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Public Records Act and Investigations

45th Annual Civil Service Conference

Presented By
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Agenda

- Public Records Act – Key Principles
- Types of Investigations
- Exemptions
- Navigating Confidentiality and Its Limits
- The Records You Create



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Public Records Act – Key Principles

- Must make public records available
- Construed broadly in favor of disclosure
- Initial response due in 5 business days
- Exemptions from disclosure
- Also applies to personal devices
- Statutory penalties for violation



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Types of Investigations

- There are numerous ways in which an investigation might be conducted
- A few examples:
  - Required by Policy
  - Internal vs. External
  - Verbal vs. Written Report
  - Fact-Finding Only
  - Attorney Work Product



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Privacy Under the Public Records Act

(Or rather, the lack thereof . . .)



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. . . 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

RCW 42.56.550

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Privacy Under the PRA

- Public agency employees are subjected to greater transparency and scrutiny than private company employees
- There is no general “privacy” right/exemption in the PRA
- “Privacy” applies only to the intimate details of one’s personal and private life

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RCW 42.56.050

1) Highly offensive to a reasonable person

AND

2) Not of legitimate concern to the public

Redaction will often resolve the issue from a court's perspective, even if someone else may be able to figure out the record is about you

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Disciplinary Records

- No right to privacy in the mere fact of investigation (as distinguished from the factual allegations)
  - *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896 (2015)
- Depends on whether complaint substantiated or resulted in some sort of discipline
  - Substantiated / discipline → disclose
  - Unsubstantiated → personal info may be exempt if alleged misconduct highly offensive (e.g., sexual misconduct with a student)

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Investigations Under RCW 42.56.250(1)(f)

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1934

Chapter 283, Laws of 2025

69th Legislature
2025 Regular Session

PUBLIC RECORDS ACT EXEMPTION—EMPLOYMENT INVESTIGATIONS—MODIFICATION

EFFECTIVE DATE: July 27, 2025

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Investigations Under RCW 42.56.250(1)(f)

- Legislation in 2019 expanded protections regarding certain employment investigations – RCW 42.56.250(6)
  - Unfair practice under WLAD, or
  - Federal, state, or local laws or internal policies prohibiting discrimination or harassment in employment
- Active/ongoing investigation vs. completed investigation
  - Records entirely exempt during active/ongoing investigation
  - After complaining employee notified of outcome, records "may be disclosed only if" certain identifying information is redacted (absent consent)

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Redacted Information

- Names
- Images
- Employee agency job titles
- Email addresses
- Phone numbers
- Voices (must alter, while retaining inflection and tone)
- What about other information?

Exception:

If complainant is elected government official, name and title is not redacted

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Notice and Consent to Release

- When do you provide notice to complainants, other accusers, and witnesses?
- During investigation?
  - Handles notice requirement up front when the person is available
  - Opportunity to document the individual's position regarding release
- Ask again when request comes in?
- Withdrawal of consent

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Requests for Investigative Records

- Who is the requesting party?
- Disclosure outside the PRA
  - Union requests
  - Litigation
  - Regulatory Agencies
- Evaluate third-party notice to affected individuals (RCW 42.56.540)
  - Often optional, but not always
- Immunity where there has been a good-faith release (RCW 42.56.060)

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Navigating Confidentiality

- Inherent tension
  - Policy of government transparency
  - Need for candor in investigations
- Concerns about breaching trust or breaking promises
- Don’t promise what you can’t provide and be up front about limitations



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The Records You Create



- Think about records at the outset
  - Ownership of records
  - What records are needed and/or desirable
- Consider privacy interests
  - Redactions that will be needed
  - How to identify individuals
- If privilege, be careful about inadvertent waiver and consistency

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The Records You Create

- Handwritten notes
- Transcripts (audio/video)
- Appropriate storage and retention
- Records on non-agency devices
  (please don't create those if you can help it)



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Questions?

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Thank you.



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PRINCIPAL

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