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**LAKE WASHINGTON SCHOOL DISTRICT RESPONSE TO ATTORNEY GENERAL OFFICE INVITATION FOR FORMAL COMMENT  
ON PROPOSED AMENDMENTS TO THE MODEL PUBLIC RECORDS ACT RULES**

**I. Overview**

The Washington State Constitution recognizes the “paramount duty of the state to make ample provision for the education of all children residing within its borders...” (Art. IX § 1). The Lake Washington School District (the “District”) was formed “to educate all students to a higher level; to focus on the individualized instructional needs of students; to strive towards closing the achievement gap and reducing dropout rates; and to prepare students for a constantly evolving workforce and increasingly demanding global economy” (RCW 28A.150.198(2)). Of course, the District appreciates that the Public Records Act (the “Act”) furthers the similarly noble goal of public access and accountability. However, the Act itself explicitly recognizes the secondary nature of perfect public records compliance by instructing agencies to adopt “reasonable procedures” that promote public access and “prevent excessive interference with other essential functions of the agency” (RCW 42.56.100). If, as Maya Angelou astutely observed, education is indeed one’s “Passport to the Future,” then the District must jealously guard its ability to educate the next generation – even if this results in slower processing times for public records responses. Otherwise stated, the Act does not require an agency with finite resources, like the District, to shift limited resources away from its core teaching and learning objectives to improve public records act response times.

The District has experienced an unprecedented number of public records requestors seeking overbroad and labor-intensive requests with no apparent legitimate purpose – most of which arrive through anonymized servers. These extensive high-volume requests resulted in an unprecedented backlog of public records requests and, although prioritization of requests is a helpful tool, the District cannot indefinitely set aside these requests to attend to time-sensitive or smaller requests. The District expends significant public resources to respond to public records requests and cannot reallocate additional public funds for this purpose without excessively interfering with its essential functions of teaching and learning.

**A. *Changes Adding “Prompt” and “Most Timely Possible Action” (WAC 44-14-010 & 020)***

The District opposes the proposed additional timeliness requirements as vague and unsupported by the Act because the proposed additions of “prompt” or “most timely possible action” are either in direct violation of the Act or entirely superfluous.

First, if requestors interpret the word “prompt” to mean “immediate” or “within a certain established time period” then this modification directly contradicts RCW 42.56.520, which authorizes agencies to

provide a “reasonable estimate of the time the agency” will require to fulfill the request based on a set of established factors. The only other plausible definition of the term “prompt” would be “within a reasonable amount of time,” which would ultimately render the modification entirely redundant and, therefore, unnecessary.

Similarly, the proposed requirement for agencies to take the “most timely possible action,” if taken at face value, violates RCW 42.56.100, which requires rule makers to “prevent excessive interference with other essential functions of the agency,” because it requires an agency to redirect all available resources to public records responses at the expense of other essential functions simply because such an action is technically “possible.” Alternatively, if the phrase actually means “most reasonably timely action,” then it too is superfluous and entirely pointless.

***B. Maintaining Public Records Solely on Personal Devices (WAC 44-14-030)***

The proposed rules seek to add additional requirements preventing agencies from maintaining any public records exclusively on personal devices. The law defines work-related text messages or personal emails on a private device as public records. However, Washington courts recognize that even public employees have a privacy interest in their personal devices and have held that an agency satisfies its obligation to search for such records by asking the employee to make a good faith search of their devices or responsive records. Importantly, an agency is not authorized to subject employee personal property to search and seizure to “ensure” that public records are “readily available” for inspection. Accordingly, the only “reasonable steps” at the District’s disposal are to enact a policy that directs employees to maintain public records on personal devices or to conduct public business on public devices and through an application connected to District servers.

***C. Triage Different Types of Records Requests (WAC 44-14-040(1))***

The District is not opposed to language permitting it to categorize responses into “simple” and “complex” tracks for efficiency purposes. However, the District opposes the proposed language requiring agencies “to ensure that processing times are proportionate to the difficulty of each request.” While the District appreciates the intent to improve efficiency, the proposed language is vague, undefined, and ultimately impracticable. The terms “simple,” “complex,” and “proportionate to the difficulty” are not defined in the rule, leaving agencies without clear guidance on how to categorize requests or measure difficulty. In practice, the complexity of a request is often not apparent at the outset and may depend on factors such as the location of records, the need for legal review, issuance of required third party notices, or the involvement of multiple departments. Hardline definitions or expectations around proportionality would impose unrealistic burdens and expose agencies to unnecessary scrutiny or litigation. The District urges the Attorney General’s Office to revise this section to reflect a permissive framework that allows agencies to triage requests when appropriate, without mandating a rigid or undefined standard. Agencies must retain discretion to manage their workloads in a manner that aligns with their statutory obligation to avoid excessive interference with essential functions, particularly in educational settings where staff time is already stretched thin.

The District also opposes the proposed language stating that “where a request has been made for a single, specific, identifiable record, the agency will endeavor to produce the request within five business days if practicable to do so.” This addition is unauthorized by the Act because it bypasses an agency’s statutory ability to determine a “reasonable estimate” of the time required to fulfill any given request, as provided under RCW 42.56.520. The Act explicitly allows agencies to assess the time needed to respond based on the nature and complexity of the request, and any rule that imposes a presumptive timeline—even one framed as aspirational—undermines that statutory discretion. Moreover, this type of hard and fast rule is

demonstrably inappropriate in many situations. For example, a “single record” could include employee personnel information that requires pre-disclosure notification and a ten-day waiting period under RCW 42.56.250(2). The proposed language fails to account for such statutory requirements and creates unrealistic expectations that could be abused by requestors seeking to force premature disclosure. In practice, this provision would expose agencies, particularly school districts with limited resources, to unnecessary litigation and compliance risks. The District urges the Attorney General’s Office to remove this language or, at minimum, clarify that agencies retain full discretion to determine reasonable timelines in accordance with existing law.

***D. Evaluating Time Sensitive Requests (WAC 44-14-040(3))***

The District is not opposed to language permitting it to consider the time-sensitive nature of a given request as long as such language is permissive rather than mandatory. Most requestors consider their requests to be emergent. This places agencies in the difficult position of trying to evaluate what types of time-sensitive issues take precedence over others. Such an analysis is not always appropriate, particularly when agencies cannot compel requestors to explain the purposes of any given request. Regardless, Washington law already allows the District to consider the time sensitive nature of a given request in appropriate circumstances, so this proposed change is unnecessary.

The District opposes the proposed requirement that an agency fully evaluate the volume and availability of records *before* its initial response because this is practically unfeasible and unrealistic. The District is comprised of many different departments and school buildings with records maintained in a variety of locations. The process of identifying relevant departments and/or buildings, communicating with employees in such locations, and then actually obtaining the records to consider volume within a 5-day window is not practical. Frankly, such an ask is not possible without requiring District personnel to stop working on their primary job responsibilities related to the teaching and learning objectives and to, instead, focus their attention on public records request above all else. Such a requirement clearly violates RCW 42.56.100.

***E. Denial Logs (WAC 44-14-040(4)(d))***

RCW 42.56.210 already requires that “Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.” The proposed rulemaking is, again, redundant and pointless.

***F. Notice to Third Parties (WAC 44-14-040(6))***

The District opposes the proposed changes to third party notice because it places public employees in the untenable position of unilaterally evaluating the impact of certain records on third parties. Specifically, this dramatic change charges public employees with speculating as to what type of information “may substantially and irreparably damage any person or vital government function” if disclosed. While a public employee can reasonably be tasked with identifying records that “may affect” a third-party interest, it is patently unfair to require agencies to make a determination of substantial or irreparable damage on a third party’s behalf. Particularly when the third party is in the best position to accurately evaluate the impact of disclosure.

Moreover, the proposed change violates numerous statutory notice requirements explicitly stated in the Act or other laws – namely notice to families, children, and employees related to disclosure of certain records. These statutory notice requirements serve an important function of protecting employees and students from harmful dissemination of personal information.

The District has no interest in unilaterally determining the impact of certain records on third parties, and even less interest in acting as the intermediary between the third party and the requestor to modify the request to suit outside interests. Asking an employee to exercise this sort of discretion is unrealistic. The original rule appropriately allows agencies to provide notice to third parties whose rights may be affected, to allow this third party the opportunity to make their own evaluation of the issues, and to communicate directly with the requestor regarding scope of the request. Essentially, it takes the public agency out of the discussion, which ultimately frees up the agency to efficiently process public records requests without diverting resources from its essential functions.

***G. Suspension of Public Records Requests (WAC 44-14-040(8)(b))***

The District opposes the proposed changes to effectively prevent public agencies from obtaining any finality with respect to records inspections. A request to inspect records requires physical records to be available in a given location. It is patently unreasonable to require agencies to be prepared to present documents at any given time should the requestor re-emerge years into the future. By permitting a requestor to make a subsequent request for records that were previously prepared but not claimed, and by instructing agencies to consider how recently the prior request was closed and the number of records remaining to be processed, the rule creates a loophole open to exploitation. This language effectively enables requestors to harass agencies by cycling requests and then asserting that the agency should have the records immediately available, simply because the requestor failed to claim them in a prior request. Such a requirement would force agencies to hold prepared records indefinitely, anticipating that a requestor may reappear at any time to claim them. This is not practicable and places an unreasonable administrative burden on agencies with limited resources. Moreover, there is no prejudice to the requestor based on the closure of abandoned requests. The requestor can simply re-submit the same request when they have more time to participate in the process.

The Public Records Act recognizes the need for agencies to close abandoned requests and return records to their original locations, and any rule that undermines this principle disrupts agency operations and diverts resources from essential functions. Agencies must retain the ability to close requests and return records without fear of perpetual obligation, and subsequent requests should be processed as new requests, with reasonable timelines and without any presumption that the agency has records immediately available.

**II. Conclusion**

The District agrees that changes should be implemented to public records rules, but disagrees that the proposed changes are authorized by law or are the best solution for the problems at hand.

Respectfully,



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