



Public Records Act



History of Public Disclosure

- **Freedom of Information Act**
- **Initiative 276**
- **Creating Chapter 42.56 RCW**



Public Policy

- **People do not yield their sovereignty to the agencies which serve them.**
- **The people do not give public servants the right to decide what is good for the people to know.**
- **The people insist on remaining informed so that they may maintain control over the instruments that they have created.**

Construction of PRA

- **“The Act shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.”**
- **“In the event of conflict between the provisions of the Act and any other act, the provisions of the Act shall govern.”**



Main Elements of the PRA

Upon request, an agency shall promptly respond to and disclose public records, unless a record falls within a specified exemption.



Who Must Comply?

- **“State agency” includes every state office, department, division, bureau, board, commission, or other state agency**
- **“Local agency” includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency**



What is a “public record”?

- **Any writing that contains information relating to the conduct of government or the performance of any governmental function**
- **The writing was prepared, owned, used or retained by the agency**
- **The writing is in any “physical form”**



What is a request?

- **Identifiable public record**
- **No particular form needed**
- **No particular words needed**
- **No statutory cite needed**

What is a “prompt response”?

Within 5 business days, an agency must:

- **Provide the records**
- **Acknowledge receipt and provide reasonable estimate of response time. Seek clarification if needed.**
- **Deny the request**



When is Additional Time Needed?

- **Additional time may be based upon the need to:**
 - **Clarify the intent of the request**
 - **Locate and assemble the records**
 - **Notify third persons or agencies affected by the request**
 - **Determine whether any of the records requested are exempt and that a denial should be made as to all or part of the request**

Denials

- **Identify each record denied**
- **State why record is exempt**
- **Cite the statute that is the basis for the denial**

Exemptions

- **Over 300 exemptions**
- **Found in chapter 42.56 RCW, other RCW chapters and federal law**
- **Narrow construction of exemptions required**



Partial List of Exemptions

- **Records relevant to a controversy that would not be disclosable in litigation (including “attorney work product”)**
- **Personal information (students, employees, taxpayers)**
- **Bank and financial information**
- **Investigative, law enforcement, and crime victim information**

Partial List of Exemptions Continued

- **Employment application and some personal information of employees (e.g. residential addresses, social security numbers, personal telephone numbers)**
- **Preliminary drafts, notes, intra-agency memos**
- **Many types of financial, commercial, and proprietary information**

Prohibition

- **The Act prohibits the disclosure of lists of individuals for commercial purposes.**
- **“Commercial purposes” has been broadly interpreted.**

Remedies

- **Court action may be instituted**
- **Fines from \$5 to \$100 a day for each day denied**
- **Attorney fees and costs**



Public Disclosure v. Records Retention

- **Public records shall not be destroyed except pursuant to an approved records retention schedule**
- **Agencies should follow retention schedules set by records retention committee**
- **If a public records request is made at a time when a record exists but is scheduled for destruction in the near future, the agency shall retain possession of the record, and may not destroy it**



Charges for Requests

- No fees for inspecting public records
- No fees for locating public records
- A reasonable charge for providing copies of records and for the use of agency equipment to copy records, which shall not exceed the amount necessary to reimburse the agency
- Default charge - \$.15/page



Recent Court Cases

- **Yousoufian v. Sims**
- **Rental Housing Authority v. Des Moines**



Yousoufian v. Office of Ron Sims
165 Wn. 2d 439 (2009)

**How Should Penalties for
Public Records Act violations
be determined?**



Factors to Consider

- **Clarity of the public records request**
- **Promptness of agency's response (including requester's need for the records)**
- **Strict compliance with procedures and exemptions**
- **Training and supervision of staff**
- **Reasonableness of explanation for noncompliance**

Factors to Consider continued

- **Agency attitude: helpful, negligent, reckless, dishonest, or acted in bad faith**
- **Agency's tracking procedures**
- **Potential for harm, including economic loss and loss of government accountability**
- **Deterrence effect of penalty based on size of the agency**
- **Specific facts of the case**



Rental Housing Authority v. Des Moines

165 Wn.2d 525 (2009)

At a minimum, an exemption log should contain the following information:

- 1. Type of document/description of document**
- 2. Date**
- 3. Author/Sender**
- 4. Recipient (including CCs) if applicable**
- 5. Statutory exemption and brief explanation for withholding**
- 6. Number of pages**



Conclusion

- **Provide public full access to information concerning the conduct of government**
- **Protect individual's privacy rights**
- **Preserve the efficient administration of government**