



City Clerk's Office
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TO: Washington Attorney General's Office, ATTN: Christina Beusch

FROM: City of Issaquah, WA

DATE: November 6, 2025

RE: Comments Regarding Proposed Amendments to Public Records Act – Model Rules Chapter WAC 44-14, CR-102, WSR 25-20-108

To the Attorney General's Rules Committee,

We appreciate the opportunity to provide comment on the proposed amendments to the PRA Model Rules. The City of Issaquah supports the Public Records Act (PRA), Chapter 42.56 RCW, and its goals. Nothing in this letter should be interpreted as opposition to those goals. However, the proposed amendments conflict with these goals and create additional requirements and liabilities beyond those provided in the PRA.

Aside from the changes to include gender neutral language, we request rejecting the majority of the proposed amendments.

If the way in which public agencies process public records requests throughout the State requires a change, this should be accomplished via legislative amendment to the PRA rather than amendments to the PRA Model Rules. While the Model Rules are non-binding best practices, they have recently been cited to assess the appropriateness of an agency's actions, creating a precedent for the Model Rules to be considered as a benchmark for review of agencies' actions. See *Cousins v. State Department of Corrections*, 3 Wn.3d 19 (2024). Given this, the PRA Model Rules may effectively become an unmandated extension of the PRA.

The following are comments on specific proposed amendments to the Model Rules.

1. 44-14-010 & 44-14-020 WAC – Emphasizing Promptness

According to the public hearing notice, "In response to [the original media] petition [to the PRA Model Rules], the AGO is proposing, for example, amendments to: WAC 44-14-010 and 020 to emphasize promptness."

The PRA already mandates prompt responses to requests. It is unclear what these revisions emphasizing promptness and timeliness will achieve or obligate upon public agencies, particularly given the vagueness of the proposed language.

We appreciate that the proposed revisions still allow agencies to determine what the "most timely possible action on requests" entails, but have concerns about proposed amendments in WAC 44-14-040 which may conflict with or counter this.

2. 44-14-030(2) WAC – Records Index

According to the public hearing notice, revisions to this section were:

- "In response to that [media] petition, ... amendments to: ... WAC 44-14-030 to ensure public records are available to be produced"
- And to "clarify in WAC 44-14 030 that state and local agencies have different obligations relating to maintaining records indices."

We respectfully request that these amendments be rejected. These revisions add additional requirements beyond those in RCW 42.56.070 without any apparent benefit given the volume of records and types of records that a public agency creates and maintains.

3. 44-14-030(3) WAC – Organization of Records

City of Issaquah supports the practice of public employees providing records in their possession (if any) to their agency upon separating employment. However, the implications and liability to an agency are not clear regarding the lengths it must go to search for and obtain copies of records that may exist on an employee's personal accounts and devices, especially if the separating employee is uncooperative and given the Courts' hesitance to address search and seizure limitations on public records.

4. 44-14-040(1) WAC – Providing "Fullest Assistance"

According to the public hearing notice, "In response to [the original media] petition [to the PRA Model Rules], the AGO is proposing, for example, amendments to: ... WAC 44-14-040 on evaluating the complexity of a request and factors for considering estimate of time to respond to a request, use of third-party notices, and exercising diligence in providing installments."

We respectfully request that these amendments be rejected. Though well-intentioned, and though these strategies may work for some agencies, they are not a universal best practice. Flexibility is necessary when responding to public records requests. Further, these amendments may have the unintended consequence of creating processes that prevent some agencies from providing fullest assistance fairly and equitably.

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.

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 the 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. (2024 data not yet available.) Producing records must be done "promptly" and, largely, agencies across the State are already doing this.

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/or redaction, and/or third-party notice. A prime example of this is a request for a public employee's personnel file.

Agencies should be able to decide how best to triage requests and allocate their resources so that all public records requests are promptly processed in compliance with the PRA.

5. 44-14-040(3) WAC – "Time is of the Essence"

Attempting to meet a time-sensitive deadline for a requestor is laudable and consistent with the PRA's statement that agencies should provide the "fullest assistance" to requestors. Furthermore, RCW 42.56.080(2) prohibits agencies from "distinguish[ing] among persons requesting public records." However, without legislative revisions to the Public Records Act specifying when and how agencies should identify and prioritize requests where time is stated to be of the essence, **we strongly urge that the proposed revisions to WAC 44-14-040(3) not be adopted.**

Incorporating "time is of the essence" language into the Model Rules creates a situation where Public Records Officers must discriminate between requestors and apply subjective judgment to whether the requestor's stated reason for needing their request prioritized above all others is warranted. This provision also does not take into account a requestor's own actions (or lack thereof) which may be the cause of or contribute to the need for an expedited response. This will result in more disputes between agencies and requestors who believe that agencies could do more to expedite a records request without understanding how doing so might not be possible or compliant with law, or where other competing requests demand similar attention.

6. 44-14-040(4)(d) WAC – Request Denial

City of Issaquah supports this amendment as it clarifies the expectation that, even when records are completely withheld, the legal reason(s) allowing or requiring the withholding will be provided to the requestor so they may review and challenge it, should they wish.

7. 44-14-040(6) WAC – Agencies' Responsibility to Protect the Rights of Others

We strongly urge that the proposed revisions to WAC 44-14-040(6) not be adopted.

These proposed amendments would impose greater standards than required by the PRA. As proposed, these amendments 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." Requiring a public records officer to make a determination regarding an individual's potential damages prior to issuing a third-party notice places the public records officer in the untenable position of making factual assessments in matters to which they may not be privy. Furthermore, the subject of the records is the person in the best position to determine whether they will suffer any substantial or irreparable damage.

8. 44-14-040(8) WAC – Processing Resubmitted/Subsequent Requests

We respectfully request that the proposed revisions to WAC 44-14-040(8) be rejected.

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, rather the amount of resources it would require to re-process the request and how that impacts other public records requests ahead of them.

Every situation is different and agencies require the flexibility to "process requests in the order allowing the most requests to be processed in the most efficient manner" as currently provided in the Model Rules (WAC 44-14-040(1)).

9. 44-14-040(10) WAC – Providing Records in Installments

We respectfully request that the proposed revisions to WAC 44-14-040(10) be rejected.

While we support providing records as quickly as practicable to requestors and in a regular and consistent manner, the current wording of this section provides guidance for producing records in installments in a sufficient and clear manner.

10. 44-14-040(12) and 44-14-04006 – Incorporating Language from the Cousins' Ruling for Closing Letters

We are in support of these amendments as they provide clarity regarding the information provided to requestors, and allowable process for closing a request.