

THE PUBLIC RECORDS ACT (PRA)

RCW 42.56



King County

Department of Executive Services
Office of Risk Management Services
Public Records Program

What is a public record?

- ▶ Any writing
 - ▶ Relating to the conduct/performance of any governmental or proprietary function
 - ▶ Prepared, owned, used or retained by any state or local agency

RCW 42.56.010(3)

How is “writing” defined?

- ▶ “‘Writing’ means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to:
 - ▶ letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.”

RCW 42.56.010(4)

Types of records

Any writing relating to the conduct/performance of any governmental or proprietary function. Basically, anything prepared, owned, used or retained by a public agency.

- ▶ Agendas
- ▶ CAD files
- ▶ Calendars
- ▶ Contracts
- ▶ Databases
- ▶ Emails
- ▶ Faxes
- ▶ Forms
- ▶ Invoices
- ▶ Letters
- ▶ Meeting minutes
- ▶ Notes
- ▶ Ordinances
- ▶ Paper/hard copy
- ▶ PDFs
- ▶ Photographs
- ▶ PowerPoint presentations
- ▶ Public comment forms
- ▶ Receipts
- ▶ Spreadsheets
- ▶ Text messages
- ▶ Videos
- ▶ Voicemails
- ▶ Word documents

Recognizing a public records request (PRR)

- ▶ Public records requests do **NOT** have to be in writing.
- ▶ Anytime you see or hear the following words, acronyms, or similar phrases, consider the request to be a PRR and forward to your public records officer:
 - ▶ “public records request” or “PRR”
 - ▶ “public disclosure request” or “PDR”
 - ▶ “Freedom of Information Act Request” or “FOIA”
 - ▶ “formal records requests”
 - ▶ “copies of...”
 - ▶ “all records regarding...”
- ▶ Be aware of hidden requests.

Legal requirements in response to a public records request (PRR):

- ▶ Agencies are required to promptly make available for inspection and copying all identifiable public records unless the record falls within the specific exemptions of the Act or another statute. *RCW 42.56.070*
- ▶ Agencies shall provide the fullest assistance to requestors. *RCW 42.56.100*
- ▶ An agency must perform an adequate search in all places it reasonably believes a record could be. *Neighborhood Alliance v. Spokane County*
- ▶ A response is required in writing within five business days. *RCW 42.56.520*

The five-day response must:

- ▶ Provide for inspection and/or a copy the record(s) requested; and/or
- ▶ Provide the internet address and link on the agency's web site to the specific record(s) requested (if the individual does not have internet access, then the agency must provide copies or allow the requestor to view the records using an agency computer); and/or
- ▶ Acknowledge receipt of the request and provide a reasonable estimate of the time needed to respond; and/or
- ▶ Seek clarification for a request that is unclear. If portions of the request are clear, the agency must respond to those portions; or
- ▶ Deny the request in accordance with the law. A written statement must accompany the denial setting out the specific reasons for the denial.

RCW 42.56.520

The PRA does not require

- ▶ Agencies to:
 - ▶ Create records, or
 - ▶ Respond to requests for information, or
 - ▶ Explain records
- ▶ Requestors to:
 - ▶ State their reason for the request.
 - ▶ **Exception:** If the request is for a list of individuals for a "commercial purpose." *RCW 42.56.070(8)*
 - ▶ Provide their names.
 - ▶ **Exception:** If the request is for records only available to certain individuals (e.g., medical records, autopsy reports, etc.)

Exemptions

- ▶ Agencies must identify each record withheld or redacted, and the legal justification for doing so (e.g., exemption log). A requestor may sue based upon an agency's failure to provide the justification.
- ▶ If only a portion of a document is exempt, that portion may be redacted. The remainder of the document must be released.
- ▶ Exemptions should be narrowly applied, as case law historically has ruled in favor of the requestor.

RCW 42.56.210(3)

Exemptions: Attorney Client Privilege

- ▶ Exempts a client's request for legal advice, legal advice the attorney provides, and the client's questions about that advice.
- ▶ The client must intend for the communication to be confidential.
- ▶ Does not exempt client records just because the attorney is cc'd.

Exemptions: Deliberative Process

- ▶ Preliminary drafts, sharing of opinions or recommendations of policies, proposed bargaining agreements, contract bids, etc., may be exempt. Once the policies or recommendations are implemented, the exemption no longer applies and may be released.

- ▶ An agency must meet all four requirements below to rely on this exemption:
 1. The records contain pre-decisional opinions or recommendations expressed as part of a deliberative process;
 2. Disclosure would be injurious to the deliberative or consultative function of the process;
 3. Disclosure would inhibit the flow of recommendations, observations, and opinions;
 4. The materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on which the decision is based.

PAWS v. Univ. of Washington, 125 Wash.2d 243, 256-257 (1994)
RCW 42.56.280

Risks associated with failure to comply with the PRA

- ▶ Strict liability standard; no exceptions for acting in good faith.
- ▶ If the requestor prevails in a court case, they are entitled to penalties of up to \$100 per day per page, plus attorney's fees.

PRA Resources

- ▶ Chapter 42.56 RCW
 - ▶ <https://apps.leg.wa.gov/rcw/default.aspx?cite=42.56>
- ▶ Washington State Attorney General - Open Government Training
 - ▶ <https://www.atg.wa.gov/opengovernmenttraining.aspx>
- ▶ Municipal Research and Services Center - Public Records Act
 - ▶ <http://mrsc.org/Home/Explore-Topics/Legal/Open-Government/Public-Records-Act.aspx>