

1 **Candidate Name**

Diane A. Brennan

2 **Office Sought**

Kenmore City Council

3 **District (if applicable)**

4 **Position Number (if applicable)**

2

5 **Are you the Incumbent?**

Answer

Yes

No

6 **Campaign Mailing Address**

PO Box 82053
Kenmore, WA 98028

7 **Campaign Phone Number**

425.369.9942

8 **Campaign Email Address**

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9 **Campaign Web Site Address**

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In each of the next sections, an issue of current concern to open government advocates is explained, and a legislative change related to the concern is described. You are then asked if you would support such legislation. By "support", we mean that, assuming other details of the legislation are not inconsistent with your principles, you would sponsor, co-sponsor, vote for, request, sign, testify in favor of, or otherwise publicly support the legislation described. We invite you to elaborate on each answer, such as explaining the reasoning behind your position or any special insights you may have on the issue based on your personal background or experience.

10 1. Recording of Executive Sessions ? The Open Public Meetings Act requires all meetings of the governing bodies of state and local agencies to be open to the public and announced in advance. However, the law allows the bodies to meet behind closed doors in an executive session for certain limited purposes, such as to consult with their attorney on litigation or to discuss the maximum price they are willing to pay for a parcel of land, so long as the purpose of the meeting is announced in advance and the secret discussion is limited to the announced allowed purpose. Legislation has been proposed that would require audio recordings to be kept of all executive sessions. The recordings would be exempt from disclosure under the Public Records Act and from subpoena or discovery in a lawsuit, unless a lawsuit is filed under the Open Public Meetings Act challenging the legality of the executive session and evidence is presented sufficient to convince a judge that a violation had likely occurred, in which case the recordings or minutes could be privately reviewed by the court. If the challenged executive session is found to have included improper discussions and all appeals are exhausted, the recording of only the portions of the meeting that should have been public would be disclosed. Would you support such legislation?

Answer

Yes

No

11 Would you support a resolution or ordinance to have the government entity to which you seek election voluntarily record its executive sessions (as some already do) in advance of a state requirement being adopted?

Answer

Yes

No

Comment: This is an issue in our city where we are certain that decisions are being made in executive session that should be made in public meetings.

12 2. Attorney-Client Privilege ? The 2004 state Supreme Court decision in Hangartner v. City of Seattle declared that the attorney-client privilege in RCW 5.60.060(2)(a) must be considered an exemption from the Public Records Act, in addition to the exemption in RCW 42.56.290 which allows only attorney-client communications associated with an active lawsuit to be withheld from disclosure. The result of this decision is that virtually all communication between government agencies and their attorneys can be kept secret, including routine communication not related to any actual or threatened lawsuit. Many citizens are concerned that this expansion blocks disclosure of a substantial amount of information necessary to hold government accountable. Legislation has been proposed that would restore the original intent of the Public Records Act with regard to communications between public sector attorneys and their clients, which is that communication between agencies and their attorneys is exempt from disclosure only in relation to an actual controversy (lawsuit) while the controversy remains pending in the courts. Would you support such legislation?

Answer

Yes

No

13 Since the decision to invoke the attorney-client exemption is discretionary, belongs to the local elected officials (not the government attorney) and is not required by state law, would you support a resolution or ordinance to have the government entity to which you seek election agree not to invoke the attorney-client exemption except in relation to an actual controversy (lawsuit) while the controversy remains pending in the courts?

Answer

Yes

No

14 3. Create an Independent Open Government Ombudsman ? Legislation has been proposed that would create a statewide independent open government ombudsman to provide information on public records and open public meetings to state and local agencies and the public, advocate on behalf of the public in obtaining public records from state and local agencies, maintain a web site to assist the public in obtaining information and public records, and prepare model employee orientation and training materials on open government principles for agencies and elected officials. Although the Attorney General has appointed an assistant attorney general to provide advice on open government issues who is given the title of ?ombudsman?, this position is not truly independent; the fact remains that the primary mission of the Attorney General is to represent state agencies in legal actions, including defending agencies who claim exemption of public records from disclosure. This conflict of interest may prevent an assistant attorney general from independently acting in the interest of protecting the public?s right to know. Several other states have already created independent open government ombudsmen to assist the public. Would you support legislation creating an independent open government ombudsman in Washington, including funding for the office?

Answer

Yes

No

15 4. Require Open Government Training for Government Employees and Elected Officials ? Many of the reported violations of the Public Records Act and the Open Public Meetings Act have resulted from a lack of knowledge or misunderstand of the statutes and case law. These problems, and the resulting loss of public trust and financial impact on agency budgets due to penalties, could be avoided by ensuring that every government employee, both elected and appointed, receives at least basic training regarding the principles of open government and their responsibilities under the Public Records Act (RCW 42.56), Open Public Meetings Act (RCW 42.30), and the records preservation law (RCW 40.14) during initial orientation at the beginning of their government service and during annual in-service training. Public records officers and other employees who have custody of records

or respond to records requests would receive more comprehensive training consistent with their responsibilities. This training does not have to be long or expensive, and could easily be provided as a free online course developed and maintained by or under the supervision of the Attorney General to ensure its correctness.

Would you support legislation requiring such training?

Answer

Yes

No

16 As an elected official who would be responsible to follow the laws regarding open government, have you read the following within the last two years? (check all that apply)

To view the laws click on the below links:

RCW 42.30

RCW 42.56

RCW 40.14

Answer

The Open Public Meetings Act, RCW 42.30

The Public Records Act, RCW 42.56

The law on Preservation and Destruction of Public Records, RCW 40.14

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5. Improving Preservation and Access to Electronic Records ? Most records and communications of public agencies today are in electronic form ? email, databases, word processing documents, spreadsheets, and the like ? and huge volumes of such data exist. These electronic records are public records like any other record, subject to the retention requirements of RCW 40.14 and to public access under RCW 42.56, regardless of whether they are stored on publicly-owned computers or elsewhere. Because electronic records are so easily destroyed, agencies should be required to archive email and other electronic records in a manner that prevents any individual employee from intentionally or accidentally destroying them without proper review. In addition, some agencies interpret the Public Records Act as allowing them to convert electronic records to paper form before providing them to requestors, such as to allow for redacting of exempt information. Creating paper records is time consuming and expensive, and often of no practical use to the requestor because of the volume of information. With a minimum of training and with no special software, records can be duplicated electronically, exempt information redacted electronically, and the data provided to the requester quickly and at minimal cost. Legislation has been proposed to clarify that electronic records are required to be provided in electronic form if it can be done with commonly-available programming tools and media. Agencies would not be permitted to convert records to paper form simply for convenience of redaction or to enable them to establish a per-page copying charge. Agencies would be required to provide data as email attachments when possible, to avoid the need to charge for media for mailing.

17 Would you support legislation requiring electronic records to be archived for preservation, and that electronic records must be provided in electronic form on request?

Answer

Yes

No

18 Would you support a resolution or ordinance to have the government entity to which you seek election voluntarily agree to require electronic records be archived for preservation and provided in electronic form on request, in advance of a state requirement being adopted?

Answer

Yes

No

19 6. Stop Agency Abuse of Third-Party Injunctions ? Some public agencies have abused the provision of RCW 42.56.540 that enables the agency to notify a person named in a record or to whom the record pertains. Rather than asserting that the record is exempt from disclosure and defending that assertion directly ? which would expose the agency to having to pay the requestors attorney?s fees, court costs, and penalties under RCW 42.56.550(4) ? agencies have been inviting persons named in records, often their own agency employees, to file for an injunction under RCW 42.56.540 and claim that release of the records would ?not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions?. The agency then intentionally fails to mount a meaningful defense against the named person?s motion, even sometimes allowing the injunction to be issued by default, and thereby avoiding any responsibility for fees, costs or penalties. This is an abuse of process, and a loophole in the law that should be closed.

Legislation has been proposed that would require both the requester and the agency be indispensable parties to any action under the PRA. When a lawsuit is filed by a person named in a record to block its release, both the agency and the requester would always be joined as parties to the case; agencies notifying third parties that they are named in records subject to disclosure would have to inform them of this requirement. Agencies sued to block access would have to either state that the agency does not oppose disclosure or clearly state its opposition and the applicable exemption from disclosure; if the agency opposes disclosure and does not prevail, it would be subject to attorney fees, costs, and penalties as though it had denied disclosure itself.

Would you support legislation to close this ?third party injunction? loophole?

Answer

Yes

No

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Would you support a resolution or ordinance requiring the government entity to which you seek election to prosecute a motion to have the courts include both the government entity and the requestor of the public record(s) as indispensable parties anytime an action for an injunction is filed pursuant to RCW 42.56.540?

Answer

- Yes
- No

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Thank You For Your Service!