

WASHINGTON STATE PUBLIC RECORDS ACT

(1) In a nutshell, the ACT requires:

- Public records be produced for review in response to a public disclosure request;
- Unless they fall within some very narrow and specific exemptions.

(2) Public Record defined in the ACT as:

- (1) Any writing; (2) related to the conduct of government; (3) used by the City or City employees or volunteers.

(3) Definition of writing under the ACT:

- Virtually any form of recorded information.

(4) A document may still qualify as a public record, even if not located on City computers.

*Essentially, any **WRITING** that you create or receive in your capacity as a Board member and that is related to the Board's work or City business will be a public record subject to disclosure upon request.*

(5) A written or oral request triggers the requirements of the Public Records Act

If you are contacted with what sounds like a request for identifiable documents, contact your assigned Public Records Officer immediately.

(6) Public Records Act Exemptions

(a) Deliberative Process Exemption

- To be exempt, a record must meet a four-part test:
 - (i) It must contain **predecisional opinions or recommendations** expressed as part of the deliberative process;
 - (ii) Disclosure would be **injurious to the deliberative process** or consultative function;
 - (iii) Disclosure would **inhibit the flow** of recommendations, **AND**
 - (iv) Material reflects **policy recommendations and opinions**. (RCW 42.56.280)

- The deliberative process exemption is a potential trap for the unwary:
 - (i) It does not apply to **raw factual data**;
 - (ii) Applies to policy making **not policy implementation**;
 - (iii) The exemption goes away when policy making ends; and
 - (iv) Does not apply simply because the document is labeled “DRAFT”

WASHINGTON STATE RECORDS RETENTION ACT also applies to any **substantive documents** created as part of your work on the Board.

- (1) requires that substantive documents that the Board and individual Board members create **must be retained**;
- (2) It isn’t necessary to retain **administrative materials** such as emails about scheduling;
- (3) Documents that involve **substantive discussions** of the Board’s business must be retained.

WASHINGTON STATE OPEN PUBLIC MEETINGS ACT

(1) **Statement of purpose:**

“all meetings of the governing body of a public agency [which includes boards and commissions created by the governing body] shall be open and all persons shall be permitted to attend.”

(2) **What is a meeting subject to the Act?**

- **Meeting** is any occasion when “**action**” is taken.
- **Action** is defined in the Act as “any discussion, consideration, public testimony, review, evaluation and other deliberation, in addition to final action.”

Generally, a meeting occurs whenever a majority of the members of a board or commission discuss agency business, or receive public testimony, even if no decisions are made.

Even informal gatherings could be a meeting subject to the Act.

- (3) The OPMA **does not require that a meeting be conducted in person** – a meeting could occur via a conference call or even the use of **email**.

Passive receipt of emails related to scheduling or distribution of documents is ok.

(4) **Rolling majorities or serial meetings** intended to reach a collective decision are prohibited.

- That same principle applies to email.

But remember that communication between individual members is generally ok, and a rolling majority refers to a concerted effort to reach a consensus among a majority of the members.

(5) **Subcommittees** and the Open Public Meetings Act

- OPMA applies when **receiving public testimony** or **acting on behalf** of the full Board.
- Subcommittee acts on behalf of the governing body “when it exercises actual or de facto decision-making authority for the governing body.”

(6) **Disruptions** during an open public meeting

- Members of the public can be removed if it becomes unfeasible to conduct the meeting, but caution that there is a strong presumption that the meeting be open.
- Media representatives must always be allowed.

(7) **Executive Sessions**

- A portion of a meeting of the Board that may be closed to the public if the matter to be discussed falls within certain exceptions to the OPMA.
- Only authorized for specific purposes listed in the OPMA

Note: Any final action taken by the Board must be in an open session.

(8) **Penalties** for a violation include nullification of the action, attorney’s fees, and potential personal liability.