

In the spotlight....elected officials

By Debbi Sellers

With the New Year, agencies are welcoming in newly elected councilmembers. For many, this is their first experience serving on a governing body. Both new and existing councilmembers may not be aware of how their actions may create liability for themselves as well as their city or town, especially those activities surrounding electronic communications. RCW 42.56, the Public Records Act (PRA), declares that local government records are exclusively public property and are open to public access subject to limited exemptions. A public record is any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function that is prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic. Agencies are required to make their public records available promptly on request. As a result, councilmembers who use their private email account or personal electronic devices to conduct agency business could be required to temporarily relinquish these devices to be searched, as a result of a public records request. For this reason, councilmembers should use city/town issued devices and email accounts to conduct agency business. Because most communications are subject to disclosure, Councilmembers should be mindful that what they put in writing could become subject to public scrutiny. In addition, they should not use personal social media sites such as Facebook and Twitter to voice opinions regarding ongoing issues within their agency.

Councilmembers also need to be cautioned about potential violations of the Open Public Meetings Act (OPMA). While the OPMA applies to council meetings, councilmembers might meet socially, outside of their regularly scheduled meetings. Social gatherings are excluded under the OPMA as long as the attendees do not discuss the business of the governing body or take any official action. However, if several councilmembers meet for dinner prior to a council meeting and there are enough councilmembers at the dinner to form a quorum, the dinner has now transformed into an open public meeting. Council may argue that no business was discussed during the dinner and therefore the OPMA was not violated. However, perception is not always reality.

Additionally, if a quorum of the city council exchanges emails in which agency business is discussed, it is considered a violation of the OPMA. However, if one councilmember emails the others to share information, then there is likely no OPMA violation. In other words, a passive receipt of email does not constitute a public meeting. It is the exchange of emails or discussion amongst the councilmembers that triggers the likelihood of an OPMA violation. Committee meetings are also excluded under the OPMA if the committee members have no actual or implied decision-making authority and as long as there is not a quorum of councilmembers in attendance.

The Open Government Training Act (RCW 42.56.150, RCW 42.56.152 and RCW 42.30.205) requires many public officials and all agency records officers to receive training. WCIA offers trainings that can assist councilmembers in understanding their duties and responsibilities relating to the OPMA and the (PRA). Online training through LocalGovU, on the WCIA website, is available and consists of three separate modules covering the PRA, OPMA and Records Retention. Each module contains a single training video and exam. If your agency has any questions regarding this or any other training offered by WCIA, please contact the Member Services Department.

More information on City Councils can also be found in ADM.02 of the Liability Resource Manual. The Liability Resource Manual is available through the Member Resources page on the WCIA website: <http://www.wciapool.org/member-resources>