

OPEN PUBLIC MEETINGS ACT AND PUBLIC RECORDS ACT UPDATES

Anna C. Franz

KenisonFranz

(509) 754-2493 – af Franz@basinlaw.com

OPEN PUBLIC RECORDS ACT: LEGISLATIVE UPDATES

- ESHB 1329 (2022)
- Much of the bill is non-mandatory encouragement to: provide additional opportunities for public comment; implement real-time telephonic, electronic, internet or other remote access to public meetings; make audio/video recordings or provide online streaming of public meetings;
- Public Emergencies: if a public agency determines that it cannot hold a public meeting in person with reasonable safety the agency may:
 - Hold a remote meeting (must allow real-time verbal communication)
 - Hold a meeting at which physical attendance by some or all members of the public is limited with a remote listening option available; the public notice of the meeting needs to include instructions to join

OPEN PUBLIC RECORDS ACT: LEGISLATIVE UPDATES

- RCW 42.30.077/.080: public agencies must make the agenda of each regular or special meeting available online no later than 24 hours in advance of the start time of the meeting
 - An agency may share a website with or have its website hosted by another public agency
 - Can change agenda after posting
- Exemption for agencies with:
 - Aggregate valuation of property subject to taxation by the entity is less than \$400M;
 - Population less than 3K; and
 - Provides confirmation to the state auditor with its annual reports that the cost of posting notices on a website of its, a shared website, or on the website of the county would exceed 1/10 of 1% of its budget

OPEN PUBLIC RECORDS ACT: LEGISLATIVE UPDATES

- RCW 42.30.110(2): the announced purpose of excluding the public for an executive session must be entered into the minutes of the meeting
- RCW 42.30.240 – Public comment requirements
 - Must provide a public comment opportunity at or before every regular meeting at which final action is taken for public comment
 - Public comment can be provided orally at the meeting or through written comment.
 - Written comments must be distributed to the governing body.
 - Agency can set a reasonable deadline for submitting written comment before the meeting.
 - Accommodation requirements – must provide an opportunity to provide oral comment remotely upon request of any individual who will have difficulty attending a meeting of the governing body of a public agency by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult.
 - Agency can establish time limits on public comment.

OPEN PUBLIC RECORDS ACT: RECENT LITIGATION

- *McFarland v. Tompkins* (2025): notice of special meeting agenda topic required under RCW 42.30.080 was inadequate where it listed “miscellaneous business to come before the Board” as it did not provide notice of the business to be transacted. The resolution adopted under this item was voided as a result of the OPMA violation.
- *West v. Walla Walla City Council* (2025): special meeting notice listed agenda item as “vote to select 5 finalists for position of City Manager”; rather than vote on 5 finalists, the council voted to hire one of the applicants. Council subsequently voted to reconsider the action and voted again to hire the applicant at a properly noticed meeting.

OPEN PUBLIC RECORDS ACT: RECENT LITIGATION

- *In re Recall of Bird* (2023): notice of special meeting agenda topic required under RCW 42.30.080 was inadequate where it listed “Local Control” as it did not provide notice of the business to be transacted. The resolution adopted under this item was voided as a result of the OPMA violation and could be the basis for a petition to recall those board members who participated in the violation. The recall effort was successful against all three members who voted to approve the resolution.
- *Egan v. City of Seattle* (2020): councilmembers participated in a series of non-public meetings, phone calls, texts, and emails regarding their position on a matter resulting in a press release that a proposed action was supported by a majority of the city council signed by a quorum of the members. Court held that if a quorum of a legislative body collectively commits or promises to each other to vote—as a group—in favor of or in opposition to a piece of pending legislation at a future public meeting, then such a commitment may be evidence that a majority of the body attended a “meeting” with the collective intent to take an “action” in violation of the OPMA.

OPEN PUBLIC RECORDS ACT: RECENT LITIGATION

- *Zink v. City of Mesa* (2021): Former Mayor Zink video recorded city council meeting over the objections of the former mayor and council members in 2003. The mayor called 911 to have her removed from the meeting and the sheriff's office responded. After refusing to stop, Zink was arrested and charged with criminal trespass which was later dismissed. The Court held that the public has a right to record a public meeting under the OPMA under the prohibitions on restriction of attendance on the fulfillment of a condition precedent. While a governing body may remove a member of the public who is disrupting the orderly conduct of business any such removal must be reasonable.

PUBLIC RECORDS ACT: LEGISLATIVE UPDATE

- RCW 42.56.250(f) (2025): investigative records regarding an internal investigation of employment discrimination and harassment must have identifying information of complainants, accusers, and witness redacted, including alteration of voices in any recordings, unless the individual consents to the disclosure. Names of elected officials as complainants may not be redacted from records after the investigation is final.

PUBLIC RECORDS ACT: ADMINISTRATIVE UPDATE

- Attorney General's Office adopts Model Rules on Public Disclosure through APA rule making process
 - RCW 42.56.570(4): Local agencies should consult the advisory model rules when establishing local ordinances for compliance with the requirements and responsibilities of the PRA.
 - Training for elected officials and public records officers must be “consistent” with the Model Rules
- In 2024 the Editor of the Seattle Times submitted a petition for rulemaking to amend the Model Rules based on complaints that agencies were providing “outrageously long time estimates” and had “extreme backlogs” which interfere with the public’s right to be informed in a timely manner

PUBLIC RECORDS ACT: RECENT LITIGATION

- *Cousins v. State* (2024): Sufficient closing letters must be written in plain language targeted to a lay audience and should include at least the following information: (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and (3) that the requester may ask follow-up questions within a reasonable time frame, which may be explicitly specified by the agency.
- “The District did not find any responsive documents to your request and therefore considers this request closed and the one year statute of limitations for an action under RCW 42.56.550 has started to run. If you have any questions regarding this request, please submit them to the public records officer within 30 days of this letter.”

PUBLIC RECORDS ACT: RECENT LITIGATION

- *Citizen Action Defense Fund v. Washington OFM* (2025): deliberative process exemption protects records related to the public employee collective bargaining process until that process is complete. All steps required to complete the process must be done before the exemption no longer applies.
- *Hood v. City of Vancouver* (2025): request for all records related to an audit. Closing letter included statement “If you feel that there are any missing documents or additional types of materials that your request sought, which are not included in the enclosed response, please contact me so your request may be clarified.” Court held a request for clarification under the PRA must be made before the request is closed. Should state what the agency is interpreting the records request to be and request the requester either confirm or further clarify their request.
- Hood is up to 22 Court of Appeals cases involving PRA claims since 2016; 157 superior court filings in Odyssey Portal (all WA counties except King)

PUBLIC RECORDS ACT: RECENT LITIGATION

- *Valderrama v. City of Sammamish* (2024): former councilmember requested communications between councilmembers and citizens. City emailed councilmembers to notify them about the request and ask them to search their personal devices and accounts for responsive records, provide responsive records to the City, and complete search affidavits under *Nissen*. “To satisfy the agency's burden to show it conducted an adequate search for records, we permit employees in good faith to submit ‘reasonably detailed, nonconclusory affidavits’ ” about the “nature and extent of their search.” The affidavit must explain why withheld information is not a “public record” under the PRA. “So long as the affidavits give the requester and the trial court a sufficient factual basis to determine that withheld material is indeed nonresponsive, the agency has performed an adequate search under the PRA.” When done in good faith, this procedure allows an agency to satisfy its duty to search for and disclose public records without unnecessarily infringing on its employees’ constitutional rights. An agency's affidavits are entitled to a presumption of good faith.

QUESTIONS?