



2011 Candidate Questionnaire

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.

WCOG members 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. 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 web site at www.washingtoncog.org. We invite you to join the Coalition as well!

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. It is our intention to announce **on July 31** to our members and to the statewide and local news media the names of those candidates who have or have not responded to this questionnaire.

Candidate Information

Information Sought	Response
Candidate Name	Toby Nixon
Office Sought	Kirkland City Council
District (if applicable)	
Position Number (if applicable)	4
Incumbent (Yes or No)	No
Campaign Mailing Address	Friends of Toby Nixon 12113 NE 141st St Kirkland, WA 98034-1411
Campaign Phone Number	425-823-9779

Campaign Email Address	toby@tobynixon.com
Campaign Web Site Address	www.tobynixon.com

Questions

In 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.

1. Attorney-Client Communications Privilege – A 2004 state Supreme Court decision 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. Many government agencies now claim they can withhold virtually all communication between them and their attorneys, including routine communication not related to any actual or threatened lawsuit. Many citizens are concerned that this blocks disclosure of a substantial amount of information necessary to hold government officials accountable for their decisions and actions.

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.

Do you support such legislation? Yes

Additional Comments:

Since the decision to invoke the attorney-client communication privilege is discretionary, would you support a resolution or ordinance to have the government entity to which you seek election commit not to invoke the privilege when there is no actual or threatened lawsuit? **Yes**

Additional Comments:

2. Records 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. The law allows the body to meet behind closed doors in "executive session" for certain limited purposes, such as to consult with their attorney on active or pending 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 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. 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 a court under seal for judicial 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 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.

Do you support such legislation? Yes

Additional Comments:

Would you support a resolution or ordinance to have the government entity to which you seek election voluntarily record its executive sessions (as some already do)? **Yes**

Additional Comments:

3. Create a Low-Cost 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 can be a very expensive and time-consuming process for both the 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 recommended legislation that would create a voluntary 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. Citizens (not agencies) could choose to use this process, but would not be required to do so; 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.

Do you support such legislation? Yes

Additional Comments:

Would you support an ordinance or resolution to have the government entity to which you seek election voluntarily participate in such a low-cost dispute resolution program, if one were to be established? **Yes**

Additional Comments:

4. 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 and official, 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 would not be long or expensive,

and could easily be provided as a free online course developed and maintained under the supervision of the Attorney General.

Do you support such legislation? Yes

Additional Comments:

Would you support a resolution or ordinance to have the government entity to which you seek election require the described training (as some already do) in advance of a state requirement being adopted? **Yes**

Additional Comments:

5. 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. 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, even though creating paper records is time consuming and expensive, and 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 provided electronically, exempt information redacted electronically, and 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.

Do you support such legislation? Yes

Additional Comments:

Would you support a resolution or ordinance to have the government entity to which you seek election commit to properly archive electronic records and to provide records in electronic form on request? **Yes**

Additional Comments:

6. 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, and yet in recent legislative sessions there have been multiple proposals to eliminate the Sunshine Committee and end its important work.

Do you oppose eliminating the Sunshine Committee? Yes

Additional Comments:

7. Oppose Attacks on Public Records Access – During recent 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 increased the cost of copies, enabled agencies to charge for copies made for the agency's convenience that the requester didn't ask for, charged people to access records if processing their requests took more than a certain number of hours per month, 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 found to have illegally withheld records, required penalties to be paid to the state rather than to 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.

Do you oppose attempts to make it more difficult for citizens to access public records, such as those described? Yes

Additional Comments:

Would you work within the statewide organization that represents the government entity to which you are seeking election (such as the Association of Washington Cities, Washington State Association of Counties, Washington Association of County Officials, Washington State School Directors Association, Washington Public Ports Association, Washington Fire Commissioners Association, etc.) and try to stop that organization from supporting legislation that would make it more difficult for citizens to access public records? **Yes**

Additional Comments:

Thank You for Your Service!