November 12, 2025

Attorney General Nicholas Brown
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Re: Public Comment on News Media Petition to Amend the Model Public Records Act Rules

Dear Attorney General Brown:

The Port of Tacoma and Port of Seattle (Ports) are public port districts established pursuant to RCW 53.04.010. The Northwest Seaport Alliance (NWSA) is a port development authority formed pursuant to RCW 53.57, and is the marine cargo operating partnership of the Ports of Tacoma and Seattle. Marine cargo operations through the NWSA provide significant jobs and revenue to Washington, which is the most trade-dependent state in the nation.

The Ports and NWSA are public agencies subject to the requirements of the Public Records Act ("PRA") (RCW 42.56). The Port of Tacoma and NWSA share records management staff who, among other important duties, work diligently to respond to an average of 125 public records requests which the two agencies receive per year; similarly, the Port of Seattle's public disclosure staff respond to an average of 2,000 public disclosure requests annually. We appreciate the opportunity to provide this comment on the proposed amendments, focused on issues of particular concern to the Ports and the NWSA.

Our comments include two primary themes. First, the proposed revisions include a number of subjective terms which increase potential for discriminate treatment in processing requests, add confusion, and increase litigation risk due to higher scrutiny and the inherent need to engage with counsel more often. Second, some of the proposed revisions require additional time and staff resourcing for implementation. These costs will be challenging for our organizations to absorb, particularly at a time when our budgets have tightened because of decreased federal funding, inflation, and slower growth in the US and Washington state economies. *See for e.g. Washington State Economic and Revenue Forecast Council* Update from October 2025. Specifically, we provide comments on the following sections:

Insertion of the terms "promptly/prompt"

The proposed amendments insert the word "promptly" or "prompt" in several locations throughout, but without further definition or explanation. RCW 42.56.080(3) already requires agencies to make records "promptly available," and so the addition of the term to the model rules is unnecessary.

WAC 44-14-030(3)

Public records officers rely on subject matter experts and records custodians to search and collect records from agency systems and retain public records created on their personal devices. Changes to this section are an obligation beyond the PRA and are already addressed through records management. A requirement for staff to move records from private accounts also imposes an obligation beyond what is included in the PRA. At minimum, the proposal to mandate that records be transferred from private to agency accounts or devices should be revised to encourage such a transfer.

WAC 44-14-040 (1)

The proposal that requests for a single record should be fulfilled and completed within five business day is impractical and unreasonable given the usual volume of requests and the complexity and availability of many agencies' staffing, file systems and recordkeeping. While many agencies aspire to close out simple single record requests as soon as possible, this is often not possible if, for example, the staff member acting as the record's custodian is not available in that period, or if the record is complex, lengthy, or subject to other regulations. A five-day completion requirement would be fundamentally unfair to agencies, many of which would never be able to comply despite best efforts and intentions.

WAC 44-14-040 (3)

As a practical matter, we are concerned that prioritizing requests depending on "whether time is of the essence" – from the lens of the requester, and without regard to the size or complexity of the request or the diligence of the requestor in making a timely request – will effectively devolve into nearly every request being "pressing" or of "time sensitive importance" precluding agency compliance.

WAC 44-14-040 (6)

The proposed threshold for determining whether an agency has a "reasonable belief" that an exemption applies or "substantial and irreparable damage" will occur before giving third party notice requires too much guesswork on the part of the agency staff about what meets that standard. The person making that determination should be the party impacted by the disclosure, which the current rule concedes ("may affects rights of others"), not the agency. Additionally, this proposed standard does not take into consideration contractual, statutory, or regulatory requirements the agency may be under to give third party notice prior to disclosure of certain information. The proposed amendments also disregard the existing substantive requirements of RCW 42.56.540 which allows notice to any party named in the record but does not require that the agency determine, or have a reasonable belief, whether

the record is exempt prior to notice.

The proposal contemplates requiring agencies to give notice to requestors to allow them to revise the request. While agencies often do this as a courtesy, it is not a legal requirement and should not be included in the model rules. As a practical matter, mandating that an injunction be obtained within ten days may be impossible based on local court calendars and other factors beyond the agency or third party's control, particularly where notification is mailed. The PRA already limits agencies' ability to abuse the third-party notice process.

WAC 44-14-040(8)(b)

Proposed amendments to this section would effectively amend the PRA to give priority to reopened requests. The proposal contemplates that requests may be closed, and records refiled, however, it suggests that a recently closed request should be processed more quickly than other requests in violation of PRA principles.

WAC 44-14-040(10)

Proposed amendments to this section impose a new requirement for an agency to be "diligent" when processing requests by installment. It is unclear what this new requirement for diligence for installment production means and how it would be interpreted. It improperly implies that agencies may only use installments when the records are part of a larger set.

We appreciate the opportunity to provide feedback on the news media proposed amendments and look forward to continuing to participate in the rulemaking process.

Sincerely,

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