

Overview – Designing an Open Government Oversight Agency



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

August 26, 2009

Current WA Law - Two Different Statutes

Open Public Records

RCW 42.56

(PRA –
Public Records Act)



Open Public Meetings

RCW 42.30

(OPMA –
Open Public Meetings Act)



History & Application

Open Public Records

- Originated in Initiative 276 in 1972 (and formerly codified in RCW 42.17).
- Applies to all public agencies, state and local. Generally does not apply to courts, however, one case is pending.* Limited application to Legislature.
- Applies to “public records” which are defined to include “writings.”
- Records are open unless there is an exemption.

** City of Federal Way v. Koenig (Whether the Federal Way Municipal Court is a “local agency” subject to disclosure requirements of the PRA.)*

Open Public Meetings

- Passed in 1971. Pre-dates Initiative 276. Minutes requirement in another law - RCW 42.32.
- Applies to multimember public agency boards and commissions, and their committees --- boards and commissions in cities, counties, special purpose districts, school districts, state agencies, etc. Does not apply to courts or Legislature.
- Requires meetings of governing body to be open gavel-to-gavel, unless there is an exception.

Intent

Open Public Records

- Construction: 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.

Open Public Meetings

- Declaration: The people of this state do not yield their sovereignty to the agencies which 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 retain control over the instruments they have created.

Information & Enforcement

Open Public Records

- Attorney General's Office creates pamphlet and can issue PRA exemption opinions for state agencies (and formal AGOs for qualified requesters); has also created ombudsman position; issues model rules; has online Deskbook.
- PRA enforced through courts. Requester files an action in superior court.

Open Public Meetings

- AGO can issue formal opinions (for qualified requesters); has also created ombudsman position; may provide technical assistance and training. Has online Deskbook.
- OPMA enforced through the courts. Person challenging compliance by a board or commission files an action in superior court.

Penalties

Open Public Records

- Penalties for violations:
 - Mandatory per-day statutory penalties plus attorneys fees can be awarded.
 - Court can also order disclosure of all or part of withheld record, or non-disclosure of part or all of record.

Open Public Meetings

- Penalties for violations:
 - Court can impose a \$100 civil penalty against each member.
 - Court will award costs and attorney fees to a successful party seeking the remedy.
 - Action taken at an improperly closed meeting can be declared null and void.

Examples of Volume

Open Public Records

- Applies to “**any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.**”
- Paper records, electronic records, emails, overheads, CDs, microfiche, etc.

Open Public Meetings

Applies to governing bodies of multi-members public agency boards:

- (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;
- (b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
- (c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;
- (d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

Examples of Volume (cont.)

Open Public Records

- An estimated thousands of agency employees at state and local level create possibly millions of records each year covered by PRA.
- There are approximately 200+ state agencies, 202 cities, 296 school districts, etc.
- Washington State Patrol responded to 10,000 public records requests in 2007, making 248,809 pages available.
- In 2007, DOC made roughly 350,000 pages available to offenders.
- DSHS reported that one Special Commitment Center resident made 361 requests in 2008, which required production of 85,000 pages.

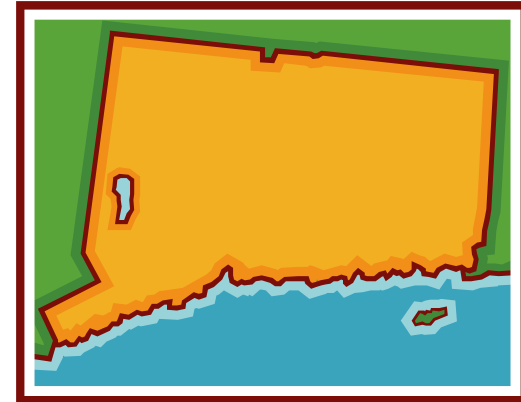
Open Public Meetings

- An estimated thousands of meetings per year are subject to the OPMA.
- Example: There are 100 state boards and commissions (approx.), 39 counties, 202 cities, 296 school districts. State statutes described 32 different types of local government boards and MRSC describes 40 types of special purposes districts.
- Example: The City of Seattle has a City Council plus its committees, and over 50 boards and commissions.

3 Examples of Oversight Agencies In Other States

Connecticut (pop. 3.5 million)*

- Freedom of Information Commission.
- Public records and meetings.
- Five members. Meet 2-3 times per month, excluding hearings conducted by ALJs or board members.
- 22 staff.
- \$ 2 million budget per year.
- 800 complaints filed with agency in 2008. Complaints involve timeliness of responses to requests, exemptions, etc.
- 250 final decisions issued per year by Commission; ALJ's used for hearings.
- 92 advisory opinions and declaratory rulings issued to date (since agency created).
- Commission gets named in about 25-30 court cases/year.
- Most staff are lawyers and paralegals.



* *Washington State population is 6.4 million.*

3 Examples of Oversight Agencies in Other States (cont.)

New Jersey (pop. 8.6 million)



- Government Records Council.
- Public records only.
- 5 member council.
- Budget: \$600,000 per fiscal year, recently cut from \$800,000.
- Nine staff.
- 1800 complaints have been filed since 2002; average is 250-300 per year.
- Hearings conducted by ALJs.
- Typical monthly Council agenda includes 20-40 cases (appeals from ALJ decisions or proposed settlements).
- Agency uses and pays for mediator.
- A recent study concludes staffing level should be 30 FTE, budget should be \$3 million per year, and jurisdiction expanded to open meetings.

3 Examples of Oversight Agencies in Other States (cont.)

New York (pop. 19.4 million)



- Committee on Open Government.
- 10 members.
- Public records, public meetings.
- Provides advisory opinions and rules, and annual report, does not conduct hearings or investigations.
- Website lists three staff assigned, but agency is budgeted through another agency, the Department of State. Specific budget or other staffing not known at this time.
- In 2008, committee answered 7,000 telephone inquiries, prepared 772 written advisory opinions, and gave 109 presentations.

Examples of Elements That Could Be Considered In Designing a PRA/OPMA Oversight Agency



- Independent agency?
- Multimember board? Full time or part time?
- Open records?
- Open meetings?
- Jurisdiction (state agencies, local agencies, both)?
- Conduct investigations?
- Conduct hearings?
- Use Administrative Law Judges?
- Jurisdiction to hear cases shared with superior courts?
- Have ombudsman?
- Have mediation program?

Examples of Elements That Could Be Considered In Designing a PRA/OPMA Oversight Agency (cont.)



- Adopt rules?
- Issue opinions (formal or informal, binding or not binding)?
- Provide materials and training?
- Operate website?
- Operate toll-free number?
- Track PRA/OPMA legislation?
- Submit annual report to Legislature?
- Dedicated funding source or general fund?
- Agency prospective only; so what effective date?
- Other?



Questions?