



Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

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APR 29 2009

Secretary of State  
WA. STATE ARCHIVES

April 28, 2009

Mr. Richard O. Prentke  
Perkins Coie  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099

**RE: WAC 434-662 – Preservation of Electronic Public Records**

Dear Mr. Prentke:

I first wish to apologize for the length of time it has taken to respond to your letter dated January 28, 2009. There has been a substantial shift in client representation in our division and as of two weeks ago, I now represent the Office of the Secretary of State and, in particular, the state archivist.

In answer to the issue you have raised in your letter concerning the application of WAC 434-662 to Washington school districts, it remains the position of the Secretary of State that school districts are subject to the WAC regulations.

I understand that it is your position that the Office of the Secretary of State has expanded the definition of "agency" in WAC 434-662-020 to include school districts and other non-state agencies beyond its statutory authority; however, in my opinion, this is not the case. It is noted that while definitions in RCW 40.14.010 are limited to state agencies, portions of RCW 40.14, especially RCW 40.14.070, clearly do apply to local governments.<sup>1</sup>

It may be helpful by reviewing the statutes governing the retention of records by public agencies. By statute, the division of archives and records management is established in the Secretary of State's Office, for the purpose of managing, centralizing, and making available to the public various archival public records. RCW 40.14.020. The state archivist, as head of the division, is granted the authority to operate the state archives and records centers.

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<sup>1</sup> School districts are considered municipal or quasi-municipal corporations. *Am. Fed'n of Teachers v. Yakima School Dist.*, 74 Wn.2d 865, 868, 447 P.2d 593 (1968).

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The preservation, destruction, and disposition of local government records are governed by RCW 40.14.070. Under that statute, the Legislature created the local records committee as a counterpart to the state records committee (which has authority over records of state agencies), under RCW 40.14.050. RCW 40.14.070 specifies that “county, municipal, and other local government agencies may request authority to destroy noncurrent public records” through the use of retention schedules approved by the local records committee. RCW 40.14.070. The committee is explicitly granted the authority to “veto the destruction of any or all items” contained on lists submitted by local governments. *Id.* The Legislature has therefore explicitly extended to local governments the requirement that noncurrent public records be maintained according to a schedule approved by the local records committee.

You suggest that the inclusion of the phrase “any agency of the state of Washington” excludes local governments from the scope of the act. Both the full context of the act and its legislative history, however, demonstrate that this was not the Legislature’s intent.

The goal of statutory construction, of course, is to give effect to the intent of the Legislature. *In re Sehome Park Care Center*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995). It is clear that the Legislature intended RCW 40.14.070 to apply to county governments because the statute expressly says so. The Supreme Court has made clear that, “[i]n ascertaining intent, we must look to the whole statute, rather than the single phrase at issue.” *Sehome*, 127 Wn.2d at 774. While it might be contended that the reference to the state in RCW 40.14.010 injects a note of ambiguity, that ambiguity can be reasonably resolved only in favor of concluding that the Legislature intended RCW 40.14.070 to apply broadly to records generated or retained by local governments.

The full scope of the state archives act makes clear that, the phrasing of the definitional section notwithstanding, the Legislature clearly intended the act to apply to local, as well as state, government. The text of RCW 40.14.070 itself makes clear that the Legislature intended to provide a comprehensive system for the retention of local governmental records. That statute cannot reasonably be read to limit its scope bearing in mind the principle of statutory construction that no part of a statute should be construed as meaningless and effect should be given to the whole. *Cox v. Helenius*, 103 Wn.2d 383, 693 P.2d 683 (1985). It would hardly be necessary to establish a distinct local records committee at all since the treatment of records generated under the limited circumstances you describe could certainly have been dealt with adequately by the records committee established by RCW 40.14.050.

The Legislature explicitly extended the scope of the state archivist’s authority to records generated by local governments as well as state agencies. The authority of the archivist includes the authority to set standards for the durability and permanence of records maintained by local agencies. RCW 40.14.020(6)(a). Additionally, the archivist is charged with the responsibility of

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assisting and training local agencies in the proper methods of using various technologies in maintaining public records. RCW 40.14.020(10).

The act contains other clear indications of legislative intent to apply to local governments. Perhaps the most striking are the provisions related to funding of archival services. Services provided to state agencies are paid for through a fee structure established pursuant to RCW 40.14.025. This fee, however, is limited only to state agencies and not to local governments. The Legislature separately provided that archival services to local governments shall be funded through a fee collected by county auditors but paid into the state treasury. RCW 36.22.175. The latter statute clearly provides that “records scheduling” services, among others, shall be provided to local governments. *Id.* Additionally, revenue generated by a judgment debtor surcharge is utilized to provide training in records management to local governments. RCW 40.14.027.

Finally, the state archivist is assigned the responsibility of examining local government records in order to determine which are of primarily historical interest and therefore should be accessioned into the archives. RCW 40.14.070. Obviously the legislative purpose of preserving records with historical value would be frustrated if the archivist were unable to perform this function due to premature destruction of the records. This suggests that the scope of the records retention provisions of RCW 40.14.070 should not be construed narrowly so as to frustrate the purposes of the final sentence of that statute.

The text of the statutes in full context demonstrate that the records retention and scheduling system of RCW 40.14 is intended to address comprehensively the records of both state and local governments. In this context, the phrase “any agency of the state of Washington” as used in RCW 40.14.010 should be construed to include local governments specifically referenced in RCW 40.14.070.<sup>2</sup> See also RCW 43.105.250 – Electronic access to public records – Findings – Intent.<sup>3</sup>

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<sup>2</sup> This conclusion is based upon a reading of the full act in context. As a general matter, the phrase “state agency” often does not include local governments. *Mochizuki v. King Cy.*, 15 Wn. App. 296, 297-98, 548 P.2d 578 (1976). The conclusion that the term does not exclude local governments is based upon the context of this particular chapter of the RCW, and its legislative history.

<sup>3</sup> The Legislature expressed its clear intent that both state and local governments were encouraged to “develop, store, and manage their public records and information in electronic formats” to meet their missions and objectives. Further, it was the intent of the Legislature for state and local governments to “set priorities for making public records widely available electronically to the public.”

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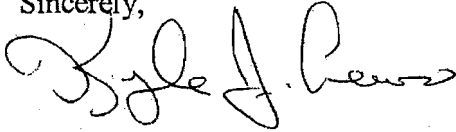
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I hope that this analysis will be of assistance. I should point out, however, that this letter does not constitute a formal opinion of the Attorney General. While it represents my considered judgment as to the question presented, it has not been considered in the manner usually devoted to formal opinions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kyle J. Crews", with a long horizontal flourish extending to the right.

KYLE J. CREWS

Assistant Attorney General

KJC/nh

cc: ✓ Jerry Handfield, State Archivist  
James Pharris, SAAG  
Jeff Even, SAAG