

## Jill Boltz

---

**From:** Sorum, Doris <DSORUM@ci.tacoma.wa.us>  
**Sent:** Wednesday, March 25, 2020 9:30 AM  
**To:** Jill Boltz  
**Subject:** Early guidance for the AGO's office on the Governor's Proclamation - OPMA and PRA  
**Importance:** High

### Early guidance from the AGO

March 24, 2020

Hello. Attached here is a link to [Governor's Proclamation 20-28 \(Open Public Meetings act and Public Records Act\)](#) (issued March 24, 2020). Please feel free to distribute the proclamation, plus this email if you choose, to client public agencies and to public agency attorneys. As you are aware, the Governor has been issuing proclamations to help stem the spread of the coronavirus disease 2019 (COVID-19) outbreak and to promote public health and safety. Proclamation 20-28 is one of those.

- **Summary of Proclamation 20-28.** This proclamation temporarily prohibits in-person contacts with the public that are required by the Open Public Meetings Act (OPMA) (RCW 42.30) and the Public Records Act (PRA) (RCW 42.56), suspending some statutory language that would require such contacts. This proclamation also temporarily suspends the PRA's requirements for agencies to respond to PRA requests for public records within five business days from receipt, and to maintain business hours for public inspection and copying of records for a minimum of 30 hours per week. It is effective from March 24, 2020 until midnight, April 23, 2020, unless extended beyond that date. Please read the proclamation for details and to see the list of citations to the specific OPMA and PRA statutes or portions of statutes that are temporarily suspended.
- **Suggestions to Implement Proclamation 20-28.** In this general overview below, we also suggest several non-binding options for agencies to implement this proclamation. More than one option may be applicable at a particular agency or in a given circumstance, or there may be other options. In addition, as events unfold, there may be future legal developments that may affect some options. We recognize events are developing quickly, particularly as they involve the impacts of actions taken to limit virus transmissions.
- **General Guidance.** This general guidance is as of the above date. This is not legal advice or a legal opinion, and concerns only some parts of the OPMA and PRA. If agencies need legal advice or a legal opinion on these matters, want guidance on other laws or other issues, want to consider other options, or there are other legal developments in the future with respect to COVID-19 disease outbreak, they should consult with their attorneys. State agencies should consult with their assigned Assistant Attorney General.

---

### General Overview and Some Suggestions With Respect to Proclamation 20-28

- **OPMA:** Agencies subject to the OPMA that wish to conduct regular and special meetings during the COVID-19 disease outbreak must have those meetings open to the public.
  - However, the proclamation temporarily **suspends** OPMA language requiring agencies to provide a **physical location** for the public to attend meetings **in-person**.

Instead, while the public must continue to be permitted to attend the meetings, they can **attend only remotely (not in-person)**.

- The proclamation temporarily suspends **other OPMA provisions** requiring **in-person** activities or otherwise requiring a **physical location** or meeting activities related to a physical location/site or meeting room.
- The proclamation temporarily suspends the ability of an agency to take “action” on matters at a meeting **unless** they are: (1) matters **necessary and routine**, or (2) **necessary to respond to the outbreak and current public health emergency**.

*Only Remote Attendance by Public.* To implement the proclamation, agencies will need to arrange for remote attendance by the public at meetings subject to the OPMA, if they have not already done so. Those include a telephone conference call-in set up at minimum, and may include other electronic means of remote access such as electronic, web-based internet, or other means. The means need to provide for persons attending the meeting to hear each other at the same time. Some examples of resources are listed in the proclamation. Agencies will need to inform the public that temporarily, their ability to “attend” those meetings is remote only, and that in-person attendance is not permitted at this time.

Under the proclamation, it will not be a violation of the OPMA to require the public to use a conference call-in or remote access login number or to comply with other similar conditions of remote attendance during the time the proclamation is in effect. We suggest that call-in or login information should be placed on meeting agendas and on the agencies’ websites. We suggest that an agency can also consider distributing that information via other means, such as media releases, social media, or other similar mechanisms, especially if the agency does not have a website.

*Other OPMA References to Physical Locations for Meetings.* To implement the proclamation, agencies should review its details. For example, other temporarily suspended OPMA statutes include those concerning required posting of meeting notices or adjournments at an agency office physical location; the references to a meeting “room” and a “site”; and, for state agencies, requiring filing a notice with the Code Reviser that the agency has changed a regular meeting physical location.

*Action.* To implement the proclamation, agencies will need to confine their meeting topics temporarily to only those matters that are: (1) necessary and routine, or (2) necessary to respond to the outbreak and current public health emergency. Other matters will need to wait.

*Revised OPMA Guidance Forthcoming.* The Attorney General’s Office issued [OPMA general guidance](#) on March 6, 2020, given the status of the COVID-19 disease outbreak at that time. The Office will update that March 6 guidance soon with respect to this new proclamation.

Meanwhile, importantly, please note that the March 6 guidance addressed the need under normal circumstances for an agency to have a speakerphone at an agency office or other physical meeting location if any or all of a governing body is attending remotely, so the public can come to the location in person and hear the discussion. *However, that speakerphone arrangement at an agency office or other physical meeting location is not required during the time the proclamation is in effect because attendance by the public must be remote only, and not at a physical office or location.*

- **PRA: Agencies must still respond to PRA requests during the COVID-19 disease outbreak.**

- However, the proclamation temporarily **suspends PRA** language requiring agencies to provide an ability for the **public** to conduct PRA business **at an agency office, in-person**, such as in-person inspection of records or in-person submission of PRA requests.

- The proclamation also temporarily **suspends** the PRA requirement that agency offices must be **open for public inspection and copying of public records** for a **minimum of 30 hours per week**. Agencies must still have their hours posted on their websites.
- The proclamation also temporarily **suspends** the PRA requirement that agencies respond to PRA requests within **five business days**.

*No In-Person PRA Business.* To implement the proclamation, agencies should not provide or arrange for in-person PRA business contacts with the public at agency offices (facilities). Examples of *in-person* PRA business contacts that are temporarily on hold at this time are activities permitting a requestor to walk into an agency office or facility during customary business hours to: submit a PRA request, physically inspect records or agency PRA procedures, copy records, and do other walk-in activities during business hours such as pay for and/or pick up copies of records. Agencies should instead use alternative communication methods for PRA business with requestors such as phone, U.S. mail, email, an online portal, or other communication methods that do not require in-person contacts with requestors.

*If agencies have scheduled in-person inspections of records at agency offices during the time the proclamation is in effect, they should immediately contact the requestor and cancel those appointments.* We suggest agencies should explain the reason. We suggest agencies can then consider options. For example:

- As one option, agencies can reschedule the inspection appointment to a later date.
- As another option, an agency could inquire if, rather than inspection, the requestor will instead accept copies. If the requestor will accept copies, the agency would explain when and how the records or an installment will be provided, and copy fees.
- As another option, an agency could also inquire if the requestor wants to withdraw his/her request to inspect records and re-submit it later when agency business returns to normal.
- As another option, if there are commonly-requested records submitted by many requestors during this event, an agency could also post them on its website and direct requestors to the website so they can inspect records remotely.
- There may be other options, too.

We also suggest agencies post the new information --- concerning no in-person PRA business at this time and the reason --- on their agency websites. They may wish to consider distributing that same information through other means, such as media releases or stakeholder notices, social media, or other mechanisms. We suggest that in those communications they also describe the alternative communication mechanisms and other such arrangements for PRA business. Agencies will also want to distribute that information to their staff who process PRA requests. We also suggest that if an agency has not already done so, it should post on its website the methods for the public to remotely contact the Public Records Officer, such as providing the agency's PRA email address.

*Five Business Days.* As described, agencies must still respond to PRA requests. Under normal circumstances, agencies are required to send a response within five business days of receiving the request (excluding day of receipt). However, these are not normal circumstances because of the COVID-19 disease outbreak. The proclamation temporarily suspends the requirement to respond in five days. The proclamation does not prohibit an agency from responding within five days or as soon thereafter as is feasible under the circumstances; and if it is possible to do so, it may be helpful to the agency and the requester in preventing a later backlog of work.

While the proclamation is in effect, an agency may also wish to post on its website that it may not be able to provide requestors an initial response within five business days, and that PRA response time period is suspended pursuant to the proclamation.

Finally, again, agencies should consult with their attorneys if they need legal advice. Other resources for local governments can include the Municipal Research and Services Center (MRSC), and/or local government organizations. For information on other or future proclamations, and their effective dates, see the Governor's Office website here: <https://www.governor.wa.gov/office-governor/official-actions/proclamations>.

Nancy Krier  
Assistant Attorney General for Open Government  
Office of the Attorney General  
(360) 586-7842  
[Nancy.krier@atg.wa.gov](mailto:Nancy.krier@atg.wa.gov)  
March 24, 2020