

# Washington Public Ports Association

---

## Public Records and Public Meetings in the Age of AI

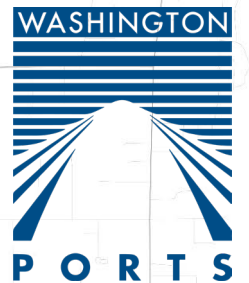
Tim Schermetzler, CSD Attorneys at Law

Jim Rothlin – Port of Bremerton

John Dumas – Port of Anacortes

Tiffany DeSimone – Port of Bellingham

Eron Berg – Port of Port Townsend



# I'm sorry Tim...I'm afraid I can't do that...

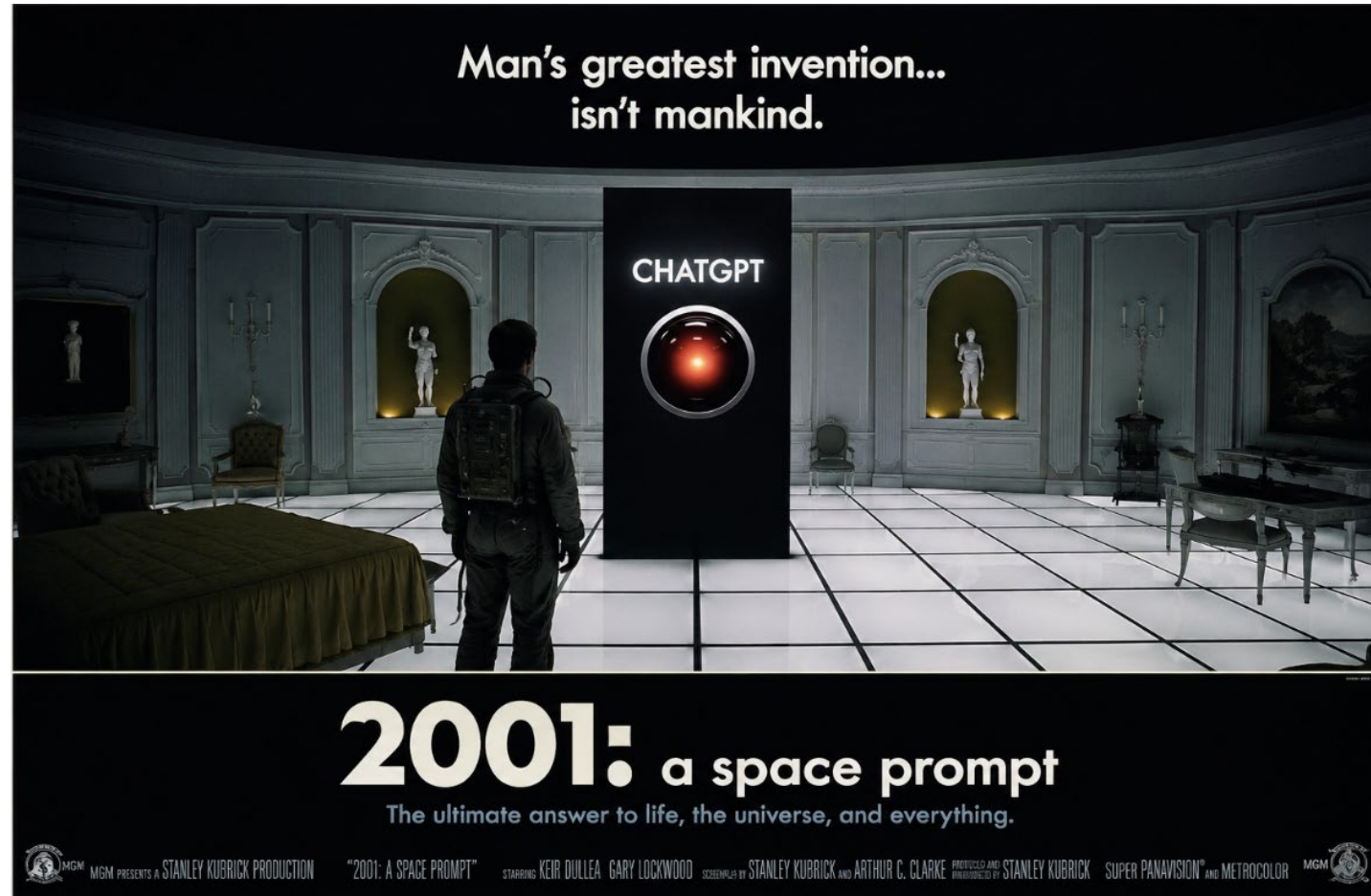


Photo Generated by ChatGPT



# Welcome / Objectives

- Brief Overview of AI
- Legal Considerations for Ports using AI
- Learn from the Panel
- Best Practices



# What is AI Anyway?

## AI Generally vs Generative 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.



# What is AI Anyway?

- **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.



# Legal Considerations: Public Records Act

## 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.*



# Legal Considerations: Public Records Act

## 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.”*



# Legal Considerations: Public Records Act

So, what do we think...is a Chat Log a public record?



# Legal Considerations: Public Records Act

- Requests for Chat Logs
- Record Retention – Chapter 40.14 RCW
- Transitory records - Records with minimum retention value
- Exemptions

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-002 Rev. 0	<p><b>Brainstorming and Collaborating</b></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"> <li>• Meetings – Advisory (DAN GS2012-027);</li> <li>• Meetings – Governing/Executive (DAN GS50-05A-13);</li> </ul> <p>Excludes records covered by:</p> <ul style="list-style-type: none"> <li>• Drafting and Editing (DAN GS2016-004);</li> <li>• Records Documented as Part of More Formalized Records (DAN GS2016-009).</li> </ul>	<p><b>Retain</b> until no longer needed for agency business</p> <p><i>then</i></p> <p><b>Destroy.</b></p>	NON-ARCHIVAL NON-ESSENTIAL OFM

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

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
GS2016-006 Rev. 1	<p><b>Internet Browsing</b></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"> <li>• Browsing history/saved passwords/web form information, etc.;</li> <li>• Cache/temporary files;</li> <li>• Cookies.</li> </ul> <p>Excludes internet activity log records covered by <i>Audit Trails and System Usage Monitoring (DAN GS2010-003)</i>.</p>	<p><b>Retain</b> until no longer needed for agency business</p> <p><i>then</i></p> <p><b>Destroy.</b></p>	NON-ARCHIVAL NON-ESSENTIAL OFM



# Legal Considerations: Public Records Act

- Caution: judge every request and record individually...
- The applicable retention period or whether the record is exempt will often depend on the topic and content of the prompt and chatbot conversation.



# Legal Considerations: Open Public Meetings Act

## How is AI used in Open Public Meetings:

- Recording Meeting Transcripts (also PRA implications)
- Note Taking / Summarizing (also PRA implications)
- Public Comments (written and oral)



# Legal Considerations: Open Public Meetings Act

## 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.*



# Panel and Audience Q & A



# Best Practices

## Artificial Intelligence Policy

### 1.0 PURPOSE:

The purpose of this policy is to provide guidelines for the Port's use of generative artificial intelligence (GenAI).

### 2.0 PERSONNEL AFFECTED:

All Port personnel.

### 3.0 GUIDING PRINCIPLES:

Generative Artificial Intelligence ("GenAI") is a type of artificial intelligence that allows computers to create new content, including text, images, and more, based on inputs or prompts. Members of the Port may use GenAI to solve meaningful challenges and enhance service delivery, but should do so in a way that is consistent with the Port's policies and reflects the Port's values.

### 4.0 POLICY:

4.1 **Attribution** - Any Port record in which content created by GenAI is a materially contributing source will be attributed to the GenAI source, such as:

*Some material in this record was generated using [SOURCE].*

Attribution will be removed if the record has undergone a sufficiently complete review such that GenAI is no longer a materially contributing source.

### 4.2 Use of GenAI

4.2.1 All content created by GenAI will be reviewed by a member of the Port prior to each use in an official Port capacity. GenAI content review will evaluate and verify that the content:

- o Is accurate, relevant, and free of potential bias;
- o Complies with state and federal law, as well as the Port's policies and practices; and
- o Includes attribution to GenAI, if required.

- 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)



# Best Practices

## Artificial Intelligence Policy

### 1.0 PURPOSE:

The purpose of this policy is to provide guidelines for the Port's use of generative artificial intelligence (GenAI).

### 2.0 PERSONNEL AFFECTED:

All Port personnel.

### 3.0 GUIDING PRINCIPLES:

Generative Artificial Intelligence ("GenAI") is a type of artificial intelligence that allows computers to create new content, including text, images, and more, based on inputs or prompts. Members of the Port may use GenAI to solve meaningful challenges and enhance service delivery, but should do so in a way that is consistent with the Port's policies and reflects the Port's values.

### 4.0 POLICY:

4.1 **Attribution** - Any Port record in which content created by GenAI is a materially contributing source will be attributed to the GenAI source, such as:

*Some material in this record was generated using [SOURCE].*

Attribution will be removed if the record has undergone a sufficiently complete review such that GenAI is no longer a materially contributing source.

### 4.2 Use of GenAI

4.2.1 All content created by GenAI will be reviewed by a member of the Port prior to each use in an official Port capacity. GenAI content review will evaluate and verify that the content:

- Is accurate, relevant, and free of potential bias;
- Complies with state and federal law, as well as the Port's policies and practices; and
- Includes attribution to GenAI, if required.

- Coordinate with IT professionals
- Understand and Implement Security Tools
- Train Staff
- Educate public and disclose Port's use of AI
- Share resources & tools developed by other Ports



Thank You

