

1 EXPEDITE

No Hearing Set

2 Hearing is Set

Date: January 19, 2018

3 Time: 9:00 a.m.

The Honorable Christopher Lanese

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8 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

9 THE ASSOCIATED PRESS,
10 NORTHWEST NEWS NETWORK,
11 KING-TV (KING 5), KIRO 7, ALLIED
12 DAILY NEWSPAPERS OF
13 WASHINGTON, THE SPOKESMAN-
14 REVIEW, WASHINGTON
15 NEWSPAPER PUBLISHERS
16 ASSOCIATION, SOUND
17 PUBLISHING INC., TACOMA
18 NEWS, INC. (THE NEWS TRIBUNE),
19 and THE SEATTLE TIMES,

20 Plaintiffs,

21 v.

22 THE WASHINGTON STATE
23 LEGISLATURE; THE
24 WASHINGTON STATE SENATE,
25 THE WASHINGTON STATE HOUSE
26 OF REPRESENTATIVES, Washington
state agencies; and SENATE
MAJORITY LEADER MARK
SCHOESLER, HOUSE SPEAKER
FRANK CHOPP, SENATE
MINORITY LEADER SHARON
NELSON, and HOUSE MINORITY
LEADER DAN KRISTIANSEN each
in their official capacity,

Defendants.

NO. 17-2-04986-34

BRIEF OF AMICUS CURIAE
ATTORNEY GENERAL OF
WASHINGTON

1 **I. INTRODUCTION**

2 The Public Records Act is a “strongly worded mandate” that “ ‘ reflects the belief that the
3 sound governance of a free society demands that the public have full access to information
4 concerning the workings of the government.’ ” *Worthington v. Westnet*, 182 Wn.2d 500, 506,
5 507, 341 P.3d 995 (2015). Its purpose is “nothing less than the preservation of the most central
6 tenets of representative government, namely, the sovereignty of the people and the accountability
7 to the people of public officials and institutions.” *Progressive Animal Welfare Soc’y v. Univ. of*
8 *Washington*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). The question before the Court is whether
9 the Legislature, or any of its legislative offices, is subject to the requirements of the Public
10 Records Act.

11 Because the Public Records Act is a statute, the Legislature can define which units of
12 government, which public officials, and which records and information are subject to the Act.
13 The Legislature has defined the applicability of the Act to the House of Representatives and the
14 Senate by defining which records must be made available for release by the offices of the Chief
15 Clerk and the Secretary of the Senate for their respective houses. But the Legislature has not
16 enacted any special provisions governing the responsibilities of individual legislative offices and
17 their officers under the Act. Accordingly, individual legislators are subject to the provisions of
18 the Public Records Act in the same way as any other elected state officer in Washington. Only
19 this view comports with the text and purpose of the Act, as well as its legislative history.

20 **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

21 This amicus curiae brief is filed at the Court’s request by the Attorney General of
22 Washington. As the legal officer for the State, the Attorney General advises state officers and
23 agencies in interpreting and applying the Public Records Act (PRA) and, when necessary,
24 represents them in legal actions under the Act. Const. art. III, § 21; RCW 43.10.030, .040.¹ The

25 _____
26 ¹ The Attorney General’s Office is not representing any of the legislative defendants in this matter.
See RCW 43.10.045.

1 Attorney General also fulfills specific statutory roles in administering the Act, including
2 providing training and technical assistance (RCW 42.56.155), issuing written opinions
3 concerning state agency denials (RCW 42.56.530), and adopting advisory model rules for state
4 and local agencies (RCW 42.56.570). Accordingly, the Attorney General has a significant
5 interest in the scope and construction of the Act. This brief presents the Attorney General’s view
6 of the PRA’s application to the Legislature and its various offices.

7 **III. STATEMENT OF THE CASE**

8 Both parties agree summary judgment is appropriate on the issue of whether the
9 Legislature is subject to the PRA in any manner. Therefore, the Attorney General relies on the
10 facts agreed to in the parties’ complaint and answer. Docket Nos. 1, 4. *See, e.g., Pleasant v.*
11 *Regence Blue Shield*, 181 Wn. App. 252, 261, 325 P.3d 237 (2014), *review denied*, 181 Wn.2d
12 1010 (2014) (“By filing cross motions for summary judgment, the parties concede there were no
13 material issues of fact.”). As this Court noted in the hearing on December 22, 2017, before the
14 Court can determine whether any violation of the PRA has occurred, it must first determine
15 whether the Act applies to the legislative branch at all. Because of this posture, the Attorney
16 General only suggests to this Court the proper analysis to apply and takes no position on any of
17 the specific record requests made to the House of Representatives, the Senate, individual
18 legislators, and staff.

19 **IV. ANALYSIS**

20 **A. Principles of Statutory Construction to Be Applied to the Public Records Act**

21 The PRA was adopted on the principle that “full access to information concerning the
22 conduct of government on every level must be assured as a fundamental and necessary
23 precondition to the sound governance of a free society.” *Neigh. All. of Spokane County v.*
24 *Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011) (internal quotation marks omitted).
25 The Act must be “liberally construed and its exemptions narrowly construed” to ensure that the
26 public’s interest is protected. *Worthington*, 182 Wn.2d at 507 (quoting RCW 42.56.030). The

1 Court’s “fundamental objective” when interpreting the Act is to “ascertain and carry out the []
2 intent” of the people in enacting the original measure and the Legislature in subsequently
3 amending and recodifying it. *See Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App.
4 711, 720, 328 P.3d 905 (2014) (interpreting the PRA).

5 This inquiry must begin with the text. *Nissen v. Pierce County*, 183 Wn.2d 863, 873, 357
6 P.3d 45 (2015). “The surest indication of the legislature’s intent is the plain meaning of the
7 statute, which [is] glean[ed] from all that the Legislature has said in the statute and related
8 statutes which disclose legislative intent about the provision in question.” *Five Corners Family*
9 *Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011) (internal quotation marks omitted)
10 (quoting *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).
11 Legislative definitions provided in a statute control. *Fraternal Order of Eagles, Tenino Aerie 564*
12 *v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002); *see also*
13 *State v. Barnes*, 189 Wn.2d 492, 496, 403 P.3d 72 (2017). If, however, a statute is “susceptible
14 to two or more reasonable interpretations,” it is ambiguous and the court “may look to the
15 legislative history of the statute and the circumstances surrounding its enactment in order to
16 determine legislative intent.” *Five Corners Family Farmers*, 173 Wn.2d at 305-06 (internal
17 quotation marks omitted). Courts also look at the PRA in its entirety in order to enforce the law’s
18 overall purpose. *Rental Hous. Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 536,
19 199 P.3d 393 (2009).

20 **B. The Public Records Act Applies to the Legislative Branch in Different Ways**

21 The inquiry here begins with the text of the PRA. *Nissen*, 183 Wn.2d at 873. The Act
22 mandates that “[e]ach agency . . . make available for public inspection and copying all public
23 records” unless the record is exempt from disclosure by law. RCW 42.56.070(1). “Agency” is
24 defined to mean:

25 *all state agencies and all local agencies. “State agency” includes every state*
26 *office, department, division, bureau, board, commission, or other state agency.*
“Local agency” includes every county, city, town, municipal corporation, quasi-

1 municipal corporation, or special purpose district, or any office, department,
2 division, bureau, board, commission, or agency thereof, or other local public
3 agency.

4 RCW 42.56.010(1) (emphases added). “Public record” is defined to mean:

5 any writing containing information relating to the conduct of government or the
6 performance of any governmental or proprietary function prepared, owned, used,
7 or retained by any state or local agency regardless of physical form or
8 characteristics. For the office of the secretary of the senate and the office of the
9 chief clerk of the house of representatives, public records means legislative
10 records as defined in RCW 40.14.100 and also means the following: All budget
11 and financial records; personnel leave, travel, and payroll records; records of
12 legislative sessions; reports submitted to the legislature; and any other record
13 designated a public record by any official action of the senate or the house of
14 representatives.

15 RCW 42.56.010(3). These two “very broad” definitions mean that for “agencies,” as defined in
16 the statute, the PRA “subjects virtually any record related to the conduct of government to public
17 disclosure” and “give[s] the public access to information about every aspect of state and local
18 government.” *Nissen*, 183 Wn.2d at 874 (internal quotation marks omitted).

19 **1. The “Legislature” as a Unified Branch of Government Is Not Subject to the
20 Public Records Act**

21 Defendants assert that the “Legislature” is not a “state agency” within the scope of the
22 PRA. Def. Cross Mot. at 13. The Attorney General agrees, but only to the extent that
23 “Legislature” means the unified constitutional branch of government.

24 The Constitution vests legislative authority of the State in the Legislature, which consists
25 jointly of the House of Representatives and the Senate. Const. art. II, § 1; *State ex rel. Robinson*
26 *v. Fluent*, 30 Wn.2d 194, 213, 191 P.2d 241 (1948) (state legislative power is vested in both
houses, not in either separately). Neither house can act alone to fulfill the State’s legislative
duties. It takes both houses to enact laws for the State and exercise certain constitutional
functions. *See, e.g.*, Const. art. II, § 12 (governing legislative sessions); Const. art. II, § 18 (style
of laws to be by “legislature”); Const. art. III, § 12 (two-thirds of Legislature can override
gubernatorial veto); *State ex rel. O’Connell v. Yelle*, 51 Wn.2d 620, 320 P.2d 1086 (1958) (only
unified Legislature has power to set compensation of officials; House could not unilaterally

1 increase compensation for a member); *State ex rel. Robinson*, 30 Wn.2d at 213-14 (single house
2 could not establish standing legislative committee). Accordingly, neither the House of
3 Representatives nor the Senate alone constitutes the “Legislature” as that term is used in the
4 Constitution or in state law. *See, e.g.*, Const. art. II, §§ 1, 2; RCW 44.04.010, .021.

5 Nor does the State’s legislative power reside in just the two houses. As referenced in the
6 Constitution, the “legislature” also includes the Governor when he approves or disapproves
7 legislation. *Washington Fed’n of State Emps. v. State*, 101 Wn.2d 536, 544, 682 P.2d 869 (1984).
8 It also includes the people when they exercise their initiative and referendum powers. Const. art.
9 II, § 1; *Yelle v. Kramer*, 83 Wn.2d 464, 474-75, 520 P.2d 927 (1974). “[T]he word ‘legislature,’
10 as used in the constitution [therefore] must be deemed to include all branches or component parts
11 of the legislative power,” and does not denote a single house or member. *See Yelle*, 83 Wn.2d at
12 473 (citing *State ex rel. Mullen v. Howell*, 107 Wash. 67, 181 P. 920 (1919)).

13 Under this construction, the PRA would not apply to the Legislature as a constitutional
14 entity. At the state level, as noted above, the Act applies only to “state agencies,” which are
15 defined as state offices, departments, divisions, bureaus, boards or commissions.
16 RCW 42.56.010(1). None of these terms describes the Legislature as a unified branch of
17 government.

18 This conclusion is consistent with the Supreme Court’s determination that the definition
19 of “agency” does not encompass the judicial branch of our state government. *See City of Federal*
20 *Way v. Koenig*, 167 Wn.2d 341, 346, 217 P.3d 1172 (2009) (the judiciary is not a “state or local
21 agency” under the Act). Like the judiciary,² other constitutional provisions and considerations
22 provide public access to the Legislature’s records when that body acts as a unified branch of
23 government. *See, e.g.*, Const. art. II, § 11 (requiring maintenance of legislative journals and open
24 doors); Const. art. II, § 22 (requiring recording of votes for bill to become law); Const. art. III,

25 _____
26 ² *See Nast v. Michels*, 107 Wn.2d 300, 303-04, 730 P.2d 54 (1986) (summarizing the common law right of
access to court case files).

1 § 17 (requiring Secretary of State to keep a record “of the official acts of the legislature”); RCW
2 43.07.040 (Secretary of State charged with custody of all acts and resolutions passed by the
3 Legislature and the journals of the Legislature).

4 The Legislature, defined as a unified branch of government, is not a “state agency” under
5 RCW 42.56.010(1). Accordingly, the PRA does not encompass the Legislature when viewed
6 through this constitutional lens. As explained below, however, this conclusion does not mean
7 that the entire legislative branch evades the requirements of the PRA.

8 **2. The Public Records Act Applies to the House of Representatives and the**
9 **Senate Through the Chief Clerk and Secretary of the Senate**

10 Although the Legislature, defined as the unified branch of government, is not an
11 “agency” under the plain language of RCW 42.56.010(1), the Legislature itself has made the
12 House and Senate subject to the PRA through the administrative offices of the Chief Clerk of
13 the House of Representatives and the Secretary of the Senate, as set forth in the PRA. *See, e.g.*,
14 RCW 42.56.010(3), .520, .560.

15 Plaintiffs argue that the offices of the Chief Clerk and the Secretary of the Senate are
16 separate “state offices” from that of the House of Representatives and the Senate, *see* Pl. Mot. at
17 12, but there is no principled basis for this contention. As an initial matter, Plaintiffs cannot
18 reasonably dispute that the offices of the Chief Clerk and the Secretary of the Senate are the
19 internal administrative offices of the House and the Senate, respectively. *See* Def. Cross Mot.,
20 Gorrell Decl. at 2; *see also* <http://leg.wa.gov/House/Pages/HouseAdministration.aspx> (last
21 visited Jan. 9, 2018); <http://leg.wa.gov/Senate/Administration/Pages/default.aspx> (last visited
22 Jan. 9, 2018). In fact, state law specifically tasks the Chief Clerk and the Secretary of the Senate
23 with the document retention duties of their respective houses and committees. *See* RCW
24 40.14.010, .100-.180. And RCW 40.14.130 imposes a general requirement on the chairs and
25 members of committees, subcommittees, and interim committees of the House and Senate, and
26 on legislative employees to deliver to the office of the Chief Clerk of the House of

1 Representatives and the office of the Secretary of the Senate all legislative records that are no
2 longer needed for the regular performance of their official duties (or within 10 days after sine
3 die). It therefore makes sense to reference those offices in the PRA when referring to the public
4 record requirements of the House and the Senate. *E.g.*, RCW 42.56.010(3), .520, .560. The Chief
5 Clerk and the Secretary of the Senate are responsible for the House and Senate’s records and
6 other administrative duties. They are not “state offices” unto themselves.

7 The plain text of the Act supports this conclusion. The Act sets forth a specific definition
8 of “public record” for the offices of the Chief Clerk and the Secretary of the Senate in
9 RCW 42.56.010(3), as follows:

- 10 • “Legislative records” is defined in RCW 40.14.100 to mean
11 “correspondence, amendments, reports, and minutes of meetings made by
12 or submitted to legislative committees or subcommittees and transcripts
13 or other records of hearings or supplementary written testimony or data
14 thereof filed with committees or subcommittees in connection with the
15 exercise of legislative or investigatory functions,” *but not* “the records of
16 an official act of the legislature kept by the secretary of state, bills and
17 their copies, published materials, digests, or multi-copied matter which
18 are routinely retained and otherwise available at the state library or in a
19 public repository, or reports or correspondence made or received by or in
20 any way under the personal control of the individual members of the
21 legislature”;
- 22 • All budget and financial records;
- 23 • Personnel leave, travel, and payroll records;
- 24 • Records of legislative sessions;
- 25 • Reports submitted to the legislature; and

- 1 • Any other record designated by any official action of the Senate or the
2 House of Representatives.

3 Each of the listed records naturally relate to those of the individual legislative houses and their
4 employees, but do not include official acts of the Legislature kept by the Secretary of State, or
5 records held by individual legislators (e.g., reports or correspondence received and controlled by
6 individual members) apart from committee or subcommittee records they may hold.

7 RCW 42.56.010(3), together with its cross reference to RCW 40.14.100, thus carefully
8 defines the public records of the House and Senate that are subject to release under the PRA. It
9 recognizes the offices of the Chief Clerk and the Secretary of the Senate as the entities charged
10 with collecting and retaining those records for the House and Senate, respectively. Consistent
11 with that recognition, the PRA imposes certain duties on the Chief Clerk and Secretary of the
12 Senate that are consistent with those imposed on state agencies.³ See RCW 42.56.070, .090, .100,
13 .120, .520, .560.

14 Finally, while unnecessary to a plain reading of the PRA, the legislative history also
15 supports the conclusion that the Act’s references to the offices of the Chief Clerk and the
16 Secretary of the Senate encompass the public record requirements imposed on the House of
17 Representatives and the Senate. In 1995, the Legislature made a number of changes to the prior
18 codification of the Act that addressed campaign finance, ethics, and public records. The changes
19 included new definitions for “state office” and “state legislative office,” a revision to the
20 definition of “public records” to include the provision addressed above, and the addition of other
21 references to the Chief Clerk and the Secretary of the Senate that describe the public record
22 duties of those offices. Laws of 1995, ch. 397, § 1. The Final Bill Report of the enacted law
23 described these revisions as follows: “Public disclosure statutes are amended to specifically
24

25 ³ The Attorney General’s Open Government Resource Manual briefly states that the “PRA applies in a
26 more limited form to the Washington State Legislature” and then provides a link to the Legislature’s website. See
<http://www.atg.wa.gov/open-government-resource-manual/chapter-1>. The argument made here is consistent with
this statement. Nothing more should be read into the Resource Manual than what it states.

1 address access to and production of public records *in the possession of the Senate and the House*
2 *of Representatives.*” Final Bill Report on Engrossed Substitute S.B. 5684, at 2, 54th Leg., Reg.
3 Sess. (Wash. 1995) (emphasis added). Because there is no reference to the House of
4 Representatives or the Senate in the legislation itself, the report must refer to those amendments
5 concerning the offices of the Chief Clerk and the Secretary of the Senate as the offices
6 undertaking the public records duties for their respective houses. These amendments remain
7 untouched in the PRA as it currently exists, and the practices of the House and Senate implement
8 these amendments. Def. Cross Mot., Gorrell Decl.

9 **3. Individual Legislative Offices and the Various Legislative Agencies Are**
10 **“State Agencies” Under the Public Records Act**

11 While the PRA specifically addresses the House of Representatives and the Senate, the
12 text does not make any separate provision for legislative agencies, such as the Office of the State
13 Actuary, RCW 44.44, or the Legislative Support Services, RCW 44.80. Neither does it carve out
14 any exception for the offices of individual legislators from the definition of “state agency” in
15 RCW 42.56.010(1). Accordingly, the broad definition of “state agency” covers these entities—
16 just as it does every other state office, constitutional or otherwise. The language is not
17 ambiguous, but even if the plain meaning of the Act did not directly lead to this conclusion, the
18 legislative history of the PRA certainly does.

19 It is worth repeating that the PRA was enacted to provide “full access to information
20 concerning the conduct of government on every level.” *Neigh. All. of Spokane County*, 172
21 Wn.2d at 714. The PRA is explicit: the Act covers *every* state office, department, division,
22 bureau, board, commission, or other state agency. RCW 42.56.010(1). It also covers individual
23 state employees because agencies “act exclusively through their employees and other agents,
24 and when an employee acts within the scope of his or her employment, the employee’s actions
25 are tantamount to ‘the actions of the [agency] itself.’” *Nissen*, 183 Wn.2d at 876 (quoting *Houser*
26 *v. City of Redmond*, 91 Wn.2d 36, 40, 586 P.2d 482 (1978)). Individual legislative offices, their

1 officers and employees, and other legislative agencies plainly fall within this broad coverage.⁴
2 Moreover, the records under the personal control of individual legislators and those of other
3 legislative offices are not the responsibility of the Chief Clerk or the Secretary of the Senate.
4 RCW 40.14.100. They must be considered separately and would fall within the general definition
5 of “public record” so long as they relate “to the conduct of government or the performance of
6 any governmental or proprietary function.” RCW 42.56.010(3).

7 Even if the term “state office” is ambiguous as to individual legislative offices and their
8 officers, the legislative history shows that the Act has long encompassed them. The people
9 enacted Initiative 276 to secure a right to “full access to the conduct of government . . . and
10 public records.” Laws of 1973, ch. 1, § 1 (Initiative Measure No. 276, approved November 7,
11 1972). They defined “agency” similar to its current iteration (including the term “state office”),
12 but also included “public officials” in the definition. Laws of 1973, ch. 1, § 2. The definition of
13 “public record” was also similar to its current form, but did not include the clause about the
14 offices of Chief Clerk and Secretary of the Senate. *Id.* Four years later, the Legislature removed
15 “public officials” from the definition of “agency.” Laws of 1977, ch. 313, § 1.

16 In 1995, the Legislature added definitions for “state office” and “state legislative office,”
17 and added the provisions for the offices of the Chief Clerk and the Secretary of the Senate
18 discussed above. Laws of 1995, ch. 397, § 1. “State office” was defined as “state legislative
19 office or the office of governor, lieutenant governor, secretary of state, attorney general,
20 commissioner of public lands, insurance commissioner, superintendent of public instruction,

21 ⁴ Defendants assert that elected, constitutional officers are not included in the definition of “agency.” Def.
22 Cross Mot. at 14. It is true that the Supreme Court noted in *Nissen* that it is an open question whether the PRA
23 applies independently to elected officials. *Nissen*, 183 Wn.2d at 875 n.6. But other cases have treated elected
24 officials as subject to the PRA. *See, e.g., Freedom Found. v. Gregoire*, 178 Wn.2d 686, 310 P.3d 1252 (2013) (PRA
25 action against Governor); *West v. Vermillion*, 196 Wn. App. 627, 640-41, 384 P.3d 634 (2016), *review denied*, 187
26 Wn.2d 1024 (2017), *cert. denied*, 138 S. Ct. 202 (2017) (PRA action against elected city council member).

27 The definition of “agency” in RCW 42.56.010(1) specifically includes every “state office” and every local
28 “office,” without distinguishing those offices held by elected officers from other offices. To distinguish between
29 elected public officers and other public employees in construing that term would exempt every elected public officer
30 in the State, including the Governor, the Attorney General, county prosecuting attorneys, county treasurers, and
31 many more. There is nothing in the language or history of the PRA to suggest an intention to leave such a gaping
32 hole in the people’s ability to access public records on every government level.

1 state auditor, or state treasurer.” *Id.* “State legislative office” meant “the office of a member of
2 the state house of representatives or the office of a member of the state senate.” *Id.* Accordingly,
3 the Legislature explicitly applied Initiative 276’s public record requirements to the offices of *all*
4 state officers, including those of individual legislators, and distinguished individual state
5 legislative offices from the offices of Chief Clerk and Secretary of the Senate.

6 Ten years later, in 2005, the Legislature recodified the public record requirements of
7 Initiative 276 into their own chapter, RCW 42.56, which it designated the “Public Records Act.”
8 *See* Laws of 2005, ch. 274, §§ 101-103. The Legislature did not include any definitions in
9 RCW 42.56, but instead cross-referenced the definitions found in then RCW 42.17, where the
10 public records requirements had been originally codified. Laws of 2005, ch. 274, § 101. The
11 definitions for “agency,” “state office,” and “state legislative office” remained the same.⁵ Two
12 years later, in 2007, the Legislature removed the cross-reference to RCW 42.17 and copied over
13 the definitions of “agency,” “public records,” and “writing” into RCW 42.56. Laws of 2007,
14 ch. 197, § 1. Then, in 2010, the Legislature again amended both RCW 42.17 and RCW 42.56 in
15 the same session law, recodifying the campaign finance provisions into RCW 42.17A, and
16 adding a definition of “person in interest” to the PRA. Laws of 2010, ch. 204, § 1005(2).

17 This history supports two logical conclusions. First, from at least 1995 to 2007, the PRA
18 explicitly covered state legislative offices along with all other “state offices” (e.g. the office of
19 the Governor, Lieutenant Governor, etc.). Second, from 2007 to today, the PRA continues to
20 cover those offices implicitly under the general definition of “state agency.” While Defendants
21 assert this definition deliberately *excludes* “legislative offices,” there is no support for such an
22 assertion, especially when the entire history of the Act and related laws are considered. If
23 Defendants’ assertions were true, then the state offices of the Governor, Lieutenant Governor,
24

25 ⁵ Defendants contend that these definitions applied only in relation to the campaign finance laws, Def.
26 Cross Mot. at 15, but there is no support in the 1995 session law or the legislative documents for this assertion. If
that were true, there would have been no need to reference back to the definitions of RCW 42.17 when the Public
Records Act was recodified in 2005.

1 Secretary of State, Attorney General, Commissioner of Public Lands, Insurance Commissioner,
2 Superintendent of Public Instruction, State Auditor, and State Treasurer would also be excluded
3 from the Act. This would be inconsistent with the purpose of the PRA. *See* RCW 42.56.030. The
4 PRA must currently apply to legislative offices and other legislative agencies, just as it does for
5 all other “state offices” within the State.

6 The Legislature has the power to change the way the PRA applies to individual legislative
7 offices and legislators. It has the power to circumscribe their responsibilities under the Act or to
8 exempt them entirely. It can do so at any time it chooses. Until the Legislature changes the law,
9 however, the Act must be understood to apply to all state offices, including the offices of
10 individual legislators.

11 **V. CONCLUSION**

12 This Court should find that the Public Records Act applies to the House of
13 Representatives and the Senate through the offices of the Chief Clerk of the House and the
14 Secretary of the Senate, and that the public records held or required to be held by the Chief Clerk
15 and Secretary must be released as provided in the Act. The Court should also find that legislative
16 agencies and individual legislative offices both fall within the definition of “agency” in RCW
17 42.56.010(1) and are subject to the Public Records Act. To hold otherwise would be contrary to
18 the plain language and purpose of the Act.

19 DATED this 10th day of January 2018.

20 ROBERT W. FERGUSON
21 *Attorney General*

22 
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1 **CERTIFICATE OF SERVICE**

2 I declare under penalty of perjury under the laws of the State of Washington, that I
3 served a true and correct copy of the foregoing document, via electronic mail, upon the
4 following:

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17 DATED this 10th day of January 2018, at Olympia, Washington.

18 
19 KRISTIN D. JENSEN
20 Confidential Secretary