

June 25, 2025

Public Records

Refresher and Update



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*Assisting local
governments with PRA
best practices.*

Technical Assistance
Training – Risk Mitigation

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But first a word from our Attorneys...

This material is for informational purposes only and is not intended as legal advice, nor as a substitute for the legal advice of an attorney. You should contact your own legal counsel if you have a question regarding your legal rights or any other legal issue.



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Agenda

Foundation

Recurring and Emerging Issues

Trends

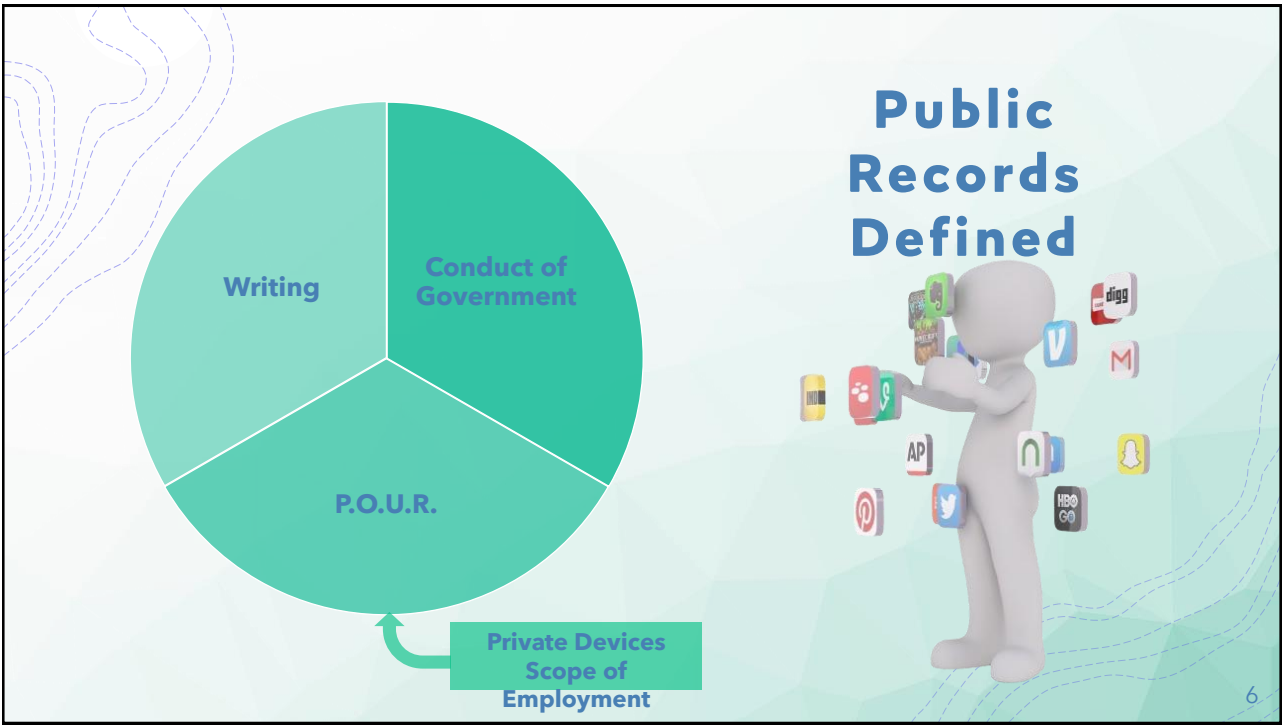


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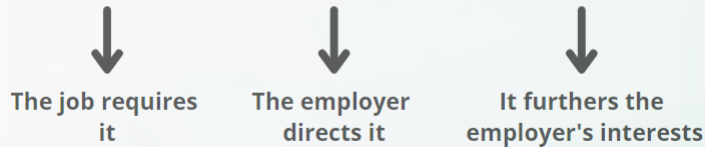


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PERSONAL DEVICES & ACCOUNTS

Includes - personal cell phones, text messages, email accounts, and social media accounts.

Scope of Employment

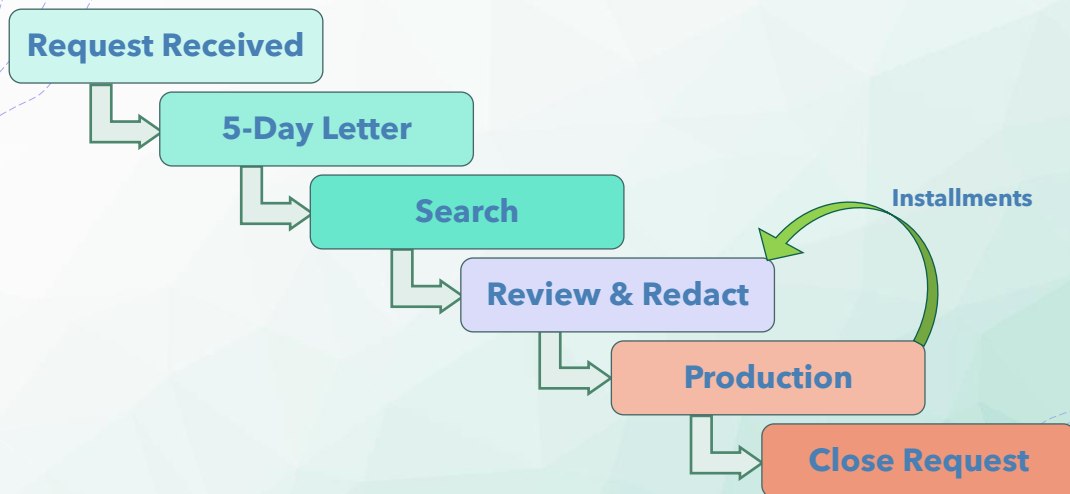


The public employee must obtain, segregate and produce to the employer those public records that are responsive to a PRA request from the employee's personal accounts, files, and devices.

Bottom Line

Records belong to the agency. They are not personal records.

The Public Records Production Process – Start to Finish –



Requester Identity and Use of the Records

- Treat all requesters the same.
- Does not mean they all get the same records. *City of Fife v. Hicks*, 186 Wn. App. 122, 345 P.3d 1 (2015).
- While the default is neutrality, identity of the requester may matter.
E.g. Student Records, News Media, Commercial Purpose, Juvenile Justice Records...
- "Why do they want the records? What are they going to do with them?"
Generally, does not matter.
Commercial Purpose as an Exception.

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Introduction to Proton.me

Based out of Switzerland.
Offers encrypted email service.

**Secure email that
protects your privacy**

Keep your conversations private with Proton Mail, an encrypted email service based in Switzerland.

<https://proton.me/mail>

Initially, Proton mail relied on crowdfunding with use restricted to invited individuals. In 2016 it was opened to the public with more than 70 million users by 2022. It offers a free plan which is supported by paid subscriptions offering extra features and storage.

Proton mail is an email address. Requesters may submit requests anonymously.
Agencies shall not distinguish among persons requesting records.
An anonymous request may implicate exemption determination.

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Recurring and Emerging PRA Issues



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Wash. State Supreme Court “Our Role in PRA Cases”

Cousins v. Department of Corrections, 3 Wn.3d 19, 546 P.3d 415
(2024)

“We must promote a culture of compliance among agencies and a culture of cooperation among requesters.”

DOC Started From a Deficit Position

“[T]he inaccuracies in DOC's internal file concerning the identity of the requester and Cousins' payment history caused significant confusion for the records specialist who took over after Izatt, to Cousins' detriment.”

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Required Components of a Closing Letter

- A) How the PRA request was fulfilled and why the agency is now closing the request,
- B) That the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and
- C) That the requester may ask follow-up questions within a reasonable time frame.

Cousins v. Department of Corrections, 3 Wn.3d 19, 546 P.3d 415 (2024)

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PRA Issues with Automated License Plate Readers

flock safety

Eliminate Crime
in Your
Community

To solve and eliminate crime – you need evidence. Protect your community, business or school SAC with coverage that never sleeps. Empower your law enforcement agency to solve crime faster with Flock's city-wide safety platform.



KOMONEWS

Use of Flock Safety cameras growing across western Washington, raising privacy concerns

HeraldNet
EVERETT, WASHINGTON

Mountlake Terrace approves
Flock camera system after
public pushback

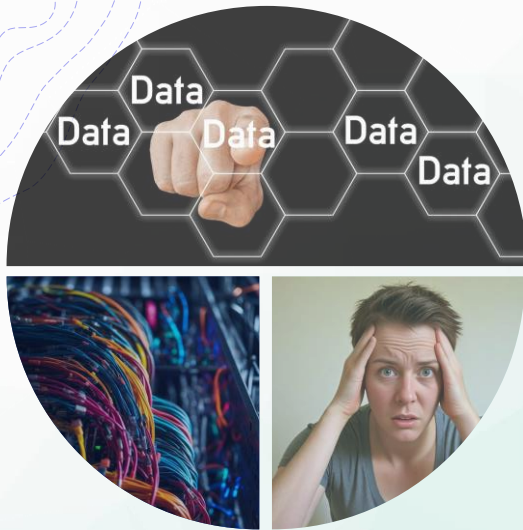
The council approved the \$54,000 license plate camera system agreement by a vote of 5-2.

KIMA

Yakima County Commissioners allocating
\$600K for flock cameras

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Shared Databases

- + Who's data is it?
- + P.O.U.R
- + Searching

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The "Draft" exemption - RCW



- + **There is no "Draft" exemption.**
- + **There is a deliberative process exemption.**
 - + **Temporarily provides an exemption to allow a full and robust discussion of a policy level issue.**
 - + **Protects discussion of decision makes and communication from other staff.**
 - + **Does not protect underlying factual records.**
 - + **A specific record is not exempt when publicly cited by an agency.**
 - + **Protection ends when decision is made.**
 - + **Does not apply to implementation records.**

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42.56.250(1)(i) – Domestic Violence, Stalking ... Survivor

What is Exempt: Any employee's name or other personally identifying information, including but not limited to birthdate, job title, addresses of work stations and locations, work email address, work phone number, bargaining unit, or other similar information, maintained by an agency in personnel-related records or systems, or responsive to a request for a list of individuals subject to the commercial purpose prohibition under RCW 42.56.070(8).

Employee Must provide:

- 1) Sworn statement under penalty of perjury; verified by the director or designee; that "they" are a survivor with reasonable basis to believe risk continues, OR
- 2) Proof of participation in the address confidentiality program under chapter 40.24 RCW.

Key Considerations:

- Applies if employee, or the dependent of the employee is the victim.
- Also protects all documentation maintained to administer the exemption.
- DOES NOT APPLY to records requests from the news media as defined in RCW 5.68.010(5). See *Green v. Pierce County*, 197 Wn.2d 841, 487 P.3d 499 (2021).

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Proton.me Requests

- + PRA Log
- + Records Index
- + PRO Identification
- + Commercial Purpose



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Trends



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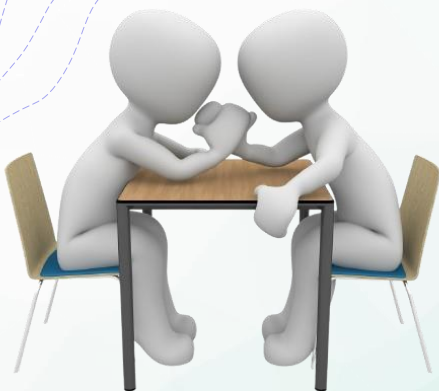
In PRA Challenges, Who Has the Burden of Proof

If an agency asserts an exemption, the agency must demonstrate the exemption is properly applied.

Searching for responsive records: the agency must show it conducted a reasonable search to locate responsive documents.

If not providing records within 5 business days, the agency must demonstrate that its estimate of time was reasonable.

In challenges for delay in the release of records, the agency must show that it was diligent in its efforts - **an objective standard from the viewpoint of the requester.**



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Communication Tips



Customer Service

Sufficient closing letters must be written in plain language targeted to a lay audience. (*Cousins*)

Write letters to accomplish a single purpose. The greater the number of contingencies, the greater the potential for confusion or misunderstanding.

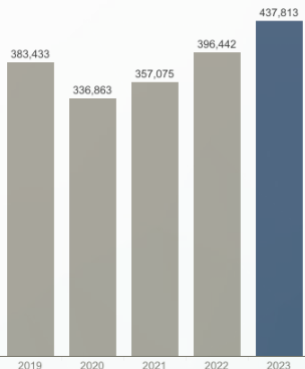
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PRA Request Statistics

Total requests received
(Jan. 1 - Dec. 31)



2023 – Select Data Points

- Cities/towns received the highest number of requests: 176,354 (40% of the statewide total).
- The most common requesters were individuals (40%), law firms (11%), and governments (11%).
- 33,196 (8%) requests required clarification from the requester.
- 10,260 (2%) requests were denied in full.
- 102,004 (23%) requests were partially denied or redacted.
- 24,337 (6%) requests were abandoned by the requester.

Agencies reported 78 court cases that were filed in 2023 alleging that an agency violated Chapter 42.56 RCW.

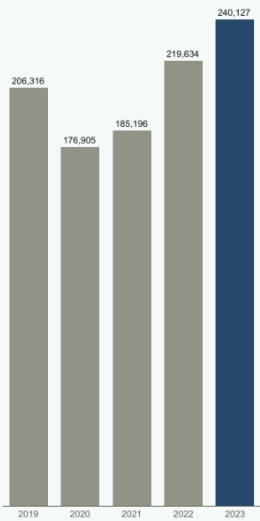
- 19 of the 78 (24% of statewide total) cases were filed against cities/towns.

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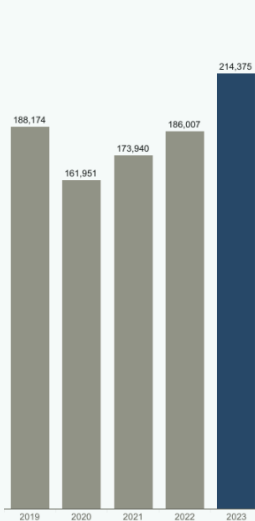
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Request Processing Time

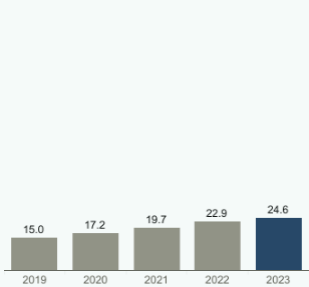
Metric 1 Number of requests closed within five days of receiving the request



Metric 2 Number of requests where an estimate beyond five days was provided



Metric 3
Average days to final disposition



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Thank You