



November 17, 2025

Washington State Attorney General's Office
Rulemaking Team

Sent via email: ago rulemaking@atg.wa.gov

To Whom It May Concern:

Thank you for the opportunity to provide comment on the proposed amendments to the Public Records Act Model Rules, chapter 44-14 WAC. Thank you also for your consideration of agencies' informal comments made during consideration of the rulemaking petition. The City of Kirkland has been at the forefront of advocating for transparency in public disclosure and of taking actions supporting the Public Records Act. In conjunction with the Public Records Act, the City's local laws related to public access to public records and our Public Record Act Rules create a framework for Kirkland staff to provide the fullest assistance to requestors. In developing local public records rules and processes, the City, along with agencies across the state, relies on the guidance provided by the Model Rules.

The City Clerk's Office staff and the City's Public Disclosure Steering Team have reviewed the proposed amendments and identified several concerning proposals. As indicated in the CR-102, the Model Rules provide a resource on "best practices" an agency can use to align its practices with the requirements of the PRA. Several of the proposed changes are inconsistent with the PRA and fail to provide agencies with direction on actual best practices. Other proposed changes are unnecessary and would be unduly burdensome for agency implementation.

Kirkland respectfully offers the following detailed comments on several proposed amendments:

Proposed change to WAC 44-14-030(2): *"The (name of agency) finds that maintaining an index of (specify which types of records) is unduly burdensome"*

This proposal exceeds the scope of RCW 42.56.070(4), which requires only that an agency issue a formal order specifying the reasons and extent to which compliance would be unduly burdensome—not a list of record types. Requiring agencies to list record types to justify opting out would result in a de facto index, undermining the very purpose of the exemption the PRA provides.

Kirkland has already formally opted out of maintaining an index due to the decentralized nature of the City's records systems, which span twelve departments and multiple databases. Indexing all records would require significant staff time, cross-departmental coordination, and technical infrastructure that would divert resources from processing actual disclosure requests. **This proposed amendment should be rejected.**

Proposed change to WAC 44-14-040(1): *"including, when appropriate, triaging requests into simple and complex tracks to ensure that processing times are proportionate to the difficulty of each request."*

This proposal oversimplifies the nature of records requests and risks conflict with RCW 42.56.080(2), which prohibits distinguishing among requestors. The official comments already encourage agencies to manage the order in which they process requests. Including the proposed language makes this proposal read like a mandatory requirement that is not supported by the text of the PRA. Agencies are in the best position to exercise discretion in determining categories of requests for that agencies records. Moreover, what qualifies as "simple" or "complex" can be subjective and sometimes will turn on the nature of the document or how the request is worded. For

example, a request for a single body-worn camera video may appear “simple” but often requires privacy redactions, legal review, and cost recovery. Conversely, a request for a dozen routine meeting agendas may be fulfilled in minutes. **This proposed amendment should be rejected to preserve agency discretion in triaging records requests and to avoid a binary framework that does not reflect operational realities.**

Proposed change to WAC 44-14-040(1): “Where a request has been made for a single, specific, identifiable record, the (name of the agency) will endeavor to produce the request within five business days if practicable to do so.”

This proposed requirement assumes that a single, specific, identifiable record means that the request is simple. This assumption is not accurate. For example, Kirkland’s Police Department receives a high volume of records requests, even the simplest of which may necessitate legally-required redactions.

While this proposal may seem academically feasible, it is not realistic for larger, more complex requests or for larger agencies that receive a large number of requests. Kirkland already endeavors to provide single, easily identifiable records as quickly and accurately as possible. However, a request for a single, specific, identifiable record is not always simple. To meet the Model Rules’ proposed turnaround for “simple” requests, Kirkland estimates it will need to hire at least one additional full-time employee. **This proposed amendment should be rejected.**

Proposed change to WAC 44-14-040(3): “When evaluating the nature of the request, the (name of the agency) should consider if the requestor has identified a reason that time is of the essence for the production of the records and if it is practicable to produce the records in the time frame provided by the requestor.”

This proposed amendment introduces subjectivity, inequity, and potential liability. Adopting this standard will encourage some requestors to routinely claim urgency to gain priority, force staff to make subjective judgments about the legitimacy of urgency claims, delay processing of other legitimate requests, and interfere with essential functions. This proposal could allow a requestor to move to the front of the line simply by claiming some deadline exists with the public records officer having no way of evaluating for truthfulness. The proposed amendment also does not take into account whether the requestor has acted diligently. For example, one situation that many agencies face is requests made shortly before a trial where the defendant or defense attorney failed to use existing discovery tools – agencies should not have to prioritize requests where the requestor could have sought the records sooner but chose to wait until the last minute to make the request.

Kirkland’s public records staff already considers urgency in Category 1 requests (e.g., imminent public safety concerns). Kirkland, like many agencies, is not equipped to vet the validity of every assertion of a time-sensitive request. This proposed change will exacerbate existing challenges. **This proposed language should be rejected or the Model Rules should simply clarify that agencies may consider urgency at their discretion, consistent with RCW 42.56.100.**

Proposed change to WAC 44-14-040(6): “the public records officer may, prior to providing the records, give notice to a person named in such records or to whom the records specifically pertain.”

This standard is vague and places undue burdens on public records officers. Kirkland follows RCW 42.56.250(2) and provides third-party notice when required, particularly for

personnel records. The proposed amendment could create confusion about when notice is mandatory or discretionary and lead to inconsistent application and increased risk. **The current rule language should be retained and perhaps clarified to reflect that third-party notice is required only when mandated by statute or when the agency has a reasonable belief that an exemption may apply.**

Proposed change to WAC 44-14-040(8)(b): "The requestor must claim or review the assembled records within ~~((thirty))~~ 30 days of the (name of agency's) notification ~~((to him or her))~~ that the records are available for inspection or copying, unless another time frame is agreed upon by the agency and the requestor."

First, Kirkland appreciates that the proposed amendment responds to comments received during the early review of the original proposal. Nevertheless, this change still seems unnecessary. As agencies across the state experience, many requestors do not reply to any staff outreach. Adding this language to the Model Rules may create an unwarranted expectation by requestors or courts that an agency must offer or agree to an alternative time for review other than the reasonable 30 days already incorporated into the Model Rules. Even without this proposed language, agencies often provide additional time for retrieving records. Because a requestor can simply remake a request, agencies have a strong incentive not to close requests prematurely.

Proposed change to WAC 44-14-040(8)(b): "**The requestor may make a subsequent request for the same or almost identical records, which may be processed by the agency as a new request. In evaluating the time to process the new request, the agency will consider how recently the prior request was closed and the number of records from the prior request remaining to be processed.**"

The second sentence in this proposed amendment could be interpreted as giving preferential treatment to repeat requestors, which is inconsistent with the RCW 42.56.080 prohibiting agencies from distinguishing among records requestors. Consistent with the PRA, Kirkland's policy allows the City to close abandoned requests after 30 days with notice to the requestor. Where the requestor seeks subsequent records, the City may treat these as new requests. This approach is neutral, efficient, and consistent with Kirkland's policy of processing requests in the most practicable manner. **Kirkland supports inclusion of the first sentence in bold above, as a neutral best practice indicating that subsequent requests may be treated as new requests. Kirkland requests the proposed second sentence above be eliminated.**

The City of Kirkland encourages the AGO to reject many of the proposed amendments to the Model Rules. Kirkland is dedicated to upholding the principles of open government and is hopeful that the Model Rules will continue to provide clear, effective guidance to employees and elected and appointed officials on PRA issues.

Thank you for this opportunity to provide comment on these proposed rules. Please feel free to contact the City of Kirkland if you have any questions or if City staff may be of further assistance in this process.

Sincerely,



Darcey Eilers
City Attorney