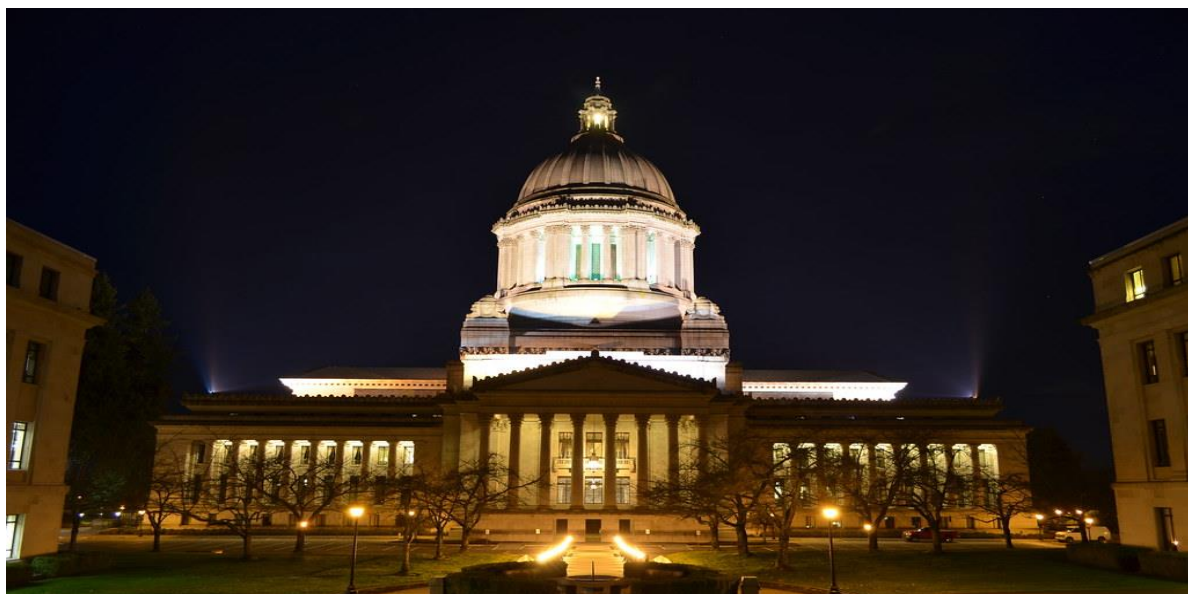


Washington Coalition for  
Open Government  
WASHINGTONCOG.ORG

# WCOG Watchdog

*WCOG advocates for the people's right to access government information*



## SECRECY PLAN?

### WHAT IS “LEGISLATIVE PRIVILEGE”?

WashCOG board members have grave concerns over the excuse of “legislative privilege” to deny citizens’ access to records. Mike Fancher’s report starts on pg 2.

## LEGISLATURE’S COMING HOW YOU CAN GET INVOLVED

There are many ways to make your voice heard in Olympia. Check out the information in this issue on searching for bills, monitoring hearings and participating in hearings. pg 2

## MARCH BREAKFAST PLAN TO JOIN US FRIDAY, MARCH 17.

We will gather on Friday, March 17 at 7:30 a.m. for our annual Sunshine Breakfast and Awards Program. Award nominations are open this month so plan now to join us. Details on pg 6.

## Board members express serious concerns over new secrecy ploy

When Washington legislators tried to exempt themselves from the Public Records Act nearly five years ago, thousands of Washingtonians angrily emailed or phoned Gov. Jay Inslee's office. Inslee vetoed the measure. We considered [SB 6617](#) a dead letter. Forever.

But now the Washington state House of Representatives is asserting that legislators have a previously unknown personal privilege to withhold from public disclosure the documents they use in their work for the people. The Washington Coalition for Open Government asserts that no such "legislative privilege" exists within the state's Constitution or laws.

The House's emerging new take on its responsibilities under the Public Records Act came to light recently in response to records requests from the public and news media. The House claims that the legislators' e-mails, texts, WhatsApp chats and other forms of intergovernmental and external communications fall not under the state's Public Records Act, but instead under Article II Section 17 of the state Constitution.

That's an astounding reach. That clause protects "freedom of debate." Under the House's new expansive interpretation, legislators could withhold records of internal legislative discussion of proposed policies, positions or legislation, including deliberations, recommendations, opinions and advice.

It violates the spirit of Washington's open government laws: The people have a right to know.

(Con't pg 3)

## WA Legislature: How YOU can get involved.

Making your voice heard in Olympia can sometimes be a daunting task. We hope a few tips can help you monitor and participate in the legislative session which gets underway in Olympia this month. It is always important to bring as many informed voices to the table when approaching difficult issues. We want you to have all the information you need to send a message to lawmakers. We are carefully watching what our elected officials are doing. (Con't pg 5)

## CLAIMS OF “LEGISLATIVE PRIVILEGE” CAUSE GRAVE CONCERN (CONTINUED FROM PG 2)

WashCOG knows so far of two instances where the House asserted this nonexistent privilege:

- In response to a Public Records Act request filed last spring by reporter Austin Jenkins of Northwest News Network for records related to a state representative’s correspondence regarding potentially impeaching Gov. Jay Inslee, and;
- In response to a request by Linda Yang, executive director of Washington Asians For Equality, who was seeking records showing why the Legislature killed plans for Chinese American History Month.

The House, **apparently recently**, enshrined this supposedly longstanding exemption in the form of a note in its public records policy

The result, Yang wrote in protesting the lack of information about Chinese American History Month: “If the cited communication exemption can be applied so broadly and freely, PRA becomes meaningless.”

Yang never got a response.

WashCOG doesn’t know how often House leaders have used their creative new escape route from public accountability. But we intend to find out.

Here’s the actual wording of the section of the state Constitution that the House is citing:

“SECTION 17 FREEDOM OF DEBATE. No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.”

On a plain and simple reading, this is clearly not applicable to documents. It’s about “words spoken in debate.” It follows the “speech and debate” clause provision in the U.S. Constitution, which says members of Congress are “privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.”

So the speech and debate clause is about meetings. Not documents. (The clause traces to the [English Bill of Rights of 1689, which was largely about protecting members of Parliament from libel charges for what they said in legislative argument.](#))

**The House needs to stop trying to hide legislators’ actions from the public.** Knowing what our lawmakers are doing in our name is a cornerstone of our democracy and lawmakers should stop trying to skirt the spirit and intent of the law.

A preamble to the Public Records Act is clear. “The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”

It’s worth recalling that the Public Records Act was established after an overwhelming vote of Washington’s electorate.

We should be moving toward more transparency, not less. More accountability, not less. If we want to keep our democracy strong, then we have to keep demanding accountability from our elected officials.



## **BOARD WELCOMES RETURN OF STEPHANIE OLSON**

The WashCOG Board of Directors is pleased to welcome Stephanie Olson back to the board. Stephanie is an attorney who served on the board from 2018 to 2019 and has now returned to Seattle and has accepted a three-year term on the board.

Stephanie grew up in the Woodinville area and graduated with honors from the University of Washington School of Law where she served as an editor of the Harvard Journal of Law and Public Policy as well as the Washington Journal of Law and technology. She worked as a paralegal before beginning her practice of law. She left Washington for an opportunity to work at the U.S. Commerce Department in the general counsel’s office, where she eventually rose to become the deputy general counsel for litigation. Following that appointment, Stephanie moved to Reno, Nevada, where she clerked at the Ninth Circuit District Court.

Stephanie joined the law firm of Perkins Coie in its Boise office, but it turned out most of her work and focus was centered in Seattle, so she is now at the Seattle office of Perkins Coie where she represents companies and individuals in high-stakes litigation across the country. Stephanie has represented clients in a broad range of disputes, ranging from constitutional and appellate litigation to trade enforcement, national security issues, administrative actions, contract disputes, receiverships and business dissolutions, product liability and negligence claims, and private arbitration. She has deep experience in managing complex litigation on high-profile cases, including developing and implementing strategic discovery plans and driving cases toward successful dispositive motions. She is passionate about her pro-bono work and we are happy to welcome her back home and back to the board of WashCOG.

## LEGISLATURE'S COMING: HOW YOU CAN GET INVOLVED (CONTINUED FROM PG 2)

We have a treasure in the Pacific Northwest in TVW. It is the organization that covers government and keeps us all in the know. Now that lawmakers need to provide remote access to their hearings, TVW has stepped up to the plate and provided extensive coverage of state government. We urge you to check out its website at [www.tvw.org](http://www.tvw.org). Together with information from WashCOG and access provided by TVW, you have everything you need to follow legislation relating to openness and transparency in government. Here are some suggestions for keeping apprised of what's happening in Olympia:

1. Visit the legislature's website at [Legislature Home \(wa.gov\)](http://Legislature Home (wa.gov)) and explore the tools available under "Let Your Voice Be Heard." If you click on "Participating in the Process," you will find there are three basic ways to participate in public hearings: testify (in person or via Zoom), submit written testimony and have your position on a bill recorded. The second heading on the right is simply called "Find." Use that tool if you have a bill number and want to see where that legislation is in the process. The categories are useful and pretty self-explanatory. If you are interested in finding out whether or not bills have been filed that impact open records or meetings, in the "Standard Reports" box, scroll down to "Search and Tracking Tools" and select the "Bills by Topic" link. That will allow you to search by subject matter such as "PUBLIC RECORDS."
2. Contact your lawmakers. It is easy to find information about how to contact your legislator, and WashCOG may ask you at some point during the session to contact them regarding a specific bill. We will do this with legislative action alerts and notices on specific bills we feel will either positively or negatively impact public records.
3. Monitor the legislature through TVW. On their website is a section titled "Legislature," and it will give you all the information you need to monitor hearings, floor debate and other activities. We applaud their work and encourage everyone to take advantage of this great service.

You may be seeing or hearing the name Steven Welch as we move through the session. Steven is WashCOG's legislative research intern this year and will be tracking legislation and following bills related to your right to know.

The folks at WashCOG encourage all citizens to get involved with government. Democracy is something we do, not something we have and for us to continue to guarantee transparency, it takes an army of citizens knocking down the secrecy walls. If you are not already a member of WashCOG, please visit our website and consider joining us. Democracy is fragile and it takes all of us to nurture it.



[This Photo](#) by Unknown Author is licensed under [CC BY-ND](#)

## 2023 SUNSHINE BREAKFAST IS FRIDAY, MARCH 17

The luck of the Irish will be with us this year as we gather for the 2023 Sunshine Breakfast and Awards Program at T-Mobile Park, home of the Seattle Mariners. Put on your ballgame gear and join us for breakfast, awards and tours of the ballpark as we gear up for another year of transparency, hard work, and open government.

Last year's event was marked by the end of an era as we honored Toby Nixon's 15 years of service on the board, 13 of which he spent as president of the organization. To mark Toby's impact on WashCOG, we renamed the former James Madison Award to the Toby Nixon Award and presented him with the first-ever award now being his name. Toby graciously agreed to serve as president emeritus of the coalition, and we still rely on his wisdom and knowledge in this never-ending quest to keep government open and transparent.

The breakfast is our major fundraising event of the year and we are always looking for new people to join us in this effort to strengthen our transparency laws and keep the doors to democracy open. If you would like to join us this year, please click on Events and register. Individual tickets are \$35 and tables for 10 are \$350. Doors open at 7:30 a.m. and the program begins at 8:00 a.m. Tours of T-Mobile Park will be available courtesy of WashCOG and our generous sponsors. Go to [www.washingtoncog.org/events](http://www.washingtoncog.org/events) to register.

**MAKE YOUR PLANS NOW AND WE'LL SEE YOU ON ST. PATRICK'S DAY!**

## TOWN HALL ENGAGES WITH CAMPUS



Panelists at the Open Government Town Hall: George Erb, WashCOG officer; Prof. Cathy Wineinger, WWU; Michele Earl-Hubbard, attorney with Allied Law Group and a WashCOG board member; Keara Ryan, director of the ASWWU Office of Civic Engagement; Amy Edstrom Nelson, LWV and also publisher of the nonprofit news site *Salish Current*.

WashCOG joined with other civic and student organizations to host an Open Government Town Hall at Western Washington University in Bellingham on Oct. 9, 2022.

Presentations included a panel discussion, “Informed citizens are engaged citizens,” addressing how open government and civic education strengthen democracy; and a report by WWU alumni Asia Fields and Erasmus Baxter on their use of the Public Records Act in their investigative reporting. As journalism students, the two received a Key Award in 2018 for their PRA research on the university’s handling of sexual assault complaints.

Joining WashCOG in the event were the League of Women Voters of Bellingham and Whatcom County, the Munro Institute at WWU, the Associated Students Office of Civic Engagement and the Department of Journalism at WWU. The town hall was scheduled to follow the annual conference of the Washington Newspaper Publishers Association in Bellingham that weekend, and some of those attendees also came to the Town Hall.

The event also celebrated the 20<sup>th</sup> birthday of WashCOG and the 50<sup>th</sup> anniversary of the passage of Initiative 276, which became the Public Records Act. WashCOG hopes to organize other Town Hall events at other Washington colleges.

For more information on the Town Hall and access to a recording of the event, check our website: <https://www.washcog.org/in-the-news/open-government-town-hall-examines-access-in-bellingham>

## OPINION PAGES

Guest column from activist Joe Kunzler

### Dear Washington State Legislature: The People Insist on Remaining Informed...

First, I thank profusely all 2022 Washington state legislators who voted for HB 1329. That bill did an incredible amount of good to update our Open Public Meetings Act and ensure that our state retained true public access to guarantee the voices of all thoughtful Washingtonians in our representative democracy are heard in between elections. The fact that our legislature would come together as one for democracy says a lot about how we are not just the best Washington in the union, but the best state in the union – especially as other states like California are sliding into a democratic deficit by not placing into law protections to retain remote testimony.

Second, recently we had a 2023 legislative session preview, where several questions were raised about invoking legislative privilege against public records requests. One of the reasons why I feel I was able to help lobby for HB 1329 passage was the fact that I could review all the legislative public records on the subject. For House Speaker Laurie Jinkins to tinker with taking away public access to legislative records is a clear danger to the public's right to know.

Furthermore, with each exemption, we get farther and farther away from the construction of RCW 42.56.30, the Public Records Act, which is introduced with this philosophy:

*The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.*

I ask Speaker Jinkins and other like-minded legislators to please mull over this quotation. Please understand that to retain citizen trust in our state Legislature we need legislators to please promote freedom of information – public meetings and public records.

I would also add that we need a true open government ombudsperson. Ideally, this ombudsperson would report to the “Four Corners” of the Senate and House majority and minority party leaders for a four-year term to assist legislators and their constituents in upholding RCW 42.30, the Open Public Meetings Act, and RCW 42.56, the Public Records Act. This person should not report to the executive branch's chief attorney, whose job it is to lead the attorneys defending Washington state government and the people's initiatives in the judicial branch. Rather this office should be an extension of legislative oversight over both the state executive branch and local governments – the latter of which are technically creations of Washington state government.



Ultimately, this Heather “Newsbrooke” Brooke, Ph.D., quote from *Your Right to Know* is relevant:

“You should not expect politicians to promote freedom of information. Why should they? They have a vested interest in controlling the public's access to information and thereby maintaining their grip on power.”

It’s also worth noting that Brooke did a journalism internship in the Washington state Legislature. Brooke was so amazed she could request the receipts of Washington state legislators she wanted to do the same for British Members of Parliament (MPs), and the rest is British history... like the over 150 British MPs who did not run after their expenses were made public.

This is something I hope all Washington state legislators will please consider, as we do in this Washington Coalition for Open Government. Us? We are the keepers of the Newbrooke legacy. We are the first responders to threats to our democracy. We defend the lanes of exporting knowledge in the hope that knowledge sharing will get the public policy results that will build back smarter and stronger our state and our nation.