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STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

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Item #3d: Email Communications and the Open Public Meetings Act

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**Approved by the
Director:**

Proposed Action: Briefing

Summary

All regular and special meetings of the Board are open public meetings as defined in Chapter 42.30 RCW. When more than a quorum of members is gathered to discuss business of the Board, in person OR electronically, their discussions or actions must be consistent with the open public meeting laws, including notice to the public when required. An email exchange among members of a governing body in which an "action" takes place (any discussion, deliberation, or evaluation that may lead to a final decision) can be a "meeting" under the Open Public Meetings Act.

Staff Recommendation

This memo is a reminder to Board members to avoid sending email correspondence or responding to email correspondence with copies to all other members when the content or subject matter pertains to Board actions.

Background

The Legislature passed the Open Public Meetings Act ("OPMA"), chapter 42.30 RCW, in 1971 as a part of a nationwide effort to make government affairs more accessible and, in theory, more responsive.

The Washington State Attorney General's Office hosts a web site about provisions of the Open Public Meetings Act (www.atg.wa.gov/OpenGovernment/InternetManual/Chapter3.aspx).



That web site is the source of information in this memo.

Analysis

A meeting occurs whenever the governing body of a public agency takes "action." Under the Open Public Meetings Act, "action" includes any discussion, deliberation, or evaluation that may lead to a final decision. In fact, the "action" determines whether a "meeting" has taken place, not whether a "meeting" in the everyday sense of the term (e.g., a gathering of people) has taken place. Decisions of the governing body are called "final actions."

Quorums

A meeting occurs if a majority of the members of the governing body were to discuss or consider issues no matter where that discussion or consideration might occur.

Several cases hold that the requirements of the Open Public Meeting Act are triggered only by a quorum of the governing body, so the "action" of less than a quorum likely is not subject to the Act.

Email

An email exchange among members of a governing body in which an "action" takes place can be a "meeting" under the OPMA. Since an email exchange among members of a governing body is not open to the public, such an exchange in which an "action" took place would violate the OPMA.

Board members should use caution in using email to discuss any Board issues and avoid using the "reply to all" feature if the email would go to all Board members or if there is a chance it would be forwarded to other Board members.

Consequences

There are legal consequences from an Open Public Meetings Act violation.

- First, any final action taken in violation of the OPMA is void.
- Second, the OPMA provides for financial penalties. Each member of the governing body is personally liable for the \$100 penalty if he or she is aware that the meeting is in violation of the OPMA. Courts also may award all legal costs to the successful party.

As you know, loss of credibility suffered by a board because of a judicial finding of an Open Public Meeting Act violation—or even the mere filing of a suit—may be the most severe consequence.

Conclusion

The Board's policies and practices promote public involvement and adherence to the Open Public Meetings Act. Public comment and participation are welcome in its actions and activities. Electronic communications pose unique challenges, and staff hopes that

this memo provides useful information to the Board in their efforts to maintain access to open government and accountability.