

OPEN GOVERNMENT TRAINING

Guidance for Public Hospital Districts

AWPHD Rural Hospital Leadership Conference
Campbell's Resort, Chelan Washington
June 30, 2026



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Presenters



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Legal Consultant
MRSC

Agenda

Open Public Meetings Act
(OPMA, RCW 42.30)

Campaigning
(RCW 29B.45.010)

Social Media Issues
(1st Amendment,
Public Records, OPMA)



The Open Public Meetings Act

OPMA

RCW 42.30



OPMA application

The OPMA applies to agency “governing bodies”

- Multimember boards, councils, etc. that make agency policies or rules
- Legislatively created agency subagencies (like planning commissions)
- Subcommittees that exercise the body’s decision-making authority, conduct hearings or take public testimony or comment

Excludes advisory bodies that only discuss internally to advise or inform a governing body (but beware of “rubber stamp”)





The OPMA and committees

Governing bodies (like PHD boards) can form committees to address matters needing more board study or investigation than board meetings allow

Committee types:

- “Standing”—formed to address ongoing or reoccurring matters that need greater board attention, such as budget issues)
- “Ad hoc”—formed as needed to address complicated or time-consuming issues as they arise, such as acquisition of property



The OPMA and committees

- **Committee formation:** governing bodies typically form committees and define their functions by motion/vote or through adopted procedural rules
- **Committee members:** the forming board chooses committee members, who can include both board members and others outside the PHD with special knowledge in a needed area
- **The OPMA:** does it apply to committees?



The OPMA and committees

4 scenarios when the OPMA WILL apply to committees:

Quorum + membership	Delegated decision authority	Hearings or testimony	“Rubber stamp”
A board quorum (or more) can transact official PHD business, so quorum + committee meetings involve “action” requiring OPMA compliance	Committees empowered to make board decisions “act on behalf of” the board, requiring OPMA compliance	Committees whose work includes conducting hearings or taking public testimony or comment must follow the OPMA	Committees that merely advise boards or make recommendations to them aren’t subject to the OPMA, <u>unless</u> the board routinely “rubber stamps” the committee’s recommendations



Public attendance at meetings

The OPMA requires the public's ability to attend governing body meetings involving "action" (official agency business)

Action includes taking public testimony, discussions, deliberations, and final actions (votes or collective decisions)

Agencies can impose no public attendance "conditions" except:



generally applied and reasonably necessary conditions to protect health or safety, or to prevent interruptions; or



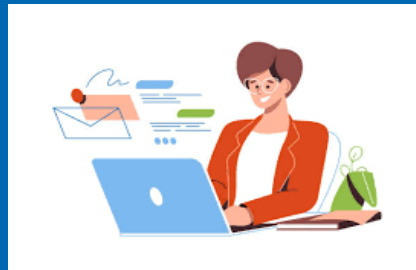
restrictions on openly carrying firearms while attending (lawful concealed carry ok)

RCW 42.30.040 / RCW 9.41.305

NOT Agency “Meetings”



Gatherings of less than governing body quorum (unless gathered to act on governing body's behalf)



Passively receiving information or emails with no active exchange or discussion among members

Attendance at social gatherings involving no official business (but be careful!!)





Closed sessions

Governing bodies can exclude the public from their closed sessions:

- Licensing hearings

- Professional disciplinary hearings

- Quasi-judicial hearings between specific parties

- Collective bargaining negotiations

RCW 42.30.140





Executive sessions

The public can be excluded from a governing body's executive sessions:

Governing bodies can hold executive sessions during any meeting type (regular, special, emergency)

Governing body ultimately decides to hold one (but they are frequently suggested or recommended by staff or agency counsel)

RCW 42.30.110

Who attends an executive session?



Governing body generally decides executive session attendees

But agency attorney must attend sessions to discuss agency litigation under RCW 42.30.110(1)(i)

Can PHD superintendents attend? Maybe:

RCW 70.44.080:

PHD superintendents are “entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district”



Executive session bases

Considering **buying or leasing real estate** when public knowledge would increase price

Can discuss any aspect of the purchase/lease transaction

Setting bottom price to **sell real estate** when public knowledge would decrease price

Can discuss minimum sale price only

Receive or evaluate **complaints/charges against public employee**

Unless employee wants open meeting discussion

Executive session bases (cont'd)



Evaluate **public employment applicant qualifications**

But hiring decision must be public

Evaluate a **specific public employee's performance**

But decision to discipline must be public

Evaluate **qualifications of a candidate for elected position**

But candidate interview and appointment decision must be public



Executive session bases (cont'd)

To discuss **actual or potential litigation** against the agency or a member in their official capacity:



Litigation can be specifically threatened or reasonably anticipated



Can include discussion of legal risks related to a proposed action or current practice



Agency attorney must attend a session under this basis

Executive session bases (cont'd)



RCW 70.44.062:

PHD board discussions related to granting, denying or restricting a health care worker's clinical or staff privileges or status must be confidential

Board may discuss in executive session (but final decisions regarding worker's status or privileges must be public)



Executive session procedures

- ✓ State session purpose in public meeting, citing precise RCW subsection / legal authority (e.g. “RCW 42.30.110 (1)(g)”)
- ✓ Enter session purpose into meeting minutes
- ✓ State specific session end time (“we’ll return to public session at 7:10 p.m.” instead of “we’ll return in 10 minutes”)
- ✗ Do NOT return to public session before stated end time
- 🕒 To extend, have presiding officer publicly announce new session end time at expiration of original end time
- ⚠️ Keep session discussions confidential—ethical violation to disclose

Executive session checklist



MRSC Executive Session Checklist

[opma executive session checklist.pdf](#)

OPMA – EXECUTIVE SESSIONS

Checklist FOR LOCAL GOVERNMENTS

MRSC



The Open Public Meetings Act (OPMA) requires specific steps be taken in order to hold an executive session. Use this checklist to guide your agency's compliance with the OPMA as it applies to executive sessions. For more information and resources visit mrsc.org/opma.

REQUIREMENT	COMPLETED
Meeting An executive session can only be held as part of a regular or special meeting.	☐
Purpose The presiding officer announces in open session the purpose/topic of the executive session.	☐
End Time The presiding officer announces in open session the time the executive session will end. Note: Announce a specific time – announcing a length of time is not sufficient.	☐
Legal Counsel Legal counsel is present during the executive session, if required.	☐
Confidentiality At the start of the executive session, participants are reminded that discussions are confidential.	☐
Discussion topics for local governments as set forth in RCW 42.30.110(1). (See Notes for Specific Discussion Topics in Practice Tips section.)	
• Matters affecting national security (RCW 42.30.110(1)(a)(i)).	☐
• Infrastructure and security of agency computer and telecommunications network (RCW 42.30.110(1)(a)(ii)). Note: Requires presence of legal counsel.	☐
• Consideration of site selection or acquisition of real estate purchase or lease if likelihood that disclosure would increase price (RCW 42.30.110(1)(b)).	☐
• Consideration of the minimum offering price for sale or lease of real estate if there's a likelihood that disclosure would decrease the price (RCW 42.30.110(1)(c)). Only minimum price may be discussed; factors influencing price must be discussed in public session. See Columbia Riverkeeper v. Port of Vancouver . Note: Final action selling or leasing public property must also be taken in open session.	☐
• Complaints or charges brought against a public officer or employee (RCW 42.30.110(1)(f)). Note: At respondent's request, discussion must be in open session.	☐
• Qualifications of an applicant for public employment (RCW 42.30.110(1)(g)).	☐
• Performance of a public employee (RCW 42.30.110(1)(g)).	☐
• Qualifications of an applicant/candidate for appointment to elective office (RCW 42.30.110(1)(h)). Any interviews or votes must be held in open session.	☐
• Discussions with legal counsel regarding agency enforcement actions (RCW 42.30.110(1)(i)).	☐
• Discussion with legal counsel about current or potential litigation (RCW 42.30.110(1)(i)).	☐
• Discussion with legal counsel about legal risks of current or proposed action (RCW 42.30.110(1)(i)).	☐

EXECUTIVE SESSION FAQ



Are notes that I take in an executive session subject to public records requests?

EXECUTIVE SESSION FAQ



A

YES!

Executive session notes are agency-created writings relating to the conduct of government, and are therefore public records

If requested, possible to assert exemptions depending on note content

Public comment



Public must be allowed a chance to comment at any regular meeting involving “final action”

Final action = collective decision or vote

Public comment



RECEIVING public comment:

Can choose to receive comments orally, in writing, or both (can impose receipt deadline if written)

Must allow remote comments if feasible and requested by anyone with difficulty attending meeting in person

Public comment not required in “an emergency situation”

LIMITING public comment:

Agency meetings are limited public forums for 1st Amendment purposes

Can limit comments to agenda topics

Can impose comment time limits to ensure orderly meeting

Impose limits by procedural rules for consistency



Interruptions

Meeting events are only “interruptions” if they make the “orderly conduct of a meeting unfeasible”

Examples include public comments over allotted time or off topic, verbal threats or harassment

Not interruptions: silent nazi salutes, non-threatening personal verbal attacks, use of profanity



Interruptions



5 step presiding officer procedure to address interruptions:

- 1 **Tell** the person they are interrupting the meeting
- 2 **Cite** the interrupting conduct
- 3 **Ask** them to stop
- 4 **Warn** them that continuing may result in their removal
- 5 **Order** them removed by a board motion if behavior continues



Interruptions

Two options if removing the interrupter(s) doesn't restore meeting order:

1 Clear the room of spectators and continue the meeting

- OR -

2 Adjourn the meeting and reconvene it at a different location the body chooses by majority vote

In either event, can only finally dispose of matters listed on agenda, and can't exclude media (unless they participated in the interruption)

Campaigning

RCW 29B.45.010



Campaign Statements

RCW 29B.45.010 prohibits agency employees and officials from using “agency facilities” to campaign for or against a ballot measure or a political candidate

Agency facilities include use of agency computers or cell phones to access personal email or social media for campaigning

Not violations:

Board collective decisions or votes on ballot measures at open public meetings

Elected official statements for or against ballot measures at open press conferences or in response to specific inquiries

Campaign Statements



Public Disclosure Commission (PDC) guidance is that elected officials:

Can engage in political activities on their own time using no agency facilities

If using their official title, should clarify that they speak only for themselves (but can speak for the agency if it has adopted the political position by resolution)

Can attend functions or events at any time of day and give opinions about candidates or ballot measures, if not compensated and no public equipment, vehicle or facility is used

Additional Guidance on Campaigning



Search Menu

Guidelines for Local Government Agencies in Election Campaigns

Cite as PDC Interpretation No. 04-02

Use of the Guidelines

These Guidelines are meant to aid and assist in compliance with the law.

This document is an educational tool that is an expression of the Commission's view of the meaning of [RCW 42.17A.555](#) and relevant administrative rules and case law involving local government and election campaign activity. It is intended to provide guidance regarding the Commission's approach and interpretation of how the statutory prohibition on the use of public facilities for campaigns impacts activities that may be contemplated by government employees and other persons who may seek to utilize those public facilities. Readers are strongly encouraged to review the statute and rules referenced in these Guidelines.

For ease of reference, the majority of this interpretation is in chart form. In part, the chart identifies categories of persons, some possible activities, and some general considerations. These illustrative examples in the columns of the chart are not intended to be exhaustive.

Public Disclosure Commission (PDC) Guidance:

Guidelines for Local Government Agencies in Election Campaigns | Washington State Public Disclosure Commission (PDC)

Social media issues:

1st Amendment

Public Records / Records retention

OPMA

SOCIAL MEDIA 1ST AMENDMENT ISSUES

Only government actions can violate a person's 1st Amendment rights

If an agency official posts about agency business on their personal social media, does the official act personally if they delete or block another's comments, or are those government actions subject to potential 1st Amendment liability?



Lindke v. Freed—1st Amendment

An official's comment blocks/deletions on personal social media are only government actions if:

- 1 the agency **authorized** the official to speak about the specific agency business discussed; and
- 2 the official **used** that agency authority during the social media exchange



Lindke v. Freed—1st Amendment

Courts consider:

When has an agency **“authorized”** an official to speak about agency business?

- Is making the statements a part of the official's job?
- Do agency enactments (statutes, ordinances, regulations, etc.) authorize the official to speak for the agency on the subject?
- Does the agency have a long-standing and “well settled” history or custom of allowing the official (either an individual or a position) to speak for the agency on the subject?

Lindke v. Freed—1st Amendment



When does an official
“**use**” agency
speaking authority?

From the Lindke opinion:

“If the public employee does
not use his speech in
furtherance of his official
responsibilities, he is speaking
in his own voice.”

Social media & public records



When are an official's personal social media posts public records?

Topic:

The posts refer to or impact agency actions, processes or functions;

and

Authority/capacity:

The official posted in their official capacity—any one of the following qualifies:

The official's position *generally* required the post

The agency *specifically* directed the official's post

The official's post furthers agency interests

Searching personal social media for public records



Agencies must search personal social media accounts likely to contain records responsive to a public records request

Nissen v. Pierce County, 183 Wn.2d 863 (2015):

Agencies can satisfy this records search obligation by having officials search their own personal accounts and giving any responsive records to the agency with an affidavit reasonably detailing the search

Example declaration (personal email account search):

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DECLARATION OF *****

Pursuant to RCW 9A.72.085, I, *****, state and declare as follows:

I am a current member of the City of Spokane Valley City Council. My term is set to expire on December 31, 2019. I make this Declaration based upon my own personal knowledge and/or belief.

1. I have reviewed a copy of the public record request from *, dated ***, 2018, a copy of which is attached to this Declaration as attachment A.

2. I checked my personal email account to determine if I had any responsive City-related emails of any kind. I did this by scrolling through my account, then opening any email that may possibly be related to City business. The search included the inbox email folder, sent email folder, and deleted email folder associated with my account. I also searched for any calendar entries or appointments. Responsive City-related emails on my personal account, if any, are being provided with this Declaration as attachment B.

3. I checked my personal phone to determine if I had any responsive text messages relating to my duties as a City Councilmember. Responsive City-related text messages on my personal phone, if any, are being provided with this Declaration as attachment C.

DECLARATION OF ***** - 1

Social media & records retention



WAC 434-662-030:

Electronic records are equivalent to paper documents for retention purposes

If social media posts qualify as agency records, the agency must retain them in accordance with Secretary of State City CORE records retention schedule: [local-government-common-records-retention-schedule-core-v.5.0-\(october-2024\).pdf](#)

Social media & records retention



Washington State Archivist guidance regarding social media retention and permitted destruction:

Basics of managing social media records

How long do social media posts need to be kept?

Common retention schedules for social media

Social media & records retention



WAC 434-662-040:

Agencies must retain electronic records in a format that is “usable, searchable, retrievable and authentic for the length of the designated retention period”

State archivist recommends using a social media “capture tool” to retain social media records, rather than relying on the social media platform itself

Sample Social Media Records Retention Policy



City of Vancouver:

8.0 Records Retention Act Compliance

State and local records retention laws and schedules apply to social media content. All social media content that is required to be retained by the City shall be maintained for the required retention period on a City server in a format that preserves the metadata of the original record.

Prior approval of the retention format and procedures *for each social media tool being used* by Council members to conduct City business must be received from the City Manager upon the advice and recommendations of the Public Records and Information Technology staff. It is the responsibility of each Councilmember to either register their social media account(s) with the City Information Technology Department for capture and archiving by the City, or independently maintain current, approved retention procedures, and ensure that those procedures are followed.

Councilmembers who do not register applicable social media accounts with the City should consult with the City Manager and appropriate staff for the applicable retention schedule and method.

Social Media & Public Meetings



Wood v. Battle Ground S.D., 107 Wn. App. 550 (2001):

Councilmembers can “meet” even when not physically present together

Social media exchanges between governing body members can create “serial” meetings—a series of less than quorum/majority meetings that can add up to a “full” meeting

Social Media and Public Meetings



Legal
issues
when
social
media
activities
become
“meetings”

Meeting location—social media exchanges involving quorum may lack physical meeting location for public attendance (may violate RCW 42.30.070)

Public comment—social media exchanges may lack chance for public comment (may violate RCW 42.30.240 if an exchange involves final action)

Secret votes—RCW 42.30.060 prohibits “secret” votes outside of public meetings

OPMA Violation on Social Media



5-member council example:

- **Councilmember Smith** posts to Facebook: “this City needs a new park. We should partner with the school district to develop it.”
- **Councilmember Jones** comments on Smith’s post: “I totally agree—great idea. Can’t wait to discuss further.”
- **Councilmember Wallace** separately “likes” Jones’s comment.



OPMA Violation on Social Media

Although separate, individual and discrete social media communications, collectively a council quorum discussed agency business through the Facebook exchange

- The exchange is a council meeting with action subject to OPMA
- **OPMA violations**

No public attendance at “meeting”

No public comment with final action (collective decision to pursue park development plan)

Not social media OPMA Violations



Less than council majority meets in private and takes no “action”



Councilmembers *passively* receive information with no response or discussion



Seattle v. Kaseburg (2018): councilmember e-mail exchanges with individual community members that are not circulated among council majority (may also apply to social media exchanges)

Questions



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Thank You!

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