



# Washington Coalition for Open Government

November 12, 2025

Dear Attorney General Nick Brown,

The Washington Coalition for Open Government enthusiastically supports the Attorney General's proposed revisions to the Model Rules, which will provide long overdue improvements to the functioning of the Public Records Act.

WashCOG is a nonprofit, nonpartisan, mostly volunteer-run organization advocating for government transparency through legislative and administrative channels, as well as through litigation, education and recognition of governments, other entities and persons who advance the cause of open government.

Our comments below detail our support for specific provisions of the proposed rules. We also recommend additional measures that could further serve the voters' vision of open government, as evidenced in their overwhelming vote in favor of the forerunner of the Public Records Act.

The need for these proposed changes (and more) was documented in WashCOG's [2024 report](#) "Your Right To Know: A Special Report on the Erosion of Public Access to Government Information in Washington State." The report and its [2025 update](#) document laid bare how, "Often with good intentions, sometimes with bad intentions, governments have moved toward secrecy and withholding information that legitimately should be public." These changes will help restore public confidence in state and local governments in Washington.

To address specific sections of the proposed rules:

- As proposed, WAC 44-14-010 should be amended to specify "prompt" access to public records. The objections advanced during this rulemaking process to the

effect that including the terms “prompt” and “promptly” in the Model Rules would impose new burdens on agencies are wrong. Why should the Model Rules under the WAC not reflect this specific requirement of the actual statute, which in fact requires agencies to act “promptly” in responding to records requests? (See RCW 42.56.080, .520). Reporting agencies recorded a nearly 60% increase in wait times for records requests between 2019 and 2024, according to [data from the Joint Legislative Audit and Review Committee](#). The news media’s request for rulemaking says “reporters have been receiving outrageously long time estimates for satisfying simple records requests,” which comports with what WashCOG has learned is the experience of too many non-news media requesters as well. The voters said release of records should be “prompt.” The Model Rules should say that, too.

- Similarly, WAC 44-14-020 should require “the most timely possible action on requests.”
- We agree with the proposal to spell out in WAC 44-14-0030(3) that agencies must keep records organized in a way that they can be readily accessed by public records officers and other staff with PRA responsibilities. We support the proposed changes that would ensure that records created or received on personal devices are transferred to or duplicated in agency systems as soon as practicable, and are not stored solely on personal devices. Furthermore, rules should warn agencies and staff that withholding or inadequately protecting public records on personal cellphones or other devices can result in disciplinary action.
- We also agree that WAC 44-14-030(3) should be updated to reflect that modern threats to preservation of public records stem mostly from misuse of new technology by government employees and elected officials. WashCOG has learned of too many instances in which employees or elected officials have failed to retain email, text, chat and other messages, usually on personal electronic devices or on ephemeral communication platforms such as Microsoft Teams. Our report documents several high-profile cases and includes recommendations to limit this practice. It [notes](#), “This practice imposes a burden on agencies and ultimately taxpayers, by making it more difficult and costly to retrieve records in response to a PRA request.” Model Rules should end the use of auto-deletion of public records, configuring those platforms used for government business, such as Microsoft Teams, to comply with state records retention schedules. Preservation management should be overseen by records management staff.
- As proposed, WAC 44-14-040(1) should specify that public records officers can triage requests into simple and complex tracks. This would more fully satisfy the existing provision in this section that records should be provided “in the most efficient manner possible.” Objectors have complained that it is not always possible early in the PRA process to determine if a request is complex or simple.

But recall that the proposed language merely says that this sorting *may* occur “when appropriate.” That is not a burden; it opens the possibility that more requestors could be served more efficiently. We believe the statute allows records officers to prioritize simple requests ahead of large and complex requests. The Model Rules should make that clear. WAC 44-14-04003 already states that, “A relatively simple request need not wait for a long period of time while a much larger or more complex request is being fulfilled. Agencies are encouraged to be flexible and process as many requests as possible even if they are out of order.”

- The language proposed for insertion into WAC 44-14-040(1) encouraging release of a single, identifiable record within five days is simple common sense. Again, note that the proposed wording says this should be done “where it is practicable to do so.” No harm done. More transparency enabled.
- We support the language proposed for insertion into WAC 44-14-040(3) instructing records custodians to consider whether the requester has provided evidence that “time is of the essence” in fulfilling the request, and “*if it is practicable* to produce the records in the time frame provided by the requestor.” (Emphasis added.)
- We support the language proposed for insertion into WAC 44-14-040(6) raising the standard for third-party notice to cases “which may substantially and irreparably damage any person or vital government function,” which complies with the standard for enjoining release of a record. See RCW 42.56.540. Requiring agencies to “have a reasonable belief that” records are “arguably exempt from disclosure” is simple common sense. The practice of third-party notification has too often become a tactic for governments that don’t want to release information to delay or contravene their responsibilities for responding to requests.
- We support the clarifying additions proposed for WAC 44-14-040(12) regarding closing requests. Agencies should give requesters a specific calendar date for when a request will be unilaterally closed for failure to pay or pick up records. Agencies should notify requesters that they are taking action that triggers the statute of limitations and when the one-year statute of limitations begins to run after a request is closed. Any notice of failure to pay for or pick up records requires an opportunity to cure the default and continue the production of the installments without demanding the requester make a new request and start over.

In summary, WashCOG fully supports the changes enumerated above.

In addition, we believe the Attorney General's Office should consider these suggestions to further embrace the spirit in which the voters adopted the forerunner of the Public Records Act:

### 1) REQUIRE AGENCIES TO ACCEPT ELECTRONIC PAYMENTS AND USE ELECTRONIC COMMUNICATIONS TO DELIVER RECORDS

Some agencies still require requesters to send physical checks, sometimes for tiny amounts, which is slow, wasteful and unreliable. Rules should require agencies to provide a simple, secure electronic payment portal (e.g., credit card, ACH) for public records fees. Physical checks should be allowed as an option, but not as the sole method.

The same goes for release of records. The default method for transmitting documents and other communications with requesters should be electronic, unless the requester asks otherwise or if that is impracticable.

### 2) ENFORCE A BROAD AND IN-DEPTH SEARCH REQUIREMENT

Model Rules should require that every agency create a publicly available list of all communication and records storage platforms used by the agency, such as emails, cloud storage or instant messaging.

Agencies should be required to search all platforms known to contain responsive records, regardless if those are cited by the requester. Currently, agencies often limit their searches to email unless otherwise asked, presently a big challenge to requesters who may not know what other record platforms exist.

### 3) "TRANSITORY" RECORDS

In numerous instances, and particularly when chat or text messages are involved, some agencies mistakenly instruct personnel that "transitory" records, e.g. scheduling emails or text messages, need not be retained. Although this is more directly governed under the RCW 40.14, the interplay of that statute with the PRA, RCW 42.56, faithful execution of the provisions in RCW 40.14 in designating "transitory" records is integral to making the PRA work as intended. It's important that these rules assure that agencies aren't abusing or overusing the provision for "transitory" records to be destroyed.

In closing, WashCOG would like to point out that our organization is the only one involved in this rulemaking that represents the interests of the general citizenry, rather than the government, the news media or another specific sector.

In a similar vein, we again commend the Attorney General's Office for undertaking these long-needed revisions of the Model Rules and remind the AGO that while it is statutorily required to represent certain government entities in certain matters, the true and ultimate clients of the AGO are the people of the state of Washington.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael R Fancher". The signature is written in a cursive, slightly slanted style.

Mike Fancher, president

Washington Coalition for Open Government