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TO: Washington Attorney General's Office

FROM: Association of Washington Cities

DATE: November 13, 2025

RE: Comments on Public Records Act Model Rules Rule Making WSR 25-20-108

Thank you for the opportunity to submit these comments on the changes to the Public Records Act (PRA) Model Rules proposed by the Attorney General's Office (AGO) in connection with Rule Making WSR 25-20-108. For this comment letter, we will refer to this proposal as the "proposed rules."

We appreciate the significant work already performed by the AGO in developing the proposed rules and note that they address many of the concerns raised by AWC in connection with the previous Rule Making process.[1] The PRA Model Rules are a valuable tool for agencies to consult for best practices for complying with the statutory and case law requirements of the PRA. AWC respectfully submits these comments to highlight areas we suggest need to be modified to bring the proposed rules into closer alignment with the PRA and the reported decisions interpreting it.

Areas of Concern with Proposed Rules

1. Triage is a Process that Requires Flexibility and Judgment.

The Merriam Webster Dictionary defines triage as:

> the assigning of priority order to projects on the basis of where funds and other resources can be best used, are most needed, or are most likely to achieve success[2]

The current version of WAC 44-14-040 already requires agencies to "process requests in the order allowing the most requests to be processed in the most efficient matter." We submit that this guidance to agencies is sufficient and provides agencies with the flexibility necessary to balance the many competing factors that come into play when deciding the order in which to process public records requests.

The temptation to categorize public records requests as either "simple" or "complex" should be avoided for several reasons. Even if reasonable minds will agree most of the time that a request is

[1] WSR 24-21-023.
[2] TRIAGE Definition & Meaning - Merriam-Webster

simple or complex, there will be specific instances in which agencies and requestors disagree. The proposed rules suggest that a request for a "single, specific, identifiable record" is simple and should be produced within five business days "if practicable to do so."

But what if the record is an employee disciplinary investigation report comprising several hundred pages with privileged or confidential information that requires redaction before being produced? Alternatively, what would happen if a request that appeared on its face to be simple to the records officer turned out to be more complex? Asking agencies to triage public records requests into simple and complex categories will invite disputes between agencies and requestors who disagree that their request is "complex."

The simple/complex distinction could also create inefficiencies. A requestor who has multiple requests on a single topic might decide to submit each request individually instead of making a single request and risking having it designated as "complex."

Ultimately, an agency must process and respond to all the public records requests, and they must do it promptly. This is made clear in RCW 42.56.080(2), which provides that agencies must make records "promptly available" and states that agencies "shall not distinguish among persons requesting public records." Grouping requests into categories based on whether a public records officer perceives them as easy or difficult would seem to run afoul of RCW 42.56.080(2).

An agency that applies the simple/complex method of triage also runs the risk of creating a category of complex requests that remain open indefinitely if an agency does not have the resources to process both the simple and complex requests while performing its other essential functions. The proposed rules recognize that processing public records is an essential public function, but stating that does not resolve the fundamental dilemma of limited time and resources.

Washington cities carry out many essential public functions—a process that also requires triage. Some cities are better resourced financially and technologically than others, but all cities must promptly process and respond to every public records request they receive under RCW 42.56.080(2). As a result, they should be able to decide how best to triage and allocate their resources so that all public records requests are processed in compliance with the PRA. Mandating a particular method of triage will not help Washington agencies process public records requests more quickly.

Similarly, requiring agencies to produce "a single, specific, identifiable record" within five business "if practicable to do so" goes beyond the requirements of the PRA. As noted previously, a request for a single record may, at times, be complex. In this regard, the proposed rule creates a misleading impression that a request for a single record should be processed within five days because it is simple.

RCW 42.56.520 requires an agency to acknowledge a public records request within five business days, but it does not impose a specific time-period in which records must be produced. Record production must occur "promptly." Whether the "promptly" requirement has been met requires an

evaluation of the request and the surrounding facts and circumstances and is not susceptible to bright line rules. AWC therefore opposes the proposed revisions to WAC 44-14-040(1).

2. The "Time is of the Essence" Provision Further Complicates the Public Records Process.

The proposed change to WAC 44-14-040(3) states that an agency "should consider if a requestor has identified a reason that time is of the essence for the production of the records and if it is practicable to produce the records in the timeframe provided by the requestor." It appears that this provision applies to both simple and complex requests, which therefore further complicates the processing of public records requests.

Attempting to meet a time-sensitive deadline for a requestor is laudable and is consistent with the PRA's statement that agencies should provide the "fullest assistance" to requestors.[3] The problem with codifying "time is of the essence" language in the Model Rules is that it will encourage requestors to invoke that language. A public records officer will have to determine whether the request for expedited service is credible and warranted, and if so, whether the agency can meet the requested deadline. The public records officer will also have to decide how to process an expedited request in relation to the other simple and complex records requests that are being processed at the time.

Like the simple/complex triage requirement, this provision will result in more disputes between agencies and requestors who believe that an agency could do more to expedite a records request. The PRA does not contain a provision that requires or authorizes an agency to expedite individual public records requests. The decision of whether an agency can or should expedite a public records request should be left to the best efforts and judgment of an agency's public records officer and should not be codified in the Model Rules. AWC respectfully requests that the proposed revision to WAC 44-14-040(3) not be adopted.

3. Third Party Notice Provision Must Address Agency Obligations under RCW 42.56.250.

The proposed rules revise the criteria for third party notice under WAC 44-14-040(6). However, the proposed rule does not reference RCW 42.56.250(2), which provides that an agency *must* provide third party notice when it receives a request for information located exclusively in an employee's personnel, payroll, supervisor or training file. The proposed rule should be updated to clarify that there are circumstances under which third party notice is not optional for an agency. Creating greater limitations on third party notice places a records officer in an awkward position of making a judgement on behalf of the rights of a third party based solely on the records' officer's "reasonable belief" that the records should or should not be exempt.

[3] RCW 42.56.100.

4. The Requirements for Opting Out of Maintaining an Index Should Not be Changed.

RCW 42.56.070(3) provides that each local agency shall maintain a current public records index unless the agency issues a formal order pursuant to RCW 42.56.070(4) explaining why it would be "unduly burdensome" to do so. These statutory provisions, as they pertain to local agencies, have not changed since the inception of the PRA in 1972—a time when computer servers, electronic records, and email were not in widespread use. For most cities at the time, public records would have been in paper, microfiche, or similar "hard copy" format and stored at city hall. In those days, maintaining an index may have been useful so that city employees would know which file drawer to search for a public record.

In the current technological era, the vast majority of local agencies issue formal orders finding that it would be unduly burdensome to maintain an index of public records. For cities, such orders typically refer to the sheer volume of records produced by various city departments and divisions, the time required to update and maintain such an index, and the fact that cities often have multiple servers and storage locations, which would require multiple indexes.[4]

The proposed rules would modify WAC 44-14-030 to require that a local agency "specify which types of records" are unduly burdensome to index. Such a requirement is problematic, since many of the formal orders issued by local agencies provide general reasons why maintaining an index would be unduly burdensome without referring to specific record types. That raises the question of whether such local agencies would have to reissue their formal orders in order to be in compliance with the proposed version of WAC 44-14-030.

RCW 42.56.070(4)(a) simply states that a local agency shall "issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations." The statute does not contain a requirement that a local agency specify which types of records are unduly burdensome.

Local agencies have found that maintaining a public records index is unduly burdensome not because of specific record types, but because the whole undertaking would be time consuming and divert scarce resources away from the essential function of processing records requests. We respectfully submit that for local agencies, the current language of the Model Rules is adequate, and that local agencies and requestors will not be well-served by adoption of additional public records index requirements.

[4] MRSC has links to a few examples of formal orders in the Basic Procedural Requirements section of its Public Records Act Basics webpage.

5. The Subsequent Requests for Inspection of Records Provisions Should Not be Revised.

WAC 44-14-040(8)(b) addresses subsequent requests to inspect records. In this scenario, a requestor will have made a request to inspect records and then failed to claim or review the records within 30 days (or another period of time agreed upon by the agency and requestor).

The current Model Rule (which would be deleted under the proposed rules) states that:

> [o]ther public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

The proposed rule authorizes an agency to treat the subsequent request as a new request, but then provides:

> In evaluating the time to process the new request, the agency will consider how recently the prior request was closed and the number of records from the prior request remaining to be processed.

AWC respectfully requests that this sentence be deleted from the proposed rules. The determinative question for an agency is not how recently the prior question was closed or the number of records that are left to be processed—the question is the amount of agency resources required to re-process the request and how that impacts other public records requests in the queue.

If the current Model Rules can be interpreted to "punish" a requestor by stating that other public records requests can be processed ahead of a subsequent request, the proposed rule can be read to "reward" a subsequent request. A neutral approach is to simply state that a subsequent request will be processed as a new request. Deleting the final sentence of Section 8(b) of the proposed rule and deleting the sentence of the current Model Rules quoted above will achieve that result. AWC supports this because it gives agencies flexibility in processing subsequent requests and neither rewards or punishes subsequent requestors.

Conclusion

AWC appreciates the work of the AGO in developing the proposed rules. Thank you for your consideration of these comments. Cities and towns are committed to open and transparent government. The Model Rules are a helpful tool in providing guidance for compliance with the increasingly complex public records ecosystem. While the commitment to providing access and effective management of public records is strong, the resources available varies considerably among cities. The Model Rules should reflect the diversity of the many local and state agencies subject to the Public Records Act and the many competing demands for limited resources and services.