

Social Media Use By Public Agencies

Examples of Open Public Records & Open Public Meetings Issues



Prepared by Nancy Krier, Assistant Attorney General for Open Government
Washington State Attorney General's Office

Washington Social Media Summit

June 17, 2016

Tumwater, Washington



Washington - Two Sunshine Laws

Open Public Records

RCW 42.56

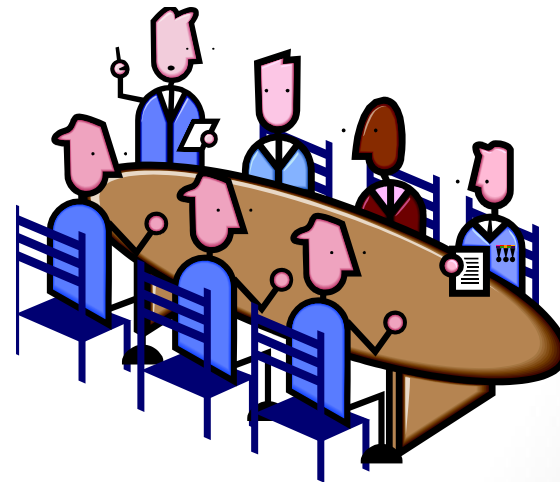
Public Records Act
(PRA)



Open Public Meetings

RCW 42.30

Open Public Meetings Act
(OPMA)



Intent



Open 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.”
- The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”

Open Public Meetings

- “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.”



Scope & Penalties

Open Public Records

- PRA applies to “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.”
- Includes paper records, **electronic records**, emails, overheads, photographs, CDs, microfiche, etc.
- Court can impose penalties & attorneys fees for agency violations of PRA, such as not producing responsive records.



Open Public Meetings

- OPMA applies to multi-member public state and local agency governing boards.
- Applies to quorum of such a board or commission transacting the agency’s business. **Location of meeting does not matter for OPMA purposes.** Case law: could be via email.
- Court can impose penalties & attorneys fees for knowing violations of OPMA.



Social Media Use – PRA & OPMA

Possible Issues

Open Public Records

- “Public records” include agency Facebook posts, Tweets, YouTube videos, etc.
- Those social media records responsive to a PRA request must be **searched, retained and produced** – does the agency have the tools to do that?



Open Public Meetings

- A **“meeting”** could occur if a quorum participates in a **discussion of agency business on a Facebook page or through other social media.**
- But the agency is required to do certain advance public notices before meetings, maintain minutes, and permit the public to observe (with no conditions on attendance), so without those, OPMA would not be satisfied.



Social Media Use and Risk Management Tips



Open Public Records

- Agencies should think about the records they are creating, and what laws apply, **BEFORE** engaging in social media,
- Agencies should have clear policies.
- Agencies should keep updated on changes in law and social media technology.
- See handout for more details.



Open Public Meetings

- Agencies subject to OPMA should be aware that quorum discussions of agency business – including on social media --- can trigger OPMA requirements and possible penalties if requirements not followed.
- May need to adopt board policies.

Examples:

Cheney, Bonnie Lake



