



## GOVERNMENT ACCOUNTABILITY: ENFORCING THE PUBLIC RECORDS ACT

### LEGISLATION:

#### OFFICE OF OPEN RECORDS

The Attorney General and State Auditor will jointly request legislation to amend the PRA to create an independent Office of Open Records, consisting of one employee housed within the Office of Administrative Hearings. The appeal process will be funded through a reasonable filing fee paid by requesters seeking the office's assistance and also by charging agencies defending against appeals. The Office of Open Records would have administrative authority to enforce the provisions of the PRA and will:

- Provide a speedy and inexpensive administrative appeals process for resolving disputes over disclosure of public records.
- Adopt rules to provide clear guidelines for an appeal process that is available for citizens, state and local agencies.
- Submit an annual report to the Legislature on its activities, and recommend legislative reform.

Requesters retain their ability to initiate lawsuits in court.

#### NOTICE & OPPORTUNITY TO CURE

Similar to the state's tort claim process, this legislation would require records requesters seeking penalties in court to first file a public records claim to notify the agency of their intent to file a lawsuit. This will help reduce agency budgets by giving agencies time to correct possible mistakes or misunderstandings in producing records and will improve the delivery of public documents. This bill does not affect a requester's ability to go straight to court and be awarded attorney's fees and costs if they prevail, but simply requires a requester who is seeking penalties to give an agency reasonable notice of the basis of the dispute and an opportunity to cure any error.

#### STATUTE OF LIMITATIONS ON RECORDS LAWSUITS

This legislation closes a loophole in the law by clarifying for agencies and requesters that there is a single one-year statute of limitations period under the PRA for any claim where a requester has been denied a record, regardless of whether the agency makes a single response or responds in installments. In a recent appellate decision, the court concluded that the one-year limitations period under the PRA does not apply where an agency provides a single response producing records or indicating that no records can be located. In order to provide clear, consistent and certain guidelines to both agencies and requesters considering legal actions, the law needs to be clarified.

### THE PROBLEM:

Citizens who are denied access to public records and public meetings have no choice other than to go to court, and lawsuits are costly and time-consuming, many taking years to resolve. Going to court to enforce legal rights to access public records and public meetings is simply not an option for many citizens.

State agencies and local governments face a logjam of citizen complaints, costly litigation over the PRA and the OPMA, and uncertainty regarding potential liability that may require payment of attorneys' fees, costs, and daily penalties. All of this impacts ever-shrinking budgets, forcing government to cut other vital services to comply.

### BACKGROUND:

Many states provide an independent administrative review process to resolve complaints without litigation. These states use administrative boards to offer services including mediation, dispute resolution, non-binding legal interpretations, investigation of potential violations, issuing final appealable rulings, offerings of legislative reform, and training public officials about their responsibilities under the law.

The Attorney General's Office and the Auditor's Office created the Open Government Task Force to address growing concerns among governments and the public. The task force was comprised of state and local elected officials, citizens and representatives of organizations who have worked extensively on open government issues. The task force held two study sessions and made recommendations on the creation of an administrative board to rule on complaints of violations regarding the Public Records Act (PRA) and the Open Public Meetings Act (OPMA). The full report and recommendations of the task force are available online at <http://www.atg.wa.gov/OpenGovernment/TaskForce.aspx>.