

**Comment on Proposed Model Rules
(November 6, 2025 PRA Rule making Hearing)**

Good morning, and thank you for the opportunity to comment.

My name is Arthur West, and I appreciate the Attorney General's attempt to improve agency compliance with the Public Records Act. By coincidence I have submitted prior rule making petitions on some of these same issues — one to clarify what “prompt” means under RCW 42.56, and another through WATech to require preservation of Teams records — both of which were denied.

As to the proposed rules, they need to go further in defining “promptness”. Agencies routinely take a year or more to complete requests. “Prompt” should mean that, absent truly extraordinary circumstances, no request should take more than one year, and agencies should respond to moderately sized requests within 6 months at most, with the agency bearing the burden of showing clearly why additional time is necessary.

Second, the proposal to replace the clear 30-day inspection period with an “agreed-on period” creates a gray area that will invite disputes. Please keep the current bright-line rule—at least 30 days, or longer if mutually agreed so as not to give agencies a grey area to exploit to deny requests.

Third, on record preservation: the Model Rules must end the auto-deletion experiment. Technology must conform to the law, not the other way around. All platforms—Teams, texts, or cloud services—must retain communications for at least three years, as proposed in the WATech rule making petition I submitted, which as noted earlier was denied.

Fourth, agencies should be required to provide a public inventory of all communication platforms and to conduct a broad search across those systems, not just email. That's the only way the PRA can work in the digital age.

Fifth, agencies must allow if at all possible, electronic payment of fees. Citizens shouldn't have to mail five-cent checks to obtain records, or appear in person as some agencies have in the past, required.

Finally, I urge the Attorney General to make clear that its first duty is to defend the integrity of the Public Records Act—not to shield agencies that destroy or withhold public records. Thank you.

Arthur West

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Chief Financial Officer
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November 5, 2021

Arthur West
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RE: Denial of Petition for Amendment or Repeal of Rules

Dear Mr. West,

Thank you for submitting your Petition for Amendment or Repeal of Rules (Petition), relating to WAC 174-276-040; Evergreen received your Petition on September 12, 2021. The Petition requests that Evergreen amend WAC 174-276-040 of its public records rules to add language requiring: 1) all public records requests be completed within one year, except in the case of unusually large requests; 2) that the President be required to hire employees or contractors to process public records requests in compliance with the proposed rule; and 3) that the President of the College be “subject to mandatory removal” for noncompliance with the rule. The Petition also seeks repeal of WAC 174-276-040. However, the proposed language provided in the Petition reflects only amendments.

The College has reviewed your Petition, its existing rules, history of processing public records requests, and the requirements of the Public Records Act and, based on this review, is denying your Petition. Like all state agencies, Evergreen is obligated to adopt descriptions, statements, and rules concerning its public records process. RCW 42.56.040(1). The law does not require the adoption of language, such as that contained in your Petition, which seeks to dictate staffing and employment decisions and impose obligations beyond those established under the Public Records Act (PRA).

Evergreen is committed to satisfying its legal obligations under the PRA and doing so within the scope of its legal authority and available resources. This includes providing reasonable estimates of time and providing the “most timely *possible* action on requests.” RCW 42.56.100 (emphasis added). As noted in the PRA Model Rules, this provision “recognizes that an agency is not always capable of fulfilling a request as quickly as the requestor would like.” WAC 44-14-04003(3). The PRA recognizes that there is a balancing that must occur to allow the agency to devote staff within the agency’s resources and avoid “excessive interference with other essential functions of the agency.” RCW 42.56.100.

As noted by the PRA Model Rules:

Requestors should keep in mind that all agencies have essential functions in addition to providing public records. Agencies also have greatly differing resources. The act recognizes that agency public records procedures should prevent "excessive interference" with the other "essential functions" of the agency. RCW 42.56.100. Therefore, while providing public records is an essential function of an agency, it is not required to abandon its other, nonpublic records functions. Agencies without a full-time public records officer may assign staff part-time to fulfill records requests, provided the agency is providing the "fullest assistance" and the "most timely possible" action on the request. The proper level of staffing for public records requests will vary among agencies, considering the complexity and number of requests to that agency, agency resources, and the agency's other functions.

WAC 44-14-04001. This recognizes the individualized policy decisions that each agency must make – decisions that are not properly codified or dictated by rule.

Evergreen has a full time Public Records Officer (PRO) and, in recent years, has obtained additional support to help the PRO in processing a particularly broad and complex request. During that same timeframe, Evergreen has experienced a significant increase in the number, and complexity, of public records requests. Evergreen also experienced unprecedented turnover of the PRO that started with the unexpected death of a PRO. Evergreen does have a number of broad, complex, pending requests. Many of these requests are for emails, which are some of the most complex and time-consuming records to process. When dealing with these larger requests, Evergreen responds using installments. Evergreen has not failed to answer these requests. Rather, Evergreen gathers records, processes them along with other requests, and provides installments when a set of responsive documents has been fully reviewed and any applicable redactions have been applied.

To the extent that you, or any other requester, is dissatisfied with Evergreen's processing of a public records request, Evergreen encourages engagement and communication. *See Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004 (2014) (Court of Appeals encouraged requesters to communicate with agencies about issues related to their PRA requests); WAC 44-14-04003(3) ("Communication is usually the key to a smooth public records process for both requestors and agencies."). Communication can help Evergreen's PRO to focus on specific components of a request that the requester would like prioritized and can help the PRO better understand what the requester is seeking. Ultimately, if a requester believes that the PRA has been violated, the requester can seek judicial enforcement. RCW 42.56.550. These are the mechanisms in the law for addressing concerns that an agency may not be processing public records requests in accordance with the PRA, not the proposed rules submitted in the Petition.

Finally, contrary to the assertions in your Petition, Evergreen does not have a "pattern of failing to properly appoint and register a Public Records Officer." In accordance with RCW 42.56.580(2), Evergreen properly designated Holly Joseph as the individual responsible for overseeing Evergreen's public records office. Ms. Joseph has been overseeing the College's public records program for many years, during which time she has supervised five (5) different public records officers. Ms. Joseph's designation in the Washington State Register was not only appropriate, it provided continuity and oversight

to the program throughout these transitions. Recently, Ms. Joseph accepted another assignment at the College. Accordingly, the College updated the information with the Washington State Register and has identified Kate MacKinnon as the College's registered public records official.

Pursuant to WAC 82-05-050, you may appeal this denial of your Petition to the governor; any such appeal must be made within thirty (30) days of the denial.

Sincerely,



Dave Kohler
Chief Financial Office

JUNE 6, 2024

WATECH (Proposed) WAC *-***-*** Ensuring Accountability, Efficiency, and Consistency Through Mandatory Preservation of Teams Records**

Pursuant to SHB 1947, as of June 6, 2024 “Washington Technology Solutions (WATECH) is established with clear accountability to the agencies it serves and to the public. This accountability will come through enhanced transparency in the agency's operation and performance.” In addition, WATECH is required by SHB 1947 “to establish clear policies and standards for the efficient and acceptable use of technology in state government, providing guidance and leadership to state agencies in deploying technology...”

In order to fulfill these statutory mandates, WATECH hereby adopts the following Rule: Accountability, transparency, acceptability and consistency in the use of MS Teams by state agencies to conduct the People’s business requires that Teams communications must be retained for a minimum of 3 years. All State agencies must ensure that any use of MS Teams technology is coordinated in such a way that all Teams records be retained for a minimum of 3 years and, unless privileged, be readily available to the public at a reasonable cost under the Public Records Act. WATECH will coordinate the use of MS Teams with all state agencies to ensure that these Teams records are duly retained and reasonably available to the public without exorbitant charges.