

**Proposal to Replace AGO Appeals with an Independent Office  
of Public Records Review (OIPRR)  
for the PRA Model Rules (WSR 25-20-108)**

Submitted to: Washington State Office of the Attorney General – Rulemaking Team

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**Subject: Comment on PRA Model Rules – Proposal to Replace AGO Appeals with  
an Independent Review Office (OIPRR) (WSR 25-20-108)**

Attorney General’s Office – Rulemaking Team:

Thank you for undertaking updates to the Public Records Act (PRA) Model Rules (chapter 44-14 WAC). Under RCW 42.56.570, the Attorney General is charged with adopting advisory model rules to improve uniformity and transparency in PRA administration. I submit the attached proposal to (1) remove the AGO from the administrative appeal chain and (2) establish an Office of Independent Public Records Review (OIPRR) as the second-step, independent reviewer of agency denial/redaction decisions.

This reform addresses a structural conflict and improves accountability. In practice, WAC 44-14-080 and its companion comments (WAC 44-14-08001–08004) make an internal agency appeal available and then invite requesters to seek AGO review of state-agency denials (WAC 44-14-08002). But the AGO also defends those same agencies in PRA litigation, creating incentives to validate withholdings rather than correct them—undermining confidence in the process. In my recent PRA case against the AGO, the Court of Appeals reversed and remanded because many of the AGO’s privilege redactions were improper (see attached opinion).

I urge adoption of the draft rule text below to: (a) remove AGO review as a step in the model rules; (b) create a neutral OIPRR to provide fast, expert, non-conflicted determinations; and (c) preserve judicial review exactly as provided in RCW 42.56.550.

Sincerely,

/s/ Robert Scales, CEO  
Police Strategies LLC

## I. Executive Summary

**Problem** - Under current model rules, a requester may (a) take an internal appeal to the agency (WAC 44-14-08001), then (b) ask the AGO to review a state agency’s exemption claim (WAC 44-14-08002). Because the AGO defends state agencies in PRA lawsuits, that second step lacks independence and rarely changes outcomes. Litigation is then the only meaningful remedy—costly, slow, and inaccessible to most requesters.

**Solution** - Replace AGO review with an independent Office of Independent Public Records Review (OIPRR)—a neutral, expert reviewer that can affirm, reverse, or modify agency decisions and award fees/damages in defined circumstances. This proposal preserves the requester’s right to immediate judicial review under RCW 42.56.550 after OIPRR’s final determination.

**Benefits** - Eliminates conflict of interest; produces faster, expert resolutions; reduces litigation volume and expense; increases uniformity and compliance statewide.

**Recent case context** - In *Scales v. AGO* (Div. I, Oct. 20, 2025), the Court of Appeals held that numerous AGO privilege redactions were improper and remanded—underscoring the need for independent scrutiny of redaction claims.

## II. Drafting Approach

- These are advisory model-rule changes under RCW 42.56.570. Agencies are urged to adopt them locally; the AGO should align training accordingly.
- If the AGO determines that certain remedial elements (fee/damages awards by OIPRR) exceed model-rule scope, adopt the process and independence pieces now, and transmit the remedies to the Legislature (see Section V).

## III. Proposed Model-Rule Text

### A. Amend WAC 44-14-080

Current title: Review of denials of public records.

Proposed title: Review of denials of public records—Agency internal review; independent OIPRR review; judicial review.

Add subsectioning to align steps: (A) Internal Agency Review; (B) OIPRR Review; (C) Judicial Review.

### B. Replace WAC 44-14-08002 (AGO review) with OIPRR review

Current 44-14-08002: Attorney general’s office review of denials by state agencies.

Proposed 44-14-08002 (repeal & replace): Independent review by the Office of Independent Public Records Review (OIPRR).

(1) Purpose and independence. The OIPRR provides an independent, non-party administrative review of agency denials, redactions, and closure determinations under

chapter 42.56 RCW. The OIPRR is organizationally and functionally independent from agencies subject to the PRA and from the Attorney General's litigation functions.

(2) Composition. The OIPRR is led by a Director (licensed attorney) appointed by the Governor to a five-year term, removable only for cause. An advisory board (no fewer than seven members) includes: (a) private attorneys with PRA expertise, (b) journalists or media-organization representatives, and (c) members of the public.

(3) Jurisdiction. After completing an agency's internal review process under WAC 44-14-08001, a requester may file a petition for OIPRR review within 30 calendar days of the agency's final internal decision.

(4) Record and briefing. Within 10 business days of notice, the agency must transmit to OIPRR the unredacted records for in camera review (where feasible and consistent with security or privilege), the exemption log, and supporting declarations. The requester may submit a statement and evidence.

(5) Timelines. OIPRR issues a written determination within 30 calendar days, extendable for good cause (complexity, volume) with a written explanation and rolling installments for segregable issues.

(6) Standards. Exemptions are narrowly construed; the agency bears the burden under RCW 42.56.550(1). OIPRR may require segregation and disclosure of non-exempt portions and may require itemized privilege logs identifying author, date, recipients, subject matter, and exemption basis.

(7) Remedies. If OIPRR affirms the agency, the requester may seek judicial review under RCW 42.56.550. If OIPRR reverses in whole or in part, the agency must produce consistent with OIPRR's decision on the schedule set by OIPRR.

(8) Fees and damages (advisory; see Section V). Where a requester has counsel and prevails before OIPRR, OIPRR may award reasonable attorney fees and discretionary damages between \$1,000 and \$10,000, calibrated to delay, bad faith, and the value of the records.

(9) Publication. OIPRR publishes redacted decisions to promote uniform statewide guidance.

(10) Effect on litigation. OIPRR review is a prerequisite to judicial review under these model rules, but does not limit a requester's rights under RCW 42.56.550 or toll any statute of limitations triggered by an agency's closing notice.

### **C. Conforming edits**

1) WAC 44-14-08001 (Agency internal procedure): internal review conducted by personnel not involved in the initial decision where practicable; provide a documented exemption/privilege log with the internal decision.

2) Delete references to AGO review and substitute OIPRR review throughout Chapter 44-14 and the Comments to WAC 44-14-080.

3) WAC 44-14-08004 (Judicial review): retain existing text pointing to RCW 42.56.550; note that judicial review remains available after OIPRR's determination.

#### **IV. Administration & Implementation**

- Standing up OIPRR: Publish the OIPRR framework in the Model Rules now and, in parallel, identify a host office (independent small agency or administratively-housed but firewalled unit).
- Time targets: 30-day OIPRR decisions for typical email/paper disputes; 60–90 days for large data sets, using installments.
- Transparency: A public OIPRR decisions library plus quarterly metrics (median days, reversal rate, common errors).
- Training alignment: PRA trainings updated to reflect OIPRR standards for privilege logs and segregation.

#### **V. Legislative “Path B” (if fees/damages require statute)**

If AGO concludes that OIPRR fee/damages awards require statute:

- 1) Adopt the structural/process pieces in the Model Rules now (independence; timelines; in camera record transfer; publication).
- 2) Transmit a 2026 request bill to create OIPRR in statute; authorize OIPRR to award reasonable attorney fees and discretionary damages (\$1,000–\$10,000) when requesters prevail; and make OIPRR review a prerequisite to suits for denials/redactions (not failure-to-respond), preserving RCW 42.56.550 remedies.

#### **VI. Why Independence Matters**

- Conflict in current practice: AGO both reviews state-agency denials (advisory) and defends those agencies in court—blending advisory and adversarial roles.
- Demonstrated risk of over-redaction: The Court of Appeals held numerous AGO privilege redactions improper and remanded; non-legal content and transmittal emails cannot be categorically withheld.
- Judicial review preserved: WAC 44-14-08004 and RCW 42.56.550 continue to govern court remedies; OIPRR supplies a faster expert checkpoint before court.