

# How Did We Get Here From There - Part I

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In February, the Yakima Herald Republic posted

(<http://www.yakimaherald.com/news/latestnews/1943936-8/legislature-makes-hits-misses-on-open-government>) the statement:

*"In 1972, Washington state's voters approved an initiative that led to what is now the Public Records Act; with a 72 percent yes vote on Initiative 276, the electorate strongly stated a desire that government business be conducted in an open and transparent manner."*

This statement is often repeated by the newsprint media, but what is the *truthiness* of the statement? The initiative did lead to the current version of the Act, but was it a drumbeat for the current Public Records Act? A trip back in time is in order here.

In the general election of 1972, the voters of the State of Washington approved Initiative 276 with a resounding 72% majority.

The Initiative was primarily for control of Campaign Financing Reporting. The ballot synopsis reads (bolding for emphasis):

Ballot Title:

**An ACT relating to campaign financing, activities of lobbyists, access to public records, and financial affairs of elective officers and candidates; requiring disclosure of sources of campaign contributions, objects of campaign expenditures, and amounts thereof; limiting campaign expenditures; regulating the activities of lobbyists and requiring reports of their expenditures; restricting use of public funds to influence legislative decisions; governing access to public records; specifying the manner in which public agencies will maintain such records; requiring disclosure of elective officials' and candidates' financial interests and activities; establishing a public disclosure commission to administer the act; and providing civil penalties.**

The emphasis of the initiative, as will be discussed further below, was on campaign finance reform, with a section on public records access included in the mix.

There were 45 sections in this Initiative, 36 concerned Campaign Financing and 9 (25-34) concerned Access to Public Records. The Public Disclosure Commission (PDC) was created with this Initiative. It had responsibility for implementing the Campaign Finance Reform of the initiative, but did not have any enforcement capacity for the Public Records portion. Afterwards, RCW 14.17.150 was created for that purpose, which became RCW 42.56 (Act).

In a survey of Seattle Times articles on the Initiative in 1972, there were 44 articles found from April 1972 until the day before the election. Only 5 of the articles made any mention of the Public Records portion of the Initiative. All of the “action” was on campaign finance and lobbyist expenditures.

The first article on April 8, 1972 concerned a letter sent out by Bennett Feigenbaum, Chairman of the Washington Coalition for Open Government. The article noted that the letter said:

*“In line with the philosophy of the Initiative 276 (concerning campaign - financing disclosure matters) we will be making public the sources and amounts of all of our contributions and we will be asking all candidates voluntarily to do the same.”*

The emphasis on campaign financing continued on throughout the year with debates scheduled between lobbyists and proponents of the initiative, multiple editorials on campaign finance reform, articles about the ineffective federal campaign finance rules, and, of course, Watergate.

On July 26, 1972, after 160,000 signatures were obtained to put the initiative on the ballot, Bennett Feigenbaum wrote to the Time’s Editor:

*“Editor, The Times: The Coalition for Open Government greatly appreciated your editorial support, and would like also to take this opportunity to thank publicly each of the thousands of voters who collected signatures for Initiative 276, giving Washington voters an opportunity in November to vote on disclosure of campaign financing and lobbyist activities.  
BENNETT FEIGENBAUM, Chairman, Coalition for Open Government”*

The Seattle Times published an editorial on August 31, 1972 in which they compared Initiative 276 to the then recently enacted Federal Election Campaign Act. Their conclusion was that passing the initiative would “... set a salutary example, not only for other states, but for Congress as well.”

Finally, on November 3, 1972 (4 days before the election), the Seattle Times ran its first article specifically on the public records access portion of the initiative as “Initiative 276 may have a sleeper”. The article’s first paragraph says:

*“Talk about Initiative 276 and it rings two bells with the average voter: the disclosure of campaign financing and lobbyists’ funding.”*

The article then goes on to discuss the impact of the public records access portion of the initiative and only discussed the cost of physically copying records. The article used an example of a county charge of \$ 2 for the first page and \$ 1 for subsequent pages and whether or not the labor in copying could be included in the charge.

This was the only article that discussed the impact of the public records access portion of the initiative. All other articles either just mentioned it in one sentence or discussed how it might be used to declare the initiative unconstitutional. No debates, no in-depth analysis, no discussion of a zero-tolerance, unrestricted request law with enforcement given (with financial incentives) to the private sector.

Finally, in a 2004 review of Initiative 276 by UW, Bernie Feigenbaum, Chairman of the Washington Coalition for Open Government, was quoted as saying:

*“A less talked about part of the initiative regarded public records in general. Feigenbaum recalls that most of the initiative discussion focused on campaign-finance disclosure but a section was added stating that public records shall be open. “I can’t remember exactly why we put it in there. It was really uncontroversial. I don’t remember any opposition.”*

The Chairman of the organization creating and promoting Initiative 276 couldn’t remember much about how the section on public records access came about. So, the “... *electorate strongly stated a desire ...*” is a bit of a stretch here. This doesn’t make the resulting law good or bad, it is just one example of the over selling of the Act by the newsprint media.

The development of the Act after the election will be covered in subsequent postings. It gets really interesting from here on out.

The I-276 portion of the Voters Pamphlet for November 1972 and the UW review in 2004 are on the Library page of the website and available for downloading. The Seattle Times articles can be provided upon request.