

Are Sortable Databases "Lists of Individuals"? Attorney General Opinion Addresses Electronic Records Implicating "Commercial Purpose Prohibition"

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The Washington State Attorney General issued [an opinion](#) concluding that a county's real property assessment rolls, in an electronic form which could be sorted by property owner name, are "lists of individuals" which cannot be produced under the "commercial purpose prohibition" of the Public Records Act, RCW 42.56.0070(8).

The "commercial purpose prohibition" states that agencies "shall not" "give, sell or provide access to lists of individuals" when requested for a "commercial purpose." RCW 42.56.0070(8). In an earlier 1980 Attorney General Opinion, issued when assessment rolls were only available to requesters in hard copy, static form, the Attorney General opined that records identifying property owners in alphabetical order were "lists of individuals" prohibited from disclosure under the "commercial purpose prohibition," but that similar lists organized by parcel description were not: the AGO reasoned that those lists were still fundamentally lists of real property.

In revisiting this opinion, the AGO notes, "the availability and use of technology in 1980 was different than it is today. . . . Now, searching and sorting technology means that providing access to certain electronic records, even those that do not initially appear to be lists of persons, may, in fact, be providing access to lists of individuals." For example, excel spreadsheets containing assessment roll data could easily be sorted by any data field, including property owner name. The AGO advises that agencies will have to assess records on a case-by-case basis, considering, "the nature of the data contained in the records, how it is stored, and how it may be queried or sorted within the records to

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display lists of names, even if the records do not initially display lists of individuals." The AGO notes that the "legislature may wish to clarify" the commercial purpose prohibition "in light of evolving technology." The AGO also assumes, for purposes of its analysis, that the request was in fact made for a "commercial purpose."

The AGO also addresses whether "lists of individuals" should be provided in redacted form, and concluded that the agency should attempt to redact individual names from the record. The AGO states: "[A]gencies should consider whether they can produce the records with redaction, whether the requestors are willing to modify their requests to avoid disclosure of lists of individuals, or whether the agencies can provide customized access pursuant to RCW 42.56.120(3)."

If you have questions, please contact any member of our [Public Records & Open Government](#) team.