

Open Public Meetings Act

RCW 42.30



Prepared by Washington State Attorney General's Office

Last revised: April 2014



Washington's Open Public Meetings Act (OPMA)

- Passed in 1971
- Requires meetings to be open to the public, gavel to gavel
- RCW 42.30



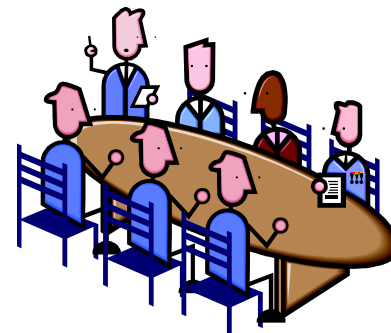
OPMA Applies To:

Multi-member public state and local agencies, such as boards and commissions, as follows:

- Any county, city, school district, special purpose district, or other **municipal corporation** or political subdivision of Washington.
- 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.

~ *RCW 42.30.020*

These are the “public agencies” subject to the OPMA.



Governing Body

- All meetings of the ***governing body*** of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

~ *RCW 42.30.030*



What is a Governing Body?

- The **multimember board or other policy or rule-making body**

OR

- Any **committee** of such public agency *when:*
 - the committee acts on behalf of the governing body,
 - conducts hearings, or
 - takes testimony or public comment

~ RCW 42.30.020

What is a Meeting?

- “**Meeting**” means meetings at which the public agency takes “**action**” ~ *RCW 42.30.020*
- Physical presence not required – can occur by phone or email



An exchange of e-mail could constitute a meeting if, for example, a quorum of the members participate in the e-mail exchange & discuss agency business. Simply receiving information without comment is not a meeting.

- Does not need to be titled “meeting” – OPMA also applies to “retreats,” “workshops,” “study sessions,” etc.
- No meeting occurs if the governing body lacks a quorum.

Action

- “**Action**” means the transaction of the official business of the public agency and includes but is not limited to:
 - Public testimony
 - All deliberations
 - Discussions
 - Considerations
 - Reviews
 - Evaluations
 - Final actions



The requirements of the OPMA are triggered whether or not “final” action is taken.

~ RCW 42.30.020

Final Action

- “**Final action**” is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof”
- Must be taken in public, even if deliberations were in closed session
- Secret ballots are not allowed



~ RCW 42.30.060, RCW 42.30.020

Travel and Gathering

- A majority of the members of a governing body may travel together or gather for purposes other than a regular meeting or a special meeting, so long as no action is taken.
- Discussion or consideration of official business would be action, triggering the requirements of the OPMA.

~ RCW 42.30.070



Public Attendance

- A public agency can't place conditions on public to attend meeting subject to OPMA:
 - For proceedings governed by OPMA, cannot require people to register their names or other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance

~ *RCW 42.30.040*



- Reasonable rules of conduct can be set
- Cameras and tape recorders are permitted unless disruptive
 - ~ *AGO 1998 No. 15*
- No “public comment” period required by OPMA

Executive Session

- Part of a regular or special meeting that is closed to the public
- Limited to specific purposes set out in the OPMA
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins; time may be extended by further announcement

~ RCW 42.30.110



Executive Sessions

Specified purposes set out in OPMA.

Includes, for example:



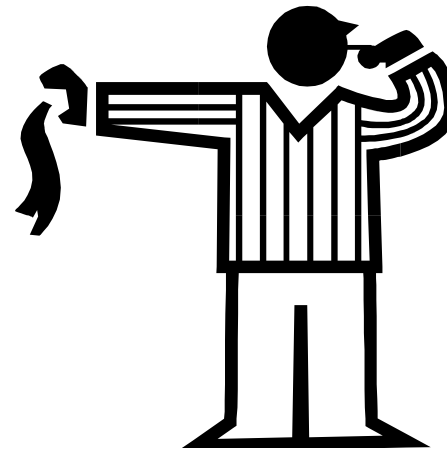
- National security
- Real estate
 - Site selection or acquisition of real estate
 - Lease or purchase
 - Public knowledge would likely increase price
 - Sale or lease
 - Public knowledge would likely decrease price
 - Final action selling or leasing public property must be take at open meeting
- Publicly bid contracts
 - Review negotiations on performance
 - Public knowledge would like increase costs
- Evaluate qualifications of applicant for public employment
- Meet with legal counsel regarding enforcement actions, litigation or potential litigation
- Other purposes listed in RCW 42.30.110

~ *RCW 42.30.110*

Penalties for Violating the OPMA

- A court can impose a \$100 civil penalty against each member (personal liability)
- Court will award costs and attorney fees to a successful party seeking the remedy
- Action taken at meeting can be declared null and void

*~ RCW 42.30.120; RCW 42.30.130;
RCW 42.30.060*



Open Public Records Act RCW 42.56



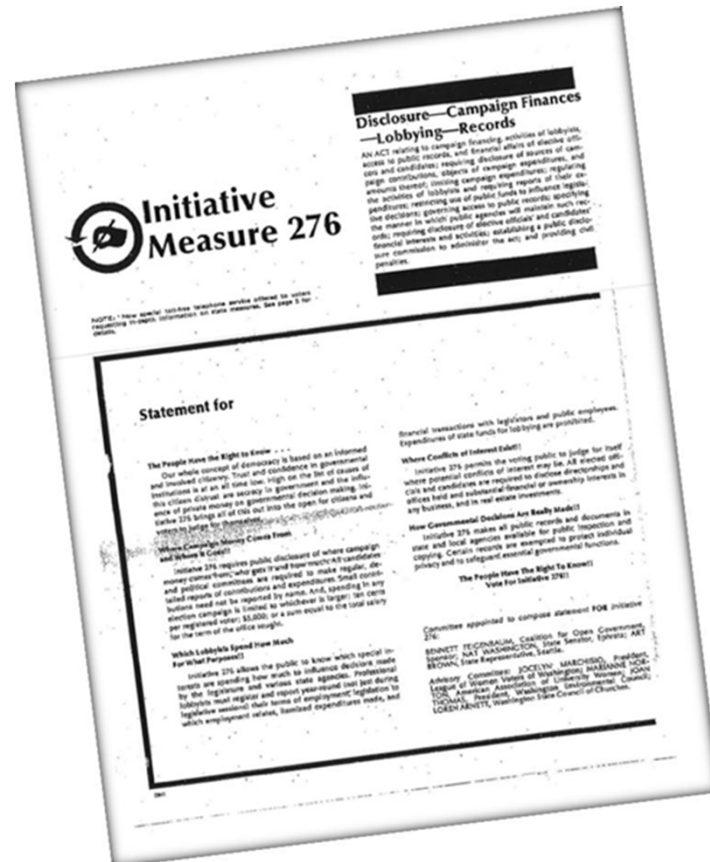
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Washington's Open Public Records Act (PRA)

- Passed in 1972 – Initiative 276
- 72 percent of the popular vote
- RCW 42.56 (formerly RCW 42.17)



Touchstone:



- Public records of government agencies are presumed open.
- Records or information in records can be withheld only by law (e.g. exemption in law). Exemptions must be “narrowly construed.”

~ *RCW 42.56.030*



Public Record

“**Public record**” means:

- 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.”

~ RCW 42.56.030



Note: Public Records Can Include...

...records of agency business when they are created or retained by agency employees or officials on home computers or in non-agency email accounts.



Exemptions

professionally redact [REDACTED] in Word Documents
you've ever had to [REDACTED] to purge corporate confidential or personal
information, you know it's not fun. You either need to [REDACTED]
[REDACTED] or getting fancy
matting tools.
I got a better solution: A [REDACTED]
for documents a sort-of CIA-like professional appearance.

- Records are presumed open.
- If a record, or part of a record, is withheld from the public, the agency must cite to an **“exemption”** in law and give a brief explanation.
- Exemptions are **narrowly construed**.
- The general rule is the agency withholds only the exempt information, and releases the rest.
- Exemptions must be authorized in law --- in PRA or other laws.

~ *RCW 42.56.050, RCW 42.56.210 - .510, RCW 42.56.550*

Privacy

- There is no general “privacy” exemption in the PRA.
- If privacy is an express element of another exemption, privacy is invaded only if disclosure about the person would be:
 1. “Highly offensive to the reasonable person” and
 2. “Not of legitimate concern to the public.”

This means that if information does not satisfy both these factors, it cannot be withheld as “private” information under other statutes.

~ RCW 42.56.050



Enforcement & Penalt



- PRA enforced by **courts** for claims listed in PRA.
- A court can impose **civil penalties**. No proof of “damages” required.
- A court is to consider the **factors** in requiring an agency to pay a penalty:
- Plus, a court will award the requester’s **attorneys fees and costs**.
- Special penalty provisions and court procedures apply to lawsuits involving inmate requests.

~ *RCW 42.56.550, RCW 42.56.565; Yousoufian v. Sims*