

Chehalis Basin Board

Public Records Act & Open Public Meetings Act

Refresher Training

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Public Records Act

- ▶ Public records of government agencies are presumed open
- ▶ Records withheld only when statutory exemption applies
- ▶ Exemptions are rarely applicable and must be “narrowly construed.” RCW 42.56.030

Public Records Act

- ▶ Public record: “any writing containing information relating to the conduct of government . . . prepared, owned, used, or retained by any state or local agency . . .” RCW 42.56.010(3)

Public Records Act

- ▶ Writing: “handwriting, typewriting, printing . . . photographing, and every other means of recording any form of communication . . . papers, maps . . . tapes . . . film & video recordings . . . sound recordings and . . . data compilations . . .” RCW 42.56.010(4)

Public Records Act

- ▶ Public records can include records of agency business when created or retained by agency employees or officials on home computers or devices, or in non-agency email accounts or files

Public Records Act

- ▶ A record a public employee prepares, owns, uses or retains within the scope of employment is a record “prepared, owned, used or retained by a state or local agency” under the PRA.

Public Records Act

- ▶ Board member use of Ecology email address for all Board-related communication
- ▶ Risks involved with using other email accounts (work, personal, etc.) while corresponding regarding Board-related activity

Public Records Act

► **NWSATURDAY**

ORCAS ARE BACK>TAIL SLAPPING & BREACHING NEAR WEST SE

Durkan staffers used private email, records show

By LEWIS KAMB Seattle Times staff reporter.

Four of Seattle Mayor Jenny Durkan's staffers used private email accounts when planning with political consultants what to do immediately after the City Council reversed course on a controversial business head tax to raise money for housing and homelessness services, according to records released Friday to The Seattle Times.

The June 11 messages - shared via Gmail accounts

Public Records Act

- ▶ What happens if a Board member receives a request for disclosure of documents covered by the Public Records Act?

Open Public Meetings Act

- ▶ WA's Open Public Meetings Act (OPMA) passed: 1971
- ▶ Requires meetings to be open to public. RCW 42.30
- ▶ Applies to multi-member public state and local agencies
- ▶ RCW 43.21A.731 created Chehalis Board: 7 voting members and 5 ex officio members. OPMA applies to Board meetings.

Open Public Meetings Act

- ▶ “All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend . . .”
RCW 42.30.030.

Open Public Meetings Act

- ▶ Governing body: “the multimember board, commission, council . . . of a public agency, or any committee thereof when the committee acts on behalf of the governing body . . .”
RCW 42.30.020(2)

Open Public Meetings Act

- ▶ Action: “the transaction of the official business of a public agency by a governing body including . . . discussions, considerations, reviews, evaluations, and final actions.” RCW 42.30.020(3)

Open Public Meetings Act

- ▶ Final action: “a collective positive or negative decision, or an actual vote by a majority of the members . . . upon a motion, proposal, resolution, order, or ordinance.”
RCW 42.30.020(3)

Open Public Meetings Act

- ▶ Final action must be taken in public
- ▶ Does not need to be a formal vote
- ▶ Can be an informal proposal resulting in a negative or positive decision

Open Public Meetings Act

- ▶ Meeting: “meetings at which action is taken.” RCW 42.30.020(4)
- ▶ A meeting of the governing body occurs when a majority of its members (quorum) gathers with the collective intent of transacting the governing body’s business

Open Public Meetings Act

- ▶ Quorum: Number of members who must be present to conduct official business
- ▶ Board's Handbook specifies number of individuals to constitute a quorum

Open Public Meetings Act

- ▶ A majority of Board members may travel together or gather for purposes other than a regular or a special meeting, so long as no action is taken
- ▶ Discussion or consideration of official business would be action, triggering the requirements of the OPMA. RCW 42.30.070

Open Public Meetings Act

- ▶ A meeting can occur by phone or email.
- ▶ An exchange of email could constitute a meeting if, for example, a quorum of members participate in the email exchange and discuss agency business.

Open Public Meetings Act

- ▶ Serial meetings: Do multiple, consecutive contacts trigger the application of the OPMA?
- ▶ Ex. 1: Stakeholder contacts individual Board members consecutively in an attempt to influence Board member decisions or line up support or opposition to a particular position. The Board members actively participate in the communications. More than passive receipt of information.
- ▶ Ex. 2: Stakeholder contacts several Board members via email without the goal of influencing outcome. Board members do not respond to stakeholder.

Open Public Meetings Act

- ▶ If communications do not reflect the requisite collective intent to meet, no “meeting” has occurred, and the OPMA does not apply

Open Public Meetings Act

- ▶ Participants must collectively intend to meet to transact the governing body's official business for the OPMA to apply.

Lobbying

- ▶ A Board member becomes a lobbyist when he or she attempts to influence the passage or defeat of any legislation by the Legislature, or the adoption or rejection of any rule, standard, rate or other legislative enactment or any state agency action

Lobbying

- ▶ Board members may express an opinion and support for budget request recommendation to Governor

Lobbying

- ▶ Federal Relations Procedures: Updated June 2018
- ▶ Agencies must coordinate with Governor's Office through DC office when they communicate with the federal government, including Congress and federal agencies

Final Points

- ▶ Board-related communications subject to disclosure under PRA. Recommend use of Ecology-issued email address.
- ▶ OPMA applies to Board meetings, and serial meetings can trigger application of OPMA.
- ▶ Board Handbook contains Governor's Office Federal Relations Procedures (2018)

Thank you!