

PUBLIC RECORDS ACT OVERVIEW

ANN MARIE SOTO
AWC RMSA MEMBER PRA TRAINING SERIES
JANUARY 20, 2022



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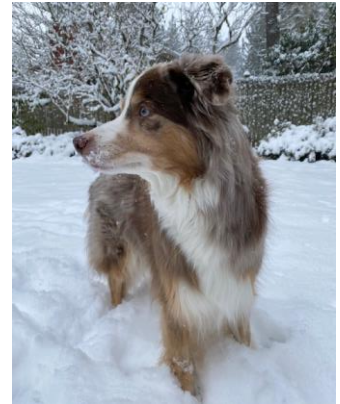
Overview

- What is the PRA and why should you care?
- History of the PRA
- Sources of authority
- Local government responsibilities and challenges under the PRA
- Understanding the definition of "public record"
- Records retention
- Risk management strategies for PRA and takeaways
- Additional resources



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Gus and Henrik



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What is the PRA and why should I care?

The PRA is "a strongly worded mandate for broad disclosure of public records to ensure "full access to information concerning the conduct of government on every level," while remaining "[m]indful of the right of individuals to privacy."

Bellevue John Does 1-11 v. Bellevue School Dist. #405, 164 Wn.2d 199 (2008).

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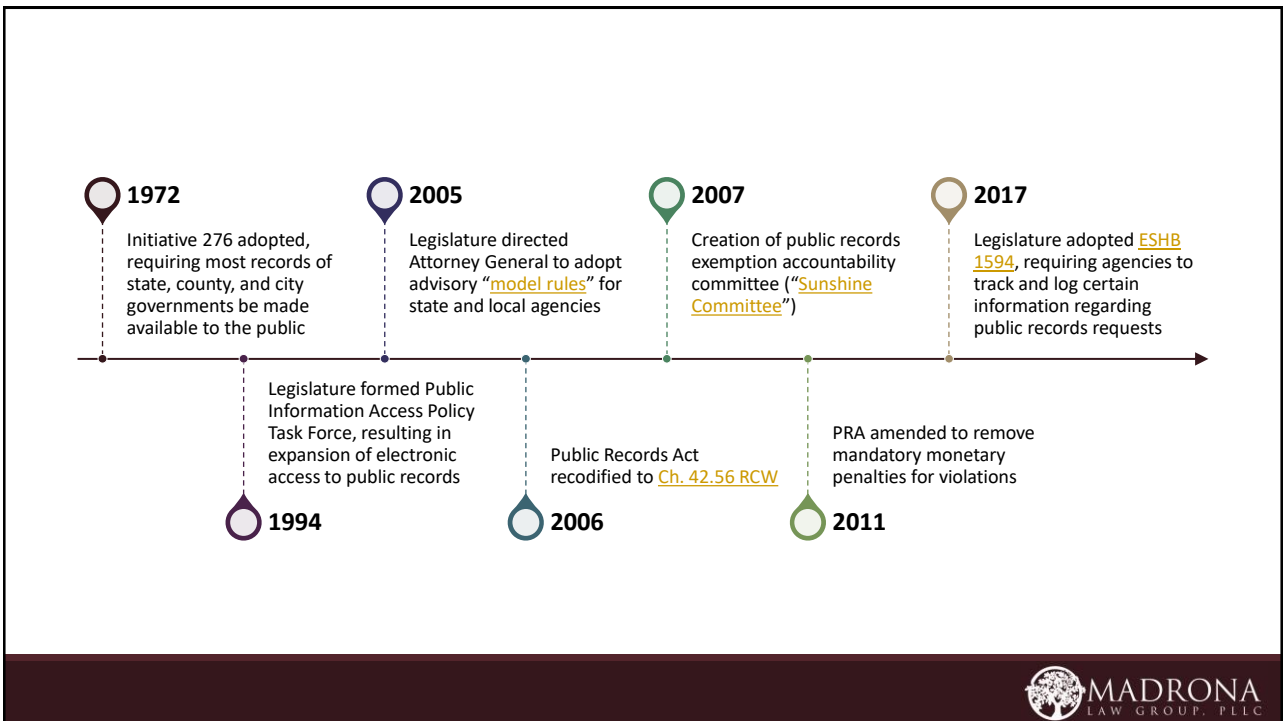
Blah blah
blah...
So what?



- PRA requires agencies to make public records available for inspection and copying
- PROs and elected officials required to complete PRA training (and refresher training) within 90 days of assuming duties
- Important for all agency employees and officials to be familiar with the PRA and use consistent procedures when dealing with PRRs
- PRA violations (even inadvertent ones) can come with hefty penalties
- Staying apprised of PRA and record requirements may help avoid litigation, or better prepare for litigation that may arise

History of the PRA

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Sources of Authority

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Statutes, Regulations, and Other Records- Related Authority

- Public Records Act, [Chapter 42.56 RCW](#)
- Model Rules, [Chapter 44-14 WAC](#)
- Preservation and Destruction of Public Records, [Chapter 40.14 RCW](#)
- [Freedom of Information Act](#) (“FOIA”)
 - Note: WA Courts will often look to FOIA and related Federal case law when interpreting similar provisions and issues under the PRA
- Exemptions in PRA and other WA statutes (list maintained by Sunshine Committee): [Public Disclosure Exemptions 2021.pdf](#)
- United States and Washington Constitutions
- Case law



Local government responsibilities and challenges

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Agency Responsibilities

- Adopt and publish a PRA policy (RCW 42.56.040 and 42.56.100)
- Appoint and publicly identify a Public Records Officer (PRO) (RCW 42.56.580)
- Ensure PRO and all members of agency's governing bodies complete PRA training (RCW 42.56.150 and 42.56.152)
 - PRO training also to include training on retention, production, and disclosure of electronic documents, including updating and improving IT systems
- Publish and maintain a list of exemptions outside of the PRA (RCW 42.56.070(2))
- Maintain a public records index (RCW 42.56.070(4))
- Adopt a public records fee schedule (RCW 42.56.120)
- Track, log, and report public records request information to JLARC (RCW 40.14.026)

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JLARC Tracking Requirements – All Agencies

Must track and log the following information regarding public records requests:

- **Identity of requestor (if provided)**
- **Date and text of request**
- **Description of records produced in response to request**
- **Description of records redacted or withheld and the reasons for redaction/withholding**
- **Date of final disposition of the request.**

RCW 40.14.026(4)



JLARC Reqs – Agencies w/ \$100k+ Costs*

Must also track and report the following to JLARC by July 1 each year:

- No. of PRRs where the agency provided the requested records within 5 days of receiving the request;
- No. of PRRs where the agency provided a time estimate beyond 5 days after receiving the request;
- The average and median number of days from receipt of request to the date the request is closed;
- No. of PRRs where the agency sought clarification from the requestor;
- No. of PRRs denied in full or in part and the most common reasons for denying requests;
- No. of requests abandoned by requestors;
- PRRs by type of requestor, if known;
- Which portion of PRRs were fulfilled electronically compared to requests fulfilled by physical records;
- No. of PRRs where the agency scanned physical records electronically to fulfill disclosure;
- Total estimated agency staff time spent on each individual PRR;
- Estimated costs incurred by the agency in fulfilling PRRs, including costs for staff compensation and legal review, and a measure of the average cost per request;
- No. of claims filed alleging public records violations involving the agency, categorized by type and exemption at issue, if applicable;
- Public records litigation costs incurred, including any penalties imposed;
- Records management and retention costs, including staff compensation and purchases of equipment, hardware, software, and services; and
- Expenses recovered from requestors for fulfilling PRRs, including any customized service charges.

RCW 40.14.026(5)
*Optional for agencies with costs under \$100k



Common Challenges Faced by Agencies

- Keeping up with technology
 - Ensuring agency has a way to capture/retain public records created on new technology/programs (ex. Zoom chats, Slack, texts, etc.)
- Funding/staffing levels
- Dealing with serial or difficult requestors
- Maintaining consistent documentation
- Maintaining public records held by third-parties (consultants/contractors, agency volunteers, etc.)



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Understanding the definition of “public record”

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“Public record” is broadly defined:

“[I]ncludes 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.”

- Includes email, paper files, recordings, web content.
- Includes public records created on **personal electronic devices or non-agency email accounts.**
- May include social media posts.

RCW 42.56.010(3)



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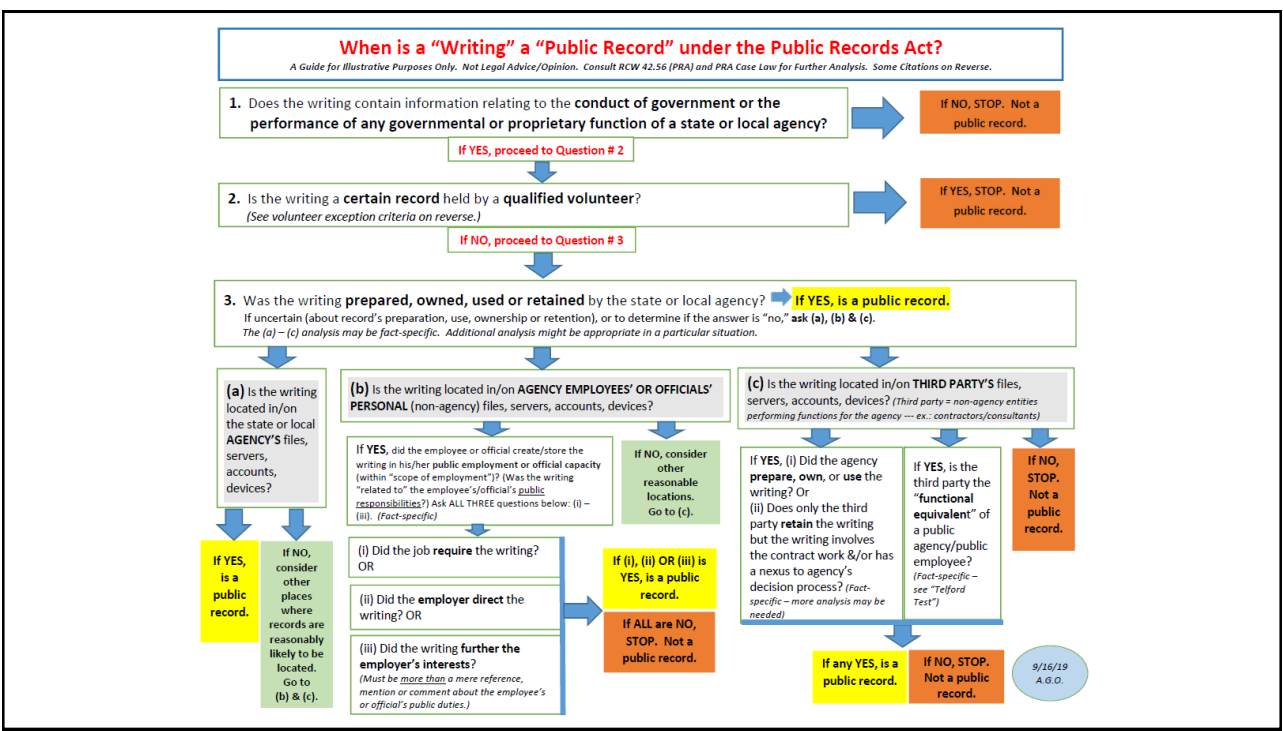
Records don't just look like this anymore...



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	A	B	C	D	E	F	G	H
2			Stock A	Stock B	Stock C	Stock D	Stock E	Stock F
3	Stock's quantity	1000	1205	1145	1201	1105	1115	
4	Price per stock	3.45	3.5	3.6	3.7	3.8	3.9	
5	Current profit	3,450.00	4,217.50	4,122.00	4,443.70	4,199.00	4,348.50	
7								
8	Wished profit	4,690.00	4,690.00	4,690.00	4,690.00	4,690.00	4,690.00	
9		4,920.00	5,120.00	4,920.00	5,120.00	4,920.00	5,120.00	
10		5,120.00	5,320.00	5,120.00	5,320.00	5,120.00	5,320.00	
11		5,320.00	5,520.00	5,320.00	5,520.00	5,320.00	5,520.00	
12		5,520.00	5,720.00	5,520.00	5,720.00	5,520.00	5,720.00	

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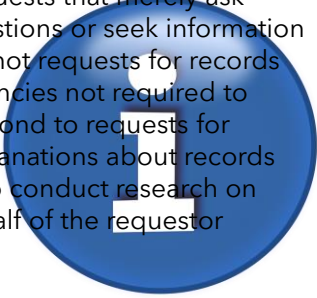


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Requests for Records vs. Information

- Records defined as 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 public agency regardless of physical form or characteristics
- Record must be "identifiable," meaning one that is existing at the time of the request and which agency staff can reasonably locate

- Requests that merely ask questions or seek information are not requests for records
- Agencies not required to respond to requests for explanations about records or to conduct research on behalf of the requestor



RCW 42.56.010(3); RCW 42.56.080; WAC 44-14-04002(2)



Identifiable Public Records

May 24, 2014

Attn: Human Resources

I would like to know how the city handles employment discrimination claims. Please advise at your earliest convenience.

Ann Smith

To: City Clerk

Date: June 1, 2014

I would like to receive a copy of the city's policy for handling employment discrimination claims.

Thank you.

Paul Jones

The first request is for information.
The second request is for an "identifiable public record."





Retaining Public Records

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Records Retention, Ch. 40.14 RCW

- Records must be retained per the *Local Government Record Retention Schedule* from Washington State Archives.
- After retention period has expired, then records should either be:
 - **Transferred to state archives to protect state history**
 - i.e. project files (after 6 years), maps and photographs, press releases, public opinion polls, speeches (after they have served local use).
 - **Destroyed after they meet retention to reduce PRA workload**
 - i.e. calendars (2 years), citizen complaints (3 years), contracts (6 years after completion), foreclosures (10 years after resolution).

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Focus on Electronic Records

- **Websites are records.** Agencies must keep a copy of previous web site when updating. WAC 434-662-140
- **Create clear electronic records.** WAC 434-662-150
 - Emails on agency business are public records.
 - Save agency business-related e-mails separately from private email accounts or personal devices to agency servers.
 - Use descriptive subject lines.
 - Shorten e-mail strings and limit cc's.
 - Limit volume of records (delete unimportant emails with no retention value, don't "Reply-all").



Relationship Between PRA and Records Retention

- PRA requires agencies to provide access to records in existence at the time a request is made; if the records no longer exist, then there are no records to provide. This would not be a violation of the PRA.
- If the agency receives a PRR for a record *before* the record is set for destruction, the agency has a duty not to destroy the record until it provides a copy to the requestor. (RCW 42.56.100)
- Must retain records documenting the public records provided to the requestor (either copies of the record itself or a list) for 2 years after the request has been fulfilled. (See Ch. 40.14 RCW)
- Underlying records must be retained per retention schedules
- If responsive records are found after closing a PRR, the agency should provide them to the requestor ASAP. (WAC 44-14-040(13); WAC 44-14-04003(13); WAC 44-14-04007)

We're almost done!!



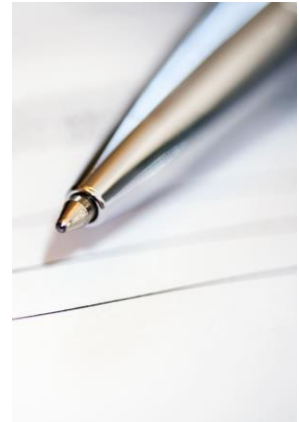
Risk Management Strategies & Takeaways

- **Stay current on changes** to the PRA, records, and technology.
- **Establish a culture of compliance** starting with agency leadership.
- **Know the law.** Ensure staff and officials are trained about PRA requirements and how to respond to records requests.
- Be mindful of what you put in writing! **Avoid making records** you don't want to see on the front page of the paper.
- **Documentation** and **communication** are KEY!
- **Protect records.** Ensure systems are in place to file, track, retrieve and preserve records, especially with staff changes.
 - **Retain important records** by transferring them to State Archives.
 - **Promptly destroy records** that have met their retention schedule.
- **When in doubt**, contact your legal counsel, RMSA, MRSC, or [Washington AG's Local Government PRA Consultation Program](#).

Final Note...

Remember: RMSA continues to offer pre-litigation assistance with new public records requests at no cost to members.

Contact RMSAClaims@awcnet.org for assistance or more information



Additional Resources

Records retention and destruction

Washington State Archives site—Records Management:
<http://www.sos.wa.gov/archives/RecordsManagement/>

On-line training course for public officials (Washington State Archives):
<http://www.sos.wa.gov/archives/RecordsManagement/PublicOfficialsandPublicRecords/index.html>

Public Records Act

Washington State Attorney General's video on the PRA:
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx#.UyDPOfldWqs>

Washington State AG's Local Government PRA Consultation Program:
<http://www.atg.wa.gov/prc-consulting-program>

MRSC publication: "Knowing the Territory: Basic Legal Guideline for Washington City, County and Special Purpose District Officials":
<http://www.mrsc.org/publications/ktt13.pdf>

MRSC publication: "Public Records Act for Washington Cities, Counties and Special Purpose Districts":
<http://www.mrsc.org/publications/prc13.pdf>

Washington Coalition for Open Government—Public Records Act information: <http://www.washingtoncog.org/searchpr.php>

JLARC: [Joint Legislative Audit & Review Committee Joint Legislative Audit & Review Committee \(wa.gov\)](http://www.jlarc.org)



MARK YOUR CALENDARS!

RMSA PRA Training Series Part 2: Thursday, February 17, 2022, 10AM

Responding to Public Records Requests - Deep Dive for Public Records Officers and Key Records Personnel



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Questions?

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