

**To: Sen. Nelson and Rep. Sullivan**  
**From: Dave Zeeck**

Thank you for the opportunity to review the draft plan for a PRA task force. I shared the draft, confidentially, with open-records experts in the media and the open-government community in Washington.

Here are some thoughts we had about the draft plan as it now stands:

1. At the bottom of page 2 where it says, "a specific definition of open records applies to the Legislature," we disagree. The AG also disagrees, based on his amicus brief from January, which stated that the PRA has "explicitly covered state legislative offices along with all other state offices" since 1995. That particular sentence about a particular definition covering the legislature is, in my view, part of a losing argument before the Superior Court in Thurston County. I would just strike that sentence, because it is unnecessary. The remainder of that section, where it talks about the Superior Court's ruling in the dispute, is accurate and non argumentative. I don't see any point in raising this issue and creating a disagreement where none need exist.
2. It is unclear to me who will choose the "experts" for the various hearings/meetings. That is a critical role, and I think we would like to participate in deciding who advises the task force.
3. For the July meeting there is a reference to "legislative privilege," when the Superior Court I believe has ruled their essentially is none as it applies to members of the Legislature. I think that wording is argumentative and, for the moment, inaccurate.
4. Regarding the December report, who actually drafts a report on the matters upon which we find consensus, if any? Is that staff of the Ruckelshaus Center, or is that legislative committee members and/or their counsel?
5. I think it may be easier to get to "findings" than "recommendations." Recommendations in some ways are pointless, when the Supreme Court decides what the law is. That court may be the best place for resolution of many of these issues.
6. There is repeated mention in the draft of the need for privacy in constituent communications. Who the "experts" are in this discussion is critical. This doesn't seem to be an issue in local government or the executive branch agencies; why should it be for state legislator communications with constituents? Selective experts might support such a need for confidentiality; others (and widespread experience) might negate that assertion.

7. We're curious as to why there is no mention of an enforcement mechanism if the legislature violates the PRA. We find it unacceptable that if the legislature fails to disclose records that the only recourse is to complain to a committee made up of legislators and staff, with no penalties, no attorney fees or costs, no appeal to any court or objective independent review of any kind. Any law needs to have teeth or it will be ignored with impunity.
8. Likewise there needs to be broad "expert" discussion of any assertion of an exemption of communication between or among legislators. It doesn't exist in the law, which plainly says legislators can't be sued or otherwise punished for things they say in debate. There is no exemption for such communication among local government officials and they seem to function; we see no reason for such an exemption for the legislature.
9. There is some question about whether the Legislature needs its own section of the PRA. If there are reasonable enforcement mechanisms in a separate part of the act that covers the legislature, that would make a separate section more acceptable.
10. The draft seems concerned about having one representative from the print press, one from broadcast and one from an internet outlet. That seems nonsensical in an age when the legacy newspaper newsrooms in the state are presently the largest, most expert and most prolific digital media in the state. Those print/digital newsrooms also possess the most expertise in using the public records Act. You could find three good journalists (print/digital and broadcast) who know the act and could represent the interest of the media without dividing it by antiquated and outdated categories such as "broadcast" and "print." The most important thing is that the representatives of the media be people who know, understand and use the public records act in their work. It might also be useful to name alternates, or to allow for the participation of alternates, should principals be unable to make all of the meetings.
11. We have some concerns about the makeup of the task force. Will the public members be truly representative, or will they be cherry picked to support the perspective of legislative leadership on this issue?
12. Toby Nixon is the obvious choice from the open-government community. Toby has seen this issue from multiple perspectives, each of which he brings to his views on the matter.