

## King County Executive Branch's Comments on Proposed Changes to Model Rules (CR-102)

Thank you for the opportunity to comment on the proposed changes to the Public Records Act Model Rules.

Before commenting on the proposed rules, King County would like to highlight an emerging public disclosure concern. Increasingly, requestors are relying on generative artificial intelligence (AI) to interpret the Public Records Act and accompanying authorities, such as the Model Rules. AI often misstates legal requirements of agencies, leading requestors to incorrectly believe the agency is in violation of the law when in fact, it is acting lawfully.

The purpose of the PRA Model Rules is to promote a culture of compliance among agencies and a culture of cooperation among requestors by standardizing PRA best practices. By default, they are advisory in nature and are not legally binding unless formally adopted. Any "one-size-fits-all" approach in the model rules, therefore, may not be best for requestors and agencies.

Therefore, we strongly encourage and respectfully request the Attorney General's Office to consider possible misinterpretation by requestors and/or generative AI when updating the Model Rules and make it clear that the proposed amendments are advisory before adopting the proposed rules.

### 44-14-040(1)

- The suggestion to produce a single record within five business days fails to address the complexity of just one record given current technology. Some single, specific, and identifiable records require significant time to collect and review, such as bodycam videos, jail facility blueprints, security logs, etc.

### 44-14-040(3)

- Generally:

- o We are concerned that the requirement for agencies to evaluate requests for expeditious processing, and to act on those requests when practicable, may be misinterpreted by requestors or generative AI as an assurance that agencies will establish an expectation that agencies are required to produce records on a timeline dictated by the requestor.

- Agency cannot determine if "time is of the essence":

- o King County agrees that expedient and timely processing of requests is beneficial both to requestors and to agencies. However, we do not agree that it is, nor should it be, the agency's responsibility to determine whether time is of the essence.

- “Practicable” is too vague:

o The proposed language also states that agencies should produce records within the requested time frame if it is practicable to do so. “Practicable” can imply many factors – the records being requested, the complexity of the request, whether redactions are needed, or the overall workload of public disclosure staff, among

other considerations. The lack of objective criteria to determine practicability puts agencies in a position where they are asked to differentiate between requestors and defend what is or is not “practicable” to requestors and potentially the courts, if challenged on their response time.

44-14-040(6)

- Agencies should not be required to determine whether release would “substantially and irreparably” damage a person before giving third-party notice. Agencies do not have the information to accurately assess this standard, as it is the third party, not the agency, that has the information necessary to make that determination. “Substantially and irreparably” is an extremely high standard that is often determined by a court of law; agencies should not be put in a position to make this determination.
- Furthermore, the proposed amendment fails to note that third-party notice is sometimes required by law. If the proposed amendments are adopted, it should be made clear that this clause would not apply when third-party notice is required by law.
- The use and applicability of “person” may be unclear to laypeople. Please define or clarify the meaning of “person”, so it is clear if the rule applies only to third-party notice for individual people, or to all types of third-party notice, including notice to entities.