

Washington *Coalition for*  
**Open Government**  
washingtoncog.org

**ANNUAL  
REPORT  
2020**



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## INTRODUCTION

**I**t takes some time and reflection to adequately describe the year that was 2020. Horrible, devastating, deadly, scary. All words that come to mind. The Washington Coalition for Open Government, worked very hard to ensure any description of 2020 would not include the phrase “at time of government secrecy.” Whichever word or phrase you use to describe 2020, please join us in looking forward to this new year and the opportunities it will present to rejuvenate the momentum for open and transparent government in our state.

During the past year, the Coalition underwent some changes, saw some ambitious goals sidelined due to the pandemic, and learned new ways of connecting with each other and our members. 2019 saw the retirement of long time Executive Director, Elly Snow and the subsequent sale of her company Seattle Operating Support which the Coalition had relied on for their strong administrative services. The change was a challenge and in late 2019, the board opted to explore a new administrative model and hired Juli Bunting as Executive Director. What follows in these pages is a comprehensive look at the Coalition’s work during the most challenging year in our history, 2020, and a hopeful glance into what lies ahead in 2021.



The year began pretty much the same as years past, with our usual watchdog activities in Olympia during the legislative session. Our accomplishments and disappointments from that session are in this report as is a look forward to priorities for the upcoming session which begins January 11. As always, we will be fighting on the side of transparency and openness. Keeping tabs on the legislature is one of our top

priorities. We have to be ever vigilant to prevent further exemptions to the PRA and to promote legislation which will further open up state government to the citizenry. We hope you’ll take time to brush up on what transpired last year and take a look forward at our priorities this year.

When 2020 began, one of our educational outreach goals was to visit high school students all over the state to talk about civic engagement, civic responsibility, the importance of open government as a way to promote our 2020 Scott Johnson High School Essay Contest. We began promoting the contest in February and started getting



entries almost immediately but unfortunately, March brought the pandemic, and our ability to speak in classrooms ended. This year, with more promotion, we hope teachers and home-schooling parents will take advantage of our Zoom capabilities to provide guest speakers as a supplement to government and social studies classes. We will roll out the 2021 contest in February 2021. We hope you will familiarize yourself with this contest and pass on to all the high school students in your life. We are

thankful for the support of the Stokes Lawrence Law Firm who sponsors the cash prize every year.

Despite the many challenges facing all of us in 2020, the courts found ways to hold trials while keeping participants, the press, and the public safe. WCOG corresponded with all judges in the state reminding them to keep their courtrooms accessible to the public in order not to violate the Washington State Constitution provisions on open courts. We remain committed to working



with the courts and all state agencies on best practices as we continue to face a global pandemic in the new year. We are dedicated to your right to know what government is doing in your name and we will fight for that right, even when it requires innovation and dedication to openness.

As always, WCOG board members were involved with major PRA legal challenges, PRA requests, filing amicus



# CORE MISSION: EDUCATION

**T**here are two components to our educational outreach; community/civic organizations and students/young adults. We firmly believe the more the public is educated about good government; the more the public knows about transparency and openness, the better. It is always our mission and desire to impress upon our citizens the importance of open government. Any watchdog organization needs an educated populace and dedicated activism behind it. Our goal is to present this issue to Washington citizens in a straightforward manner that is clear, concise, and constant so we all understand we have a right to know what government does in our name.

## OUTREACH: COMMUNITIES

**T**he challenges brought on by the global pandemic have been life-changing and will likely be us for at least the first half of 2021.

As an organization with an important message to convey, we knew we had to adapt to new ways of connecting with the community to grow our movement. And, as winter turned to Spring, we adapted. Video conferencing, formerly a convenient meeting platform, became an outreach tool, an award stage, and a classroom.

As in years past, WCOG President Toby Nixon was the ultimate Goodwill ambassador for WCOG, speaking at numerous public forums, events, and civic meetings. He is a tireless supporter of open government and is our number one requested speaker. While 2020 did not offer us the quantity of public appearances as years past, Toby appeared via video conferencing at several community events, including speaking engagements, panel discussions, legislative hearings, and guest lecturing in classrooms. As we begin 2021, WCOG will use innovation and technology, the desire for interesting video content, and the ongoing necessity of virtual engagements to get our message to the community. If your agency, company, or organization



would like to request a speaker, please contact Juli Bunting at 206-782-0393. We are eager to meet your members and have an honest, open, and educational conversation about the PRA and the OPMA

## OUTREACH: SCHOOLS

Each year, the Coalition is pleased and proud to conduct the annual Scott Johnson High School Essay Contest. The contest is named for the late Scott Johnson of the Stokes Lawrence Law firm, who was a former member of the WCOG board and a dedicated advocate for open government. The Stokes Lawrence Law Firm sponsors the contest each year with a \$1,000 cash prize. The Essay Contest is open to all Washington state high school students and usually runs from January to April.

We experienced a successful launch with the Essay Contest in late January but as the pandemic swept across the nation, schools started closing, classes went remote, and graduations were in question. Again, we adapted. We made the decision to extend the deadline for the contest on a couple of occasions. We had approximately 25 entries this year, but a number were from out of state. While the judges read and considered those entries, in the end, a Washington state student, Abigail Wilkes of Colbert, WA was named the winner of the cash prize. We congratulate



Abigail on her work which is included as an addendum to this report. Looking forward in 2021, after a new contest chair has stepped forward, our plan is to launch and promote the contest through February and set a deadline of May 1 for entries. We are hopeful 2021 will allow some “in-person” appearances at the schools promoting the contest and talking about good government. If not “in-person”, we stand ready to bring our message to classrooms through video conferencing.

## CORE MISSION: LEGISLATION

**W**COG tracked a total of 68 bills during the 2020 session. Of those, 54 died one way or another during the session, and 14 got to the governor’s desk. Of those 14, the governor vetoed 3 bills. In each of those three cases, the bill would have created a new program of some kind or another that would have cost money. The governor vetoed many such bills in order to reduce spending and prepare for the revenue shortfall that is sure to come because of the impact of CoVid-19 response on the economy.

Here's a quick summary of the 11 bills related to open government the governor signed:

- WCOG strongly opposed 2SHB 1888, which exempts from disclosure public employee birthdates and photographs except when requested by members of the government-approved news media. The public employee labor unions laid down an ultimatum – that legislators had to make it more difficult for Freedom Foundation to contact union members or else – and the legislature complied despite the negative impacts on government accountability.
- WCOG supported ESHB 2588, sponsored by WCOG board member Rep. Gerry Pollet, that helps deal with small special purpose districts who fail to obey state requirements for financial controls and auditing. The core portions of the bill, which allow counties to take over non-compliant special purpose districts, remained in the bill. Unfortunately, the provisions to improve transparency of all special purpose districts, such as to require them to post their agendas, minutes, budgets, and financial statements online, were amended out of the bill. At least new tools were created to deal with the worst districts.
- 7SHB 2794 eliminates the ability for the public to object to the sealing of juvenile criminal records, leaving that decision up to the courts but mostly making the sealing fully automatic. And eight bills that create new narrowly-crafted public records exemptions, for a variety of



types of information, including information about juvenile sex offenders received by schools, certificates of parental improvement, information that might identify sexual assault victims in college records, firearm background check records, information about leaks in natural gas transmission lines, reports of sales at distilleries, health care benefit manager information submitted to the insurance commissioner, and health care information held in state retirement records. Most of these exemptions make sense, and WCOG did not object to them.

- We did oppose bills that would have been damaging, including one that would allow agencies who had closed a request as complete to provide additional records later without penalty, and another that would allow small agencies to have 30 days to initially respond to a request instead of the 5 days that have worked fine in the PRA since 1973. And, unfortunately, many other bills that we supported died as well. All are noted in the attached report.

One positive observation from the session is that the legislature did not immediately seek to overturn the Supreme Court's decision that most legislative records are subject to disclosure under the PRA. We've been hearing that many requests are being made for legislative records on a variety of topics, with interesting disclosures including the apparent disdain some legislators have for their constituents who ask questions. We will continue to be vigilant in the 2021 session for moves to again close off access to legislative records. Thank you all for contacting legislators during the 2020 session! It really does make a difference in the outcome! WCOG encourages you to continue to hold local and state agencies accountable during this difficult time. Agencies are taking extraordinary actions to fight the virus, many of which significantly restrict personal liberty or suspend important controls on government actions. As you know, the governor suspended portions of both the Public Records Act and the Open Public Meetings Act related to in-person contact, and we're already hearing reports of some agencies abusing these provisions by conducting meetings without adequate opportunity for public attendance or by unreasonably delaying responding to records requests.

## LOOKING FORWARD:

**W**ashington Coalition for Open Government has established the following priorities for legislative action during the 2021 session. The Coalition encourages its members and concerned citizens throughout Washington to contact members of the Legislature and ask for their support of these priorities.

1. **Treat All Legislative Records the Same as Other Public Records.** The Washington State Supreme Court ruled, in *Associated Press et al v. Washington State Legislature et al*, that records held by individual legislators are subject to disclosure under the Public Records Act. Now it is time to make the PRA apply to all legislative records, including those of legislative staff and agencies of the legislative branch. We must make the state legislature as accountable to the people as every local legislative body in the state, with appropriate exemptions that are in the public interest.
2. **Stop Abuse of Agency Notice to Parties Named in Records.** Many agencies delay release of records by abusing the ability to notify persons named in a record. The amount of time allowed for such parties to obtain a court order blocking release of records should be limited to two weeks or less from the date of the agency's initial response to the request. Agencies should be required to identify the exemption under which a record could be withheld when providing notice.
3. **Requesters who successfully defend against a lawsuit filed by a third party to block release of records should be able to recover their attorney fees and court costs from that party, or from the agency if the agency acted in bad faith by inviting the lawsuit.**
4. **Codify Rules for Public Records and Public Meetings During Declared Emergencies.** In response to the COVID19 pandemic, the governor suspended portions of the Public Records Act and the Open Public Meetings Act and prohibited use of various parts of them because of social distancing requirements. While stakeholders were consulted on these actions, they have not been subject to the full deliberative legislative process. The legislature should convene a stakeholder process to craft PRA and OPMA amendments to address their operation during declared emergencies so such proclamations and suspensions would not be required in the future, including emergencies such as major fires, floods, earthquakes, and volcanic eruptions in addition to pandemics.

5. **Advisory Committee Meetings Must be Open to the Public.** Public agencies often create boards, committees, task forces, or other groups to analyze policy alternatives and make recommendations. Too often these advisory groups meet outside the public eye, so people can't see what options were considered and understand why some were excluded. All this work should be open to the public, with meeting times and places announced in advance. Let's stop developing policies in secret.

The following additional items of concern to open government advocates will be also be supported:

- Require all special purpose districts to hold elections using the same schedule and mechanism as other jurisdictions, and to be fully subject to the Open Public Meetings Act.
- Clarify that agencies cannot escape PRA penalties by leaving a request open indefinitely, and that litigation to force release of records can start as soon as access to a record is denied even if the request is not "closed".
- Provide voluntary alternative dispute resolution for PRA and OPMA cases that is faster and less expensive than superior court, without impairing a plaintiff's ability to choose to file a suit or receive penalties if they prevail.
- Require disclosure exemptions to be contained within or referenced from RCW 42.56.
- Create an exemption in the PRA for audio and video recordings of lawfully closed meetings.
- Create a private right of action under the PRA for improper or premature destruction of public records.
- Prevent agencies from initiating litigation against public records requesters such as for declaratory judgment.
- Amend the state constitution to eliminate any notion of "Executive Privilege" under the PRA.
- Restore the original intent of the attorney-client communications exemption in the PRA.
- Oppose weakening of the PRA through changes in process or expansion of exemptions.
- Require an opportunity for public comment before final action is taken under the OPMA.
- Officials who violate the OPMA should be penalized even without proof they knew the meeting was illegal.

# CORE MISSION: LITIGATION

## AMICUS BRIEFS AT A GLANCE

*“The legal term amicus curiae is a Latin phrase that literally means “friend of the court.” The term is used to refer to a legal brief, called an amicus brief that may be filed with an appellate court, including a supreme court, by a party not involved with a current case, but in support of one side or another on the legal issue at hand.”*

Our goal at WCOG is not to take agencies to court. Our goal is to ensure governmental agencies are following the law and not operating in secret. And while litigation is not our goal, we are not shy about supporting PRA lawsuits and we are not shy about taking agencies that violate the law to court. In 2020, WCOG filed amicus briefs in support of several new and ongoing lawsuits. Some of the top PRA/OPMA lawyers in the state serve on our board and they are always busy. Throughout the year, our board members have scrutinized, evaluated, and acted on worthy litigation seeking to hold lawmakers accountable for their actions.

It is the general policy of WCOG to not participate at the trial court level in any such actions. However, we may decide to seek intervenor or amicus status for PRA/OPMA issues pending before Washington appellate courts. The criteria to be used in selecting cases for amicus participation may include some or all of the criteria used to file a suit ourselves, plus the following: Whether amicus participation will increase the likelihood of a favorable outcome for the party which has sued to obtain public records or access to public meetings; Whether amicus participation will help produce an appellate court decision to resolve ambiguities or conflicts in the area of PRA/OPMA laws among the divisions of the courts of appeal; Whether our participation is likely to enhance or promote the acceptance of an appellate case in an PRA/OPMA action.

Any decision to authorize amicus participation by WCOG may be made by the President, with a recommendation from the Legal Committee.

In making a determination to institute litigation, the WCOG Legal Committee has established certain criteria, which will guide it in recommending the commencement of any such litigation to the full WCOG Board, which must approve any final decision regarding the commencement of litigation. This criteria may include some, or all, of the following criteria, or other criteria that may be relevant to a determination in an individual case:

- It is unlikely a private litigant could or would bring the case.
- The case under consideration must have a strong legal basis, indicating a high likelihood of ultimate success on the merits.
- Any judicial decision resulting from the litigation must be intended to preserve and protect the rights of ordinary Washington citizens to have the fullest access as allowed by law to the workings of government either through public meetings or public records.
- A significant public interest in the records sought must be present; WCOG will not advance litigation to further narrow private interests.
- The case raises unique legal questions that suggest the case could help resolve existing ambiguities in Washington law or further the development in Washington law in the areas of access to public records and public meetings.
- The agency withholding records has a pattern of abusing Washington's public records or public meetings acts.
- The case ultimately presents a compelling reason to fight against unjust illegal withholding of public records by public agencies.

# CORE MISSION: RECOGNITION

**W**COG has always subscribed to the principle that people who dedicate themselves to good government, people who speak up when they're denied access, people who do not take no for an answer, and journalists who inform the public should be rewarded for those efforts. We recognize people from all walks of life, in all sorts of circumstances who take remarkable action to ensure all of us can have access to government meetings, decisions, and records

## THE KEY AWARD:

**T**hroughout the year, WCOG honors open government advocates who have gone to extraordinary lengths in the pursuit of transparency by presenting them with our Key Award to recognize these efforts. It is our usual practice to present Key Awards live at a time and place convenient for the award recipient. Obviously, that was not possible in 2020 and so our Key Award presentations were made through video conferencing.

Governor Jay Inslee was recognized for seeking input from stakeholders regarding access and transparency issues in the original emergency declaration on COVID-19 restrictions.

The governor's Chief of Staff, David Postman and Chief Legal Counsel, Kathryn Leathers, were all honored for including stakeholders in emergency declaration decisions.

Jacob Jones of the Whitman County Watch was recognized for his dogged pursuit of public records and the use thereof.

## MADISON, ANDERSEN, BUNTING AWARDS:

**N**ational Freedom of Information Coalition President, Dave Cuillier (University of Arizona) and Seattle Times Editorial Page Editor, Kate Riley, were honored by the Washington Coalition for Open Government with the 2020 James Madison and 2020 James Andersen Awards in a virtual ceremony in September.<sup>15</sup> Cuillier has a long history of advocating for open government and transparency both in the Pacific Northwest and nationally. This award is for life time achievement in the area of advocating for open government. Dave fought for transparency as a reporter and editor in Washington and now leads this very important



national movement. NFOIC could not have more dedicated leadership.

**C**uillier responded to news of the award by saying transparent, accountable government is more important than ever and the nation can look to Washington state for inspiration. “We saw in recent years citizens fight back against attempts to exempt the Legislature from the state public records law. We’ve seen recalcitrant public agencies held accountable through hefty fines. It’s this special frontier attitude that reminds the elected who is in charge. Washingtonians are lucky to have been served by dedicated, tireless volunteers, working two decades through WCOG to ensure that people know what their government is up to. I can say definitely from the research and data, that WCOG’s work has made a difference in people’s lives, and that its influence radiates throughout the country. It makes me proud to be an Evergreen State native and fortunate to have been shaped by such amazing transparency warriors in WCOG. Together, we will hold the line.”



**S**eattle Times Editorial Page Editor, Kate Riley was honored with the 2020 James Andersen award for her relentless pursuit of government accountability, and for educating the public on the editorial pages of the Seattle Times. Riley says the cause of open government has never been more important. “In times of controversy, even the best-intentioned elected official might be tempted to skirt open-

government laws. As traditional news organizations struggle, fewer journalists from fewer newspapers are asking questions of elected officials. That's why it is even more important that all community members are able to access information that rightly belongs to them. WCOG is a great ally of the people in this regard. I am humbled to receive this award and will continue to do my part to shed a light on government.”

The Board was very pleased to honor these two outstanding individuals who are such strong advocates for transparency at all levels of government.,

# OFFICE OF THE EXECUTIVE DIRECTOR

The first year of my tenure as Executive Director for WCOG has been one of an ever-changing landscape. As we began, we were recovering from a major administrative change which led to reduced staff and expenses but also reduced people power to keep the train on the track.

As we look forward to a new year, a new beginning, WCOG will be undergoing yet more changes. In 2021, we are losing long time WCOG President Toby Nixon as he retires from the board of the organization after 15 years, 13 of which he served as President. Although we realize no one can step into Toby's shoes, we will be working toward more and more input from board members and our working committees.

My goals for 2021 are to increase our communications with members, donors, supporters, and partners so we can continue our quest to keep Washington one of the most open and transparent states in the country. To do that, we need to be ever vigilant against those who seek to water down the PRA/OPMA or seek to enact loopholes allowing secrecy in government.

In education, I intend to offer our speakers to classrooms, virtual and in-person as we begin to come out from under the dark shadows of COVID-19. If you are an educator in Washington, please call on us to provide your class with an interesting speaker or panel on accountability and civic engagement.

There is no question Toby Nixon will be missed. His knowledge of the law rivals that of the best transparency lawyers in the state and his institutional knowledge of WCOG is something we can only envy. For now, we will continue to rely on his kindness and good graces as we seek to navigate the waters of open government.

# BOARD DEVELOPMENT

The Board of Directors is the governing body of the Coalition and we are a diverse and dynamic group of concerned citizens from all over the political spectrum and professions. We have attorneys, journalists, media executives, academicians, elected officials, and activists. Although we strongly disagree with each other on major political issues, we come together to work on this one issue we can all agree on and that is that knowing what government is doing in our name is one cornerstone of our democracy.

The Coalition is always looking for interested, bright, new board members to help us with our mission of supporting transparency and openness in government. While the board is taking some time to re-evaluate our roles and responsibilities, we will be actively recruiting board members in the fall of 2021. If you are interested in serving on our board, contact Board Development Chair, Sam Pace at [sam@sampace.com](mailto:sam@sampace.com) to inquire about positions that will become available in early 2022.



# OUR FINANCIALS

The Coalition operates on a shoestring budget. During the global pandemic, our finances remained steady with a balance of about \$40,000. We rely on sponsorships, donations, and member contributions to keep the organization up and running. We appreciate everyone who donates to this cause and want to encourage everyone who is able to make a donation.

We do limited fundraising but plan to step up those efforts moving forward into 2021. We begin with an annual Spring campaign in March during Sunshine week and coincides this year with the kickoff of the Scott Johnson High School Essay Contest.

We encourage anyone interested in open and transparent government in Washington to visit our website at [www.washingtoncog.org](http://www.washingtoncog.org) and donate today.



