



**SEATTLE CITY
ATTORNEY'S OFFICE
ANN DAVISON**

Public Records Act and Records Retention Training/Refresher

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The Public Records Act:

Statute

- [RCW 42.56 et seq.](#)
 - Applies to all local and state agencies within Washington - including boards and commissions of a local agency (City).
 - "Public Record" includes any writing containing info relating to the conduct of government or the performance of any governmental or proprietary function, prepared, owned, used., or retained by an agency.
 - "Writing" - is any form of record, including handwritten records, electronic records, text messages, and audio/video recordings.

Take aways

- The records you create in the course of your work on behalf of the City/Committee are public records - subject to request and disclosure.
- Notes, recordings, written or recorded communications, in furtherance of your work as a Commissioner, are public records, even if prepared or retained on a personal device or personal account.
 - Personal notes are subject to disclosure but may not need to be retained beyond your business need for them if they have not been requested.
 - Use of a personal device/account will potentially result in the phone number or email address being disclosed.



Compliance: Who does what?

Public Disclosure Officer

- Acknowledges public disclosure requests within statutorily permitted 5 business days
- Communicates with requester and clarifies request as needed
- Performs/arranges for a search of relevant locations on City systems, based on the terms of the request and info from a subject matter expert.
 - May need to reach out to Committee Members for help to identify, locate, and produce responsive records
- Reviews search results for responsiveness to the request and any applicable exemptions.

Committee Members

- Be aware of potential public disclosure requests that come in outside of the City's public records portal
 - At a meeting, through email. If unsure - pass to PDO
- Preserve records responsive to a request
- When asked to help respond to a request, provide relevant information about search terms and any sensitive material that might fall under a statutory exemption
- Perform a search of non-City devices or accounts if used for Committee business - provide an affidavit verifying that a search was performed.



Consequences for non-compliance

Statutory penalties and non-legal implications

- No personal liability - the agency is responsible for PRA compliance.
 - However, if there is PRA litigation, you may be asked to provide testimony or declarations as to your involvement in responding to a relevant request
- Where an agency is found to have denied a requester an opportunity to inspect a public record or has not made a reasonable estimate of the time it will take to provide records in response to a request - a court may assess penalties in the amount of up to \$100 per day, per record.
 - A finding that an agency has violated the PRA will also subject the agency to the requester's costs and attorney's fees.
- Non-compliance, may also result in unfavorable media attention, a break down in trust with the public and people being served by the agency, and can tie up agency resources in a way that takes away from the primary mission.



Records Retention - RCW 40.14

How long do public records need to be kept?

- Public records must be kept in accordance with established records retention schedules.
 - [City Records Management Program - Retention Schedule \(seattle.gov\)](#) (General Schedule applicable throughout the City)
- To help ensure records retention compliance, consider including agency provided support staff on Committee related communications which will allow those staff members to preserve the records. For records created with personal devices/accounts - make sure retention settings are set to preserve records to ensure compliance.
- Some records - like personal meeting notes - have minimal retention requirements, and can be disposed of when no longer needed (UNLESS REQUESTED THROUGH THE PRA WHILE IN EXISTENCE)
- There can be personal liability for intentional destruction of public records, inconsistent with the retention schedules.



Overall take aways:

Things to be aware of as a Committee Member with respect to the PRA and Records Retention

- The records you prepare, own, use, or retain as a Committed member are public records subject to disclosure and retention requirements.
- Public disclosure requests may come to you directly - please provide them to agency support staff asap, to help the relevant agency comply with statutory deadlines.
- Your assistance may be needed to fully understand a request, and to locate and provide responsive records.
- Once a request for a record has been received - you will need to preserve the record, even if it may have otherwise been permissible to dispose of the record prior to the request.
- You can work with agency provided staff to ensure compliance with retention and disclosure obligations.



Questions?

- For questions about Committed PRA or records retention compliance processes, you can work with the agency provided staff.
- For legal questions - you can reach out directly to the City Attorney's Office, or work through your Committee's agency staff to help direct questions.
 - If the question is related to a specific request, it is often best to include the public disclosure officer to ensure consistency in guidance, understanding, and approach.

Thank you for your time and for your service.

