



CITY OF
BAINBRIDGE ISLAND

ETHICS BOARD
SPECIAL MEETING
THURSDAY, SEPTEMBER 17, 2020
6:00 PM – 7:00 PM
VIA ZOOM WEBINAR

THE ETHICS BOARD WILL HOLD THIS MEETING
USING A VIRTUAL, ZOOM WEBINAR, PER GOVERNOR INSLEE'S
"STAY HOME, STAY HEALTHY" ORDERS

MEMBERS OF THE PUBLIC WILL BE ABLE TO CALL IN TO THE ZOOM MEETING.

PLEASE CLICK THE LINK BELOW TO JOIN THE WEBINAR:

[HTTPS://BAINBRIDGEWA.ZOOM.US/J/94186628417](https://bainbridgewa.zoom.us/j/94186628417)

OR IPHONE ONE-TAP: US: +13017158592,,94186628417# OR +13126266799,,94186628417#

OR TELEPHONE:

DIAL(FOR HIGHER QUALITY, DIAL A NUMBER BASED ON YOUR CURRENT

LOCATION): US: +1 301 715 8592 OR +1 312 626 6799 OR +1 346 248 7799

OR +1 646 558 8656 OR +1 669 900 9128 OR +1 253 215 8782

WEBINAR ID: 941 8662 8417

INTERNATIONAL NUMBERS AVAILABLE:

[HTTPS://BAINBRIDGEWA.ZOOM.US/J/94186628417](https://bainbridgewa.zoom.us/j/94186628417)

AGENDA

1. CALL TO ORDER – 6:00 PM
2. ELECTION OF TEMPORARY CHAIR AND TEMPORARY MINUTE-TAKER
3. DISCLOSURES OF CONFLICTS OF INTEREST
4. ANNUAL OPEN GOVERNMENT TRAINING
 - A. PUBLIC RECORDS ACT AND RECORDS RETENTION
 - B. OPEN PUBLIC MEETINGS ACT
5. ITEMS FOR NEXT MEETING AGENDA
 - A. ORIENTATION TO THE CODE OF CONDUCT AND ETHICS PROGRAM
 - B. CODE OF CONDUCT AND ETHICS PROGRAM IMPLEMENTATION
 - C. PENDING COMPLAINTS AND REQUESTS
6. NEXT MEETING DATE: SEPTEMBER 21, 2020 (6:30 – 8:00 PM)
7. ADJOURNMENT

City of Bainbridge Island Committee and Commission – email account access and use

City email accounts are provided for business related communications

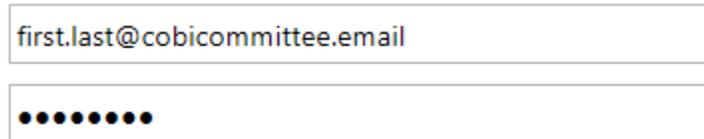
All committee email addresses are in the format: `firstname.lastname@cobicommittee.email`

All sent and received email messages are automatically archived for public records act retrieval

The link to the email login screen is: <http://mail.office365.com/> (save the link in your browser)

Your user ID is your full email address: example first.last@cobicommittee.email

The first time you log on you will use a temporary password, which will be distributed separately



A screenshot of an email login interface. The top field contains the text "first.last@cobicommittee.email". The bottom field contains a series of ten black dots, representing a masked password.

- You will be prompted to change your password (required to be “strong” or complex – see window)

User ID:

first.last@cobicommittee.email

* Old password:



A text input field containing ten black dots, representing a masked old password.

* New password:



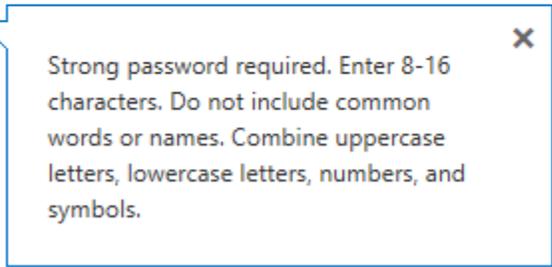
A text input field containing ten black dots, representing a masked new password.

strong

* Confirm new password:



A text input field containing ten black dots, representing a masked confirmation of the new password.

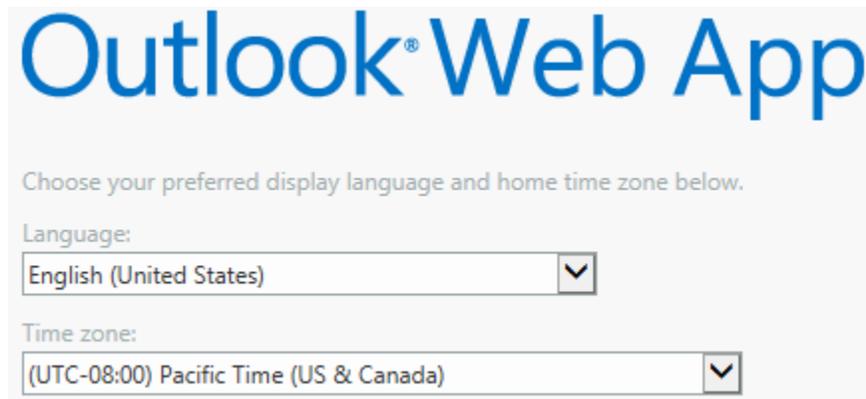


Strong password required. Enter 8-16 characters. Do not include common words or names. Combine uppercase letters, lowercase letters, numbers, and symbols.

- After clicking “Save”, you will re-enter your password to log into your account for the first time
- A “Get started with Office 365” window offers some training and connectivity options
- Click on Outlook (upper right) to access your email account



- Update the time zone on the Outlook Web App screen to “Pacific Time (US & Canada)”, click “save”



Outlook® Web App

Choose your preferred display language and home time zone below.

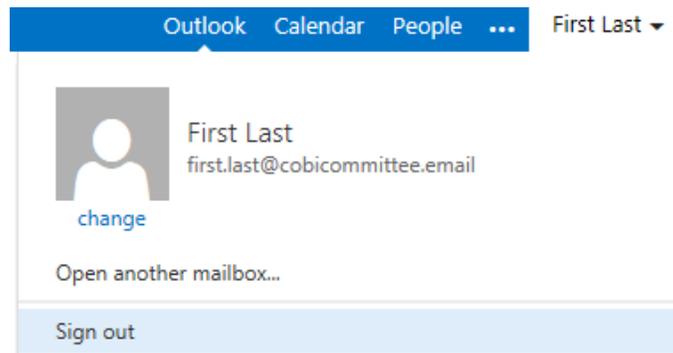
Language:
English (United States) ▼

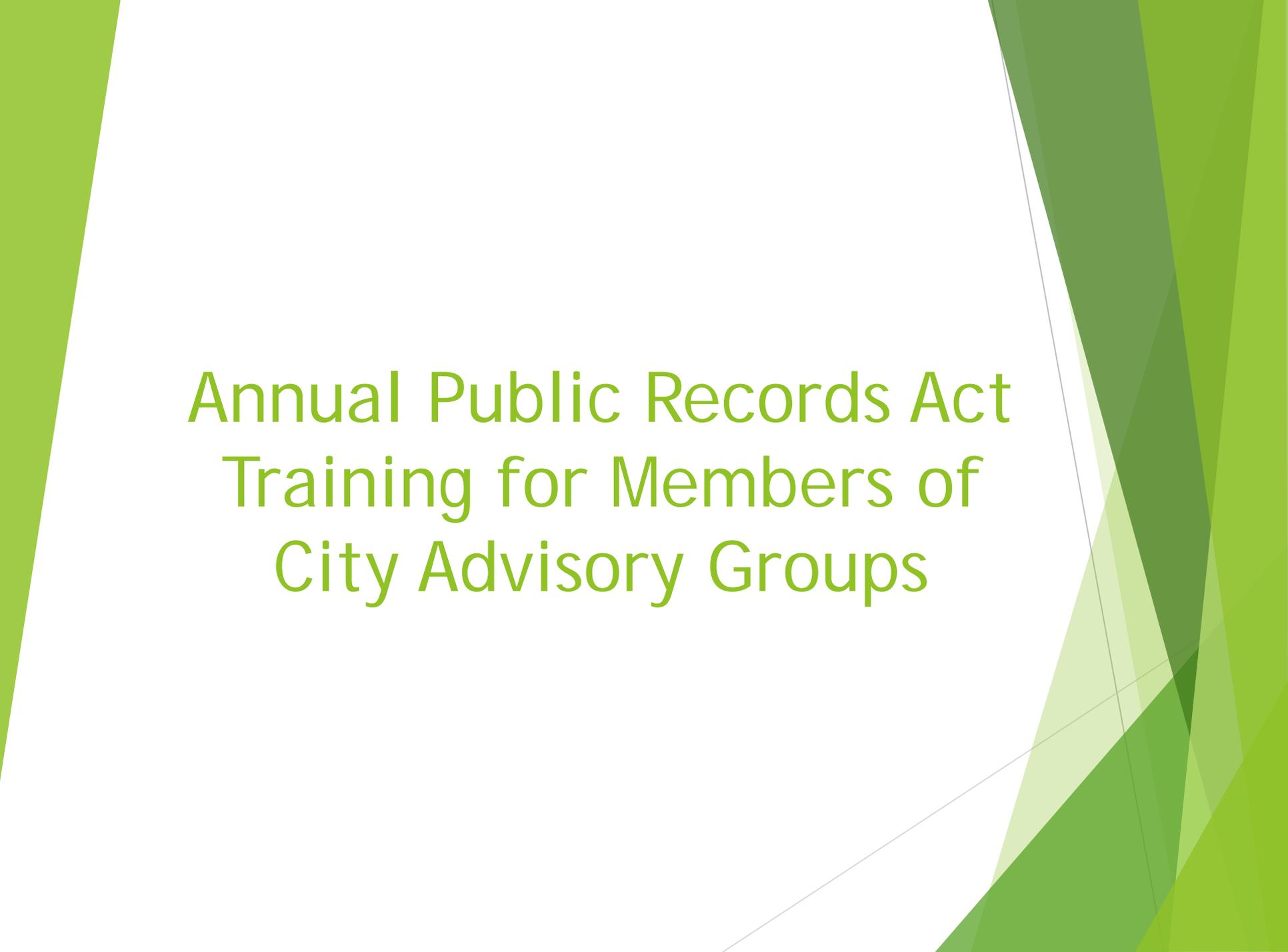
Time zone:
(UTC-08:00) Pacific Time (US & Canada) ▼

- To create a new message, click the “new mail” button in the upper left corner



- To log out of account, you should click on down arrow next to your name (upper right), and Sign out



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Annual Public Records Act Training for Members of City Advisory Groups

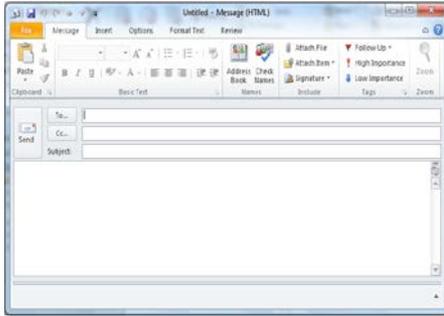
Today's Topics

1. What is a public record?
2. Complying with the PRA.
 - A. Use of email for City business;
 - B. Use of texting for City business;
 - C. Use of social media for City business;
 - D. Use of personal devices for City business; and
 - E. Use of Online Productivity/Collaboration Tools
3. Exemptions and prohibitions.
4. Penalties under the PRA.

Purposes of the PRA

- People don't yield sovereignty to local government
- Maintain right to know
- People maintain control through access to information
- Fully protect public interest

Common Types of Public Records



Prepared
Owned
Used
Retained



Key Concept

- Consider the content of the record.
- A record is a public record if it relates to the conduct of government or the performance of any governmental or proprietary function, and it meets one of the POUR factors.
- A record is not a public record if it relates solely to personal matters and not to agency business.

Using Email for Committee Business

- ▶ Use your City account for all committee business
- ▶ Use your City account only for committee business.
- ▶ Do not use your personal email account to conduct Committee business.
- ▶ If you get a committee-related email message via your personal account, forward the email to your City account, and respond to the sender and indicate to them that all committee-related emails need to be sent to you via your City email address.

Texts Related to Committee Business

- ▶ Do not send texts related to committee business.
- ▶ If you receive a committee-related text message on your personal phone, use the following procedure:
 - 1) Reply with a message stating that all written committee-related communications must be through your City email address.
 - 2) Forward both the original text and your response as an attachment to your City email account.
 - 3) Include the date, sender & recipient name, and brief description of the topic in the subject line of the email.

Social Media and Committee Business

- ▶ Do not use social media for committee business.
- ▶ If you receive a committee-related message on your personal social media account, use the following procedure:
 - 1) Reply with a message stating that all written communication must be through your City email address.
 - 2) Forward both the original message and your response as an attachment to your City email account.
 - 3) Include the date, sender & recipient name, and brief description of the topic in the subject line of the email.

Social Media and Committee Business

- ▶ Every committee is encouraged to work with Kristen Drew, the City's Communications Coordinator
- ▶ Kristen Drew, Communications Coordinator
kdrew@bainbridgewa.gov
206.780.3741 (office)

Email, Text, and Social Media Recap

- ▶ Use your City email account for all committee business.
- ▶ Use your City email account only for committee business.
- ▶ Do not send texts related to committee business.
- ▶ Do not use social media for committee business.

Use of Personal Devices

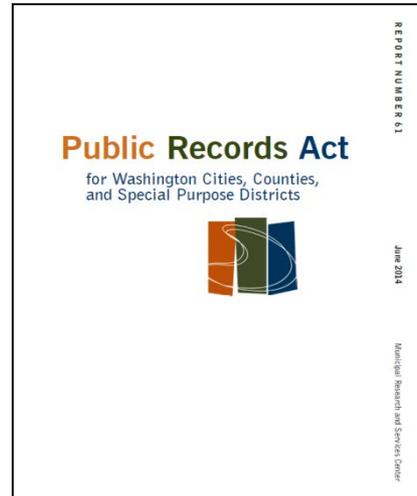
- ▶ Personal Devices = Personal phone, laptop, tablet, etc.
- ▶ To the extent possible, keep committee-related records separate from personal records.
- ▶ Do not delete committee-related records without first forwarding them to your City-issued email account.

Use of Online Productivity/Collaboration Tools

- ▶ Examples: Slack, Trello, Asana, etc.
- ▶ Do not use online productivity/collaboration tools.

Exemptions Under the PRA

- ▶ Exemptions are narrowly construed
- ▶ Exemptions are permissive rather than mandatory



Penalties



References: Chapter 42.56 RCW; chapter 40.16 RCW

PRA Penalties

- ▶ Per day penalties from \$0 to \$100
- ▶ Costs and fees

Also, as a committee member, the appointing authority (e.g., the City Council) has the authority to remove you from the committee based on a violation of City policy.



Closing Recommendations

ELECTRONIC RECORDS – PRA AND RECORDS RETENTION

DO'S AND DON'TS

For Local Government Success



These Do's and Don'ts are intended to provide summary guidance related to use of electronic records and electronic devices in compliance with the Public Records Act (PRA) (chapter 42.56 RCW) and records retention law (chapter 40.14 RCW). For a more thorough analysis of these issues, please review our related guides: [Electronic Records – PRA and Records Retention Practice Tips](#). For more information and resources also visit www.mrsc.org/opmepsa

	Do	Don't
Agency Computer	Do use your agency computer to conduct agency business. This allows your agency to retain records appropriately and locate such records in response to a PRA request.	Don't delete records from your agency computer (or any computer) unless you're certain the records aren't public records, or the records are past their required record retention period. (If you have any doubt about deleting records, check with your agency's legal counsel.)
Personal Computers	Do use your personal computer to remotely access your agency's file server and email server (if your agency allows for such remote access).	Don't use your personal computer to conduct agency business unless you do so by accessing your agency's server(s) remotely. If that's not possible and you use your personal computer to conduct agency business, make sure that you: <ul style="list-style-type: none"> • Retain all public records with retention value; and • Provide those records to your agency so the agency can retain the records appropriately and make them available if a PRA request is made for such records.
Agency Email Account	Do use your agency email account to conduct agency business. This allows your agency to retain its records appropriately and to locate such records in response to a PRA request.	Don't delete emails sent or received from your agency email account unless you're certain the emails aren't public records, or the emails are past their required record retention period. (If you have any doubt about deleting emails, check with your agency's legal counsel.)

PRA – AGENCY OBLIGATIONS: A STARTING POINT

CHECKLIST

For Local Government Success



The Public Records Act (PRA) establishes basic procedural requirements that each agency must adopt. Use this checklist as a start for PRA compliance.* For more information and resources visit www.mrsc.org/opmepsa

- 1. **Assign a Public Records Officer (PRO)**
Post the PRO's contact information at the agency's place of business, on the agency's website (if any), and in any relevant publication. [RCW 42.56.040](#).
- 2. **Adopt a Local Public Records Act Policy**
The local PRA policy should outline reasonable regulations for the agency's handling of public records requests, such as the agency's response process when it receives a records request. The policy must be prominently displayed. [RCW 42.56.040](#).
- 3. **Publish a List of Exemptions and Prohibitions Found Outside the PRA**
Publish a list of exemptions and prohibitions to disclose other than those listed in the PRA. [RCW 42.56.070](#). Examples of these other types of exemptions and prohibitions can be found in Appendix C of MRSC's [Public Records Act Publication](#).
- 4. **Maintain an Index of Public Records**
Maintain a current index of many types of agency records unless to do so would be unduly burdensome for the agency. If it's unduly burdensome, the agency must adopt a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations. [RCW 42.56.070](#).
- 5. **Adopt a PRA Fee Schedule**
Establish fees for PRA costs, including costs for hard copies, electronic copies, and mailing costs. [RCW 42.56.070](#) and [RCW 42.56.120](#).
- 6. **Provide for a Review Procedure for any Denial of Records**
An agency must provide for review of a denial to impact records. The review can be conducted by the PRO's supervisor, the agency's attorney, or any individual designated by the agency. Review is deemed complete two business days after the initial denial. [RCW 42.56.120](#).
- 7. **PRA Training Requirements, Effective July 1, 2014 (see Office of the Attorney General: [Open Government Training Act Q & A](#))**
 - Every local elected official and every local government PRO must receive records training (PRA training concerning chapter 42.56 RCW and records retention training concerning chapter 40.14 RCW).
 - This training must be completed no later than 90 days after these elected officials and PROs take their oath of office or assume their duties. They must also receive "refresher" training at intervals of no more than four years.

*DISCLAIMER: This checklist is meant to provide summary information on basic procedural requirements of the PRA; the checklist is not intended to be regarded as legal advice. Consult with your agency's attorney about its use as well. May 2014

ELECTRONIC RECORDS – PRA AND RECORDS RETENTION

PRACTICE TIPS

For Local Government Success



These practice tips are intended to provide practical information to local government officials and staff about electronic records and requirements under the Public Records Act (PRA) (chapter 42.56 RCW) and records retention law (chapter 40.14 RCW). The tips are based on real-world experiences, as played out in our courts and otherwise.* For more information and resources visit www.mrsc.org/opmepsa

Key Initial Point

In the context of these practice tips, it's important to keep in mind that the vast majority of records – including electronic records – that agencies deal with are public records. That said, it's also important to recognize that: (1) not all records prepared, owned, used, or retained by an agency are public records and (2) not all public records have retention value.

Key Terms as Used in These Practice Tips

Electronic record: An electronic record (e-record) is any device you can access through an electronic device. E-records include documents, emails, voice messages, texts, tweets, instant messages, photos, and videos.

Electronic device: An electronic device (e-device) is any device you can use to access e-records. E-devices include desktop computers, laptops, smart phones, other cell phones, and tablets.

Remember These General Principles for Electronic Records

1. **Think before you "POUR."** Regardless of the e-device you use to create or access an e-record, if that e-record, no matter its form, is prepared, generated, given, or retained by the agency, and its content relates to the conduct of government or the performance of any governmental or proprietary function, it's a public record.
2. Establish agency policies/procedures. Agencies should adopt effective policies and/or procedures related to e-communications and e-devices, including appropriate use and retention requirements.
3. Failure to comply can be costly. Knowledge of, and compliance with, the rules that apply to production and retention of e-records and use of e-devices is essential, because even inadvertent mistakes can result in serious consequences for your agency.

What kind of consequences? If a PRA requester wins in court, an agency will be subject to daily penalties ranging from \$0-\$100 per day (the trial court decides the amount), and the court will award attorney fees and costs to the requester. In the context of records retention requirements, it's a

Check out MRSC's Public Records (and OPMA) Practice Tips and Checklists.

PRA – HOW TO PERFORM AN ADEQUATE SEARCH FOR RECORDS

PRACTICE TIPS

For Local Government Success



The Public Records Act (PRA), chapter 42.56 RCW, requires that agencies perform an adequate search to locate records responsive to a public records request. The PRA itself doesn't provide detailed provisions on how to conduct an adequate search. Rather, such requirements can be found in court decisions interpreting the PRA, including [Washington Alliance for Open Government v. Spokane County](#), 172 Wn.2d 702 (2011). These practice tips are based on such case law. Use these tips to guide your agency's search for responsive records.* For more information and resources visit www.mrsc.org/opmepsa

Adopt a Standard Methodology to Search for Records

(This methodology will apply to each search.)

1. **Records organization.** Understand how each department within your agency organizes and retains its records.
 - Implement an effective system for locating and collecting responsive records. With an effective system in place, an agency can more efficiently find records responsive to a PRA request and more easily defend itself against a challenge that its search for records was inadequate, especially in situations in which the agency finds no records responsive to a PRA request.
 - a. How does the agency inform applicable staff and officials about a PRA request?
 - TIP: Consider having the Public Records Officer (PRO) email the records request to applicable staff and officials and require them to actively respond regarding whether they have responsive records via the "reply" function in Microsoft Outlook (or equivalent).
 - b. Who searches for the records?
 - TIP: If the PRO searches for records, consider developing a "tip sheet" identifying locations to search for commonly-requested records, listing commonly-used search terms, and providing other key information (see below).
1. **Be clear on what the requester is seeking.**
 - In determining the scope of the search, take care not to interpret the request too narrowly.
 - If the request is unclear, ask questions from the requester.
 - Document any communication the agency has with the requester.

*DISCLAIMER: These practice tips are meant to provide tips on how to perform an adequate search; the tips aren't intended to be regarded as legal advice. Consult with your agency's attorney about this topic as well.

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Annual Open Public Meetings Act Training for Members of City Advisory Groups

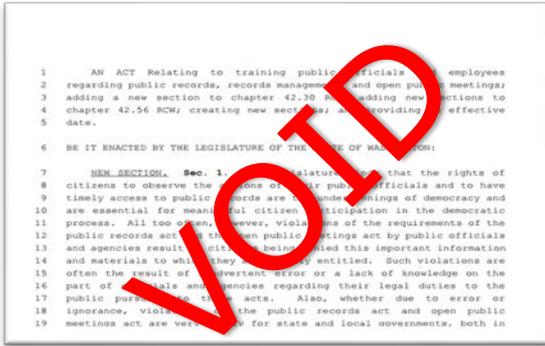
Today's Topics

1. Purposes of the OPMA.
2. General OPMA requirements.
3. Regular and special meetings.
4. Rules on public attendance and conduct during meetings.
5. Serial meetings.
6. Email, texting, and social media.

Purposes of the OPMA

- ▶ People of Washington don't yield sovereignty to local governments and agencies.
- ▶ The people insist on remaining informed.
- ▶ Public servants in the state exist to aid in the conduct of the people's business.
- ▶ It's the intent of the OPMA that the actions of public servants be taken openly and that their deliberations be conducted openly.

The Penalties Can Be Serious



- A Councilmember who knowingly participates in an illegal meeting is subject to a \$500 fine against them personally for a first violation and \$1,000 for any subsequent violation.
- Attorney fees and court costs are awarded to successful OPMA plaintiffs.
- Additionally, ordinances, resolutions, and other legislative acts adopted at an illegal meeting are void.

General OPMA Requirements

1. All meetings of the governing body must be open to the public
2. No secret ballots
3. Ordinances, resolutions, rules, regulations, and orders must be adopted at a public meeting or they are invalid

What is a “Meeting”?



- “Meetings” occur when “action” is taken.

What Constitutes “Action”?

- ▶ “Action” means the transaction of the official business of the Committee by a majority or more of the Committee.
- ▶ Includes discussion, deliberations, public testimony, review, and evaluations.
- ▶ Includes, but isn’t limited to, final action.
- ▶ Final action – a collective decision or voting on motions, resolutions, or ordinances.

Other Types of Activities that Could be Considered a Meeting



Regular Meeting

- ▶ Recurring meetings held in accordance with a regular schedule.
- ▶ The Committee must establish the date and time of regular meetings by resolution, order, or rule.
- ▶ Limited notice requirements.
- ▶ The agenda can be amended and final action can be taken on items on the agenda (unless special requirements apply to a specific type of action).

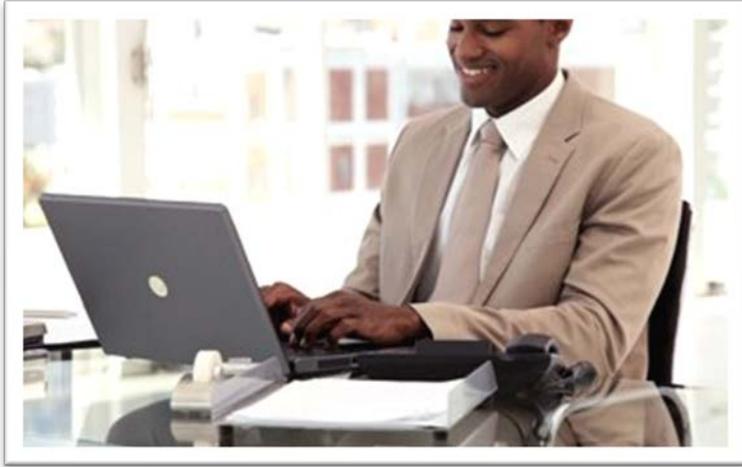
Special Meetings

- ▶ Any meeting other than a regular meeting, regardless of label.
- ▶ May be called by the presiding officer or by a majority of members of the Committee.
- ▶ Has special notice requirements.
- ▶ The meeting may be about more than one topic.
- ▶ However, **no final action** may be taken on a topic **unless the topic was listed in the notice for the meeting.**

Public Attendance and Conduct During Meetings



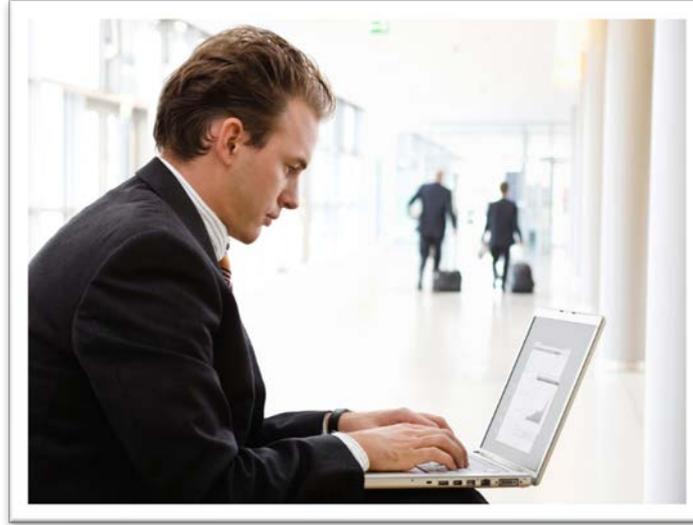
Serial (or “Rolling”) Meetings



Telephone Tree



OPMA and Email



- Discussion by a majority or more of members of a Committee over email can constitute a meeting under the OPMA.
- Courts have created guidelines for members of governing bodies to follow to avoid implicating the OPMA when using email.

The OPMA and Email - Practice Tips

- ▶ Passive receipt of information via email is permissible
- ▶ It's generally ok to email a majority or more of a Committee if you are only providing documents and factual information.
- ▶ For such information-only emails to other members of the governing body, have the first line of the email clearly state: "For informational purposes only. Do not reply."
- ▶ Except for information-only emails, don't send an email to all or a majority of the Committee, and don't use "reply all" when the recipients are all or a majority of the Committee.
- ▶ Alternatively, have a designated staff member email the documents or provide hard copies to each member of the City Council.
- ▶ **PRA Reminder:** Use your City email for all City business.

OPMA and Texting



- **PRA Reminder:** Do not text to conduct Committee business.
- Discussion by a majority or more of members of a Committee over text can constitute a meeting under the OPMA.
- Do not participate in group texts that include majority or more of members of a Committee.

OPMA and Social Media



- **PRA Reminder:** Do not use social media for Committee business.
- Discussion by a majority or more of members of a Committee over social media can constitute a meeting under the OPMA.

Executive Sessions

RCW 42.30.110(1)(i):

- In general, authorized to discuss with legal counsel enforcement actions or legal risks of a proposed action or current practice of the Ethics Board.

