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Legal Alerts

Washington Supreme Court Sets New Criteria for Closing Public Records Requests

04.15.24

On April 11, 2024, the Washington Supreme Court issued a decision mandating how public records officers, agency attorneys and other government employees must close their responses to public records requests under the state Public Records Act ("PRA"), Chapter 42.56 RCW, in order to trigger the PRA's one-year statute of limitations.

Issue: The Court's opinion in *Cousins v. Department of Corrections (DOC)* specifically addresses whether and when an agency's closing letter triggers the PRA's one-year statute of limitations. Under prior case law, the one-year limitation period starts to run when an agency provides a "final, definitive response" that is objectively sufficient to put the requester on notice that the agency does not intend to disclose records or further address the request. Under the new opinion, a closing letter must include specific Court-required statements to be "objectively sufficient" notice that the agency's response has ended.

New Closing Letter Statements: Under the Court's new test, a PRA closing letter must provide "at least" the following information "in plain language targeted to a lay audience." The letter must state:

1. "**How the PRA request was fulfilled"** and **"why the agency is now closing the request"**;
2. That "**the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request"**; and
3. That **"the requester may ask follow-up questions within a reasonable time frame,"** which may be specified by the agency.

What if the requester follows up with questions? If the requester asks timely follow-up questions, the agency may search for additional records, but is not required to do so. If, however, the requester asks questions and the agency does not intend to further address the request, the Court now requires the agency to "explicitly say so and reiterate that the statute of limitations has started to run."

What if the agency produces additional records? When an agency issues a sufficient closing letter but later produces additional responsive records, that later production will not "ordinarily" restart the limitations period, but "may be relevant to assessing the agency's liability and penalties, as well as equitable tolling in appropriate cases." In other words, the later-produced records could constitute a withholding in violation of the PRA but would not "ordinarily" restart the one-year clock.

Public agencies and agency personnel should begin to integrate the Court's prescribed criteria into their practices for closing public records requests as soon as possible. Thorough and carefully worded closing

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letters, as outlined by the Court, will be critical in preventing ambiguity and will facilitate a well-defined start to the one-year statute of limitations. Agencies should consider attorney review of closing letters for complicated or large requests, as well as letters to requesters with a history of PRA litigation. Agencies should also review their PRA policies and consider updating them to include the new closing-letter requirements. If you have questions about the new closing letter requirements, the PRA generally, or any specific closing letter, please contact a member of our Public Records & Open Government team.

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