

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

WASHINGTON

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# WASHINGTON

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Access to Public Records and Meetings in

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# Contents

Introductory Note .....	iv	V. PROCEDURE FOR OBTAINING RECORDS .....	11
User's Guide .....	v	A. How to start.....	11
FOREWORD .....	1	B. How long to wait.....	12
Open Records.....	2	C. Administrative appeal.....	12
I. STATUTE -- BASIC APPLICATION.....	2	D. Court action.....	12
A. Who can request records? .....	2	E. Appealing initial court decisions.....	13
B. Whose records are and are not subject to the act? .....	2	F. Addressing government suits against disclosure.....	13
C. What records are and are not subject to the act? .....	3	Open Meetings.....	14
D. Fee provisions or practices.....	3	I. STATUTE -- BASIC APPLICATION.....	14
E. Who enforces the act? .....	3	A. Who may attend? .....	14
F. Are there sanctions for noncompliance? .....	4	B. What governments are subject to the law? .....	14
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS ..	4	C. What bodies are covered by the law? .....	14
A. Exemptions in the open records statute.....	4	D. What constitutes a meeting subject to the law.....	14
B. Other statutory exclusions.....	7	E. Categories of meetings subject to the law.....	15
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.....	7	F. Recording/broadcast of meetings.....	17
D. Are segregable portions of records containing exempt material available?.....	7	G. Are there sanctions for noncompliance? .....	17
E. Homeland Security Measures.....	7	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS ..	17
III. STATE LAW ON ELECTRONIC RECORDS.....	7	A. Exemptions in the open meetings statute.....	17
A. Can the requester choose a format for receiving records? .....	7	B. Any other statutory requirements for closed or open meetings. 18	18
B. Can the requester obtain a customized search of computer databases to fit particular needs? .....	7	C. Court mandated opening, closing.....	18
C. Does the existence of information in electronic format affect its openness? .....	8	III. MEETING CATEGORIES -- OPEN OR CLOSED.....	18
D. How is e-mail treated? .....	8	A. Adjudications by administrative bodies.....	18
E. How are text messages and instant messages treated? .....	8	B. Budget sessions.....	18
F. How are social media postings and messages treated? .....	8	C. Business and industry relations.....	18
G. How are online discussion board posts treated? .....	8	D. Federal programs.....	18
H. Computer software.....	8	E. Financial data of public bodies.....	18
I. How are fees for electronic records assessed? .....	8	F. Financial data, trade secrets or proprietary data of private corporations and individuals.....	18
J. Money-making schemes.....	8	G. Gifts, trusts and honorary degrees.....	18
K. On-line dissemination.....	8	H. Grand jury testimony by public employees.....	18
IV. RECORD CATEGORIES -- OPEN OR CLOSED.....	8	I. Licensing examinations.....	18
A. Autopsy reports.....	8	J. Litigation; pending litigation or other attorney-client privileges.....	18
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations) .....	8	K. Negotiations and collective bargaining of public employees..	18
C. Bank records.....	8	L. Parole board meetings, or meetings involving parole board decisions.....	18
D. Budgets.....	8	M. Patients; discussions on individual patients.....	18
E. Business records, financial data, trade secrets.....	8	N. Personnel matters.....	18
F. Contracts, proposals and bids.....	9	O. Real estate negotiations.....	19
G. Collective bargaining records.....	9	P. Security, national and/or state, of buildings, personnel or other.....	19
H. Coroners reports.....	9	Q. Students; discussions on individual students.....	19
I. Economic development records.....	9	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS ..	19
J. Election records.....	9	A. When to challenge.....	19
K. Gun permits.....	9	B. How to start.....	19
L. Hospital reports.....	9	C. Court review of administrative decision.....	19
M. Personnel records.....	9	D. Appealing initial court decisions.....	19
N. Police records.....	10	V. ASSERTING A RIGHT TO COMMENT.....	19
O. Prison, parole and probation reports.....	11	Statute.....	20
P. Public utility records.....	11		
Q. Real estate appraisals, negotiations.....	11		
R. School and university records.....	11		
S. Vital statistics.....	11		

## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

Washington's public records and open public meetings laws, passed separately in the early 1970s, are a product of the "open government" climate brought about by distrust of government accountability and by misuse of government power during the civil rights and Vietnam protest era. Citizen groups such as the League of Women Voters, Common Cause, Coalition for Open Government, and others succeeded in promoting such legislation at a time when conservative opposition to such measures was discredited. Subsequent events of the 1970s, particularly Watergate, vindicated the need for the reform legislation; however, changes in the political climate, increasing sophistication of government agencies and their attorneys, decline of "open government" groups, and public antagonism towards the press led to legislative and judicial retrenchment from the mid-1980s to present, including an increase in the number and scope of exemptions.

The open records law was passed by Washington voters in November 1972 as Initiative 276. The law took effect January 1, 1973. Previously, there was an ill-defined common law right to public records that was seldom litigated.

*Note: The open records law was part of the Public Disclosure Act, codified at RCW Ch. 42.17. Effective July 1, 2006, the open records law was re-organized and recodified as RCW Ch. 42.56 and is now referred to as the Public Records Act.*

The major thrust of Initiative 276 was reform of campaign financing and lobbying by requiring disclosure of sources of contributions and expenses. The public records portion of the initiative was a relatively small section and was not the focus of much debate. Since the drafters did not pay extensive attention to the public records section, it is sometimes hard to reconcile how certain sections fit together or what the precise intent is.

The only "legislative history" for Initiative 276 is the State of Washington Voters Pamphlet (November 7, 1972), which contains statements for and against the ballot measure as well as a summary of the proposed law, a summary of the law as it then existed, a summary of the effect the proposed law would have, and the actual text of the new law.

In interpreting the current public records law, appellate judges have cited the Voters Pamphlet as evidence of legislative "intent," thus giving the Pamphlet some persuasive effect. The Pamphlet described the prior law as follows:

Access to public records is largely governed, under present law, by court decisions under which members of the public having a legitimate interest therein are entitled to examine all records in the custody of a public official which that official *is required by law to maintain*. However, in the case of records which the official having custody is not required by law to maintain, the disclosure or nondisclosure of information contained therein is largely within the discretion of this official. [Emphasis added.]

The pamphlet went on to explain that the effect of Initiative 276 was to require disclosure of all public records "regardless of whether or not the particular record is one which the official having custody is required by law to maintain." The Pamphlet also noted that state and local government agencies would have to meet a number of detailed requirements with respect to the maintenance and indexing of all the records and that public inspection was subject only to certain excep-

tions relating to "individual rights of privacy or other situations where the act deems the public interest would not best be served by open disclosure." These statements, and others in the Pamphlet, are usually cited by appellate judges writing pro-disclosure opinions or dissents.

Appellate judges writing pro-disclosure opinions or dissents have also routinely cited the declaration of policy set forth at the beginning of the Act, Rev. Code of Wash. ("RCW") 42.17.010(11), which says that "full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society."

Subsequently, there have been persistent efforts — some successful, some not — to add exemptions. The press, on the other hand, has only been successful on two occasions in obtaining significant pro-access amendments. In 1987, a restrictive definition of the "right to privacy" was formally added to the Act after some judicial waffling had created uncertainty with respect to the common law. RCW 42.56.050. In 1992, the Legislature adopted more than a dozen amendments requested by the press, including a broader definition of "public record," a specific definition of "promptness," increases in civil penalties, and immunity for public officials who release public records in good faith.

The current Open Public Meetings Act, which was adopted in 1971, has a preamble that is often cited by appellate judges.

The people of this state do not yield their sovereignty to the agencies which 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 retain control over the instruments they have created.

RCW 42.30.010. The Washington Supreme Court has referred to this preamble as one of the strongest statements of legislative policy contained in any state statute. *Cathcart v. Andersen*, 85 Wn.2d 102, 107, 530 P.2d 313 (1975). In 1992, the Legislature added this same language to the public records law. RCW 42.56.030.

There is very little legislative history available on most Washington law, including the Open Public Meetings Act. The Washington Legislature seldom maintains a record of floor debates and has nothing comparable to the Congressional Record or the committee reports prepared by the U.S. Congress. At best, there is an occasional colloquy put into the official record for the purpose of clarifying a particular point.

Consequently, the primary "authority" for interpreting the 1971 law is contained in Attorney General Opinion ("AGO") No. 33 dated October 29, 1971 (and cited as 1971 Op. Atty. Gen. No. 33). This AGO recites the following history to the 1971 Act:

[By enactment of the 1971 Act], the legislature basically replaced our earlier 1953 public meetings act with a comprehensive new act dealing with this subject. This new act was patterned closely after a California statute, commonly referred to as the "Brown Act"; and it is also somewhat similar to an open meetings act which was passed several years ago in Florida.

Before examining the provisions of the new act let us first, for comparative purposes, note the general thrust of the earlier law which it has replaced. Prior to August 9, 1971, when [the new law] became effective, the meetings of public agencies in this state — both state and local — were governed by RCW 42.32.010-.030. The first section of that act required that the adoption of any ordinance, resolution, rule, etc., be done in a meeting open to the public. If the date of that meeting was not fixed by law or rule, then in advance of the meeting there was to be notification to the press, radio and television in the county in which the meeting was to be held. The second section, RCW 42.32.020 specifically permitted the public agency to hold executive sessions and to exclude the public therefrom for all purposes other than "final adoption" of an ordinance, rule, regulation, etc. The third section, RCW

42.32.030, required that minutes be kept of all regular and special meetings, except executive sessions, and further required that those records be open for public inspection [this section continues to remain in effect].

Under this prior legislation it was quite possible for a public agency to take all the preliminary steps toward action, save only the final act of formal adoption of the rule or other directive, in sessions which were closed to the public. It is important that this be understood, because a legislature which enacts a new law such as that we are here considering must be presumed to have been aware of the scope and effect of its prior law on the subject and have intended to accomplish change therein.

The Open Public Meetings Act has been the subject of less court interpretation and legislative revision than the Public Records Act. In part, this is due to its clearer language and history.

## Open Records

### I. STATUTE -- BASIC APPLICATION

*Note: Pursuant to RCW 42.56.570(2), (3), the Washington Attorney General's Office (AGO) has prepared a set of model rules regarding the Public Records Act. See WAC Ch. 44-14. Each state and local agency is urged to adopt these rules to provide greater clarity and uniformity in terms of how public records requests are handled. These model rules indirectly provide a good overview or guide regarding interpretation of the Public Records Act.*

#### A. Who can request records?

##### 1. Status of requestor.

Any person may request records. RCW 42.56.080. "Person" includes an individual, public, private or governmental entity, or "any other organization or group of persons, however organized." RCW 42.17.020(35) (2000). A requester does not have to establish a "need to know" in order to obtain access. RCW 42.56.080; *Yacobellis v. City of Bellingham*, 55 Wn. App. 706, 780 P.2d 272 (1989), *pet. for review denied*, 114 Wn.2d 1002, 788 P.2d 1077 (1990).

##### 2. Purpose of request.

The Public Records Act contains two restrictions based on the requester's purpose: (1) Agencies may not sell or provide access to lists of individuals requested for commercial purposes. RCW 42.56.070(9). This prohibition applies to requests by commercial entities such as bill collectors or process servers, but not by governmental entities such as county sheriffs, the State Patrol, or a television reception improvement district not engaged in any "profit expecting" business activity. 1983 Op. Atty. Gen. No. 9. It is universally agreed that a newspaper, engaging in newsgathering, is not affected by this exemption. (2) Imprisoned criminals may be enjoined from obtaining otherwise disclosable records, if it is shown that the request was made to harass or intimidate a public agency or employee or to assist criminal activity, or would threaten the security of a correctional facility or any person. RCW 42.56.565.

##### 3. Use of records.

There are no other restrictions on subsequent use of information provided.

#### B. Whose records are and are not subject to the act?

##### 1. Executive branch.

The Public Records Act applies to all state and local agencies. RCW 42.56.040, .070(1). There is no express statutory or case law concerning access to executives themselves, but the definition of "agency" appears broad enough to cover them.

##### 2. Legislative bodies.

The Washington State Supreme Court has not decided whether the Public Records Act applies to all records of the legislature. *Cowles Publishing Co. v. Murphy*, 96 Wn.2d 584, 637 P.2d 966 (1981). The Act does apply to administrative records of the Clerk of the State House of Representatives and of the Secretary of the Senate. RCW 42.56.100.

##### 3. Courts.

Records of the Judicial Qualification Commission are exempt. *Garner v. Cherberg*, 111 Wn.2d 811, 765 P.2d 1284 (1988). The Washington State Supreme Court has held that court case files are not subject to the Public Records Act. *Nast v. Michaels*, 107 Wn.2d 300, 730 P.2d 54 (1986). Subsequent cases have extended this rule to all records held by the judicial branch, including administrative documents and correspondence. *Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009). In April 2001, the Washington Supreme Court Rules Committee was presented with a proposal to subject judicial branch administrative records to a degree of public disclosure. If adopted, the

proposed rule (GR 31A) would provide a presumption of access to such records, subject to all of the exemptions contained in the Public Records Act, as well as 11 additional specific exemptions and a privacy-based “balancing test.”

#### 4. Nongovernmental bodies.

Privately run entities occasionally have been held to be “agencies” subject to the Public Records Act, if they are the “functional equivalent” of a public agency under a four-part test that looks to (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government. See *Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wn. App. 185, 181 P.3d 881 (2008); *Telford v. Thurston County Bd. of Com’rs*, 95 Wn. App. 149, 974 P.2d 886 (1999).

#### 5. Multi-state or regional bodies.

Such bodies arguably fall within the legislative purpose of the Act, but there have been no case decisions. There is special language in the Open Public Meetings Act for regional bodies of publicly owned utilities “formed by or pursuant to” Washington law. RCW 42.30.020(1)(d).

#### 6. Advisory boards and commissions, quasi-governmental entities.

Such entities fall within the broad definition of “agency” under the Act. RCW 42.56.010(1).

### C. What records are and are not subject to the act?

#### 1. What kind of records are covered?

The Act applies to all “public records,” defined as any record “relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” RCW 42.56.010. Courts have interpreted this broadly. For example, records regarding “community contributions” from Native American tribes to the State Gambling Commission are public records, because the Commission relies on those documents when negotiating Compacts with the tribes. *The Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 958 P.2d 260 (1998). In *Concerned Ratepayers Association v. PUD No. 1 of Clark County*, 138 Wn.2d 950, 983 P.2d 635 (1999), the court found that an agency “used” a record that it had examined at the vendor’s site and subsequently cited in a feasibility study. Electronic “metadata” is disclosable as a public record if the metadata specifically requested. *O’Neill v. Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010). The Act does not apply to requests for information rather than records. See *Smith v. Okanogan County*, 100 Wn. App. 7, 994 P.2d 857 (2000); *Bonamy v. City of Seattle*, 92 Wn. App. 403, 994 P.2d 857 (1998).

#### 2. What physical form of records are covered?

The term “records” includes any document, film, tape, recording, computer record, etc. RCW 42.56.010(3), (4) (eff. Jan. 1, 2012). The Act does not require agencies to create records that do not exist. See *Smith v. Okanogan County*, 100 Wn. App. 7, 994 P.2d 857 (2000).

#### 3. Are certain records available for inspection but not copying?

The statute does not distinguish between records available for inspection and records available for copying. *But see Hudgens v. City of Renton*, 49 Wn. App. 842, 746 P.2d 320 (1987) (Criminal Records Privacy Act exempts nonconviction data from copying provisions of Public Records Act but not inspection provisions), *review denied*, 110 Wn.2d 1014 (1988). Agencies are permitted to adopt and enforce rules to protect records from damage or disorganization, or to prevent excessive interference with other essential agency functions. RCW 42.56.100.

### D. Fee provisions or practices.

#### 1. Levels or limitations on fees.

No fees may be charged merely for inspection or locating of public records. RCW 42.56.120. An agency may impose a reasonable charge for providing copies “which charges shall not exceed the amount necessary to reimburse the agency . . . for its actual costs directly incident to such copying.” *Id.*

#### 2. Particular fee specifications or provisions.

For photocopies, the default rate is fifteen cents per page. RCW 42.56.070(8), .120, .130. An agency may establish a higher rate is necessary to recover actual costs of providing photocopies. However, the agency must make available to the public a statement of the actual per page cost or other costs, and the basis for computation of the charge. RCW 42.56.070(7). The Act sets forth criteria which may be considered in determining such cost. *Id.* See RCW 70.58.107 (2000) (birth, death, marriage, and dissolution certificates).

##### a. Search.

Search fees may not be charged to requesters under the Public Records Act. RCW 42.56.120.

#### 3. Provisions for fee waivers.

There are no provisions under the statute for fee waivers. However, as a practical matter, many agencies do not charge for small quantities of records in order to avoid the administrative time and expense of collecting and accounting for small fees.

#### 4. Requirements or prohibitions regarding advance payment.

An agency may require a deposit in an amount not to exceed 10% of the estimated cost of providing copies for a request. RCW 42.56.120. If an agency makes a request available in a partial or installment basis, the agency may charge for each part of the request as it is provided. *Id.*

#### 5. Have agencies imposed prohibitive fees to discourage requesters?

Some counties have considered imposing what have been viewed as prohibitively high fees, but the media have successfully prevailed upon these counties not to follow through with the proposals.

### E. Who enforces the act?

Any person who has been refused to allow inspection or copying of public records may demand judicial review through a private lawsuit. RCW 42.56.550. Likewise, any person who believes that an agency has not provided a reasonable estimate of time that the agency requires to respond to a public records request may seek judicial review. *Id.* Alternately, if a state agency denies a person an opportunity to inspect or copy a public record, the individual may request the attorney general’s office to review the matter and provide a written opinion. RCW 42.56.530. Such opinions are not binding on the agency, but may be persuasive.

An agency, or a third party named in or referred to in a record, is entitled to seek a protective order enjoining the inspection of a public record. RCW 42.56.540. *Darwinson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993).

#### 1. Attorney General’s role.

If a state agency denies a person an opportunity to inspect or copy a public record, the individual may request the attorney general’s office to review the matter and provide a written opinion. RCW 42.56.530. Such opinions are not binding on the agency but may be persuasive.

#### 2. Availability of an ombudsman.

There is no ombudsman provision in the Public Records Act. The Washington Attorney General’s Office has an “open government om-

budsman,” who is available to consult on and assist with public records and open meetings issues. <http://www.atg.wa.gov/OpenGovernment/Ombudsman.aspx>.

### 3. Commission or agency enforcement.

There is no commission or agency that enforces the Public Records Act. The state Public Disclosure Commission only enforces the campaign finance disclosure aspects of the Public Disclosure Act. RCW 42.17.350, .360, .390.

#### F. Are there sanctions for noncompliance?

A requester who prevails against an agency that has denied a record must be awarded their costs, including reasonable attorneys’ fees. RCW 42.56.505(4). In addition, the court must award civil penalties in an amount not less than \$5 per day and not to exceed \$100 per day for each day that the requester was denied the right to inspect or copy a public record. *Id.* The factors courts apply in determining the amount of such awards are set out in *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

##### a. General or specific?

Under case law, the coverage of the Act is liberally construed and its exemptions narrowly confined. *Progressive Animal Welfare Soc’y v. University of Wash.* (“PAWS”), 125 Wn.2d 243, 884 P.2d 592 (1994), *partial reconsideration denied* (Feb. 1, 1995). In 1992, the Legislature formally adopted this rule of construction. RCW 42.56.030. Disclosure is required unless a specific exemption applies. RCW 42.56.070.

##### b. Mandatory or discretionary?

The exemptions in the Public Records Act are permissive, not mandatory. Thus, an agency can release information even if an exemption applies.

##### c. Patterned after federal Freedom of Information Act?

Washington courts will look to federal FOIA case law when interpreting the Public Records Act. *Dawson v. Daly*, 120 Wn.2d 782, 791, 845 P.2d 995 (1993). The exemptions are only loosely patterned after the federal act, and in some cases the two statutes are “markedly different.” *Laborers Intern. Union of North America, Local No. 374 v. City of Aberdeen*, 31 Wn. App. 445, 448, 642 P.2d 418 (1982)

#### 2. Discussion of each exemption.

a. *Clients of the State.* This exemption permits nondisclosure of personal information “in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.” RCW 42.56.230(1). The exemption is narrow, and limited to information maintained in the collection of individual client files that the agency necessarily maintains for the client. *Lindeman v. Kelso School District*, 162 Wn.2d 196, 172 P.3d 329 (2007).

The names and addresses of property owners who contract with the city for federal HUD loans are not “clients” of the city, nor are their names and addresses “personal information” under the exemption. *Walla Walla Union-Bulletin v. Walla Walla City Council*, 7 Med. L. Rptr. 1858 (Walla Walla Cty. July 14, 1981). A patient of a public hospital cannot be denied access to his or her own medical records. *Oliver v. Harborview Medical Ctr.*, 94 Wn.2d 559, 618 P.2d 76 (1980).

b. *Employees.* The statute permits nondisclosure of *personal* information about public officials and employees “to the extent that disclosure would violate their right to privacy.” RCW 42.56.230(2). The “right to privacy” refers to matters that would be highly offensive to a reasonable person if disclosed *and* are not of public concern. RCW Ch.

42.56.050; *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978). Agencies must prove both prongs of the test and cannot balance the public interest against the privacy interest. See *Tacoma Public Library v. Woessner*, 90 Wn. App. 357, 951 P.2d 357 (1998). Release of records related to teacher certification revocations, particularly as they pertain to teachers’ sexual misconduct with students, does not violate the teachers’ right to privacy. *Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 791 P.2d 526 (1990). However, disclosure of the identity of a teacher accused of sexual misconduct violates the teacher’s right to privacy under the statute if the allegation is not substantiated. *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wn.2d 199, 189 P.3d 139 (2008).

The exemption does not cover percentage crop sharing information concerning farm lands registered with the County Assessor, *Van Buren v. Miller*, 22 Wn. App. 836, 592 P.2d 671, *review denied*, 92 Wn.2d 1021 (1979), nor does it cover police officer complaints about their police chief’s job performance. *Columbian Publishing Co. v. City of Vancouver*, 36 Wn. App. 25, 671 P.2d 280 (1983). A discharged school employee can obtain performance evaluations of other employees; however, the names of coworkers will be deleted unless there is a specific showing that the right to privacy should not apply. *Ollie v. Highland School Dist.*, 50 Wn. App. 639, 749 P.2d 757, *review denied*, 110 Wn.2d 1040 (1988). Disclosure of performance evaluations, which do not discuss any specific instances of misconduct or the performance of public duties, is presumptively highly offensive to a reasonable person and not of legitimate public concern, and thus violative of the employee’s privacy rights and exempt. *Dawson v. Daly*, 120 Wn.2d 782, 797, 845 P.2d 995 (1993). *Beltran v. DSHS*, 98 Wn. App. 245, 989 P.2d 604. However, evaluations of high level employees, such as city manager, have more significant public interest and are not exempt under *Dawson*. See *Spokane Research v. City of Spokane*, 99 Wn. App. 452, 994 P.2d 267 (2000).

The legitimacy of public concern is determined by balancing the public’s interest in disclosure against the public’s interest in the efficient administration of government. *Id.* Thus, the public has a legitimate concern in seeing a settlement agreement between a city and one of its top employees because “[t]he fact a public body may not be able to keep the specific terms of a settlement agreement confidential does not have such a chilling effect on future settlements so as to affect the efficient administration of government.” *Yakima Newspapers Inc. v. City of Yakima*, 77 Wn. App. 319, 328, 890 P.2d 544 (1995).

The state Attorney General has stated that public employee salary information is generally not personal information subject to nondisclosure, although individual employee deductions may be protected by a right to privacy. 1973 Op. Atty. Gen. No. 4. Employee identification numbers are exempt, but names must be released. See *Tacoma Public Library v. Woessner*, 90 Wn. App. 357, 951 P.2d 357 (1998). Information provided by job applicants for a city plumber’s job, however, including reasons for leaving the previous job, criminal convictions and handicaps, may be withheld. *Washington State Human Rights Comm’n v. City of Seattle*, 25 Wn. App. 364, 607 P.2d 332 (1980). In 1987, the legislature exempted all applications for public employment, including resumes and names included in those applications. RCW 42.56.250(2). The courts also have held that applications are exempt under RCW 42.56.210(1)(b). *Beltran v. DSHS*, 98 Wn. App. 245, 989 P.2d 604 (1999).

In addition, residential addresses, telephone numbers, personal email addresses and other specific personal information of public employees or volunteers may be withheld from public disclosure. RCW 42.56.250(3). This exemption applies only to records held in personnel files and public employment records. Thus, a public official’s personal email address is not exempt if it appears in other types of public records. *Meckling v. Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009),

Public employees who seek advice under an agency process concerning unfair labor practices, or use internal, informal anti-discrimination procedures, have the right to remain anonymous. RCW 42.56.250(4), (5).

Also exempt are criminal history records checks for certain board staff finalist candidates. RCW 42.56.250(6).

Photographs and birthdates of criminal justice agency employees are exempt from disclosure. This exemption does not apply to the news media. RCW 42.56.250(8).

Even if a court orders release of documents, an employee or other person may sue the agency for common law invasion of privacy. See *Corbally v. Kennewick Sch. Dist.*, 94 Wn. App. 736, 973 P.2d 1074 (1999); but see *Corey v. Pierce County*, 154 Wn. App. 752, 225 P.3d 367 (2010) (dismissed employee's claim for "negligent dissemination of harmful information" barred as matter of law). The mere fact that records may not be disclosable under a PRA privacy-based exemption does not in itself give rise to an invasion of privacy action against media entities that report the information contained in the record. See *Cawley-Herrmann v. Meredith Corp.*, 654 F.Supp.2d 1264 (W.D. Wash. 2009).

c. *Taxpayer, Financial and Personal License Information.* Tax returns, and information that would result in unfair competitive disadvantage to the taxpayer or violate the taxpayer's right to privacy, are generally exempt. RCW 42.56.230(3). The "right to privacy" refers to matters that would be highly offensive to a reasonable person if disclosed and are not of public concern. RCW 42.56.050; *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978). Credit/debit card numbers and other financial account numbers are also exempt. RCW 42.56.230(4), (5). Personal information contained in documents used to apply for a driver's license or identicard is exempt under RCW 42.56.230(6).

d. *Investigative Records.* This exemption applies to specific investigative records, the nondisclosure of which is essential to law enforcement or to protect a person's right to privacy. RCW 42.56.240(1). It covers only ongoing investigations, *Ashley v. Public Disclosure Comm'n*, 16 Wn. App. 830, 560 P.2d 1156, review denied, 89 Wn.2d 1010 (1977), and once the investigation is complete, the records are open. *Hearst*, 90 Wn.2d 123. Reports generated as part of routine administrative procedure, not as the result of a specific complaint or allegation of misconduct, are not "investigative reports." *Cowles Publishing Co. v. City of Spokane*, 69 Wn. App. 678, 683, 849 P.2d 1271 (police reports regarding contact by any K-9 dog with citizen, generated as matter of course, are not investigative records), review denied, 122 Wn.2d 1013, 863 P.2d 73 (1993). Reports which could trigger an investigation and imposition of sanctions if warranted, but which are not themselves used for "law enforcement," are not exempt. *Id.* at 684.

Investigative records related to pending criminal matters are presumptively subject to disclosure once a suspect has been arrested and referred to the prosecutor for a charging decision. *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010); *Cowles Pub'g Co. v. Spokane Police Dep't*, 139 Wn.2d 472, 987 P.2d 620 (1999). The state supreme court at one point created a categorical exemption for "open and active" police investigation files in which disclosure would jeopardize the ability to solve the case. *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997). The court later clarified that such a categorical exemption *only* exists for "information contained in an open, active police investigation file." *Limstrom v. Ladenburg*, 136 Wn.2d 595, 963 P.2d 869 (1998) (refusing to extend a categorical exemption to work product materials under 42.56.290). In *Cowles* and again in *Serko*, the court further clarified that the concept of categorical exemption did not apply once the case was referred to the prosecutor's office, even if the files remained technically open.

The "right to privacy" refers to matters that would be highly offensive to a reasonable person if disclosed and are not of public concern. RCW 42.56.050, eff. 7/1/06; *Hearst*, 90 Wn.2d 123. In a torturous opinion, a Washington court has held that whether statements in public records are "true" bears on whether the records are of legitimate concern to the public. *City of Tacoma v. Tacoma News Inc.*, 65 Wn. App. 140, 827 P.2d 1094, review denied, 119 Wn.2d 1020, 838 P.2d 692 (1992) (police records of investigation based on unsubstantiated allegation of child abuse against political candidate not of legitimate public

concern). But see *Hudgens v. City of Renton*, 49 Wn. App. 842, 746 P.2d 320 (1987) (arrest report, citation, and patrol report must be disclosed despite acquittal), review denied, 110 Wn.2d 1014 (1988). In *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wn.2d 199, 189 P.3d 139 (2008), the Washington Supreme Court held that the identities of teachers accused of sexual misconduct are not subject to disclosure in cases where the allegations were not substantiated.

Criminal records on charges that have not resulted in conviction or other adverse disposition and for which formal proceedings are over are closed to the public. RCW 10.97.050, .030(2). Internal police investigations are considered exempt, even though no criminal charges are involved and no right to privacy is violated. The Washington Supreme Court has said that public disclosure of such investigations would render law enforcement ineffective. *Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 748 P.2d 597. Nevertheless, an investigative report concerning liquor law violations at a Police Guild party is not exempt on grounds that public disclosure would render law enforcement ineffective or violate the officers' privacy. *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 769 P.2d 283. In addition, internal investigation records are not exempt if requested as part of the discovery process, because a trial court can craft a protective order to alleviate law enforcement concerns. *State v. Jones*, 96 Wn. App. 369, 979 P.2d 898 (1999).

e. *Identity of Witnesses, Victims, and Persons Filing Complaints.* The identity of witnesses, victims, and persons who file criminal or quasi-criminal complaints with agencies other than the Public Disclosure Commission if the complainant indicates at the time of filing the complaint that the complainant desires for it to be confidential, is exempt if disclosure would endanger a person's life, property or physical safety. RCW 42.56.240(2).

One appellate decision, under review by the Washington Supreme Court, has found that victim impact statements are investigative records that are exempt as essential to effective law enforcement. *Koenig v. Thurston County*, 155 Wn. App. 398, 229 P.3d 910 (2010), review granted 170 Wn.2d 1020 (Jan. 5, 2011).

f. *Test Questions.* An agency may withhold "[t]est questions, scoring keys, and other examination data used to administer a license, employment, or academic examination." RCW 42.56.250(1).

g. *Real Estate Appraisals.* Real estate appraisals made in connection with the purchase or sale of property are exempt from disclosure until the earlier of (1) three years from the date of the appraisal, or (2) consummation or abandonment of the transaction. RCW 42.56.260.

h. *Commercially Valuable Information.* An agency may withhold any valuable formulae, designs, drawings or research data obtained within five years of the request for disclosure if disclosure would produce private gain and public loss. RCW 42.56.270(1). "Research data" is defined as "a body of facts and information collected for a specific purpose and derived from close, careful study, or from scholarly or scientific investigation or inquiry." *Servais v. Port of Bellingham*, 127 Wn.2d 820, 832, 904 P.2d 1124 (1995) (cash flow report prepared for Port's use in negotiations with developers exempt). Research data includes raw data and the guiding hypotheses that structure the data, *Progressive Animal Welfare Soc'y v. University of Wash.*, 125 Wn.2d 243, 255, 884 P.2d 592 (1994), partial reconsideration denied (Feb. 1, 1995), and is not limited to scientific facts. *Servais*, 127 Wn.2d at 831. The exemption does not cover accounting reports developed to secure a federal loan. See *Spokane Research v. City of Spokane*, 96 Wn. App. 569, 994 P.2d 267 (1999).

i. *Deliberative Process.* This exemption allows nondisclosure of intra-agency deliberative materials. RCW 42.56.280. Inter-agency materials are not exempt. *Columbian Publishing Co. v. City of Vancouver*, 36 Wn. App. 25, 671 P.2d 280 (1983). The exemption applies to opinions, such as faculty tenure evaluations, *Hafermebl v. University of Wash.*, 29 Wn. App. 366, 628 P.2d 846 (1981), but does not include purely factual matters, *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978),

or the raw data on which a decision is based. *PAWS*, 125 Wn.2d at 256. Deliberative materials are exempt only until the policies or recommendations contained in such records are implemented. *Dawson v. Daly*, 120 Wn.2d 782, 793, 845 P.2d 995 (1993).

j. *Discovery Exemption*. If an agency is a party to a lawsuit, it may withhold any records relevant to that suit that would be protected under rules of pretrial discovery. RCW 42.56.290. Civil, rather than criminal, discovery rules apply. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 963 P.2d 869 (1998). This exemption applies to “reasonably anticipated litigation,” *id.* at 791, and to records created to evaluate an agency’s potential liability, *Overlake Fund v. City of Bellevue*, 70 Wn. App. 789, 794, 855 P.2d 706 (1993), *review denied*, 123 Wn.2d 1009, 869 P.2d 1084 (1994), but it does not apply where the records may only have some possible relevance to a future hypothetical dispute with a third party. *Yakima Newspapers Inc. v. City of Yakima*, 77 Wn. App. 319, 325, 890 P.2d 544 (1995). As reflected in the work product rule, the exemption also applies after the termination of litigation. *Dawson*, 120 Wn.2d at 790. A settlement agreement is not protected under the work product rule and, thus, this exemption, because it is not prepared in anticipation of litigation but in an attempt to conclude litigation. *Yakima Newspapers*, 77 Wn. App. at 326-27. The courts have refused to create a blanket work product exemption to everything in a prosecutor’s litigation file. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 963 P.2d 869 (1998); *but see Koenig v. Pierce County*, 151 Wn. App. 221, 211 P.3d 423 (2009) (transcript of a witness statement was exempt under work product exemption because it was sought by the prosecutor in anticipation of litigation). In *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010), the Supreme Court held that police investigative records generally are not exempt from PRA disclosure as prosecutorial work product. The Court expressly rejected the argument that “a law enforcement agency is merely an arm of the prosecutor’s office for purposes of a work product analysis.”

In *Morgan v. Federal Way*, 166 Wn.2d 747, 213 P.3d 596 (2009), the Supreme Court held that a city’s report investigating a hostile work environment complaint against a municipal judge was subject to disclosure, and did not qualify as work product because at the time of the investigation, no litigation had been threatened or anticipated.

k. *Archaeological Site Protection*. Records identifying the location of archaeological sites may be withheld to avoid looting or degradation of sites. RCW 42.56.300.

l. *Library Records*. Library records that are used primarily to maintain control of library materials may be withheld to protect the identity of the user. RCW 42.56.310.

m. *Construction Bidders*. Qualifying financial information provided by bidders in connection with the ferry system or highway construction may be withheld. RCW 42.56.270(2).

n. *Railroad Contracts*. Railroad contracts filed prior to 1991 with the utilities commission, but not summaries of those contracts, may be withheld. RCW 42.56.480(1).

o. *Export Services*. Certain financial and commercial information supplied by private persons in connection with state sponsored export services may be withheld. RCW 42.56.270(3).

p. *Private Vocational Schools*. Certain financial disclosures that private vocational schools must file by law may be withheld from public disclosure. RCW 42.56.320(1).

q. *Utilities and Transportation Records*. Certain records filed with the state Utilities and Transportation Commission that a court has determined are confidential are exempt. RCW 42.56.330(1).

r. *Loan Information*. Certain financial and commercial information supplied by businesses in applying for loans or program services in connection with state sponsored development programs may be withheld. RCW 42.56.270(4); *see also Spokane Research v. City of Spokane*, 96 Wn. App. 569, 994 P.2d 267 (1997) (accounting reports and lease used

to secure federal loan exempt while loan application was pending). RCW 42.56.270 contains numerous other exemptions for loan and other financial information submitted to specified agencies.

s. *Timeshare Condominiums*. Membership lists in timeshare projects that must be filed by law may be withheld from public disclosure. RCW 42.56.340.

t. *Utility and Transit Customers*. Residential addresses and telephone numbers of customers of a public utility may be withheld from public disclosure. Personal records related to carpool programs, transit passes, toll transponders and the like are also exempt. RCW 42.56.330(2)-(8).

u. *Health Care Providers*. The Social Security numbers, residential addresses, and phone numbers of health care providers may be withheld from disclosure. RCW 42.56.350. Records obtained from or on behalf of HMOs, entities providing disability insurance or health care services, pharmaceutical manufacturers, or other entities who purchase, dispense or distribute drugs may be withheld. RCW 42.56.360(1)(b). Also, records created for and maintained by a health care provider’s quality improvement committee are exempt. RCW 42.56.360(1)(c).

v. *Drug Manufacturers’ Samples*. Information required by law to be gathered in connection with drug manufacturers’ drug sample programs may be withheld from public disclosure. RCW 42.56.360.

w. *Industrial Development Corporations*. Financial information, business plans, examination reports and information submitted by businesses seeking certification as industrial development corporations are exempt. RCW 42.56.270(5).

x. *State Investment Board*. Financial and commercial information supplied to the state Investment Board relating to the investment of public trust or retirement funds may be withheld if disclosure would result in loss. RCW 42.56.270(6).

y. *Workers’ Compensation Contractors*. Financial and valuable trade information provided to the state Department of Labor and Industries by health care providers who have contracts pursuant to the workers compensation program are exempt. RCW 42.56.270(7).

z. *Domestic Violence*. Client records maintained by a domestic violence shelter or rape crisis center are exempt. RCW 42.56.370.

aa. *Agricultural Information*. Business information related to organic food product certification is protected from public inspection and copying. RCW 42.56.380(1). Other exemptions for personal and business information submitted in connection with specified agricultural programs are set out in RCW 42.56.380(3)-(10).

bb. *Recycled Products Marketers*. Financial, commercial, operations, technical, and research information submitted to or obtained by the Clean Washington Center is exempt. RCW 42.56.270(8).

cc. *State Contacts Abroad*. Personal information maintained in the state database of Washington contacts abroad is exempt. RCW 42.56.480(2).

dd. *Medical Records*. Health care information of patients is exempt except for certain directory information. RCW 42.56.360(2).

ee. *Check Cashier/Seller*. Residential addresses, telephone numbers, and financial statements in applications for check cashier/seller licensing are exempt. RCW 42.56.450.

ff. *State Colleges, Libraries and Archives*. Any state college, library or archive that receives a gift or grant which by its terms restricts public access to certain records may withhold such records. RCW 42.56.320(4).

gg. *Impaired Physicians*. Certain records involving disciplinary action under the impaired physicians program may be withheld from public disclosure. RCW 42.56.360(1)(e).

hh. *Commercial Fertilizer*. Semi-annual reports submitted to the Agricultural Department by persons who distribute commercial fertilizer are exempt from disclosure. RCW 42.56.380(2).

ii. *Concealed Pistol Licenses*. License applications for concealed pistols are exempt from public disclosure. RCW 42.56.240(4).

jj. *Investment Opportunities Office*. Financial or proprietary information supplied by investors or entrepreneurs under RCW 43.31 is exempt from public disclosure. RCW 42.56.270(12).

kk. *Child Victims*. Information revealing the identity of child victims of sexual assault who are under age 18 is confidential. RCW 42.56.240(5).

ll. *Gang database*. The statewide gang database is exempt from disclosure. RCW 42.45.240(6).

mm. *Pseudoephedrine sales tracking data*. Data from this system is exempt from disclosure. RCW 42.56.240(7).

nn. *Sex offender notification*. Identifying information submitted to the statewide unified sex offender notification and registration program for the purpose of receiving notification regarding a registered sex offender is exempt from disclosure. RCW 42.56.240(8).

oo. *Infant Deaths*. Documents in files of local health departments pertaining to infant mortality reviews are not subject to public disclosure, although statistical compilations may be released. RCW 42.56.360(1)(f).

pp. *Life Insurance Policy Holders*. Names and identifying information of owners of life insurance policies regulated by the insurance commissioner are exempt. RCW 42.56.400(3).

qq. *Insurance Antifraud Plans*. Information concerning insurance antifraud plans filed with the insurance commissioner is exempt from disclosure. RCW 42.56.400(4).

rr. *Insurance Information Regarding Material Transactions*. Information provided to the insurance commissioner by Washington insurers, health plans, health care service contractors, or HMOs regarding material acquisitions or dispositions of assets, or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements is exempt. RCW 42.56.400(5).

ss. *Fireworks Records*. Records produced pursuant to the state Fireworks Law are exempt from disclosure. RCW 42.56.460.

tt. *Fish and Wildlife*. Specified commercial and recreational fish and wildlife data are exempt under RCW 42.56.430.

## B. Other statutory exclusions.

The Public Records Act also exempts from disclosure any record for which disclosure is prohibited by another statute. RCW 42.56.070(1). There are dozens of such “other statutes” under state and federal law. Examples include:

1. *Criminal Records Privacy Act*. The Act restricts access to pre-conviction and nonconviction records generally but not post-conviction records. Records of entry are accessible on a chronological basis, and records of those currently in the criminal justice system are not exempt. RCW 10.97.

2. *Juvenile Records*. Juvenile offender hearings are presumed open (but may be judicially closed for good cause). RCW 13.40.140(6), 13.50.010 and .050(2), (11). Juvenile dependency hearings and records, on the other hand, are presumptively closed. RCW 13.34.110. Court records other than the official file in a juvenile offender proceeding may not be released, except to those engaged in legitimate research for educational, scientific or public purposes where the anonymity of those mentioned in the records is preserved.

3. *Coroner Records*. Coroner records that identify the deceased may be withheld for 48 hours or until the next of kin is notified, although the official may exercise discretion to release the records earlier to aid in identifying the deceased. RCW 68.50.300.

## C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

On the basis of the Public Records Act’s mandate that agencies disclose public records unless they fall within *statutory* exemptions, RCW 42.56.070(1), courts arguably should not be able to create additional exemptions. Prior to this amendment some courts had created additional exemptions when it was thought to be in the “public interest” to protect certain documents from disclosure. In 1994, the Supreme Court closed off a potential loophole in RCW 42.56.540, which states:

examination of any specific public record may be enjoined if . . . the superior court . . . finds that such examination 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.

The court held that Section 540 is simply a procedural provision allowing for an injunction suit and that parties seeking to avoid disclosure must rely on a specific statutory exemption, as well as establishing Section 540’s public interest and irreparable damage elements. *Progressive Animal Welfare Soc’y v. University of Wash.*, 125 Wn.2d 243, 884 P.2d 592 (1994); *Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 174 P.3d 60 (2007).

## D. Are segregable portions of records containing exempt material available?

The statutory exemptions are inapplicable to material that can be segregated from otherwise protected information. RCW 42.56.210(2).

## E. Homeland Security Measures.

Portions of records assembled, prepared or maintained to prevent or respond to criminal terrorist acts and specific and unique vulnerability assessments are exempt from disclosure. RCW 42.56.420(1). Also, records obtained as a result of national security briefings with state and local government are not subject to disclosure where they are not subject to disclosure under federal law. *Id.* See *Northwest Gas Ass’n v. Washington Utilities and Transp. Comm.*, 141 Wn. App. 98, 168 P.3d 443 (2007). Other information regarding security jails, schools, telecommunications networks, and transportation system may be exempt. RCW 42.56.420(2)-(5).

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

Washington law defines “public record” broadly to include electronic formats. RCW 42.56.010. There is no provision in the Act permitting agencies to limit the format in which public records may be examined or copied. Consequently, the requester can choose any available format for receiving the records. Although the PRA does not expressly require an agency to provide unredacted e-mails in an electronic format, an agency must do so where reasonable and feasible, under the PRA’s “fullest assistance” provision (RCW 42.56.100). *Mechling v. Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009).

### B. Can the requester obtain a customized search of computer databases to fit particular needs?

Although there is no statutory language concerning customized searches of computer databases, Washington agencies generally accept requests for customized searches. They do not challenge them as requesting something other than a public record. However, agencies often claim that there are technical barriers to providing a customized search and/or excessive costs to be assessed against the requester.

### C. Does the existence of information in electronic format affect its openness?

Nothing in the Washington statute suggests that the existence of information in the electronic form affects its openness. In fact, the opposite is true: electronic records fit within the definition of “records.” RCW 42.56.010.

### D. How is e-mail treated?

E-mail is not treated any differently than other records. E-mail metadata is also a public record, but a requester seeking metadata should say so specifically in the record request. *O’Neill v. Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010).

#### 1. Does e-mail constitute a record?

Yes. E-mail is not treated any differently than other records.

#### 2. Public matter on government e-mail or government hardware

E-mail is not treated any differently than other records.

#### 3. Private matter on government e-mail or government hardware

In *Tiberino v. Spokane County*, 103 Wn. App. 680, 13 P.3d 1104 (2000), an appellate court held that personal emails sent by a public employee on her work computer were exempt from disclosure under the PRA’s privacy-based exemption for public employee files. Applying the statute’s privacy test, the court found that disclosure of the records was of no legitimate public interest and that release would be highly offensive. The case does not state a blanket rule regarding private use of public email accounts, but rather appears to turn on the content of the emails. The emails, which the court reviewed in camera, apparently disclose to the employee’s mother and sister that she had been raped.

#### 4. Public matter on private e-mail

In *O’Neill v. Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010), the Washington Supreme Court held that the home computer used by a city official to send an email is subject to inspection by the city to determine whether a requested record still existed.

#### 5. Private matter on private e-mail

There are no cases specifically on point. In *O’Neill v. Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010), the Washington Supreme Court held that the home computer used by a city official to send an email is subject to inspection by the city to determine whether a requested record still existed. A dissenting justice noted that public officials’ home computers likely contain personal information that is not subject to the PRA, and raised the possibility that such searches could violate officials’ privacy rights.

### E. How are text messages and instant messages treated?

There is no statutory or case law addressing this issue, though the definition of “public record” is broad enough to encompass such messages.

### F. How are social media postings and messages treated?

There is no statutory or case law addressing this issue, though the definition of “public record” is broad enough to encompass such postings.

### G. How are online discussion board posts treated?

There is no statutory or case law addressing this issue, though the definition of “public record” is broad enough to encompass such postings.

### H. Computer software

There is no statute or case law specifically addressing this issue.

### I. How are fees for electronic records assessed?

The Public Records Act permits an agency to assess no more than a “reasonable charge” for providing copies of public records – no more than its own costs in making the copy. Fees for searching and retrieving records are prohibited. RCW 42.56.120. With respect to electronic records, this means that public agencies can charge for the actual cost of the medium onto which the electronic information is copied – for example, the cost of a disk. Agencies should not charge for emailing records.

### J. Money-making schemes.

Washington law provides that “[a]gencies should not offer customized electronic access services as the primary way of responding to requests or as a primary source of revenue.” RCW 43.105.280.

### K. On-line dissemination.

The PRA provides that an agency may respond to a record request by providing a link to the requested record on the agency’s website (unless the requester lacks internet access, in which case the agency must provide a hard copy). RCW 42.56.520.

## IV. RECORD CATEGORIES -- OPEN OR CLOSED

### A. Autopsy reports.

Autopsy reports are confidential under RCW 68.50.105.

### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

The Public Records Act does not specifically address administrative investigations as a separate category of records. Specific types of administrative investigative records may be subject to exemptions cited elsewhere in this outline.

### C. Bank records.

Examination reports and examination information obtained by the supervisor of banking are confidential under RCW 30.04.075. However, investigation reports concerning applications for new banks are public. RCW 30.04.075(7). Examination reports and information obtained by the department of financial institutions from banks, other financial institutions and securities brokers and investment advisers is confidential and exempt from public disclosure. RCW 42.56.400(6).

### D. Budgets.

The only provision of the PRA addressing budgets is RCW 42.56.100, which includes within the definition of “public records” budgets held by the Clerk of the State House of Representatives and of the Secretary of the Senate. For other agencies, budgets are treated no differently than any other public record.

### E. Business records, financial data, trade secrets.

An agency can withhold valuable formulae, designs, drawings, computer source code or object code and research data obtained within five years of the disclosure request if disclosure would produce private gain and public loss. RCW 42.56.270(1). The state Supreme Court has held that “the public records act may not be used to acquire knowledge of a trade secret.” *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 748, 958 P.2d 260 (1998).

RCW 42.56.270 exempts a wide variety of financial and commercial information supplied to state agencies by requirement of law, including (among others) submissions in connection with ferry construction or road construction bids, RCW 42.56.270(2), export services, RCW 42.56.270(3), applications for loans in connection

with state-sponsored programs, RCW 42.56.270(4), industrial development corporations, RCW 42.56.270(5), public sector retirement funds, RCW 42.56.270(6), workers' compensation contractors, RCW 42.56.270(7), the Investment Opportunities Office, RCW 42.56.270(12), applications for a liquor, gambling or lottery retail license, RCW 42.56.270(10), submissions to the Department of Social and Health Services in connection with state purchased health care, RCW 42.56.270(11), and submissions to the Department of Ecology in connection with electronic product recycling, RCW 42.56.270(13). Other exemptions include account numbers supplied to an agency, RCW 42.56.230(4), financial and commercial information submitted to the state in connection with certain railroad contracts, RCW 42.56.480(1), private vocational schools, RCW 42.56.320(1), time-share condominiums, RCW 42.56.340, drug manufacturers' samples, RCW 42.56.360, organic food products, RCW 42.56.380(1), and commercial fertilizer, RCW 42.56.380(2).

In addition, lists of individuals sought merely for commercial purposes may be withheld. RCW 42.56.070(9).

#### F. Contracts, proposals and bids.

Information relating to ferry and highway construction, and railroad and export services bids may be withheld, although summaries of railroad contracts are open. RCW 42.56.270.

#### G. Collective bargaining records.

There is no specific exemption for collective bargaining materials.

#### H. Coroners reports.

Coroner records that identify the deceased may be withheld for 48 hours or until the next of kin is notified, although the official may exercise discretion to release the records earlier to aid in identifying the deceased. RCW 68.50.300.

#### I. Economic development records.

The Public Records Act exempts from disclosure financial and commercial information supplied in applications for economic development loans or program services provided by any local agency. RCW 42.56.270(4). Also exempt is certain financial and proprietary information submitted to the Department of Community, Trade, and Economic Development. RCW 42.56.270(12).

#### J. Election records.

Voter poll books are to be made available under RCW 29A.08.720, but they cannot be used for commercial, nonpolitical purposes. Maps of precinct boundaries are to be made available under RCW 29A.16.050(7). The voter's name, gender, voting records, date of registration and registration number are available for inspection and copying from voter registration cards, RCW 29A.08.710(2), though the identity of the office at which an individual registered to vote is not. RCW 29A.08.720. Information from absentee ballot applications is available under RCW 29A.40.130.

The Washington Secretary of State has found that referendum and initiative petitions are subject to disclosure under the Public Records Act, a practice that was generally upheld against a First Amendment challenge in *Doe v. Reed*, 130 S. Ct. 3348 (2010).

Campaign financing disclosure is required under RCW 42.17.030-.135. Lobbyists must register with the Public Disclosure Commission and make certain reports available under RCW 42.17.150-.230. Public officials must disclose their financial affairs under RCW 42.17.240-.241. Political advertising must be disclosed under RCW 42.17.510-.550. County auditor or county elections officer reports of primaries and elections are to be disclosed under RCW 29A.04.225 and 42.17.375.

#### 1. Voter registration records.

A voter's name, gender, voting records, date of registration and registration number are available for inspection and copying from voter

registration cards, RCW 29A.08.710(2), though the identity of the office at which an individual registered to vote is not. RCW 29A.08.720. Information from absentee ballot applications is available under RCW 29A.40.130. The Washington Secretary of State has found that referendum and initiative petitions are subject to disclosure under the Public Records Act, a practice that was generally upheld against a First Amendment challenge in *Doe v. Reed*, 130 S. Ct. 3348 (2010).

#### 2. Voting results.

County auditor or county elections officer reports of primaries and elections are to be disclosed under RCW 29A.04.225 and 42.17.375

#### K. Gun permits.

License applications for concealed pistols are exempt from public disclosure. RCW 42.56.240(4).

#### L. Hospital reports.

Records of the Public Hospital Commission are open to the public. RCW 70.44.050 (2000). A patient of a public hospital cannot be denied access to his or her own medical records. *Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 618 P.2d 76 (1980).

#### M. Personnel records.

Information in files maintained for public officials and employees may be withheld "to the extent that disclosure would violate their right to privacy." RCW 42.56.230(2). The "right to privacy" refers to matters that would be highly offensive to a reasonable person if disclosed *and* are not of public concern. RCW 42.56.050.

#### 1. Salary.

Public employee salary information is generally not personal information subject to nondisclosure, although individual employee deductions may be protected by a right to privacy. 1973 Op. Atty. Gen. No. 4. Employee identification numbers are exempt, but names must be released. See *Tacoma Public Library v. Woessner*, 90 Wn. App. 357, 951 P.2d 357 (1998).

#### 2. Disciplinary records.

Release of records related to teacher certification revocations, particularly as they pertain to teachers' sexual misconduct with students, does not violate the teachers' right to privacy. *Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 791 P.2d 526 (1990). However, disclosure of the identity of a teacher accused of sexual misconduct violates the teacher's right to privacy under the statute if the allegation is not substantiated. *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wn.2d 199, 189 P.3d 139 (2008).

Disclosure of employee performance evaluations, which do not discuss any specific instances of misconduct or the performance of public duties, is presumptively highly offensive to a reasonable person and not of legitimate public concern, and thus violative of the employee's privacy rights and exempt. *Dawson v. Daly*, 120 Wn.2d 782, 797, 845 P.2d 995 (1993). *Beltran v. DSHS*, 98 Wn. App.245, 989 P.2d 604. However, evaluations of high level employees, such as city manager, have more significant public interest and may not be exempt under *Dawson*. See *Spokane Research v. City of Spokane*, 99 Wn. App. 452, 994 P.2d 267 (2000). A discharged school employee can obtain performance evaluations of other employees; however, the names of coworkers will be deleted unless there is a specific showing that the right to privacy should not apply. *Ollie v. Highland Sch. Dist.*, 50 Wn. App. 639, 749 P.2d 757 (1988).

#### 3. Applications.

Applications for public employment are exempt from disclosure. RCW 42.56.250(2).

#### 4. Personally identifying information.

The residential addresses, telephone numbers, wireless numbers, personal email addresses, social security numbers, and emergency

contact information of employees or volunteers of a public agency are exempt from disclosure. RCW 42.56.250(3).

### 5. Expense reports.

There is no specific authority addressing disclosure of expense reports under the PRA.

## N. Police records.

### 1. Accident reports.

Reports filled out by those involved in the accident are normally not available as public records. RCW 46.52.080; *Guillen v. Pierce County*, 144 Wn.2d 696, 31 P.3d 628 (2001). Accident reports filled out by police officers are public records and are generally subject to disclosure, at least once the investigation is complete.

### 2. Police blotter.

Police blotters, jail registers and incident reports are generally available prior to case closure. However, the Public Records Act seals law enforcement records if nondisclosure “is essential to effective law enforcement or for the protection of any person’s right to privacy.” RCW 42.56.240(1). The Washington Criminal Records Privacy Act (“CRPA”) prevents disclosure of certain criminal records, but does not apply to “[o]riginal records of entry maintained by criminal justice agencies” if the records are “compiled and maintained chronologically and are accessible only on a chronological basis.” RCW 10.97.030(1) (b). Thus, most information in chronological incident reports and blotters is public under both the CRPA and the Public Records Act, but the requester would have to know the date of the incident to locate the document.

The CRPA provides that records of convictions, other formal dispositions adverse to the subject and records of those currently in the criminal justice system (including those on parole) “may be disseminated without restriction.” Records on charges that have not resulted in conviction or other adverse disposition and for which formal proceedings are complete are closed to the public. RCW 10.97.050.

### 3. 911 tapes.

911 tapes are available to the extent not covered by the investigative records exemption. See RCW 42.56.240(1).

### 4. Investigatory records.

#### a. Rules for active investigations.

Specific investigative records are exempt if nondisclosure is essential to law enforcement or to protect a person’s right to privacy. RCW 42.56.240(1). The exemption covers only ongoing investigations, *Asbley v. Public Disclosure Comm’n*, 16 Wn. App. 830, 560 P.2d 1156, review denied, 89 Wn.2d 1010 (1977), and once the investigation is complete, the records are open. *Hearst*, 90 Wn.2d 123. Reports generated as part of routine administrative procedure, not as the result of a specific complaint or allegation of misconduct, are not “investigative reports.” *Cowles Publishing Co. v. City of Spokane*, 69 Wn. App. 678, 683, 849 P.2d 1271 (police reports regarding contact by any K-9 dog with citizen, generated as matter of course, are not investigative records), review denied, 122 Wn.2d 1013, 863 P.2d 73 (1993). Reports which could trigger an investigation and imposition of sanctions if warranted, but which are not themselves used for “law enforcement,” are not exempt. *Id.* at 684.

Investigative records related to pending criminal matters are presumptively subject to disclosure once a suspect has been arrested and referred to the prosecutor for a charging decision. *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010); *Cowles Pub’g Co. v. Spokane Police Dep’t*, 139 Wn.2d 472, 987 P.2d 620 (1999). The state supreme court at one point created a categorical exemption for “open and active” police investigation files in which disclosure would jeopardize the ability to solve the case. *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997). The court later clarified that such a categorical

exemption *only* exists for “information contained in an open, active police investigation file.” *Limstrom v. Ladenburg*, 136 Wn.2d 595, 963 P.2d 869 (1998) (refusing to extend a categorical exemption to work product materials under 42.56.290. In *Cowles* and again in *Serko*, the court further clarified that the concept of categorical exemption did not apply once the case was referred to the prosecutor’s office, even if the files remained technically open.

The “right to privacy” refers to matters that would be highly offensive to a reasonable person if disclosed *and* are not of public concern. RCW 42.56.050, eff. 7/1/06; *Hearst*, 90 Wn.2d 123. In a torturous opinion, a Washington court has held that whether statements in public records are “true” bears on whether the records are of legitimate concern to the public. *City of Tacoma v. Tacoma News Inc.*, 65 Wn. App. 140, 827 P.2d 1094, review denied, 119 Wn.2d 1020, 838 P.2d 692 (1992) (police records of investigation based on *unsubstantiated* allegation of child abuse against political candidate not of legitimate public concern). *But see Hudgens v. City of Renton*, 49 Wn. App. 842, 746 P.2d 320 (1987) (arrest report, citation, and patrol report must be disclosed despite *acquittal*), review denied, 110 Wn.2d 1014 (1988). In *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wn.2d 199, 189 P.3d 139 (2008), the Washington Supreme Court held that the identities of teachers accused of sexual misconduct are not subject to disclosure in cases where the allegations were not substantiated.

Criminal records on charges that have not resulted in conviction or other adverse disposition and for which formal proceedings are over are closed to the public. RCW 10.97.050, .030(2). Internal police investigations are considered exempt, even though no criminal charges are involved and no right to privacy is violated. The Washington Supreme Court has said that public disclosure of such investigations would render law enforcement ineffective. *Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 748 P.2d 597. Nevertheless, an investigative report concerning liquor law violations at a Police Guild party is not exempt on grounds that public disclosure would render law enforcement ineffective or violate the officers’ privacy. *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 769 P.2d 283. In addition, internal investigation records are not exempt if requested as part of the discovery process, because a trial court can craft a protective order to alleviate law enforcement concerns. *State v. Jones*, 96 Wn. App. 369, 979 P.2d 898 (1999).

#### b. Rules for closed investigations.

Once the special investigation is complete, the records are open. *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978).

### 5. Arrest records.

The CRPA restricts access to pre-conviction and nonconviction records generally but not post-conviction records. Records of entry are accessible on a chronological basis, and records of those currently in the criminal justice system are not exempt. RCW 10.97.

### 6. Compilations of criminal histories.

The CRPA allows access to records of convictions and records of those currently in the criminal justice system; however, records on charges that have not resulted in conviction or other adverse disposition and for which formal proceedings are over are closed to the public. RCW 10.97.050.

### 7. Victims.

The identity of witnesses, victims and people who file criminal or quasi-criminal complaints with agencies other than the Public Disclosure Commission is exempt if disclosure would endanger a person’s life, property or physical safety, or if the complainant indicates at the time of filing the complaint that the complainant desires it to be confidential. RCW 42.56.240(2).

The CRPA restricts access to pre-conviction and nonconviction records generally but not post-conviction records. Records of entry are accessible on a chronological basis, and records of those currently in the criminal justice system are not exempt. RCW 10.97.

Coroner records that identify the deceased may be withheld for 48 hours or until the next of kin is notified, although the official may exercise discretion to release the records earlier to aid in identifying the deceased. RCW 68.50.300.

### 8. Confessions.

There are no specific restrictions on access to confessions unless they fall within the investigative records exemption under the Public Records Act, RCW 42.56.240(1), or the CRPA. RCW 10.97.050.

### 9. Confidential informants.

May be exempt pursuant to the Public Records Act's investigative record exemption, RCW 42.56.240(1).

### 10. Police techniques.

Investigative records that disclose police techniques may be withheld if nondisclosure is necessary for effective law enforcement. RCW 42.56.240(1). The state Supreme Court has held that records of internal police investigations are public, but the names of complaining persons and law enforcement officers who are the subject of complaints may be withheld. *Cowles Publ'g Co. v. Washington State Patrol*, 109 Wn.2d 712, 748 P.2d 597 (1988) (finding, on the facts of the case, that nondisclosure is necessary for effective law enforcement).

### 11. Mug shots.

Mug shots are exempt from disclosure. *Cowles Publishing Co. v. Spokane Police Department*, 139 Wn.2d 472, 987 P.2d 620 (1999).

### 12. Sex offender records.

Identifying information submitted to the statewide unified sex offender notification and registration program for the purpose of receiving notification regarding a registered sex offender is exempt from disclosure. RCW 42.56.240(8).

### 13. Emergency medical services records.

No specific statute or case law. Likely subject to the exemption for health care information, which is exempt except for certain directory information. RCW 42.56.360(2).

## O. Prison, parole and probation reports.

Prison, parole and probation reports are generally open. The CRPA restricts access to pre-conviction and nonconviction records generally but not post-conviction records. Records of entry are accessible on a chronological basis, and records of those currently in the criminal justice system are not exempt. RCW 10.97.

## P. Public utility records.

Public utility records are generally available. *See In Re Rosier*, 105 Wn.2d 606, 717 P.2d 1353 (1986); 1983 Op. Atty. Gen. No. 9. However, residential addresses and telephone numbers of customers of a public utility may be withheld from public disclosure. RCW 42.56.330(2). Also, the state Supreme Court has found a constitutional privacy interest in electric usage records, thus allowing disclosure by a public utility district only under authority of law. *Matter of Maxfield*, 133 Wn.2d 332, 344, 945 P.2d 196 (1997); *see also* RCW 42.17.314 (2000).

## Q. Real estate appraisals, negotiations.

### 1. Appraisals.

Real estate appraisals made in connection with the purchase or sale of property are exempt from disclosure until the earlier of (1) three years from the date of the appraisal, or (2) consummation or abandonment of the transaction. RCW 42.56.260.

### 2. Negotiations.

No specific authority. See section on Appraisals.

### 3. Transactions.

No specific authority. See section on Appraisals.

### 4. Deeds, liens, foreclosures, title history.

No specific authority. See section on Appraisals.

### 5. Zoning records.

No specific authority

## R. School and university records.

### 1. Athletic records.

There are no express restrictions and no case law concerning access to athletic records. Presumably, such records are available subject to privacy-based exemptions for student records. RCW 42.56.230(1).

### 2. Trustee records.

There are no special exemptions for trustee records. The only exemptions that would apply are those related to specific types of records that might be kept at schools and universities. *See* previous section. Also, "first class" public school districts — districts with a student enrollment in their public schools of 2,000 pupils or more — must make administrative records available for public inspection under RCW 28A.330.070.

### 3. Student records.

The Public Records Act contains an exemption for personal information "in any files maintained for students in public schools." RCW 42.56.230(1). The exemption is narrow, and limited to information maintained in the collection of individual student files that the school necessarily maintains for the student. *Lindeman v. Kelso School District*, 162 Wn.2d 196, 172 P.3d 329 (2007) (security video not subject to exemption). Federal law prohibits release of personally identifiable information, other than directory information, from the education records of a student absent written consent from a parent of a student or the eligible student. 20 U.S.C.A. § 1232g.

## S. Vital statistics.

Records relating to births, deaths, marriages or divorces generally are available, although some confidential details may be omitted. RCW 70.58.055(2), .104. Government offices are allowed to charge \$20 for certified copies and \$8 merely to search. RCW 70.58.107.

### 1. Birth certificates.

See Vital statistics section above

### 2. Marriage & divorce.

See Vital statistics section above

### 3. Death certificates.

See Vital statistics section above

### 4. Infectious disease and health epidemics.

While the Public Records Act contains numerous exemptions related to personal health care information, no specific provision governs access to statistics regarding epidemics. The state Department of Health gathers and periodically reports on incidents of certain diseases. *See* WAC 246-100 and 246-101.

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

The Public Records Act requires each agency to publish the procedures by which requests for public records are to be made. RCW 42.56.040. Nevertheless, most agencies act somewhat informally with

or without published procedures. Only the largest agencies and police agencies have FOI officers. A requesting party may consider calling the agency to ask what the proper procedure is.

## 2. Does the law cover oral requests?

Yes, and on routine matters, many agencies will make records available without a written request. If, however, a requesting party anticipates a problem he or she should make a written request. This is helpful in seeking to establish a record.

## 3. Contents of a written request.

A typical written request (in the absence of a contrary agency requirement as to form) should (1) state clearly that it is a request for public inspection of records under the Public Records Act, (2) describe concisely and specifically the records sought, (3) state the time and date the request is being made, (4) indicate to whom the agency should respond and how the requesting party may be contacted by mail and telephone, and (5) note that the law requires a prompt response to the request and a written statement of the specific reasons for a denial, subject to judicial review and imposition of statutory costs, attorneys' fees and a civil penalty for wrongful denial.

### B. How long to wait.

*Promptness.* The Public Records Act requires agencies to make a prompt response to requests for public records. RCW 42.56.520. "Promptness" means as soon as practicable, but, in any event, no longer than five days unless the agency can establish that it is impossible to meet the five-day deadline. *Id.* Thus, after five business days have passed, a requesting party can sue an agency for violating the promptness requirement.

*Granting Disclosure.* An agency's response to a request for records may not be based on the identity of the requester or the stated purpose, if any, of the request. RCW 42.56.080. If the agency grants a request, it is to make the records available for inspection and copying during the customary office hours of the agency. RCW 42.56.090. The agency is also required to make agency facilities available for copying to the extent it would not disrupt agency operations. RCW 42.56.080. A public agency or official acting in good faith to comply with the Public Records Act may not be held liable for any loss or damage resulting from the release of a public record. RCW 42.56.060.

*Explanation of Nondisclosure.* The agency must explain the basis for any record, or portion of a record, that is deleted or withheld. RCW 42.56.070. The agency must identify the specific exemption authorizing withholding of the record, or part of the record, and briefly explain how the exemption applies to the record withheld. RCW 42.56.210(3). Furthermore, the agency must inform the requester of the fact that it has withheld records, and it must identify such records, or portions of records, with particularity. *Progressive Animal Welfare Soc'y v. University of Washington*, 125 Wn.2d 243, 270-71, 884 P.2d 592 (1994), *partial reconsideration denied* (1995) ("PAWS").

*Delay.* Courts have recognized that failure to respond in a timely manner is, in essence, a denial. Agencies that are slow in responding to requests should also be reminded that the court has the discretion to award penalties in an amount up to \$100 per day for each day that the requester is denied the right to inspect or copy the records. RCW 42.56.550(4). Also, a requester may challenge in court an agency's estimate of the time it will take to respond to a request. RCW 42.56.550(2).

### C. Administrative appeal.

If the agency denies a request, it must review that denial within a two-day period. At the end of that period an agency is deemed to have taken its final action and the denial is ripe for judicial review. RCW 42.56.520, eff. 7/1/06). There is no need to go through an extensive administrative appeal process. In most cases, the initial decision by an agency is its final decision.

The Public Records Act allows any requester whose public disclosure request has been denied to seek a written opinion from the Attorney General as to whether the record is exempt. RCW 42.56.530. The Attorney General's determination of whether the records at issue are exempt, though persuasive, is not binding on the state agency or on the requester. Other informal avenues that have been successful are approaches to the attorney representing the agency. Often these attorneys are independent of the agency and, therefore, are willing to make an independent assessment of the legal situation.

### D. Court action.

Any person denied access to a public record may seek judicial review of the agency denial. RCW 42.56.530(1). The requesting party files an action in the superior court of the county in which the record is maintained and makes a motion for an order requiring the agency to show cause why it has refused to allow public inspection. The burden of proof is on the agency to establish that nondisclosure is consistent with the statute. *Id.* However, an agency is not limited to arguing only those exemptions it identified in its response to a request for records. *PAWS*, 125 Wn.2d at 253.

Although there are no formal procedures for seeking expedited judicial review, the courts have been willing to accommodate media requests for expedited processing. They may conduct hearings based on affidavits alone. RCW 42.56.550(3).

The court is to review all agency actions challenged under the statute *de novo*. *Id.* Thus, the agency is granted no deference in its determination that the records should be withheld. In addition, the courts are admonished to "take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." *Id.*

Courts are permitted to make an *in camera* inspection of any record withheld by the agency. *Id.* The decision whether or not to review documents, or hear testimony, *in camera*, is reviewed only for abuse of discretion. *Yakima Newspapers Inc. v. City of Yakima*, 77 Wn. App. 319, 328, 890 P.2d 544 (1995).

#### 1. Who may sue?

An action may be brought by a requester, by the agency, or by any person "named in the record or to whom the record specifically pertains." RCW 42.56.540, .550.

#### 2. Priority.

Such matters are not given any priority on the court calendar by statute. As a practical matter, most courts will hear public records matters on short notice, provided no jury is requested.

#### 3. Pro se.

*Pro se* actions are difficult. They require not only familiarity with rules concerning filing and serving a lawsuit but scheduling a hearing as well. More importantly, a *pro se* litigant will have difficulty with the substantive argument because the law has become complex and agency attorneys have become very sophisticated in litigating public disclosure cases.

#### 4. Issues the court will address:

#### 5. Pleading format.

Not specified.

#### 6. Time limit for filing suit.

Actions under the Public Records Act must be filed within one year of the agency's claim of exemption, or the last production of a record on a partial or installment basis. RCW 42.56.550.

#### 7. What court.

The Public Records Act's venue provision states that actions are to be brought in the superior court in the county in which the requested record is maintained. RCW 42.56.550.

## 8. Judicial remedies available.

A court may order an agency to release a record or to respond to a record request, and may award fees, costs and statutory penalties to a prevailing requester. RCW 42.56.550. It also may enjoin the release of a record upon motion of the agency or a third party who is named in the record or to whom the record specifically pertains. RCW 42.56.540.

### 9. Litigation expenses.

A requester who prevails against an agency that has denied a record must be awarded their costs, including reasonable attorneys' fees. RCW 42.56.550(4).

#### a. Attorney fees.

See above

#### b. Court and litigation costs.

See above

## 10. Fines.

A requesting party who prevails against the agency is entitled to recover, in addition to its costs and attorneys' fees, a statutory penalty up to \$100 per day for each day that records were improperly withheld. RCW 42.56.550(4). Because the statutory award is a penalty, and aimed at deterrence, the requester need not establish damages to recover or, for that matter, that the agency acted in bad faith. *Amren v. City of Kalama*, 131 Wn.2d 25, 37-38, 929 P.2d 389 (1997); *American Civil Liberties Union of Washington v. Blaine Sch. Dist. No. 503*, 95 Wn. App. 106, 111, 975 P.2d 536 (1999); *Yacobellis v. City of Bellingham*, 64 Wn. App. 295, 301, 825 P.2d 324 (1992). However, an agency's bad or good faith is relevant in determining how high the penalty should be, as are such factors as the promptness of the agency's response, the clarity of the request, the agency's training practices and the significance of the records. *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010). A requester need not prevail as to every record to recover fees, so long as the requester "substantially" prevails. *Overlake Fund v. City of Bellevue*, 70 Wn. App. 789, 796, 855 P.2d 706 (1993), *review denied*, 123 Wn.2d 1009, 869 P.2d 1084 (1994). However, a requesting party who prevails against a private person opposing agency disclosure of a record is not entitled to attorneys' fees. *Yakima Newspapers*, 77 Wn. App. at 329.

## 11. Other penalties.

See section on Fines

## 12. Settlement, pros and cons.

Whether settlement of a public records request is desirable depends on the nature of the request and the requester's goals, among other things. If the material requested is time-sensitive, it may be practical for the requester to narrow the request or accept some redactions in exchange for obtaining the critical records quickly. Settlement also may make sense in order to avoid the expense or delay of litigating against an agency, or against a third-party seeking to enjoin the request. Settlement discussions should always be informed by the broad pro-disclosure policy of the PRA, and by case law awarding attorneys' fees and (sometimes steep) statutory penalties for wrongful non-disclosure. On the other hand, fees and penalties are not available to requesters when the agency prevails, or when the litigation is brought by a private third-party.

### E. Appealing initial court decisions.

If the court rules against the requesting party, the normal rules of appeal apply and the requester has 30 days from entry of the adverse judgment to give notice of its appeal. A prevailing requester is entitled to attorneys' fees on appeal. *PAWS*, 125 Wn.2d at 271.

At the beginning of each appellate term, the state Supreme Court provides a list of cases pending before the Courts and a brief statement as to the issues involved. Interested *amici* should review these lists, which are available on the Court's website.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

### F. Addressing government suits against disclosure.

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination 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. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. RCW 42.56.530.

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

“[A]ll persons” are generally permitted to attend any meeting of the governing body of a public agency. RCW 42.30.030. In the event that there is a disturbance and individuals are removed for disrupting the meeting, “[r]epresentatives of the press or other news media, except those participating in the disturbance,” will be allowed to remain in attendance. RCW 42.30.050. No one can be required, as a condition of attendance at a public meeting, to register his name or other information, to complete a questionnaire, or otherwise fulfill any condition precedent to attendance. RCW 42.30.040. Though a governing body may set reasonable rules of conduct so the meetings can be conducted in an orderly fashion, access cannot be limited and cameras and tape recorders cannot be prohibited unless they are actually disruptive. RCW 42.30.050; Op. Atty. Gen. 1998, No. 15.

### B. What governments are subject to the law?

OPMA applies to any public agency at the state, county, municipal or local level, and any subagency created by legislation, including planning commissions, library and park boards and commissions. RCW 42.30.020(1).

### C. What bodies are covered by the law?

#### 1. Executive branch agencies.

OPMA only applies to meetings of the “governing body” of an agency or subagency. “Governing body” refers to multi-member boards, commissions, committees, councils, or any policy or rulemaking body. RCW 42.30.020(2). A committee of any governing body is also covered by OPMA whenever it acts on behalf of the government body, conducts hearings, or takes testimony or public comment. *Id.*

#### 2. Legislative bodies.

The OPMA does not apply to the state legislature. RCW 42.30.020(1)(a). However, it is an open question as to whether the Act applies to caucuses and committees of the legislature. Thus far, the issue has been avoided because the legislative caucuses and committees have adopted open meeting rules that are as broad or more broad than OPMA.

#### 3. Courts.

Courts are not covered by the Act. RCW 42.30.020(1)(a).

#### 4. Nongovernmental bodies receiving public funds or benefits.

Receipt of public funds is likely insufficient to subject an otherwise private nongovernmental entity to the requirements of the OPMA. However, privately run entities have been held to be “agencies” subject to the Public Records Act, if they are the “functional equivalent” of a public agency under a four-part test that looks to (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government. See *Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wn. App. 185, 181 P.3d 881 (2008); *Telford v. Thurston County Bd. of Com’rs*, 95 Wn. App. 149, 974 P.2d 886 (1999). Although the issue has not been litigated in the OPMA context, this line of PRA cases likely applies with equal force to the OPMA because the definition of “agency” is the same under both statutes.

#### 5. Nongovernmental groups whose members include governmental officials.

Strictly speaking, the Act does not apply to nongovernmental groups except in specific instances, *i.e.*, a policy group whose mem-

bership includes representatives of publicly owned utilities. RCW 42.30.020(1)(d). However, if a majority of the governing body of a particular agency meets with anyone else concerning agency business, then the meeting is considered a meeting of the governing body and is subject to the Act.

#### 6. Multi-state or regional bodies.

Other than the policy group of publicly owned utilities mentioned above, there is no specific coverage for multistate or regional bodies. A federal court has held that meetings of interstate advisory committees are not subject to the Act where the governing body of any particular state agency did not attend nor did the multistate body have any final authority. *United States v. State of Oregon*, 699 F. Supp. 1456 (D. Or. 1988), *aff’d*, 913 F.2d 576 (9th Cir. 1990), *cert. denied*, 501 U.S. 1250 (1991).

#### 7. Advisory boards and commissions, quasi-governmental entities.

If an advisory board or commission is created by or pursuant to statute, ordinance or other legislative act or if such group in fact sets policy for an agency, then these boards and commissions are covered by the Act. RCW 42.30.020(1). The Act does not apply to meetings of an interstate advisory body. *Salmon for All v. State of Wash.*, 118 Wn.2d 270, 821 P.2d 1211 (1992).

#### 8. Other bodies to which governmental or public functions are delegated.

Task force formed by city’s planning advisory board to analyze a particular issue, take testimony and public comments, conduct hearings, and otherwise act on behalf of the board and city council is subject to the OPMA. *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001).

#### 9. Appointed as well as elected bodies.

There is no distinction between an elected and an appointed body.

## D. What constitutes a meeting subject to the law.

### 1. Number that must be present.

The Act states that all meetings of the “governing body” must be open to the public. The governing body is defined as any multimember board, commission, committee, council, or other policy or rule-making body. RCW 42.30.020(2). The meeting need not take place in a formal setting.

For example, in 1998, the Washington State Auditor found that Algona Economic Development Corporation Public Development Authority violated the OPMA when it held dinner meetings on the Spirit of Washington Dinner Train and on cruises in the Puget Sound. In 1999, the Auditor held that some members of the Monroe City Council violated the OPMA when they met after public meetings at a local restaurant. In both cases, the members of the governing body discussed business in addition to socializing. The business discussions made the gatherings meetings held in violation of the Act. Thus, any time members of a governing body discuss official business, the public must have access. Where a quorum of the city council takes “action” (as defined in the statute) at a standing committee meeting, a city council meeting has occurred. Op.Atty.Gen.2010, No. 9, 2010 WL 4963127.

#### a. Must a minimum number be present to constitute a “meeting”?

If a majority of the governing body or a quorum are engaged in deliberations or other action, the meeting is subject to the OPMA. *Eugster v. City of Spokane*, 128 Wn. App. 1, 114 P.3d 1200 (2005).

#### b. What effect does absence of a quorum have?

Where a quorum of the city council takes “action” (as defined in the statute) at a standing committee meeting, a city council meeting has occurred. Op.Atty.Gen.2010, No. 9, 2010 WL 4963127. Absent a

quorum, the agency may take the position that no meeting can take place, but “serial meetings” in which the governing body seeks to avoid the OPMA by holding multiple meetings comprised of less than a quorum are likely impermissible.

## 2. Nature of business subject to the law.

“Meeting” means a meeting at which “action” is taken. RCW 42.30.020(4). “Action” includes discussion, public testimony, review, evaluation, and other deliberation, as well as “final” action. RCW 42.30.020(3). Final action is a collective positive or negative decision by formal motion or informal proposal or vote by the majority of members of the governing body. RCW 42.30.020(3), *Miller v. City of Tacoma*, 138 Wn.2d 318, 331, 979 P.2d 1129 (1999). In other words, there is a meeting whenever a governing body discusses agency business — even if no decisions are made.

## 3. Electronic meetings.

The Act says that “all” meetings of the governing body of a public agency shall be open and public. It does not require that such meetings be conducted in person. Presumably, meetings by conference call or e-mail are not prohibited so long as there is a speaker phone or video display terminal for the public who may wish to observe and/or listen to the proceedings. With the proper scheduling of meeting and agenda, Washington Attorney General’s Office has opined that such procedures would meet the requirements of the Act.

### a. Conference calls and video/Internet conferencing.

In 1996, the State Auditor held that two members of a three-member board violated the OPMA when one board member called another member to discuss agency business. The calls lasted from one minute to up to one hour. In 1996, the Auditor also found that a board that operates a public ambulance service in Skamania County violated the Act when two members of a three-member board used a third party to exchange information between the members which ultimately became part of an agreement signed by the board.

### b. E-mail.

The exchange of e-mail messages may constitute a meeting within the meaning of the Open Public Meetings Act provided a majority of the governing body is involved and the use of e-mail is not merely informational or passive receipt of e-mail. *Wood v. Battleground School Dist.*, 107 Wn. App. 550, 27 P.3d 1208 (2001).

### c. Text messages.

There is no authority addressing this issue.

### d. Instant messaging.

There is no authority addressing this issue.

### e. Social media and online discussion boards.

There is no authority addressing this issue.

## E. Categories of meetings subject to the law.

### 1. Regular meetings.

#### a. Definition.

Regular meetings are “recurring meetings held in accordance with a periodic schedule declared by statute or rule.” RCW 42.30.075.

#### b. Notice.

##### (1). Time limit for giving notice.

OPMA does not specify any time limit for giving notice of a regular meeting. Agencies are only required to give notice in accordance with statutes or rules pertaining to that agency. By definition “regular meeting” refers to a periodic schedule that has been established. See E.1.b(3) below.

##### (2). To whom notice is given.

OPMA does not specify to whom notice must be given for regular meetings. It is left up to individual statutes and rules to specify. All that OPMA requires is that the governing body establish a time for holding regular meetings. RCW 42.30.070.

##### (3). Where posted.

OPMA requires that the governing body of a public agency must adopt a regular meeting schedule “by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body.” RCW 42.30.070. State agencies must file a schedule of the time and place of regular meetings for publication with the Washington State Register on or before January of each year. Notice of any change from such meeting schedule must be published in the State Register for distribution at least 20 days prior to the rescheduled meeting date. RCW 42.30.075.

##### (4). Public agenda items required.

OPMA does not require that a public agenda be adopted, prepared, or disseminated. However, in the case of special meetings, advance notice is required. The notice must specify “the business to be transacted.” RCW 42.30.080.

##### (5). Other information required in notice.

There are no requirements for notice of a regular meeting beyond those described in subsections (1) through (4) immediately above.

##### (6). Penalties and remedies for failure to give adequate notice.

If an agency fails to follow the minimal notice requirements of the OPMA, any person may commence an action for an injunction or mandamus. RCW 42.30.130. If the challenger prevails against the agency, he or she will recover his or her reasonable expenses and attorney fees in bringing the action, RCW 42.30.120(2). To prevail, the party need only establish that a violation occurred, not that the participants knowingly violated the law. See, e.g., *Miller*, 138 Wn.2d at 331-32 (awarding attorneys’ fees and costs despite findings that participants believed they were acting appropriately under the law. Also, any final actions taken may be declared null and void. RCW 42.30.060 (2000); *Responsible Urban Growth Group v. Kent*, 123 Wn.2d 376, 868 P.2d 861 (1994); *Slaughter v. Snohomish County Fire Dist.*, 50 Wn. App. 733, 750 P.2d 656. Also, each member of the governing body who attends the meeting with knowledge that the meeting is in violation of the OPMA is personally liable for a civil penalty of \$100. RCW 42.30.120(1). A knowing violation can also result in a recall from office. *In re Andersen*, 131 Wn.2d 92, 929 P.2d 410 (1997); *Matter of Recall of Roberts*, 115 Wn.2d 551, 799 P.2d 736 (1990); *Pedersen v. Moser*, 99 Wn.2d 456, 662 P.2d 866 (1983); *Cole v. Webster*, 103 Wn.2d 280, 692 P.2d 799 (1984); *Bocek v. Bailey*, 81 Wn.2d 831, 505 P.2d 814 (1973). The Governor may also remove appointees confirmed by the Senate if the Governor believes such appointee has violated the OPMA. RCW 43.06.080; see also *Price v. Seattle*, 39 Wash. 376, 81 P. 847 (1905); *State v. Johns*, 139 Wash. 525, 248 P. 423 (1923) (confirming Governor’s plenary power to remove appointees believed to have committed misconduct or malfeasance).

#### c. Minutes.

##### (1). Information required.

OPMA does not have a provision regarding minutes. However, there is a separate state law which requires that minutes of regular and special meetings must be promptly recorded and open to public inspection. RCW 42.32.030. There is no definition of what is meant by “promptly.” Moreover, minutes of executive sessions are not required.

##### (2). Are minutes public record?

Written or taped minutes are public records and, therefore, are available under the Public Records Act. Minutes, or portions thereof,

may be exempt from disclosure only if they fall within one of the exemptions to that Act.

## 2. Special or emergency meetings.

### a. Definition.

None provided for special meetings. Emergency meetings, which may be held without notice, must involve an emergency threatening sudden, unexpected and severe physical damage to persons or property and requiring immediate action. RCW 42.30.080; *Mead Sch. Dist. v. Mead Educ. Ass'n*, 85 Wn.2d 140, 530 P.2d 302 (1975) (holding that an impending teacher's strike was not such an emergency).

### b. Notice requirements.

Special meetings may be called at any time by the presiding officer of the governing body so long as 24 hours advance written notice is given to each member of the governing body and to each media organization that has on file with the governing body a written request to be notified of special meetings. RCW 42.30.080; *Kirk v. Pierce County Fire Protection Dist. No. 21*, 95 Wn.2d 769, 630 P.2d 930 (1981).

Agencies may call emergency meetings without notice if the meeting meets the definition in E.2.a above.

An "agenda" is required in the announcement of a special emergency meeting. RCW 42.30.080, and an agency's action must be limited to the listed agenda items. In 1999, the State Auditor held that the Bothell City Council violated the OPMA when it discussed a topic not on the published agenda for a special meeting. Washington State Auditor Schedule of Audit Findings for 1/1/99-12/31/99.

*Penalties.* If an agency fails to follow the minimal notice requirements of the OPMA, any person may commence an action for an injunction or mandamus. RCW 42.30.130. If the challenger prevails against the agency, he or she will recover his or her reasonable expenses and attorney fees in bringing the action, RCW 42.30.120(2). To prevail, the party need only establish that a violation occurred, not that the participants knowingly violated the law. *See, e.g., Miller*, 138 Wn.2d at 331-32 (awarding attorneys' fees and costs despite findings that participants believed they were acting appropriately under the law). Also, any final actions taken may be declared null and void. RCW 42.30.060 (2000); *Responsible Urban Growth Group v. Kent*, 123 Wn.2d 376, 868 P.2d 861 (1994); *Slaughter v. Snohomish County Fire Dist.*, 50 Wn. App. 733, 750 P.2d 656. Also, each member of the governing body who attends the meeting with knowledge that the meeting is in violation of the OPMA is personally liable for a civil penalty of \$100. RCW 42.30.120(1). A knowing violation can also result in a recall from office. *In re Andersen*, 131 Wn.2d 92, 929 P.2d 410 (1997); *Matter of Recall of Roberts*, 115 Wn.2d 551, 799 P.2d 736 (1990); *Pedersen v. Moser*, 99 Wn.2d 456, 662 P.2d 866 (1983); *Cole v. Webster*, 103 Wn.2d 280, 692 P.2d 799 (1984); *Bocek v. Bailey*, 81 Wn.2d 831, 505 P.2d 814 (1973). The Governor may also remove appointees confirmed by the Senate if the Governor believes such appointee has violated the OPMA. RCW 43.06.080; *see also Price v. Seattle*, 39 Wash. 376, 81 P. 847 (1905); *State v. Johns*, 139 Wash. 525, 248 P. 423 (1923) (confirming Governor's plenary power to remove appointees believed to have committed misconduct or malfeasance).

### c. Minutes.

#### (1). Information required.

OPMA does not have a provision regarding minutes. However, there is a separate state law that requires minutes of regular and special meetings to be promptly recorded and open to public inspection. RCW 42.32.030. There is no definition of what is meant by "promptly." Moreover, minutes of executive sessions are not required.

#### (2). Are minutes a public record?

Written or taped minutes are public records and, therefore, are available under the Public Records Act. Minutes, or portions thereof, may be exempt from disclosure only if they fall within one of the exemptions to that Act.

## 3. Closed meetings or executive sessions.

### a. Definition.

The OPMA allows for closed meetings in only two circumstances: First, certain meetings may be closed because the OPMA is deemed not to apply to such meetings. RCW 42.30.140. Second, agencies are permitted, under certain circumstances, to have a closed executive session. RCW 42.30.110(1)(a)-(k). The OPMA does not otherwise define a closed meeting or executive session. Any meeting to which OPMA does not apply or any specified circumstance in which executive sessions are permitted, may be closed to the public, including the press. RCW 42.30.110, .140 (2000).

### b. Notice requirements.

#### (1). Time limit for giving notice.

An announcement of an executive session can take place any time; there is no specified time limit.

#### (2). To whom notice is given.

The governing body is only required to publicly announce to those in attendance that it is going into an executive session. RCW 42.30.110(2).

#### (3). Where posted.

OPMA does not require posting of notice of an executive or closed session.

#### (4). Public agenda items required.

OPMA does not require that an agenda be adopted or published; however, the presiding officer of the governing body must publicly announce the purpose for excluding the public from the meeting place. *Id.*

#### (5). Other information required in notice.

At the time a meeting is closed, the presiding officer must announce when the executive session will be concluded and, if it is not concluded at that time, the presiding officer must make a subsequent announcement as to the extension of the time. *Id.*

#### (6). Penalties and remedies for failure to give adequate notice.

If an agency fails to follow the minimal notice requirements of the OPMA, any person may commence an action for an injunction or mandamus. RCW 42.30.130. If the challenger prevails against the agency, he or she will recover his or her reasonable expenses and attorney fees in bringing the action, RCW 42.30.120(2). To prevail, the party need only establish that a violation occurred, not that the participants knowingly violated the law. *See, e.g., Miller*, 138 Wn.2d at 331-32 (awarding attorneys' fees and costs despite findings that participants believed they were acting appropriately under the law. Also, any final actions taken may be declared null and void. RCW 42.30.060 (2000); *Responsible Urban Growth Group v. Kent*, 123 Wn.2d 376, 868 P.2d 861 (1994); *Slaughter v. Snohomish County Fire Dist.*, 50 Wn. App. 733, 750 P.2d 656. Also, each member of the governing body who attends the meeting with knowledge that the meeting is in violation of the OPMA is personally liable for a civil penalty of \$100. RCW 42.30.120(1). A knowing violation can also result in a recall from office. *In re Andersen*, 131 Wn.2d 92, 929 P.2d 410 (1997); *Matter of Recall of Roberts*, 115 Wn.2d 551, 799 P.2d 736 (1990); *Pedersen v. Moser*, 99 Wn.2d 456, 662 P.2d 866 (1983); *Cole v. Webster*, 103 Wn.2d 280, 692 P.2d 799 (1984); *Bocek v. Bailey*, 81 Wn.2d 831, 505 P.2d 814 (1973). The Governor may also remove appointees confirmed by the Senate if the Governor believes such appointee has violated the OPMA. RCW 43.06.080; *see also Price v. Seattle*, 39 Wash. 376, 81 P. 847 (1905); *State v. Johns*, 139 Wash. 525, 248 P. 423 (1923) (confirming Governor's plenary power to remove appointees believed to have committed misconduct or malfeasance).

### c. Minutes.

There is no requirement that minutes be taken during a closed meeting or an executive session. However, if minutes are taken, they become public records and may be exempt from disclosure only if Public Records Act exemptions apply.

### d. Requirement to meet in public before closing meeting.

Although the OPMA does not expressly say so, it is clearly contemplated that a governing body will meet first in public before closing a meeting. OPMA states that before convening an executive session, the presiding officer must make a public announcement. RCW 42.30.110(2).

### e. Requirement to state statutory authority for closing meetings before closure.

As stated above, the OPMA requires the presiding officer of a governing body to publicly announce the purpose for excluding the public from the meeting before going into executive session. *Id.* It is generally accepted that the public announcement must specifically identify the exemption of the Act that is involved and the general subject matter of the closed session.

### f. Tape recording requirements.

There is no requirement that meetings or minutes be tape recorded, although some agencies customarily do so. Such recordings are subject to the Public Records Act.

## F. Recording/broadcast of meetings.

The use of cameras and other recording devices may not be prohibited unless they are actually disruptive. RCW 42.30.50; Op. Atty. Gen. 1998, No. 5. As a practical matter, broadcasting, recording and photographing are routinely allowed; however, care must be taken to avoid a secret recording that might run afoul of the state's anti-eavesdropping statute. RCW 9.73.030.

## G. Are there sanctions for noncompliance?

Any action taken at meetings failing to comply with the Open Public Meetings Act is null and void. RCW 42.30.060. *See Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001). Any person may commence an action either by mandamus or injunction to stop violations or prevent threatened violations of the Open Public Meetings Act. RCW 42.30.130. Individual members of the governing body who attend a meeting in violation of the Open Public Meetings Act with knowledge of the fact that the meeting is in violation of the OPMA are subject to personal liability in the amount of a \$100 civil penalty. RCW 42.30.120(1) Any person who prevails against a public agency for violation of the Open Public Meetings Act shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action. RCW 42.30.120(2).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

#### 1. Character of exemptions.

##### a. General or specific.

The OPMA provides for closed meetings in two circumstances. First, certain meetings may be closed because the OPMA is deemed not to apply to such meetings. Second, agencies are permitted, under certain circumstances, to have a closed executive session.

##### b. Mandatory or discretionary closure.

The areas not covered by the Act and the executive session exemptions are all discretionary. In other words, there is no requirement that such meetings be closed. The only other exemption to the OPMA, other than as set forth above, is the situation where there is a public disturbance. In such case, the governing body may order the room

cleared of the public and the meeting may continue; however, members of the media who were not involved in the disturbance are allowed to remain. RCW 42.30.050.

### 2. Description of each exemption.

Meetings may be closed in the following situations because the OPMA is deemed inapplicable, RCW 42.30.140:

a. The formal granting or denying of a license permit or certificate to engage in a business, occupation or profession, or disciplinary proceedings involving a member of a business, occupation or profession;

b. Proceeding of a quasi-judicial nature relating to named parties. A county commission's consideration of whether to grant a permit allowing a city to extend its sewer outfall, as a matter of significant public interest, was not a "quasi-judicial matter between named parties." *Protect the Peninsula's Future v. Clallam County*, 66 Wn. App. 671, 676, 833 P.2d 406 (1992). A four-part test is employed to determine whether an agency action is quasi-judicial:

(1) [w]hether a court could have been charged with making the agency's decision; (2) whether the action is one which historically has been performed by courts; (3) whether the action involves the application of existing law to past or present facts for the purpose of declaring or enforcing liability; and (4) whether the action resembles the ordinary business of courts as opposed to that of legislators or administrators.

*Id.*;

c. Meetings involving matters covered by the state Administration Procedure Act ("APA") Ch. 34.05 RCW. The APA does not apply to local agencies. *Victoria Tower Partnership v. City of Seattle*, 49 Wn. App. 755, 745 P.2d 1328 (1987);

d. Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; and

e. Meetings or portions of meetings concerning the strategy or position to be taken by the governing body during the course of collective bargaining, professional negotiations, grievance or mediation proceedings, or involving reviewing proposals made in such negotiations or proceedings.

Executive sessions may be called in the following situations, RCW 42.30.110(1)(a)-(k):

a. To consider matters affecting national security;

b. To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would likely increase the price;

c. To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding the consideration would likely lower the price;

d. To review negotiations on the performance of publicly bid contracts when public knowledge would likely increase costs;

e. To consider, in the case of a commercial export trading company, financial and commercial information supplied by private persons to the export trading company;

f. To receive and evaluate complaints or charges brought against a public officer or employee, unless the officer or employee requests that the meeting be open;

g. To evaluate qualifications of an applicant for public employment or to review the performance of a public employee. Final actions and discussions of generally applied salary levels must be open to the public;

h. To evaluate the qualifications of a candidate for employment to elective office. Interviews and final actions appointing candidates to

elective office must be open;

i. To discuss certain matters with legal counsel when public knowledge of the discussion is likely to result in adverse legal or financial consequences to the agency;

j. To discuss western library network prices, products, equipment and services, when public discussion would reduce the network's competitiveness, though final actions must be taken in public;

k. To consider, in the case of the State Investment Board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

l. To consider proprietary or confidential non-published information related to the development, acquisition, or implementation of state purchased healthcare services; and

m. To consider, in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

#### **B. Any other statutory requirements for closed or open meetings.**

Before convening an executive session, the presiding officer must publicly announce both the purpose for excluding the public and the time at which the executive session is to conclude. RCW 42.30.110(2). There is no similar requirement with respect to meetings to which the Act does not apply. Minutes are not required during closed or executive sessions; however, if such minutes are made they must be made promptly.

#### **C. Court mandated opening, closing.**

No decisions have mandated that specific future meetings be open or closed. Instead, the courts have ruled on numerous occasions that based on the facts before them closed meetings did or did not violate the Act. *See, e.g., Miller v. City of Tacoma*, 138 Wn.2d 318, 979 P.2d 429 (1999) (City Council members' informal balloting to fill commission position should have occurred in an open meeting instead of the closed executive session); *Protect the Peninsula's Future v. Clallam County*, 66 Wn. App. 671, 833 P.2d 406 (1992) (executive session was improper where review of shoreline permit application involved matter of substantial importance to the public); *Walla Walla Union-Bulletin v. Walla Walla County Comm'n*, 15 Media L. Rep. 1208 (1988) (closed commission meeting violated OPMA); *Port Townsend Publ'g Co. v. Brown*, 18 Wn. App. 80, 567 P.2d 664 (1977) (no violation where closed session of county commission involved Comprehensive Employment and Training Act).

### **III. MEETING CATEGORIES -- OPEN OR CLOSED.**

#### **A. Adjudications by administrative bodies.**

Adjudications by state administrative bodies are generally covered by the APA and, therefore, are not covered by the OPMA. RCW 42.30.140(3). As a general rule, the fact-finding of such bodies is open, but the deliberations are closed.

#### **B. Budget sessions.**

Budget sessions are open to the public except those portions that might be closed because they involve sale, purchase or lease of public lands, negotiations of publicly bid contracts, or western library network prices.

#### **C. Business and industry relations.**

Presently, the only limitation is where the governing body is considering financial and commercial information pertaining to export trading companies.

#### **D. Federal programs.**

There is no limit in OPMA on public attendance at meetings to discuss federal programs.

#### **E. Financial data of public bodies.**

No limitation.

#### **F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

There is no express limitation other than on financial and commercial information pertaining to export trading companies. RCW 42.30.110(1)(e).

#### **G. Gifts, trusts and honorary degrees.**

No limitation; such discussions should be open.

#### **H. Grand jury testimony by public employees.**

Grand jury testimony is not covered by OPMA. However, such testimony is not generally open to the public. RCW 10.27.080, .090, .150.

#### **I. Licensing examinations.**

Meetings concerned with granting or denying a license are excluded from OPMA and, therefore, may be closed. *See* RCW 42.30.140. However, the fact-finding portion of such meetings often is open to the public.

#### **J. Litigation; pending litigation or other attorney-client privileges.**

An executive session may be held to discuss certain matters with legal counsel representing the agency when public knowledge of the discussion is likely to result in "adverse legal or financial consequence" to the agency. RCW 42.30.110(1)(i). Matters that may, for this reason, be discussed in closed session are those relating to agency enforcement actions and to present or potential litigation to which the agency, the governing body or a member acting in an official capacity is, or is likely to become, a party.

#### **K. Negotiations and collective bargaining of public employees.**

Negotiations and collective bargaining sessions, as well as grievance and contract interpretation meetings are excluded from OPMA. Also, meetings of the governing body itself to consider the strategy or position to be taken by such body during the course of collective bargaining or negotiations are not subject to any provision of the Act. *See* RCW 42.30.140.

#### **L. Parole board meetings, or meetings involving parole board decisions.**

The state Board of Prison Terms and Paroles has adopted rules stating that all Board proceedings are open to the public, unless the Board states on the record "a good cause" for denying access to observers, including members of the press.

#### **M. Patients; discussions on individual patients.**

There is no specific exemption for such meetings if they involve the governing body.

#### **N. Personnel matters.**

Personnel matters, as a rule, must be discussed in open session. However, an agency may close a meeting to receive and evaluate complaints or charges brought against a public officer or employee or to evaluate qualifications of an applicant for public employment or to review the performance of a public employee, unless the employee requests that the meeting be open. However, final action on hiring, setting salaries, or discharging or disciplining any employee must occur in a public meeting. *See* RCW 42.30.110(1)(f) and (g).

## O. Real estate negotiations.

An agency may close a meeting of the governing body to consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding consideration likely would increase the price. Similarly, a public agency may close a meeting of the governing body to consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding the considerations likely would lower the price. *See* RCW 42.30.110(1)(b) and (c).

## P. Security, national and/or state, of buildings, personnel or other.

An agency may close a meeting to consider matters “affecting national security.” RCW 42.30.110(1)(a).

## Q. Students; discussions on individual students.

There is no basis for closing a meeting to discuss an individual student. Moreover, meetings of a student board which is the governing body of the recognized student association of a campus of a public institution of higher education must conform to the requirements of the Act. RCW 42.30.200.

## IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

### A. When to challenge.

There is no specific statutory requirement as to when a closed meeting must be challenged. Therefore, the normal statute of limitations of two years and the doctrine of laches probably apply.

### B. How to start.

Although it is not required by the Act, a reporter should probably make an oral protest and urge the agency to keep a meeting open. The reporter might ask the governing body to take a vote as to whether or not to close the meeting, or to allow sufficient time for the reporter to contact an editor or lawyer to further present arguments to the governing body.

#### 1. Where to ask for ruling.

##### a. Administrative forum.

### C. Court review of administrative decision.

#### 1. Who may sue?

If such efforts are futile, or if the reporter does not want to take such steps, the reporter or news media organization may bring a suit in the local county court. RCW 42.30.120, .130.

#### 2. Will the court give priority to the pleading?

Such matters are not given any priority on the court calendar by statute; however, as a practical matter, most courts will hear the matter on short notice, provided no jury is requested.

#### 3. Pro se possibility, advisability.

*Pro se* actions may be brought if an individual has a basic knowledge of court pleadings and procedure. Usually it is much more efficient to have an attorney initiate the action; however, if time is not of the essence, a *pro se* litigant can probably handle a matter. Since much of the argument will revolve around statutory construction, a large amount of legal research is not necessary. *Pro se* litigants, however, must be aware that they may be liable for attorneys’ fees if they lose and the court finds that their action was frivolous. RCW 42.30.120(2).

#### 4. What issues will the court address?

Not specified.

#### 5. Pleading format.

Not specified.

## 6. Time limit for filing suit.

Not specified.

## 7. What court.

Suit may be brought in the local county court. RCW 42.30.120, .130.

## 8. Judicial remedies available.

The court may void any final actions taken at the meeting, if the governing body failed to comply with the OPMA. The court also may enjoin prospective or future violations. However, where there is no evidence that the agency will hold another meeting in violation of the OPMA, injunctive relief is not appropriate. *Protect the Peninsula’s Future v. Clallam County*, 66 Wn. App. 671, 677, 833 P.2d 406 (1992).

## 9. Availability of court costs and attorneys’ fees.

A successful litigant challenging the agency’s closure may obtain attorneys’ fees and costs. RCW 42.30.120(2).

## 10. Fines.

The court may assess a civil penalty of \$100 against each member of the governing body of the agency who attended the meeting knowing it was in violation of the OPMA. RCW 42.30.120(1).

## D. Appealing initial court decisions.

### 1. Appeal routes.

If the reporter or news media organization is unsuccessful at the county court level, appeal may be taken to the state Court of Appeals and, from there, to the state Supreme Court.

### 2. Time limits for filing appeals.

Thirty days.

### 3. Contact of interested amici.

Interested *amici* can learn of open meeting issues that may be pending before the state Supreme Court by consulting published lists at the beginning of each court term. The lists, available on the court’s website, will contain the names of cases to be heard and the basic issues in those cases.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

## V. ASSERTING A RIGHT TO COMMENT.

The OPMA addresses the public’s right to observe, not to participate, in a public meeting. However, a member of the public shall not be required, as a condition to attend a meeting, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to attendance. RCW 42.30.040.

There is no right to participate, unless the agency has adopted rules requiring or permitting such participation.

If a meeting is interrupted by a person or a group so as to render the orderly conduct of the meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by a majority vote of the members. RCW 42.30.050. However, representatives of the press or other news media, except those participating in the disturbance, shall not be removed and may attend any session held after members of the public have been excluded due to disruption. *Id.*

## Statute

### Open Records

*Revised Code of Washington*

*Title 42. Public Officers and Agencies*

#### *42.56.001. Finding, purpose*

The legislature finds that chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of chapter 274, Laws of 2005 is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records.

#### *42.56.010. Definitions (Effective until January 1, 2012)*

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "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.

(2) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(3) "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.

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(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

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#### *42.56.020. Short title*

This chapter may be known and cited as the public records act.

#### *42.56.030. Construction*

(1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed.

#### *42.56.050. Invasion of privacy, when*

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

#### *42.56.060. Disclaimer of public liability*

No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

#### *42.56.070. Documents and indexes to be made public*

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of \*subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain

a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public

inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

#### *42.56.080. Facilities for copying—Availability of public records*

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

#### *42.56.090. Times for inspection and copying—Posting on web site*

Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives for a minimum of thirty hours per week, except weeks that include state legal holidays, unless the person making the request and the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives or its representative agree on a different time. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice.

#### *42.56.100. Protection of public records—Public access*

Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the

house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

#### *42.56.110. Destruction of information relating to employee misconduct*

Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW 41.06.450, to the extent necessary to ensure fairness to the employee.

#### *42.56.120. Charges for copying*

No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.

#### *42.56.130. Other provisions not superseded*

The provisions of RCW 42.56.070(7) and (8) and 42.56.120 that establish or allow agencies to establish the costs charged for photocopies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records.

#### *42.56.140. Public records exemptions accountability committee*

(1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007. The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate.

#### *42.56.210. Certain personal and other records exempt*

(1) Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

#### *42.56.230. Personal information*

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(5) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(6) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

#### *42.56.240. Investigative, law enforcement, and crime victims*

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) The statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165; and

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address.

#### *42.56.250. Employment and licensing*

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security

numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment;

(6) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025;

(7) Except as provided in \*RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under \*RCW 47.64.220(1) and described in \*RCW 47.64.220(2); and

(8) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030.

#### *42.56.260. Real estate appraisals*

Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, are exempt from disclosure under this chapter. In no event may disclosure be denied for more than three years after the appraisal.

#### *42.56.270. Financial, commercial, and proprietary information*

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

- (7) Financial and valuable trade information under RCW 51.36.120;
- (8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;
- (9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;
- (10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;
- (b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card gaming licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;
- (11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;
- (12)(a) When supplied to and in the records of the \*department of community, trade, and economic development:
- (i) Financial and proprietary information collected from any person and provided to the \*department of community, trade, and economic development pursuant to RCW 43.330.050(8); and
- (ii) Financial or proprietary information collected from any person and provided to the \*department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;
- (b) When developed by the \*department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;
- (c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;
- (d) If there is no written contact for a period of sixty days to the \* department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;
- (13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;
- (14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;
- (15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;
- (16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;
- (17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;
- (b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business; and

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information.

#### *42.56.280. Preliminary drafts, notes, recommendations, intra-agency memorandums*

Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action.

#### *42.56.290. Agency party to controversy*

Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

#### *42.56.300. Archaeological sites*

(1) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites are exempt from disclosure under this chapter.

(2) Records, maps, and other information, acquired during watershed analysis pursuant to the forests and fish report under RCW 76.09.370, that identify the location of archaeological sites, historic sites, artifacts, or the sites of traditional religious, ceremonial, or social uses and activities of affected Indian tribes, are exempt from disclosure under this chapter in order to prevent the looting or depredation of such sites.

#### *42.56.310. Library records*

Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter.

#### *42.56.320. Educational information*

The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;

(3) Individually identifiable information received by the workforce training and education coordinating board for research or evaluation purposes;

(4) Except for public records as defined in RCW 40.14.010, any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents; and

(5) The annual declaration of intent filed by parents under RCW 28A.200.010 for a child to receive home-based instruction.

*42.56.330. Public utilities and transportation*

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a van-pool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety.

(a) This information may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identicaid that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

*42.56.335. Public utility districts and municipally owned electrical utilities—Restrictions on access by law enforcement authorities*

A law enforcement authority may not request inspection or copying of records of any person who belongs to a public utility district or a municipally owned electrical utility unless the authority provides the public utility district or municipally owned electrical utility with a written statement in which the

authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this section is inadmissible in any criminal proceeding.

*42.56.340. Timeshare, condominium, etc. owner lists*

Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department are exempt from disclosure under this chapter.

*42.56.350. Health professionals*

(1) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health is exempt from disclosure under this chapter. The exemption in this section does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations.

(2) The current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department are exempt from disclosure under this chapter, if the provider requests that this information be withheld from public inspection and copying, and provides to the department of health an accurate alternate or business address and business telephone number. The current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department of health shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.56.070(9).

*42.56.360. Health care*

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(g) Information obtained by the department of health under chapter 70.225 RCW;

(h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150;

(i) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under RCW 70.168.150(2)(b); and

(j) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as “exempt” so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.

#### 42.56.370. Domestic violence program, rape crisis center clients

Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030 are exempt from disclosure under this chapter.

#### 42.56.380. Agriculture and livestock

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department’s programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer’s production information;

(6) Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW 15.19.080;

(7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW 15.17.140(2) and 15.17.143;

(8) Financial statements obtained under RCW 16.65.030(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

#### 42.56.390. Emergency or transitional housing

Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043 are exempt from disclosure under this chapter.

#### 42.56.400. Insurance and financial institutions

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims’ compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) “Claimant” has the same meaning as in RCW 48.140.010(2).

(b) “Health care facility” has the same meaning as in RCW 48.140.010(6).

(c) “Health care provider” has the same meaning as in RCW 48.140.010(7).

(d) “Insuring entity” has the same meaning as in RCW 48.140.010(8).

(e) “Self-insurer” has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140(3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court; and

(18) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010.

#### 42.56.403. *Property and casualty insurance statements of actuarial opinion*

Documents, materials, and information obtained by the insurance commissioner under RCW 48.05.385(2) are confidential and privileged and not subject to public disclosure under this chapter.

#### 42.56.410. *Employment security department records, certain purposes*

Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter.

#### 42.56.420. *Security*

The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities; and

(5) The \*security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180.

#### 42.56.430. *Fish and wildlife*

The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data may be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040; and

(4) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b)).

#### 42.56.440. *Veterans' discharge papers—Exceptions*

(1) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents are exempt from disclosure under this chapter. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(2) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been

commingled with other records are exempt from disclosure under this chapter, if the veteran has recorded a “request for exemption from public disclosure of discharge papers” with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran’s next of kin, a deceased veteran’s properly appointed personal representative or executor, a person holding the veteran’s general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(3) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran’s next of kin, a deceased veteran’s properly appointed personal representative or executor, a person holding the veteran’s general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(4) For the purposes of this section, next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran’s widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

#### *42.56.450. Check cashers and sellers licensing applications*

Information in an application for licensing or a small loan endorsement under chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter.

#### *42.56.460. Fireworks*

All records obtained and all reports produced as required by state fireworks law, chapter 70.77 RCW, are exempt from disclosure under this chapter.

#### *42.56.470. Correctional industries workers*

All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter.

#### *42.56.480. Inactive programs*

Information relating to the following programs and reports, which have no ongoing activity, is exempt from disclosure under this chapter:

(1) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under \*RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter;

(2) Personal information in files maintained in a database created under \*\* RCW 43.07.360; and

(3) Data collected by the department of social and health services for the reports required by section 8, chapter 231, Laws of 2003, except as compiled in the aggregate and reported to the senate and house of representatives.

#### *42.56.510. Duty to disclose or withhold information—Otherwise provided*

Nothing in RCW 42.56.250 and 42.56.330 shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

#### *42.56.520. Prompt responses required*

Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency’s web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then

the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (4) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

#### *42.56.530. Review of agency denial*

Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section.

#### *42.56.540. Court protection of public records*

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination 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. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

#### *42.56.550. Judicial review of agency actions*

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct

a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

#### *42.56.560. Application of RCW 42.56.550*

The procedures in RCW 42.56.550 govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives.

#### *42.56.565. Inspection or copying by persons serving criminal sentences—Injunction*

(1) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(2) In deciding whether to enjoin a request under subsection (1) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(3) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

(4) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

#### *42.56.570. Explanatory pamphlet*

(1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.56.010, addressing the following subjects:

(a) Providing fullest assistance to requestors;

(b) Fulfilling large requests in the most efficient manner;

(c) Fulfilling requests for electronic records; and

(d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule.

#### *42.56.580. Public records officers*

(1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications.

#### *42.56.590. Personal information—Notice of security breaches*

(1)(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) For purposes of this section, "agency" means the same as in RCW 42.56.010.

(2) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, “breach of the security of the system” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, “personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(a) Social security number;

(b) Driver’s license number or Washington identification card number;  
or

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

(6) For purposes of this section, “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section and except under subsection (8) of this section, notice may be provided by one of the following methods:

(a) Written notice;

(b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or

(c) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) E-mail notice when the agency has an e-mail address for the subject persons;

(ii) Conspicuous posting of the notice on the agency’s web site page, if the agency maintains one; and

(iii) Notification to major statewide media.

(8) An agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(9) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(10)(a) Any customer injured by a violation of this section may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(d) An agency shall not be required to disclose a technical breach of the security system that does not seem reasonably likely to subject customers to a risk of criminal activity.

#### 42.56.600. Mediation communications

Records of mediation communications that are privileged under chapter 7.07 RCW are exempt from disclosure under this chapter.

#### 42.56.610. Certain information from dairies and feedlots limited—Rules

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated

animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

#### 42.56.900. Purpose—2005 c 274 §§ 402-429

The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in RCW 42.17.310 through 42.17.31921 by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change to any public inspection and copying exemption in the Revised Code of Washington.

#### 42.56.901. Part headings not law—2005 c 274

Part headings used in this act are not any part of the law.

#### 42.56.902. Effective date—2005 c 274

This act takes effect July 1, 2006.

#### 42.56.903. Effective date—2006 c 209

This act takes effect July 1, 2006.

#### 42.56.904. Intent—2007 c 391

It is the intent of the legislature to clarify that no reasonable construction of chapter 42.56 RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney’s mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public’s interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

Current through Laws 2011, chapters 1 and 2

## Open Meetings

#### 42.30.010. Legislative declaration

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people’s business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which 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 retain control over the instruments they have created.

#### 42.30.020. Definitions

As used in this chapter unless the context indicates otherwise:

(1) “Public agency” means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute,

other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) “Governing body” means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) “Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) “Meeting” means meetings at which action is taken.

#### *42.30.030. Meetings declared open and public*

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

#### *42.30.040. Conditions to attendance not to be required*

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

#### *42.30.050. Interruptions—Procedure*

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

#### *42.30.060. Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited*

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an “action” under this chapter.

#### *42.30.070. Times and places for meetings—Emergencies—Exception*

The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided

for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.

#### *42.30.075. Schedule of regular meetings—Publication in state register—Notice of change—“Regular” meetings defined*

State agencies which hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January of each year for publication in the Washington state register. Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date.

For the purposes of this section “regular” meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

#### *42.30.080. Special meetings*

A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body; and to each local newspaper of general circulation and to each local radio or television station which has on file with the governing body a written request to be notified of such special meeting or of all special meetings. Such notice must be delivered personally, by mail, by fax, or by electronic mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the governing body a written waiver of notice. Such waiver may be given by telegram, by fax, or electronic mail. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

#### *42.30.090. Adjournments*

The governing body of a public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

*42.30.100. Continuances*

Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or reconvened to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW 42.30.090 for the adjournment of meetings.

*42.30.110. Executive sessions*

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

*42.30.120. Violations—Personal liability—Penalty—Attorney fees and costs*

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. Pursuant to RCW 4.84.185, any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

*42.30.130. Violations—Mandamus or injunction*

Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body.

*42.30.140. Chapter controlling—Application*

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collec-

tive bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

*42.30.200. Governing body of recognized student association at college or university—Chapter applicability to*

The multimember student board which is the governing body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, “recognized student association” shall mean any body at any of the state’s colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state’s colleges and universities: PROVIDED, That there be no more than one such association representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state’s colleges or universities.

*42.30.210. Assistance by attorney general*

The attorney general’s office may provide information, technical assistance, and training on the provisions of this chapter.

*42.30.900. Short title*

This chapter may be cited as the “Open Public Meetings Act of 1971”.

*42.30.910. Construction—1971 ex.s. c 250*

The purposes of this chapter are hereby declared remedial and shall be liberally construed.

*42.30.920. Severability—1971 ex.s. c 250*

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.











































































































































