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Washington Coalition for Open Government represents individuals and organizations intent on preserving and protecting Washington's Open Government Laws – Open Records and Open Meetings. Its mission is to represent the public in matters where open government issues are raised, are threatened, or deserves broader exposure. It accomplishes this mission by educating the public and government officials, by action in the legislature and the courts, and by recognizing acts by individuals, organizations, and agencies in support of open government.

Coalition members include citizen activists and representatives of government, business, labor, media, law, and public policy organizations. We are keenly interested in the views of candidates for public office regarding open government issues. The following questionnaire provides an opportunity for you to share your views on current high-priority open government issues. We sincerely appreciate you taking the time to provide your answers. The Coalition is a 501(c)(3) non-profit organization and as such does not endorse or contribute to candidates, but will make the responses to this questionnaire available to our members and to the general public, without any "grade" or commentary, so they may be more fully informed when making decisions regarding candidates in the upcoming election. By submitting your response to the Coalition, you give your consent for the Coalition to publish the information contained in your response on the Coalition's internet web site.

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CANDIDATE INFORMATION

1 **Please enter the information indicated below.**

Name:	**Glenn Anderson**
Work Phone:	425-222-7092
Email Address:	glenn.anderson@att.net
Address:	POBx 1682 Issaquah, 98027

2 **Office Sought:**

State Representative

3 **District:**

5

4 **Position Number (if applicable):**

2

5 **Are you the incumbent in this office?**

Answer
✔ Yes
No

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QUESTIONSIn each of the sections below, 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.

6 **1. Attorney-Client Communications Privilege – The 2004 state Supreme Court decision in Hangartner v. City of Seattle declared that the attorney-client communication 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 officials accountable for their decisions and actions. Since this decision, agencies have been claiming attorney-client privilege to withhold records from disclosure much more frequently.**

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. Communication between agencies and their attorneys seeking advice on matters not related to an active or threatened lawsuit would be subject to disclosure.

Would you support such legislation?

Answer
✔ Yes
No

7 **2. Access to Legislative Records – The definition of “public records” in the Public Records Act is very broad. However, the legislature has carved out an exception for itself in the definition, and “reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature” are not subject to the PRA. The legislature also asserts that Article 2 Section 17 of the state constitution (“No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate”) exempts emails and other communication between legislators, or**

between legislators and staff, from disclosure. No similar exemption exists for any other legislative body in the state, such as city or county councils. The result is that a significant portion of the work of the state legislature is conducted out of view of the people.

Legislation has been proposed to make all legislative records fully subject to the Public Records Act, just like other government records and like the records of all local legislative bodies. Statutory exemptions would apply, to protect the privacy of confidential and other information that is deemed to be in the public interest to withhold.

Would you support such legislation?

	Answer
	Yes
✔	No

8

3. Access to Court Records – Court decisions have interpreted the definition of "public records" in the Public Records Act to exclude court records – not just court case files which are open to the public under Article 1 Section 10 of the state constitution unless sealed, but court administrative records as well. The result is that even court expense records – how the public's money is spent – can be withheld from public view, along with many other types of records that enable the public to hold their elected judges and judicial branch employees accountable. Some courts and court administrators have made some records available, but access is inconsistent and considered discretionary by the courts.Legislation is being developed by a stakeholder group under the Board of Judicial Administration that could make court administrative records available under the Public Records Act. Access to court case files would continue to be controlled by the courts under court rules, and the private deliberative notes of judges would be exempt from disclosure.

Would you support such legislation?

	Answer
✔	Yes
	No

9

4. Records of Executive Sessions – The Open Public Meetings Act requires all meetings of the governing boards of state and local agencies to be open to the public and announced in advance. However, the law allows the boards to meet behind closed doors in "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 closed meeting is announced in advance and the secret discussion is limited to the announced allowed purpose. Some boards would like to record their executive sessions to enable them to resolve any future disputes about what transpired during the meeting, but are concerned that some or all of the recordings would be subject to disclosure under the Public Records Act.

Legislation has been proposed that would exempt executive session recordings, transcripts, and minutes from disclosure under the Public Records Act and from subpoena under other legal actions. Unauthorized disclosure of executive session records would be punishable under laws governing disclosure of confidential information. Agencies would be able to present such records to courts under seal for in camera review to establish that a challenged executive session was proper or for other purposes. If an agency presents a record of an executive session to a court for review and the court determines that any part of the executive session was in violation of the Open Public Meetings Act, the court may order the agency to

release to the public the part of the recording, transcript, or minutes of the session that should have been open to the public. Agencies would be able to submit digital recordings of executive sessions for secure confidential storage in the Washington State Digital Archives.

Would you support such legislation?

	Answer
	Yes
✔	No

10

5. Create a Non-Judicial Process for Review of PRA and OPMA Disputes – Currently, if a request for public records is denied or access procedures not followed, or if the requirements of the Open Public Meetings Act are disobeyed by an agency, the only recourse is to bring a lawsuit in superior court. This is a very expensive and time-consuming process for both the aggrieved citizen and the agency involved. Many citizens abandon attempts to access information because they can't afford an attorney; agencies face huge litigation costs when disputes do make it to court.

A task force convened by the Attorney General and the State Auditor has recommended legislation that Washington create an administrative review process for Public Records Act and Open Public Meetings Act disputes that would not require the expense of hiring a lawyer and going to court. The law would include financial incentives to exhaust the administrative review process before taking a dispute to the courts. The ability to go to court directly would be preserved for urgent matters, as well as the ability to appeal to the courts when the outcome of the administrative review process is unfavorable. The agency providing this dispute resolution service could perform a number of other valuable services, including providing training and advisory opinions for agencies, and ombudsman and hotline services for the public.

Would you support such legislation?

	Answer
✔	Yes
	No

11

6. Require Open Government Training for Government Employees and Elected Officials – Many of the reported violations of the Public Records Act and the Open Public Meetings Act have resulted from a lack of knowledge or misunderstanding of the statutes and case law. These problems, and the resulting loss of public trust and financial impact on agency budgets due to penalties, could be avoided by ensuring that all government employees have at least a basic knowledge of records retention and access requirements, and that all officials subjected to the OPMA know its requirements.

Legislation has been proposed that would require every government employee, both elected and appointed, to receive basic training regarding the principles of open government and their responsibilities under the Public Records Act, Open Public Meetings Act, and the records preservation law during initial orientation at the beginning of their government service. Annual in-service training would be required to refresh this training, including updates based on changes in statutes or case law. Public records officers and other employees who have custody of records or respond to records requests would receive more

comprehensive training consistent with their responsibilities. This training does not have to be long or expensive, and could easily be provided as a free online course developed and maintained by or under the supervision of the Attorney General to ensure its correctness.

Would you support such legislation?

	Answer
✔	Yes
	No

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7. Improving Preservation and Access to Electronic Records – 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. These electronic records are public records like any other record, subject to the retention requirements of RCW 40.14 and to public access under RCW 42.56, regardless of whether they are stored on publicly-owned computers or elsewhere. Because electronic records are so easily destroyed, agencies should be required to archive email and other electronic records in a manner that prevents any individual employee from intentionally or accidentally destroying them without proper review. In addition, some agencies interpret the Public Records Act as allowing them to print electronic records onto paper before providing them to requestors. Creating paper records is time consuming and expensive, and they are often of no practical use to the requestor because of the volume of information. 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 software 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, to avoid the need to charge for media for mailing. Agencies that have the ability to scan paper records into electronic form and send them to requesters electronically would be required to do so upon request, and would be allowed to charge a scanning fee to cover the actual labor cost of scanning.

Would you support such legislation?

	Answer
✔	Yes
	No

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8. Stop Agency Abuse of Third-Party Injunctions – Some public agencies have abused the provision in RCW 42.56.540 that enables the agency to notify a person named in a record or to whom the record pertains. Rather than asserting that the record is exempt from disclosure and defending that assertion directly – which would expose the agency to having to pay the requestors attorney's fees, court costs, and penalties under RCW 42.56.550 – agencies have been inviting persons named in records, usually their own agency employees, to file for an injunction under RCW 42.56.540 and claim that release of the records would "not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions". The agency then intentionally fails to mount a meaningful defense against the named person's motion, even sometimes allowing the injunction to be issued by default, and thereby avoiding any responsibility for fees, costs or penalties. This is an abuse of process, and a loophole in the law that should be closed.Legislation has been proposed that would require both the requester and the agency be indispensable parties to any action under the PRA. When a lawsuit is filed by a person named in a record to block its release, both the agency and the requester would always be

joined as parties to the case; agencies notifying third parties that they are named in records subject to disclosure would have to inform them of this requirement. Agencies sued to block access would have to either state that the agency does not oppose disclosure or clearly state its opposition and the applicable exemption from disclosure; if the agency opposes disclosure and does not prevail, it would be subject to attorney fees, costs, and penalties as though it had denied disclosure itself. Would you support such legislation?

Answer
✔ Yes
No

14

9. Prevent Arbitrators or Judges from Ordering Destruction of Public Records Contrary to Law – In a recent case in Bellingham, an arbitrator found that a report written by a city employee contained false allegations regarding work done by a contractor. As part of the settlement of the dispute, the arbitrator ordered all copies of the report to be destroyed, despite the fact that the document was a public record subject to retention requirements and no provision of law allowed for it to be destroyed. When a copy of the document was requested under the Public Records Act, the judge upheld the arbitrator ruling and ordered all copies destroyed. That order was carried out, and the public has forever lost the ability to hold government employees accountable for the content of the document.Legislation has been proposed to clarify that neither arbitrators nor judges may order the destruction, alteration, transfer or removal of a public record inconsistent with retention requirements developed by the Secretary of State pursuant to RCW 40.14 or for requested public records scheduled for destruction. Would you support such legislation?

Answer
✔ Yes
No

15

10. Oppose Elimination of the Sunshine Committee – Many exemptions to the Public Records Act come into existence as obscure sections of bills that do not reference the Public Records Act itself, and are never reviewed by experts in public records law. Since Washington's public records law was passed with a 72% vote as part of I-276 in 1972, the number of exemptions was grown from 10 to nearly 400. The Public Records Exemptions Accountability Committee (the "Sunshine Committee") was created in 2007 to review every exemption, undertake a thorough analysis including opportunities for stakeholder testimony and participation, and make a recommendation to the legislature on whether each exemption should be retained, modified, or eliminated. The Sunshine Committee operates at very low cost – just the cost of photocopies used in the meetings and travel reimbursement for committee members who live away from meeting sites – and yet in the 2009 and 2010 legislative session there were multiple proposals to eliminate the Sunshine Committee and end its important work.Would you oppose legislation to eliminate the Sunshine Committee?

Answer
Yes
✔ No

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11. Oppose Attacks on Public Records Access – During the 2009 and 2010 legislative sessions, several bills were introduced that would have made it more difficult or expensive to access public records or that would otherwise discourage citizens from using their right to know what their government is doing. These included bills that would have enabled agencies to charge citizens for simply inspecting records without

making copies, substantially increasing the cost of copies of records, enabled agencies to charge for copies made for the agency's convenience that the requester didn't ask for, limited the number of requests a citizen can make or be charged for access, enabled agencies to charge high fees for access to certain types of data, required a conference with an agency before filing a PRA enforcement action in court, eliminated penalties for agencies illegally withholding records, or required the penalties to be paid to the state rather than the requester, eliminated mandatory recovery of attorney fees and court costs for citizens successfully suing to enforce the PRA, and others. These bills are often introduced at the request of agencies who fail to recognize that public records disclosure is a core part of every agency's mission, and who view accountability and transparency as a burden rather than essential to the exercise of the sovereignty of the people.Would you oppose attempts to make it more difficult for citizens to access public records, such as those described?

Answer
✔ Yes
No

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Thank You for Your Service!