

OVERVIEW OF OPEN GOVERNMENT RESPONSIBILITIES



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ATTORNEY GENERAL'S OFFICE

Open Government – “Sunshine Laws”

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- Open Public Meetings Act
- Public Records Act
- Records Retention



- “Sunlight is said to be the best of disinfectants, electric light the most efficient policeman.” --Justice Louis Brandeis.
- Transparency builds confidence in government.
- Public confidence helps you be more effective

Open Government Trainings Act

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- **Requires regular training on the requirements of:**
 - **Open Public Meetings Act (OMPA) – RCW 42.30**
 - **Public Records Act (PRA) – RCW 42.56**
 - **Records Retention – RCW 40.14**
 - **Every member of the governing body of a public agency must complete OPM training within 90 days of assuming duties or taking oath of office. Thereafter, training required every four years.**
- RCW 42.30.205.

Purpose of the Open Government Trainings Act

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- **Risk Management**
 - The Supreme Court has held that **PRA training can reduce PRA penalties.** *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444 (2010)
 - The Supreme Court has also explained, “An agency’s **compliance with the Public Records Act is only as reliable as the weakest link in the chain.** If an agency employee along the line fails to comply, the agency’s response will be incomplete, if not illegal.” *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243 (1995)
- **Promote increased knowledge and understanding of the open government requirements**

OPEN PUBLIC MEETINGS ACT

Legislative Declaration of Purpose – RCW 42.30.010

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- **Public agencies exist to aid in the conduct of the people's business; actions are to be taken openly and deliberations conducted openly**
- **People do not yield their sovereignty to the agencies which serve them**
- **People do not give public servants the right to decide what is good for the people to know and what is not good for them to know**
- **People remain informed so they may retain control over the instruments they have created**

OPEN PUBLIC MEETINGS ACT ***(RCW 42.30)***

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- ◆ All ***meetings*** of the ***governing body of a public agency*** shall be open and public (RCW 42.30.030)
- ◆ Minutes must be recorded and are open to public inspection (RCW42.32.030)

What is a Governing Body?

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“All meetings of a ***governing body*** of a public agency shall be open and public . . .”

- ◆ Multimember governing bodies of state and local agencies
- ◆ Subcommittees
 - ◆ If quorum OR
 - ◆ If delegated final decision-making authority, conducting hearings, or taking public comment or testimony

What Constitutes a Meeting ?

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“All ***meetings*** of a governing body of a public agency shall be open and public . . .”

- ◆ A meeting is a gathering where “action” is taken; any such meeting must be open
- ◆ “Action” means “the transaction of the official business”

ACTION

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- ◆ Public testimony
- ◆ All deliberations
- ◆ Discussions
- ◆ Reviews
- ◆ Evaluations
- ◆ Final action (collective positive or negative decision, or final vote by a majority sitting as a body or entity). Secret ballots not allowed.

Physical Presence Not Required

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- An exchange of emails among Board Members can constitute a deliberation or discussion and thus, a “meeting” subject to the Open Public Meetings Act.

Wood v. Battle Ground Sch. Dist., 107 Wn. App. 550 (2001)

BEWARE OF “REPLY ALL”

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Travel & Gathering

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- “It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or special meeting . . . PROVIDED, That they take no action as defined by this chapter.” RCW 42.30.070 (emphasis added).

GIVING NOTICE: REGULAR MEETINGS

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- ◆ Recurring meetings of the public body
- ◆ Trustees must adopt a **regular schedule** of the time and place of meetings for each year
 - ◆ Schedule must be filed with the Code Reviser on or before January 1st of each year
- ◆ **New in 2014 – Agenda must be posted on website 24 hours before the meeting**

GIVING NOTICE: SPECIAL MEETINGS

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Written Notice Must:

- ◆ **Be given to:**
 - ◆ Each member of governing body
 - ◆ Each media entity which has requested notice
- ◆ **Be posted on:**
 - ◆ Website
 - ◆ Main entrance of principal location (and meeting location, if different)
- ◆ **Delivered at least 24 hours in advance**
- ◆ **Specify the time, place, and business to be transacted (agenda)**

FINAL ACTION IS LIMITED TO AGENDA ITEMS

Public Attendance

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- 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. Can remove disruptive individuals. If meeting is disrupted can clear room or adjourn to another place and reconvene.
- Cameras and tape recorders are permitted unless disruptive
~ *AGO 1998 No. 15*

EXECUTIVE SESSIONS

Are authorized for limited, specific topics listed, including:

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- ◆ Receive and evaluate complaints or charges against a public officer or employee
- ◆ Review performance of an employee
- ◆ Evaluate qualifications of a job applicant
- ◆ Meet with legal counsel relating to potential litigation, litigation & agency enforcement actions
- ◆ Site selection, acquisition, price of real estate
- ◆ Quasi-judicial actions (exempt)
- ◆ Collective bargaining strategy (exempt)

RCW 42.30.110; 140

Going into Executive Session

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“ . . . [T]he presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded.”

RCW 42.30.110(2)

Penalties for Violating Open Public Meetings Act

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- **Personal civil liability (\$100/penalty)**
- **Costs and attorneys fees**
- **Action taken is null and void**
- **Media attention (of the bad kind)**

Text message from Board Member Jones to Members Smith and Doe

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(Assume a five-person Board)

In response to your voice mail, I have polled the other board members over the fee waiver issue that was raised by student government. We need to show unanimity on the vote at tomorrow's meeting.

This resides on the personal cell phones of Trustees Jones, Smith, and Doe. Is it private? Is there an open meetings problem?

QUESTIONS?

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