

# THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

## **Situation Assessment of Public Records Requests to Local Governments**

Conducted for the Washington State Legislature  
by the William D. Ruckelshaus Center

December 13, 2013

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### DISCLAIMER

*The following report was prepared by the William D. Ruckelshaus Center, a joint effort of the University of Washington and Washington State University whose mission is to act as a neutral resource for collaborative problem solving in the State of Washington and Pacific Northwest. University leadership and the Center's Advisory Board support the preparation of this and other reports produced under the Center's auspices. However, the key themes contained in this report are intended to reflect the opinions of the interviewed parties, and the findings are those of the Center's assessment team. Those themes and findings do not represent the views of the universities or Advisory Board members.*

## **I. ASSESSMENT PROCESS**

### **A. Overview**

The William D. Ruckelshaus Center (Center) is a neutral resource for collaborative problem solving in the state of Washington and the Pacific Northwest, providing expertise to improve the quality and availability of voluntary collaborative approaches for policy development and multi-party dispute resolution. The Center is a joint effort of Washington's two research universities, the University of Washington (UW) and Washington State University (WSU). For more information, see attached overview (see Appendix A) or visit [www.ruckelshauscenter.wsu.edu](http://www.ruckelshauscenter.wsu.edu).

The 2013–15 Washington State Operating Budget (SB 5034) contains a proviso directing the Center to “collaborate with representatives of the public, the media, and local governments regarding public records requests made to local government” and “report to the appropriate committees of the Legislature.” From available information about the situation, issues, time frame and resources involved, the Center determined that an assessment of the situation would be more productive than attempting to launch a full-fledged mediation or negotiation. The Center confirmed this approach with university and legislative leaders, including the chairs and ranking minority members of the House Local Government, House Government Operations and Elections, and Senate Government Operations committees.

Thus, this report is derived from a situation assessment, an interview-based effort to better understand and explore relevant issues and interests of involved parties, along with the situation dynamics. A situation assessment is a typical first step in exploring a potential collaborative process that reveals useful information to inform next steps forward, whether that involves a collaborative process or not. For the purposes of this report, a collaborative process is defined as a solution-focused dialogue among all key interests, participating willingly, that is convened and facilitated by a neutral third party. If the parties to a collaborative process reach agreement, results are typically returned to traditional legislative, executive and/or judicial policy forums for consideration and possible action.

The Center reached out to a balanced cross-section of parties between August and November 2013, to capture a wide range of perspectives. Interview candidates were identified via the Center's background research, selection criteria, and chain referral sampling (in which all interviewees are asked to identify additional potential interviewees). The assessment was intended to identify the major issues and key parties involved, and document their interests and perspectives. It also explored the prospects for a collaborative process to address those issues.

### **B. Assessment Team**

Chris Page (Project and Development Lead) managed the situation assessment, with strategic oversight from Michael Kern (Director of the Ruckelshaus Center). Chris Page, Michael Kern and Erica Bates (Project Associate) designed the assessment process, developed the protocols and guide for the interviews (see Appendix B), and conducted and summarized the interviews.

### **C. Identification of Parties**

The Center developed a set of criteria to guide the selection of interested parties to interview. These criteria are:

- Broadly representative of the interests related to public records requests and local governments
- Fulfilling the categories outlined in the state budget proviso
- Geographically dispersed, including large and small jurisdictions
- Representative of the diverse perspectives and views on past and future efforts
- Organizational and/or subject matter expertise and leadership
- Fits within project time and resource constraints

The assessment team consulted the Bill Report for House Bill 1128 (“Regarding Local Agencies’ Responses to Public Records Requests”) from the 2013 Legislative Session, which listed persons testifying both in support of and opposed to that legislation. Additional background research and initial conversations with legislators produced a preliminary draft list of interested parties. A number of interested individuals and organizations contacted the Center, providing more potential interview subjects. The list was organized into several categories, in an effort to ensure that all interests were represented. These categories were:

- The Public/Requesters
- Media
- Local Government
- State Government
- Non-Governmental Organizations
- Legal
- Judicial
- Information Technology

The assessment team selected an initial round of interviews representing a broad and balanced range of interests. Based on suggestions from these interviewees, the Center conducted a second round of interviews, reaching the 35 parties included in Appendix C. The list is not meant to be exhaustive but rather to include a balance from each significant category of interested constituency. The goal is for all interested parties to feel that their perspective was included in the assessment, whether they themselves were interviewed or not.

### **D. Assessment Protocols and Institutional Review**

The assessment team developed a set of protocols to govern the interview process, based on university human subject research principles and best practices in the field of collaborative decision-making. The WSU Institutional Review Board reviewed the Center’s protocol and approved the study for human subject participation, determining that the study could be conducted according to the protocol without further review.

Interviewees were invited by email and/or phone to participate in an interview and received background information explaining the process, the purpose and how the interview would be used. The preliminary information emphasized that the interview would be confidential (to be consistent with university research protocols and encourage interviewees to be as frank as possible), in that the results would be aggregated in a

summary report and specific statements would not be attributed to individual interviewees. Interviewer notes of the conversation were not retained beyond the drafting of the report, per research protocol. Interviews were conducted by phone or in person. The Center reported preliminary findings at briefings for two House Legislative committees in November 2013.

## II. COMMONALITIES AND DIFFERENCES

The following will give a sense of the interviews, highlighting areas of agreement and of differences. Also included are recommendations that emerged for each highlighted area.

### A. COMMON GROUND

#### 1. The principles of the Public Records Act (PRA) are sound, and government accountability is vital

Every interviewee stated some version of the same sentiment—that citizens have the right to know what agencies are doing with public funds, and governments must be accountable to the people.

#### 2. The vast majority of public records requests—and requesters—are reasonable

Unanimously, respondents believe that most requests made under the PRA are well-intentioned and most people making the requests are willing to work with local governments to clarify or narrow the scope of broad or unclear requests, as appropriate. No one interviewed wants to limit the rights of these citizens.

#### 3. There is a lack of available data or clarity on abusive requests

There did not seem to be doubt among the parties that abusive records requests are possible, and that they do exist at some level. Interviewees agreed that a minority of requesters are significantly impacting certain small municipalities in the state. Although not all local governments are documenting the resources they allocate to records requests, those who report dealing with “nuisance requesters” believe they are spending significant portions of their operating budgets fulfilling those requests. Interviewees stated that much of the budget impact stems from paying legal counsel to examine large amounts of email and other records to pinpoint and redact, or recommend withholding, sensitive information deemed exempt from disclosure. They state that this can significantly impact operations for smaller jurisdictions. Some interviewees assert that “frivolous” requests, or those that are intentionally extensive, in order to inconvenience the local agency, are not a good use of taxpayer money. These entities want relief from what they perceive as abusive requests. However, because of a lack of documentation, it is unclear how widespread these problem requests are for local governments in Washington.

RECOMMENDATION by multiple respondents: gather data on how many requests are made, size of requests, how much time it takes to respond to them, how much they cost, and how many local governments can provide clear examples of requests from their jurisdiction that can be perceived as frivolous (not in the public interest).

#### **4. Local governments could benefit from improved records management and practices**

The PRA dates back to an era of typewriters and carbon copies. Now, with electronic communications and documentation, agencies are creating and managing exponentially greater numbers of records. Tracking and responding to requests can be time-consuming, complex and challenging, especially for smaller jurisdictions. Proactive steps by local governments can make a big difference in their ability to efficiently respond to requests.

RECOMMENDATION by multiple respondents: Local governments could implement relatively simple protocols to make records requests easier to handle. Examples might include ensuring the subject line of an email or name of a file labels its contents accurately; limiting the number of recipients of a message to those most necessary; deleting draft files; and/or archiving/streamlining/indexing emails and records regularly.

#### **5. Frustration with aspects of the legal system as the sole path to dispute resolution**

The majority of parties mentioned frustration that the court system is the only currently available venue for resolving disputes over records requests. The most frequently cited challenge was the cost. Local government representatives protested that the cost of fulfilling requests is borne completely by the agency, and cited the budget impacts of having attorneys pore through thousands of files. They explained that this is exacerbated by a lack of clarity around what exactly is exempt, with hundreds of exemptions not yet clarified by the courts. On the other hand, concern was raised that if a citizen requester believes that an agency has withheld responsive records, there is no recourse if (s)he cannot afford a lawyer to challenge the response.

Other challenges cited by respondents from having no alternative to the courts include the delays associated with the court system, and the “all-or-nothing” outcomes resulting from the legal process. While the State Attorney General’s ombudsman can provide advice on public records disputes, respondents stated that it would help to have an entity aside from the court system that issues actual rulings to settle them.

PRIORITY RECOMMENDATION by multiple respondents: establish an alternative to the court system to resolve records requests issues. This alternative should be independent, inexpensive and swift in its resolution of disputes. Some interviewees made specific suggestions for how to accomplish this, with New York State mentioned as a model. Most common was the idea of a third-party arbiter, mediator or administrative judge. NOTE: When asked, respondents maintained that the parties should retain the option to pursue legal action as a backup.

### **B. DIFFERENCES**

#### **1. Opinions on how well the Public Records Act is working**

Most respondents believe the PRA is working adequately, but has room for improvement. However, a handful described it as broken or needing an overhaul, while a few interviewees think it is working perfectly. Those who see opportunity to improve the law cited issues such as disorganization, redundancy and confusion around the number and wording of exemptions.

RECOMMENDATION by multiple respondents: Do not make major changes to the PRA, but streamline it to organize, simplify, clarify and/or reduce the number of exemptions. This might include guidance to agencies responding to PRA requests to limit erroneous or problematic disclosure or withholding of records.

## 2. Perceptions about how much of a burden public records requests are for local governments

This emerged as the area with the most pronounced difference of opinion. A segment of interviewees described responding to requests as part of doing business for agencies, a core service that should not be seen as interfering with other functions. These respondents believe that adopting best practices for records management and responding to requests will mitigate the problems that local governments experience. Others reported that local governments, especially smaller jurisdictions that see themselves as plagued by “problem requests” (also described by respondents as vendetta, frivolous or abusive requests), experience responding to requests as a significant impact on their staff time and financial resources.

## 3. Reasons why governments may not provide records in a timely manner

Multiple respondents stated that agencies are inclined to intentionally delay the provision of time-sensitive records. These parties believe that when time is limited—such that after a certain date the records being requested won’t help the requester respond to a deadline, e.g. leading up to an election or a comment deadline for a decision—government should have to either provide records, delay the decision or extend the comment period until after the records are supplied. Other reasons cited for governments failing to provide records swiftly include the slow pace of bureaucracy and the sheer volume of records. Several respondents believe that some requesters intentionally leverage that volume in an attempt to “shut down the government.” Local government representatives said that when they seek relief from these types of burdensome requests, they get portrayed in the media as being against open government; and that this contributes to what some called a lack of trust among the parties and to the perception that governments actively seek to conceal records.

## 4. Penalties and awards can be seen as not enough or too rewarding

Local government representatives described it as problematic that there is financial incentive for requesters to catch an agency in the wrong. They believe that the profit motive inspires some citizens to file intentionally complex requests, in the hope of generating errors and the accompanying awards. In contrast, open government advocates note that most penalties are assessed at the low end of the scale, and that a recent change to allow a penalty of zero dollars per day reduces the incentive for agencies to comply with records requests. Others said court decisions tend to discount attorney fees granted to successful litigants, while awarding 100% of attorney fees to governments that win court cases; this is seen as unfair and discouraging lawyers from assisting records requesters.

## 5. Prospects for a collaborative process to resolve issues

Some questioned whether records requesters would willingly participate in a collaborative process. They see requesters as well-served by the current situation, which has no limits to the number or frequency of requests one person can file, or how broad a request can be. Other respondents stated that governments have no incentive to negotiate, since they can refuse to provide records by claiming an exemption and put the burden of hiring a lawyer on the requesting citizen, who may not have money for legal counsel. However, despite this difference of opinion, *most respondents believe that all key interests do have incentive to seek common ground*—whether to address existing grievances, or to avoid legislation crafted and passed without their input—and that reasonably-informed parties or observers can see enough room for improvement to make it worth coming together to solve problems collaboratively.

### III. SUMMARY OF FINDINGS ON ISSUES SPECIFIED IN BUDGET PROVISO

#### A. Balancing open public records with the concerns of local governments related to interfering with the work of the local government

Some interviewees took issue with the perception that responding to records requests is interfering with (i.e. separate from) government work, stating that providing records *is* government work. Local government representatives stated that, with limited resources, they would prefer to focus on delivering other services, rather than hunting for records—especially in response to frivolous requests. A summary of respondents’ input on an ideal end goal would be to maintain the greatest level of public access to public documents, with the least impact to government resources and operations.

This assessment revealed a lack of widely-accepted information on actual levels of resources local governments are allocating to accommodate requests. Some interviewees question whether most government entities are spending significant resources on responding to requests. Other subjects perceive a widespread issue in governments having to allocate such sizable resources to records requests that it impacts other services. Based on this discrepancy, this assessment recommends data collection on this and other topics (this is addressed in detail under “Possible Next Steps” in Section V below).

Many interviewees believe that online systems combined with proactive records management (organizing and indexing records, categorizing them, centrally archiving them, etc.) can help agencies manage public request workloads. Others believe that there are now simply too many records, and too many exemptions and sensitivities with records, to make this realistic.

It is not clear that local governments are taking full advantage of existing policies and practices that can help them achieve a balance between open records and core services. An example of the policy opportunity might be that the PRA allows a jurisdiction to define an appropriate level of effort, so that responding to requests doesn’t create “excessive interference with other essential functions of the agency” (RCW 42.56.100). In this assessment, only a few jurisdictions—the cities of Kirkland, Gold Bar and Pasco—were named as having done so. Possible sources of practices that may help with balancing open public records with other government services include the State Attorney General’s *Model Rules on Public Disclosure* (WAC 44-14) or best practices identified in a 2007 report by the Washington State Auditor’s Office entitled *Open Public Records Practices at 30: Government Entities—Report #1000011*. In addition, several entities have developed training modules for local governments on the PRA and how to respond to records requests.

RECOMMENDATION synthesizing input from multiple respondents: assess how to ensure local governments have access to training and resources for records management, and how to efficiently implement good practices. Considerations include the need to identify funding and a trusted party to lead the training.

RECOMMENDATION from multiple respondents: local governments consider adopting policies that limit the interference of responding to “problem” records requests with other services, including responding to legitimate requests, by adopting policies describing how requests will be prioritized and limiting the number of hours spent responding to requests.

Respondents noted that training for local governments is not likely to significantly mitigate impacts from the “problem” requests that can sap agency resources; these are specifically addressed below under *Alternatives to the court system...* in the section entitled *Other issues brought forward by the participants*.

## **B. Resources necessary to accommodate requests**

Several respondents believe that local governments can spend fewer resources responding to requests if they take advantage of existing tools designed to assist in managing and fulfilling requests. Subjects mentioned the potential benefits of widespread training for public records officers and elected officials on PRA (and Open Public Meetings Act) requirements, along with records management tools and how to work with requesters cooperatively to avoid antagonistic relationships that can foster additional problem requests. Others believe that existing training opportunities and resources are implemented regularly, and that neither these trainings nor improved records management practices would significantly mitigate the impacts of problem requests on local government resources.

RECOMMENDATION synthesizing input from multiple respondents: assess, consolidate, and ensure provision of training opportunities for local governments regarding the PRA, records management best practices, and how to work smoothly with requesters.

As mentioned, other entities have developed resources and training modules in addition to the *Model Rules on Public Disclosure* by the A.G.'s Office, e.g. a website of resources by the Municipal Research Services Center ([www.mrsc.org/subjects/legal/prd/prd.aspx](http://www.mrsc.org/subjects/legal/prd/prd.aspx)) that includes a comprehensive guide to the PRA for cities, counties and special purpose districts; and training sessions by the Washington State Association of Counties ([www.countytraininginstitute.org/](http://www.countytraininginstitute.org/)).

Again, respondents noted that training for local governments is not likely to significantly mitigate impacts from problem requests. These are specifically addressed below under *Alternatives to the court system...* in the section entitled *Other issues brought forward by the participants*.

## **C. Potential harassment of government employees**

Most interview subjects believe the vast majority of records requests are legitimate and most requesters are reasonable, but that some requesters file requests targeting employees or local governments with the intent to cause difficulties. When asked to comment on this issue, many conflated harassment of government *employees* with harassment of government *agencies*. This matters, because remedies differ for the two types of situations. There was general agreement that either way, requests meant to harass violate the intent of the PRA and occupy agency resources better spent elsewhere.

RECOMMENDATION by multiple respondents to address any clear harassment of individual employees: raise awareness, via above-mentioned training, that statutes exist to address harassment of individuals (RCW 10.14), and encourage local governments to post anti-harassment statutes prominently.

RECOMMENDATION by multiple respondents to address harassment of agencies: establish a third-party entity outside of the formal court system to hear cases. This is discussed in more detail above in *Frustration with aspects of the legal system as the sole path to resolution* section of *Common ground* on page 5.

## **D. Potential safety concerns of people named in the records**

Presumably, this proviso language is intended to address the possibility that requesters might use public records to locate people, or sensitive information about people named in the records, in order to do them harm. Few interviewees saw such safety concerns as a significant issue and none provided an example. Many cited the number of exemptions as protection for citizens named in records. One respondent did see concerns, noting that these exemptions often were created after safety concerns of people cited in public records were raised.

### **E. Potentially assisting criminal activity**

There was widespread agreement among respondents that this is not a significant issue. Some isolated examples of potential scenarios were offered (such as identity theft or theft of financial information), but no interviewee cited specific, real-world examples or major problems that can be attributed to the PRA. Respondents said the Act is a less effective means of accessing records for identity theft, for example, than other existing methods, because it leaves a traceable connection to the requester.

### **F. Other issues brought forward by the participants**

The proviso language asked the Center to report on “other issues brought forward by the participants.” In addition to issues outlined in the proviso and cited in the *Commonalities and Differences* section above, a handful of other issues emerged and are described here, with recommendations to address them as appropriate.

#### **1. Increasing volume of records**

As described earlier, the PRA was written in a time when vastly fewer government records were generated. Interviewees pointed out a disconnect between the ease of requesting records and the difficulty of fulfilling them: it takes only a moment to go online and/or send an email to create a public records request, while responding to a request can take dozens or even hundreds of hours of staff time.

#### **2. Increasing frequency of requests**

Several subjects noted that ease of filing an actionable has contributing to an apparent upward trend in the number of citizens filing requests. Others asserted that online discussion forums among requesters cause requests to proliferate.

RECOMMENDATION by multiple respondents: post as many records as possible related to essential services on a well-organized agency website, so that little effort is required to make those records available to requesters, or no request is needed in order to access them.

RECOMMENDATION by multiple respondents: agencies should allocate a set percentage or number of staff hours to fulfilling requests, and budget for this.

#### **3. Proliferation of exemptions**

Local governments can bear a significant cost burden in the number of hours lawyers spend reviewing emails to ascertain if they contain information exempt from disclosure. The lack of clarity in some of the exemption language, coupled with the fact that many exemptions have yet to be interpreted by any court, can lead to disputes over whether information should be withheld or is subject to disclosure.

RECOMMENDATION by multiple respondents (as noted above in the *Opinions on how well the PRA is working* subsection of the *Differences* section): Streamline the PRA to organize, simplify, clarify and/or reduce the number of exemptions and other issues as assessed by PRA experts.

#### **4. Legislature not subject to PRA to the same level as other government entities**

Several respondents mentioned the discrepancy between the levels to which the State Legislature is subject to the PRA as compared to local governments. These respondents tend to believe strongly that the Legislature should be subject to public records requests in the same ways that other government entities are.

### **5. Abuse of the attorney-client privilege exemption**

Some respondents believe that, while most instances of attorney-client privilege may be legitimate, this exemption is being used to intentionally conceal records that should legitimately be public.

## **IV. ISSUES AND RECOMMENDATIONS OF INVOLVED PARTIES RELATED TO A POTENTIAL COLLABORATIVE PROCESS**

Most of the interviewees, representing the full spectrum of interests, were willing to give a collaborative process a chance. A sizable minority, however, expressed skepticism that one or more interests had incentive to participate. Those parties who voiced support for a collaborative process were asked what suggestions they had for designing such a process for the purpose of resolving issues with public records requests. What follows is a collation of these ideas, cautions and recommendations.

### **A. Preparation for a Process**

Many of those interviewed, representing all interests, declined to offer specific input on the prospects or structure for a possible collaborative process. Others recommended certain steps occur prior to convening a group of interested parties.

- Gather available data on records requests and their impacts on local government
- Define the mission and the goals for any collaborative group
- Determine the areas appropriate for negotiation
- Be ready with a set of draft ground rules for the group to review
- Secure political support for the process from legislative leaders

Interviewees expressed strong support for a neutral, knowledgeable and respected convener, mentioning that the convener ideally would have the power to implement recommendations of the collaborating parties and a commitment to do so if reasonable. Respondents mentioned that there have been efforts at collaboration in the past, but those efforts were not necessarily based on a commonly-accepted set of data or convened by a universally-accepted body.

### **B. Approach/Scope**

If the choice is made to proceed with a collaborative process, the goal should be to form a group that is balanced and representative of all interests, and where an impartial facilitator helps members strive for consensus on a mutually-acceptable solution. It should be a small enough group to be manageable, and have benchmarks to necessitate hard work and timely outcomes.

### **C. Participant Selection**

Balance and inclusiveness on the group is recommended, with the following cited by interviewees for characteristics of the participants:

- Willing to listen and learn
- Committed to good faith bargaining
- Passionate, knowledgeable and well-respected
- Collaborative nature
- Committed to problem solving, not just talking
- Able to represent constituents, agency, company or organization with authority
- Willing to serve as contact for others who are not at the table
- Time and resources to participate

#### D. Criteria for a Successful Process

Interviewees on all sides had ideas for a successful process. In general, they asked for a clear process with defined objectives, planned well in advance and accountable to state leaders.

- **Good communication and leadership:** Nearly all parties want to see an open, honest dialogue among agencies and stakeholders. The convening entity would need the respect of all sides; the neutral third party would need subject matter knowledge and strong facilitation skills.
- **Expertise on hand:** Many suggested that there should be policy, rulemaking and operational expertise available to the group as needed. This expertise could come from agency staff or knowledgeable involved parties who could serve as resources to the group.
- **Building trust and understanding:** Some respondents perceive a lack of trust between local governments and requesters and/or the public in general. A number of interviewees described governments as intentionally covering up activities. Without agency leadership establishing a culture of cooperation with requests, simple non-responsiveness (e.g. due to busy workload) can begin to contribute to an adversarial climate. This adversarial climate can easily escalate. For a collaborative process to succeed, this lack of trust is a challenge that would need to be addressed. However, most interviewees believe this can be mitigated by involving respectful leaders on all sides who are empowered to speak for their constituencies.
- **Careful process design:** With hundreds or thousands of government entities and citizen requesters, a collaborative process must be carefully structured with a large enough task force or other such body engaged at key points, but a small group of respected leaders handling the bulk of the negotiations.

#### V. POSSIBLE NEXT STEPS

An idea emerged for the near term to convene key interests in a “summit” on public records issues, to consider the findings of this assessment. This could be followed by work groups tasked with addressing certain issues or topics, whether laying the groundwork for an overall collaborative process or around specific adjustments and improvements that the parties agreed make sense.

Another next step voiced by several respondents that could assist in resolving issues is data collection, which could be conducted by a number of parties (e.g. state agencies, universities or private research firms). Similar considerations apply as with the potential provision of training recommended above, in that funding and a trusted source to do the work will need to be identified. Possible areas of study include:

- How other states have addressed the challenge of balancing open government with provision of other public services (multiple respondents cited New Mexico and New York as good examples).
- What different training resources are available for local governments and how widely they are being implemented.
- How larger local governments in Washington are tracking, responding to and documenting resources spent fulfilling requests (the City of Seattle was mentioned as being able to provide resources and assistance).
- How widespread harassing or nuisance requests actually are
- How big a financial burden these requests are
- What impact records requests might be having on provision of other public services
- How many local governments are aware of best practices for records management, responding to records requests
- What online tools might be available to assist in organizing, providing, presenting, and maintaining records

## VI. CONCLUSION

This report recommends establishing a common information base before pursuing additional legislative activity or efforts to develop a negotiated set of solutions for resolving issues associated with public records requests and local governments. It will be important to clarify beyond anecdotes and perceptions what percentage of local governments is being significantly impacted by records requests, and in what ways and magnitudes, to establish a mutually-accepted set of data. This fact-finding effort can shed further light on what resources and potential models have been developed by entities in Washington, as well as by other states facing these same issues, and how effectively those have been implemented.

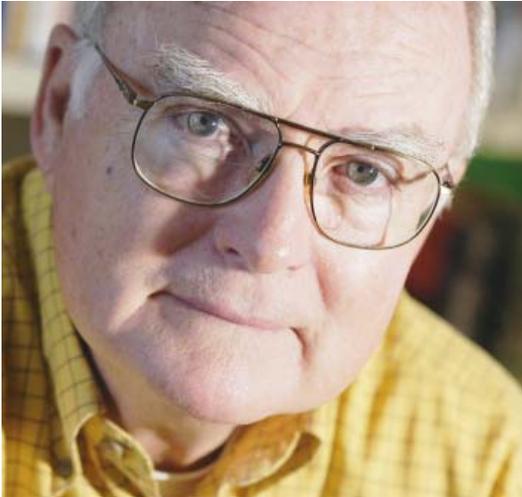
In the coming months, to take advantage of any momentum this study may generate, it will be important to keep the lines of communication open among key parties. This dialogue may be as simple as a half-day or full-day workshop to present and discuss the set of findings generated by this effort (including the range of perspectives on various issues, and the prospects for a more full-fledged collaborative process). While such a workshop would be open to all interested parties and could have robust attendance, more efficient and streamlined work efforts should follow. This could consist of smaller working groups tasked with endeavors such as overseeing data collection and developing recommendations based on the findings, exploring possible frameworks (funding, structure, leadership) for a non-court mechanism for resolving disputes, and advising on the design of a possible collaborative process to generate solutions acceptable to all.

It could also be effective to charter the data collection effort and, while that effort is underway, determine—with leaders of the various interested constituencies—a time frame, leadership and other aspects of a facilitated collaborative policy development effort. Whatever avenues are pursued, it will be important to have those directives be generated (or advised) by the interested parties themselves—or at least to have those directives endorsed by the parties before being finalized.

The William D. Ruckelshaus Center is pleased to submit this report to the Washington State Legislature, and hopes these results help legislators and other interested parties determine whether or not to proceed with a collaborative process—including potential issues, outcomes, concerns, challenges, participants, design and facilitation—as well as alternative ways to proceed, if a collaborative process is not pursued. For any questions, please contact the Center at [ruckelshauscenter@wsu.edu](mailto:ruckelshauscenter@wsu.edu), 509-335-2937 or 206-428-3021.

# THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON



*"Unfortunately, we have historically lacked an institutional theater in which science and policy-making can come together efficiently, and produce more light than heat."*

– WILLIAM D. RUCKELSHAUS

For more information on the William D. Ruckelshaus Center, please visit our web site at: <http://RuckelshausCenter.wsu.edu>

## about the center

### Mission & Vision

The mission of the William D. Ruckelshaus Center is to act as a neutral resource for collaborative problem solving in the State of Washington and Pacific Northwest. The Center provides expertise to improve the quality and availability of voluntary collaborative approaches for policy development and multi-party dispute resolution.

The Center is a joint effort of Washington's two research universities and was developed in response to requests from community leaders. Building on the unique strengths of the two institutions, the Center is dedicated to assisting public, private, tribal, non-profit and other community leaders in their efforts to build consensus and resolve conflicts around difficult public policy issues. The Center also advances the teaching and research missions of the two universities by bringing real-world policy issues to the academic setting.

The Center envisions a future in which governmental leaders, policy makers, stakeholders and citizens in the state of Washington and the Pacific Northwest routinely employ the tools of collaborative decision making to design, conduct and implement successful public policy processes.

### Services

The Center can:

- Provide a neutral and safe forum for parties to define and resolve issues
- Conduct a situation assessment to determine the most productive means of addressing the issues
- Provide facilitation, mediation, dispute resolution, project management, strategic planning and other services that help parties reach consensus and resolve issues
- Serve as an information portal for resources and research to be used by the parties
- Perform applied research and fact finding
- Provide knowledge, training, and infrastructure development to improve the collaborative problem-solving capacity of the parties and institutions
- Host policy discussions

*"Compliments to the Ruckelshaus Center for helping us all to forge a path forward. We certainly wouldn't have gotten to this point without you."*

**–KAREN VALENZUELA**  
*Governor's Chehalis Work Group*



## Projects

The Center offers assistance, training, and research to advance some of the most challenging issues in the state, including natural resources policy, socio-economic issues, and regulatory reform. The Center provides expertise in the process of defining the issues, enhancing the ability of stakeholders to address the substance of the issues and come to agreement.

Prior to conducting a project, the Center follows a deliberate approach of first seeking confidence of the affected and interested parties through consultation with key stakeholders. The Center's role is to improve understanding among parties and enhance the possibilities for progress on issues, rather than dictate an answer from the universities. The results belong to the parties themselves; the Center provides an independent forum and neutral resources that create the possibility for these results to take shape.

## Governance and Funding

The Center is hosted at the University of Washington by the Daniel J. Evans School of Public Affairs, and at Washington State University by WSU Extension. The Center has offices in Seattle, Olympia and Pullman. It is overseen by an advisory board chaired by William Ruckelshaus and composed of prominent local and state leaders representing a broad range of constituencies and geographic locations in the region. Funding for the Center is sought from a mix of sources, including foundations, corporations, individuals, agencies, other state and federal sources, and fees for services when appropriate.

*WSU Extension and UW Evans School of Public Affairs programs and employment are available to all without discrimination.*

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12/2/13

## The William D. Ruckelshaus Center Advisory Board

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**Daniel Newhouse** - Washington State Department of  
Agriculture

**Jesse Palacios** - Former Yakima County Commissioner

**Linda Evans Parlette** - Washington State Senate+

**V. Lane Rawlins** - University of North Texas

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**Kellye Y. Testy** - UW School of Law+

**Jim Waldo** - Gordon Thomas Honeywell, LLP

**Doug Walker** - The Wilderness Society\*\*

**Paul Ward** - Yakama Nation\*

**Terry Williams** - The Tulalip Tribes

**Michael Young** - University of Washington+

**Cindy Zehnder** - Gordon Thomas Honeywell, LLP

**Hans Zeiger** - Washington State House of Representatives+

# THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

## Public Records Requests Situation Assessment

### Introduction

The William D. Ruckelshaus Center (Center) is a neutral resource for collaborative problem solving in the state of Washington and the Pacific Northwest, providing expertise to improve the quality and availability of voluntary collaborative approaches for policy development and multi-party dispute resolution. The Center is a joint effort of Washington's two research universities, the University of Washington (UW) and Washington State University (WSU). For more information, see attached one-page overview or visit [www.ruckelshauscenter.wsu.edu](http://www.ruckelshauscenter.wsu.edu).

The 2013–15 Washington State Operating Budget (SB 5034) contains a proviso directing the Center to “collaborate with representatives of the public, the media, and local governments regarding public records requests made to local government,” and “report to the appropriate committees of the Legislature” (House Local Government and Senate Governmental Operations). The report is to include recommendations related to balancing the need for open public records with concerns of local governments. The final report is due December 15, 2013; it is likely the Center will report draft findings to one or more committees in November 2013. The report will be available to all interested parties.

The Center's report will be derived from a situation assessment, which is an interview-based process undertaken to better understand and explore relevant issues and interests of involved parties and situation dynamics. The Center will reach out to a balanced cross-section of parties over the next several months to capture a wide range of perspectives. The assessment will articulate the major issues and key parties involved, and document their interests and perspectives. It will also analyze and explore the prospects for a collaborative process to address those issues. In this context, a collaborative process means a solution-focused dialogue among all the key interests, participating willingly, that is convened and facilitated by a neutral third party. If the parties to a collaborative process reach agreement, it is typical that the results are returned to traditional legislative, executive and/or judicial policy forums for consideration and possible action.

You have been identified, via the Center's selection criteria and/or referral, as an interview candidate. We hope you will agree to participate. Participation is completely voluntary. You can choose at any time during the interview to decline to answer a question or end the interview. To encourage you to be as frank as possible, and to be consistent with university research protocols, responses from these interviews will not be attributed by name or organization. We will share a list of who was interviewed and key themes that emerged, but names will not be associated with any of the statements.

*It is important to note that—as a program of the State's public university system—the Center is subject to the Washington State Public Records Act, and therefore (though not a local government) could be indirectly affected by the outcome of this effort. Please let us know if you have any questions about this or any other aspect of this assessment.*

The Center's research and study design is being conducted according to human subject research procedures and protocols that have been reviewed and deemed exempt by the WSU Office of Research Assessment. If you have

any questions about your rights as participants you can contact the Principal Investigator at 206-428-3021 or ruckelshauscenter@wsu.edu.

Below are the questions for the interview, which is expected to take 45 minutes to one hour. You do not need to prepare responses to these questions ahead of time. They are provided to provide the opportunity for advance reflection, if you wish. Prior to proceeding with the interview questions, we will confirm that you are willing to continue.

### Questions

1. Please tell us about your background, affiliation, involvement and interests with respect to public records requests made to local governments.
2. What would you describe as the major issues associated with this topic?
3. Do you feel that the current Public Records Act is working well? If so, what do you think are its most important and/or effective features? If not, what most needs improvement?
4. Do you have comments on any or all of the issues highlighted in the proviso:
  - a. Resources necessary to accommodate requests;
  - b. Potential harassment of government employees;
  - c. Potential safety concerns of people named in the records;
  - d. Potentially assisting criminal activity?
5. Do you think a collaborative process (as defined above) is appropriate to address these issues?
6. If so, what would you hope could be accomplished if a collaborative process were conducted on issues related to public records requests—what would the outcome look like? What concerns or challenges would need to be addressed? How could a process be designed to address those challenges? How would you know the process was successful?
7. If you do not think a collaborative process is appropriate, or if you think the issue is not “ripe” for such a process at this time, what (if anything) do you think should happen next?
8. If a collaborative process were conducted, do you think it would be important to be assisted by a neutral third party? If so, what characteristics would be important in that third party?
9. Would the full range of needed interests participate? Would they have incentive to negotiate and seek common ground? Would you/your constituency participate if asked?
10. Who do you think it is important that we interview as part of this assessment? Why is it important to speak to him/her?
11. What should we have asked that we did not?
12. Do you have any questions for us?

### APPENDIX C. Interviewee Names and Affiliations

	Name	Category	Affiliation
1.	Sackett, Scott	Information Technology	Washington State Archives
2.	Sanders, Richard	Judicial	Former Washington State Supreme Court
3.	Schwab, Michael	Judicial	Ex-Yakima Co. Superior Court Judge, Chair of Public Records Exemptions Accountability (Sunshine) Committee
4.	Earl-Hubbard, Michele	Legal	Allied Law Group
5.	Taylor, Briahna	Local Government/Legal	Lobbyist for several local gov's (Gordon, Thomas, Honeywell)
6.	Beavers, Joe	Local Government	City of Gold Bar
7.	Bock, Candice	Local Government	Association of Washington Cities
8.	Deeder, John	Local Government	Evergreen Public Schools
9.	Francik, Rebecca	Local Government	City of Pasco
10.	Lindekugel, Ben	Local Government	Association of Washington Public Hospital Districts
11.	McEachran, Dave	Local Government	Whatcom County (Prosecuting Attorney)
12.	McMahan, James	Local Government	Washington Association of County Officials
13.	Mielke, Todd	Local Government	Spokane County (Commissioner)
14.	Ramerman, Ramsey	Local Government/Legal	City of Everett (Attorney), WA Assn of Public Records Officers
15.	Steele, Dan	Local Government	Washington Association of School Administrators
16.	Riley, Kate	Media	The Seattle Times
17.	Thompson, Rowland	Media	Allied Daily Newspapers
18.	Will, Bill	Media	Washington Newspaper Publishers Association
19.	Edain, Marianne	Non-Governmental Organization (records requester)	Whidbey Environmental Action Network
20.	Erickson, Steve	Non-Governmental Organization (records requester)	Whidbey Environmental Action Network
21.	Meinig, Bob	Non-Governmental Organization (local gov't services)	Municipal Research and Services Center of Washington
22.	Mercier, Jason	Non-Governmental Organization (open gov't advocacy)	Washington Policy Center
23.	Nixon, Toby	Non-Governmental Organization (open gov't advocacy)	Washington Coalition for Open Government
24.	Blanchard, Tim	Public	Citizen requester
25.	Clark, Ed	Public	Citizen requester
26.	Clifford, Chris	Public	Citizen requester
27.	Ference, Cindy	Public	Citizen requester
28.	Yousoufian, Armen	Public	Citizen requester
29.	Hasegawa, Bob	State Government	Washington State Senate
30.	Hunt, Sam	State Government	Washington State House of Representatives
31.	Pollet, Gerry	State Government	Washington State House of Representatives
32.	Roach, Pam	State Government	Washington State Senate
33.	Sonntag, Brian	State Government	Former Washington State Auditor
34.	Takko, Dean	State Government	Washington State House of Representatives
35.	Taylor, David	State Government	Washington State House of Representatives