



TO: Washington Attorney General's Office

FROM: City of Kennewick

DATE: 11/13/2025

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

To the Attorney General's Rule Making Team:

The City of Kennewick thanks you for the opportunity to provide additional comment on the proposed updates to the Public Records Act (PRA) Model Rules. After reviewing the proposed updates to the PRA Model Rules, the City of Kennewick respectfully submits these informal comments to call attention to areas in which changes to the proposed model rules may benefit from further review to bring them into closer alignment with the Public Records Act.

The following are comments on specific proposed updates to the Model Rules:

**WAC 44-14-030 Availability of public records. (2) Records index.** The proposed update to the Model Rules states, "The (name of agency) finds that maintaining an index of of (specify which type of records) is unduly burdensome and would interfere with agency operations." The proposed update language is vague and does not specify to what extent an agency would need to specify the type of records. Could this language be interpreted as requiring an agency to create an index of records to then declare that maintaining an index as unduly burdensome? Furthermore, RCW 42.56.070(4)(a) only requires issuing and publishing a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations, the RCW does not contain a requirement to outline specific record types.

**WAC 44-14-040 Processing of public records requests—General. (1) Providing "fullest assistance."** The proposed update to the Model Rules states, "including, when appropriate, triaging requests into simple and complex tracks to ensure that processing times are proportionate to the difficulty of each request. Where a request has been made for a single, specific, identifiable record, the (name of the agency) will



endeavor to produce the request within five business days if practicable to do so. Categorizing requests into simple and complex should be avoided, as should the term “practicable.” The categorization of requests into simple or complex and the term “practicable” are both very subjective. This subjectiveness could lead to confusion and/or frustration on the part of Agency Staff and/or Requestors. A Requestor may deem that a request for one police report to be a simple request and expect completion of the request within 5 days. While Agency Staff may deem the same request as complex because while it is for a single, specific, identifiable record the record may require significant redaction that may require supervisor or legal review. As it is currently written, 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.” We believe that 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.

**WAC 44-14-040 Processing of public records requests—General. (3) “Time is of the essence”** The proposed update to the Model Rules states, “before providing the initial response. When evaluating the nature of the request, the (name of the agency) should consider if the 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 time frame provided by the requestor.” The term “practicable” in this proposed amendment is also subjective, which as mentioned above may lead to confusion and/or frustration between Agency Staff and Requestors. Additionally, incorporating this “time is of the essence” language into the Model Rules creates a situation where Public Records Officers must discriminate between requestors and their stated reasons for needing their request prioritized above others. Since the Public Records Act does not require requestors to explain why they are seeking records (except in very limited and well-defined circumstances), this creates liability for agencies for Public Records Act violations. Further, it may encourage requestors to invoke the “time is of the essence” language in the hope that their request will be prioritized above others.

**WAC 44-14-040(6) Third-party notice and preventing irreparable harm.** The proposed updates to the Model Rules do not appear to take into account RCW 42.56.250(2), which states, “Upon receipt of a request for information located exclusively in an employee's personnel, payroll, supervisor, or training file, the agency **must** provide notice to the employee, to any union representing the employee, and to



the requestor.” Further, a release of records within 10 business days of the notice may be unduly burdensome on the affected party when factoring in mail time to send the third-party notice, hiring legal counsel, filing for an injunction, and returning an injunction to the agency that provided the third-party notice.

**WAC 44-14-040 (8) Inspection of records.** The proposed update to the Model Rules states, “(b) The requestor must claim or review the assembled records within ((thirty)) 30 days of the (name of agency's) notification ((to him or her)) that the records are available for inspection or copying, unless another time frame is agreed upon by the agency and the requestor. The agency will notify the requestor in writing of this requirement and inform the requestor ((that he or she should)) to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the ((thirty-day)) specified time period or make other arrangements, the (name of agency) may close the request and refile the assembled records. ((Other 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 requestor may make a subsequent request for the same or almost identical records, which may be processed by the agency as a new request. 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.” We believe the addition of “unless another time frame is agreed upon by the agency and the requestor” to the current WAC will cause confusion between Agency Staff and Requestors. This addition to the current WAC neither outlines for Agency Staff or Requestors how to establish another timeframe nor outlines how to agree or disagree to a proposed change to the timeframe. Additionally, WAC 44-14-040(8)(b) addresses subsequent requests to inspect records. In this scenario, a requestor will have failed to claim records within 30 days (or another period agreed upon by the agency and requestor). The current Model Rule (which would be deleted under the proposed rules) states that:

“Other 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:

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

The City of Kennewick respectfully requests that this sentence be deleted from the proposed rules. The determinative question for an agency is not how recently the prior request 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.

There should be a neutral approach to this by simply stating 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. The City of Kennewick supports this because it gives agencies flexibility to “process requests in the order allowing the most requests to be processed in the most efficient manner.” WAC 44-14-040(1).

The City of Kennewick thanks the Attorney General’s Office for all of the work that has been done to create the proposed Model Rule updates and for the opportunity to provide informal comments. The PRA Model Rules are a valuable tool for agencies in responding to the requirements of the PRA. The City of Kennewick fully supports the PRA and the goals of the PRA. Nothing in the above comments should be interpreted as opposition to those goals.