

# PUBLIC RECORDS AND OPEN PUBLIC MEETINGS TRAINING

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*The opinions expressed herein are the author's and are not necessarily those of the Washington State Attorney General's Office.*



# INTRODUCTION

## Purpose:

- **Give Commissioners and staff knowledge of their obligations under important open government laws: the Open Public Meetings Act (OPMA) and the Public Records Act (PRA)**
- **Promote compliance with the PRA and OPMA**
- **Meet the requirements of the Open Government Trainings Act, which mandates Open Public Meetings Act training for Boards/Commissions**



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



# OPMA AND PRA BASICS “SUNSHINE LAWS”

*“Sunlight is the best disinfectant.”*

- Justice Louis Brandeis



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# OPMA AND PRA BASICS

- **OPMA: RCW Chapter 42.30; PRA: RCW Chapter 42.56**
- **Both the OPMA and the PRA are open government “sunshine” laws intended to make sure the public can oversee the conduct of public business**
- **Both apply to the Commission and Commissioners individually; the PRA also applies to agency staff**



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# OPMA AND PRA BASICS

- **Both are to be construed liberally in favor of openness, transparency, and public access**
- **Exemptions construed narrowly**
- **Both impose substantial penalties for non-compliance**
- **But there are key distinctions between the two Acts**



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# OPMA AND PRA BASICS

- **Both the OPMA and PRA are based on the imperative of openness and transparency to the public**
  - **Meetings (any interaction between a quorum of the Commission related to official business) must generally be open to the public**
  - **Public records must generally be made available for public inspection and copying**
- **Don't mix up OPMA and PRA**
  - **An email is a public record, even if exchanged between less than a quorum of the commission**
  - **Permissible exec. session topics under the OPMA are distinct from PRA exemptions**



# WASHINGTON'S OPEN PUBLIC MEETING ACT (OPMA)

- **Passed in 1971**

- “The legislature enacted the OPMA as part of a nationwide effort to make government affairs more accessible and transparent. *LAWS OF 1971, 1st Ex. Sess., ch. 250.*” *West v. Wash. Assoc. of County Officials*

- **Require meetings to be open to the public, gavel to gavel**

- **Patterned after CA's “Brown Act” and a Florida Law**



# OPMA - PURPOSE

## **Purpose of the OPMA: Public business be conducted in public:**

*The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.*



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# OPMA – PURPOSE

- **The people of this state do not yield their sovereignty to the agencies which serve them.**
- **The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.**
- **The people insist on remaining informed so that they may retain control over the instruments they have created.**

RCW 42.30.010 (emphasis added).



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# OPMA – PURPOSE

- **The purpose of the OPMA is to allow the public to “observe all steps” in the “decisionmaking process”**
- **The OPMA employs “some of the strongest language used in legislation.”**
  - **Washington State Supreme Court**



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# OPMA - REQUIREMENTS

## Basic requirement:

***All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in the OPMA***



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# OPMA - DEFINITIONS

**What is a “governing body” of a “public agency”?**

- **Defined in RCW 42.30.020 (1) and (2)**
- **The multimember board or other policy or rulemaking body**
- **Wash. State Parks & Recreation Commission is a “governing body” of a “public agency” for purposes of the OPMA**



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# OPMA - DEFINITIONS

- **Includes “any committee thereof” when:**
  - **The committee acts on behalf of the governing body;**
  - **Conducts hearings; or**
  - **Takes testimony or public comment**
- **Committee NOT subject to the OPMA when it lacks actual, de facto decisionmaking authority:**
  - **Gather information**
  - **Internal discussions**
  - **Provide info to governing body**
  - **Gives advice to the governing body**
  - **Performs administrative staff support role**



# OPMA - DEFINITIONS

## What is a “meeting”?

- **RCW 42.30.020(4): “Meeting’ means meetings at which action is taken.”**
- **Meeting occurs when a majority of its members (quorum) gathers with the collective intent of transacting the governing body’s business**
- **Quorum for WSPRC is four out of seven**



# OPMA - DEFINITIONS

## What is “action”?

- **RCW 42.30.020(3):** “‘Action’ means the transaction of the official business of a public agency by a governing body including but not limited to:
  - receipt of public testimony,
  - All deliberations, discussions, considerations, reviews, evaluations, and
  - “final actions”



# OPMA - DEFINITIONS



**Definition of “meeting” and “action” construed broadly such that nearly any interaction between a quorum of the body at which official business is discussed may be considered a “meeting” subject to the OPMA. If a quorum is present:**

- **Informal conversations can be a “meeting”**
- **Phone conference can be a “meeting”**
- **Email discussion can be a “meeting”**
- **Social media interactions might be a “meeting”**



# OPMA – FINAL ACTION

- **“Final action” is a collective positive or negative decision, or an actual vote\*, by a majority of the governing body**
- **Must be taken in public, even if deliberations were allowed to be conducted in closed session**
- **Secret ballots not allowed**

**\*Does not need to be a formal vote. Can be an informal proposal resulting in a negative or positive decision. A consensus on a position to be voted on at a later meeting would qualify as a collective positive decision and a final action. *Miller v. City of Tacoma***





# OPMA - OPEN MEETINGS

## Meetings must be open to the public:

- **RCW 42.30.030: *All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in the OPMA.***
- **Body generally cannot place conditions on attendance (no sign-in requirements)**
- **But the OPMA provides procedures for dealing with disruptions, including ejecting disruptors and (in certain cases and with certain limitations) clearing the meeting room or adjourning to another location**



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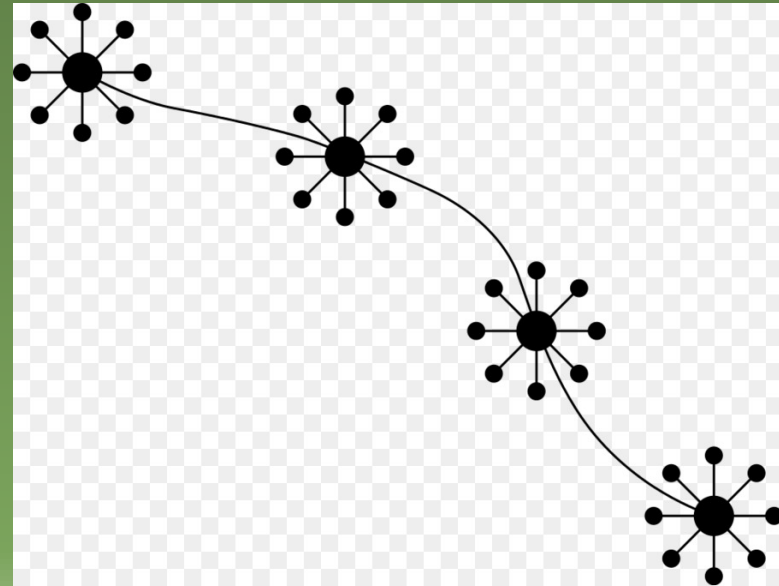
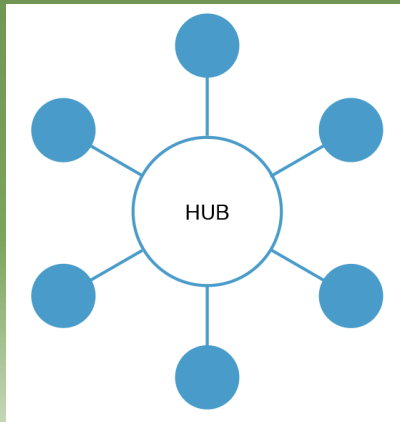
# OPMA - OPEN MEETINGS

- **Physical presence (and concurrence in time) not required – a meeting can occur by phone or email**
- **An exchange of email could constitute a meeting if, for example, a quorum of the members participate in the email exchange & discuss agency business. Simply receiving information without comment is not a meeting**
  - *Wood v. Battle Ground School Dist.; Citizens Alliance for Property Rights Legal Fund v. San Juan County*
  - (Note: Some boards, as a matter of policy, restrict emails among board members so as to not create potential OMPA issues)
- **Does not need to be called a “meeting” – applies to retreats, workshops, study sessions, etc.**
- **No meeting occurs if no quorum**



# OPMA – “SERIAL MEETINGS”

- “Daisy Chain”
- “Hub and Spoke”



# OPMA - EXEC. SESSION

## Limited exception to the open meeting requirement: executive session

- **OPMA allows a governing body to conduct certain business in closed session on a limited basis**
- **Executive session is held in private; essential staff and legal counsel may be present**
- **Presiding officer must announce (1) purpose of exec. session and (2) the time the body will return to regular (open) session (although the time may be extended by the presiding officer)**
- **Final action cannot be taken in exec. session (no secret voting); body must come out of exec. Session to take final action**



# OPMA - EXEC. SESSION

## Topics that may be discussed in exec. session:

- Real estate acquisitions or sale/lease pricing;
- Negotiations on certain public contracts;
- Complaints against public employees or officers;
- Candidate qualifications in the process of hiring a public employee;
- Performance of a public employee;
- Certain legal matters, including litigation or potential litigation and legal risks to the agency
- Others that don't pertain to WSPRC (e.g. national security)
  
- Note: these are distinct from PRA exemptions



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# OPMA - EXEC. SESSION TO DISCUSS AGENCY ENFORCEMENT ACTIONS, LITIGATION, OR POTENTIAL LITIGATION

- **This executive session is not permitted just because legal counsel is present**
- **This executive session must address:**
  - **Agency enforcement action**
  - **Agency litigation**
  - **“Potential litigation” as defined by statute**



# OPMA - REQUIREMENTS

## Meeting notice requirements

- **Notice must be given of a meeting of the body**
- **“Regular” meetings: Schedule of regular meetings must be published in the State Register. Any business may be conducted at regular meeting**
- **“Special” meetings: Notice of special meeting must be printed in newspaper, posted on agency’s website, and physically displayed at agency HQ and meeting site. Such notice must be given 24 hours in advance of the meeting. Notice must state business of special meeting; meeting is limited to that business**
- **“Emergency” meetings: special meeting to “deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage.” 24-hour notice requirement does not apply if impractical and would increase the likelihood of injury or damage.**





# OPMA - PENALTIES

**OPMA provides for penalties against individual members of the governing body for violations**

- *Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision [the OPMA] applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of five hundred dollars. One thousand dollars for any subsequent violation.*
- **Any person may bring a legal action to enforce the OPMA. If successful, he/she is entitled to attorneys fees and costs**



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**2022  
(POST-  
COVID)  
ADDITIONS  
& CHANGES**

Public agencies are encouraged to provide for the increased ability of the public to observe and participate in the meetings of governing bodies through real-time telephonic, electronic, internet, or other readily available means of remote access that do not require an additional cost to access the meeting.

**2022  
(POST-  
COVID)  
ADDITIONS  
& CHANGES**

- Does not eliminate “physical location” requirement, except as allowed under statute
  - Declared emergencies (federal, state, or local)
  - by reason of fire, flood, earthquake, or other emergency

# OPMA questions?



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# PRA - BASICS

**Purpose of the PRA: Public business be subject to public scrutiny through examination of public records**

***The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.***

RCW 42.56.030 (emphasis added).



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# PRA - REQUIREMENTS

**Basic requirement:**

***Public agencies must make any public record available for public inspection and copying upon request, unless a specific exemption applies***



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# PRA - DEFINITIONS

## What is a “public agency”

- **RCW 42.56.010(1): “ ‘Agency’ includes all state agencies and all local agencies.**
  - **“State agency” includes every state office, department, division, bureau, board, commission, or other state agency**
  - **“Local agency” includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency**
  - **Includes entities that are the “functional equivalent” of an agency**
- **Wash. State Parks & Recreation Commission (both the Commission and the Agency) is a “state agency” for purposes of the PRA**



# PRA - DEFINITIONS

## What is a “public record”

- **RCW 42.56.010(3): “Public record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.**
- **RCW 42.56.010(4): “Writing’ means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.**





# PRA - DEFINITIONS

## What is a “public record” (cont.)

- The definition is broad, so a “public record” is basically *any* physical medium containing information relating to the conduct of government or performance of government functions, whether hard copy or electronic, if it is prepared, owned, or used by an agency, including:
- A record may be a “public record” that must be produced by the agency upon request even if not in the physical possession of the agency



# PRA - REQUESTS

**A member of the public may request to inspect or to receive a copy of any identifiable public record**

- **Requests generally made to the agency's public records officer, but not necessarily**
- **Request need not take any particular form (although agencies can by rule impose some limited requirements)**
- **A request must seek "identifiable" public records; a request for information does not fall under the PRA**
- **A request cannot be denied simply because it is overly broad**



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# PRA – AGENCY RESPONSE

**An agency must promptly respond to public records request. Within 5 business days the agency must:**

- **Acknowledge receipt of the request and provide a reasonable estimate for a further response**
- **Fulfill the request (which may be accomplished by providing an internet address and link to the records on the agency's website)**
- **Seek clarification**
- **Deny the request with an accompanying written statement of the specific reasons**



# PRA – AGENCY RESPONSE

**Searching for, preserving, gathering, and producing responsive document:**

- **Upon receipt of a public records request, an agency must conduct a search for responsive public records; the search must be “adequate” – *i.e.* “reasonably calculated” to locate responsive records**
- **Search must include all places where responsive records are reasonably likely to be located**
- **Since responsive records may not be in the agency’s physical possession, the agency is still responsible for attempting to locate and obtain them, the search may need to include non-agency locations**
- **This could include personal computers, mobile phones, cloud storage services, etc. used by agency staff and Commissioners**
- **Search should be documented in detail, including the where and how of the search**



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# PRA – AGENCY RESPONSE

**Searching for, preserving, gathering, and producing responsive document (cont.):**

- **Potentially responsive records must be preserved pending a complete response to the request (even if they would otherwise have been subject to destruction under the applicable retention schedule)**
- **Responsive records located through the search must be gathered and produced to the requester**
- **Records may be provided to the requester in “installments” as they become available for production**
- **Production need not happen within any specified time, as long as the time it takes to complete production is “reasonable” under the circumstances, including the agencies other work**
- **An agency may charge a fee for reproducing records and for mailing (but not for searching for records)**



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# PRA – EXEMPTIONS

**Responsive records must be produced to the requester, unless a specific exemption applies**

- **The PRA itself provides for certain exemptions; other statutes (both state and federal) may also provide exceptions**
- **Fewer exemptions than you might think; for example, no general “privacy” exemption (although specific exemptions reflect privacy concerns)**
- **Exemptions must be construed narrowly in favor of production and only exempt portions of a record may be withheld, by redaction where possible**
- **When invoking an exemption, agency must provide an “exemption log” that identifies the exempt record and explains how the claimed exemption applies**



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# PRA – EXEMPTIONS

## Common exemptions:

- **Attorney-client privilege and attorney work product**
- **Draft documents that reflect staff opinions (until document finalized)**
- **Agency personnel files (except findings of misconduct)**
- **Trade secrets**
- **Real estate appraisals (until transaction is complete)**

**Note: PRA exemptions differ from OPMA exec. session topics**



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# PRA – PENALTIES

**The PRA provides for potentially severe penalties for violations of the Act:**

- **Violations can include failure to timely respond to a request, failure to adequately search for records, or improper withholding of records**
- **Requester dissatisfied with agency's response can sue the agency in superior court**
- **Penalties are assessed on a per-record/per-day basis from between \$0 and \$100, depending on mitigating and aggravating factors; penalties can be substantial**
- **Requester is entitled to attorneys' fees and costs if successful in a PRA lawsuit**



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# RECORDS RETENTION

**Preservation and destruction of public records is governed by a separate statute, RCW Chapter 40.14**

- **Under the records retention statutes, whether a public record must be retained, and if so, for how long, depends on the type (or class) of the record**
- **Some records may be immediately discarded/deleted while others must be preserved indefinitely**
  - **Example: “transitory” records may be immediately disposed of while certain historical documents must be preserved**
- **Each agency (including State Parks) has records retention “schedules” approved by the Secretary of State that define classes of records and set forth the retention requirements for each class**
  - **But retention schedule may be overridden by a pending public records request or “litigation hold notice”**
- **Criminal penalties for wrongful destruction of records**



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# RECORDS RETENTION

## Records retention: bedrock principles

- **Records retention requirements apply to the agency, not to individuals (although you, as an individual, may sometimes be responsible for retaining a record on behalf of the agency)**
- **A SINGLE copy of a record must be retained by the agency pursuant to the applicable retention schedule; duplicates need not be retained**
  - **But a copy of a record that has been substantively altered (by handwritten notes, for example) is a unique record unto itself that is subject to retention requirements**
  - **Forwarding an email may constitute a new record**
- **Best records management practices dictate that records that do not need to be retained should be deleted/destroyed when no longer needed**



# RECORDS RETENTION

- **To the extent possible, rely on agency staff for retention or records**
- **Be diligent and stay on top of email management**
  - **Forwarding an email could be construed as a separate record**
- **Transmit records to appropriate staff for retention, then delete/destroy when no longer needed:**
  - **Commission meetings, commission business – Becki**
  - **Real estate, development – Heather**
  - **Operations – Jon**
  - **Fiscal, business – Laura**
  - **Legislative/Gov't Affairs – Owen**
  - **Personnel – Amber**
  - **Tribal Relations – Jenna**
  - **Public records requests – Brian Thrasher**
  - **Other - Becki**





# RECORDS MANAGEMENT - BEST PRACTICES

**Compliance with the PRA is aided by good records management: records should be created, managed, stored, and discarded/deleted with the PRA and retention requirements in mind**

- **Don't unnecessarily create records – but that does not mean \*never\* create records**
- **Thoughtfully manage and store records for easy search and retrieval; store records by subject in discrete locations**
- **Transmit records to appropriate staff for retention**
- **Discard/delete records according to applicable retention schedule and when no longer needed (remember: records responsive to a PRA request cannot be discarded/deleted pending fulfillment of the request; records subject to a litigation hold notice cannot be discarded/deleted until the hold is lifted)**





# PRA – BEST PRACTICES



Storing records on personal electronic devices (personal computer, tablet, smartphone, cloud storage site) can create situation where the agency may be obligated to search those devices for records. To minimize this possibility:

- Utilize agency email system as opposed to personal email
- Avoid storing agency records on personal devices, or always store records in a discrete location or device
- Delete records that can be deleted under the applicable retention schedule



# PRA questions?



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# Final questions?



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# RESOURCES

- **AGO Open Government Resource Manual**  
<http://www.atg.wa.gov/open-government>
- **AGO Open Government Training**
  - **Free in-person trainings**
  - **Free training videos and slides**  
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>
- **State Archive Records Retention Training (video)**
- **Municipal Research and Service Center (MRSC)**



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# THE OPEN GOVERNMENT QUIZ



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**QUESTION #1:  
MEETING  
SUBJECT TO  
THE OPMA**

The Director is meeting with a commissioner and two assistant directors. Is this meeting subject to the OMPA?

- a. Yes
- b. No





**No.** The OPMA applies to meetings where a quorum of the governing body is present. Here, the only member of the governing body present is one commissioner, which is not a quorum of the governing body.



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## **QUESTION #2: THE MEETING AGENDA**

Does the public need to be provided with an agenda prior to a regular meeting of the Commission?

- a. Yes
- b. No



Yes, so long as the agency has a website (and employs at least 10 full time employees), the preliminary meeting agenda must be posted on the agency website no later than 24-hours in advance of the meeting (see [RCW 42.30.077](#)).



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## **BONUS QUESTION!**

Can the Commission amend the agenda after it has been made available to the public?

- a. Yes
- b. No



**Yes.** The governing body can amend the agenda after it has been made available to the public. This can be done prior to the meeting or during the meeting by a vote of the governing body.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



**QUESTION #4:  
GROUP EMAIL  
COMMUNICATIONS**

A local governmental entity with an interest in one of the agenda items for the upcoming Parks Commission meeting sends a substantive group email to all of the commissioners. The Commission Chairperson “replies all” to everyone with an email that substantively engages with the entity’s email. Do these email communications violate the OPMA?

- a. Yes
- b. No





**Probably no.** Under current Washington law, passive receipt of email does not constitute participation in a meeting. (*Citizens Alliance for Property Rights Defense Fund v. San Juan County.*) In this case, all of the commissioners passively received the Chairperson’s “reply all” email, and do not engage in further replies or discussion. If three more commissioners reply, this would constitute a meeting in violation of the OPMA.



## **BONUS QUESTION (AGAIN)!**

Are these emails subject to public disclosure?

- a. Yes
- b. No, because there was no quorum and no meeting occurred



**Yes.** The Public Disclosure Act is a separate statute, which requires disclosure of non-exempt agency records (including commission emails) regardless of whether a “meeting” has occurred under the definitions of the OPMA. Care should be taken to not confuse public disclosure requirements with open public meeting requirements.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



**QUESTION #4: GROUP  
EMAIL  
COMMUNICATIONS  
(CONTINUED)**

Instead of “reply all,” the Chairperson emails some substantive thoughts only to the Vice Chair, who then, unbeknownst to the Chairperson, sends that to the Secretary. A few days later, the Secretary discusses the Chairperson and Vice Chair’s emails in a phone conversation with Commissioner A & B. Is it a violation of the OPMA?

- a. Yes
- b. No



**Probably yes.** This creates a potential “daisy chain” serial meeting scenario. Even though the different commissioners involved never met in the same place at the same time, at least four eventually participated in a discussion of commission business that occurred serially, constituting a “meeting” for the purposes of the OPMA.



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## **QUESTION #4: GROUP EMAIL COMMUNICATIONS (CONTINUED)**

A private citizen emails all of the commissioners to present grievances relating to Parks business. All seven commissioners respond individually to the private citizen, but does not “reply all” or otherwise copy the other commissioners by “cc’ing” or “bcc’ing.” None of the commissioners make their responses known to each other. At the subsequent public hearing, the private citizen reveals the incongruous responses received from each commissioner. Has a violation of the OPMA occurred?

- a. Yes
- b. No





**Probably not in this case.** The commissioners communicated with a member of the public and not with each other, and there was no indications that they were using the individual (or a commissioner or staff person) as an intermediary to relay messages from one commissioner to another. Had they done so, a classic “hub and spoke” serial meeting scenario would have occurred in violation of the OPMA. In this case, the commissioners did not find out what each other stated to the private citizen until that same citizen came to speak at an open public meeting – that may not be a good thing either, but that’s outside the scope of this training.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **QUESTION #3: SCHEDULING A SPECIAL MEETING**

The executive assistant sends an email to all members of the Commission asking if they are free on Friday at 3:00pm for a special meeting of the Commission. Each commissioner “replies all,” indicating their availability for the meeting. Do these email communications violate the OPMA?

- a. Yes
- b. No



**No.** Under [RCW 42.30.080](#) a special meeting may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this grant of authority, it's likely permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **BONUS QUESTION!**

Are these emails subject to public disclosure? What if the executive assistant Cc'ed the assigned AAG for Parks when she sent the email?

- a. Yes, in both situations
- b. No, if the legal counsel was Cc'ed
- c. No, in both situations, because the commission has the authority to call a special meeting



**Yes, in both situations.** It does not matter in this case that legal counsel was included in the email communication. Doing so does not automatically exempt the communication from public disclosure.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **QUESTION #5: TRAVELING TOGETHER**

Is it a violation of the OPMA for four out of seven commissioners to travel together to a conference?

- a. Yes
- b. No





**No.** Per [RCW 42.30.070](#): “It shall not be a violation... for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.”

In other words, so long as the four members do not discuss agency business during their travel to the conference, there is no OPMA violation.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **QUESTION #6: NO QUORUM**

There is no quorum for today's regularly scheduled commission meeting. Can the meeting still be held to take public testimony on a controversial agency matter?

- a. Yes
- b. No



**No.** A meeting of the governing body cannot be held without a quorum. If less than a quorum of the governing body is present for a meeting, the only official action that can take place is to adjourn the meeting. For more information see [RCW 42.30.090](#).



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **QUESTION #7: TRAVELING TOGETHER**

All seven commissioners are attending the same conference. Must this be noticed as a special meeting?

- a. Yes
- b. No



**No.** Attending a conference together is not considered a meeting under the OPMA and does not need to be noticed as such so long as a quorum of the Commission does not discuss agency business with each other while at the conference (see [RCW 42.30.070](#)). It is also fine for the individual members of the governing body to discuss agency affairs with other conference attendees. However, commissioners are advised against asking questions related to agency business during any Q&A portion of the conference when the other members of the governing body are in attendance (because the other members are now hearing about agency business, which may qualify as a “discussion” and, therefore, an “action” under [RCW 42.30.020\(3\)](#)).



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **QUESTION #8: EXECUTIVE SESSION**

All seven members of the Commission meet privately, without calling a meeting. However, they are meeting to discuss something that is allowed to be conducted in executive session (one that does not require legal counsel present). Is it a violation of the OPMA?

- a. Yes
- b. No





Yes. Although a governing body may discuss certain matters in closed session under the OPMA, that closed session must occur during an open regular or special meeting and it may be commenced only by following the procedures in [RCW 42.30.110\(2\)](#). The public must know the board is meeting in executive session and why.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



**QUESTION #8:  
EXECUTIVE  
SESSION  
(CONTINUED)**

The Commission Chair makes the following announcement to those in attendance at the public meeting:

*“The Commission will now be meeting in executive session to discuss personnel issues and the executive session will end in 30 minutes.”*

Is this announcement adequate for OPMA purposes?

- a. Yes
- b. No



**No.** While, at first blush, this announcement appears to comply with the OPMA requirements, it does not. Executive sessions can only be held for the precise purposes set forth in [RCW 42.30.0110\(1\)](#). “Personnel issues,” in general, is not one of the recognized purposes for holding an executive session. Rather, an executive session can be held to discuss these types of personnel issues:

- Complaints or charges brought against a public officer or employee,
- Qualifications for public employment,
- Performance of a public employee,
- Current or potential litigation involving personnel (legal counsel is required to be in attendance), or
- Legal risks of current or proposed action involving personnel (again, legal counsel must be in attendance).

Thus, the presiding officer should use one of the specific personnel purposes identified in the RCW and should not use the general purpose of “personnel issues.”



## **BONUS QUESTION!**

During an executive session, written staff reports were handed out to inform the commissioners. Are these subject to public records disclosure?

- a. Yes
- b. No, as long as those materials relate to matters for which the executive session was called.



**Yes!** They are still subject to public records disclosure, unless a Public Records Act exemption applies. Remember not to mix up permissible topics (e.g. discussion of personnel complaint) for which the commission can go into executive session with public records exemptions.



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## **QUESTION #9: COMMISSION ATTENDANCE**

Four of the seven commissioners are unable to attend the regularly scheduled commission meeting in person, but are able to do so virtually. Can the meeting be held?

- a. Yes
- b. No





**Yes.** The Attorney General's Office issued an opinion in 2017 stating that remote attendance by phone or video is not prohibited by the OPMA so long as the speaker phone or video is provided at the designated meeting place at the designated meeting time, and the speaker phone or video allows attending members of the public to hear all discussion and participate in the discussion (if allowed by agency rule).



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



## QUESTION #10: PUBLIC ATTENDANCE AT MEETINGS

A regularly scheduled commission meeting is about to take place in a secured area of a building, which requires attendees to sign in at the Reception Desk. The meeting location was announced in advance and notice was given to the public about needing to sign in at the Reception Desk. At 8:55am, it becomes obvious that the meeting room is far too small and cannot accommodate all the people that showed up to attend. As announced on the published agenda, the Commission commences with the meeting at 9:00am.

Does this violate the OPMA?

- a. Yes
- b. No



**OPEN PUBLIC MEETINGS AND PUBLIC RECORDS TRAINING**



**Yes.** While the OPMA allows the public to attend all meetings, it does not allow for the possibility of insufficient space. Presumably, if a nearby location is available, the governing body should move there to allow attendance by adjourning the meeting to that location and posting a notice on the door ([RCW 42.30.090](#)).

The chair can require those who wish to speak (**but not all attendees**) to sign in. A sign-in requirement (or any other conditions) cannot be imposed for attendance, only for participation. Since the OPMA does not require the governing body to allow public participation, a sign-in requirement for speaking/participating is allowed, and thus the time for each speaker can also be limited. The governing body can maintain order by removing those who are disruptive.

