

Legal Committee: AI and the PRA and OPMA

Washington Public Ports Association
Spring Conference – Legal Committee
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AI Overview and Port Use of AI

Types of AI

- **AI Generally** - means the use of machine learning and related technologies that use data to train statistical models for the purpose of enabling computer systems to perform tasks normally associated with human intelligence or perception, such as computer vision, speech or natural language processing, and content generation.
- **Generative AI** - means technology that uses machine learning, including deep learning models, natural language processing, or other computational processing techniques of similar or greater complexity, to generate images, audio, or video.

Chatbots & Chatlogs

- **Chatbots** - ChatGPT is one type of “chatbot” developed by the company OpenAI. Other technology companies have similar AI tools or chatbots, such as Google Gemini, Microsoft Copilot, and Amazon Q.
- **Conversation or Chat Log** - is a record of the user’s conversation with the AI tool, including prompts and AI’s responses. Usually, these messages are kept in order showing how the conversation progressed.

How is your port using / interacting with AI?

- Generating web content?
- Social media?
- Grant and report writing?
- Public records?
- Responding to public questions?
- Analyzing data?
- Generating images or videos?
- Other?

AI and Your Port

- What legal risks do you see with AI?
- How are you managing those risks for your port?
- Has AI created more / new work for you at your ports?
 - e.g., tenants using AI programs for lease negotiations, AI assisted pro se litigants, AI generated public records requests, chat bot records requests, other?

PRA & OPMA Considerations for AI Use

PRA & AI: What is a Record

RCW 42.56.010(3)

A “public record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

RCW 42.56.010(4)

Writing is broadly defined to include, among other things, “other documents including existing data compilations from which information may be obtained or translated.”

PRA & AI: Chat Logs

- Are chat logs records?
- If so, are they transitory records?
- Do exemptions apply?

PRA & AI: Transitory Record

- Transitory Records are those with short term or temporary information purposes with minimal retention value
- Chapter 40.14 RCW – Retention & Destruction
- WAC 44-14-03005



PRA & AI: Retention Schedule

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-006 Rev. 1	<p>Internet Browsing</p> <p>Records routinely generated as part of internet browsing.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Browsing history/saved passwords/web form information, etc.; • Cache/temporary files; • Cookies. <p>Excludes internet activity log records covered by <i>Audit Trails and System Usage Monitoring (DAN GS2010-003)</i>.</p>	<p>Retain until no longer needed for agency business</p> <p><i>then</i></p> <p>Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-010 Rev. 0	<p>Reference Materials</p> <p>Materials gathered from outside sources for reference/reading use which are <u>not</u> evidence of the agency's business transactions.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Copies of published articles, reports, etc.; • Individual participants' copies of internal and external training materials (such as proceedings, handouts, notes taken, etc.) from conferences/seminars/trainings; • Internet browser favorites/bookmarks; • Listserv/RSS feeds. <p>Excludes records covered by <i>Secondary (Duplicate) Copies (DAN GS50-02-04)</i>.</p>	<p>Retain until no longer needed for agency business</p> <p><i>then</i></p> <p>Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM

PRA & AI: Retention Schedule

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-002 Rev. 0	<p><i>Brainstorming and Collaborating</i></p> <p>Records generated as part of informal exchanges of ideas/brainstorming/collaboration processes, where not covered by a more specific records series.</p> <p>Includes, but is not limited to, notes, mind maps, etc., developed as part of brainstorming/collaboration sessions using electronic/virtual collaboration tools (such as OneNote, Popplet, Lync, etc.), as well as those written on whiteboards, flipcharts, large/oversize paper sheets, Post-It/sticky notes, etc.</p> <p>Excludes records generated during open public meeting brainstorming sessions covered by:</p> <ul style="list-style-type: none"> • <i>Meetings – Advisory (DAN GS2012-027);</i> • <i>Meetings – Governing/Executive (DAN GS50-05A-13);</i> <p>Excludes records covered by:</p> <ul style="list-style-type: none"> • <i>Drafting and Editing (DAN GS2016-004);</i> • <i>Records Documented as Part of More Formalized Records (DAN GS2016-009).</i> 	<p>Retain until no longer needed for agency business <i>then</i> Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-004 Rev. 0	<p><i>Drafting and Editing</i></p> <p>Records relating to the drafting/editing of correspondence, documents, and publications. Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Preliminary drafts not covered by a more specific records series, not needed as evidence of external consultation or as evidence that the agency practiced due diligence in the drafting process; • Edits/suggestions/directions (such as handwritten annotations/notes, track changes information/comments in Microsoft Word, etc.); • Electronic documents created solely for printing (such as signs, mailing labels, etc.); • Related correspondence/communications. 	<p>Retain until no longer needed for agency business <i>then</i> Destroy.</p>	NON-ARCHIVAL NON-ESSENTIAL OFM

PRA & AI: Retention Schedule

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-009 Rev. 1	<p>Records Documented as Part of More Formalized Records</p> <p>Records where the evidence of the business transaction has been documented as part of another more formalized record of the agency which is retained in accordance with the current approved minimum retention period.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Data entry input records (such as paper forms, handwritten notes, etc.) that have been documented as records within agency information systems (such as databases) provided the original record/form (including any signatures) is not required as evidence or authorization of the transaction; • Working/rough notes, voicemail messages, text messages, social media posts, etc., that have been memorialized/captured in another format such as a note-to-file, email confirming the conversation, speech-to-text translations, etc.; • Automatically-generated email notifications sent out by agency information systems, provided the transaction is captured as part of an audit trail; • Raw data/statistics/survey responses that have been consolidated/aggregated into another record. <p>Excludes:</p> <ul style="list-style-type: none"> • Audio/visual recordings of meetings covered by <i>Advisory Body Records (DAN GS2012-027)</i>, <i>Governing/Executive/Policy-Setting Body Records (DAN GS50-05A-13)</i>, or <i>Meetings – Staff and Internal Committees (DAN GS50-01-43)</i>; • Electronic records (such as emails) that have been printed to paper; • Records covered by <i>Records Reported/Submitted to External Databases/Systems (DAN 2024-024)</i>. <p><i>Note: Electronic records need to be retained in electronic format in accordance with WAC 434-662-040.</i></p>	<p>Retain until verification of successful conversion/keying/transcription <i>then</i> Destroy.</p>	<p>NON-ARCHIVAL NON-ESSENTIAL OFM</p>

OPMA & AI: Documenting Meetings

RCW 42.30.035 – Minutes

The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection.

RCW 53.12.245 – Organization of Commission – Powers & Duties – Record of Proceedings

The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

OPMA & AI: Documenting Meetings

- AI Note Taking
- AI Transcriptions
- Public use of AI in meetings
- Other?



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Recent AI Legislation

New AI Laws

- Disclosure requirements for AI –
HB 1170 (2026) [Effective Feb.
1st, 2027]

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1170

AS AMENDED BY THE SENATE

Passed Legislature - 2026 Regular Session

NEW SECTION. **Sec. 6.** (1) A government agency that makes available an artificial intelligence system intended to interact with consumers must disclose to each consumer, before or at the time of interaction, that the consumer is interacting with an artificial intelligence system. The disclosure must be:

- (a) Clear and conspicuously posted;
- (b) Written in plain language; and
- (c) May not use a dark pattern.

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E2SHB 1170.SL

(2) The disclosure may be provided by using a hyperlink to direct a consumer to a separate web page.

(3) An agency is required to make the disclosure under subsection (1) of this section regardless of whether it would be obvious to a reasonable consumer that the consumer is interacting with an artificial intelligence system.

(4) For the purposes of this section, "artificial intelligence system" has the same meaning as in section 1 of this act.

Recommendations

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- Develop an AI Policy for use of AI
- Revise or amend your existing public records policies for record retention
- Control software / AI tools used by Port
- Appoint an AI point person at your Port (public records officer)
- Coordinate with IT professionals
- Understand and implement security tools
- Train staff
- Educate public and disclose Port's use of AI

AI Q&A and Discussion

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