Annual Report for 2012

Washington Coalition for Open Government, the leading advocate for the people’s right to access government information in Washington, had another very impressive year in 2012:

- We fought hard in the courts to preserve access to public records, and filed amicus briefs in a dozen cases in Washington’s appellate courts (see pages 6, 7, and 8 for these and other important legal actions);

- We tracked over 65 bills in the state legislature (including 35 high priority bills) and won significant legislative victories in the face of misguided efforts to limit the access to government and the people’s right to know (see pages 4 and 5);

- We expanded public outreach with our third annual Washington State Open Government Conference; seven new Open Government Forums throughout Washington; a debate of the candidates for Attorney General, offered in conjunction with The Seattle Times; many speaking engagements at events throughout the state; (see pages 2 and 3); and,

- We added impressive new talent to our efforts to protect and enhance open government efforts in Washington.

The number of individuals and government officials seeking advice from the Coalition on open government issues continued to increase, and we expanded our direct intervention to influence the behavior of government agencies by sending more letters and making personal visits. The Coalition's respect and influence continued to grow, evidenced by the mobilization of organizations representing government agencies to attempt to counter our efforts and make it more difficult for the public to know what the government is doing.

Dues-paying membership in the Coalition increased only slightly from 212 at the end of 2011 to 214 at the end of 2012, but the number of individuals and organizations making significant contributions in the higher sponsorship levels grew. The number of individuals signed up for the free “Citizen’s Network” email list increased from 572 to 695, and the number of individuals who became “fans” of our Facebook page grew to 500.

During 2012, the Coalition placed an emphasis on improving how we communicate our message. Our Revenue Committee chaired by Ed Clark, enlisted the assistance of a marketing professional. Erika Schmidt President and COO of Frause Integrated Communications gave generously of her time and talent to help create a communications plan for WCOG, which will be fully implemented during 2013.

Other work of the Coalition’s Revenue Committee resulted in a special dues rate for student members and involvement in The Seattle Foundation’s GiveBIG Day, a one-day, online charitable giving event, which netted almost $15,000.

We appreciate the service of board members that left the board in 2012, including Brian Sonntag, former Washington State Auditor, Mike Reitz formerly of The Freedom Foundation, Lucille Walls of Alliance of People with disAbilities, Teresita Torres of Teamsters Local Union No. 117, Lynn Kessler, former Majority Leader in the Washington State House, David Norman, formerly with Allied Law Group, Scott Johnson of Stokes Lawrence, and Rita Hubbard of InvestigateWest. We welcomed to the board Jonathan Bechtle of The Freedom Foundation, Larry Shannon of the Washington State Association for Justice, Michele Earl-Hubbard of Allied Law Group, Judy Endejan of Graham & Dunn, and Jerry Handfield, former Washington State Archivist.
We thank those who served during 2012 as officers and committee chairs of the Coalition: **Toby Nixon**, president and chair of the Government Committee; **Mike Fancher**, vice president and chair of the Awards Committee; **Gerry Pollet**, secretary; **Sam Pace**, treasurer; **Patience Rogge**, chair of the Events Committee; **Bill Will** and **Peggy Watt**, co-chairs of the Communications Committee; **Scott Johnson** and **Kathy George**, chairs of the Legal Committee, **Barbara Levette** and **Ed Clark**, co-chairs of the Revenue Committee; and **George Erb** and **David Seago**, co-chairs of the Board Development Committee. We also appreciate the hard work of our executive director **Elly Snow**, along with the staff at Seattle Operating Support LLC, and **Stokes Lawrence** and **Davis Wright Tremaine** law firms for hosting our monthly board meetings. The Coalition would not function without the service of these individuals and the many volunteers and activists who contribute their time and energy to the cause.


As you will see in the following summary of the activities of the Coalition, a lot of hard and important work was done during 2012. We accomplished a great deal – but there is always more than we have time, people, or energy to do! We actively seek the participation of others who share our passion for open government and willingness to serve, and hope that all you who read this report will join us in this important work.

**SUMMARY OF ACTIVITIES FOR 2012**

**Public Education and Outreach**

**Third Annual Statewide Open Government Conference:** On March 10, the Coalition presented the Washington State Open Government Conference at the Women’s University Club. Over 70 people attended. Keynote remarks were made by State Archivist **Jerry Handfield**. Conference sessions were presented by **Tracy Vedder**, KOMO 4 News, **Carl Hu**, a citizen activist from Bellevue, peace activist **Glen Milner**, **Gloria Howell**, 2011 American Society of Newspaper Editors Award Winner, **Ed Clark**, Clark Raymond & Company PLLC, **Ram Arumugam**, Cascade Software Corporation, **Bill Schrier**, City of Seattle, **Matt Rosenberg**, Public Eye Northwest, **Greg Lane**, TVW, **Mike Fancher**, formerly of The Seattle Times, **Slade Gorton**, former U.S. Senator, Attorney **Karen Gates Hildt** (widow of Michael Hildt, executive director of the original Coalition for Open Government that sponsored Initiative 276 in 1972, enacting Washington’s public records disclosure law) , **Bennett Feigenbaum**, Executive Mediator Services (chairman of the original Coalition for Open Government), **Bill Will**, Washington Newspaper Publishers Association, and **David Ammons**, of the Secretary of State’s Office.

**Open Government Forums:** Seven Open Government Forums were held all around Washington during 2012, including, Kent (April), Redmond (May), Vancouver (June), Puyallup (July), Union (August), Tacoma (September), and Mount Vernon (October). These forums drew a combined attendance of 172 government officials, private citizens, and members of the media. The importance of media support was demonstrated at these forums, as attendance was largely dependent upon the coverage provided by local media, including
carrying display ads, press releases, and op-ed pieces. Many prominent officials appeared on panels this year, including State Senator Pam Roach, Kirkland City Councilmember (and WCOG president) Toby Nixon, Assistant Attorney General Tim Ford, State Archivist Jerry Handfield, Sam Pace, contracted Housing Specialist for the Seattle-King County Association of REALTORS® (and WCOG treasurer), Martha Martin, Ph.D., East County Fire and Rescue District Commissioner and past President of CCIA, retiring State Auditor Brian Sonntag, former Washington State House Majority Leader Lynn Kessler, Tacoma News Tribune Reporter Sean Robinson, trustee of the Washington State Historical Society and chief historian for The Legacy Project John C. Hughes, News Tribune Journalist Peter Callaghan, Assistant City Editor and projects reporter at The Daily Herald Scott North, and Skagit Valley College President Dr. Thomas Keegan.

Attorney General Candidate Debate: The Coalition partnered with The Seattle Times to host a candidate debate between Bob Ferguson and Reagan Dunn on September 12. This event, which was held at The Seattle Times, drew almost 80 attendees. Mike Fancher, vice president of the board for the Washington Coalition for Open Government and former executive editor of The Seattle Times, served as moderator. Panelists included Ross Reynolds, senior host of KUOW’s The Conversation, Bob Young, Seattle Times government reporter, and Michele Earl-Hubbard, principal at the Allied Law Group and an open government expert.

Online Help Line: The WCOG online Help Line (and telephone help service) continued to answer many inquiries from citizens needing assistance dealing with agencies on open government issues, including questions regarding the definition and legality of closed door meetings, access to DOC files, how to properly request public records, definition of what qualifies as a public record, steps to take when an agency is ignoring a public records request, define what qualifies under the Washington State Open Meetings Act, whether public meetings that require asking a receptionist for access and are held behind locked security doors are legal under the Open Public Meeting Act, whether an agency is responsible under the Public Records Act if they don’t have a record they should have, whether or not recorded interviews and other written material pertaining to city personnel are subject to the Public Records Act, whether a town has the obligation of notifying its citizens of impending town bankruptcy, defining the correct protocol for a public hearing, what recourse citizens have after being unable to attend a public hearing, and many more!

White Papers: During 2012 the Coalition began to author and post white papers. White papers concerning the following topics are now available on the Coalition’s web site: Managing Agency Workload and Costs Under the Washington State Public Records Act; Retention and Disclosure of Voicemail Messages by State and Local Agencies in Washington State; Court Administrative Records Should be Subject to the Public Records Act.

Op eds: Coalition board members, including Peggy Watt, Bill Will, David Seago, Kathy George, and Walter Neary, produced op ed articles, which were published by newspapers around the state.

Newsletter: In addition to the periodic news releases and “Call to Action” emails that the Coalition sends out to members and subscribers to the Citizens Network email list, the board continued to send out electronic newsletters on a quarterly basis in 2012. The four newsletters contained brief articles highlighting the activities of the Coalition, promoted upcoming Coalition events, and always included a reminder about joining the Coalition and supporting its work financially.

Facebook: The Coalition’s presence on Facebook expanded from 426 to 500 “fans” during 2012. Our page can be found at http://www.facebook.com/washingtoncog.

Government and Policy Initiatives

Legislation Tracking: During the legislative session, the Coalition tracked the progress of 65 of the 1,437 bills, memorials, and resolutions introduced in the Washington State Legislature. Every one of these 1,437
measures were examined for impact on open government. Of the 65 bills tracked, 35 were considered “priority” bills to which the Coalition paid particular attention. The 35 priority bills were deemed to have some potential impact, positive or negative, on the public’s right to know, particularly regarding access to public records and public meetings.

**Legislative Effectiveness:** Of the 35 priority bills, only two passed. Both of them enhanced open government: HB 2313 requires meetings of university boards of trustees and regents to be open to the public and include a public comment period, and SB 5355 requires agencies that have web sites and personnel assigned to maintain the site to post notice of special meetings on the site, and also requires special meeting notices to be posted at the agency headquarters and at the meeting location if not at headquarters. Unfortunately, SB 5355 doesn’t require the notice to be prominently displayed on the web site (it could be several clicks deep), and it requires citizens to check the web site every day to see if a special meeting is being held. A much better solution would have been to require agencies to set up an email list that any citizen can subscribe to, and post the special meeting notices to the email list, but we’ll continue to advocate for that in the future.

None of the bills that WCOG actively opposed passed during the 2012 legislative session. Considering just how bad some of the bills would have been if they had passed, this was an important achievement! It is a great testimony to the effectiveness of WCOG members and supporters – especially Rowland Thompson of the Allied Daily Newspapers of Washington (a member of the WCOG Advisory Committee) and Bill Will of the Washington Newspaper Publishers Association (a member of the WCOG Board of Directors) – as well as citizen activists from all around the state who called, emailed, and visited their legislators to object to the numerous bad bills.

Of the remaining 63 tracked bills, 7 passed and 56 failed. The bills that passed included new exemptions to disclosure under the Public Records Act (either directly in RCW 42.56 or in other statutes), including: Records of law enforcement agencies regarding homes or businesses that have burglar alarm systems or of people on vacation (EHB 1234); Bids submitted to the state central procurement agency, until the agency signs a contract for procurement (HB 2452); Livestock importation records that are exempt from disclosure under federal law (HB 2456); Information submitted to the state by independent Medicaid fraud investigators, and investigative records compiled by the state related to reports of Medicaid fraud (SB 5978). WCOG did not oppose creation of these new exemptions.

The other significant bill that passed last session was SB 6493, which expands the provisions of RCW 42.56.565 to also include sexually violent predators who are being held in the civil commitment center. RCW 42.56.565 is the law passed in 2009 that enables agencies to obtain injunctions to block people being held in jail or prison from requesting public records if the agency deems them to be harassing the agency or its employees, if fulfilling the request would threaten prison security, threaten the safety of any person, or assist in criminal activity. WCOG expressed concern when RCW 42.56.565 passed that it was a slippery slope and would be expanded in future years to enable agencies to obtain injunctions against more categories of disfavored requesters. This fear was realized last year with SB 6493. In addition, last year’s HB 2677 and SB 6351 would have enabled this kind of injunction to be obtained against any requester, not just those who have lost their civil rights by being convicted of a felony. We will continue to fight expansion of this power of agencies to designate requesters as “harassing” and obtain injunctions to block the requesters from making any records requests.

**Legislative Priorities:** The coalition once again prepared a legislative agenda and priorities for the legislative session to inform legislators and the public of open government issues of greatest importance. The priorities for 2012 focused on ten issues: requiring training for every elected or appointed official and every government employee, creating a voluntary mediation program to reduce the cost of resolving Public Records Act (PRA) and Open Public Meetings Act (OPMA) disputes, creating an exemption in the Public Records Act for audio and video recordings of lawfully closed meetings, restoring the original intent of the
attorney-client communications exemption, creating a private right of action under the Public Records Act for improper destruction of records, protecting funding for Superior and Appellate Courts, protecting funding for the Washington State Archives, preserving the Sunshine Committee, expanding access to legislative and court administrative records, and improving preservation of and access to electronic records.

Candidate Questionnaire: 576 candidates, mostly for partisan offices in the legislature, statewide, and at the county level, were sent the questionnaire via email or mail. 122 responses were received, tabulated, and posted on the WCOG web site, and a news release sent out encouraging editorial boards and citizens to question candidates about their responses or lack thereof. As a 501(c)(3) charitable organization, WCOG cannot endorse or support any candidates, and thus the information we provided did not indicate which answers were “right” or “wrong” and we did not rate candidates in any way. Nevertheless, candidate responses to the questionnaire did become an issue in some races during the 2012 campaign. The questionnaire generated one new WCOG membership, and resulted in several phone calls to the WCOG office from the media and candidates.

Government Consultation and Advocacy: WCOG increased our presence and strengthened our voice in government issues during 2012, and many officials reached out to WCOG for our advice as an important stakeholder and expert on open government issues. Toby Nixon met with King County Councilmember Kathy Lambert and others to discuss the retention and disclosure requirement for voicemail messages. Nixon met with Michael Schwab, chair of the Sunshine Committee. Toby Nixon was approached by Everett Assistant City Attorney Ramsey Ramerman for advice on computer software to facilitate categorizing of emails for retention and disclosure. The Coalition signed on to Openthegovernment.org letters to the Department of Health and Human Services and the Department of Defense, urging the full release of crucial information regarding the contamination of water at the U.S. Marine Corps Base Camp Lejeune, NC, and one to the House Committee on Oversight and Government Reform opposing a bill designed to roll back a hard-fought policy to secure no-fee public access to National Institute of Health research. At the request of the Sunshine Committee, Toby Nixon compared the Code Reviser’s draft list of PRA exemptions enacted in 2012 against the WCOG bill status report, and responded with the results. The Coalition signed on to a letter by The Sunlight Foundation, Project on Government Oversight, and the OMB Watch in support of the DATA Act, intended to dramatically improve federal spending transparency. The Coalition signed on to a Sunlight Foundation letter urging the Department of Labor to re-post a document concerning child labor in agriculture, which hit has withdrawn. Toby Nixon spoke at a meeting of the Edmonds City Council on the subject of recording or keeping minutes of executive sessions. Nixon spoke on a panel regarding open government issues at the Washington State Association of Counties annual conference, and spoke at a conference organized by the Washington Association of Public Records Officers. Nixon attended a regional meeting of the Association of Washington Cities to discuss legislation related to the PRA. Nixon also met with the mayor of Sammamish, Tom O’Dell, to discuss compliance with the PRA, among other topics, and attended another meeting with representatives of the Seattle Police Department to discuss transparency.

Legal Activities

WCOG v. AGO & DOC: In spring 2012 the Coalition settled its 2010 lawsuit against the Washington state Attorney General and the Department of Corrections (DOC) for materials requested under the Public Records Act. The case was settled for a payment of $65,000 by the two agencies to WCOG and its attorneys. The case originated with WCOG’s 2008 public records request seeking to determine whether the agencies were assisting or representing DOC employees in bringing lawsuits against the DOC in order to prevent public records from being provided to inmate Allan Parmelee. WCOG was suspicious of the relationship between the agencies and the DOC employees in Burt v. Department of Corrections and other cases involving requests for public records by Parmelee. WCOG believed that the lawsuits brought by the DOC employees were sham lawsuits, and that the agencies were colluding with the employees in order to prevent the release of records to Parmelee. In response to WCOG’s request for public records on the matter, the agencies failed to provide native
electronic records as WCOG requested, did not properly explain why records were withheld, made excessive claims of attorney-client privilege, and failed to provide some records entirely. This case was settled without admission of liability by the Attorney General and the Department of Corrections.

**Amicus Briefs:** The Coalition, either separately or in conjunction with other organizations supporting open government, submitted amicus briefs in support of open government principles to the courts regarding a number of cases, including joining Allied Daily Newspapers of Washington and the Washington Newspaper Publishers Association in the *Freedom Foundation v. Christine Gregoire* case challenging her claim of an “executive privilege” to withhold public records, the *State v. Richardson* case involving efforts to unseal conviction records of a politician considered a grave infringement on the public’s right of access, the *Lakewood v. Koenig* case concerning whether an agency can prevail in an agency suit against a PRA requester without meeting its burden of proving that an exemption applies, the *Sargent v. Seattle* case involving a request by a criminal defendant to see records related to his own case, the *Ringhofer v. King County* case concerning public access to juror disqualification forms, the *Gaston Cornu-Labat v. Quincy Valley Hospital* in which a doctor challenged the hospital’s claims that requested records fell under “peer review” and “quality improvement” exemptions from disclosure, and a case challenging Virginia’s *Freedom of Information Act* restriction to their state citizens only. We also participated, along with news media organizations, in support of a petition to the Washington Supreme Court in the *Seattle Police dash-cam video* case.

**Continuing Legal Education Seminar:** The Coalition presented a day-long continuing legal education seminar in 2012 titled “The Public's Right to Know: Laws, Tensions and Emerging Issues” with the dual purpose of providing quality education on public records and open public meeting laws as well as raising revenue for Coalition projects. The seminar included sessions on openness in state and federal courts from two of Washington's most respected judges, how to break through secrecy in government, and about the government’s perspective and ethical duties in the open government arena. Presenters included U.S. District Judge Robert Lasnik, retired Supreme Court Justice Gerry Alexander, KIRO-TV anchor Monique Ming Laven, Seattle City Attorney Pete Holmes, attorney Judy Endean, attorney Eric Stahl, attorney Shelley Hall, attorney Jeffrey Myers, attorney Art Lachman, State Rep. Gerry Pollet, General Manager of the Washington Newspaper Publishers Association Bill Will, and WCOG President Toby Nixon. The seminar was held at the Washington Athletic Club and had 34 attendees (including presenters). 5.75 hours of continuing legal education credit was offered.

**Awards and Recognitions**

**Society of Professional Journalists Heroes of the 50 States: The State Government Hall of Fame:** WCOG President, Toby Nixon, was the 2012 Heroes of the 50 States inductee. During his time as a Washington legislator, Nixon sponsored 13 bills supporting more open government and served as a ranking member of the House Committee on State Government Operations and Accountability, which under his leadership passed 17 election reform bills. Nixon was also honored for building WCOG into one of the most effective state coalitions in the country, during his years as president since 2007.

**Sunshine Week Local Heroes Award:** The Coalition nominated Key Award winner Eric Rachner, of Seattle, who forced the local police to make public videos from patrol car dashboard cameras for this award. Rachner was awarded second place.

**Eighth Annual James Madison Awards:** The James Madison Award, the Coalition’s highest honor, is presented each year to an individual or organization whose commitment to the cause of open government has been demonstrated through exemplary words or deeds. The 2012 James Madison Award was presented to the law firm Davis Wright Tremaine. Davis Wright Tremaine has been a leading advocate for open government in Washington for over 40 years. They
have continued this work, on things like assuring public access to police records, federal tax records, court files, and court proceeding.

**Special Madison Awards:** In 2012, the Coalition also awarded Madison Awards to those most involved in the passage of I-276 and the subsequent defense of it in court— a turning point for government transparency in Washington State. I-276 was overwhelmingly approved by voters in 1972, which lead to what would become the Washington Public Disclosure Act. Honored with Madison Awards were the late Michael Hildt, executive director of the Coalition for Open Government that sponsored and defended I-276 (received by his widow, attorney Karen Gates Hildt); former U.S. Senator Slade Gorton, who defended I-276 after its passage in his role as Washington’s attorney general; President and Chief Administrative Officer of Executive Mediator Services, Bennett Feigenbaum, who was chairman of the Coalition for Open Government; and Bill Neukom, Founder, President and Chief Executive Officer of the World Justice Project and former general counsel of Microsoft, who was general counsel for the Coalition for Open Government.

**Sixth Annual James Andersen Award:** The James Andersen Award is given annually to an individual or organization that has done something extraordinary to advance the efforts of the Washington Coalition for Open Government. The award this year was presented to D. Edson Clark, CPA, a member of the WCOG board since January 2011 and co-chair of its Revenue Committee. Clark was chosen for his exemplary leadership, as well as his contribution of time, energy, and financial support for the Coalition.

**Key Awards:** The Key Award can be awarded by the Coalition Board of Directors at any time to an individual or organization in honor of a good deed in advancement of open government. The name of the award recognizes the “key contributions” of the award recipients, and the symbolism of the “key” to unlocking files of public records and government information and unlocking the doors of meetings illegally closed to the public. The award includes a special “Key Award” lapel pin and certificate, a free year of membership in the Coalition, and recognition on the Coalition web site and in a news release. Honorees this year included: Carl Hu, who dug into the background of a charity soliciting contributions and exposed the fact that the telemarketing service for the Breast Cancer Prevention Fund (BCPF) was apparently reaping significantly more of the donated funds than the charity itself; Matt Rosenberg, who organized the panel and program for a successful presentation, “Open Government Future: Technology, Innovation, and Community” for the 2012 Open Government Sunshine Week Conference; Michael Gendler, who was rendered quadriplegic in a crash on Seattle's Montlake Bridge and used the Public Records Act to show the history of similar accidents and thereby improve the safety of other bicyclists in the Seattle area; Kim Hendrickson, who was fired as the independent examiner of the Bainbridge Police Department at a closed meeting and vigorously pursued accountability for those who closed the meeting; and William Kildall and Patricia Slaten, organizers of a citizens' group in Clallam County to monitor the actions of the local hospital district.

**Ballard/Thompson Award:** The Ballard/Thompson Award, named after former Speaker of the House Clyde Ballard and former state Senator and Chief Clerk of the House Alan Thompson, both of whom were among the founders of Washington Coalition for Open Government, is given to a member or members of the state legislature who have demonstrated outstanding dedication to the cause of open government during the previous legislative session. The inaugural recipient of the Ballard/Thompson Award was Senator Robert Morton, 7th District, Kettle Falls. Senator Morton introduced SB 5355, which unanimously passed in the House of Representatives and Senate and required public agencies to prominently display notices for special meetings at the agency’s main location, at the meeting site, and on the
agency’s web site. He has been a consistent sponsor and supporter of legislation to enhance government transparency.

Scott Johnson Open Government Essay
former WCOG board member and strong away during 2012. Johnson was a mentor to as an attorney, and had achieved his lifelong court judge, only to pass away from a chronic office. To honor him and to educate young people government, the Coalition launched an essay seniors. The first winner will be selected in 2013. Lawrence Foundation for contributing toward the

Competition: Scott Johnson, a advocate for open government, passed many young people during his career dream of being elected as a superior medical condition prior to taking about the importance of open contest for high school juniors and The Coalition is grateful to the Stokes scholarship awards for the contest.