



PUBLIC DISCLOSURE AND RECORDS MANAGEMENT

**EAG
SEPTEMBER 2018**

OFM

OFFICE OF FINANCIAL MANAGEMENT

In a Nutshell

- » **Public Records** - Recorded information (regardless of physical form or characteristics) prepared, created, owned, used, sent, received, and/or retained in the course of public business

Formats

(not an exhaustive list)



Storage

(not an exhaustive list)



- » **Public Disclosure** - The process related to disclosure of public records when requested under the Public Records Act
- » **Records Management** - The proper and legal management of public records based on approved retention schedules (barring no legal holds/public records requests)

Public Disclosure Basics

»Chapter 42.56 RCW – The Public Records Act

»The PRA is strongly worded in favor of disclosure:

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”

Public Disclosure Basics

»What is a public record?

“any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

Public Disclosure Basics

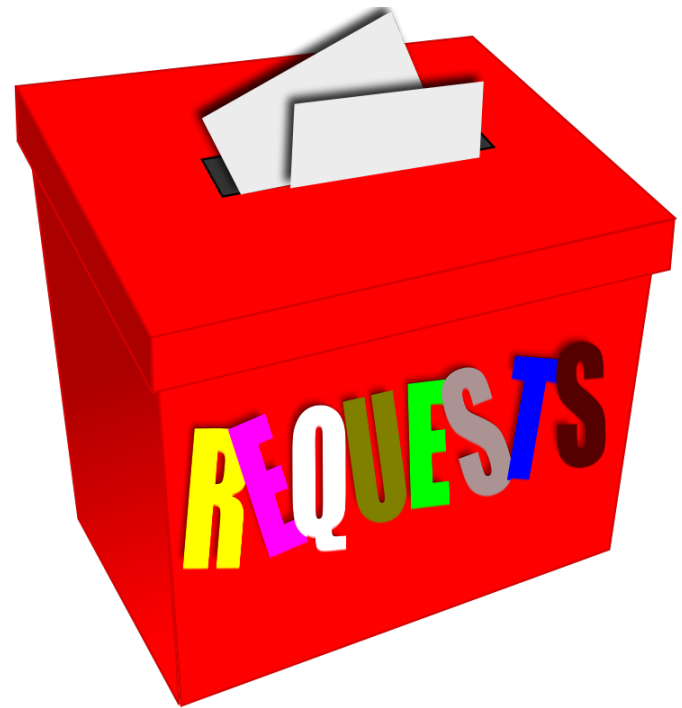
»What about a writing?

“handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.”

»Any method or medium you can think of that memorializes and conveys information can be a “record.”



» So we've got a lot of public records – what must we do when someone asks for them?



» Step 1: Has someone asked for a public record?

› Request for information

VS

› Request for “identifiable” record

› When in doubt – ask your PRO

» Step 2: The Five Day Reply

- › The fundamental rule of records requests
- › The five-day reply is limited to one of the following:
 - Provide the requested records or a link to the records online
 - Deny the request (this includes “we don’t have it”)
 - Give a reasonable estimated time for responding to the request
 - Ask for clarification of the request (only if objectively unclear)

» Step 2: The Five Day Reply

- › Failure to reply to a request within five days is the same as denying a records request
- › For every day over five days, a penalty may apply
- › Alert your PRO before five day window expires

» Step 3: The Search for Records

- › You may be asked to search for records in response to a request
- › Search must be “adequate” – means you must search everywhere you can think of that would reasonably contain relevant (responsive) records
 - Emails (including vault)
 - Text messages
 - Paper files
 - E files/docs
 - Voicemail
 - Etc.

» Step 4: Producing the Records

› A note on confidentiality

- Bring concerns to PRO's attention
- Final decision on redaction may require legal analysis

» Step 4: Producing the Records

› Consequences of Violating the Act

- The clock starts ticking if



- Five days goes by without a reply
- Agency responds it has no responsive records, but it does (missed or intentionally withheld)
- Agency responds with records, closes the request, but missed or intentionally withheld a responsive record
- Agency responds that it has responsive records, but withholds or redacts the records based on a claimed exemption from disclosure

» Step 4: Producing the Records

› Consequences of Violating the Act

- Penalties are measured per record per day



- Judge decides \$0 - \$100 per day
- Recent ruling: Judge decides what a “record” means
- Worst case scenario (so far): \$100 per page per day
- WA Supreme Court Justice Susan Owens notes: “By this logic, a trial court could impose a separate penalty for each paragraph, sentence, or even word in a public record.”

» Step 4: Producing the Records

› Diligent Search; Records Reviewed; Ready to Send!

- Release the records, close the request
- Requester has one year to challenge

› Retention requirements

- Records must be retained by PRO for two years after the request is closed
- Falls under GS 05001

Records Management

Proper and legal management of public records based on approved retention schedules

(aka "the most powerful narcoleptic known to mankind"

-Dept. of Interior Records Manager)

Topics I'll quickly touch on:

- » Washington State Statutes and Administrative Rules
- » Agency policies
- » Common records terms, definitions, concepts
- » Records with minimal retention value

Washington State Statutes

- » RCW 40.10 - Microfilming of Records to Provide Continuity of Civil Government
- » RCW 40.14 - Preservation and Destruction of Public Records
- » RCW 40.16 - Penal Provisions
- » RCW 40.20 - Reproduced Records for Governments and Business



RCW 40.16.010

Injury to public record

*Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a **class C felony** and shall be punished by **imprisonment** in a state correctional facility for not more than five years, or by a **fine** of not more than one thousand dollars, or by both.*

[2003 c 53 § 214, 1992 c 7 § 34, 1909 c 249 § 95; RRS § 2347.]

Washington State Administrative Rules

- » WAC 434-600 - Promulgation
- » WAC 434-610 - Definitions
- » WAC 434-615 - Custody of Public Records
- » WAC 434-620 - Powers and Duties of the State Archivist
- » WAC 434-624 - Powers and Duties of the State Records Committee
- » WAC 434-626 - Powers and Duties of the State Agency Records Officers
- » WAC 434-640 - Methods of Records Disposal
- » WAC 434-660 - Standards for the Accuracy, Durability and Permanence of Public Records
- » WAC 434-663 - Imaging Systems, Standards For Accuracy and Durability
- » WAC 434-677 - Security Microfilm
- » WAC 434-690 - Archives - Access to Public Records

Policies

Roles under OFM Records Management Policy

» Records Officer

- › Oversees agency records management; liaison to Sec. of State's Office, Division of Archives and Records Management

» Records Coordinators/Custodians

- › Records management help at the division/workgroup level; subject matter experts

» Employees

- › Know the records management policy, rules and laws
- › Comply with records requirements and manage records



Related Policies

- » Public disclosure, litigation hold, wireless device, mobile work



Common Terms and Definitions

- » **Retention Schedules** - Approved by State Records Committee
 - › Listing of record series, retention/disposition and special instructions
 - › Two types:
 - State General Schedule
 - Agency Unique Schedule
 - <http://sp.des.wa.gov/InsideOFM/pp/rm/Pages/Retention-Schedules.aspx>

General Schedule Sample



*State Government General Records Retention Schedule (SGRRS)
Version 6.0 (June 2016)*

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS 50013 Rev. 0	<p>Reference Materials Materials gathered from outside sources for reference/reading use which are <u>not</u> evidence of the agency's business transactions.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Conference materials (such as proceedings, handouts, etc.) from conferences/seminars not organized by the agency; • Copies of published articles, reports, etc.; • Internet browser favorites/bookmarks; • Listserv/RSS feeds. <p>Excludes records covered by <i>Secondary (Duplicate) Copies (DAN GS 50005)</i>.</p>	<p>Retain until no longer needed for agency business <i>then</i> Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM
GS 50002 Rev. 1	<p>Requests for Basic/Routine Agency Information Internal and external requests for, and provision of, routine information about the operations of the agency, such as:</p> <ul style="list-style-type: none"> • Business hours, locations/directions, web/email addresses; • Meeting dates/times. <p>Excludes records covered by:</p> <ul style="list-style-type: none"> • <i>Public Disclosure/Records Requests (DAN GS 05001)</i>; • <i>Provision of Advice, Assistance or Information (DAN GS 09022)</i>. 	<p>Retain until no longer needed for agency business <i>then</i> Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM

Common Terms - Record Series

ON TY (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACT
L3	<p><i>Reference Materials</i></p> <p>Materials gathered from outside sources for reference/reading use which are <u>not</u> evidence of the agency's business transactions.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Conference materials (such as proceedings, handouts, etc.) from conferences/seminars not organized by the agency; • Copies of published articles, reports, etc.; • Internet browser favorites/bookmarks; • Listserv/RSS feeds. <p>Excludes records covered by <i>Secondary (Duplicate) Copies (DAN GS 50005)</i>.</p>	<p>Retain until no longer needed for agency business, then Destroy.</p>

Record Series Title/Description - Records with a similar function used, filed, transferred and dispositioned as a unit

Common Terms – Disposition Authority Number (DAN)

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	
GS 50013 Rev. 0	<p><i>Reference Materials</i></p> <p>Materials gathered from outside sources for reference/reading use which are <u>not</u> evidence of the agency's business transactions.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Conference materials (such as proceedings, handouts, etc.) from conferences/seminars not organized by the agency; • Copies of published articles, reports, etc.; • Internet browser favorites/bookmarks; • Listserv/RSS feeds. <p>Excludes records covered by <i>Secondary (Duplicate) Copies (DAN GS 50005)</i>.</p>	Ret nee th Des

DAN – Number unique to each record series; legal authority for disposition of record

Two types of DANs:

GS 50003 – General Schedule

or

09-03-61974 – agency unique

Common Terms - Retention and Disposition

	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION
N)	<p>Reference Materials</p> <p>Materials gathered from outside sources for reference/reading use which are <u>not</u> evidence of the agency's business transactions.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Conference materials (such as proceedings, handouts, etc.) from conferences/seminars not organized by the agency; • Copies of published articles, reports, etc.; • Internet browser favorites/bookmarks; • Listserv/RSS feeds. <p>Excludes records covered by <i>Secondary (Duplicate) Copies (DAN GS 50005)</i>.</p>	<p>Retain until no longer needed for agency business <i>then</i> Destroy.</p>

Retention – Minimum time to retain primary copy of records

- **Primary Copy** - The original or main copy
- **Secondary Copies** - Any copy that's not the primary; generally destroyed when no longer needed

Disposition – Action to take when retention is met

- **Destruction**
- **Transfer to State Archives** (approx. 5 percent)

(Less) Common Terms - Designation

DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
<p>outside sources for reference/reading use which are <u>not</u> evidence transactions.</p> <p>and to:</p> <p>materials (such as proceedings, handouts, etc.) from seminars not organized by the agency;</p> <p>related articles, reports, etc.;</p> <p>favorites/bookmarks;</p> <p>...</p> <p>by <i>Secondary (Duplicate) Copies (DAN GS 50005)</i>.</p>	<p>Retain until no longer needed for agency business</p> <p><i>then</i></p> <p>Destroy.</p>	<p>NON-ARCHIVAL NON-ESSENTIAL OFM</p>

Designations:

- Archival or Non-Archival
- Essential or Non-Essential
- OPR (Official Public Record)
- OFM (Office Files and Memoranda)

Public Records Requests and Litigation Holds

» In OFM, we train employees to know that public records requests and litigation holds trump records management.

» If an employee:

- › Receives a public records request, or
- › Receives a litigation hold notice, or
- › Reasonably anticipates future legal action ...



S/he is under a duty to preserve and produce related records.

Duty to preserve

- › Applies even if retention was met and records could have been destroyed previously
- › Applies to both primary and secondary copies
- › Retain records until the public records request is complete or litigation hold lifted
- › Some requests/holds can take years to resolve

OFM Employee Responsibilities (include, but aren't limited to)

- » Every employee is responsible for managing his/her public records - anything created, sent, received, used, etc.
- » Legally can't destroy records until retention periods have been met. No approved retention schedule = no destruction.
- » Know retention requirements and apply them. Ask questions.
- » Primary records with legal, fiscal or auditable components are generally retained a minimum of six years (*unless approved otherwise*).
- » Entrance/exit processes with supervisor/records coordinator



Chapter 6 – General Schedule

(aka Records Series to Know and Love) 

- » GS 50003 - *Agency-Generated Forms and Publications – Copies*
- » GS 50006 - *Brainstorming and Collaborating*
- » GS 50007 - *Contact Information*
- » GS 50008 - *Drafting and Editing*
- » GS 50009 - *Electronic Documents Used to Create Signed Paper Records*
- » GS 50004 - *General Information – External*
- » GS 50001 - *Informational Notifications/Communications*
- » GS 50010 - *Internet Browsing*
- » GS 50011 - *Organizing/Monitoring Work in Progress*
- » GS 50012 - *Records Documented as Part of More Formalized Records*
- » GS 50013 - *Reference Materials*
- » GS 50002 - *Requests for Basic/Routine Agency Information*
- » GS 50014 - *Scheduling – Appointments/Meetings*
- » GS 50005 - *Secondary (Duplicate) Copies*
- » GS 50015 - *Unsolicited Additional Materials*

All these series have a retention of destroy when no longer needed for agency business.

Other Series to Know

These series also can be destroyed when no longer needed for agency business:

- » GS 09024 – *Meeting Arrangements*
- » GS 09026 – *Meeting Materials – Members' Copies/Notes*
- » GS 15009 – *Publications - Development*
- » GS 22001 – *Training – Arrangements*
- » GS 22006 – *Training – Development*

Other ideas

- » Records Coordinators
- » Agency records management website
- » Inventory
- » Trainings
- » Desktop guides, other records management tools
- » Coordinate with Records Management Office, Secretary of State
- » Encourage ROT cleanup (Redundant, Obsolete, and Transitory records)
- » Defensible disposition



Questions?

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