

PUBLIC RECORDS ISSUES AND QUESTIONS

Guidance for Public Hospital District Superintendents / CEOs

**AWPHD Rural Hospital Leadership Conference
Campbell's Resort, Chelan Washington
June 29, 2026**



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SUPERINTENDENT'S ROLE IN PUBLIC RECORDS REQUIREMENTS



RCW 42.56.070(1):

As public agencies, PHDs must make their public records “available for inspection” unless a record is legally exempt

RCW 70.44.090(1)(a):

PHD superintendents must oversee enforcement of all state laws pertaining to the district

A PHD superintendent's day to day involvement with public records issues can vary by local policy and practice

PRA BASICS

What is a Public Record?

FORM

A “writing” (any form of recorded documentation or communication)

Can include:

- Photos
- Audio / video recordings
- Text messages
- Social media posts
- Emails

CONTENT

The writing relates to the “conduct of government” or the performance of any governmental or proprietary function

AGENCY CONNECTION

The writing is prepared, owned, used or retained by the agency

Personal, or “conduct of government?”

Courts use the “scope of employment” test to decide whether a record on a personal device or account relates to the conduct of government:



Agency Records in Personal Accounts / Devices

Agency-related records are public records even if stored in **personal** devices and accounts. Examples:



Agency-Related [Emails](#) on Personal Accounts

[West v. Vermillion](#), 196 Wn. App 627 (2016)



Agency-Related [Text Messages](#) on Personal Phones

[Nissen v. Pierce Co.](#), 183 Wn.2d 863 (2015)



Agency-Related [Social Media Posts](#) on Personal Accounts

[West v. Puyallup](#), 2 Wn. App.2d 586 (2018)

Personal Records in Agency Accounts



Personal emails on an agency email account are public records if the agency “uses” them—the agency’s use makes otherwise personal emails “relate to the conduct of government”

[Tiberino v. Spokane County](#), 103 Wn. App 680 (2004)

Union-related emails on an agency account are not public records unless they discuss agency work conditions or other agency business

[SEIU Local 925 v. UW](#), 193 Wn. 2d 860 (2019)

Are Personal Notes Public Records?



Notes are “personal” and are NOT public records if they:

- Are created solely for a government official or employee’s convenience, or to refresh their memory
- Are maintained to indicate a private purpose
- Are not circulated or distributed within the agency
- Are not under agency control; AND
- Can be discarded at the writer's sole discretion

Yacobellis v. Bellingham, 55 Wn. App 706 (1989)

Is my agency required to search my personal computer or phone for records?



No. Courts instead allow the device owner to search their own device/account for records and produce them to agency with a “Nissen” affidavit describing their search

[Nissen v. Pierce Co.](#), 183 Wn.2d 863 (2015)

Agencies can rely on these affidavits and supplied records when responding to public records requests

[Valderrama v. Sammamish](#), 33 Wn. App.2d 318 (2024)

Records of Outside Entities



Records of outside entities (like consultants or contractors) are agency public records if the outside entity is an agency's "functional equivalent"

Functional Equivalent Test ("Telford" Test):

- The extent to which the entity performs a government function
- The extent to which public funds pay for the entity's activities
- The extent of government involvement or regulation in the entity's activities
- Whether the government created the outside entity

Getting a Public Records Request: The 5-Day Response

Agencies have 5 business days to respond to a public records request



Response options:

- Disclose the records (allow inspection or give copies)
- Direct the requestor to your agency's website
- Estimate response time needed based on request size, record location(s), need for legal review, etc.
- Ask for clarification to the extent the request is unclear
- Deny the request

Closing a Public Records Request

RCW 42.56.550(6) gives requesters 1 year to sue an agency over its public records response. This 1-year deadline starts once the agency gives the requester a plain language letter stating:



- How the agency fulfilled the request and why it's closing it
- The 1-year deadline to sue starts because the agency doesn't intend to further address the request
- The requestor can ask follow-up questions within a reasonable time (but questions don't restart the clock)

Cousins v. DOC, 3 Wn.3d 19 (2024)

IMPORTANT PUBLIC RECORDS MANAGEMENT STEPS

PRA – AGENCY OBLIGATIONS: A STARTING POINT

Checklist FOR LOCAL GOVERNMENTS



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 mrsc.org/pra.

REQUIREMENT	COMPLETED
Assign and Publicly Identify 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 publications (RCW 42.56.580).	☒
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).	☐
Publish a List of Exemptions and Prohibitions Found Outside the PRA Publish a list of exemptions and prohibitions to disclosure other than those listed in the PRA (RCW 42.56.070). For a list created by the Code Revisor of other Washington exemptions and prohibitions, see the Sunshine Committee webpage. For a list of other federal exemptions and prohibitions, see Appendix C of MRSC's PRA publication.	☐
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).	☐
Adopt a PRA Fee Schedule After a public hearing, establish fees for PRA costs, including costs for hard copies, electronic copies, and mailing costs. If determining actual costs would be unduly burdensome, the agency can adopt the statutory schedule (RCW 42.56.070 and RCW 42.56.120).	☐
Provide for a Review Procedure for any Denial of Records An agency must provide for review of a denial to inspect 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 42.56.520). Review is not a prerequisite for filing a lawsuit under RCW 42.56.550 .	☐
PRA Training Requirements 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 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 (RCW 42.56.150 and RCW 42.56.152).	☐

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 specific legal advice. Consult with your agency's attorney for guidance on specific situations.

PRA – AGENCY OBLIGATIONS: A STARTING POINT CHECKLIST FOR LOCAL GOVERNMENTS

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Assign and Publicly Identify a Public Records Officer (PRO) for the PHD

Post the PRO's contact information at the PHD's place of business, on its website (if any), and in any of its relevant publications

RCW 42.56.580

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RCW 42.56.040

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Adopt a PRA Fee Schedule

Establish the PRA fees that the PHD will charge, including costs for hard copies, electronic copies, and mailing costs

Charge either the PHD's actual costs (after a cost study), or the statutory costs allowed in [RCW 42.56.120\(2\)\(b\)](#)

RCW 42.56.070 & .120

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PRA Training Requirements

- Local elected officials and PROs must get PRA and records retention training ([RCW 42.56](#) and [RCW 40.14](#))
- They must complete this training no later than 90 days after taking an oath of office or assuming duties
- They must also get "refresher" training at least every 4 years

RCW 42.56.150 & .152



OTHER IMPORTANT STEPS

RCW 42.56.070(2):

Publish a list of exemptions found outside the PRA

Can adopt and publish this list in [Appendix C of MRSC's Public Records Act publication](#)

RCW 42.56.070(3) & (4):

Maintain an index of all PHD public records, unless the PHD adopts a formal order stating why indexing would be unduly burdensome or disruptive to agency operations (agencies commonly adopt such orders)



OTHER IMPORTANT STEPS

RCW 42.56.520(4):

Adopt a procedure to review denied records requests within 2 business days

Agency can designate the reviewer (can be PRO's supervisor, agency attorney, etc.)

RECORDS RETENTION

Proper Management of Records

- RCW 40.14 and Secretary of State / Archivist retention schedules govern public records retention
- Retention length depends on a record's "content and function" (what's in it and how the agency used it)
- A record's format or transmission method does not determine its retention period—e.g., electronic records are treated the same as paper documents for retention purposes
- Mutilating, destroying, concealing, erasing, obliterating or falsifying a public record = **felony!** See **RCW 40.16.010 & .020**

Records Retention Schedules for PHDs



WASHINGTON
Secretary of State

Managing Hospital District Records

[OSOS Home](#) / [Washington State Archives](#) / [Help For Government Agencies](#) / Managing Hospital District Records

Which Schedules to Use?

Hospital Districts use the following:

1. **Local Government Common Records Retention Schedule (CORE) v.5.0 (October 2024)** - records common to all agencies such as administration, asset management, contracts, finance, grants, human resources, information management, and transitory records.
2. **Emergency Communications (911) and Dispatch Records Retention Schedule v.2.0 (June 2026)** - records relating to any emergency communications (911) services operated by the hospital district.
3. **Fire and Emergency Medical Records Retention Schedule v.2.1 (August 2022)** - records relating to any emergency medical services operated by the hospital district.
4. **Public Hospitals Records Retention Schedule v.5.3 (December 2023)** - records relating to health care and treatment, hospital support services, laboratory and pathology management, pharmacy management, and research management.

Link:

[Managing Hospital District Records | WA Secretary of State](#)

Records Retention Schedules for PHDs



WASHINGTON

Secretary of State

Washington State Archives

Local Government Common Records Retention Schedule (CORE)

Version 5.0 (October 2024)

1.12

MEETINGS AND BOARD/COMMITTEE SUPPORT

The activities associated with documenting staff appointments/activities and assembling of groups of people for the purpose of information-sharing, discussion, planning, and/or decision-making.

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS50-05A-13 Rev. 3	<i>Governing/Executive/Policy-Setting Body Records</i> Records documenting the actions, meetings and membership of the agency’s governing body, executive management team and other policy-setting/decision-making boards, committees, commissions, councils, task forces, etc. Also includes interagency/national/external policy-setting/decision-making bodies for which the agency acts as secretary/keeper of the official records. Includes, but is not limited to: - Agendas, meeting/agenda packets (briefs, reference materials, documents for approval, etc.); - Speaker sign-up, written testimony; - Audio/visual recordings and transcripts of proceedings; - Minutes; - Appointment, reappointment, and termination correspondence/communications; - Selected images/photographs showing the committee membership at particular points in time (such as board/committee portraits, etc.) and/or significant stages of the board/committee’s life. Excludes records covered by: - Advisory Body Records (DAN GS2012-027); - Meeting and Board/Committee Administrative Arrangements (DAN GS2011-176); - Meeting Materials – Members’ Copies/Notes (DAN GS2016-007); - Ordinances and Resolutions – Approved (DAN GS50-05A-16).	Within 6 years after end of calendar year, Transfer to Washington State Archives for permanent retention.	ARCHIVAL (Permanent Retention) ESSENTIAL (for Disaster Recovery) OPR

PUBLIC RECORDS FAQs

PUBLIC RECORDS FAQs



Q

I understand that passive receipt of information is the best way to communicate with other board members outside of a public meeting.

If I send the board a document related to PHD business and no one replies, is the document still a public record?

PUBLIC RECORDS FAQs



A

Yes—regardless of any response the document is a public record because it is a writing related to “the conduct of government.” It must be disclosed unless an exemption applies

“Passive receipt” addresses a separate OPMA issue. Board members don’t improperly “meet” outside a public meeting by passively receiving emailed information

PUBLIC RECORDS FAQs



Q

Are my text messages related to PHD business subject to public records requests?

If so, what is the process when a request comes in?

Are there any exemptions?

PUBLIC RECORDS FAQs



A

Yes—text messages about PHD business can be public records even if sent from and/or stored on a personal device

Exemptions depend on text content

Agencies have 5 business days to respond to public records requests. Must respond in one of the 5 ways in RCW 42.56.520(1). Local policies can also direct response specifics.

PUBLIC RECORDS FAQs



Q

Does a verbal request to a commissioner count as a public records request?

PUBLIC RECORDS FAQs



A

Yes.

O'Dea v. City of Tacoma requires agencies to honor public records requests even if submitted or received in “non customary” ways

Board members (or other staff) receiving PRA requests should promptly forward them to appropriate agency PRA staff for processing

PUBLIC RECORDS FAQs



Q

The local newspaper has asked me to start sending our board agenda packet before our public meeting, do I need to comply?

Is this considered a public records request?

PUBLIC RECORDS FAQs



A

You do not need to comply if the agenda is for a regular meeting. **RCW 42.30.077(1)** requires agencies to post make regular meeting agendas online at least 24 hours before the meeting start, but it doesn't require furnishing agendas on specific request

RCW 42.30.080(2)(a) requires agencies to deliver special meeting agendas to local newspapers at least 24 hours before the meeting start when the paper files a written request for special meeting agendas with the board

PUBLIC RECORDS FAQs



A

The newspaper's agenda request is only a public records request if the PHD has "fair notice" that the request is made under the PRA

Courts decide fair notice by looking at the language, format and intended recipient of the request

Questions



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Please fill out the training evaluation survey

