



Government Lawyers Bar Association of Washington

2017 Summer CLE

3.5 CLE Credits

Schedule

7:30-8:00: **Registration**

8:00-9:00: **Public Records Act Update**

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

9:00-9:10: ***Break***

9:10-10:10: **Review of Current U.S. Immigration Law**

Lori Walls, Washington Immigration Defense Group

10:10-10:20: ***Break***

10:20-11:20: **Adjudicative Proceedings Under the Administrative Procedures Act**

Erika Lim, Lead Administrative Law Judge
Office of Administrative Hearings

11:30-12:00: **Considerations When Dealing with Enlisted Military Personnel**

Jeffery Lippert, Chief Criminal Deputy Prosecutor
Thurston County Prosecutor's Office

Presenters

Nancy Krier

Nancy J. Krier is the Washington Attorney General's Office Open Government Assistant Attorney General, appointed in 2013 following six years as the Public Disclosure Commission's General Counsel. Prior to the PDC, Ms. Krier served in the AGO over 20 years, including as a Division Chief of the Licensing and Administrative Law Division, where she was also designated as a Senior Counsel. In addition to the PDC, she had advised many state agencies, including the Executive Ethics Board, the Department of Corrections, the Department of Social and Health Services, and others. She was president of Washington Women Lawyers and the Government Lawyer Bar Association. Ms. Krier graduated summa cum laude from the University of North Dakota in 1982 with journalism and political science majors. Ms. Krier also was a reporter. She earned her JD at the University of Washington, joining the Washington State Bar Association in 1986 and is admitted to the U.S. District Courts in Washington and the Ninth Circuit Court of Appeals. She is a frequent speaker on open government and disclosure topics.

Erika Lim

Erika Lim is the Lead Administrative Law Judge in the Olympia Division of the Office of Administrative Hearings. Judge Lim's previous state service includes clerking at the Court of Appeals, serving as staff counsel to the state senate, and working as an agency legislative liaison and policy analyst, thereby making her a state employee Triple Crown winner for having worked in all three branches of state government. She has also worked as a staff attorney for a pro bono legal services organization and at Seattle University School of Law. She commutes regularly between Seattle and Olympia, in case anyone would like tips on the locations of speed traps on I-5.

Jeffery Lippert

Jeffery Lippert is the Chief Criminal Deputy Prosecutor for the Thurston County Prosecutor's Office. Mr. Lippert recently retired as a colonel from the Army Judge Advocate General's Corps, where he served for 25 years. During his time with the corps, he served as a senior prosecutor, senior defense counsel, general counsel and an Army trial judge, including three years at Joint Base Lewis McChord.

Mr. Lippert earned a bachelor's degree from East Carolina University and law degree from Temple University School of Law. He attended the Judge Advocate General's Learning Center and School and the Army Command and General Staff College.

Lori Wells

Lori Wells completed her B.A. and J.D. from the University of Washington in Seattle. While a law student, she participated in the Immigration Clinic at the Northwest Immigrant Rights Project and volunteered with the King County Bar Association's Neighborhood Legal Clinic Program. She was an editor and member of the *Pacific Rim Law & Policy Journal* and received the Charles Z. Smith Public Service Student of the Year Award in 2007. Lori is a member of the Washington State Bar Association and the American Immigration Lawyers Association. Before attending law school, she worked as a technical editor and writer.

2017 Public Records Act Update

Presented by:

Nancy Krier

Assistant Attorney
General for Open
Government

Sponsored by the

Government Lawyers Bar Association

June 16, 2017

Lacey, WA



Public Records Act Case Law Update

June 2017



Notes: The attached list of court decisions contains brief summaries only and is not legal advice or a legal opinion. For details, read the full decisions.

Several state appellate court *unpublished* decisions are referenced in the attached chart. Previously, they could not be cited as authority. On September 1, 2016, General Rule 14.1 became effective, which allows citation to unpublished decisions as follows: “Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.”

In addition, some of the unpublished decisions may have been published after these materials were prepared.

Some of the referenced decisions (published and unpublished) may have appealed further after these materials were prepared.

For citing to federal court decisions, see FRAP 32.1.

Finally, court decisions issued after these materials were prepared, or statutes enacted after these materials were prepared, may be relevant in a particular situation or may impact an earlier court decision.

The decisions from January 2014 – April 25, 2017 are listed in reverse chronological order, beginning with the most recent decisions.

Case	Date/Cite	Decision/Issues
2017 (as of May 31)		
SEIU 775 v. State of Washington et al.	April 25, 2017 __ Wn. App. __, P.3d __ (2017)	<ul style="list-style-type: none"> • Trial court denied union’s request for injunction that was seeking to enjoin PRA request for DSHS records of times/locations of contracting appointments and training presentations for individual providers who provide personal care services to functionally disabled persons. • Court of Appeals: Trial court decision upheld. Collective bargaining act at RCW 41.56 is not an “other statute” exemption from PRA. RCW 41.56 does not explicitly prohibit or exempt release of specific records or information.
Strand v. Spokane County, Spokane County Assessor	April 11, 2017 Unpublished	<ul style="list-style-type: none"> • Trial court found agencies properly responded to PRA requests, except for a requested roster. Trial court considered <i>Yousoufian</i> factors and awarded penalties and costs related to that one claim in the amount of \$7,380 (one penalty, \$10/day). • Requester appealed - wanted \$10 million in penalties and \$47,000 in fees and costs. • Court of Appeals: Trial court decision upheld.
Zink v. Benton County	March 16, 2017 Unpublished	<ul style="list-style-type: none"> • PRA requesters’ claims against county were properly dismissed by the trial court upon county’s motion; requesters did not appear at the motion hearing or file a response, despite notice of hearing. • Requesters’ request for attorneys’ fees and costs also denied.
Cook et al. v. Dept of Corrections	February 6, 2017 Unpublished <i>(Petition for review filed)</i>	<ul style="list-style-type: none"> • An inmate is entitled to PRA penalties only if an agency acted in bad faith. • Bad faith requires wanton or willful act or omission with utter indifference to the consequences. • Considering all of the circumstances, the act or omission must be unreasonable and warrant harsh punishment. • Under the circumstances of this case, harsh penalties were not warranted. Agency had objectively reasonable belief that phone logs maintained on third party servers were not public records; agency however changed its policy and promptly made records available. • Petition for review filed.
Doe et al. v. Dept of Corrections, Zink	January 23, 2017 197 Wn. App. 609, 391 P.3d	<ul style="list-style-type: none"> • Requested records (SSOSA evaluations) contained confidential health care information under RCW 70.02, thus they are exempt from PRA disclosure. • In third-party action to enjoin disclosure, allowing plaintiffs to use pseudonyms in the circumstances of

	496 (2017) <i>(Petitions for review granted in part)</i>	<p>this case does not implicate the Washington Constitution.</p> <ul style="list-style-type: none"> • The PRA does not prohibit plaintiffs from suing as class representatives. • Petitions for review granted on two issues: (1) whether the superior court properly allowed respondents to use pseudonyms; (2) whether the PRA exempts SSOSA evaluations.
Fortgang v. Woodland Park Zoo	January 12, 2017 187 Wn.2d 509, 387 P.3d 690 (2017)	<ul style="list-style-type: none"> • Zoo was not the functional equivalent of a public agency for PRA purposes, adopting the <i>Telford</i> analysis on when a private entity must comply with the PRA. • Court of Appeals affirmed.
2016		
Hikel v. Lynnwood	December 27, 2016 197 Wn. App. 366, 389 P.3d 677 (2016)	<ul style="list-style-type: none"> • The city's first response violated the PRA because it did not include any reasonable estimate of time when the records would be provided (although it did ask for clarification). • The city's other communications with the requester did not violate the PRA. • The city's failure to notify him when the first installment was ready did not violate the PRA. • Because no records were denied, no penalties are authorized. Requester will receive attorneys' fees on the one issue on which he prevailed.
SEIU Local 925 v. Freedom Foundation, DSHS	December 20, 2016 197 Wn. App. 203, 389 P.3d 641 (2016)	<ul style="list-style-type: none"> • The prohibition on disclosure of lists of individuals for commercial purposes did not apply because requester did not request information for commercial purpose. • RCW 42.56.230(2)(a)(ii) did not preclude DSHS from disclosing provider information because the request did not seek children's personal information. • The State Constitution did not preclude DSHS from disclosing the requested information because the information does not intrude into the private affairs of providers.
Mockovak v. King County	December 19, 2016 Unpublished <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> • While certain task force documents became public records under the PRA, the PRA does not require state agencies to acquire and turn over documents created by and belonging to a federal agency in contravention of federal regulations. • Attorney work product exempted from production other records; there was a common interest rule that also exempted some documents under work product; and there was no waiver of work product. • A federal statutory bar on disclosure cannot be waived. • Petition for review denied.

Worthington v. Bremerton et al.	December 15, 2016 187 Wn.2d 184, 385 P.3d 133 (2016)	<ul style="list-style-type: none"> • Agency filed a motion to dismiss pro se litigant’s PRA case; litigant filed special motion to strike under anti-SLAPP statute. Trial court denied motion and imposed sanctions and Court of Appeals upheld trial court. • Because Supreme Court had previously invalidated anti-SLAPP statute, sanctions were no longer proper and must be vacated. Case was remanded for further proceedings.
Anderson v. DSHS	November 15, 2016 196 Wn. App. 674, 384 P.3d 651 (2016) <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> • RCW 26.23.120, which governs child support records, is an “other statute” exempting information from disclosure under the PRA. • A requested email string was exempt from disclosure under the attorney-client privilege at RCW 5.60.060(2)(a).
West v. Vermillion	November 8, 2016 196 Wn. App. 627, 384 P.3d 634 (2016) <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> • Public official was required to produce city emails in his personal email account that met the definition of public record. • The 1st and 4th Amendments and Article 1 Sec. 7 of the State Constitution do not afford an individual a privacy interest in the public records contained in that account.
Hood v. South Whidbey School District	September 6, 2016 Unpublished <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> • Requester made numerous PRA requests to district. Court of Appeals upheld trial court’s decisions that district’s search was reasonable and upheld its application of mitigating and aggravating penalty factors, and its calculation of penalty period. Court of Appeals found trial court incorrectly calculated attorneys’ fees award and remanded that issue.
Belenski v. Jefferson County	September 1, 2016 186 Wn.2d 452, 378 P.3d 176 (2016)	<ul style="list-style-type: none"> • The one-year statute of limitations applies to PRA claims (“causes of action under the PRA”) and this period usually begins to run on an agency’s final, definitive response to a records request. • However, a court can determine based on the facts whether equitable tolling applies.
West v. The Evergreen State College Board of Trustees et	August 30, 2016 Unpublished	<ul style="list-style-type: none"> • Court of Appeals upheld trial court’s dismissal of PRA claim when Plaintiff did not establish a dispute of material fact. Trial court had ruled agency responded in full to Plaintiff’s first two PRA requests, and the

al.	<i>(Petition for review denied)</i>	agency's amended time estimate for further response was reasonable and complied with the PRA, so trial court dismissed the PRA claims related to all three PRA requests.
Jones v. Department of Corrections	August 18, 2016 Unpublished <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> The purpose of the PRA is not to subject a government entity to liability for lost records. The PRA "is not intended to penalize inadvertent loss [of a record], a phenomenon endemic to a large organization."
McKee v. Department of Corrections	August 16, 2016 Unpublished	<ul style="list-style-type: none"> Court of Appeals should defer to trial court's findings of fact when ruling was based on affidavits, losing party did not ask for live testimony, and substantial evidence supported trial court's findings.
Kittitas County v. Allphin et al.	August 9, 2016 (Published in part) 195 Wn. App. 355, 381 P.3d 1202 (2016) <i>(Petition for review granted in part)</i>	<ul style="list-style-type: none"> Published: County properly withheld records under common interest/joint defense doctrine with respect to materials covered by attorney client privilege and attorney work product. Unpublished: County's exemption logs were adequate; some emails were improperly withheld and the matter was remanded for assessment of penalties and fees; county provided fullest assistance to requester and did not delay in processing request; county was not required to produce records it did not have at the time of the request; county did not abuse judicial process. Petition for review granted only as to the issue of whether emails exchanged between county prosecuting attorneys and Department of Ecology employees relating to the Chem-Safe NOVA litigation are exempt from public records production as attorney work under the "common interest doctrine".
City of Everett v. Wallin	August 1, 2016 Unpublished	<ul style="list-style-type: none"> Inmate's PRA lawsuit was barred by the one-year statute of limitations.
Anderson v. Walla Walla Police Department	June 30, 2016 Unpublished <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> Inmate's request to police department for records regarding himself was appropriately directed to court where copy of court order may exist ("The police department had no obligation to produce a record that did not exist or to gather records kept by another agency.") Inmate did not satisfy requirement to show bad faith by agency ("we agree with the trial court that actions taken by [the agency], were prompt and meant to provide access to responsive records.")
White v. City of Lakewood	May 25, 2016 194 Wn. App. 778, 374 P.3d	<ul style="list-style-type: none"> An agency citing a categorical exemption from disclosure based on effective law enforcement exemption "does so at its own risk" because the exemption covers investigations that are "open and

	286 (2016)	<p>active.”</p> <ul style="list-style-type: none"> • Requester’s first PRA request not time-barred because there was no active investigation, so exemption was improperly cited. • Requester’s second and third requests were time-barred because the claims were not filed within one year of records being produced. “An agency satisfies the ‘production’ requirement of RCW 42.56.550(6) when it brings all of the documents together and makes that collection of documents available to a delivery service for delivery to the requestor.”
Anderson v. Department of Corrections	April 26, 2016 Unpublished	<ul style="list-style-type: none"> • Inmate’s superior court complaint was insufficient to establish he was alleging PRA claim regarding his rap sheet. • DOC made inmate’s medical records available to him through agency’s medical record request process, so there was no PRA violation. • Inmate not entitled to PRA penalties or attorneys’ fees.
Canha v. Department of Corrections	April 25, 2016 Unpublished	<ul style="list-style-type: none"> • Inmate failed to establish when he first learned that the documents he provided were not responsive, thus his claims were time-barred whether analyzed under a discovery rule or equitable tolling rule. • Inmate failed to establish that agency did not identify and produce all records he sought; he admitted that his request was ambiguous and did not respond to agency’s request to describe if its interpretation was inaccurate.
Benitez v. Skagit County	April 18, 2016 Unpublished	<ul style="list-style-type: none"> • Inmate not entitled to PRA penalties because he failed to establish that the agency acted in bad faith. • Agency sufficiently established in the record why a careful review of release of the records was required, including its consideration of a discovery order barring release to the inmate and the impact of later case law.
Worthington v. City of Bremerton et al.	April 12, 2016 Unpublished	<ul style="list-style-type: none"> • Statute of limitations had expired on requester’s PRA claim; nearly 3 years had passed since the statute expired. Trial court properly dismissed case. • Trial court did not abuse its discretion in imposing CR 11 sanctions when the requester’s action was brought for improper purposes.
SEIU Healthcare 775W v. State, Department of Social and Health Services, and Freedom Foundation	April 12, 2016 193 Wn. App. 377, 377 P.3d 214 (2016) <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> • Commercial purpose prohibition in RCW 42.56.070(9) for lists of individuals applies to “commercial purpose” as defined by AGO opinions, including a business activity by any form of business enterprise intended to generate revenue or financial benefit. • An agency receiving a request for lists of individuals cannot merely require an affirmation from the requester (that the list won’t be used for a commercial purpose). Instead, the agency must investigate when it has some indication the list may be used for a

		<p>commercial purpose, and whether an agency must investigate will depend upon a case-by-case determination based on the identity of the requester, the nature of the records requested, and any other information available to the agency.</p> <ul style="list-style-type: none"> • The lists of individuals at issue in this case were not exempt under RCW 42.56.230(1) (files maintained for welfare recipients).
Kozol v. Washington State Department of Corrections	<p>April 12, 2016 Unpublished <i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> • Inmate challenged trial court’s dismissal of two PRA lawsuits where he argued the agency failed to provide the back side of a pre-printed grievance form. Per its usual procedures, agency had destroyed it before realizing inmate viewed it as a responsive record. • Court upheld trial court’s dismissal of actions. Agency did not violate PRA when it failed to recognize inmate believed pre-printed forms were responsive, and its innocent destruction of the records excuses its failure to produce them.
Doe v. Washington State Patrol	<p>April 7, 2016 185 Wn.2d 363, 374 P.3d 63 (2016)</p>	<ul style="list-style-type: none"> • The Community Protection Act (RCW 4.24.550) regarding release of sex offender information to the public was not an “other statute” exempting level I sex offender information from disclosure. • When a statute is not explicit, courts will not find an “other statute” exemption. Courts will also identify a legislative intent to protect a particular interest or value. • PRA exemptions are permissive rather than mandatory. In contrast, an agency cannot provide a record when a statute makes it “confidential” or otherwise prohibits disclosure. • Public agencies were authorized to notify third persons of a PRA request and permit them to seek an injunction under RCW 42.56.540 – such notice by agencies was thus not wrongful. • Plaintiff was not entitled to attorneys’ fees or costs, or penalties, because she did not prevail against a <i>public agency</i> – she prevailed against private entities seeking non-disclosure. The public agencies took the position that the records were subject to disclosure.
Wade’s Eastside Gun Shop v. Department of Labor and Industries	<p>March 24, 2016 185 Wn.2d 270, 372 P.3d 97 (2016)</p>	<ul style="list-style-type: none"> • As a matter of first impression, Court holds that PRA allows trial courts to impose penalties calculated on a per page basis. • Department could not assert categorical investigative records exemption to PRA. Department failed to show nondisclosure was essential to effective law enforcement.
Faulkner v. Department of Corrections	<p>February 16, 2016 Unpublished</p>	<ul style="list-style-type: none"> • An inmate must provide bad faith in a PRA claim for monetary award. • DOC was not unreasonably dilatory and did not act in

		<p>bad faith when providing the records.</p> <ul style="list-style-type: none"> Agency’s search was reasonable. “To repeat, an agency need not search every possible place a record may conceivably be stored.”
State v. Doe I	<p>Feb. 9, 2016</p> <p>192 Wn. App. 612, 369 P.3d 166 (2016)</p>	<ul style="list-style-type: none"> This is not a PRA case but it is a “spin off” of a PRA case at <i>Doe v. Washington State Patrol, Zink</i> (No. 90413-8) (see April 7, 2016 decision above). Petitioner, a level one sex offender, in that case obtained an injunction in the WSP action. That case involved PRA requests from Ms. Zink. This case involved access to information about petitioner in court files. He filed a motion to redact/seal all identifying information in his petition seeking relief from further sex offender registration. Court remanded case for trial court to determine whether Doe established a “serious and imminent threat to an important interest” if the records were not redacted or sealed, given “the broad scope of Ms. Zink’s requests.”
Fortgang v. Woodland Park Zoo	<p>Feb. 1, 2016</p> <p>192 Wn. App. 418, 368 P.3d 418 (2016)</p> <p><i>(Petition for review was granted – See Supreme Court decision issued January 12, 2017)</i></p>	<ul style="list-style-type: none"> Applying the <i>Telford</i> analysis, Court finds the zoo is not the functional equivalent of a public agency, so it is not subject to the PRA.
Nissen v. Pierce County	<p>January 19, 2016</p> <p>(Unpublished)</p>	<ul style="list-style-type: none"> Background: <ul style="list-style-type: none"> Follow-up to <i>Nissen v. Pierce County</i> State Supreme Court decision (182 Wn.2d 863, 357 P.3d 45 (2015)). Nissen had filed PRA complaints in 2011 and 2013. Trial court had dismissed 2011 complaint (involving a PRA request for cell phone records), and then 2013 complaint (involving a request for text messages on a cell phone for more days than first request) because it raised same issue. Supreme Court held that text messages sent and received by a public employee in the employee’s official capacity are public records of the employer, even if the employee uses a private cell phone, and provided steps for searching and producing public records on

		<p>private devices. Supreme Court held that trial court improperly had dismissed 2011 complaint. Supreme Court remanded for further proceedings.</p> <ul style="list-style-type: none"> • Court of Appeals held in this decision that 2013 complaint is not precluded by dismissal of 2011 complaint, but the issue of whether Pierce County has complied with State Supreme Court decision or whether PRA penalties are appropriate is not before it. • Court of Appeals held that it will decline to penalize Pierce County in the present case because the county has not had an opportunity to comply with the State Supreme Court decision. It also denied the county's motion for sanctions and attorneys' fees; Nissen's appeal was not frivolous. • Court of Appeals reversed the trial court's decision dismissing the 2013 complaint and remanded case for further proceedings in the trial court consistent with the State Supreme Court decision.
2015		
Does et al. v. King County et al.	Dec. 28, 2015 192 Wn. App. 10, 366 P.3d 936 (2015)	<ul style="list-style-type: none"> • Private university's security cameras captured events related to shooting, and videos were turned over to local police department and prosecutor. • PRA required disclosure of videos, subject to certain redactions. • Trial court correctly determined that procedure was to determine whether a specific PRA exemption applied, before determining if preliminary injunction to enjoin disclosure should be issued. • Videos were "public records" because they contained information "relating to" the conduct of government or the performance of any governmental or proprietary function. • Regarding exemption for victims and witnesses in RCW 42.56.240(2): Stated desire of victims and witnesses that their identity not be disclosed could be accomplished under PRA through pixilation of their faces. Other information in video was disclosable because did not satisfy "privacy prong" of the exemption. • Other exemptions did not apply in this case. Factors in 42.56.240(1) (law enforcement exemption) and 42.56.420 (security exemption) were not satisfied so as to support additional redaction of videos. •
Kozol v. Department of Corrections	Dec. 1, 2015, <i>amended on denial of reconsideration</i>	<ul style="list-style-type: none"> • Court held inmate "concocted a scheme in prison to make money off" the PRA. • Trial court had properly denied inmate's request for a continuance to seek further discovery since he did not

	<p><i>Jan. 12, 2016</i></p> <p>191 Wn. App. 1034, 366 P.3d 933 (2015)</p> <p><i>(Petition for review denied)</i></p>	<p>meet CR 56 (summary judgment) discovery standard. Discovery would not have raised any issue of genuine material fact.</p> <ul style="list-style-type: none"> • PRA only requires that access be granted to existing records, not nonexistent records that one believes should exist. • There can be no silent withholding of a record that no longer exists. • When an agency does not find a record that should exist, the question for review is whether the search was adequate. Here, agency's search was adequate. "The fact that the record was eventually found does not establish that the agency's search was not adequate."
Williams v. Garland	<p>November 2, 2015</p> <p>Unpublished</p> <p>(2015 WL 8487258)</p> <p>(W.D. Wash.)</p>	<ul style="list-style-type: none"> • Inmate filed suit in federal court claiming public records officer violated his due process rights in the processing of a PRA request • Federal court dismissed claim. "There is no constitutional right to public disclosure of government documents."
Benton County v. Donna Zink	<p>November 10, 2015</p> <p>191 Wn. App. 269, 361 P.3d 801 (2015)</p>	<ul style="list-style-type: none"> • Agency can use declaratory judgment process to determine its rights under the PRA. • The PRA does not require creating a new record by scanning hard paper copies into an electronic format. • An agency may assess a requester the charge of an outside vendor for converting paper copies into electronic format.
Burt v. Department of Corrections	<p>November 10, 2015</p> <p>191 Wn. App. 194, 361 P.3d 283 (2015)</p>	<ul style="list-style-type: none"> • Inmate's estate was not entitled to attorneys' fees under equitable rule allowing for recovery of fees incurred in dissolving a wrongful injunction. • Inmate's estate was not entitled to attorneys' fees under trial court's inherent powers based on DOC's alleged bad faith.
Department of Corrections v. Barstad	<p>November 3, 2015</p> <p>Unpublished</p>	<ul style="list-style-type: none"> • Inmate alleged DOC failed to provide requested record. • Court held that because inmate conceded that the record he sought had been destroyed prior to his PRA request, and because the destruction of records in violation of RCW 40.14.060 does not give rise to a cause of action under the PRA, summary judgment in favor of DOC was affirmed. • <i>(Petition for review denied.)</i>
West v. Washington State Assoc. of District and Municipal Court Judges	<p>November 2, 2015</p> <p>190 Wn. App. 931, 361 P.3d 210 (2015)</p>	<ul style="list-style-type: none"> • Association was part of judiciary and was therefore not an "agency" subject to the Public Records Act.

Thomas v. Pierce County Prosecuting Attorney's Office	October 19, 2015 Unpublished	<ul style="list-style-type: none"> • Requester's request that agency clarify its response was not a new PRA request. "The fair notice requirement [that a request is a PRA request] is one of the few burdens placed on requestors." • Records requested were exempt under RCW 42.54.240(1) and the work product rule.
Adams v. Department of Corrections	September 1, 2015 189 Wn. App. 925, 361 P.3d 479 (2015)	<ul style="list-style-type: none"> • Inmate requested records from his offender file. • The Court found DOC's position that certain documents were exempt from disclosure was not legally defensible, and that DOC had simply deferred to the position of another agency with respect to the records without engaging in any critical analysis of its own. • Court held that for purposes of imposing penalties under RCW 42.56.565(1) (inmate injunction statute), bad faith includes an agency's failure to engage in any serious independent analysis of the exempt status of the documents it withholds.
Nissen v. Pierce County	August 27, 2015 183 Wn.2d 863, 357 P.3d 45 (2015)	<ul style="list-style-type: none"> • Text messages sent and received by a public employee in the employee's official capacity are public records of the employer, even if the employee uses a private cell phone. • A record that an agency employee prepares, owns, uses, or retains in the scope of employment is a record "prepared, owned, used ore retained by a state or local agency" under the PRA. • For a record to be "used" it must bear a nexus with the agency's decision-making process. A record held by a third party, without more, is not a public record, unless the agency "uses" it. In this case, that applied to call and text logs at the phone service provider. • The public employee must obtain, segregate and produce to the employer those public records in the employee's devices, files and accounts that are responsive to a PRA request. • The employee can in good faith submit a reasonably detailed, nonconclusory affidavit attesting to the nature of the search, and the trial court can resolve the nature of the record based solely on affidavits without an <i>in camera</i> review and without searching for records itself. So long as the affidavit gives the requester and trial court a sufficient factual basis to determine information withheld is nonresponsive, the agency has performed an adequate search under the PRA. • Where an employee withholds personal records from an employer, he or she must submit an affidavit with facts sufficient to show the information is not a "public record" under the PRA. • Agencies should develop ways to capture public

		<p>records related to employee cell phone use. Court discusses other possible records procedures, such as routing emails through agency servers, or providing an agency issued device or prohibiting use of personal devices for agency business.</p> <ul style="list-style-type: none"> • Case was remanded.
Cornu-Labat v. Hospital Dist. # 2 v. Grant County d/b/a Quincy Valley Hospital	<p>August 11, 2015 Unpublished</p>	<ul style="list-style-type: none"> • Background: Supreme Court had earlier remanded this case and ruled there were issues of fact concerning exemptions claimed by the district regarding the hospital quality improvement/peer review process. 177 Wn.2d 221 (2013). • Upon remand, the district submitted a supplemental declaration to the trial court. Another appeal was filed. Court held that under the law of the case the summary judgment motion must be denied; the supplemental declaration was insufficient. The case was remanded again for trial. • Court also noted that documents had not been provided for <i>in camera</i> review and court is reluctant to decide the legal issues without the opportunity to review the records.
Roe v. Anderson	<p>August 10, 2015 Unpublished</p> <p>2015 WL 4724739 (W.D. Wash.)</p>	<ul style="list-style-type: none"> • Federal court entered injunction barring disclosure to requester of license information concerning erotic dancers, under the First Amendment. Constitutional provision is an “other statute.” • Court declined to find PRA unconstitutional. • Court held the PRA is a tool to enable citizens to monitor their government; it is not a mechanism for them to examine, exploit or endanger each other.
Faulkner v. Gonzalez	<p>August 10, 2015 Unpublished</p> <p>2015 WL 47224758 (W.D. Wash.)</p>	<ul style="list-style-type: none"> • Inmate mail rejection case filed in federal court in a claim related to inmate’s state PRA cases. • Federal court dismissed case, holding “A public records act case is not the type of case identified in Lewis as being sufficiently serious to invoke a constitutional right to access the courts.”
White v. Skagit County & Island County	<p>July 13, 2015</p> <p>188 Wn. App. 886, 355 P.3d 1178 (2015)</p>	<ul style="list-style-type: none"> • Copies of requested ballots were exempt under Washington’s constitutional and statutory provisions (Title 29A RCW) protecting ballot secrecy. • Ballots were not subject to redaction because redaction would not eliminate the risk of disclosing the identity of individual voters. • Counties’ brief explanations were sufficient (one was in an exemption log, one was in an explanatory letter) • Requester’s failure to clarify excused county from proving more specifically why the metadata and properties were exempt. • (See also <i>White v. Clark County</i>)

		<ul style="list-style-type: none"> • <i>(Petition for review denied.)</i>
Northup v. Department of Corrections	July 6, 2015 Unpublished	<ul style="list-style-type: none"> • Requester had no cause of action at the time he brought his PRA claims in superior court because agency had not taken final action on request, and agency may remedy a deficiency in an earlier installment.
Cedar Grove Composting v. City of Marysville	July 6, 2015 188 Wn. App. 695, 354 P.3d 249 (2015)	<ul style="list-style-type: none"> • Cedar Grove had personal stake in the outcome of the action, so had standing to sue. • Under the exceptional facts of the case, the records prepared by a contractor acting as the functional equivalent of a city employee were public records for the purposes of the PRA.
White v. Clark County	June 30, 2015 188 Wn. App. 622, 354 P.3d 38 (2015)	<ul style="list-style-type: none"> • Pre-tabulated election ballots are exempt from disclosure under the State Constitution, Title 29A RCW, and Secretary of State regulations. • Trial court failed to make findings of fact/conclusions of law on amount of attorneys' fees awarded with respect to claim of incomplete PRA response (no records produced nor exemption log), so that part of case was remanded. • <i>(See also White v. Skagit County & Island County)</i> • <i>(Petition for review denied in this case; however, Petitioner made a later PRA request to Clark County which was denied under the analysis of this opinion and that case is pending a direct review request at the State Supreme Court.)</i>
Block v. City of Gold Bar	June 22, 2015 189 Wn. App. 262, 355 P.3d 266 (2015)	<ul style="list-style-type: none"> • City's search for records was adequate. • City's exemption log and brief explanations were adequate, describing attorney work product and attorney client privilege. • Failure to disclose an existing record is not a per se violation if search was adequate. • Agency's declarations were reasonably detailed, nonconclusory and submitted in good faith. • <i>(Petition for review denied.)</i>
Robinson v. Turner	May 27, 2015 Unpublished 2015 WL 3408756 (W.D. Wash.)	<ul style="list-style-type: none"> • Plaintiffs' allegations in federal court that agency did not comply with PRA does not raise a federal constitutional claim and is dismissed.
Belenski v. Jefferson County	May 19, 2015 187 Wn. App. 724, 350 P.3d 689 (2015) <i>(Petition for</i>	<ul style="list-style-type: none"> • A public agency's internet activity logs are public records. • The PRA's statute of limitations bars claims filed after the statute has run (in this case, under <i>either</i> a one or two year limit). <i>(See later State Supreme Court decision of Sept. 1, 2016).</i>

	<i>review on statute of limitations claim accepted – See State Supreme Court decision of Sept. 1, 2016)</i>	<ul style="list-style-type: none"> • Agency is not required to respond to a request that does not involve identifiable public records. • Statutory exemption for current public employees also applies to former public employees. • County’s search of three departments was sufficient. • Agency properly provided brief explanation to support its claimed exemptions and did not silently withhold records.
Planned Parenthood et al. v. Bloedow	May 18, 2015 187 Wn. App 606, 350 P.3d 660 (2015)	<ul style="list-style-type: none"> • Disclosure of induced abortion data that identifies the health care provider is exempt from disclosure.
McKee v. King County	May 18, 2015 Unpublished	<ul style="list-style-type: none"> • A person’s request for his own jail records is written permission as required in RCW 70.48.100 before such records can be released. • Other requested documents were exempt under attorney work product. • No finding county acted in bad faith with respect to this inmate PRA case.
Predisik v. Spokane School District	April 2, 2015 182 Wn.2d 896, 346 P.3d 737 (2015)	<ul style="list-style-type: none"> • No privacy right requires redacting name of unsubstantiated allegations of public employee misconduct. • Privacy may exist in facts of allegations. • Court will look at Restatement 2d of Torts regarding privacy.
City of Fife v. Hicks	Feb. 24, 2015 186 Wn. App. 122, 345 P. 3d 1 (2015)	<ul style="list-style-type: none"> • Redactions under investigative records exemption; identities of high ranking officers disclosable. • No redaction of requester’s name. • Generalized declaration insufficient. • City filed suit; not insulated from delay.
Bichindaritz v. University of Washington	Feb. 17, 2015 Unpublished	<ul style="list-style-type: none"> • Large penalty award reversed. • Statute of limitations barred claims. • Time needed to search is part of time needed to produce records. • <i>(Petition for review denied.)</i>
Klinkert v. Criminal Justice Training Commission	Feb. 9, 2015 185 Wn. App. 832, 342 P.3d 1198 (2015)	<ul style="list-style-type: none"> • One-year statute of limitations began to run when agency provided requester exemption log. • <i>(Petition for review denied.)</i>
Kozol v. King County	Feb. 3, 2015 Unpublished	<ul style="list-style-type: none"> • PRA claim dismissed under one-year statute of limitations. • <i>(Petition for review denied.)</i>

Garvie v. Department of Corrections	Feb. 3, 2015 Unpublished	<ul style="list-style-type: none"> • Two of inmate’s requests were time-barred under one-year statute of limitations. • DOC properly responded to third request, and properly redacted telephone records in fourth request.
Worthington v. WestNet	Jan. 22, 2015 182 Wn.2d 500, 341 P.3d 995 (2015)	<ul style="list-style-type: none"> • Provision of interlocal agreement stating it was not an “agency” for PRA purposes not binding on the courts • Interlocal agreement could not designate task force as nonentity if doing so would conflict with PRA. Obligations and requirements.
West v. Holmes	Jan. 20, 2015 Unpublished	<ul style="list-style-type: none"> • City conducted adequate search for records. • Requester must ask for identifiable records.
2014		
State v. A.G.S.	Dec. 31, 2014	<ul style="list-style-type: none"> • While not a PRA case, decision addresses access to juvenile records under RCW 13.50. • All records related to a juvenile offender must be kept confidential unless they are part of the juvenile court file or meet another statutory exemption.
City of Lakewood v. Koenig	Dec. 11, 2014 182 Wn.2d 87, 343 P.3d 335 (2014)	<ul style="list-style-type: none"> • City’s brief explanation insufficient. • City filed action against requester; city did not prevail and case remanded for award of attorneys’ fees.
Anthony v. Mason County	Dec. 11, 2014 Slip Copy at No. 13-5473- BJR, 2014 WL 7045151 (W.Dist. Wash.)	<ul style="list-style-type: none"> • Federal court granted summary judgment for county on PRA claim; it is a “state law claim” for which the court declines to exercise supplemental jurisdiction.
Belo Management Inc. v. CLICK Network, the Tacoma News Tribune	Nov. 25, 2014 184 Wn. App. 649, 343 P.3d 370 (2014)	<ul style="list-style-type: none"> • Pricing information at issue in the case was not a trade secret and disclosure was in the public interest. • Broadcasters were “persons” within the meaning of the PRA. • Requester was not entitled to award of attorneys’ fees; agency was willing to disclose records but was barred by court order.
Mahmoud v. Snohomish County	October 27, 2014 Unpublished	<ul style="list-style-type: none"> • Requester failed to file lawsuit within one-year statute of limitations . • <i>(Petition for review denied)</i>
West v. Gregoire	October 21, 2014 184 Wn. App.	<ul style="list-style-type: none"> • Requester abandoned claims by failing to argue them at show cause hearing. • Requester failed to establish particularized need for disclosure of privileged records.

	164, 336 P.3d 110 (2014)	
Hobbs v. State	October 7, 2014 183 Wn. App. 925, 335 P.3d 1004 (2014)	<ul style="list-style-type: none"> • Requester may initiate a lawsuit to compel compliance with the PRA after the agency has engaged in some <i>final</i> action or inaction. • When an agency has remedied any PRA violation at time requester has cause of action, no penalties. • Agencies are not required by PRA to provide an estimate of when they will <u>fully</u> respond. • Auditor’s search for records was reasonable. • <i>(Petition for review to State Supreme Court untimely.)</i>
Haines-Marchel v. Department of Corrections	September 16, 2014 183 Wn. App. 655 , 334 P.3d 99 (2014)	<ul style="list-style-type: none"> • Agency properly redacted material where nondisclosure was essential to effective law enforcement under RCW 42.56.240(1), except for a small portion of some material.
Andrews v. Washington State Patrol	September 16, 2014 183 Wn. App. 644, 334 P.3d 94 (2014) <i>(Petition for review denied)</i>	<ul style="list-style-type: none"> • Agency’s failure to comply with self-imposed deadlines not a PRA violation. • Court will take “flexible approach.” • Petition for review denied.
West v. Port of Olympia	August 26, 2014 183 Wn. App. 306, 333 P.3d 488 (2014)	<ul style="list-style-type: none"> • Court assumes employee’s identity in investigative report with unsubstantiated allegations is personal information and the employee has a privacy right in his or her identity. • However, the agency’s redactions violated the PRA because disclosure would not be highly offensive to a reasonable person and therefore would not violate the employee’s right to privacy. • <i>(NOTE: See also Predisik v. Spokane School District.)</i>
Faulkner v. Department of Corrections	August 19, 2014 183 Wn. App. 93, 332 P.3d 1136 (2014)	<ul style="list-style-type: none"> • Inmate did not show agency acted in bad faith after incomplete PRA response. • DOC did not deny inmate opportunity to review or copy a record that did not exist. • Defines/clarifies bad faith post – <i>Francis v. DOC</i>, finding it is “the high end of the culpability spectrum” and “wanton” or “willful.”
O’Neil v. City of Shoreline	August 18, 2014 183 Wn. App. 15, 332 P.3d	<ul style="list-style-type: none"> • City failed to show prejudice from untimely PRA fee request submitted to court.

	1099 (2014)	
Department of Transportation v. Mendoza de Sugiyama	July 29, 2014 182 Wn. App. 588, 330 P.3d 209 (2014)	<ul style="list-style-type: none"> • A discovery protective order restricting discovery of some documents does not prohibit the same party from seeking those documents in a PRA request – they are still “available” under the civil rules.
Fisher Broadcasting v. City of Seattle	June 12, 2014 180 Wn.2d 515, 326 P.3d 688 (2014)	<ul style="list-style-type: none"> • Records that are partially responsive in a database are to be produced in response to a PRA request. • Given the way public records are now stored (and, in many cases, initially generated), “there will not always be a simple dichotomy between producing an existing record and creating a new one.” • “Whether a particular public records request asks an agency to produce or create a record will likely often turn on the specific facts of the case and thus may not always be resolved on summary judgment.” • RCW 9.73.090(1) (recordings – privacy act) is a limited disclosure under the PRA that applies only where there is actual, pending litigation.
West v. Department of Licensing	June 9, 2014 182 Wn. App. 500, 331 P.3d 72 (2014)	<ul style="list-style-type: none"> • A “complex and broad” request may require an agency to provide records in installments, and use additional time to locate and assemble records, notify third parties, and determine if information is exempt. • Agency timely responded to PRA requests. • Records relating to tax payment amounts funded to tribes were exempt. • Requester was not entitled to reconsideration based on newly-discovered evidence.
Robbins, Geller et al. v. State et al.	March 4, 2014 179 Wn. App. 711, 328 P.3d 905 (2014)	<ul style="list-style-type: none"> • The burden rests upon the person seeking nondisclosure. • Information here was not shown to be a protected trade secret or exemption under 42.56.270(1)(proprietary data, trade secrets), so was disclosable. • A private party can assert an exemption under RCW 42.56.270(1) (valuable formula, research data, etc.). • Private party does not prevail for purposes of seeking fees when agency wanted to release records, but was prohibited from doing so by court order.
West v. Port of Tacoma	Feb. 20, 2014 Unpublished	<ul style="list-style-type: none"> • Trial court improperly dismissed PRA case under Civil Rule 41.
Gale v. City of Seattle	Feb. 10, 2014 Unpublished	<ul style="list-style-type: none"> • City inadvertently failed to disclose some responsive records; \$10/day penalty assessed; <i>Yousoufian</i> factors analyzed. • Pro se not entitled to attorneys’ fees.
Hunter v. Department of Corrections	Feb. 4, 2014 Unpublished	<ul style="list-style-type: none"> • Inmate’s request to review his central file was not PRA request. • Agency conceded that trial court erred in concluding letter from inmate’s attorney was not a PRA request.

West v. Washington State Association of Cities	Feb. 4, 2014 Unpublished	<ul style="list-style-type: none"> Records allegedly improperly withheld were not responsive to request.
City of Seattle v. Egan	Feb. 3, 2014 179 Wn. App. 333, 317 P.3d 568 (2014)	<ul style="list-style-type: none"> There is no constitutional right to access records. Agency can bring an action to determine the applicability of a law prohibiting release of records.
Martin v. Riverside School District	Jan. 30, 2014 180 Wn. App. 28, 329 P.3d 911 (2014)	<ul style="list-style-type: none"> Teacher did not have a right of privacy to exempt information regarding substantiated allegations of misconduct.
Reid v. Pullman Police Department	Jan. 28, 2014 Unpublished	<ul style="list-style-type: none"> Agency not required to provide a record it did not possess at time of request.

Public Records & Public Meetings Legislation 2017 Regular Session

The list below contains links to and brief summaries of bills impacting public agency records and open meetings which passed both houses during the 2017 regular session of the Washington State Legislature and were delivered to the Governor. The regular session ended April 23, 2017. The Governor has 5 days, excluding Sundays, to take action on any bill passed by the Legislature, provided adjournment does not occur within those 5 days. Bills that are delivered fewer than 5 days before the Legislature adjourns have 20 days to be acted on by the Governor.

Unless otherwise specified in a bill, or for some sections of a bill, bills enacted in the regular session are effective July 23, 2017.

The Governor convened a 30-day special session beginning April 24 with respect to the 2017-18 biennial operating and capital budgets, and stating that legislative leadership, working together with the Governor, “may agree upon additional matters that are necessary for the Legislature to address.” The Governor convened a second special session beginning May 23 to complete unfinished business. It is possible that additional legislation impacting public agency records/open meetings will be enacted during a special session.

This is not an exhaustive list. Consult the Legislature’s website for bills introduced, bill language including amendments, full history of a bill including companion bills, public hearing information, and bill status: <http://app.leg.wa.gov/billinfo/>.

RECORDS



May 22, 2017

Bill No.	Title/Summary • Other Info	Prime Sponsor	Status
HOUSE			
1043	Addressing nonpublic personal health information <ul style="list-style-type: none"> • Office of insurance commissioner records – RCW 48.02 • RCW 42.56.400 	Robinson	Governor signed. Chap. 193, 2017 Laws.
1105	Concerning passenger-carrying vehicles for railroad employees <ul style="list-style-type: none"> • RCW 42.56.330 • RCW 81.61 	Stanford	Governor signed. Chap. 333, 2017 Laws.
1109	Supporting victims of sexual assault <ul style="list-style-type: none"> • RCW 43.101 – Records retention/retrieval - criminal justice training commission 	Orwall	Governor signed. Chap. 290, 2017 Laws.
1337	Relating to the interstate medical licensure compact <ul style="list-style-type: none"> • New section – RCW 42.56 	Riccelli	Governor signed. Chap. 195, 2017 Laws.
1462	Adding authority to the department of agriculture to regulate sanitary processing of marijuana-infused edibles <ul style="list-style-type: none"> • Exempts processor information – RCW 42.56; RCW 69.07 	Kloba	Governor signed. Chap. 138, 2017 Laws. Sec. 4 eff. 4/1/18.

1465	Exempting from public disclosure certain information regarding reports on wolf depredations <ul style="list-style-type: none"> RCW 42.56.430, new section in RCW 42.56, RCW 77.12.885 	Short	Governor signed. Chap. 246, 2017 Laws.
1477	Concerning disclosure of health-related information with persons with a close relationship with a patient <ul style="list-style-type: none"> RCW 70.02 	Kilduff	Governor signed. Chap. 298, 2017 Laws. Sec. 6 eff. 4/1/18.
1493	Concerning biometric identifiers <ul style="list-style-type: none"> See also HB 1717 See also HB 2213 Title 19 RCW 	Morris	Governor signed. Chap. 299, 2017 Laws.
1501	Protecting law enforcement and the public from persons who illegally attempt to obtain firearms <ul style="list-style-type: none"> Certain records exempt under RCW 42.56 	Hansen	Governor signed. Chap. 261, 2017 Laws.
1594	Improving public records administration <ul style="list-style-type: none"> RCW 42.56.010, 42.56.152, RCW 42.56.520, RCW 42.56.570, RCW 40.14, RCW 36.22.175 	McBride	Governor signed. Chap. 303, 2017 Laws.
1595	Concerning costs associated with responding to public records requests <ul style="list-style-type: none"> RCW 42.56.070, RCW 42.56.080, RCW 42.56.120, RCW 42.56.130, RCW 42.56.550 	Nealey	Governor signed. Chap. 304, 2017 Laws.
1717	Concerning state agency collection, use, and retention of biometric identifiers <ul style="list-style-type: none"> See also HB 1493 See also HB 2213 Title 40 RCW 	Smith	Governor signed. Chap. 306, 2017 Laws.
1732	Concerning the confidentiality of educator professional growth plans <ul style="list-style-type: none"> RCW 42.56.250 	Springer	Governor signed. Chap. 16, 2017 Laws.
1816	Concerning information sharing related to implementation of the homeless youth prevention and protection act of 2015 <ul style="list-style-type: none"> RCW 48.185C, RCW 13.50.010 	Frame	Governor signed. Chap. 277, 2017 Laws..
1829	Concerning the exemption from public disclosure of information regarding public and private computer and telecommunications networks <ul style="list-style-type: none"> RCW 42.56.420 	Hudgins	Governor signed. Chap. 149, 2017 Laws.
1877	Concerning the release of driving record abstract information affecting registered tow truck operators <ul style="list-style-type: none"> See also SB 5343 RCW 46.52.130 	Stanford	Governor VETOED.
1965	Standardizing the collection and distribution of criminal records <ul style="list-style-type: none"> RCW 9.41, RCW 9A.44, RCW 43.43 	Lovick	Governor signed. Chap. 174, 2017 Laws.
2005	Improving the business climate in this state by simplifying the administration of municipal general business licenses. <ul style="list-style-type: none"> Reference to RCW 42.56 Title 35 RCW 	Lytton	Governor signed. Chap. 209, 2017 Laws.

SENATE

5031	Addressing licensing and enforcement provisions applicable to money transmitters and currency exchanges under the uniform money services act. <ul style="list-style-type: none"> RCW 19.230 	Angel	Governor signed. Chap. 30, 2017 Laws.
5039	Adopting the uniform electronic legal material act <ul style="list-style-type: none"> Title 1 RCW 	Pedersen	Governor signed. Chap. 106, 2017 Laws. Eff. 1/1/2018.
5131	Addressing provisions concerning marijuana with respect to research licenses, local authority notifications, the retail licensing application process, processor wholesale events, and jurisdictional requirements <ul style="list-style-type: none"> RCW 42.56.270, RCW 69.50, RCW 69.51A 	Rivers	Governor signed. Chap. 317, 2017 Laws.
5173	Concerning loss prevention reviews by state agencies <ul style="list-style-type: none"> RCW 43.19 	Chase	Governor signed. Chap. 318, 2017 Laws.
5207	Concerning the public disclosure of global positioning system data corresponding to residential addresses of public employees and volunteers <ul style="list-style-type: none"> RCW 42.56.250 	Kuderer	Governor signed. Chap. 38, 2017 Laws.
5343	Concerning notice sent by and certain release of information affecting registered tow truck operators <ul style="list-style-type: none"> See also HB 1877 RCW 46.55.110, RCW 46.52.130 	Warnick	Governor signed. Chap. 43, 2017 Laws.
5358	Improving tax and licensing laws administered by the department of revenue, but not including changes to tax laws that are estimated to affect state or local tax collections as reflected in any fiscal note prepared and approved under the process established in chapter 43.88A RCW <ul style="list-style-type: none"> RCW 84.08 — Electronic communication of confidential property tax information RCW 19.02.115 – Restriction on lists of persons 	Schoesler	Governor signed. Chap. 323, 2017 Laws.
5435	Specifying to whom information and records related to mental health services may be disclosed for the purposes of care coordination and treatment <ul style="list-style-type: none"> RCW 70.02.230 	Rivers	Governor signed. Chap. 325, 2017 Laws. Sec. 2 eff. 4/1/18.
5761	Exempting certain confidential fish and shellfish harvest information from disclosure under chapter 42.56 RCW, the public records act <ul style="list-style-type: none"> RCW 42.56.430 	McCoy	Governor signed. Chap. 71, 2017 Laws.
5764	Concerning higher education records <ul style="list-style-type: none"> RCW 42.56.240, RCW 28B.112 	Wellman	Governor signed. Chap. 72, 2017 Laws.

MEETINGS



May 22, 2017

Bill No.	Title/Summary • Other Info	Prime Sponsor	Status
HOUSE			
1417	Concerning the harmonization of the open public meetings act with the public records act in relation to information technology security matters • RCW 42.30.110	Hudgins	Governor signed. Chap. 137, 2017 Laws.

Summary of [ESHB 1594](#) (Improving Public Records Administration)

[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

DEFINITION

- **PUBLIC RECORD.** Section 1 amends the “public record” definition in the Public Records Act (PRA) at RCW 42.56.010(3) to exclude records that are not otherwise required to be retained and are held by volunteers who (a) do not serve in an administrative capacity; (b) have not been appointed by the agency to an agency board, commission or internship; and, (c) do not have a supervisory role or delegated agency authority.

TRAINING

- **PUBLIC RECORDS OFFICER TRAINING.** Section 2 amends the training requirement for public records officers in RCW 42.56.152 to require training on “particular issues related to the retention, production and disclosure of electronic documents, including updating and improving technology information services.”

RECORDS PROCEDURES

- **5-DAY RESPONSE – REQUEST FOR CLARIFICATION.** Section 3 amends RCW 42.56.520 to provide that a permitted agency response to a PRA request within the 5-business day period is an acknowledgment of receipt and request for clarification, “and, providing to the greatest extent possible, a reasonable estimate of time” the agency will require to respond to the request if it is not clarified. If the entire request is unclear and the requester fails to respond, the agency need not respond to it. However, the agency must respond to those portions of a request that are clear.
- **PRA REQUESTS - LOGS.** Section 6 adds a new section in RCW 40.14 (records retention) that requires public agencies to maintain a log of public records requests to include for each request the identity of the requester (if provided), date of receipt, text of request, description of records produced, description of records redacted/withheld and the reasons, and date of final disposition. The logs must be retained per the agency’s records retention schedule and are a public record the PRA.
- **LOCAL AGENCY PRA ORDINANCES - ATTORNEY GENERAL’S OFFICE MODEL RULES.** Section 4 amends RCW 42.56.570 to provide that local agencies should consult the Attorney General’s Office (AGO) Model Rules when establishing local PRA ordinances.
- **PRA REQUESTS – DATA COLLECTION AND REPORTING.** Section 6 adds a new section in RCW 40.14 that requires public agencies “with actual staff and legal costs associated with fulfilling public records requests of at least \$100,000 during the prior fiscal year” to report to the Joint Legislative Audit and Review Committee (JLARC) 17 different data points about the agency’s PRA requests. Agencies that incur lower PRA costs (less than \$100,000) may report the data. JLARC must consult with state and local agencies to develop a reporting method and define metrics.

The data to be reported includes: leading practices and processes for records management/retention including technology upgrades and what percentage were implemented by the agency, average length of time to acknowledge receipt of a PRA request, proportion of requests where the agency responded in 5 days compared to where agency provided an estimated response time beyond 5 days, comparison of agency’s average initial estimate with actual time when all records were disclosed including whether the agency sent subsequent estimates, number of clarifications requested, number of requests denied and most common reasons, number of requests abandoned, requester types, which portion of requests were fulfilled electronically, numbers of requests where agency was required to scan records, estimated staff time spent on each individual request, estimated costs including costs for staff compensation and legal review and an average cost per request, number of PRA/other public records claims (by type of claim and exemption), litigation costs including penalties, costs for managing and retaining records (including staff compensation, equipment), expenses recovered by the agency from requesters, and a measure of requester satisfaction. JLARC will report to the Legislature by Dec. 1, 2019.

Summary of [ESHB 1594](#) (Cont.)

[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

PROGRAMS

- **RECORDS CONSULTATION PROGRAMS.** Section 4 amends RCW 42.56.570 to establish records consultation programs. An AGO program is established for local governments, addressing responding to records requests, seeking additional resources for technology, and mitigating liability and costs of compliance. A Secretary of State (State Archives) program is established for consultation and training on improving records retention practices for local governments. The programs end June 30, 2020. Funding is through a new county document recording \$1 surcharge deposited in the local government archives account (per Section 5 - amending RCW 40.14.024; and, Section 7 – amending RCW 36.22.175, which per Section 10 expires June 30, 2020). JLARC will review the programs and report to the Legislature by Dec. 1, 2019 (per Section 6 – new section in RCW 40.14).
- **LOCAL GOVERNMENT COMPETITIVE GRANT PROGRAM.** Section 6 adds a new section to RCW 40.14 that creates a local agency competitive grant program, administered by the State Archives, for one-time investments to improve technology information systems for records retention, management, disclosure and related training, through June 30, 2020. The program is funded through a new county document recording \$1 surcharge deposited in the local government archives account (per Section 5 - amending RCW 40.14.024; and, Section 7 – amending RCW 36.22.175, which per Section 10 expires June 30, 2020). JLARC will review the programs and report to the Legislature by Dec. 1, 2019 (per Section 6 – new section in RCW 40.14).

STUDY

- **OPEN RECORDS PORTAL STUDY.** Sections 8 and 9 provide for an open records portal study. The bill does not identify where these sections will be codified. Subject to appropriation, the State Archives must hire a consultant to study the feasibility of implementing a statewide open records portal through which a requester can request and receive a response to a PRA request through a single internet web site. The State Archives will convene a stakeholder group to develop the study's scope and direction. A report is due to the Legislature by Sept. 1, 2018.

Summary of [EHB 1595](#)
(Concerning Costs Associated With Responding to Public Records Requests)

[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

COPY FEES

- **ACTUAL COSTS - COPYING FEES - ELECTRONIC RECORDS; HEARING.** Section 1 amends RCW 42.56.070(7) in the Public Records Act (PRA) to provide that:
 - Agencies may establish a statement of the actual costs that it charges for photocopies and now to include “electronically produced copies.”
 - “Actual costs” for copies may now also include the “actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage processing service” and the cost of transmitting electronic records (including the use of a physical media device).
 - The statement of costs may be adopted only after providing notice and a public hearing.
- **ACTUAL COSTS - COPYING FEES – CALCULATIONS.** Section 3 amends RCW 42.56.120 to provide that when calculating copy fees, “the agency shall use the most reasonable cost-efficient method available to the agency.” It also provides that actual costs may be imposed only in accordance with RCW 42.56.070(7) (see amendments in Section 1), and in accordance with the statement of factors and manner used to determine actual costs.
- **ACTUAL COSTS - CUSTOMIZED SERVICE CHARGE.** Section 3 amends RCW 42.56.120 to provide that an agency may additionally impose the actual costs of a “customized service charge” when the request would require the use of IT expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes. The agency must notify the requester and take other steps if it will be doing a customized service. An agency can require an advance 10 percent deposit.
- **ACTUAL COSTS VS. PRA DEFAULT FEE SCHEDULE – RULE DECLARATION.** Section 3 amends RCW 42.56.120 to provide that an agency need not calculate actual copying costs “if it has rules or regulations declaring the reasons doing so would be unduly burdensome.” In that case, the agency can use the PRA default fee schedule. See next bullet.
- **PRA DEFAULT FEE SCHEDULE.** Section 3 amends RCW 42.56.120 to provide a PRA default copying fee schedule (including an optional flat fee), under which the agency may charge:

PRA Fee Schedule	
Actual cost	Customized service charge (in addition to fees for copies – see copying fees below).
Copies:	
15 cents /page	Photocopies, printed copies of electronic records when requested by the requester, or for the use of agency equipment to make photocopies.
10 cents /page	Scanned records, or use of agency equipment for scanning.
5 cents /each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
10 cents /gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices.
Actual cost	Any container or envelope used to mail copies.
Actual cost	Postage or delivery charges.
<i>↑ Copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request</i>	
Option for Copies:	
Up to \$2 flat fee	As an alternative to the copy charges above, an agency may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees shall not be charged for subsequent installments.

Summary of [EHB 1595](#) (Cont.)

[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

COPY FEES (cont.)

- **NO FEE - RECORDS ROUTINELY POSTED ON AGENCY WEB SITE.** Section 3 amends RCW 42.56.120 to provide that an agency shall not charge for access to or downloading of records it routinely posts on its web site prior to the receipt of a request, unless the requester has specifically asked that the agency provide records through other means.
- **FEE ESTIMATE.** Section 3 amends RCW 42.56.120 to provide that upon request an agency must provide a summary of the applicable charges before copies are made and the requester may revise the request to reduce the number of copies, thus the applicable charges. See also Section 5 (new court action challenging estimate of fees, amending RCW 42.56.550).
- **FEE WAIVER - RULES.** Section 3 amends RCW 42.56.120 to provide that an agency may waive any charge “pursuant to agency rules and regulations.”
- **OTHER FEE ARRANGEMENTS.** Section 3 amends RCW 42.56.120 to provide that an agency may enter into a contract, memorandum of understanding or other agreement with a requester for an alternative fee arrangement, or in response to a voluminous or frequently occurring request.
- **FEES IN OTHER STATUTES.** Section 4 amends RCW 42.56.130, which provides that PRA fees in RCW 42.56.070(7) and (8) and 42.56.120 do not supersede other statutory provisions for copying fees, and the amendment extends that provision to electronically produced copies.
- **NEW COURT ACTION – CHALLENGING FEE ESTIMATE.** Section 5 amends RCW 42.56.550 to permit a requester to file a superior court motion when the requester believes the agency has not made a “reasonable estimate of the charges to produce copies of public records.”

RECORDS PROCEDURES

- **REQUESTS – FORMAT.** Section 2 amends RCW 42.56.080 to provide that “No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.”
- **REQUESTS – BOTS.** Section 2 amends RCW 42.56.080 to provide that an agency may deny a “bot” request (a request that an agency reasonably believes was automatically generated by a computer program or script), when it is one of multiple requests from the requester received within a 24 hour period. The agency must establish that responding would cause excessive interference with other agency essential functions.
- **REQUESTS - IDENTIFIABLE RECORDS.** Section 2 amends RCW 42.56.080 to provide that PRA requests must be for “identifiable” records. A request for all or substantially all of an agency’s records is not a valid PRA request, “provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency’s records.”
- **REQUESTS – RECEIPT.** Section 2 amends RCW 42.56.080 to require agencies to honor PRA requests received “in person during an agency’s normal office hours” or by email.
- **PROVIDING COPIES - ELECTRONIC RECORD TRANSLATIONS, PAPER SCANS.** Section 3 amends RCW 42.56.120 to provide that translating a record into an alternative electronic format at the request of the requester or scanning a paper record is not creating a new record.

Trump Administration Immigration Policies

A historical perspective on the
case of Mexico

1848: Treaty of Guadalupe Hidalgo



U.S. takes one-third of Mexico; citizenship given to 64,000 residents

1911-1929, Mexican Revolution

- Close to 1 million refugees come across porous border; some returned during the Great Depression

1942-1964, Bracero Program

- Established by executive order in 1942; enacted by law in 1951
- Managed migration: unprecedented and radical solution to America's labor needs prompted by enormous manpower shortage created by World War II
- More than 4.5 million Mexican citizens hired for work in the United States, primarily in Texas and California

No. L 216290
 ALIEN LABORER'S PERMIT
 and
 IDENTIFICATION CARD

Name CAMPBELL-Caldaron, Juan
 Home address San Diego, Mylo Alamo
Chihuahue
 Date and place of birth Mar 18, 1922
San Diego, Chih.
 Nationality MEXICAN
 Identifying marks None



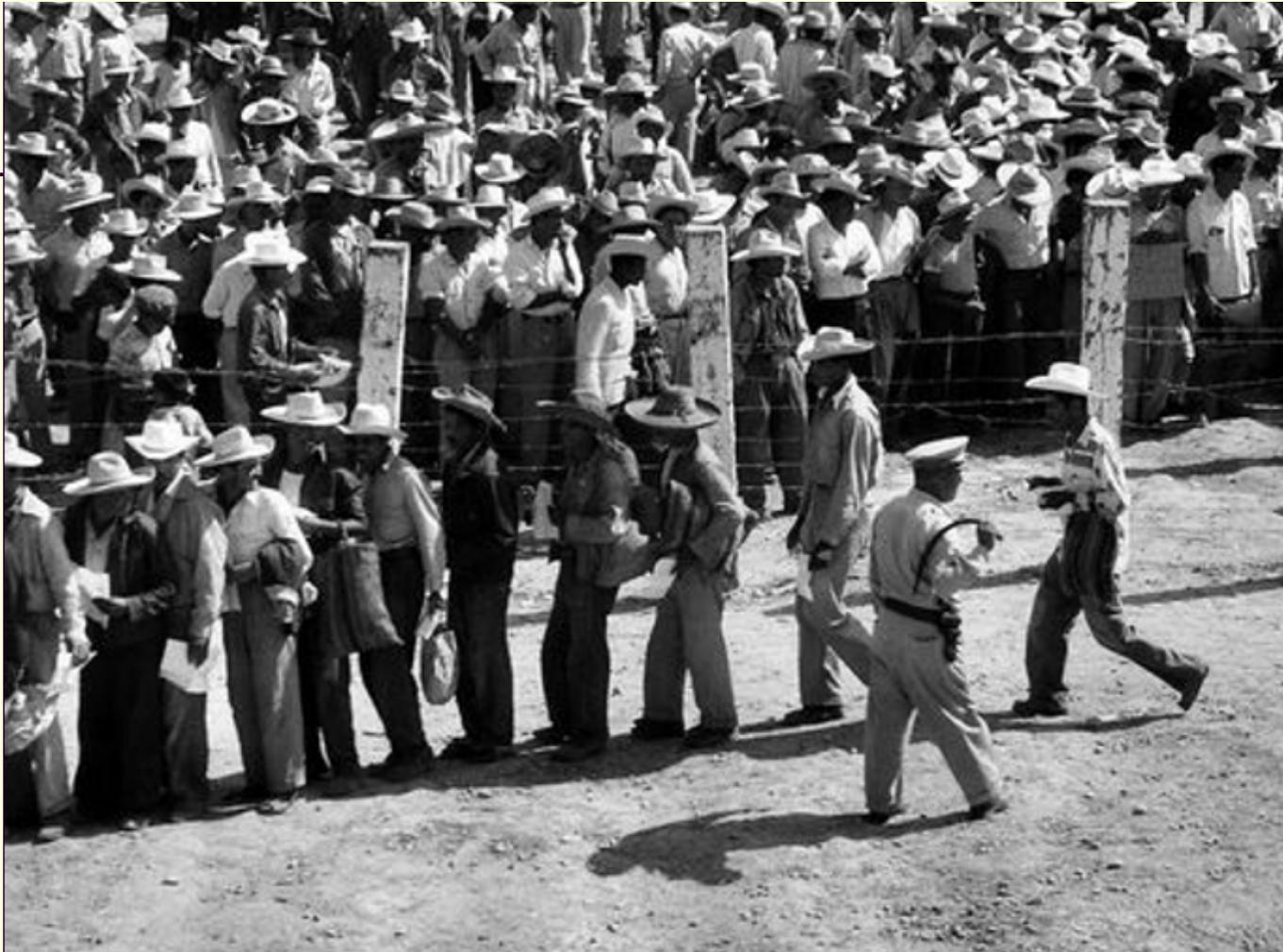
Admitted under 15
 (Class of employee)
 For employment as General Worker
 in (street) 1014 ANA CO. B. W.D.
 Date to which admitted DEC 17 1950

Expirations:
JUN 22 1951
SEP 8 1951

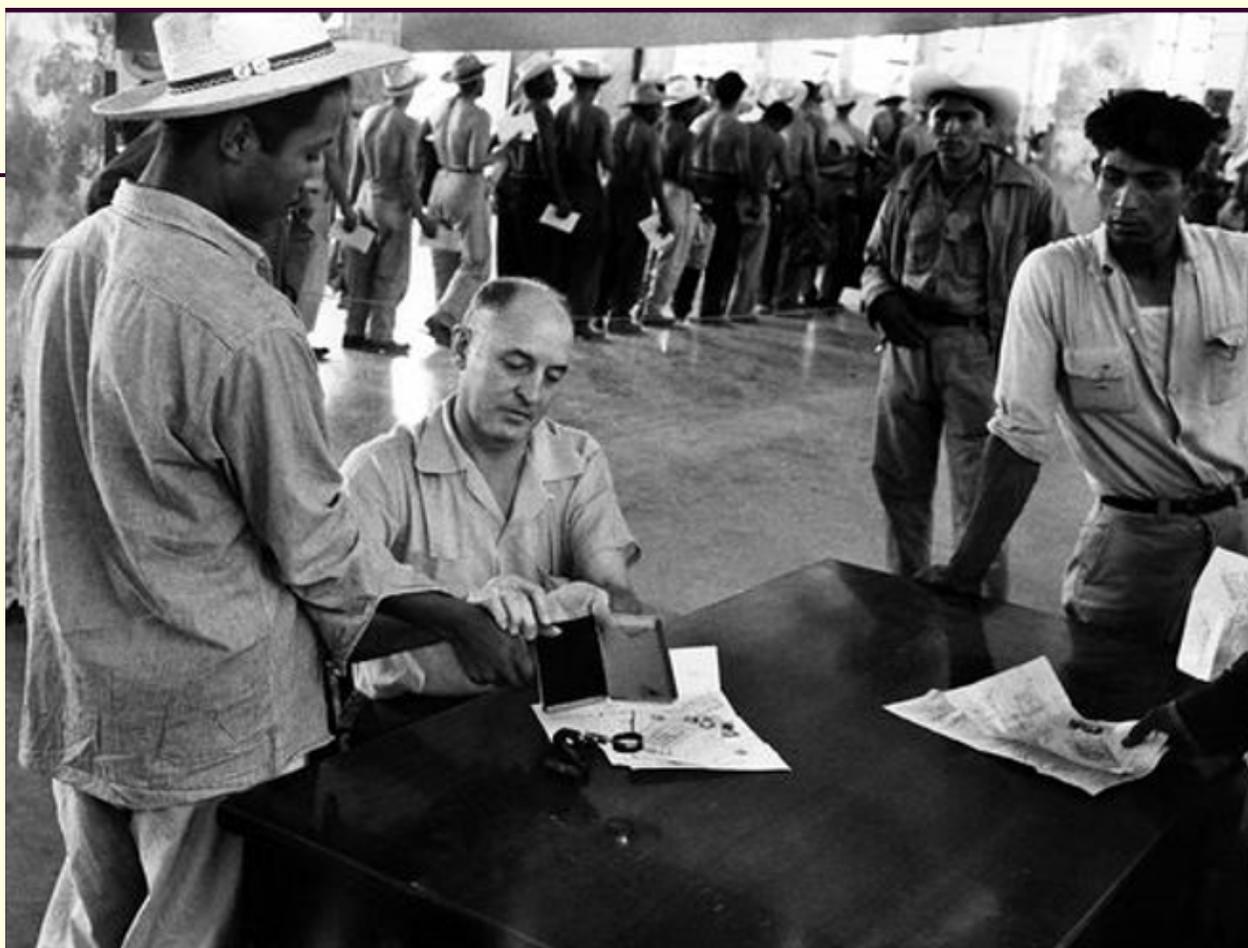
Temporary departures and readmissions:

AUTHORIZED

Bracero card, 1951



Bracero "Collection Point," 1956



Braceros being fingerprinted

1965, I.N.A. Amended

- Abolishes national-origin quota system.
- Creates a first-come, first-served system, giving preferences to family reunification and people with needed job skills.
- Limits annual Eastern Hemisphere visas to 170,000 (20,000 per country), limits Western Hemisphere to 120,000, creating an enormous backlog for Mexicans.
- Mexican visas further cut to 20,000 in 1976.

June 2017 Backlog

FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

June 2017 Backlog

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	22DEC10	22DEC10	22DEC10	01SEP95	22APR06
F2A	15AUG15	15AUG15	15AUG15	22JUL15	15AUG15
F2B	22OCT10	22OCT10	22OCT10	08APR96	22SEP06
F3	01JUL05	01JUL05	01JUL05	22FEB95	08OCT94
F4	08MAY04	08MAY04	15SEP03	15JUL97	22NOV93

1986, Immigration Reform & Control Act

- Two-step legalization process under Ronald Reagan
- 2.5 million undocumented people legalized
- Often called “Amnesty” program

1996, Illegal Immigration Reform and Immigrant Responsibility Act

- Hastily passed on eve of threatened government shutdown, Sept. 30, under Bill Clinton
- Radically expands and makes retroactive grounds of deportation
- Creates permanent bar for false claim to U.S. citizenship.
- Mandates 10-year wait to those returning to U.S. after residing illegally in U.S. for one year or more.
- Greatly restricts waivers

Post-9/11: Creation of D.H.S.

- In 2003, U.S. Department of Homeland Security takes over role of Immigration and Naturalization Services
- Immigration enforcement is associated with “anti-terrorism”
- Massive increase in funding
- More spent on immigration enforcement than on all other principal federal criminal law enforcement agencies combined; 24 percent higher than collective spending for F.B.I., Drug Enforcement Administration, Secret Service, U.S. Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives

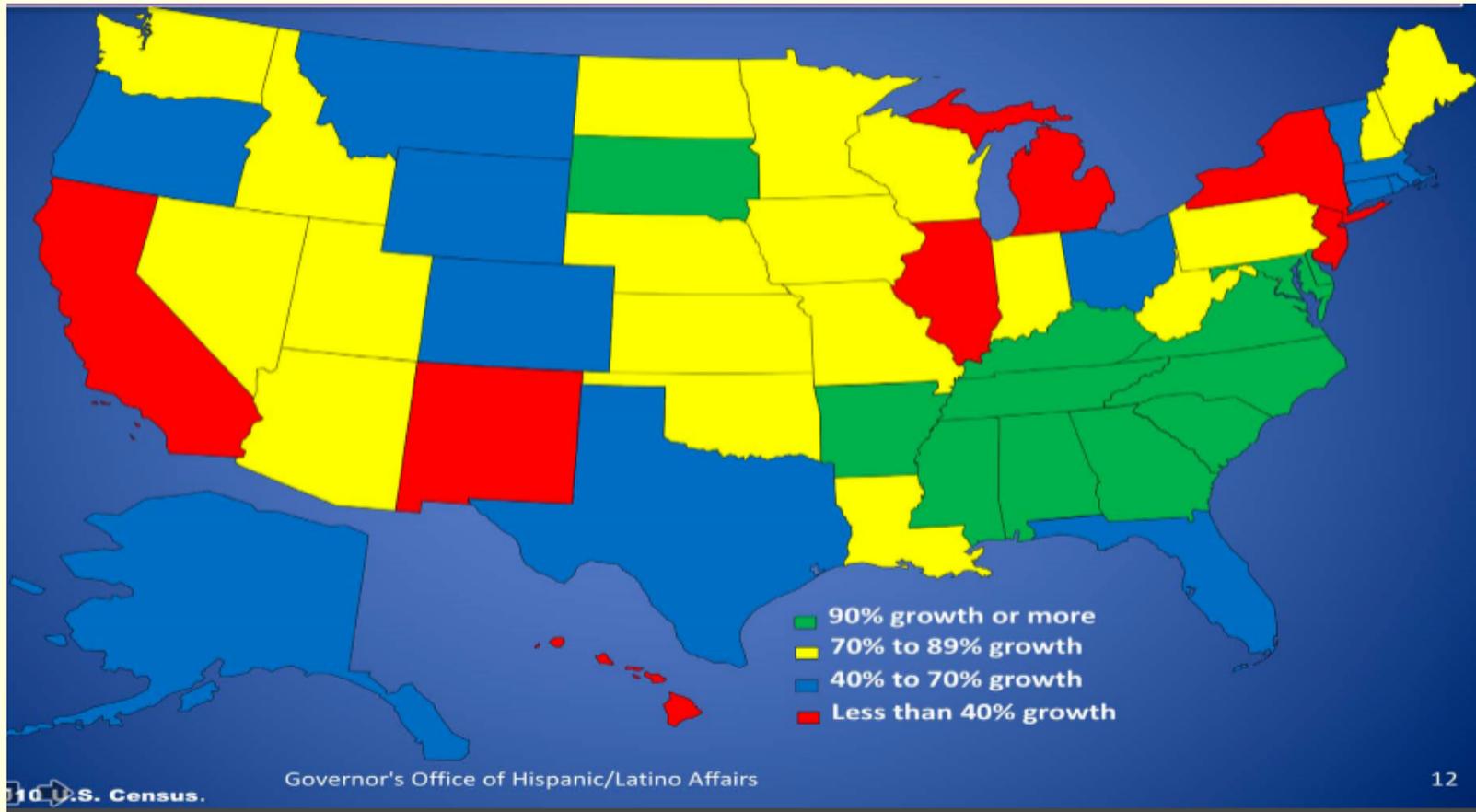
2007, Increased Immigration Enforcement

- Congress approves 700 miles of fence, more money for border patrol officers and technology
- Deportations escalate, 270,000 in FY 07, historical high
- More detention space funded, detention increases to 27,000 daily—now D.H.S. is Congressionally mandated to maintain 34,000 beds

Rise in Legal Immigration Generally

- 1960s, 3.3 million
- 1970s, 4.5 million
- 1980s, 7.3 million
- 1990s, 9.1 million
- In the 1990s, over half of U.S. workforce growth was from immigrants
- From 2000 to 2005, immigrants accounted for 86% of increase in U.S. employment (about half were Hispanics, of which 50% Mexican)
- By 2000, 20% of the population is either a first-generation immigrant or has one immigrant parent

Hispanic Population Growth, 2000-2010



Immigration Policy under Donald Trump

- Supports policies to make unauthorized employment more difficult (e.g., E-verify, where employers enter an individual's ID into online database to verify work eligibility)
- Wants to deport 11.3 million undocumented people—3.5% of population and 5.1% of workforce. (Obama deported a record 5 million undocumented people.)
- Calls for tripling number of ICE officers from 5,000 to 15,000, to facilitate increased in workplace raids.

Immigration Policy under Donald Trump

- Obama programs Deferred Action for Childhood Arrivals (“DACA”) in limbo, and Deferred Action for Parents of Americans (“DAPA”) off the table.
- On April 19, A.G. Jeff Sessions said DACA beneficiaries were not being targeted for deportation, but, “Everybody in the country illegally is subject to being deported, so people come here and they stay here a few years and somehow they think they are not subject to being deported — well, they are.”

Immigration Policy under Donald Trump

- Favors broad enforcement: Obama's 2014 policy prioritized gang members, felons, suspected terrorists, and those apprehended while trying to enter the U.S. who did not yet have long-term ties to U.S. In 2016, 85 percent of all removals were of recent entrants; of the remainder, more than 90 percent had been convicted of "serious crimes."
- Trump said Mexico is sending "rapists," criminals, and drug dealers to the U.S. In January 25 executive order, "priorities" include those who "have committed acts that constitute a chargeable criminal offense" and those who improperly use public benefits.

Immigration Policy under Donald Trump

- As of May 2, ICE had arrested 21,362 immigrants since Trump took office; up more than 32.6 percent from the same period last year. *The Washington Post* reports “about half” either had no criminal convictions or were guilty of a traffic violation.
- Press secretary Sean Spicer says that the “shackles” have come “off” ICE agents. The White House and news outlets report that ICE agents are arresting undocumented immigrants, whether criminally convicted or not.

Immigration Policy under Donald Trump

- Supports construction of wall across U.S./Mexican border; argued for a 35% tariff on products imported from companies that outsource U.S. jobs to Mexico to pay for the wall.



Donald J. Trump 
@realDonaldTrump

 Follow

The Democrats don't want money from budget going to border wall despite the fact that it will stop drugs and very bad MS 13 gang members.

11:42 AM - 23 Apr 2017

  14,906  57,955

Travel Ban Litigation

- The January 25 Executive Order, “Enhancing Public Safety in the Interior of the United States,” which threatens to cut off federal funds from “sanctuary jurisdictions,” has also sparked legal challenges.
- January 27 Executive Order, “Protecting the Nation from Foreign Terrorist Entry into the United States” banned people from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen from entering the U.S. for 90 days. A March 6 revised order was substantially similar but removed Iraq from the list. Litigation in federal courts around the country are challenging the revised order.

Travel Ban Litigation



Travel Ban Litigation

- On June 12, the Ninth Circuit issued its long-awaited ruling in *Hawaii v. Trump*, upholding most of the district court's preliminary nationwide injunction of the "travel ban" and refugee cap.
- The circuit court upheld the injunction on statutory grounds, holding (1) the President had exceeded his delegated authority under the I.N.A., (2) the government had not made a sufficient showing that allowing the entry of foreign nationals from the designated countries would be harmful to the national interest, and (3) the Order likely violated the I.N.A.'s prohibition on nationality-based discrimination.

Immigration Policy under Donald Trump

- Immigrant communities live in fear, especially families that have mixed status.
- Families are developing emergency plans in case parents are detained.
- Parents are asking how to transfer custody of their children to documented adults.
- Families are minimizing travel outside the home, asking documented friends to buy groceries and run errands.
- Clients from “travel ban” countries are fleeing to Canada to pursue asylum cases there.
- Muslims who *have* refugee status fear deportation.



Administrative Hearings 101

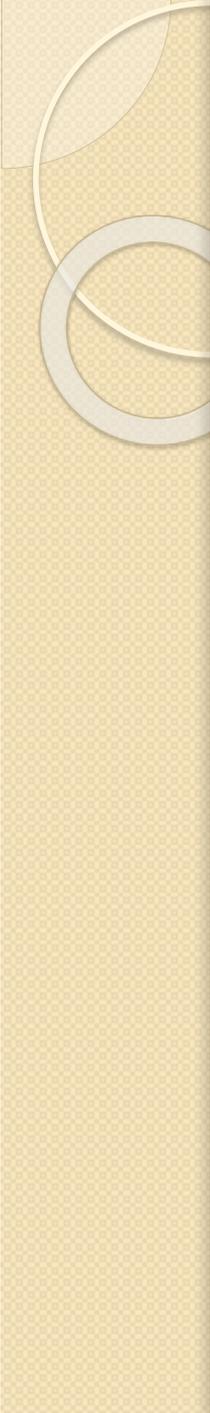
Erika Lim
Office of Administrative Hearings
Lead Administrative Law Judge

June 16, 2017



Washington Administrative Procedures Act

- **RCW 34.05**
- **Includes rulemaking, adjudicative proceedings, and review processes**



The Law of Delegated Authority

- Presiding officers are creatures of statutory invention and have only those powers specifically granted by statute or by rule
- More specifically, presiding officers have only the authority delegated by the referring agency
- No equitable powers
- De novo jurisdiction



Office of Administrative Hearings

- Centralized hearing agency
- Revolving fund agency
- OAH ALJs are judicial officers and members of the executive branch, not the judicial branch
- OAH ALJs are members of a bar but not necessarily the Washington bar



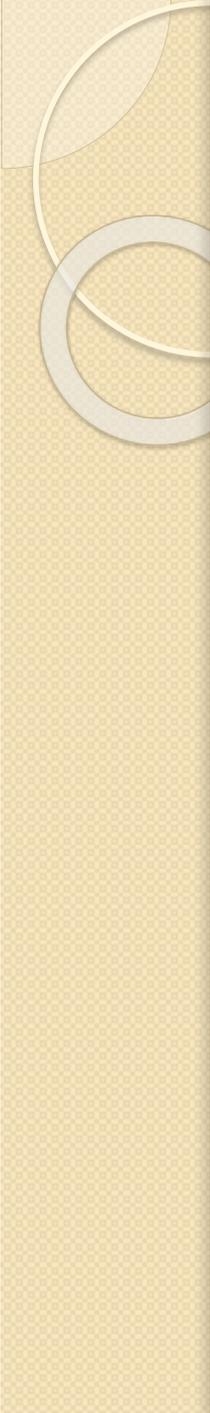
Some Agencies OAH Serves

- DSHS
- HCA
- DEL
- ESD
- L&I
- OSPI
- DFI
- OMWBE
- EEB
- HRC
- Gambling Commission
- Lottery
- LCCB
- Local government agencies



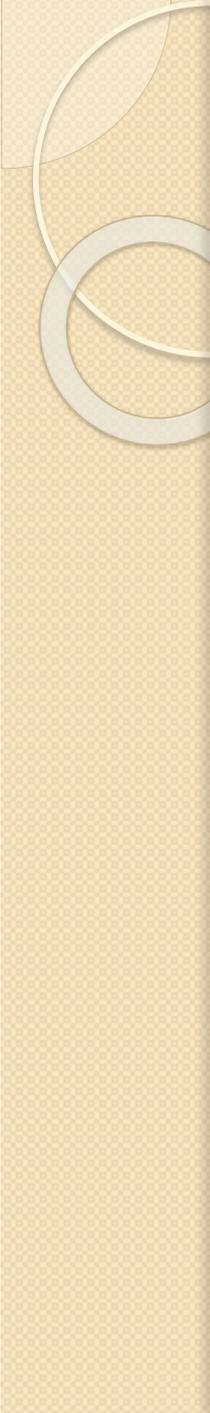
Main Components of an Administrative Proceeding

- **Hearing**
 - Recording
 - Exhibits
- **Written decision**



Hearings

- A process through which people who disagree with a decision of a state agency can have their grievances heard by an impartial ALJ
- To manage cases, ALJs can hold prehearing conferences, hear motions including discovery motions, issue subpoenas



Hearings (continued)

- Key elements
 - Notice
 - Opportunity to be heard
 - Right to present documentary and testimonial evidence
 - Right to object—hold that thought
 - Right to cross-examine
 - Right to submit rebuttal evidence



Hearings (still continued)

- There is a right to representation but most appellants are pro se
- Hearings can be by phone or in person
- OAH uses digital recorders rather than court reporters



Administrative v. Court Proceeding

- Relaxed rules of evidence
- Hearsay may be admissible if in the judgment of the ALJ it's the kind of evidence reasonably prudent persons are accustomed to rely on in the conduct of their affairs. RCW 34.05.452(1). However, findings of fact cannot be based exclusively on hearsay unless the ALJ determines that doing so would not unduly abridge the parties right to confront and rebut witnesses. RCW 34.05.461(4).
- ALJ can ask questions and have the duty to create a complete record. WAC 10-08-200(8) and (9).



Decisions

- Always written (and OAH doesn't have clerks)
- Deadline to issue
- Final v. initial order. Can't add evidence on review that wasn't part of the hearing record. RCW 34.05.554(I).
- No proposed orders necessary
- First rule of law is WACs



Other Key Issues

- Ex parte communication. RCW 34.05.455.
- OAH code of ethics
- “Affidaviting” a presiding officer. RCW 34.05.425(3) (bias) and RCW 34.05.425(4) (no reason required). The presiding officer whose disqualification is requested makes the decision about the petition to disqualify.
- Motion of prejudice against an OAH ALJ. RCW 34.12.050(1); WAC 10-08-050(2). Chief ALJ decides.



Special Adjudicative Proceedings

- Don't require full compliance with the APA
- Brief adjudicative proceeding. RCW 34.05.482 – 494.
- Emergency adjudicative proceeding. RCW 34.05.479.
- Declaratory orders. RCW 34.05.240.



 **Questions?**

Considerations When Dealing with Enlisted Military Personnel

Jeffery Lippert
Chief Criminal Deputy Prosecutor
Thurston County Prosecutor's Office

June 16, 2017

