

PUBLIC DISCLOSURE ACT (PDA)

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy. (RCW 42.56.030)

➤ **Main elements of the Public Disclosure Act**

Upon request, agencies must promptly respond to and disclose public records upon request, unless the record falls within a specified exemption.

○ **Definition of public record**

“Public record” is broadly defined as any writing that contains information relating to the conduct of government or the performance of any governmental function that was prepared, owned, used or retained by any agency regardless of physical form. This includes paper, tapes, microfiche, CD's, databases, email. The definition has been applied to each new medium that has been created, and as long as that medium contains information related to government operations, it will be considered a public record.

○ **Definition of a Request**

A request does not have to be in any particular form or include any magic language in order to be considered a public disclosure request. On the other hand, not every request for information is a public disclosure request. A request falls under the PDA if it requests identifiable records. In other words, the person requests a letter, memo, or email regarding a specific issue, subject or person.

○ **Elements to a Prompt Response**

Within five days, the agency must respond to the public disclosure request. The response may be one of these three actions:

Provide the requests records;

Acknowledge receipt of the request and provide a reasonable time needed in order to fully respond, or request clarification of the request if needed;

Deny the request.

If you acknowledge the request and provide an estimate of the reasonable time needed, that time estimate should be based on the need to clarify the request, time needed to locate and assemble the request or time needed to notify third persons of the request. If you deny the request, you must state the exemption that the records fall under and the statutory citation for the exemption.

o **Exemptions**

Everything is disclosable unless specifically exempt. Exemptions are narrowly construed in order to affect the purpose of the act. There are approximately 85 exemptions in the chapter 42.56, with additional exemptions in other parts of the RCW, for example protections for medical information or juvenile records are found in other chapters of the RCWs. Some examples are:

- ❖ RCW 42.56.230. Personal information including personal information maintained for students in public schools, patients at public institutions or welfare recipients, financial information like credit card, debit card, and bank account numbers.
- ❖ RCW 42.56.250. Employment and licensing information including test questions, scoring keys and other examination data, applications for employment including names of applicants and resumes, residential addresses and telephone numbers of employees and volunteers.
- ❖ RCW 42.56.270. Financial, commercial and proprietary information including valuable formulae, computer source code, and research data within 5 years of the request and which would produce private gain or public loss.
- ❖ RCW 42.56.280. Preliminary drafts, notes, recommendations and intra-agency memos in which opinions are expressed or policies formulated or recommended unless publicly cited by the agency in connection with an agency action.

- ❖ **Privileges.** There are several constitutional and statutory privileges that protect records from disclosure including executive privilege and attorney-client privilege. Also included are documents relevant to a controversy to which the agency is a party but which records would not be available under pretrial discovery rules.

- **Prohibitions**

In addition to exemptions, there is also a prohibition that was added to the PDA, which prohibits the disclosure of lists of individuals for commercial purposes. The list must be of individuals, not organizations or companies. “Commercial purposes” has been broadly interpreted to not only include direct solicitation but other general business reasons. Normally, you cannot ask the requestor the purpose of the request nor discriminate between requestors based on who they are. But if the request is for a list of individuals, you can ask the purpose of the request to ensure that it is not be a prohibited purpose.

- **Remedies**

If the agency does not comply with the PDA, the person who was denied records can institute an action in court. And if the agency is found to have violated the PDA, in addition to having to provide the records, the agency will be fined from \$5 to \$100 a day for each day the person was denied the record, plus attorney fees and cost.

- **Public Disclosure v. Records Retention**

The PDA requires you to disclose a public record that is in your possession. The records retention statutes tell you how long you are supposed to keep certain records. So if the records schedule states that a record has to be retained for a certain time and a request comes in within that time, then the agency should have that record and must disclose it unless exempt. On the other hand, if the schedule allows the record to be destroyed and you no longer have it, then you can deny the request. However, if the schedule allows the record to be destroyed and you still have it, then you must disclose it. You cannot destroy a record after a request for that record has been made.

- **Emails**

People treat emails as if they are a separate category of records. They are not. Emails are the same as paper documents. Whether the email must be retained or disclosed

are all based on the content of the email, not the fact that it is an email. You should treat email the same as any other document and only put in email what you would be comfortable having disclosed to the public. Don't assume the email has been deleted or that it will be exempt. Think about whether you should be sending an email or whether it is better to pick up the telephone.

➤ **Charges for PDA request**

The PDA allows an agency to charge the cost of the copies provided. If actual costs cannot be determined, then the agency can charge up to \$.15 per page. You cannot charge a person if they just want to inspect the records or the cost to the agency to search for and amass the documents responsive to the request.

➤ **Analyzing a public records request**

Is the request for identifiable public records?

If no, end of analysis, request is denied.

If yes, the record is disclosable unless a specific exemption applies.

Is the record or part thereof, exempt from disclosure under chapter 42.56 RCW?

If yes, the record is not disclosable and the request is denied.

If no, is there an exemption somewhere else

Is the record or part thereof exempt from disclosure by statute other than PDA?

If yes, the record is not disclosable and the request is denied.

If no, disclose the record.