

2010 Legislative Priorities

Washington Coalition for Open Government has established the following priorities for legislative action during the 2010 legislative session. The Coalition encourages its members and concerned citizens throughout Washington to contact members of the Legislature and urge their support for these measures. These priorities are just a portion of the Coalition's full legislative agenda, which may be viewed in its entirety at www.washingtoncog.org.

Restore the Original Intent of the Attorney-Client Communications Exemption

– Enact the recommendation of the Sunshine Committee to restore the original intent of the Public Records Act with regard to communications between public sector attorneys and agencies. Such communication should be exempt from disclosure only in relation to an actual or threatened lawsuit and not on the speculation that some future lawsuit might be filed.

Expand Access to Legislative and Court Records – Enact the recommendation of the Sunshine Committee to delete the special limited definition of legislative records so that *all* legislative records are subject to the Public Records Act unless explicitly exempt, just like other government records. Add “courts” to the definition of the “agency” under the PRA so that court records are subject to the Act unless explicitly exempt. Create appropriate exemptions for case files that are sealed by court action or under court rules, and for other court and legislative records whose confidentiality is in the public interest.

Exempt Recordings of Executive Sessions – Exempt executive session recordings, transcripts, and minutes from disclosure under the Public Records Act and from subpoena under other legal actions. Agencies should 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. Unauthorized disclosure of such records would be punishable under laws governing disclosure of confidential information. 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. Provide for storage of recordings at the state Digital Archives.

Create a Non-Judicial Process for Review of PRA and OPMA Disputes – Establish 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, including financial incentives to exhaust the administrative review process before taking a dispute to the courts. Preserve the ability to access the courts immediately and directly 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.

Require Open Government Training for Government Employees and Elected Officials – Require *every* elected and appointed official and government employee to receive basic training regarding the principles of open government and their responsibilities under the Public Records Act (RCW 42.56), the records preservation law (RCW

40.14), and other laws, and require every member of boards subject to the Open Public Meetings Act (RCW 42.30) to receive training in that law, during initial orientation at the beginning of their government service and during annual in-service training. Public records officers and other employees who have custody of records or respond to records requests should receive more comprehensive training consistent with their responsibilities. The training should be web-based, free of charge, and of short duration.

Improve Preservation and Access to Electronic Records – Electronic records, such as email, 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. Electronic records should be required to be made available to requesters in searchable electronic form, not converted to paper or image form. Electronic records should be required to be stored for longer periods than now provided in retention schedules.

Require Agencies to Scan Paper Records Into Electronic Form If Requested – Amend the Public Records Act to require agencies to provide scanned copies if requested (including embedded optical character recognition data), and to enable agencies to charge the actual cost of scanning (labor and use of agency scanning equipment) similar to what is permitted for agencies when making paper copies, including a reasonable default per-page charge for scanning which should be less than the per-page charge for paper photocopies. Unnecessary printing of photocopies is wasteful of natural resources for the paper on which they're printed, the toner used to print them, and the energy used to transport them. Scanned documents with embedded optical character recognition data are much more useful than photocopies to people with no or low vision, and are easily searchable and indexable.

Prevent Arbitrators or Judges from Ordering Destruction of Public Records Contrary to Law – Amend the Public Records Act and the Uniform Arbitration Act 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.

Reject Elimination of the Sunshine Committee – The Public Records Exemptions Accountability Committee must be permitted to continue its important work of identifying and reviewing every exemption to the Public Records Act and recommending to the Legislature whether the exemption should be continued, modified, or terminated. It should not be eliminated in a hasty and ill-considered budget-cutting move.

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.” (RCW 42.56.030 and RCW 42.30.010)