

Study of the Taxation of Electronically Delivered Products Legal Requirements of Members and Committee

Open Public Meetings Act (OMPA) of 1971 Chapter 42.30 RCW

- All meetings of the governing body of a public agency, with limited exceptions, must be open to the public.
- Meeting dates, times, and locations must be advertised in advance.
- Violations of the OMPA may result in personal liability and a civil penalty.
- The term "meeting" means meetings at which action is taken. RCW 42.30.020
- The term "action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. RCW 42.30.020.
- **Caution:** Resist the urge to "reply all" when responding to committee group e-mails. Having an e-mail discussion with two other committee members results in a "meeting" that does not comply with the OMPA.
- For more information visit the Office of the Attorney General's website at:
<http://www.atg.wa.gov/OpenGovernment/InternetManual.aspx>

Public Records Act Chapter 42.56 RCW

- The Public Records Act requires the Department of Revenue to make available for public inspection and copying all public records. The Act and chapter 82.32 provide certain exemptions and limitations that are generally designed to protect privacy rights.
- 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.
- The term "writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation.
- **Caution:** The e-mails you send and receive concerning committee business are writings that may fall under the Public Records Act. If a public records request is made concerning information included in e-mails to and from committee members, the Department must give the e-mails to the requestor. The five o'clock news rule is a good rule to remember . . . word every e-mail as if it will be read on the five o'clock news.
- For more information visit the Office of the Attorney General's website at:
<http://www.atg.wa.gov/Records.aspx>.

Disclosure of return or tax information RCW 82.32.330

- With few exceptions, the Department, its employees, and other persons are prohibited from disclosing tax returns and tax information.
- The term "tax information" means:
 - A taxpayer's identity;
 - The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability

- deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source;
- Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;
 - A part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination; and
 - Other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof.
- RCW 82.32.330 allows the Department to disclose:
 - A taxpayer's name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business, provided that the information is not associated with other taxpayer information;
 - Tax return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;
 - Statistical information provided that specific tax return or tax information cannot be identified.

Retention of Public Records

- The Department falls under the State Government Agency General Records Retention Schedule.
- Some of the writings you generate may be official public records and subject to records retention schedules.
- **Suggestion:** Keep all writing (e-mail and other forms of writings) in one file on your computer. This will allow you to copy or forward the file to the Department when the committee has completed its work. This is one way to ensure that you have complied with a public records request, if there should be one. In other words, all records may be retained in one area for a quick review.