WASHINGTON MUNICIPAL CLERKS ASSOCIATION
Established in 1969

TO: Washington Attorney General's Office

FROM: Washington Municipal Clerks Association (WMCA)

DATE: October 30, 2025

RE: Informal Comments on Public Records Act Model Rules Rule Making WSR 25-20-108

To the Attorney General's Rule Making Team:

The Washington Municipal Clerks Association (WMCA) is comprised of municipal clerks from throughout the State who serve as their agency's designated Public Records Officer under the WA Public Records Act (RCW 42.56). We support the Public Records Act (PRA) and the goals of the PRA. Nothing in these comments should be interpreted as opposition to those goals.

After reviewing the proposed changes to the PRA Model Rules, WMCA respectfully submits these informal comments to call attention to areas in which those changes to the proposed rules will help achieve closer alignment with the PRA.

Concerns with the Proposed Rules:

The requirements for opting out of maintaining an index should not be changed.

The PRA was created in 1973 when public records would have been in "hard copy" format, such as paper or microfiche that was stored at City Hall. It was ideal then to maintain an index so city employees would know where to locate specific records. RCW 42.56.070(3) provides that each local agency shall maintain a current public records index unless the agency issues a formal order pursuant to RCW 42.56.070(4) explaining why it would be "unduly burdensome" to do so. These statutory provisions have not changed since the PRA was created.

The proposed rules raise the question of whether local agencies that have previously opted out of indexing records would have to reissue their formal orders if they do not reference specific record types. Additionally, to what detail would an agency need to specify their records to declare creating an index unduly burdensome? Would this require the agency to create an index to declare doing so unduly burdensome? Of note, RCW 42.56.070(4)(a) does not contain a requirement that a local agency specify which types of records are unduly burdensome.

The whole process of creating and maintaining a public records index is unduly burdensome not because of specific record types, but the process itself would be time consuming and further take away resources from the essential function of processing records requests. We respectfully submit that the current language of the Model Rules is adequate and both agencies and requestors will not be well served by adoption of the additional index requirements.

Sorting requests into "simple" and "complex" tracks should be avoided.

WAC 44-14-040 already requires agencies to “process requests in the order allowing the most requests to be processed in the most efficient manner”. This guidance is sufficient and provides the flexibility necessary for public agencies to utilize their available resources to provide the most prompt and timely response possible to public records requests.

Categorizing public records requests as either “simple” or “complex” should be avoided. The proposed rule creates a misleading impression that a request for a single record is "simple" and should be able to be processed within five days. However, locating, reviewing, and producing a single record can be just as complex as a request for a hundred records. One record can be hundreds of pages, require legal review and redaction and/or third-party notice, such as required for records located exclusively in employee's personnel files (RCW 42.56.250(2)).

RCW 42.56.080(2) states that agencies must make records “promptly available” and that agencies “shall not distinguish among persons requesting public records”. Categorizing records based on whether they are perceived as “simple” or “complex” could go against that statutory provision.

Under RCW 42.56.570(2)(a), the Attorney General is required to adopt Model Rules addressing the fulfilling of large requests in the most efficient manner. Requiring agencies to sort requests into "simple" or "complex" tracks may require that they prioritize their limited resources on processing the "simple" requests over the "complex" ones to meet the 5-day production deadline and may interfere with the agency's essential functions.

Stating that processing public records is an essential public function does not resolve the fundamental dilemma. Agencies should be able to decide how best to triage requests and allocate their resources so that all public records requests are processed in compliance with the PRA.

RCW 42.56.520 requires an agency to respond to a public records request within five business days. Producing the record(s) is one of the possible responses – and a very common one, as evidenced by annual Public Records Reporting to JLARC. The reports show that the median number of days to close requests from 2018-2023 among all reporting agencies has consistently been 5 days each year. (Report showing 2024's data not yet available.) Producing records must be done “promptly” and, largely, agencies across the State are already doing this. WMCA opposes the proposed revision to WAC 44-14-040(1).

“Time of the Essence” provision can further complicate the public records process.

Incorporating “time is of the essence” language into the Model Rules creates a situation where Public Records Officers must discriminate between requestors and their stated reasons for needing their request prioritized above all others. Since the Public Records Act does not require requestors to explain why they are seeking records (except in very limited and well-defined circumstances), this creates liability for agencies for Public Records Act violations. Further, it may encourage requestors to invoke the "time is of the essence" language in the hope that their request will be prioritized above all others. If an agency receives numerous requests where time is claimed to be of the essence, this would not only delay work on other records requests, but could interfere with other essential functions of the agency in violation of RCW 42.56.100.

Without legislative revisions to the Public Records Act specifying when and how agencies should identify and prioritize "emergency" requests, we respectfully request that the proposed revision to WAC 44-14-040(3) not be adopted.

Third Party Notice provision should not be amended.

We respectfully request that the amendments to WAC 44-14-040(6) be rejected.

These proposed amendments would impose greater standards than required by the Public Records Act. As proposed, they would require Public Records Officers to make subjective judgments regarding what would or would not
"Substantially and irreparably damage any person or vital government function." Often, the only person able to make this judgment is the third party.

Further, RCW 42.56.250(2) states that an agency must provide third party notice when it receives a request for information located exclusively in an employee's personnel, payroll, supervisor or training file.

The proposed amendment should either be rejected or be updated to clarify that there are circumstances under which third party notice is not optional for
an agency and remove obligation for a Public Records Officer to judge whether the disclosure of records would substantially and irreparably damage the third party.

The subsequent requests for inspection of records provisions should not be revised.

WAC 44-14-040(8)(b) addresses subsequent requests to inspect records. This is where a requestor will fail to claim or review the records within 30 days (or
another period of time agreed upon by the agency and requestor) and then resubmits the request.

The current Model Rules (which would be deleted under the proposed rules) state that:

> "Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request."

The proposed rule authorizes an agency to treat the subsequent request as a new request, but then provides:

> "In evaluating the time to process the new request, the agency will consider how recently the prior request was closed and the number or records from the prior request remaining to be processed."

WMCA respectfully requests to delete this sentence from the proposed rules. The time it may take to process a resubmitted request is not determined by how recently the request was closed or the number of records that are left to process, but the amount of resources it would require to re-process the request and how that impacts other public records requests in the queue.

There should be a neutral approach to this by simply stating that a subsequent request will be processed as a new request. Deleting the final sentence of Section 8(b) of the proposed rule and deleting the sentence of the current Model Rules quoted above will achieve that result. WMCA supports this because it gives agencies flexibility to "process requests in the order allowing the most requests to be processed in the most efficient manner" (WAC 44-14-040(1).

Sincerely,

Washington Municipal Clerks Association