



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	Mark Richard
Office Sought	Spokane County Commissioner
District (if applicable)	District 2
Position Number (if applicable)	
Incumbent (Yes or No)	Yes
Campaign Mailing Address	P.O.Box 141441; Spokane Valley, WA 99214
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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 certainly support open government, however I have seen an incredible increase in cost being borne by taxpayers for continual fish-finding public records requests recently. Many of those have been politically motivated and have nothing to do with what is right, just or true. I am concerned that, even with the above described protections, agencies and organizations would be buried in more requests, the courts would be even more bogged down, and the public would receive no further protections than they have today. I also can tell you I cannot seem to keep employees or fellow commissioners from divulging confidential information as it is. This puts people’s lives, and public dollars at risk. Additional release or leaking of confidential information would definitely happen, regardless of the protections we put in place. If we are concerned about the ethics of our elected representative then we need to un-elect them.

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: I disagree with the premise. The vast majority of the work we do is freely released to the public upon request. Again, if you cannot trust the individuals then you need to un-elect them; not create unintended and potentially disastrous conditions upon all government or other agencies subject to the rule.

Further, I believe that to release documents on issues not presently involved in court action is insufficient. If you were to propose legislation that released them after the statute of limitations ran, then I might consider supporting the bill. To do otherwise would disclose information about real estate acquisitions, employee matters or potential litigation that would expose organizations and agencies to an unmanageable and unaffordable onslaught of lawsuits.

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? x 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 x No

Additional Comments: I support a longer period of time for individuals to be able to identify, prepare and make their case on a failure to release documents properly. Regarding the fines, Again the cost of responding to public records requests in the past 3 years since I have been in office (to you and me as taxpayers) has gone up exponentially. It has gotten to the point where we are hiring additional staff and sometimes cannot keep up with the requests.

Often, the parties requesting records are merely casting huge nets (asking for incredible amounts of information under vague requests) on a fishing expedition. It has gotten to the point where these groups have no regard for the cost of agencies to comply with the request. They are strictly motivated to "catch" government doing something wrong.

What we used to see is people with legitimate concerns filed specific requests on particular items of concern. I cannot imagine anyone would want to pay more taxes to feed reckless use of the public records request laws, and this certainly is not what the intent of the law was when passed. If we could limit these kinds of actions, I could support higher fines for failure to comply with the timelines or failure to divulge.

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? x Yes No

Additional Comments: This makes sense to me to increase the civil penalty and thereby decrease potential that individuals not to take the law seriously. Whereas the previous proposal focuses on a cost per document in a system presently buried in requests, this focuses on a violator therefore I could support this.

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: I do believe we need to eliminate any incentives for individuals to destroy what are public documents. If they were improperly destroyed, I certainly support imposing the penalties you describe on the violator.

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: If you work for the public, you work for the public. Your date of birth is not sacred from public information in my opinion. My only concern would be in cases regarding an employee's personal safety, but I cannot think of a case in which date of birth alone would protect that person from a predator. If I were presented evidence otherwise, then that might change my mind on this issue.

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: I need to do more research in this area. I can understand the concerns from a public safety point of view in not wanting to make this information available to terrorists, but I also respect and wish to protect the rights of citizens to ensure we are safe from spills or contamination from pipelines. Sometimes I wonder if we are not going overboard on protection from threat of terrorism, or that some might wish to use the fear of such an attack for personal or corporate gain. The bottom line is that I am uncomfortable without the time to think this through further and do more research, to provide an opinion either way on this issue. I am not sure there is an easy answer.

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? x Yes No

Additional Comments: I would restate my initial concerns that we need to reign in the abusive use of the law to a manageable and reasonable use, but given that and my overall concern about the cost of all these requirements to the taxpayers, I could support the idea of an independent position.

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? x Yes No

Additional Comments: I would support this given what I know today. I have to assume your statements are correct regarding simplicity and I am unsure of the cost of handling requests electronically. I also believe it is fair that government be allowed to charge reasonable fees, to discourage misuse of the law. If it could be done, and we could still charge a small but fair fee to recoup costs, then I believe I could support this based upon what you have presented.

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 x No

Additional Comments: Without having the agenda to read, I cannot commit to support it in advance. Based upon what you have presented in this questionnaire, I believe I could support most of but not all of the positions of the WCOG at this time. With additional research or information provided, or some revisions to the legislation you have proposed, I could support additional positions. Finally, I just want to say thank you as well, for your service in keeping government accountable and accessible to the public, which it serves!

Sincerely,

Mark Richard
Spokane County Commissioner
District 2
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Thank You for Your Service!