

LEGISLATIVE TASK FORCE ON PUBLIC RECORDS – PROPOSED DRAFT

OVERVIEW

During the 2018 interim, the Senate Facilities & Operations Committee and the House of Representatives Executive Rules Committee will convene a 15-member Legislative Task Force on Public Records to "examine establishing standards for maintaining and disclosing public records for the legislative branch of government."

Membership

The Senate Facilities & Operations Committee will appoint two Senate members from each of the largest caucuses to the Task Force based on recommendations from their respective leaders, and will designate one Senate member to serve as co-chair of the Task Force.

The House Executive Rules Committee will appoint two House members from each of the largest caucuses to the Task Force based on recommendations from their respective leaders, and will designate one House member to serve as co-chair of the Task Force.

The Senate Facilities & Operations Committee and the House Executive Rules Committee will jointly appoint the following additional members of the Task Force, after consulting with representatives of the media and open government organizations:

- Three members representing Washington-based media sources, including at least one person with a background in print, broadcast, and/or electronic or internet media;
- One member representing an open government organization; and
- Three members representing the public, including persons with expertise managing and accessing government records.

All members will be expected to participate in the Task Force in good faith and in a respectful manner.

Operations

The Task Force will hold up to four meetings in Olympia. The Task Force meetings will be scheduled and conducted in accordance with the requirements of both the Senate and the House, and are subject to approval by the Senate Facilities & Operations Committee and the House Executive Rules Committee.

The Task Force meetings will be moderated by the William D. Ruckelshaus Center. Staff support for the Task Force will be provided by Senate Committee Services and the House Office of Program Research.

The Task Force will report its findings, activities, and any recommendations on which there was consensus by the entirety of the Task Force to the appropriate committees of the Legislature before the 2019 session.

SCHEDULE

Date	Location	Type	Subject	Committee
July	Olympia	Work Session	Legislative and other branches of government	Full Committee
September	Olympia	Work Session	The value of open government	Full Committee
November	Olympia	Work Session	State and local administration of public records laws	Full Committee
December (House Committee Assembly)	Olympia	Work Session	Possible findings and recommendations	Full Committee

DESCRIPTION

Background

The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Courts, however, interpret the PRA as inapplicable to the judicial branch. See Nast v. Michels, 107 Wn.2d 300 (1986). The Supreme Court has adopted its own rules for judicial records.

Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

For purposes of the PRA, agency means all state and local agencies, which includes every state office, department, division, bureau, board, commission, or other state agency. A specific definition of public records applies to the Legislature. See Washington State Office of the Attorney General, Bob Ferguson, Washington State Sunshine Laws 2016: An Open Government

Resource Manual, Chapter 1.3 (October 28, 2016) (“The PRA applies in a more limited form to the Washington State Legislature”). Public records in the possession of the Secretary of the Senate and the Chief Clerk of the House of Representatives (Chief Clerk) means legislative records and: budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports to the Legislature; and other records designated as public.

In January 2018, the Thurston County Superior Court held, in a case currently pending appeal before the Washington Supreme Court, that the offices of individual state legislators are state offices, and thus agencies, for the purpose of PRA interpretation, subject to the PRA's disclosure requirements. The court also held that the Legislature itself and its chambers, administered by the Secretary of the Senate and the Chief Clerk, were not agencies under the PRA.

During the 2018 session, in the Supplemental Operating Budget, the Legislature directed the Senate Facilities & Operations Committee and the House of Representatives Executive Rules Committee to convene a legislative task force to examine establishing standards for maintaining and disclosing public records for the legislative branch of government. See Section 925 of ESSB 6032 (2018).

Workplan

During the 2018 interim, the Task Force will convene four meetings. The first three meetings will focus on a specific topic and be structured in a similar manner. The agenda for each meeting will include presentations by experts to be followed by ample time for moderated discussions by members. The aim of each meeting will be to identify concerns, constraints, and opportunities for consensus.

In July, the Task Force will hold a work session focused on the legislative branch of government. The work session will include presentations by experts on:

1. Constitutional law, especially the separation of powers and the rights of constituents to privacy in sensitive communications, to function as whistle-blowers, and to petition their legislators for redress of grievances;
2. Legislative privilege and deliberative processes;
3. Judicial rules applicable to court records; and
4. Public records laws in other states and their applicability to the legislative branch.

In September, the Task Force will convene a work session focused on the value of open government. The work session will include presentations by experts on:

1. The media and its rights and responsibilities related to open government;
2. The principles supporting exemptions from public disclosure; and
3. Methods of accessing public records and obtaining other information.

In November, the Task Force will convene a work session focused on administration of public records laws by state and local governments. Topics of discussions will include deliberative process exemptions, confidentiality for victims and constituents, fees and fines, and abusive requests.

During House Committee Assembly in December, the Task Force will meet to adopt a report on its findings, activities, and any recommendations on which there was consensus by the entirety of the Task Force.

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