

*The Human Services Commission approved these minutes on October 7, 2014*

CITY OF BELLEVUE  
HUMAN SERVICES COMMISSION  
MINUTES

September 16, 2014  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Commissioners Bruels, Beighle, McEachran,  
Plaskon, Villar

COMMISSIONERS ABSENT: Chairperson Perelman & Commissioner Kline

STAFF PRESENT: Emily Leslie, Alex O'Reilly, Joseph Adriano,  
Department of Parks and Community Services

GUEST SPEAKERS: Matt Segal, Jessica Skelton, Pacifica Law Group

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:36 p.m. by Commissioner McEachran who presided.

Commissioner McEachran welcomed from the Transportation Commission Ernie Simas and Vic Bishop.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Plaskon, who arrived at 6:44 p.m., and Chair Perelman and Commissioner Beighle, both of whom were excused. Councilmember John Chelminiak arrived late as well.

3. PETITIONS AND COMMUNICATIONS - None

4. STAFF AND COMMISSION REPORTS

Human Services Manager Emily Leslie reported that she and some Commissioners were planning to attend the Congregations for the Homeless luncheon on September 17.

Ms. Leslie also noted that HUD staff were currently reviewing the city's books and practices.

## 5. DISCUSSION

### A. Training on Public Records Act (PRA) and Open Public Meetings Act (OPMA)

Ms. Leslie informed the Commissioners that training with regard to the PRA and the OPMA is required by the State for all boards and commissions. She said the City has hired the Pacifica Law Group to provide the training.

Matt Segal, a partner at Pacifica Law Group, said he has been working with the City for the past 15 years. He said his partner, Jessica Skelton, also has worked a great deal for the City.

Ms. Skelton explained that all boards, commissions and city councils are subject to State law along with the various procedures and rules adopted locally. Where there is a question regarding which has supremacy, State law always trumps. The respective bylaws and procedures for individual groups incorporate by reference Robert's Rules of Order where there is no specific bylaw or procedure that applies.

Ms. Skelton stressed the need to comply with procedures in order to bolster confidence in the public. The public needs to be able to have faith that the decisions and the processes being followed are right and proper. In general, the rules are designed to place everyone on an equal footing, to ensure that all viewpoints are heard, and in the case of the PRA and the OPMA to ensure that the public has access to certain deliberations, records and documents.

The OPMA is a statutory scheme that applies to all public commissions, boards, councils and committees, along with any public agency of the State and any subdivision, under RCW 42.30.010. The Open Government Training Act, which was adopted on July 1, 2014, requires all public officials to receive training in the OPMA.

The basic provisions of the OPMA are straightforward. The most basic principle is that all meetings must be open to the public. The one exception to that is authorized executive sessions, and the reasons for conducting an executive session are set out statutorily in RCW 42.30.110. The OPMA requires prior notice of meetings and the publishing of the agenda, meeting materials and minutes. Meetings where city business is received, discussed or acted up on must include a quorum of members.

Ms. Skelton said one of the key concepts involved in determining if something might potentially violate the OPMA is the question of what constitutes an action. It is important to remember that "action" is defined very broadly and includes the transaction of official business, including but limited to the receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions. Anything that falls within that broad definition must occur in an open public meeting. No legal action can be taken by any body except in an open public meeting.

Under the OPMA, a meeting cannot take place unless a quorum is present. Absent having a majority present, a meeting cannot proceed and no action can be taken. That principle is set out in the OPMA and has been recognized in case law. The converse is also true, however, which means action taken by a quorum of the members of a body outside of a public meeting can be deemed a violation of the OPMA. Any gathering of members which constitutes a quorum, and the doing of anything that constitutes an action within the broad definition, could be construed as a violation of the OPMA.

A quorum is the presence of a majority of the members of a body as set forth in the Human Services Commission bylaws, the Council rules, and in the OPMA. One unique provision in the Human Services Commission bylaws, Article IV, paragraph 2, states that the existence of a quorum is determined at the opening of the meeting. In other words, where there are four members present at the beginning of a meeting, a quorum is achieved, and if one leaves during the meeting the quorum is deemed to continue. According to the OPMA, however, that is not the case. Given that state law trumps the Commission bylaws, the Commission must act in accord with the OPMA.

One recent addition to the OPMA is the requirement to have the agenda for a meeting posted online 24 hours in advance of a meeting. The notice provisions differ for special meetings. However, only action that appears on a posted agenda may be taken at that meeting. The distinction between a regular meeting and a special meeting is important. At a regular meeting, the agenda can be changed by the body during the meeting. The process for changing an agenda is set forth in the procedures and must include a unanimous vote of the members.

Ms. Skelton said there are a number of ways a quorum may be constituted outside of a regularly scheduled meeting. One of those scenarios is referred to as a serial meeting in which a series of conversations occur within smaller groups that could potentially be treated as a meeting to the extent that they are connected. In a case involving the Battleground School District, an exchange of emails among board members was deemed to be a meeting under the OPMA. The court ruled that there were enough people participating in the conversation about business coming before the board that a quorum had been constituted for purposes of the OPMA, and the conversation was deemed to be an action and a violation of the OPMA. A more recent decision clarifies that simply meeting in and of itself does not violate the OPMA; members must in fact meet with an intent to transact official business, and must communicate about issues that may or will be coming before the body for a vote. The case that generated the decision also involved emails among board members, three of whom were actively involved; a fourth board member was only cc'd on the emails and the court held that because the fourth member only passively received information a quorum was not constituted.

Ms. Skelton said she often entertains questions about email exchanges that involve

scheduling a meeting or the sharing of information. She said the best approach is to let city staff send out those emails; they can distribute materials to all members of a body without there being any question that something has been violated. The members in turn should not reply to all to such emails; all replies should be directly to staff.

Transportation Commissioner Simas suggested that if any gathering involving a quorum of members can be considered a meeting, the issue of intent to conduct business is of no real import. Ms. Skelton agreed that that is certainly a gray area. One court could determine there is intent where another court may not. When in doubt, it is always better to err on the side of caution.

Ms. Segal said gatherings that involve a quorum of members of a body frequently occur outside of a regular meeting. City officials often gather for a ribbon cutting ceremony or a social function. Such gatherings do not violate the OPMA provided the members do not discuss the business of the body.

Ms. Skelton said the advent of social media has only complicated things. The rules that apply to emails also apply to texting, tweeting and posting to websites. Any kind of discussion through any technological means that involves a quorum of the body risks violating the OPMA.

There are provisions in State law that allow for the assessment of penalties against jurisdictions and individuals. While the monetary penalty is not excessive, it serves to send a message to the public. The risk is that actions taken outside of an open public meeting can be invalidated.

Ms. Leslie pointed out that Commissioners on occasion make site visits to agencies that are supported with human services dollars. The visits involve tours of agency facilities and discussions regarding agency programs. She asked if the visits would be considered to be meetings if a quorum of Commissioners participated. Ms. Skelton suggested the issue is potentially live given the fact that the information gathered could potentially come before the body as a whole. The best way to address it would be to avoid having a quorum of members attend the site visits. Another way would be to note the visits as public meetings, though in such cases the public would need to be allowed to attend as well.

Commissioner Villar asked if having a SharePoint site to host documents for consideration or testimony received in written form could potentially violate the OPMA. Ms. Skelton said the question is whether or not a passive site would constitute action or the intent to meet on business that would come before the Commission. Ms. Segal suggested that a site that only allows for accessing information that is common to all members of a body, there probably is no issue. If the site included a bulletin board or other format allowing members to post comment, that could be a problem.



Grant Coordinator Joseph Adriano said a city Bellevue works with has set up a system that gives its human service commissioners the ability to register scoring on funding applications. All of the commissioners can see the scores posted and the comments made regarding each application. Mr. Segal said the issue would lie in the opportunity for collective communication about the scores; the posting of comments, to the degree that they involve business to come before the commission and could be construed as consensus building, could be problematic.

Commissioner Bruels suggested it would be very easy to cross the line. Mr. Segal agreed and commented that thinking through things ahead of time is usually the best approach. Talking to staff or the city attorney about what a desired outcome is and how to accomplish it can avoid the risk of violating the statute.

Mr. Segal suggested the PRA has caused more work for public entities in the state than any other law. It began as a citizens' initiative focused on greater transparency in government. The Washington state PRA is broader than that of the federal Freedom of Information Act and has been broadly interpreted by the courts. The rule is basically that all requests for public records must be honored, including records from boards and commissions, unless there is a specific exemption in place. Essentially, any record or document created by a body that pertains to the conduct of the business of the body is a public record. The requirement for training is a good way to avoid many of the biggest concerns associated with not being proactive.

When the law was first enacted it was very simple. The internet did not exist and anyone coming in wanting a document was given a paper copy of something that was housed in a file. As technology advanced things became more difficult, though for a time the end result was still a paper copy of a record that was in the custody of a the agency. Email began as an internal messaging system but it ushered in the era of electronic documents, though in most cases they were still held internally. All of that has now changed and documents are spread across the vast expanse of the internet, and there is far less control over electronic documents. The time is coming when all records will be digital there will be digital archives at all levels and all records will exist on a server. The challenge lies in applying public document rules that were written in the 1970s to the current electronic reality.

The general definition of a public record is extremely broad and includes anything one might conceive of that relates to the conduct of government and is owned, used or retained by a public agency regardless of physical form or characteristics. It is not the form that matters, it is the content that matters. There is an obligation to retain records, and an obligation to turn them over if someone makes an official request.

The State Supreme Court recently handed down a finding that involved an attempt by KIRO television to obtain in-car video from the City of Seattle. One question asked by the city was where it did not have the actual record or information asked if staff would be required to compile it by taking it out of a database and putting together a report. It was pretty fairly understood before the court's decision came out that the

answer was no. The court, however, concluded that it depends on the circumstances; if the information is available in a database, and if it can be retrieved and put into a report, it is discoverable and must be turned over. While that finding likely will never apply to anything a Board or Commission in Bellevue does, it is a good indication of how the courts are generally erring on the side of broadly interpreting what constitutes a public record. In 2000 the courts ended its struggle about what to do with emails by concluding that they are in fact records; even personal emails in certain circumstances might be public records depending on what they relate to. Recently the court in a case involving the City of Goldbar found that purely personal emails located on the home computers of city officials are not public records, but that begs the question of what constitutes a purely personal email, and if someone asks for the relevant emails can they be separated out.

Now nearly all public servants have a personal device used for conducting both personal and public business. A case involving the Pierce County prosecutor was decided only a week ago. The prosecutor was sued by a union representative and detective who asked to have all text messages on his personal device turned over along with all of his call logs. The trial court ruled that public servants do not have to check their constitutional rights at the door and held that asking the courts to require someone to give up information in their personal devices constitutes an invasion of privacy. Unfortunately, the court of appeals disagreed and said the text messages on the prosecutor's personal cell phone were public records if they related in any way to the conduct of government. Similarly, the call logs, even though they were not generated by the County, and even though the logs were not in the custody of the County, were found to be discoverable to the extent he looked at them, relied on them or considered them in any way in relation to the conduct of government. Many are convinced the issue will wind up before the State Supreme Court.

Home computers raise similar issues. Public officials who use their home computers to send emails or conduct commission business should recognize the need to keep all such records on a separate part of the hard drive or on a separate folder or file and be prepared to turn them over. A case from ten years ago involving the Seattle monorail project and a public record request to the volunteer board members. The request was for every record of the agency. The Supreme Court ultimately ruled that the request was overly broad, but before that happened the trial judge demanded that every board member take their personal computers to an expert selected by the requesting party to make a mirror image of the hard drives; the expert was then to look through and decide what was public and what was private.

Mr. Segal said metadata is something the drafters of the PRA never thought about. Metadata is data about data and includes such information as whether an email that was sent went through an internet pipe in Colorado or Tennessee. The metadata also can indicate the author of a document, but as a general rule about 90 percent of metadata has no substantive value whatsoever and does not relate in any way to the conduct of public servants. Nonetheless, the State Supreme Court found in a case involving the City of Shoreline that councilmembers had to hand over original copies

of their emails, in other words in their native format, with the metadata where specifically requested. The court also found that the destroying of the metadata could be a potential violation of the PRA. The finding meant that the mere printing of an email or the conversion of an email to a format such as a PDF is potentially insufficient to meet the PRA. The person requesting the information did not care at all what route an email took, all they cared about was making things difficult for the City. There is unfortunately a cottage industry operating on that principle and jurisdictions need to be aware of that.

Mr. Segal said the answer is to segregate, segregate, segregate. In using home computers, personal devices or cell phones, personal must be kept separate from what is public. The simplest means is to have separate devices and separate computers, but that is often unrealistic. It is the content that determines whether or not something is a public record, not the device used to create the document, text or email. Posting to social media raises challenges because control over the document is given up entirely. City staff are trained in the retaining of those types of records where necessary, but the members of Boards and Commissions need to be aware of the city's social media policies.

Mr. Segal said from time to time the members of a Board or Commission will receive directly from the public a request for records created at a meeting. Should that happen, the request should be sent directly to staff. Normally requests come in through staff or the public records officer and they in turn contact the Board or commission members as needed.

Kristina Thurstonson with the City Clerk's office introduced herself as the person who handles all public records requests. She said the most important thing Board and Commission members should do is keep the staff liaison in the loop. If emails are received, they should be forwarded to staff. She said there may be times when her office would need to make direct contact with a member, but there will always be contact with staff. She said the City has tip sheets that address retention timeframes. She agreed with the need to keep all Commission work separate from personal activities; usually a separate folder is all that is needed.

Mr. Segal said the main issue the staff will address, aside from how to respond to a request, is the question of retention. The PRA requires the handing over of records when requested but it also requires records to be kept for a certain amount of time depending on their content. A lot of records created by an official Board or Commission have retention value meaning they must be kept for a set period of time; some records have archival value and must be kept forever. That can really be challenging when it comes to emails. Where commissioners copy or forward to staff all public business emails, the staff will address and comply with all retention requirements. Some emails have no retention value at all, particularly those that have no relation to actual decision making. Nevertheless, if they are not handled appropriately and are they are not deleted, anyone making a request are entitled to

have them handed over and they cannot be deleted. The best approach is to know up front what can be deleted and what must be retained.

The PRA is a statute that has resulted in some whopping monetary penalties over the years. Some have reached beyond the half million dollar mark. The courts do not tend to hold back in cases they perceive to be egregious. The court has the discretion of imposing penalties of up to a hundred dollars per day; they do not have to as was the case previously, but they do have to award attorney's fees. Where the courts perceive good faith efforts to comply with the law, they are less inclined to award huge penalties. Part of the good faith effort involves training.

Commissioner Kline said she has always been curious about the Commission's meeting minutes relative to what is required to be included. Mr. Segal said there is no specific requirement to include a great deal of detail, but that does not mean it should not be done that way; there are a lot of good reasons for having detailed minutes, including being able to go back and identify what happened at a prior meeting. From a public records perspective, there is a requirement to have meeting minutes, and the minutes must be retained and archived.

Commissioner Villar asked if the discoverable records must be the original. She explained that she uses five different devices and wondered if finding a copy of the record on one of the devices would satisfy a request. Mr. Segal said that is one of the most vexing questions under the PRA. He suggested that if it were possible to ask the supreme court in a vacuum, they would say the original must be produced. If five copies of a record are kept, they may all look identical on their face, but the metadata for each will be different. From a practical point of view, however, it is not always possible to retain an original, such as when an original is housed on an external server or on a social media site. In such cases it is necessary to retain whatever can be retained. Secondary copies do not usually have to be retained, but in the Shoreline case much was made of the fact that while one of the councilmembers had copies of the email, both in hard copy and electronic format; the court concluded that was not good enough.

## 6. DISCUSSION

### A. Homeless Outreach Program Update

Human Services Planner Alex O'Reilly introduced David Johns Bowling and Brandon Ashford-Whitfield from Congregations for the Homeless. She reminded the Commissioners that the Homeless Outreach Program is a collaborative effort sponsored by several Eastside cities.

Mr. Johns Bowling informed the Commissioners that the program has just passed its first-year anniversary. He thanked the City for funding the outreach program and all of the programs that are focused on moving people on the Eastside out of homelessness. The mission is to be a bridge to help move men, women and children

toward self-sufficiency and housing stability. The outreach program is the only program which is proactively focused on going out to those in need on the streets. Many who are encountered do not actively seek out social services.

Mr. Johns Bowling distributed to the Commissioners printed statistics for Bellevue, Redmond and Kirkland for the period July through the middle of September, and for the period January through June. He pointed out that in a two-and-a-half- month period, 119 contacts were made in Redmond, 143 contacts were made in Bellevue, and 109 contacts were made in Kirkland. Every contact made and resource offered is documented and tracked.

There were some personnel bumps when the program started. The person hired to conduct the outreach struggled in adjusting to the fact that those in need on the streets and not otherwise receiving services do not have much trust in programs and agencies. Mr. Ashford-Whitfield was brought on board and is thriving in the role of building relationships and trust. Some of the newly homeless who have been encountered have been excited to learn there are programs for them and are willing to get connected with help. Mr. Ashford-Whitfield has established a routine of meeting with the homeless at encampments, street corners, the library, and at feeding programs.

The program has systems and lines of communication in place that make it easy to raise specific concerns either with city staff or with the police. While some contacts are made as a result of heads-up calls, the vast majority of the time spent in carrying out the program involves proactively getting out there and making contact with the homeless. The program provides the opportunity to both educate and connect people with resources.

Mr. Johns Bowling said at the heart of the program is respect and dignity for every person experiencing homelessness. The contacts serve as the starting point of finding out what each person really needs besides a place to stay; often what they think they need will do nothing more than help them get through the day or the week. By building relationships, the focus can be put on helping persons out of homelessness entirely. The outreach program operates year-round where the winter shelter operates only seasonally.

Mr. Ashford-Whitfield shared with the Commissioners a few stories of his encounters with homeless persons. One person who admitted to being a convicted Level III sex offender and an active drug user accepted help getting into a treatment program as a first step. A couple from Alabama who was encountered on the streets of Bellevue needed assistance in obtaining an ID for the young woman so they could spend the night at the shelter. It was revealed that the woman was pregnant and that they had been sleeping in their car. The contact helped connect her with prenatal care, food stamps and cash benefits through DSHS. Yet another couple consisting of an older gentleman and a pregnant under-age female was reported to the authorities but was also connected to DSHS for resources.

Commissioner Villar asked if problems have been encountered because of persons who do not have English as their first language. Mr. Ashford-Whitfield said that has not been an issue to any real degree.

Answering a question asked by Commissioner Bruels, Mr. Ashford-Whitfield allowed that he does respond to referrals. Ms. O'Reilly added that each city has a different referral program in place for outreach services. Bellevue is close to getting something posted on the city's intranet for Bellevue employees to see calling attention to the program. Five or six key department personnel have been identified to accept and pass along referrals.

Mr. Johns Bowling said he and Congregations for the Homeless CEO Steve Roberts met recently with the mayor of Issaquah and city officials who expressed an interest in seeing the program expanded to their city.

7. OLD BUSINESS - None

8. NEW BUSINESS

Ms. Leslie called attention to the agenda for the next meeting, noting that it will include a panel discussion on mental health and substance abuse trends and issues.

Councilmember Chelminiak reported that the next budget workshop is slated for October 6. He said he has raised the issue of a supplemental appropriation and has informed the other Councilmembers that the Commission will be explaining to the Council on October 20 the reasons behind the ask.

9. PETITIONS AND COMMUNICATIONS

Ms. Rose Dennis, address not given, said she has been a Bellevue resident for many years and attended the meeting to find out what the Commission does. She said her 28-year-old son is a drug addict and that has led her to wanting to be involved in highlighting the needs of those who are facing chronic addictions. The focus of the legislature during its next session will be on education, and that likely means programs that address addictions and homelessness may not be funded.

10. ADJOURNMENT

Commissioner McEachran adjourned the meeting at 8:08 p.m.

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Secretary to the Human Services Commission

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Date

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Chairperson of the Human Services Commission

\_\_\_\_\_  
Date