



PUBLIC RECORDS FOR ELECTED OFFICIALS: HOW WE PROTECT YOU FROM MISTAKES

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Regardless of whether you're elected as POTUS or a local city council member, public records are a part of the job. While politicians can't agree on a lot of things, most agree on the importance of public transparency and complying with existing laws. This is easier said than done with public records as the rules are often complex and subject to frequent updates. Even those with the best of intentions can quickly run afoul of public records rules where a simple mistake can turn into headlines and headaches.

1. Complying with public records requests isn't optional

While it's fair to say that most people try to follow the law, this is considerably more difficult when it comes to following laws on public records, especially as an elected official. Suddenly, you're a public employee subject to records retention rules and public disclosure requests, a foreign subject to most of us. Even in the private sector, records retention is often handled internally by a few records and information management professionals, so the average employee has little knowledge in this regard.

In addition, compliance is not optional. All public employees are bound to follow public records laws; many agencies also have internal policies or rules that can subject the employee to discipline (up to and including termination) for non-compliance. But how do you comply with something you know nothing about?

2. Technology is only part of the solution

Sure, there are technologies out there to assist in managing records retention and public records requests, but technology in of itself won't solve everything. In addition, choosing the right technology solution for your agency can be challenging. Solid policies and procedures are also needed in conjunction with regular training for all staff - elected, appointed, or just a basic hire.

You can't be expected to know everything when you assume office, let alone about concepts unique to government that are a little bit different in every state. You should receive training on the basics at least - what is a record, records management fundamentals, and how public records requests work in your state. In addition, you should be given explicit instructions on what constitutes public business and appropriate communication channels (i.e. work phone or email versus personal phone or email). Does your agency have a policy on texting? Social media? Email clean up? All of this relates to public records management.



3. Public records is a highly litigious matter

In many states, the only remedy available to a requester who believes they've been incorrectly denied records is through the court system, leading to frequent lawsuits that are a headache for agencies to handle. You may be innocent until proven guilty in the criminal justice system, but in the court of public opinion, it doesn't take much for the public to lose faith in your agency. One wrong headline can be detrimental.

Settlements may lead to costly payouts in addition to promises of improved training and technology. But our public purses aren't bottomless; the money has to come from somewhere. Would you rather spend large amounts of public funds on costly lawyers or spend a fraction of that to do public records right the first time around?

4. Getting it wrong can be a costly mistake

Sanctions for mishandling public records vary from a simple slap on the wrist to extensive fees (we're talking hundreds or thousands of dollars) and even the threat of jail time in some states. In most states, punitive fees can be applied even if the records were mistakenly withheld or destroyed. Good intentions mean nothing in the realm of public records if the law has been broken, and punishment is often swift and severe. For example, in Washington state, agencies can be fined up to \$100 per day per record that is incorrectly withheld. The clock starts from the date the agency closes the public records request. By the time litigation and judgment rolls around, even withholding 50 emails can result in huge fines.

Deleting text messages on your phone to clear up your inbox or save space seems normal and innocent enough, but delete the wrong messages at the wrong time as an elected official, and you're in big trouble.

5. Records management is everyone's responsibility

Complying with complex public records laws is truly every employee's responsibility, but the scrutiny often falls on elected officials. Every single employee in a government agency creates records on a daily basis, whether they realize it or not, and all bear responsibility for proper records management. However, when the news headline breaks, it is elected officials who are called out for any non-compliance.



Conclusion

The world of public records is entirely new to many elected officials, and the rules seem to keep changing. You certainly don't want your agency to be headline news for getting sued over a public records dispute. Not only do you need to be certain that you're in compliance, you're also responsible for making sure your entire agency is in compliance. This is a big undertaking worthy of professional help.

Trust PRI to provide training and technology solutions for records management and public disclosure in addition to expert consultants who can guide you through everything from policy implementation to choosing the correct technology solution for your agency's needs. Our instructors and consultants have real world experience managing government records at an enterprise level and can assist you in bringing your agency up to snuff on public records so you can sleep well at night.