

City of Longview Policies, Procedures and Guidelines

| Policy Name: Public Access of Electronic Data | | Effective Date: September 9, 2002 |
|---|------------------------------|--------------------------------------|
| Supercedes: Internal Administration Policy | Originating Office: Legal | Approved by: City Attorney |
| Concerning Electronic Data | | |

POLICY STATEMENT AND GUIDELINES:

Background:

"Government" is public business. Representative government is a system whereby the governed citizens elect representatives to conduct the business and affairs of government in their behalf. Government is not separate from the governed although it operates as a separate and independent entity. The citizens have the right to know what their government is doing and the activities of government must be open to public scrutiny.

Local government entities in Washington state are required to conduct their business at meetings open to the public. Private or secret meetings are prohibited, and votes cast by members of local legislative bodies may not be by secret ballot. Records, reports, and most all other data possessed by government agencies, are open to inspection and copying by the public. Notices of meetings, other than those that are regularly scheduled, must be given to the news reporting services in advance of such meetings in order that the reporters and the public will be able to attend. In short, government is to be conducted only behind glass walls.

Written information provided to government by citizens who deal with government, and information concerning employees of government, however, is not as open to public examination as is information developed by the government. A private person has the continuing right to privacy when dealing with his own business and his or her private life. When a private person (or corporation) is required by law to reveal his private business to government, he or she doesn't lose the right of privacy. The government, when it receives information concerning a private person, has a duty to protect the private nature of such information and not reveal it to the public. This is also true of persons who are employed by government - information possessed by government of a personal nature is exempt from public disclosure.

There are times when government must engage in property purchases and sales, or use privately-owned and copyrighted formulae in performing governmental business, and there are many times when employees of government will exchange thoughts and ideas in the development of governmental policies and programs. AH such matters, to the extent that public sharing of the information would place the government or a private party at a disadvantage, may be withheld from public examination and disclosure.

Supercedes: Internal Administration Policy Concerning Electronic Data

When information possessed by government is widely known, or when its "security" is not maintained, a claim that it is exempt from public examination and copying may be inappropriate due a "waiver" of the exemption.

What materials are subject to public examination and copying?

RCW 42.17.020 (27) provides that a "Public record":

"includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

RCW 42.17.020 (29) provides that 'Writing' means:

"handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording any form of communication or representation, including but not limited to, letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated."

RCW 42.17.020 (1) provides that the term "Agency":

"includes all state agencies and all local agencies. . . Local agency' includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency."

RCW 42.17.260 (1) makes records open to inspection:

"Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls with the specific exemptions of subsection (5) of this section, RCW 42.17.310, 42.17.315, or other statute which exempts or prohibits disclosure of specific information or records.

RCW 42.17.310, RCW 42.17.313, RCW 42.17.315, RCW 42.17.317, RCW 42.17.318, RCW 42.17.319. RCW 42.17.31901, RCW 42.17.31902 and RCW 10.97 all provide for exemptions to the disclosure requirements.

In short, unless exempt from public inspection and copying, everything in government relating to the conduct of government or the performance of governmental or proprietary functions, whether written, recorded, taped or electronically stored, or oral (and saved) is subject to public inspection and copying!

- As far as the city is interested, relevant exemptions from disclosure include the following:
- Personal information concerning employees
- Information required of taxpayers
- Real estate appraisals relative to pending transactions
- Valuable formulae, etc, if gain or loss would result from disclosure
- Preliminary drafts, notes, recommendations, and intra- agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific

Public Access of Electronic Data Effective Date: September 9, 2002 Originating Department:: Executive/Legal

record shall not be exempt when publicly cited by an agency in connection with agency action.

- The residential addresses and telephone numbers of city employees and volunteers
- The residential addresses and telephone numbers of utility customers
- Information possessed by government that does NOT relate to the conduct of governmental business or the performance of governmental or proprietary functions of government.

Public records containing any of the material described as being exempt from public inspection and copying, or not constituting public records, may take the form of written documents, tape or video recordings, photographs, hand written notes, etc., and they may be found in file cabinets, on desks, on diskettes, computer storage memories, or computer network storage facilities; this includes E-mail and "saved" voice mail.

Private conversations, not disclosed, are entitled to security; such privacy is protected by statute which makes it a crime to tap a phone, disclose a conversation, etc. Unless waived by general disclosure of a phone conversation (loud speaker on phone), the private character remains; however, when the speaker phone is turned on in a room full of people - there is no privacy.

Email is a communication device not unlike a telephone, except it is not interactive and it is not oral. It is a cross between a telephone and the use of the mails. E -mail and phone calls are both private unless they concern government business, and even then they may be exempt from disclosure if they are identified in RCW 42.17.310 etc.

Voice mail, if "saved," is subject to disclosure if it concerns government business. Consider the following:

E-mail and voice mail are not, per se, subject to public disclosure any more than a conversation on the street corner between two people; the fact that both persons who engage in the conversation are related to or work for government is irrelevant. E-mail that is not handled in a fairly confidential manner may, by its "public" nature, involve a waiver of privacy. Except when exempt from public disclosure under RCW 42.17.310 or otherwise specifically exempt for another reason, E-mail which is broadcast to several people who are not in the same administrative department of city government and who are not involved with the "deliberative process" of the particular E-mail message can be considered to be "advertised" and therefore a waiver of exemption from public disclosure may be likely. E-mail may be sent to several diverse people and still retain its exempt character if it is otherwise exempt (i.e., "preliminary drafts, notes, recommendations, and intra-city memorandums in which opinions are expressed or policies formulated ")

Interactive computer communication involving city council members is subject to public inspection and copying and possibly a violation of the open public meetings laws if 4 or more members of the city council are involved.

Limitations on entry into city network:

Supercedes: Internal Administration Policy Concerning Electronic Data

- Access to information contained on the city computer network memory shall be based on need to know and determination of city manager.
- Information stored on the hard drive of a computer may contain discloseable information, it may contain exempt information, it may contain NON-GOVERNMENTAL information, and it may also contain personal information of the person who is assigned the computer for his or her use (similar to the contents of a desk drawer). Therefore, access to or operation of city computers by persons who are not employees or contractors of the city should not be permitted due to the inability to segregate the information.
- General city employees may have access into such network-stored data in various departments and servers as are relevant to their jobs.
- Levels of access by executive city employees should be determined by employment status (city manager, department head, etc) and the need to know.
- City council members should have the same access to the city computer system that is available to the general public plus e-mail communication ability.
- Access to "Public Records" containing information that is exempt from public disclosure, whether located on a computer memory or otherwise, should not be permitted to City
 - Council members except with the express permission of the city manager. If granted, such permission should be coupled with an admonition that the material obtained by a council person might be exempt from public inspection and caution should be exercised in order to not violate rights of privacy of private citizens, jeopardize the city's bargaining position, or create a liability for the disclosure of exempt information and a violation of privacy.
- City council members, in the interests of efficiency, accuracy and completeness of understanding, have computer access to City Council meeting agendas and supporting documentation. This information is available on computers only to members of the City Council possessing computers and to city employees who are assigned computers for their use, however, such information is subject to public inspection and copying.

Public Disclosure of Electronic Data:

Email (electronic communication from one computer to another or to others):

When initiated by a city employee, not subject to disclosure if:

- of a private nature (nongovernmental)
- within the exemptions from public inspection

Otherwise, subject to public inspection at reasonable times, but not by computer operation by other than city employees or contractors. Preferably disclosure to be by printed document; if by diskette or visual examination of screen, care must be exercised to delete exempt data from disclosure.

When initiated by a City Council Member, not subject to disclosure if:

- of a private nature (nongovernmental)
- within the exemptions from public inspection

Otherwise, subject to public inspection at reasonable times, but not by computer operation by other than city employees or the elected official assigned to the computer. Preferably disclosure to be by printed document; if by diskette or visual examination of screen, care must be exercised to delete exempt data from disclosure.

Subject to disclosure in *all cases* where simultaneously directed to three or more other members of the City Council.

Other Data:

The same rules of disclosure apply to electronic data as to written or printed information. The public right to inspect and copy remains the same, only the method of inspection will change. The public should not be permitted to operate city computers for three reasons:

- The wrong button punched could erase stored data;
- There is no way to separate exempt data from non-exempt data and governmental from nongovernmental information except by the exercise of human judgment; and
- Allowing a private citizen (including a reporter) to sit down during business hours and browse on a computer is too disruptive to the city's business to be permitted.

Commentary

Even with the advent of computers, e-mail, voice mail, and interactive electronic communication, the public disclosure and open meetings laws have not changed. The only change consists of new communication devices and a new filing system.

It's sort of like going from closed-cabinet drawer filing to open shelf wall filing, and from stationary hard-wired telephones to portable and cellular telephones. Although there may be more data stored, no more or less of the data is now exempt from disclosure than before computerization, it's just located in a different place and there may be more of it; it's located on a computer's memory rather than in a file cabinet. The communications between and among public employees and elected officials is no more subject to public scrutiny today than it was a few years ago; if two or three people could hold a private conversation three years ago by telephone, mail or in person without disclosing their conversation to the public, they can still do so by electronic means.

REFERENCES:

Supercedes: Internal Administration Policy Concerning Electronic Data