

November 17, 2025

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Sent via email to agorulemaking@atg.wa.gov.

Dear Deputy Attorney General Beusch:

The Washington State Office of Equity (EQUITY) strongly believes in government transparency as a critical function of collective decision-making, representative democracy, and the rule of law. Simultaneously, the agency recognizes that provisions of law or their manner of interpretation can fall on different parties unequally. The agency is concerned that some of the proposed updates to the Public Records Act Model Rules do not adequately consider the safety concerns of state employees and unduly limit the ability of individual employees to utilize the legal remedies available to them under the Public Records Act. Our comments are limited to the proposed revisions of WAC 44-14-040(6) and the relevant comments to the Model Rules in Chapter 44-14 WAC.

The statutory provisions of the Public Records Act, RCW 42.56.001 et seq., and the jurisprudence interpreting it, hold strongly to not exempting many categories of state employee records. However, this means that employees may have information, phone numbers, job site, or employment contract details disclosed that can increase the risk of harassment, stalking, or targeting, especially if the records include location details or relate to a contentious topic. Additionally, while the Public Records Act was recently amended to exempt the disclosure of employee information for those who are survivors of domestic violence, sexual assault, sexual abuse, stalking, or harassment and who have a reasonable basis to believe that this risk continues to exist, this exemption does not prevent the disclosure of information that may be used to fuel some of these activities in the first instance. In many, if not most, circumstances, the party in the best position to understand how the release of a record may contribute to these risks is the individual employee, not the agency responsible for maintaining the relevant records.

EQUITY believes that the proposed changes to WAC 44-14-040(6) do not adequately strike the balance between transparency and safety. Particularly, we are concerned about the proposed change to the agency third-party notice standard from when the disclosure of records “may affect rights of others and may be exempt from disclosure” to when it “may substantially and irreparably damage any person or vital governmental function” and the agency has a “reasonable belief that the records are arguably exempt from disclosure.”

The explanatory comments for the proposed text state that the changes are intended to match the Model Rules to the standard that a party must meet to receive an injunction to prevent the release of a record. However, it is unclear, and the comments in the administrative record do not clarify, why agencies, instead of individuals, are in the best position to understand whether the release of a record will “substantially and irreparably” damage any person, and we disagree with the implication that the agency is the best positioned party. In many cases, agencies are unable or would not be able to know whether substantial or irreparable harm may exist without conducting probing, personal questioning of their employees (and the subsequent responsibility to maintain the records generated by this questioning) that step over the line of maintaining separation between employees’ professional and personal lives.

Instead of putting the responsibility on the agency to identify the potential substantial and irreparable nature of the release of information, the current, more permissive standard is more appropriate in that it allows agencies to provide notice when the agency believes that the disclosure may affect the rights of others and that an exemption may exist. Regarding any concerns about how individuals who receive a notice may seek to utilize the legal process available to them, it does not appear to us that the solution is to make it harder for affected parties to learn that information regarding them is about to be released.

Regardless of the form of the third-party notification standard, WAC 44-14-040(6) also currently does not advise that this notice should be sent with the accessibility needs of any recipient in mind. We recommend that the proposed rules be amended to incorporate accessibility standards (regarding language, disability accommodations, etc.) for all records communications.

Additionally, EQUITY believes that the proposed, more restrictive standard for third-party notification lacks accompanying revisions to the Model Rule comments in Chapter 44-14 WAC that would strike an appropriate balance with employee safety. Employees who are unaware of exemptions, such as those extended to survivors of domestic violence, assault, stalking, or harassment, remain vulnerable if they are not able to utilize this exemption because of their lack of knowledge. We recommend that the AGO amend WAC 44-14-00005 to also include, in the training advised for all employees, education about the exemptions that are appropriate to their circumstances as state employees. Additionally, we recommend that the Model Rule comments be amended to include, as part of agency compliance responsibilities, the advisement that agencies should send regular, accessible communications to remind employees of the statutory exemption for survivors of domestic violence, sexual assault, stalking, or harassment. These communications should include plain language guidance on how to submit the sworn statement and what information is covered.

Qualitative information also provides the understanding that employees from different demographic groups are disproportionately subject to risk. In order to understand whether the data bears out this understanding, agencies should be advised to track the number of records requests that involve employee-identifying information, the number of third-party notices that were sent, and the number of exemptions invoked to identify any disparities.

Regardless of whether WAC 44-14-040(6) is amended, many PRA rules are applied on a case-by-case basis, which heightens the risk for inconsistent application. EQUITY recommends, as part of the agency compliance responsibilities stated in the Model Rule comments, that agencies be advised to conduct a standard “employee risk review” for all requests to help determine the best method in which to fulfill requests and whether to provide a notification. This review could include, for example, the following questions for the public records officer to consider and, where appropriate, discuss with their agency's human resources personnel:

- Does the request implicate the identity, contact info, home or work location, direct phone/email, or other unity identifier or one or more employees?
- Are any of the employees involved in the records request likely to be at an elevated risk?
- Has the employee notified the agency of any protective status (survivor, stalking, harassment)? Are they involved in Address Confidentiality Program?
- Would disclosure of the request information create a legitimate safety risk (harassment, stalking, doxxing, retaliation)?
- Would aggregating or anonymizing the data satisfy the request while reducing risk?
- Is the agency providing employees and requestors equal access to information about their rights under the laws and rules? For example, related to translation, accessibility, and awareness?
- Are audio/video recordings involved? If so, are there voices or images of witnesses or employees who might be identifiable?

We appreciate the opportunity to provide comment on these proposed rule changes. If the proposed rules are adopted without specific consideration to disparities to employees from marginalized backgrounds, the standard disclosure practice may inadvertently create higher risk for certain employees, based on, for example, gender, race, sexual orientation, and/or disability. This would then have a disparate effect on underrepresented groups who face structural barriers to public service employment.

We are grateful that the importance of these issues is recognized across executive branch agencies, and we understand that nuance is required to strike the appropriate balance. We thank the Attorney General’s Office for its commitment to both transparency and employee safety.

Sincerely,

Amanda Maxwell
Operations Director
Washington State Office of Equity