

- Defined in WAC 44-06-085
- Third party notice is formal notification that records which may affect the rights of others.
- It provides that person with the opportunity to seek judicial remedy if they feel that the records should not be disclosed.
 - A third party given notice may seek an injunction pursuant to RCW 42.56.540 if they believe that disclosure of the records could cause them irreparable damage.
 - If a Superior Court Judge agrees with the third party, they will enjoin the agency from releasing those records.
 - This is a court order prohibiting release of the records in question

WHEN TO PROVIDE THIRD PARTY NOTICE

- If records pertain to “an agency or a person who is named in the record or to whom the record specifically pertains” when you believe that the release of those records would “clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions”
 - This is to say, if you believe that a party connected to the records may have a strong reason to seek a court order preventing the release of those records.
- RCW 42.56.250(2) REQUIRES that notification be given to employees when you receive a request for “information located exclusively in an employee's personnel, payroll, supervisor, or training file.”
 - This notice must be provided to the employee AND any union representing them.
 - You must also notify the requester that notice has been given
 - This notice must contain: the date of the request; the nature of the requested record relating to the employee; that the agency will release any information in the record which is not exempt from the disclosure requirements of this chapter at least ten days from the date the notice is made; and that the employee may seek to enjoin release of the records under RCW 42.56.540.

PRODUCING RECORDS IN INSTALLMENTS

- You are not required to produce all records at the same time. You may produce records in smaller piecemeal installments.
- When an installment is provided, you must give the requester an estimate of when they can expect the next installment.
- You may charge standard copying costs for installments.
- Installments can be any size but remember that you cannot sit on records that are ready for release, nor should you use installments to purposefully extend response time.
- Provide the records that are quicker and easier to gather first.

CONDUCTING A REASONABLE SEARCH



Consider creating a checklist for locations to search or where records are commonly located, including within databases/software or with a contractor.



You must check for records in any location where responsive records may be reasonably located.



While reviewing records, you must follow any leads to additional records.



Remember to document your search. Make notes in your request which show where you searched, what search terms you used, and any other relevant information.

PERSONAL DEVICES AND ACCOUNTS

- Records created by an employee within the scope of their employment are public records, wherever they are located, including:
 - Records saved on home computer
 - Emails sent to or from personal email accounts
 - Records on personal cell phones, including text messages
- Have employees complete an affidavit when they search personal devices and/or accounts.

BEST PRACTICES FOR PERSONAL DEVICES

- Simplest course is **not** to conduct any agency business on personal devices
- Follow any agency policies regarding use of personal devices
- If use of personal devices are allowed:
 - Don't mix work and non-work records
 - Use remote access or other means to work within an agency account
 - Delete duplicate copies (if no pending records request)
 - Maintain records in an easily accessed, consistent place



REDACTIONS

In Washington, everything is subject to public disclosure unless there is a specific exemption stating otherwise.

Many redactions are found in the public records act itself, but there are may be “other statutes” outside of RCW 42.56.

Redactions should be narrowly construed; be careful of certain exemptions which may appear broader than they actually are.

You must provide an explanation that explains what redactions have been made and why they apply to the records. (Exemption log, or use of code and Exemption Key.)

REDACT OR WITHHOLD

- Some exemptions may allow for a record to be withheld entirely.
- When withholding records in their entirety, you must provide a Withholding Log
 - (Note: The exception to this are Law Enforcement records withheld pursuant to RCW 42.56.240(1) if they have NOT yet been forwarded for prosecution).
- Be sure that your withholding is correct. Redact exempt material only – release the rest.



HOW TO REDACT

- Strongly recommend a redaction program such as Adobe Acrobat or GovQA's redaction module.
- Using redaction codes overlaid on the redactions make identifying the exemptions easier.
- If you **MUST** redact a record physically, remember to photocopy the record after making redactions so that the redacted information cannot be read through the paper.
- Example exemption key, log, and letter are available in the WAPRO Toolkit

STRICT COMPLIANCE IS REQUIRED

- PRA violations include:
 - Failure to comply with deadlines (missing the 5-Day response)
 - Providing an “unreasonable” time estimate
 - Failure to provide explanation of why a document was withheld or redacted – “silent withholding”
 - Inadequate search, resulting in records *not* being produce.



PENALTIES FOR VIOLATIONS OF THE PRA



\$0 to \$100 per day per request
(and potentially per record or per page)



No proof of actual harm (damages) required



Plus, agency must pay attorney fees and costs

EXAMPLES OF SIGNIFICANT PENALTIES

- **\$100,000** – Shoreline
- **\$174,000** – Seattle
- **\$175,000** – Mesa
- **\$187,000** – Pt. of Olympia
- **\$225,500** – DSHS
- **\$371,000** – King Co.
- **\$550,000** – Clallam Co.

Since court's have discretion on how to apply penalties, they will consider several aggravating and mitigating factors when making their decision.

Aggravating



- Lack of training.
- Inadequate searches: Not all staff searched. Not all locations were searched. Not all keywords were used in the search.
- Lack of processes.

Mitigating



- Regular, thorough training.
- Documented a reasonable search.
- Consistent, clear processes.
- Provided fullest assistance to requester.

**PENALTY
EXCEPTION –
RCW
42.56.565**

A court will not award penalties to persons serving a criminal sentence in a correctional facility, UNLESS the court finds that the agency acted in “bad faith”

COMMUNICATION IS KEY



Communicate with the requester for clarity.



Be open about what you can gather quickly, and what may take longer.



Be honest about timeframes.



Anticipate delays and communicate right away.



A phone call may be best. Memorialize the conversation in writing right after.



Never assume.



Be mindful of your tone in communications.

FILE STRUCTURE

Each Public Records Request should have its own file structure and contain the following:

- ✓ The original request: email, letter, and so on.
- ✓ All correspondence between your agency & the requestor
- ✓ A clean copy of the records requested (originals, unredacted)
- ✓ A copy of any records that were redacted or withheld
- ✓ A copy of exemption log, if applicable
- ✓ Supporting Document: search details, documents showing who searched what and where.

CLOSING REQUESTS

- Compare language of request to locations and keywords searched.
- Save all correspondence related to request (internal and external).
- Ensure all search details have been documented.
- Verify that all responsive records have been provided.
- Send closing letter:
 - Summarize your search,
 - Make clear this is your final response, include language about the statute of limitations (*Cousins v. State, Dept. of Corrections*)

SUMMARIZING COUSINS V. DEPT. OF CORRECTIONS (3 WN.3D 19, 546 P.3D 415 (2024))

Case Background

- Complicated case – began with request from 2016.
- Had multiple installments and was closed multiple times.
- Confusion about statute of limitations.
- Case made its way to the Washington State Supreme Court.

SUMMARIZING COUSINS V. DEPT. OF CORRECTIONS (3 WN.3D 19, 546 P.3D 415 (2024))

Closing Letter Requirements

- Supreme Court determined that closing letters should clearly state:
 - How the PRA request was fulfilled and why the agency is now closing the request;
 - That the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does *not* intend to further address the request; and
 - The requestor may ask follow-up questions within a reasonable timeframe, which may be specified by the agency. (Note: If the requestor does ask follow-up questions in a reasonable timeframe, the agency is not required to search for additional records, though it may choose to do so.)

SUMMARIZING COUSINS V. DEPT. OF CORRECTIONS (3 WN.3D 19, 546 P.3D 415 (2024))

Sample *Cousins* Closing Letter Language

If you have questions or concerns regarding your request, please feel free to contact me by phone at 360-753-8260, by responding to this email, or through our public records portal. We ask, however, that you please submit these to us within 30 days of this letter. Additionally, please note that contacting us about your request will not result in it being re-opened unless we tell you in writing that we have re-opened it to provide further responsive records.

This is the final response to your records request and the City of Olympia will not be responding further to your request with any additional responsive records; your request is now closed. Should you wish to take any legal action to challenge the City's response to your request, any such action must be filed within one year of the date of this letter. You may also request an administrative review of your request if you consider that you have been denied records to this email or through our public records portal.

IT PAYS TO EMBRACE THE PUBLIC RECORDS ACT

Embracing your duties
under the PRA leads
to better compliance

Poor compliance can
cost your agency

Encourage an attitude
of transparency and a
customer service
approach to working
with requesters



QUESTIONS?