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Attorney General Robert Ferguson
Office of the Attorney General
1125 Washington St.
Olympia, WA 98504

RE: Formal Comment to Proposed Changes for the Model Public Records Act Rules

The Washington State Transit Association (WSTA) respectfully submits the following formal comments regarding the proposed amendments to WAC 44-14-010 through -040. These comments reflect the collective input of WSTA's Clerks Committee, which is composed of public records officers from transit agencies across the state. Our members are dedicated to serving the public by providing timely and complete responses to records requests, while also managing a wide range of other critical responsibilities within their agencies. The Public Records Act (PRA) continues to function as an unfunded mandate, growing in complexity with each passing year. Public disclosure staff, typically trained as records professionals rather than legal experts, face increasing challenges in navigating these evolving requirements. WSTA respectfully raises concerns regarding certain proposed revisions to the Model Rules, which may carry significant legal and operational implications.

The Model Rules under the Public Records Act (PRA) serve as essential guidance for agencies in fulfilling their obligations under RCW 42.56. In addition to offering procedural benchmarks, these rules are frequently referenced by the courts in evaluating agency compliance with the PRA. As such, any revisions to the Model Rules carry significant implications for public agencies.

It is imperative that the Model Rules account for the wide variation in agency resources, including disparities in technical infrastructure, the complexity of records containing exempt or confidential information, and the staffing levels available to support public disclosure functions. WSTA strongly supports transparency and the principles of open government. However, any substantive changes to the requirements established by the PRA must be enacted through the legislative process, not through administrative rulemaking.

The proposed amendments are extensive, detailed, and far-reaching. They introduce significant changes that affect both public and private sectors, including individuals who may not have received adequate notice. Moreover, the proposed rules would impose substantial financial and staffing burdens on public agencies. These impacts warrant a more deliberative and inclusive process; specifically, one that involves legislative review and the introduction of a bill.

Justin D. Leighton
Executive Director
Washington State Transit Association
PO Box 13068, Olympia, WA 98508

WSTA is providing specific comments on each section of WAC 44-14 for which proposed changes have been introduced, offering feedback on the potential impacts to public agencies and recommendations for clarity, consistency, and statutory alignment.

WSTA supports the inclusion of gender-neutral language throughout the Model Public Records Act Rules. Using inclusive terminology promotes clarity, professionalism, and respect for all individuals, and aligns with modern best practices in public communication and policy drafting.

WAC 44-14-010 and WAC 44-14-020.

WSTA DOES NOT SUPPORT THIS REVISION: The purpose of the Model Rules is to establish procedures that agencies will follow to provide full and prompt access to public records. These rules are intended to inform the public about how to request records and to guide both requestors and agency staff in facilitating access.

The PRA's overarching purpose is to ensure full and timely access to information about the conduct of government, while balancing individual privacy rights and the need for efficient administration. The Act and its implementing rules are to be interpreted in favor of disclosure.

However, the proposed addition of the word "prompt" and the phrase "most timely possible action" lacks clear definition in this context and introduces subjectivity. Without specific parameters, these terms may create confusion for agencies and requestors alike, and could lead to inconsistent interpretations or expectations. These concepts are more appropriately addressed—and better defined—in WAC 44-14-04001 and WAC 44-14-04003, which provide practical guidance on response timelines and processing procedures.

WSTA recommends that the proposed language be reconsidered or clarified to avoid ambiguity and to ensure consistency with existing, well-established provisions in the Model Rules.

WAC 44-14-030(2).

WSTA DOES NOT SUPPORT THIS REVISION: The public records officer or designee, along with the agency, is responsible for providing the "fullest assistance" to requestors, taking the most timely possible action on requests, maintaining an index of public records (if applicable), protecting records from damage or disorganization, and ensuring that fulfilling records requests does not cause excessive interference with the agency's other essential functions.

However, the explanation regarding indexing requirements for local government agencies introduces confusion and appears inconsistent with RCW 42.56.070(4). That statute allows local agencies to opt out of indexing if they determine that maintaining such an index would be unduly burdensome. In such cases, the agency must adopt a single formal order stating the reasons for this determination.

RCW 42.56.070(4) does **not** require agencies to issue separate formal orders for each type of index, nor does it mandate that such orders be published. The proposed language, as currently written, could be interpreted to impose new procedural requirements that are not supported by statute.

If the intent is to establish a new standard for indexing, the rule should clearly specify:

- **Which types of indexes** would require separate formal orders;
- **Whether and how** those orders must be published;
- And how this aligns with or expands upon the statutory language in RCW 42.56.070(4).

WSTA recommends that this section be revised to avoid creating ambiguity or imposing unintended burdens on local agencies that are otherwise in compliance with the PRA.

WAC 44-14-040(1).

WSTA DOES NOT SUPPORT THIS REVISION: WSTA does not support the proposed revision introducing a formal triage system. While triaging is a recognized best practice and aligns with the intent of the PRA's five-day response requirement, it must remain a flexible tool determined by each agency based on its unique operational needs and resources.

Classifying requests as "simple" or "complex" is inherently subjective. An agency's assessment may not align with the requestor's expectations, potentially leading to disputes or dissatisfaction. Moreover, implementing and documenting compliance with a formal two-track system could impose additional administrative burdens, increase processing time, and ultimately delay the fulfillment of more complex requests—undermining the very efficiency the rule seeks to promote.

WSTA supports the goal of producing a single, non-exempt, identifiable record within five business days, where practicable. This aligns with the PRA's emphasis on timely access and is a reasonable and achievable standard for agencies.

WSTA recommends removing the prescriptive language around triaging and instead encouraging agencies to adopt internal practices that best support efficient and equitable processing of requests, consistent with their available resources and statutory obligations.

WAC 44-14-040(3).

WSTA DOES NOT SUPPORT THIS REVISION: Prioritizing requests solely based on a requestor's stated urgency introduces subjectivity and may result in unequal treatment among requestors. RCW 42.56.080 mandates that agencies do not discriminate against types of requesters. The PRA also requires agencies to respond to all requests with diligence and care, regardless of the perceived urgency. Every request necessitates a thorough search and legal review to ensure proper disclosure, which inherently takes time.

Additionally, this proposed language could unintentionally increase legal exposure for agencies. Without clear statutory authority, failing to meet a requestor's preferred timeline—despite acting in good faith—could lead to unnecessary litigation. Public agencies already face frequent lawsuits related to response times, and increased litigation only diverts limited resources away from processing records requests.

WSTA recommends that any added language clarify that agencies are not liable for failing to meet a requestor's self-imposed deadline, provided the agency is acting in good faith and in compliance with the PRA. This clarification would help protect agencies from undue legal risk while maintaining fairness and consistency in how requests are processed.

WAC 44-14-040(4).

WSTA SUPPORTS THIS REVISION.

WAC 44-14-040 (6).

RCW 42.56.540 explicitly states that *"an agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested."* Any attempt to limit or redefine this discretionary authority would require legislative action—not administrative rulemaking.

Furthermore, the proposed 10-business-day notice period is insufficient in many cases, particularly when private individuals are affected. **WSTA recommends the following distinctions:**

- **For private individuals:** A minimum of **30 calendar days** should be provided to allow time to understand the request, seek legal counsel, and pursue injunctive relief if necessary. Agencies should not be forced to release potentially sensitive, personal, or offensive information without affording affected individuals' due process.
- **For private businesses:** A notice period of **10 judicial days** may be appropriate. However, limiting an agency's ability to notify businesses could undermine procurement efforts and jeopardize existing contracts. Public agencies often lack the necessary context to determine whether specific information qualifies as proprietary, confidential, or a trade secret. As such, agencies may not be able to reasonably assess whether the information is exempt from disclosure.

Additionally, **any revision to this section should reference RCW 42.56.250(2)**, which mandates third-party notice to current or former employees when a request seeks records maintained exclusively in their personnel, supervisor, training, or payroll files. This statutory requirement must be preserved and clearly acknowledged in the Model Rules.

WSTA urges that this section be revised to:

- Preserve agency discretion in issuing third-party notices;
- Extend notice timelines to reflect the complexity of seeking injunctive relief;
- Recognize the limitations agencies face in evaluating proprietary or confidential business information;
- And explicitly incorporate mandatory notice requirements under RCW 42.56.250(2).

WAC 44-14-040(8).

WSTA DOES NOT SUPPORT THIS REVISION: While flexibility can be helpful in some cases, the proposed language assumes that all requestors will be communicative and cooperative in establishing alternative timelines. In practice, this is not always the case. Relying on an "agreed period" rather than a clear, consistent 30-day standard introduces subjectivity and may result in unequal treatment of requestors.

Additionally, the language suggesting that agencies may adjust processing timelines for repeat requests based on the prior request's closure date and remaining records introduces ambiguity. This could create confusion and potentially lead to disputes over whether a request is being handled fairly or timely.

WSTA recommends the following:

- Retain the **30-day period** as a firm and consistent standard for all requestors, unless extended at the agency's sole discretion for good cause.
- Clarify that **subsequent requests for the same or substantially similar records should always be treated as new requests**, without exception. This ensures clarity for both agencies and requestors and prevents the creation of perpetually open or recurring requests.

This approach promotes fairness, consistency, and administrative efficiency while still allowing agencies to manage their records programs effectively.

WAC 44-14-040(10).

WSTA DOES NOT SUPPORT THIS REVISION: While providing records in installments is a valuable and efficient practice, it must be implemented in a way that balances transparency with the operational realities of public agencies.

Producing installments allows agencies to:

- Provide timely access to portions of records;
- Conduct necessary legal and exemption reviews;
- And manage large or complex requests without delaying access to already-available records.

However, this is a **time- and resource-intensive process** that must be balanced with the public records officer's broader responsibilities. Agencies must ensure that no single requestor monopolizes staff time or disrupts essential agency functions.

The inclusion of undefined terms such as **"prompt"** and **"diligent"** introduces ambiguity and may lead to disputes if a requestor is dissatisfied with the agency's timeline or the order in which records are released. These terms should either be clearly defined or removed to avoid subjective interpretation and potential legal challenges.

WSTA recommends:

- Retaining the installment process as a best practice, while allowing agencies flexibility in how installments are scheduled and delivered;
- Removing or clearly defining subjective terms like “prompt” and “diligent” to ensure consistent application and reduce the risk of disputes;
- Preserving the 30-day standard for requestor follow-up, which provides a reasonable timeframe for engagement without unnecessarily prolonging open requests.

WAC 44-14-040(12).

WSTA SUPPORTS THIS REVISION. The proposed language provides clear and comprehensive guidance on when a public records request may be considered closed. It appropriately outlines the various scenarios in which closure is warranted—such as fulfillment, withdrawal, lack of clarification, or failure to meet payment or inspection obligations—and ensures transparency by requiring written communication to the requestor. This clarity benefits both agencies and requestors by setting expectations and helping to prevent misunderstandings or disputes. The inclusion of information about the statute of limitations and the opportunity for follow-up questions further strengthens the rule’s fairness and completeness consistent with Cousins v. State.