



City Clerk's Office

11/6/2025

Washington State Attorney General's Office  
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Olympia, WA 98504-0100

SENT VIA EMAIL: [agorulemaking@atg.wa.gov](mailto:agorulemaking@atg.wa.gov)

RE: Comments on Proposed Language Changes to Model Public Rules

Dear Office of the Attorney General:

Although the AGO's model rules are framed as non-binding best practices, their adoption can still have significant practical effects on agencies, particularly in light of the Washington Supreme Court's decision in *Cousins v. State Department of Corrections*, 3 Wn.3d 19 (2024). In *Cousins*, the Court endorsed reliance on the model rules as a means of evaluating whether an agency's actions comply with the law<sup>1</sup>. As a result, adherence to the model rules may increasingly serve as a benchmark for reviewing agency conduct. At the same time, the model rules do not replace legislative authority or fully account for variations in agency resources, recordkeeping practices, or operational functions. The more detailed and prescriptive the model rules become, the greater risk they pose for agencies and operate contrary to the intent of the Public Records Act itself; which balances interests of requesters with the exigencies of an agency's effective provision of public services for all.

### Records Index

Proposed revisions to WAC 44-14-030(2) [Page 2]: The City of Lacey would like clarity added to this amendment. The proposed amendment is ambiguous and could have the opposite effect of what is intended. Depending on the interpretation, the amendment could read that if an agency keeps records that must be indexed, the index must include details about when it was or will be updated, what it contains, and where it can be accessed.

<sup>1</sup> "In sum, we hold that a sufficient closing letter will ordinarily trigger the PRA's one-year statute of limitations pursuant to *Belenski's* final, definitive response test. In accordance with the attorney general's Advisory Model Rules, agencies must refrain from closing a request until the request has been fulfilled pursuant to applicable regulations. See WAC 44-14-04006(1)." *Id.* at 49.

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If an agency wants to opt out of creating an index, because doing so would be too burdensome and interfere with its work, the agency must list each record and explain why indexing it would be too difficult. If this interpretation is correct, identifying each record and providing the required explanations could take as much, if not more, time than creating the index itself. In attempting to reduce the workload for agencies, the amendment could in fact increase administrative burdens and interfere with operations, making the amendment counterproductive. If this is not the intent of the proposed amendments, additional clarity should be included if the proposed amendment is to be considered.

### Providing “Fullest Assistance”

Proposed revisions to WAC 44-14-040(1) [Page 6]:

The City of Lacey does not support this amendment. The AGO's proposed changes to WAC 44-14-040(1) (which suggest triaging public records requests, shortening response times, and prioritizing “simple” requests) do not reflect the real-world challenges agencies face when responding to public records requests. It is not always clear whether a request is “simple” or “complex,” and what appears to be simple to a requester may be considerably more difficult for an agency. The classification of simple and complex is subjective and can easily lead to disagreements.

A request for a small number of records can still be complex depending on factors like where the records are stored, what exemptions apply, record sensitivity, or whether a third-party notice is required. Requesters using the reasonable perspective of a private party might make assumptions about what records a public agency keeps, what it considers relevant about them, and how the records are organized. Based on these assumptions, the requester and the agency could easily conclude very different, conflicting ideas about whether a request is “simple” or “complex.” Furthermore, the complexity of a request cannot always be known until the records responsive to the request begin to surface. What seems simple and straightforward at first may become more complicated once staff begin locating and reviewing the records.

The proposed changes also fail to consider variations in agency size, resources, workloads, and existing requests thus imposing unnecessary complexities to an already difficult process. In practice, many agencies already have an informal “fast track” process for simple requests and respond within five days<sup>2</sup>, which is allowed under RCW 42.56.520. Making this approach mandatory could create unrealistic expectations and result in courts holding agencies to standards that many cannot meet.

The criticism of the “first in, first out” approach overlooks its purpose: treating all requesters equally<sup>3</sup>.

2 According to the 2024 Joint Legislative Audit and Review Committee (JLARC) Public Records Report as presented at the WAPRO Fall Conference, responding agencies complete 57% of requests within five days.

3 “Agencies shall not distinguish among persons requesting records ....” RCW 42.56.080(2).



If agencies are required to prioritize only “simple” requests, more complex but equally important requests could be delayed for weeks or even months. Requesters understandably want quick access to information, but the proposed amendment assumes that simple requests are easier and more important than others. In reality, agencies are required to provide full assistance to all requesters, regardless of request complexity.

### Providing Fullest Assistance / Time is of the Essence

Proposed revisions to WAC 44-14-040(3) [Page 6]:

The City of Lacey does not support this amendment. The proposed amendment to WAC 44-14-040(3) would require agencies to consider whether “time is of the essence” when responding to a public records request. This phrase introduces subjectivity, asking agencies to judge a request’s importance or urgency. It could also be interpreted as creating a deadline for completing a request that increases risk of litigation if missed.

In practice, determining whether “time is of the essence” may not be clear from the request itself, and agencies might feel compelled to ask requesters to justify the urgency of their request<sup>4</sup>. The City is rarely in a position to know whether the stated deadline is genuine, self-imposed, or the result of the requester’s own delay. This proposed change could lead to agencies prioritizing requests based on individual circumstances, effectively treating requesters differently, which would require an agency to “distinguish among persons requesting records,” and be in violation of RCW 42.56.080(2).

### Closing a Request - Inspection of Records

Proposed revisions to WAC 44-14-040(8) [Page 8]:

The City of Lacey does not support this amendment. The proposed changes to WAC 44-14-040(8) fail to account for the reality that agencies and requesters cannot always reach an agreement, and agencies need a mechanism to close requests definitively. It is common for requesters to stop responding after submitting a request. Requiring agencies to continue trying to contact unresponsive requesters (especially when they have not reviewed records, paid required fees, or taken other steps) would only slow down the response process and add to existing backlogs.

The proposed amendment allows a requester who fails to claim or review assembled records within 30 days to submit a new request with priority over current requesters. This approach would unfairly move that requester to the front of the line and disregard the extra time and effort the agency may need to reassemble the records. This proposal appears to require an agency to “distinguish among persons requesting records,” in violation of RCW 42.56.080(2), by showing favoritism to requesters who fail to act with due diligence.

4 Persons requesting records “shall not be required to provide information as to the purpose of the request ....” RCW 42.56.080(2)



## Closing a Request

Proposed revisions to WAC 44-14-040(12) [Page 8-9]:

The City of Lacey is in favor of this amendment. This proposed amendment helps streamline the process of closing a request in an efficient and manageable manner. It succinctly communicates necessary information to a requester to allow them to act, if desired. In clarifying that this practice is acceptable, this amendment allows agencies to finalize a request while also giving the requester information and sufficient opportunity to act.

### Concluding Comments:

Many of the proposed changes would require agencies to make subjective judgments, creating the potential for unfair treatment of requesters. The proposed changes could discourage individuals from submitting more complex requests, while allowing others to exploit the system by dividing larger requests into smaller ones to receive faster responses. These outcomes would not serve the public fairly or help ensure that all requests are handled as quickly and reasonably as possible.

Several of the proposed actions would likely slow down the response process, rather than improve it. They would require longer timelines, additional work, and add to the inefficiency of an already overburdened public records system. Keeping requests open indefinitely, adding extra information not required by law, or spending more time trying to reach unresponsive requesters would make the system less efficient, not more.

For example, removing third-party notifications and prioritizing “simple” requests might seem helpful at first, but it would harm both the people whose records are disclosed and those seeking complex information that could be just as important.

In conclusion, while the model rules are intended to be helpful best practices rather than binding law, their impact on agencies could still be significant, especially in light of the *Cousins* decision. The rules should not try to replace or expand on legislative authority, nor can they fully account for the wide variation in agency resources. The more the model rules recognize these practical realities, the more useful they will be. The ultimate goal should be to help agencies in improving their processes and providing quality service to all requesters—not to expedite responses for a few at the expense of the agency and the broader public it serves.

<sup>5</sup> Citing RCW 42.56.100, the comment states, “This recognizes that an agency is not always capable of fulfilling a request as quickly as the requester would like.” WAC 44-14-04003(3).

