SPOKANE COUNTY
SHERIFF
SHERIFF JOHN F. NOWELS

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November 14, 2025

Subject: Comment on Proposed Amendment to the PRA Model Rules

To Attorney General Nick Brown,

I am writing to provide formal comment on the proposed amendments to the Washington Public Records Act Model Rules under WAC Chapter 44-14. Our comments pertain specifically to sections 44-14-020, 030, and 040.

I respectfully object to the proposed amendments to section 020, particularly the language in subsection (3) stating that the public records officer or designee and the agency will provide "the most timely possible action on requests." The inclusion of this vague and subjective standard lacks a clear, objective benchmark and is open to inconsistent interpretation. It creates uncertainty for both requestors and agencies and may inadvertently set an unrealistic or unachievable expectation—particularly for agencies with limited staffing or high request volumes.

The PRA already requires agencies to respond to requests promptly and to provide the "fullest assistance" to requestors. Adding an undefined superlative standard such as "most timely possible" introduces ambiguity into an area of law that benefits from clarity and predictability. It also risks undermining the principle of fairness by potentially encouraging prioritization of certain requests over others based on perceived urgency, which could conflict with the PRA's requirement to treat all requestors equitably.

Moreover, the proposed language does not account for the operational realities faced by many agencies, including staffing shortages, complex or voluminous records, and the need to balance public records compliance with other essential agency functions. Without further clarification or context, this language could expose agencies to increased litigation risk or public criticism based on subjective assessments of timeliness.

Regarding the proposed amendment to WAC 44-14-030(3), which would require that if agency employees create or receive public records on personal devices or in personal accounts, they must transfer or copy those records to agency systems "as soon as practicable."

I fully support this amendment and believe this provision is a necessary and prudent step toward ensuring the integrity, accessibility, and accountability of public records. In an era

where mobile devices and personal email accounts are frequently used for work-related communication—intentionally or inadvertently—it is critical that public agencies adopt clear, enforceable standards to ensure that all public records are properly preserved and made accessible in accordance with the Public Records Act (PRA).

Requiring the transfer of public records from personal to agency-controlled systems ensures that records subject to disclosure are not inadvertently omitted from searches or responses due to being stored in personal accounts or on private devices. Furthermore, by centralizing records within agency systems, agencies can better safeguard sensitive information and apply consistent retention and redaction policies. This requirement will help agencies avoid potential PRA violations and litigation stemming from incomplete records searches or allegations of improper withholding. While this requirement may necessitate some internal policy updates and employee training, the long-term benefits to public trust and legal compliance far outweigh the administrative burden.

Finally, I would like to express my opposition to Sections 1, 3, and 6 of the proposed amendment to WAC 44-14-040, which outlines general procedures for processing public records requests under the Model Public Records Act (PRA) Rules.

While the PRA rightly emphasizes providing the "fullest assistance" to requestors, the proposed language in Section 1 introduces a triage system that allows agencies to prioritize requests based on perceived complexity or simplicity. This approach risks undermining the PRA's foundational principle of equitable access. Prioritizing "simple" requests over "complex" ones—regardless of the order in which they are received—may result in arbitrary or inconsistent treatment of requestors and could be interpreted as favoring certain individuals or types of requests over others. This is particularly concerning in light of the PRA's mandate that agencies process requests without discrimination.

Section 3 directs agencies to consider whether a requestor has identified a reason that "time is of the essence" and whether it is practicable to meet that timeline. While responsiveness is important, this provision again risks creating inequities by encouraging agencies to prioritize requests based on subjective assessments of urgency. The PRA does not authorize agencies to rank requests based on the requestor's stated need or purpose. Doing so could lead to preferential treatment and erode public confidence in the fairness of the records process.

The revised language in Section 6 significantly narrows the circumstances under which third-party notice may be given, requiring a belief that disclosure would cause "substantial and irreparable damage." This heightened threshold is problematic. The current third-party notice process serves as a vital safeguard for protecting individual privacy rights and sensitive information. Weakening this process may result in premature disclosures that could have been prevented through judicial review. The PRA and related statutes recognize the importance of third-party notice in certain contexts, and agencies should retain discretion to notify affected individuals or entities when appropriate. The proposed language appears to discourage this

practice by placing agencies in the untenable position of determining what constitutes "substantial and irreparable damage" to an unknown third party.

Thank you for the opportunity to comment and for your continued efforts to improve the PRA model rules through a collaborative and transparent process. I commend the Attorney General's Office on the proposed amendments to WAC 44.14.030 requiring the transfer of public records from personal devices to agency systems "as soon as practicable" and urge its adoption in the final rule. For the reasons outlined above, I respectfully urge the Attorney General's Office to reconsider the proposed revisions to WAC 44-14-020 and 040. These provisions, as currently drafted, introduce ambiguity, risk inequitable treatment of requestors, and may weaken essential privacy protections. I urge the Attorney General's Office to revise this language to reflect a more balanced and practical standard—one that encourages promptness while recognizing the need for flexibility and fairness.

Sincerely,

JOHN F. NOWELS, SHERIFF
Spokane County