



2008 Candidate Questionnaire

To complete the questionnaire, please save a copy of this document to your local disk drive. Open the copy, and insert your responses directly into the copy of the document. You can click on the boxes next to "Yes" or "No" to check and uncheck them, and click and type in the designated areas for additional comments. When you are finished and have verified your responses, save the file to your disk. Create an email message addressed to info@washingtoncog.org, and attach your modified copy of the questionnaire file to the email. Please send your completed questionnaire to the Coalition **no later than July 31, 2008**. By submitting this document to the Coalition, you give your consent for the Coalition to publish the information contained in your submitted document on the Coalition's internet web site, both in the form of the complete response file and in tabulated summary form.

Candidate Information

Information Sought	Response
Candidate Name	Dave Upthegrove
Office Sought	State Representative
District (if applicable)	33
Position Number (if applicable)	2
Incumbent (Yes or No)	Yes
Campaign Mailing Address	PO Box 13543, Des Moines, WA 98198
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Questions

In each of the sections beginning on the next page, an issue of current concern to open government advocates is explained, and a legislative change related to the concern is described. You are then asked if you would support such legislation. By "support", we mean that, assuming other details of the legislation are not inconsistent with your principles, you would sponsor, co-sponsor, vote for, request, sign, testify in favor of, or otherwise publicly support the legislation described. We invite you to elaborate on each answer, such as explaining the reasoning behind your position or any special insights you may have on the issue based on your personal background or experience.

1. Recording of Executive Sessions – The Open Public Meetings Act requires all meetings of the governing bodies of state and local agencies to be open to the public and announced in advance. However, the law allows the bodies to meet behind closed doors in an “executive session” for certain limited purposes, such as to consult with their attorney on litigation or to discuss the maximum price they are willing to pay for a parcel of land, so long as the purpose of the meeting is announced in advance and the secret discussion is limited to the announced allowed purpose. Legislation has been proposed that would require audio recordings to be kept of *all* executive sessions. The recordings would be exempt from disclosure under the Public Records Act and from subpoena or discovery in a lawsuit, unless a lawsuit is filed under the Open Public Meetings Act challenging the legality of the executive session and evidence is presented sufficient to convince a judge that a violation had likely occurred, in which case the recordings or minutes could be privately reviewed by the court. If the challenged executive session is found to have included improper discussions and all appeals are exhausted, the recording of only the portions of the meeting that should have been public would be disclosed.

Would you support such legislation? Yes No

Additional Comments: I was a co-sponsor in 2008

2. Attorney-Client Privilege – The 2004 state Supreme Court decision in *Hangartner v. City of Seattle* declared that the attorney-client privilege in RCW 5.60.060(2)(a) must be considered an exemption from the Public Records Act, in addition to the exemption in RCW 42.56.290 which allows only attorney-client communications associated with an active lawsuit to be withheld from disclosure. The result of this decision is that virtually all communication between government agencies and their attorneys can be kept secret, including routine communication not related to any actual or threatened lawsuit. Many citizens are concerned that this expansion blocks disclosure of a substantial amount of information necessary to hold government accountable. Legislation has been proposed that would restore the original intent of the Public Records Act with regard to communications between public sector attorneys and their clients, which is that communication between agencies and their attorneys is exempt from disclosure only in relation to an actual controversy (lawsuit) while the controversy remains pending in the courts.

Would you support such legislation? Yes No

Additional Comments:

3. Statute of Limitations and Penalties for Public Records Requests – When the Public Disclosure Act was originally adopted as an initiative to the people in 1972, the penalty for agencies failing to disclose documents was established as a range from \$5 to \$100 per document per day. This limit has never been increased to account for inflation. Because no other time limit was specified in the initiative, the normal statute of limitations for filing of civil actions (five years) applied to lawsuits under the law, meaning that penalties could accumulate for five years. During negotiations between stakeholders on a public records reform bill (HB 1758) prior to its introduction in 2005, the statute of limitations on filing of lawsuits related to public records requests was proposed to be reduced from five years to one year, at the same time the penalties were to be increased by five to ten times (up to a maximum of \$500 per document per day). During the legislative process, the increase in penalties was removed from the bill, but the reduction in the statute of limitations was retained, resulting in a net decrease in exposure to agencies of nearly 80%. A one-year statute of limitations has proven to be difficult for requesters, as it can take some time to negotiate with agencies after they initially deny a request and then to find an attorney willing to take a public records case.

Would you support legislation to restore the statute of limitations to a longer period, such as three years? Yes No

Would you support legislation to increase the maximum penalty from \$100 to \$500 per document per day, to account for inflation since the Public Disclosure Act was enacted? Yes No

Additional Comments: not sure if \$500 is the appropriate number, but I definitely support a significant increase

4. Penalties for Violation of the Open Public Meetings Act – The \$100 civil penalty per violation of the Open Public Meetings Act has not been increased since its enactment in 1971, while inflation since that time has been in excess of 600%, seriously eroding the impact of the penalty. Far too many officials appear to consider this penalty to be an acceptable risk and are hardly discouraged from engaging in illegal secret meetings. Legislation has been proposed that would increase the penalty for violations of the Open Public Meetings Act from \$100 to a range from \$250 to \$1000 depending on the degree of knowledge and willfulness of the violation.

Would you support such legislation? Yes No

Additional Comments:

5. Civil Penalties for Improper Destruction of Public Records – A recent court case found that because an agency had deleted emails that they should have retained, the records did not exist – and thus were not subject to disclosure under the Public Records Act and no penalties were due for failure to disclose them. Many open government advocates believe that this decision could encourage agencies to destroy records that they do not want disclosed. Existing law (RCW 40.16.010 and 40.16.020) creates stiff penalties – including imprisonment – for willfully destroying records, but prosecutors are reluctant to pursue criminal charges of destruction of records except in the most extreme cases. Legislation has been proposed requiring that records not otherwise exempt from disclosure which would have been available for inspection or copying but are not available because they were improperly destroyed, shall be deemed to have been improperly denied to any person seeking to inspect or copy such records, and the civil penalties and awarding of attorney fees and costs under the Public Records Act would apply.

Would you support such legislation? Yes No

Additional Comments: probably would support—will need more info

6. Public Employee Dates of Birth – Legislation has been proposed to amend the Public Records Act to exempt the birthdates of public employees from disclosure and require birthdates to be redacted from records that are released. Open government advocates opposed this legislation, arguing that birthdates are already widely available from a number of sources and no widespread identity theft has occurred as a result, and that the exemption of public employee birthdates from disclosure would make it much more difficult to match employee data to other lists to verify employee qualifications or disqualifications, such as lists of college graduates, licensees, felons, sex offenders, and a large number of other sources of investigation.

Would you support legislation that would exempt public employee dates of birth from disclosure under the Public Records Act? Yes No

Additional Comments: undecided

7. Pipeline Mapping Data – The explosion of a petroleum pipeline in Bellingham in 1999 raised awareness of many citizens to the potential danger posed by pipelines that run under our neighborhoods. In response to this explosion, laws were put in place at both the state and federal level requiring pipeline operators to provide detailed high-resolution map data enabling regulators to perform inspections and allowing the public to know, for the first time, technical details of pipelines that may impact on their homes and businesses. However, when access to this data was requested under the Public Records Act, the pipeline companies sued

to block its release, and also led an effort to pass legislation exempting the high-resolution map data from disclosure. The pipeline companies asserted that availability of the high-resolution data would provide information useful to terrorists intent on damaging pipelines to injure the public and disrupt the economy, even though the pipelines are well-marked and pass through remote areas that are infrequently monitored. The withholding of high-resolution map data from disclosure prevents experts associated with pipeline watchdog groups from independently verifying the safety measures needed to protect the public from events such as the Bellingham pipeline explosion and to verify that regulatory actions are consistent with the law. Permitting the withholding of this data in the name of “security” because it *might potentially* be useful to terrorists or in responding to terrorist acts would set a dangerous precedent that could permit other public records to be withheld from disclosure on the same basis.

Would you support legislation that would exempt high-resolution pipeline mapping data from disclosure under the Public Records Act? Yes No

Additional Comments:

8. Create an Independent Open Government Ombudsman – Legislation has been proposed that would create an independent open government ombudsman to provide information on public records and open public meetings to state and local agencies and the public, advocate on behalf of the public in obtaining public records from state and local agencies, maintain a web site to assist the public in obtaining information and public records, and prepare model employee orientation and training materials on open government principles for agencies and elected officials. Although the Attorney General has appointed an assistant attorney general to provide advice on open government issues who is given the title of “ombudsman”, this position is not truly independent; the fact remains that the primary mission of the Attorney General is to represent state agencies in legal actions, including defending agencies who claim exemption of public records from disclosure. This conflict of interest prevents an assistant attorney general from independently acting in the interest of protecting the public’s right to know. Several other states have already created independent open government ombudsmen to assist the public.

Would you support legislation creating an independent open government ombudsman in Washington, including funding for the office? Yes No

Additional Comments: seems like a good idea, but not sure where it will fit as budget priority in tough budget year

9. Require Electronic Records to Be Provided in Electronic Format if Requested – Most records and communications of public agencies today are in electronic form – email, databases, word processing documents, spreadsheets, and the like – and huge volumes of such data exist. Requests for copies of these records can sometimes result in production of the equivalent of tens of thousands of pages of information. Such volumes can still be useful to requesters if it is provided in electronic form so that it is easily searchable using commonly-available tools. Some agencies interpret the Public Records Act as allowing them to convert electronic records to paper form before providing them to requestors, such as to allow for redacting of exempt information. Creating the paper records is time consuming and expensive, and often of no practical use to the requestor because of the volume. With a minimum of training and with no special software, records can be duplicated electronically, exempt information redacted electronically, and the data provided to the requester quickly and at minimal cost. Legislation has been proposed to clarify that electronic records are required to be provided in electronic form if it can be done with commonly-available programming tools and media. Agencies would not be permitted to convert records to paper form simply for convenience of redaction or to enable them to establish a per-page copying charge. Agencies would be required to provide data as email attachments when possible, so as to avoid the need to charge for media for mailing.

Would you support such legislation? Yes No

Additional Comments:

10. Priority Issues and Legislative Agenda – The Washington Coalition for Open Government publishes a legislative agenda before each session and identifies the highest-priority open government issues.

Will you commit to supporting the Coalition position on each of the identified priority issues? Yes No

Additional Comments: I agree with the values of the coalition and am very likely to support most, if not all, of your identified priority issues.

Thank You for Your Service!