

Washington Coalition for  
Open Government  
WASHINGTONCOG.ORG

# WCOG Watchdog

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



## SUNSHINE OR SECRECY?

### [WHY I RESIGNED FROM THE SUNSHINE COMMITTEE](#)

WashCOG board member, Kathy George has resigned from the state Sunshine Committee. Now what? (PG 2)

## OPINION PAGES

### [WASHCOG BOARD MEMBER QUESTIONS AG'S ACTIONS ON PUBLIC RECORDS \(PG 5\)](#)

## SEATTLE CITY COUNCIL: [CANDIDATE QUESTIONS](#)

With seven of the nine Seattle City Council seats up for grabs, candidates need to address these issues.

Jim Simon (PG 4)

## OPINION PAGES

### [ADVOCATE DISCUSSES THE GOOD, THE BAD, AND THE UGLY OF THE 2023 LEGISLATURE \(PG 8\)](#)

## MARCH BREAKFAST HITS RECORD ATTENDANCE

### [TRANSPARENCY ADVOCATES HONORED](#)

Attendance at our annual breakfast broke previous records as we honored a record number of transparency advocates.

(PG 11)

# WashCOG Board member resigns from state Sunshine Committee in protest

## **Kathy George, WashCOG Board Member**

When Washington's Sunshine Committee has its next meeting on May 23, I will be watching from the sidelines. After serving eight years as Governor Inslee's appointee, I resigned from the committee during the previous quarterly meeting in February.

The Washington Coalition for Open Government asked me to write about why I resigned. I can sum it up best in two words: *The Legislature*.

The Sunshine Committee was created in 2007 to advise the Legislature about exemptions to the Public Records Act. WCOG and other proponents thought the committee would take a hard look at the ever-increasing exceptions to disclosure and help narrow them down.

The trouble is that the Sunshine Committee cannot accomplish anything if the Legislature is not listening. The Legislature writes the laws. Plugging holes in the public's right to know is a legislative prerogative.

This year, for the first time since my appointment eight years ago, the Legislature did not even pretend to consider carrying out the Sunshine Committee's recommendations. No sunshine bill was introduced.

Four legislators are appointed by their caucuses to serve on the Sunshine Committee along with stakeholders from the news media, the open government community and state and local agencies. Traditionally and logically, those legislative members were the ones who sponsored the bills and made sure they got public hearings in Olympia.

This year, as the first "cutoff" approached for bills to survive the legislative session, I asked Sen. Sam Hunt and Rep. Larry Springer why they had yet to introduce a Sunshine Committee bill. They are longtime Sunshine Committee members who chair the House and Senate committees dealing with public records issues. They responded with silence, which was their way of saying: "we don't care anymore."

This year's complete shutout followed three years in which Sunshine Committee bills were introduced but did not pass. Instead of openly terminating the transparency advisory group, legislators effectively killed it through neglect.

(CONT ON PG 3)

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## KATHY GEORGE RESIGNS FROM SUNSHINE COMMITTEE (CONTINUED FROM PG 2)



They did so although the Sunshine Committee lent its name *only* to unanimously approved proposals (those receiving support from both government and non-government representatives.) In other words, our recommendations to reduce secrecy were not radical or wild-eyed. They were developed through a public hearing process with outreach to agencies and affected parties.

I have a theory about why the Legislature lost interest in our sunshine-promoting efforts. (I have not been shy about expounding this theory.) I believe it is not coincidental that, ever since the Washington Supreme Court ruled in December 2019 that legislators themselves are subject to the PRA, the Legislature stopped passing Sunshine Committee bills.

Simply put, it is easier to support open government when the light shines on someone else.

In fact, legislative leaders are looking for new ways to expand secrecy, claiming a fanciful “privilege” to keep their own communications secret. In this climate, it is no wonder that the Sunshine Committee itself is questioning whether it should continue to exist. The current chair has announced her impending resignation because she, too, sees no point in providing unwanted advice to legislators.

If the climate changes, the Legislature can still enact the Sunshine Committee proposals developed over the last four years. I will be watching from the sidelines, hoping for something I can cheer for.

## GOVERNMENT TRANSPARENCY: 8 QUESTIONS FOR SEATTLE CITY COUNCIL CANDIDATES

**Jim Simon, journalist**

Questions about open government and compliance with public records laws rarely get widespread attention during local elections. WashCOG thinks that's a missed opportunity.

At both the state and local government levels in Washington, government transparency issues have grown more acute in recent years.

In Olympia, some lawmakers are pursuing efforts to expand exemptions of their own records from the state Public Records Act. At Seattle City Hall, controversy has swirled around missing records and long backlogs for releasing public records requested by the public and journalists.

With the upcoming Seattle City Council elections in mind, WashCOG is offering a guide to key questions about open government issues for council candidates. These are intended to assist the public, community organizations and journalists in keeping candidates accountable on these issues.

### **BACKGROUND:**

Last year, the city of Seattle paid a legal settlement of nearly \$200,000 to *The Seattle Times* for how it mishandled public records requests concerning the city's response to the protests on Capitol Hill in the summer of 2021. Text messages sent during that period from former Mayor Jenny Durkan, the ex-police chief and other officials were missing from the phone records of those officials.

Likewise, the long delay in fulfilling many public information requests is a serious problem. The Seattle Police Department, which gets the most public information requests by far, did receive funding in 2021 to add staff. But the press reported that there was still a backlog of more than 2,800 unfilled records requests as of last summer, forcing the public, organizations and journalists to often wait months for requested documents.

Here are some suggested questions for candidates:

1. What specific steps, if any, do you feel are needed to improve both overall transparency in city government and compliance with public records rules?
2. Do you consider the backlog of unfilled public records requests, and the lengthy wait time to comply with those requests, a significant problem for the city?
3. Do you support the city providing additional new funding and staff, particularly to the Seattle Police Department, to speed up the processing of public records requests?
4. The Seattle Police Department uses a "grouping" strategy that allows it to fill only one open request from a journalist, an organization or the public, rather than responding to all their requests at one time. Critics say this dramatically delays the process. Do you support this process? If not, what would you do about it?

5. Some city departments appear to be violating records retention laws for texts and emails. Would you support council action to ensure city officials and agencies comply, so that the public can access their communications before they're destroyed?
6. Should the city prioritize creating an improved digital archive system, which would include texts and emails by public officials? What can the council do to ensure this is established in all departments?
7. Will you pledge to not use private devices to send emails, texts and other communications for conducting city business?
8. Under what circumstances do you think it is justified for the City Council to go into executive session at a public meeting. Do you believe there is a need to limit the number and duration of these sessions?

## WASHCOG PARTICIPATES IN SPJ REGIONAL CONFERENCE

### George Erb, WashCOG Communications Director

WashCOG arranged a well-received panel discussion about public records for the Society of Professional Journalists' annual regional conference April 15 in Seattle.

The Coalition assembled a panel of reporters who effectively used records to inform the public about the impactful actions or inactions of government and, in one instance, a large employer. In some cases, the reporters and their news organizations had to fight to get the information.

Three of the four panelists were recipients of WashCOG Key Awards for their work in 2022.

The panelists were:

- Mike Reicher, an investigative reporter at *The Seattle Times*. He and his colleague LuLu Ramadan were Key Award winners.
- Rachel Riley, a reporter at Law360 who was an investigative reporter at *The Herald* in Everett, where she won a Key Award.
- Ardeshir Tabrizian, a reporter at the *Salem Reporter*, an online news site in Oregon's state capital.
- Daniel Walters, a senior investigative reporter with *The Inlander* in Spokane. He, too, was a recipient of a Key Award.

SPJ graciously allowed us to participate in the Society's annual conference for Region 10, which encompasses Alaska, Idaho, Montana, Oregon and Washington. We expect to collaborate with SPJ on other programs in the months and years ahead.



## OPINION PAGES

### SHAME ON WA AG BOB FERGUSON FOR PUBLIC RECORDS FOOT-DRAGGING

Joan Mell, WashCOG Board Member



Twenty years after the people adopted Washington’s Public Records initiative in 1972, the state Legislature added the admonishment: “The people insist on remaining informed so that they may maintain control over the instruments they have created.”

Now, 31 years later, I worry that our ability to maintain that control has been marginalized by elected officials, including the state’s top lawyer, Attorney General Bob Ferguson.

You would think that, given his role as the people’s attorney, his agency would outperform all other agencies on Public Records Act compliance. But it does not, and he does not seem to care. Ferguson’s promised leadership during his campaigns regarding the important principles of transparent governance in a democracy hardly appears where it really matters.

Anecdotally, the 2021 state Redistricting commissioners used digital platforms like Signal, with its disappearing ink, when negotiating voting districts in late 2021. Once Ferguson learned of it, he was well positioned to sanction such conduct, but he kept silent. Not even an admonishment.

Very few of those communications were ever recovered or made publicly available, despite the import of the proceedings.

One Redistricting commissioner admitted to destroying text messages, according to a [Crosscut article](#). Yet, AG Ferguson took no corrective action. Not a scolding. Not a new rule. Not any guidance.

Statistical data from Washington’s [Joint Legislative Audit Committee 2021 report](#) show other agencies like Pierce County outperforming the Attorney General’s Office. The Attorney General’s Office responded to only 193 requests within the five-day period required by law. Pierce County closed 2,617.

The AG’s Office averaged 79 days to respond to requests, ranking 205 out of the 217 state and local agencies that reported to JLARC. Pierce County’s average was 23 days. The Attorney General’s Office reported spending \$200,990.00 in costs in Public Records Act litigation while Pierce County reported spending only \$4,365.

The outdated methods the Attorney General's office uses to produce public records are even more insulting.

By way of background, I am a lawyer who has litigated against the government for more than three decades. In one politically charged case, a potential juror commented about the AG's prolific lawsuits saying "that is why they call him *Bobbie Sue*." A memorable moment.

The transcript of jury selection is a valuable public record, especially for trial lawyers needing to understand the risks of assembling an impartial jury. Unfortunately, if you made a public records request to the Attorney General's Office for the "*Bobbie Sue*" transcript, his office would likely take more than five days to give it to you.

You probably would not get it by email. Instead, you would have to wait for his office to notify you of the costs for duplicating it. Then you could opt to purchase it by sending a check or money order via standard post — no online website where you can use PayPal or Apple Pay. Meanwhile millions of Washington residents renew and pay for their driver's licenses and car tabs online. Drivers can pay their Good To Go! tolls digitally too.

Wait, the process gets better. Ten days later, his office would snail-mail back the transcript burned onto a DVD or a thumb drive that costs \$6.34 for one-time use. No simple emailing of a PDF with negligible cost.

Yes, in a state routinely ranked among the most technologically forward, the AG's Office embraces 20th-century technology that inflates costs and delays public exposure. That is a deliberate choice.

This is the same office that has shared hundreds of thousands of documents with my office via digital delivery in litigation. The AG's office's stated justification for the arcane methods? "Ease of delivery." Supposedly regular mail is "more consistent and more efficient for business needs" given the "different levels of sophistication" of public records requesters. One simple solution: Give requesters the choice.

Here's another story. My office requested public records from the AG in 2018. His office missed deadlines and sought multiple extensions, producing piecemeal records in more than 30 installments with numerous duplicates for three years. The records were mostly nonresponsive with hundreds of completely redacted pages. Despite my objections, his office kept doing the same thing.

At one point while distracted in trial with AGO lawyers, I missed a notification that an installment was ready. Within a month my office figured it out and made the payment, but his office refused

to release all the records. The assigned attorney was adamant that after 30 days the request was permanently closed. That office did not even produce a first installment in 30 days.

Frustrated, I looked for some legal authority for this rule, but there is no 30-day cutoff in the Public Records Act. The AGO made that up and put it in model rules for other agencies to follow. Now, even the Legislature threatens to permanently close public record requests within 30 days without prompt payment.

My office brought the AG's office into court for judicial review of its problematic response in this particular case with the expectation that the AG would be motivated to do better.

Disappointingly, his representative insisted in a letter that his protocols were "robust" and refused to make any changes. The AG would not agree to send public records digitally or modify his 30-day cutoff. Instead, the AGO paid my office \$150,000 to go away earlier this year.

I was just retained by another public records requester who has nearly identical complaints as my office.

The public should be concerned that we have lost control of a powerful instrument we created in Bob Ferguson's Attorney General's Office. His lack of leadership displays a dangerous anti-democratic cynicism of the public's right to know. It is well known he is exploring running for governor. If he wants the keys to the mansion, we need to make sure he rethinks and reflects the public's interest in, and need for, a transparent government before voting for him again.

*Joan Mell is a Tacoma attorney who has practiced for three decades. She is a member of the Washington Coalition for Open Government board.*



## OPINION PAGES

### THE ADVOCATE'S CORNER: CHANGE AND WASHINGTON STATE OPEN GOVERNMENT

**Joe A. Kunzler, transparency advocate**

First, I won't write *much* about ESHB 1533 – the controversial bill intended to protect public servants from harassment. Our Coalition's social media has done, quite frankly, an awesome job informing the members and the public about ESHB 1533. No, this missive is more about the unnoticed bills that move the cause of transparency forward.



Why? To quote former U.S. President Barack Obama, “First and foremost, let us remember that change has never been quick. Change has never been simple or without controversy. Change depends on persistence. Change requires determination.”

### **Controversy’s value in a representative democracy**

This Coalition has the determination and the persistence for Washington to be the best state in the Union at defending informed democracy against autocratic opacity, and many times with controversy.

Controversy is a good thing. If everything was black and white, then we could just literally program with computer code a better state and, as per the U.S. Constitution, “A more perfect Union.” But we live these independent, individual lives where we all hold different perspectives on life in the best state in the Union.

Then here comes the Washington State Legislature, where 98 Representatives, 49 Senators, 1 Lt. Governor, and 1 Governor, with their many staff members, work together to reconcile those perspectives into laws every legislative season. Every legislative season we see thousands of bills filed and tens of thousands of public records created.

### **Progress for inclusive public input in 2023**

We did have some forward progress on open government this session. So here’s a quick review of good bills for open government.

For instance, there is House Bill 1105 – a bill requiring notices of the timeframe when public comment can be submitted. Sadly, it got frozen until January 2024, due to opposite chamber cut-off. HB 1105 was, let’s just say, instead of the technical term of “striker,” friendly amended by the State Senate to create a stronger bill that requires the starting time of public comment collection to be published also. Failure to publish this information by a public agency will result in the agency being fined. The bill can again attempt to become law in 2024.

Passage of House Bill 1645 was clearly a win for more inclusive county governance. HB 1645 gives permission to County Commissioners and County Councils to have one physical monthly meeting outside of the county seat – or the city where the county government is located – if the host city of the physical meeting has more population than the county seat. Also, once a quarter the meeting can be elsewhere without restriction – thereby covering counties where their county seats are the largest cities of the county. HB 1645 also requires at least 30 days’ notice in advance for both kinds of meetings. HB 1645 was signed by Governor Inslee on April 13, 2023.

### **HB 1210: Audio record school boards – and the ideological inconsistency**

Then there’s House Bill 1210 – a personal cause for Representative Skyler Rude (GOP). The bill signed into law April 13, 2023 requires school boards – but only school boards – to audio record their meetings. Requiring audio recordings of meeting cause considerable controversy on the 2021

and 2022 legislative sessions. Some members of Rep. Rude's caucus complained about the burdens of recording meetings in the era of smartphones and cloud storage. It's progress to have that caucus champion legislation requiring school boards to audio record meetings, but why *only* school boards? Why not meetings of all government agencies?

Although Rep. Rude's determination and persistence is commendable, this Coalition needs to remain *ideological* about pursuing a *more* open government. Why? Every single day, local government officials must make difficult public policy choices. We *ideologically* want the record that led to those decisions preserved and available for public scrutiny.

Ultimately, as Heather "Newsbrooke" Brooke, Ph.D. wrote in her book, *Your Right to Know*:

As the saying goes – the cost of freedom is eternal vigilance. Politicians have taken advantage of our indifference by imposing ever more draconian and restrictive laws that increase their power while diminishing ours. Asking questions of our public bodies is the best way to ensure they are working for our interests and not those of politicians.

Sage advice worth remembering.

## Conclusion

Ultimately, when we look back at the 2023 Washington legislative session, ESHB 1533 will be the most significant open government bill to pass. It exempts certain information of public employees who are survivors of domestic violence, sexual assault, harassment or stalking. ESHB 1533 is intended to stop cruel weaponization of the Public Records Act against these victims.

This Coalition opposes ESHB 1533 as overly broad plus certain to have unintended bad consequences, despite its good intentions. We were, in my assessment, *lucky* to get the bill amended to create an exception to the exemption to allow disclosure of certain information to the professional media representatives. This was thanks to gracefully aging old friends in the Senate State Government & Elections Committee plus advocates for open government who sortied in defense of public records in front of the committee.

Unfortunately, we also are seeing the assertion of the dangerous concept of "legislative privilege" come from legislative leaders who want to decide what the public has a right to know about the legislature – something we should all universally oppose.

Then there are HB 1597 and SB 5571 that thankfully did not get hearings. Those bills sought to reconfigure the appeal process for public records and more. Imagine if this Coalition had to fight that in 2023 *also*. I am personally concerned those bills might be unfrozen in 2024.

But we should also note significant steps were made toward a more open government every single legislative season and, therefore a government our fellow Americans can believe in. To quote former President George H.W. Bush, "The heart of our government is not here in Washington, it's in

every county office, every town, every city across this land. Wherever the people of America are, that's where the heart of our government is."

Some sober thoughts as to why we're here.

*Joe Kunzler is an open government activist and aviation journalist writing only in his personal capacity. Joe worked with a team to renovate the Open Public Meetings Act in 2021-2022 with ESHB 1329, regularly files public records requests -- mostly of public transits -- and lives in Skagit County.*

## 2023 SUNSHINE BREAKFAST SETS ATTENDANCE RECORD

The luck of the Irish was with us this year as we gathered at the ballpark to honor our 2022 award winners at our annual Sunshine Breakfast and Awards Program. Just shy of 140 guests joined us at the ballpark and made it one of our largest events ever.

Although we normally use the Sunshine Breakfast to present three awards, this year, the Coalition presented a total of sixteen awards, including Key Awards for all the Bunting Award nominees.

KING5 TV Chief Investigator, Susannah Frame, served as emcee for the event again this year as we gathered in the First Base Terrace Club of T-Mobile ballpark.

Key Awards were presented to all runners-up to the Bunting Award this year due to the tremendous quality of the entries for this award recognizing journalists.



*Lineup of Awards for the March 17 Sunshine Breakfast.*

TVW, a public access cable and webcast service, was honored with the [Toby Nixon Award](#), which is the Coalition's lifetime achievement award. The nonprofit channel, founded 30 years ago, provides unedited coverage of state government, politics and public policy, enabling greater access by the people, especially during legislative sessions. Renee Radcliff Sinclair, president and CEO, accepted on behalf of TVW, which also webcast the event.

Recognized with the [James Andersen Award](#), given to the Coalition's volunteer of the year, was Peggy Watt, a journalism professor at Western Washington University and longtime WashCOG board member.



*KING5's Susanna Frame, a Bunting Award winner, emceed.*

Crosscut, a nonprofit online news organization, received the [Kenneth F. Bunting Award](#) for outstanding journalism for its work creating Washington Recovery Watch, an examination of the recipients and use of federal funds intended for Covid recovery efforts.

Also, eight runners-up for the Bunting Award were recognized with Key Awards, given periodically for any party that has

done something notable for the cause of open government.

Another Key Award was presented to Judge Judith H. Ramseyer of King County Superior Court, for her work as the chief of the Bench-Bar-Press Committee's Fire Brigade, which mediates simmering conflict over access issues before they escalate.

The Coalition also presented a [Ballard/Thompson Award](#), which has not been given since 2018. It recognizes legislators who demonstrate outstanding commitment to open government. This year's recipients were Rep. Gerry Pollet and former Rep. Emily Wicks.

The keynote address was given by [Oregon journalist Les Zaitz](#), a longtime crusader for government oversight, who shared war stories and encouragement about efforts to demand political accountability.

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 attend next year, watch our website in early 2024 for details. We hope to see you next March!

***Photos by Desiree Erdmann***