

2012 Legislative Priorities

Washington Coalition for Open Government has established the following priorities for legislative action during the 2012 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.

Require Training for Every Elected or Appointed Official and Every Government Employee on basic open government principles, including their responsibility to preserve and disclose records. Require every member of councils, boards and commissions subject to the Open Public Meetings Act to also receive training on its requirements. The training should be developed in conjunction with the Attorney General, and be concise, web-based, and available at low or no cost. Many PRA and OPMA violations result from inadvertent mistakes and lack of awareness of the law; this low-cost training will avoid far greater cost for penalties, attorney fees and court costs while improving public trust.

Create a Voluntary Mediation Program to Reduce the Cost of Resolving Public Records Act (PRA) and Open Public Meetings Act (OPMA) Disputes. Such a mediation program will help to resolve disputes while avoiding high legal fees and court costs. Participating in mediation must not impair the right of citizens to pursue their case in court if mediation fails.

Create an Exemption in the Public Records Act for Audio and Video Recordings of Lawfully Closed Meetings. Agencies would be able to voluntarily present such recordings to courts under seal for confidential review by a judge to establish that a challenged meeting was proper or for other purposes.

Restore the Original Intent of the Attorney-Client Communications Exemption for communications between public sector attorneys and agencies, which is that they 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.

Create a Private Right of Action Under the Public Records Act for Improper Destruction of Records. Although RCW 40.16 makes it a felony to destroy public records before permitted by the retention schedules established under RCW 40.14, few county prosecuting attorneys are willing to bring such charges except in extreme cases, thus creating a gap that allows embarrassing records to be destroyed without recourse. Premature destruction of records should be actionable under the PRA in the same way as any other improper denial of access to those records, with penalties, attorney fees and costs awarded to the requester, if it is proven that the records previously existed and should have been retained and available when they were requested.

Protect Funding for Superior and Appellate Courts. The only mechanism currently available to citizens to enforce the PRA and OPMA is by lawsuit in superior court. Time is of the essence in many PRA and OPMA disputes, and further reductions in court

budgets would deny justice by delaying access to court to resolve these disputes.

Protect Funding for the Washington State Archives. Access to public records is meaningless unless records are first preserved. The Archives protect Washington's most important and historical documents, train officials statewide in record retention and disclosure, and operate the nation's first and largest archive of electronic records including promulgating best practices for preservation and access to electronic records of state and local agencies. Dedicated funding and reserves for archive operations have been diverted to other purposes and must be restored.

Preserve the Sunshine Committee. The Public Records Exemptions Accountability Committee must continue its important work of increasing public trust by identifying and reviewing every exemption to the Public Records Act and recommending to the Legislature whether the exemption should be continued, modified, or terminated. The cost of the committee has already been reduced to nearly zero in previous budgets.

Expand Access to Legislative and Court Administrative Records by repealing the special limited definition of legislative records, and by adding "courts" to the definition of the "agency" in the PRA, so that all court and legislative records are subject to the PRA unless explicitly exempt. Create appropriate exemptions for court case files, chambers records, records sealed by court action or under court rules, and for other court and legislative records for which confidentiality is determined to be in the public interest.

Improve Preservation of and Access to Electronic Records, such as email, regardless of whether they are stored on publicly-owned computers or elsewhere. Because electronic records are so easily destroyed, agencies must automatically 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 must be available to requesters in original searchable electronic form, not converted to paper or scanned image form unless requested (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; documents "printed to PDF" from native form, rather than scanned as images, are much more useful than photocopies to people with no or low vision, and are easily searchable and indexable). Retention schedules must reflect that electronic records are often the primary or sole copy of a record.

"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)