

LEGISLATIVE BULLETIN

The PRA Dilemma – Transparency vs. Abuse

The Municipal Research Services Center keeps track of precedent-setting Public Records Act (PRA) lawsuits – a [blog post](#) lists them all going back as far as 1996. In just the last ten years, there have been 80 cases MRSC deemed noteworthy, most of which involved a city or county. But, these cases are just the tip of the iceberg. In fact, one prolific requestor alone has filed 73 lawsuits in the last nine years.

Countless bills are introduced in each legislative session. Reams of paper and gallons of ink have lost their lives to checklists, instruction manuals, guides, interpretations, explanations, and desk books, and metaphorically, to blog posts, online FAQs, and the like. In-person trainings and webinars abound. Thousands of hours are spent each year studying the PRA and responding to public records requests. The media has made it their priority to push toward more and more transparency – creating situations where it's too easy to do something wrong even when you are trying to do everything right.



As the media has widely [reported](#), they won their lawsuit against the state legislature, with the state Supreme Court recently holding that the PRA does, in fact, apply to individual legislators, as state agencies, and to the House and Senate under a narrower definition.

Given the unrelenting attention to the PRA, it's no surprise the legislature is reacting strongly to the Court's ruling. Legislators have dropped a bill to apply the PRA to the judicial branch – [SB 6438](#) has a hearing in State Government, Tribal Relations & Elections on Friday. (It's worth noting that, several years ago, the judicial branch took matters into their own hands and negotiated their version of the act with the media and open government groups.)

The House received [43 requests](#) in December (compared to 9 last December) and 40 through the third week of January. The Senate has received at least 35 since the ruling, in comparison to the 20 they received all of last year. Most state agencies and local governments would say, "Welcome to our world."

Nonetheless, we may have, at least in the short term, traded transparency for accessibility. Many legislators now refuse to accept paper documents such as letters or white papers. Some refuse to take the handwritten notes that have always been used by lobbyists and the general public to ask a legislator to meet them outside the doors of the House and Senate floors. Some legislators won't even look at a proffered document, let alone accept it. With time, one can only hope for a reasonable return to normalcy as the legislature becomes accustomed to the rules of the PRA.

Likely, the legislature will be [reluctant to pass](#) any meaningful PRA legislation in this session. Regardless, the Association of Washington Cities and WSAC teamed up this year to request legislation – [SB 6543](#) – that would add a commonsense "safe harbor" provision to the PRA. The bill enhances transparency by addressing the real-world quandary of what to do if a record is found after the request has been closed. Do you turn over the record and set your office up for penalties? Do you slip that record in a drawer and hope no one ever finds out? The answer should never be the latter, and the bill would allow for a grace period of 15 days, during which time if additional responsive records are discovered, they can be turned over without fear of penalty.

Once the legislature has a couple of years of over-the-top requests and lawsuits under their belts, we hope they will finally be willing to sit down and figure out how to address serial requestors and their money-making litigation that doesn't further the PRA's transparency goals. In the meantime, enacting SB 6543 would be a good start.