

Washington Coalition for
Open Government
WASHINGTON STATE

WCOG Watchdog

WCOG advocates for the people's right to access government information



Fall Town Halls

Plan now to join us for our Town Hall series “ coming to a college campus near you. The opening program on access and civic education is Oct. 9 at WWU. - Pg. 2

WashCOG to monitor City of Seattle settlement progress

WashCOG will be closely watching progress on transparency policies as the city moves forward Pg. 3

Hannah Marcle, REVEALED

Board member Hannah Marcle talks transparency on her new podcast. Pg 3

Public Health Officials and transparency

A guest essay by access activist Joe Kunzler praises an example effective communications during a pandemic. Pg 5.



Preserving the PRA/OPMA

The Washington Coalition for Open Government believes the state’s Public Records Act is being undermined in ways that endanger the public’s right to know. In response, we are working on our priorities for the 2023 legislative session.

Among the threats we see are:

- The failure of many governmental bodies to adopt and enforce reasonable rules and regulations to retain and organize records and to provide for the fullest assistance to inquirers and the most timely possible action on requests for information under RCW 42.56.100.
- Increasing problems in handling text messages and other digital communications.

In Brief:

- * The Redistricting Commission lawsuit filed by WashCOG reveals egregious violations of the PRA/OPMA. Read the [depositions on our website](#).
- * WashCOG will hold our annual Sunshine Breakfast and Awards Program at T-Mobile Park, home of the Seattle Mariners on **Friday, March 17, 2023**. Get out the green and teal and come break fast with transparency advocates on St Patrick's Day morning.
- * WashCOG recognized Crosscut with a Key Award for shining the light on how agencies are spending billions of dollars in federal pandemic aid. Key awards go to people and organizations who do something notable for open government causes. Crosscut's document library is online at [WA Recovery Watch/Follow the Funds](#). Information about the award is on [the WashCOG site](#).

- The costly mishandling of records requests because officials have used weak and strained legal arguments to resist openness and accountability.
- The failure of the legislature to adopt recommendations of the Public Records Exemptions Accountability Committee (Sunshine Committee) for eliminating unnecessary and outdated exemptions to the PRA, as well as the legislature's persistence in adding new exemptions.

We plan to make recommendations to the legislature for fixing the system. But first we are surveying other open government stakeholders to find out what they see are best and worst of how the system is working. We'll report back to you on what we learn.

During the session, we plan to revitalize our Legislative Watch, reporting on what's happening in the legislature. We also plan to launch an Action Alert process that will help your voice be heard in Olympia.

In the meantime, please let us know what you think. Your support, with ideas and donations, is essential.

Fall Town Hall events to begin on college campuses

The first Open Government Town Hall will take place from 10:30 a.m. to 1:30 p.m. on Sunday, Oct. 9 at Western Washington University in Bellingham.

Participants from student and community organizations will discuss how open government and civic education strengthen democracy. Journalism alumni will share their story of suing the university to obtain public records about sexual harassment on campus. The event is in Communications Facility Room 115 and free parking is available in the C Lots and in Lot 12A. WashCOG plans similar events on other college campuses in Washington.

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Eyes on the City of Seattle

The Washington Coalition for Open Government is launching a project in cooperation with *The Seattle Times* to monitor the City of Seattle's fulfillment of commitments it made in settling a public records lawsuit with the *Times*.

The settlement requires the city to make changes in how it retains and releases government communications. WashCOG believes this project can assist the city to achieve the best outcomes for improving government transparency.

Under the settlement, the City will undertake steps in connection with its policies, practices, or procedures for collecting or preserving public records or responding to requests. Many of the steps include specific timetables for accomplishment. Key areas include:

- Technology for archiving and retrieval
- Training
- Timeliness for responding to requests
- Webpage guidance

WashCOG is an independent, nonpartisan, nonprofit organization that works through the courts and the Legislature to defend and strengthen Washington's open government laws. Because it is independent and nonpartisan, WashCOG is well-suited to undertake this endeavor. It will share its findings with the *Times*, city officials and the public.

The coalition will enlist the cooperation and support of Seattle's mayor, city attorney and city council in this endeavor.

Here is the story that announced the settlement:

[City settles Seattle Times lawsuit over Jenny Durkan's missing text messages](#)

The Coalition urges King County Sheriff Patti Cole-Tindall to undertake the neutral, third-party investigation. If that investigation indicates there was criminal conduct, that should be pursued, as well.

Something like this should never happen again.

General Information

- ◆ **Need to file a public records request?** Go to: <https://www.washcog.org/making-a-records-request>
- Interested in depositions from those involved in the Redistricting debacle? Check out what was said in sworn depositions by going to www.washcog.org/in-the-news/redistricting-commission-documents-shared
- Join us in the ongoing mission to champion our right to know what government is doing in our name. Go to www.washcog.org/join-wcog
- Help us in our ongoing effort to hold government accountable. We have a right to know what government is doing in our name. WashCOG works tirelessly to ensure this right is not ignored by our public officials. DONATE now at www.washcog.org/donate

Hannah Marcley discusses open government on REVEALED podcast

WashCOG board member Hannah Marcley knew she wanted to be a lawyer by the time she was nine years



old. Actually, she admits she didn't just know she wanted to be a lawyer, she knew she wanted to be a U.S. Supreme Court justice. "I knew I wanted to help people, but

not sure how best to do that with a law degree," she recalls. Even though law school demands a "generalist" education of the law, Hannah says she was focused on government accountability. Today, that's reflected in her professional work and her recently-launched podcast on government transparency, *REVEALED*. When she started law school, she wanted to be a prosecutor. "As I learned more and more about the judicial system and the job of being a prosecutor, I realized this was the system abusing the people, not the people abusing each other," she reflected.

A self-described individualist, Hannah became increasingly interested in holding the government accountable. She says the classes she started taking were more and more about the individual's right to expose the government's behavior when it does bad things.

"Our whole system is predicated on the idea that people will make good choices when they have good data," she noted. "We have to trust that if we give people the right information, they will say, 'oh, that's bad,' and try to fix

Continued on next page

it. So I went from wanting to be a prosecutor to thinking I wanted to hold prosecutors accountable to thinking the whole government needs someone looking over their shoulder.”

She also noted that oftentimes it is the government cover-up that ends up doing in agencies and officials, as opposed to the initial offense. “We don't want to have a system of preventive policing so so we assume people won't commit crimes, but we almost have to let them commit crimes and then catch it in the coverup,” she observes.

On fighting an epidemic of misinformation, Hannah knows there really is no court remedy unless the misinformation is inciting violence. That deals with a court “remedy” but as far as a remedy in the curative sense, Hannah says teaching ourselves and our children to be discriminating about sources is important.

“One thing I think would be very beneficial to consumers of media would be to learn what ethical journalism really requires. That turns the establishment media's view of internet ‘journalism’ on its head because there is this sense that if anybody can be a journalist, then you have no way of verifying facts. But I would say if anybody can be a journalist, then everybody can learn what ethical journalism requires.” She sees that as an opportunity when it comes to the free flow of information.

“There's so many people who want to use the internet as a platform to talk about their local issues. You've got civic associations and school boards and parents and they have these platforms they use to send out information to each other and they're becoming an important part of ‘local journalism’ but they're not getting the training and tools that classic journalists got.” She feels there is an appetite for that training.

“People want to know how to double-check the information they're sending. If we actually taught people to be better ‘journalists,’ they would also become better consumers of media.” For example, parents exploring practices in the classroom and district are engaging in a form of investigative journalism, she suggests. “If we just called it ‘fact-finding,’ folks might understand the concept better.”

Yet, she saw that people didn't use the investigative tools familiar to journalists, but available to us all.

“I was around a lot of engaged, active people who had never made a public records request,” she observed. The primary reason was just a lack of awareness of the PRA. “If they *had* heard of filing a public records request, they thought that only attorneys made those requests.” She said she became almost evangelical in promoting records requests as a way for people to help their causes. A prime example, she said, is the story of Seattle Children's Hospital, when public records told the story of a massive cover-up of deaths and illness due to mold issues in the facilities. “This is about sick kids and kids dying, and we all need to know this information.” (WashCOG gave KING5 the 2020 Bunting Award for [its outstanding coverage of this issue.](#))

The idea of telling such stories is what led to *REVEALED*, a new podcast about transparency in government, found on WashCOG's website. Now, aside from sharing public records stories in her work and socializing, Hannah shares them on Revealed. [Find the latest episode here.](#)

Sound OFF: Health Dept. Transparency Done Well

Contributed by Joe Knuzler

One place furthering the cause of open government is Washington's Olympic Peninsula. Dr. Allison Berry, the public health officer for Clallam and Jefferson Counties, graciously accepts public questions at weekly Public Health Updates on Port Townsend radio station KPTZ and at Board of Health meetings. I share this resource because, as members of the open government community, we need to debrief regularly regarding current activities in open governance and consider how we can improve -- especially during the constraints of the COVID-19 pandemic.

"Debrief?" It's advice from accomplished aviator and ethicist retired USAF Colonel Kim Campbell in *Aiming Higher: A Journey Through Military Aviation Leadership*. Campbell advises, "For an event or experience to be meaningful, leaders must take the time to analyze and discuss how our missions are going. We must ask ourselves, what did we do well and what we could do better the next time." In that context, when a public health threat is in our midst, the people have the right to know about the danger and to learn about the best medical science on how to mitigate the threat in order to protect ourselves. When health boards cancel meetings – such as my officials at the Skagit County Board of Health have done -- and public health officers avoid media interviews and direct public inquiry, the public's right to know what their local public health officers know is dangerously limited. That's why I sought out Dr. Berry's expertise.

Furthermore, a public exposed to questionable information flying around but lacking access to public health officers is not just less informed but likely to be less cooperative with public health recommendations. "Public health depends on public trust," wrote Dr. Leana Wen, a former public health officer for Baltimore, in *Lifelines: A Doctor's Journey in the Fight for Public Health*. "For any response to be effective, people need to heed government orders, and to do that, they must have faith that their leaders know what they're talking about and have citizens' best interests at heart. A breakdown in that trust means that public health measures fall apart."

For Dr. Berry, the regular briefings and responses to questions from her Jefferson and Clallum County constituents are an excellent tool for public communications. As she said in one of those briefings:

"Things like this program are very helpful as a place where people can raise questions, and we can answer them for the benefit of the whole public. Often when I get lots of emails they're all about the same thing ... I really want to thank KPTZ for giving us this forum, where we can answer those questions in a broad way that reaches the public as a whole."

Dr. Berry's accessibility gives citizens a credible resource for information about public health issues. This is especially helpful as my fellow Americans are naturally skeptical of perceived and actual restrictions on their liberty, such as vaccination or masking requirements. Public health officials may be more successful at promoting compliance when they are accessible for questions to explain and defend public health orders. *Continued on page 8*

A True Public Advocate?

Attorney General Bob Ferguson recently announced he has selected Assistant Attorney General Morgan Damerow as the AG's Office Open Government Ombuds. WashCOG welcomes the announcement but is skeptical whether the position will be an effective public advocate. To be effective the Ombuds must focus assertively on two functions:

- Investigating, reporting on, and helping settle complaints made by individuals against abuses or capricious acts of public officials.
- Representing and advocating on behalf of the public, to keep government open and accountable to the public.

The above is pretty much the dictionary definition of what an Ombudsman does. It is also how things worked under Former AG Rob McKenna, who appointed Greg Overstreet and then Tim Ford to a new position called assistant attorney general for government accountability, or Ombuds. As Ferguson pointed out in his announcement, "Prior to the creation of the Ombuds position, Washingtonians often had nowhere to turn for information about the Open Public Meetings Act or Public Records Act. The Attorney General's Office (McKenna) created the Open Government Ombuds position in 2005 to encourage greater access to government information, answer questions from the public, media and government staff and assist in resolving disputes."

Overstreet and Ford saw their role as primarily representing people seeking access, rather than serving the interests of government agencies. They were advocates for the public's right to know. From our perspective the function hasn't been the same since Ford left in 2013, after Ferguson was first elected AG. For the past two years a team of Assistant Attorneys General performed the Ombuds' duties, but their focus has been on representing agencies.

In announcing the new appointment, Ferguson said Damerow "will assist citizens, public agencies and elected officials with Open Public Meetings act and Public Records Act compliance."

Ferguson's announcement said the work of the Ombuds includes:

- Answering questions about the Open Public Meetings Act.
- Providing Open Public Meetings Act training to newly-elected officials.
- Answering inquiries from individuals on how agencies should comply with the Public Records Act.
- Providing guidance to state and local agencies on their approach to public records requests.

Unfortunately, it does not explicitly include being an advocate for requesters dealing with recalcitrant agencies, or holding agencies accountable when they're doing it wrong. To us, that sounds more like a facilitator for the government than a champion for the people and for transparency. *Continued on page 8*

Public Advocate *Continued from page 7*

We wonder if there is a fundamental conflict between the role of the AG's office as legal counsel to state agencies and the role of the Ombuds. Does the Ombuds have an obligation to defend agencies even when they are wrong? Can he, and will he call them to account?

Will he have the resources to do the job fully and transparently?

For example, we urge that all activity undertaken by the Ombuds be proactively posted online. In addition to having educational value, such openness would allow the public and media to evaluate the work. Nothing should be exempt from scrutiny.

As AG Ferguson said in his announcement, "Washington state's open government laws exist to promote democracy and open up government for all who live here. To hold government accountable, the public must be able to stay informed of their government's activities. Not only do individuals have a right to know how their government is spending tax dollars and exercising its powers, the public has a need to know."

Words to live by.

Health Depts *Continued from page 6*

Further, Dr. Berry has shown great courage. She has withstood bullying and threats, some of them in response to an order requiring proof of vaccination in order to dine at a restaurant. She went on KIRO-FM to defend her vaccination order with libertarian Dori Monson, which is more than can be said for most public health officers in this state. Her leadership was recognized by the Olympic Educational Service District 114, which provides regional assistance to the Kitsap and North Olympic Peninsula school districts. The District gave awards to her, to Dr. Gib Morrow of Kitsap County and to Dr. Keri Gardner of Mason County. Despite the inappropriate reactions of some, any in the community respond to decision-making based on shared data.

Dr. Berry and other responsive officials provide welcome and needed resources for public health advocates who could not call upon their home team -- such as my Skagit County government, which was not nearly as accessible. For members of the public who needed accurate medical information to defend mask and vaccine requirements on public transit, and who wanted current information on our community's challenges and progress, Dr. Berry was there for all of us and a welcome example of accessible public servant.