

Public Records Laws and How to Request Public Records

"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." <http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.010>

The State of Washington outlines the requirements for all public agencies to follow when their constituents attempt to secure information:

"An agency request form should require the requestor to provide contact information so the agency can communicate with the requestor to, for example, clarify the request, inform the requestor that the records are available, or provide an explanation of an exemption. Contact information such as a name, phone number, and address or e-mail should be provided. Requestors should provide an e-mail address because it is an efficient means of communication and creates a written record of the communications between them and the agency. An agency should not require a requestor to provide a driver's license number, date of birth, or photo identification. This information is not necessary for the agency to contact the requestor and requiring it might intimidate some requestors." <http://apps.leg.wa.gov/WAC/default.aspx?cite=44-14-03006>

WAC 44-14-03001

[Washington State Register filings since 2003](#)

"Public record" defined.

Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing," containing information "relating to the conduct of government" or the performance of any governmental or proprietary function, "prepared, owned, used, or retained" by an agency.¹

(1) **Writing.** A "public record" can be any writing "regardless of physical form or characteristics." RCW [42.17.020\(41\)](#). "Writing" is defined very broadly as: "...handwriting, typewriting, printing, photo stating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW [42.17.020\(48\)](#). An e-mail is a "writing."

(2) **Relating to the conduct of government.** To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW [42.17.020\(41\)](#). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a "public record." Even though a purely personal record might not be a "public record," a record of its existence might be. For example, a record showing the existence of a purely personal e-mail sent by an agency employee on an agency computer would probably be a "public record," even if the contents of the e-mail itself were not.²

(3) **"Prepared, owned, used, or retained."** A "public record" is a record "prepared, owned, used, or retained" by an agency. RCW [42.17.020\(41\)](#).

A record can be "used" by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process it is a "public record."³ For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a "public record" because the agency "used" the document in its decision-making process.⁴ The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.⁵

Sometimes agency employees work on agency business from home computers. These home computer records (including e-mail) were "used" by the agency and relate to the "conduct of government" so they are "public records." RCW [42.17.020\(41\)](#). However, the act does not authorize unbridled searches of agency property.⁶ If agency property is not subject to unbridled searches, then neither is the home computer of an agency employee. Yet, because the home computer documents relating to agency business are "public records," they are subject to disclosure (unless exempt). Agencies should instruct employees that all public records, regardless of where they were created, should eventually be stored on agency computers. Agencies should ask employees to keep agency-related documents on home computers in separate folders and to routinely blind carbon copy ("bcc") work e-mails back to the employee's agency e-mail account. If the agency receives a request for records that are solely on

employees' home computers, the agency should direct the employee to forward any responsive documents back to the agency, and the agency should process the request as it would if the records were on the agency's computers.

RCW 42.32.030 Minutes.

The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection.

In 1972 the voters in state of Washington adopted Initiative 276, which requires that most records maintained by state, county, and city governments be made available to members of the public. The public disclosure statutes have been frequently revised over the past three decades. As of July 2006, these disclosure statutes are to found in [Chapter 42.56 RCW](#), and the statutes are now referred to as the Public Records Act. Although the public records disclosure statutes do not apply to judicial records (case files), the legislature has specifically extended their coverage to state legislative records. In addition, the public records disclosure statutes apply equally to "every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district" or "any office, department, division, bureau, board, commission, or agency thereof, or other local public agency."

The definition of what is a public record is quite broad - [RCW 42.17.020](#) (41). The definition of writing is also broad - [RCW 42.17.020](#) (48). Papers, photos, maps, videos, and electronic records are all covered by the Public Records Act.

All city records are available for review by the public, unless they are specifically exempted or prohibited from disclosure by the state statutes. A listing of the primary exemptions are found at [RCW 42.56.230 through RCW 42.56.480](#). Numerous other exemptions and disclosure prohibitions are sprinkled throughout the state statutes. Appendix C of our publication lists the public disclosure statutes that are located in RCW chapters other than [Chapter 42.56 RCW](#).

Because the public records disclosure statutes are sometimes difficult to interpret and are often a source of litigation, MRSC has prepared a publication which reviews all of the relevant statutes, exemptions and prohibitions to disclosure, and procedures to be followed when handling a request for disclosure. See ["Public Records Act for Washington Cities and Counties."](#) (📎 704kb).

[RCW 42.17.020](#) (41) (42) "Public record" includes 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. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW [40.14.100](#) and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(49) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated

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How to Request Records

A request for public records can be initiated:

- In person;
- By mail, e-mail, or fax; or
- Over the telephone.

You may be able to obtain the addresses and telephone numbers of state agencies in current telephone directories, or you can obtain the telephone number of an agency by calling the Olympia area information operator 360-753-5000 or 1-800-321-2808.

Each state and local agency is required to provide assistance to citizens in obtaining public records and to explain how the agency's public records process works.

If you request certain public records, the agency must make them available to you for inspection or copying (unless they are exempt from disclosure) during customary office hours of that agency.

You should make your request as specific as you can. A written request helps to identify specific records you wish to inspect. Many agencies have a public records request form they will ask you to use.

After your inspection of records, you may identify those records you desire and, if copying does not disrupt agency operations, copies can be promptly made for you. The agency may enact reasonable rules to protect records from damage or disorganization and to prevent disruption of agency operations.

Each state or local agency is required to establish an index as an aid to locating public records. The index is to be published and made available to those who request it.

Agency Response to a Request

Agencies are required to respond promptly to your request. Within five business days after receiving a request, the agency must either:

- Provide the record(s);
- Acknowledge your request and give you a reasonable estimate of how long it will take to fully respond; or
- Deny the request in writing, with reasons for the denial (this could also include a denial of part of your request and granting of the remainder). The agency must tell you the specific exemption or other law it relies upon for its denial.

If a request is not clear, the agency may ask you for further clarification.

If an agency denies your request, you may ask the agency to conduct an internal review of its denial within two business days after denial. At that time, the agency's denial is considered final and you can seek court review or, in some cases, review by the Attorney General's Office.

RCW 42.30.040

Conditions to attendance not to be required.

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

[1971 ex.s. c 250 § 4.]