



City of Bellevue

# Review of Open Public Meetings and Public Records Requirements

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# Agenda

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- Open Public Meetings Act (OPMA)
- Public Records Act (PRA)
- Questions

# Open Public Meetings Act (OPMA)

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The Open Public Meetings Act (“OPMA”), chapter 42.30 RCW, requires that all meetings of *governing bodies* of public agencies, including cities, counties and special purpose districts be open to the public.

# OPMA Basics

- All meetings must be open to the public, except authorized executive sessions. RCW 42.30.030; RCW 42.30.110.
- The following are required: notice of meeting, agenda, and published meeting minutes. RCW 42.30.060; RCW 42.30.070; RCW 42.030.075; RCW 42.030.077
- Meetings where City business is received, discussed, and/or acted upon must include a quorum of members (i.e., 3 members in a 5 member commission).
  - Quorum requires a majority of members. See RCW 42.30.020(3)

# The OPMA and “Action”

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- Action at meetings:
  - “Action” is defined as the transaction of official business including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. RCW 42.30.020(3).
  - No action may be taken by a council, board, commission, committee, or task force except in a public meeting. RCW 42.30.060.

# The OPMA and Quorum

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- “Action” taken by a quorum of the members outside of a public meeting violates the OPMA.
  - Members should be careful not to take action, whether intentionally or unintentionally, outside of a regularly scheduled public meeting or properly constituted special meeting.
  - Remember the broad definition of “action”
  - Beware of meetings outside of a public meeting: site visits, dinners, social gatherings, etc.

# Serial Meetings

Serial conversations between smaller groups may be treated as a “meeting.”

- *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 564, 27 P.3d 1208 (2001) (exchange of e-mails among board members was a meeting under OPMA)

**OPMA restrictions apply regardless of the form of communication: texts, online comments, e-mails, phone calls, and in-person conversations all count.**

# Serial Meetings, cont.

The mere receipt of e-mail or social media is not automatically a meeting. *Citizens Alliance*, 184 Wn.2d at 443-44.

Must intend to meet to transact official business & must communicate about issues that may or will come before the governing body for a vote. *Zink v. City of Mesa*, No. 36994-3-III, 2021 WL 2197995, at \*3 (Wash. Ct. App. June 1, 2021)



# The Public Records Act

- The PRA is a “strongly worded mandate for broad disclosure of public records.” *Green v. Pierce Cty.*, No. 98768-8, 2021 WL 2149389, at \*3 (Wash. May 27, 2021).
- It requires disclosure of all public records unless they fall within a specific exemption. RCW 42.56.070(1).
  - Courts liberally construe the disclosure provisions and narrowly construe the exemptions, meaning the PRA is interpreted in favor of disclosure

# Scope of the PRA

- A “record” is (1) any “writing” (2) containing information relating to the conduct of government or the performance of any governmental or proprietary function (3) prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. RCW 42.56.010(3)
- A “writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation...RCW 42.56.010(4)
- A requester is entitled to all non-exempt records, and may request that electronic records be produced in electronic format. See WAC 44.14.050(2).

# E-mails as Public Records

- Personal e-mails of a county employee were public records where the employee was terminated for excessive use of personal e-mail. *Tiberino v. Spokane County*, 103 Wn. App. 680, 688, 13 P.3d 1104 (2000).
  - In other words, these e-mails were public records even though their substance did not pertain to government business.
- “[P]urely personal” emails on the home computers of city officials were not public records where they did not relate to a “government function.” *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 868, 288 P.3d 384 (2012).

# Social Media and the PRA

It's the content, not the form:

- Electronic public records may include text messages, online communications, Facebook and Instagram posts, “tweets,” and likely whatever other app you can download.
- Electronic public records must be retained pursuant to applicable retention schedules. WAC 434-662-030; see also WAC 434-662-140 (web content must also be retained).
- “Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention period. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the applicable records committee.” WAC 434-662-040.

# Segregate Public and Personal Records

All members should observe best practices with respect to electronic public records, including:

- Separate e-mail and other communications used for City business from those used relating to personal business;
- Ensure City documents are separated from personal documents on personal devices or home computers;
- Ensure e-mails and other electronic documents that are public records are transferred to an organized, secure, and accessible filing system for retention, in such a manner that preserves metadata;
- Comply with retention time periods, both in terms of saving and deleting records; and
- Be prepared to produce public records in response to a records request.

# How Requests Are Handled

- Although staff coordinate and oversee compliance with the PRA, all members should be aware of and comply with PRA procedures and record requests.
- A request directed to an individual member, or staff, is still a valid request.



**Thank you!**

**Questions?**