

**PROPOSED CHANGES TO MODEL RULES FOR IMPLEMENTING
THE PUBLIC RECORDS ACT**

WAC 44-14-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make promptly available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" at RCW 42.56.010(3) to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.010(3) excludes from the definition of "public record" the records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures (name of agency) will follow in order to provide full and prompt access to public records. These rules provide information to persons

wishing to request access to public records of the (name of agency) and establish processes for both requestors and (name of agency) staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full and prompt access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the (name of agency) will be guided by the provisions of the act describing its purposes and interpretation.

EXPLANATION: This rule, which summarizes the purpose of the model rules generally and sets the tone for the chapter, should reflect that *promptness* is a core requirement of the act. See RCW 42.56.080(2) and RCW 42.56.520. The proposed amendments would add the words “prompt” and “promptly” to underscore that requirement.

WAC 44-14-020 Agency description—Contact information—Public records officer. (1) The (name of agency) (describe services provided by agency). The (name of agency's) central office is located at (describe). The (name of agency) has field offices at (describe, if applicable).

(2) Any person wishing to request access to public records of (agency), or seeking assistance in making such a request should contact the public records officer of the (name of agency):

Public Records Officer

(Agency)

(Address)

(Telephone number)

(fax number if relevant)

(email)

Information is also available at the (name of agency's) web site at (web site address).

(3) The public records officer will oversee compliance with the act but another (name of agency) staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the (name of agency) will provide the "fullest assistance" to requestors and the most timely possible action on requests; create and maintain for use by the public and (name of agency) officials an index to public records of the (name of agency, if applicable); ensure that public records are protected from damage or disorganization; and prevent

~~fulfilling public records requests from causing~~ excessive interference with other essential functions of the (name of agency).

EXPLANATION: The current model rule omits the requirement for the “most timely possible” disclosure, despite quoting RCW 42.56.100, the source of the requirement. The Attorney General’s leadership is needed to underscore that disclosure *must* be as timely as possible. As it is, many agencies have fallen into a pattern of understaffing their public records operations, such that huge backlogs have become routine and even simple requests are delayed for months. The proposed amendments would use the same language as in RCW 42.56.100 to make clear that providing the “most timely possible” responses is not optional.

WAC 44-14-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the (name of agency), (provide hours, e.g., Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays). Records must be inspected at the offices of the (name of agency). Many public records are also available for inspection and copying on the (name of agency's) web site at any time, at no cost.

(2) Records index. *(If agency keeps an index.)* An index of public records is available for use by members of the public, including (describe contents). The index may be accessed online at (web site address). *(If there are multiple indices, describe each and its availability.)*

(If agency is local agency opting out of the index requirement.)

The (name of agency) finds that maintaining an index is unduly burdensome and would interfere with agency operations. The requirement would unduly burden or interfere with (name of agency) operations in the following ways (specify reasons).

(3) **Organization of records.** The (name of agency) will maintain its records in a reasonably organized manner. The (name of agency) will take reasonable actions to protect records from damage and disorganization, including preventing unauthorized destruction or removal of original records by employees, elected officials and others~~A requester shall not take (name of agency) records from (name of agency) offices without the permission of the public records officer or designee~~. The (name of agency) shall not maintain any public records solely on a personal device or in a personal account, and shall take reasonable steps to ensure that public records are readily available to the public records officer through a centralized electronic system or, for nonelectronic records, in an organized storage system. If (name of agency) employees create or receive public records on personal devices or in personal message accounts, such employees shall transfer the records to work devices or work accounts as soon as practicable.

A variety of records is available on the (name of agency) web site at (web site address). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the (name of agency) should make the request in writing on the (name of agency's) request form or through an online portal, or by letter, fax (*if the agency uses a fax*), or email addressed to the public records officer at the email address publicly designated by (name of agency), or by submitting the request in person at (name of agency and address) and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and

make arrangements to pay for copies of the records or a deposit. Pursuant to section (insert section), charges for copies are provided in a fee schedule available at (agency office location and web site address).

(c) A records request form is available for use by requestors at the office of the public records officer and online at (web site address).

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

(e) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

EXPLANATION: Under RCW 42.56.100, agencies must protect public records from damage by anyone - not just requestors (who rarely inspect records in person). This rule should reflect that the greatest threat of premature destruction comes from agencies themselves, not from the public. Mass destruction of text messages by former the mayor and police chief of Seattle is the best-known example. The proposed amendments would clarify that elected officials and agency personnel must do their part to protect public records from damage and disorganization. This includes prohibiting use of private devices and private accounts to maintain the only copies of public records, and requiring all records to be maintained in a centralized agency system so that public records can be found and produced promptly upon request. Such standards are necessary for agencies to provide the fullest and most timely assistance on records requests as required by RCW 42.56.100.

WAC 44-14-040 Processing of public records requests—General. (1)

Providing "fullest assistance." The (name of agency) is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner including, when appropriate, triaging requests into simple and complex tracks to ensure that processing times are proportionate to the difficulty of each request. The [name of agency] will a) endeavor to complete requests for a single record within one business day and b) prioritize completion of simple requests for a small number of records ahead of completing larger more complex requests. The [name of agency] will devote sufficient staff time to public records requests so as to enable prompt responses and avoid significant backlogs, consonant with disclosure being one of the essential functions of the [name of agency].

(2) Upon receipt of a request, the (name of agency) will assign it a tracking number and log it in.

(3) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records before providing the initial response. When evaluating the nature of the request, the [name of agency] should consider whether time is of the essence such as when records are needed for participation in a hearing, public comment process or election or to deal with an urgent safety or health issue or other matter that is known to be of pressing and time-sensitive importance.

(4) **Acknowledging receipt of request.** Following the initial evaluation of the request under (3) of this subsection, and within five business days¹ of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the (name of agency's) internet web site, provide an internet address and link on the web site to specific records requested; or

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon,

send the copies to the requestor electronically or, to the extent that electronic transmission is not reasonably possible or not preferred by the requestor, by the fastest alternative method;

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available); or

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the (name of agency) will require to respond to the request if it is not clarified.

(i) Such clarification may be requested and provided by telephone, and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the (name of agency) need not respond to it. The (name of agency) will respond to those portions of a request that are clear; or

d) Deny the request. For each record fully denied, the (name of agency) will identify the record and briefly explain how a specific exemption applies. For each record that is redacted, the (name of

agency) will briefly explain how an exemption applies to each redacted portion of the record.

(5) **Consequences of failure to respond.** If the (name of agency) does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contact the public records officer to determine the reason for the failure to respond.

(6) ~~Protecting rights of others~~ Third party notice. ~~In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notices should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.~~

In the event that a requested record contains information that may substantially and irreparably damage a person if disclosed, the (name of agency) will first determine if that record is exempt from disclosure. If no exemption applies, the (name of agency) will make the record available to the requestor without notifying a third party of an opportunity to obtain an injunction. If (name of agency) is unable to

determine applicability of an exemption to a record that may substantially and irreparably damage a person if disclosed, the public records officer may, but is not required to, give notice to such person. Before giving such notice, the records officer shall contact the requester and offer an opportunity to revise the request to avoid a third-party process. Any third-party notice will include a copy of the request and shall inform the third party that disclosure will occur unless an injunction is obtained under RCW 42.56.540 within 10 days of the notice.

(7) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the (name of agency) believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(8) **Inspection of records.**

(a) Consistent with other demands, the (name of agency) shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or

alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor of a records inspection should ~~must~~ claim or review the assembled records within an agreed period ~~thirty days~~ of receiving the (name of agency's) notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should 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 agreed~~thirty-day~~ period or make other arrangements, the (name of agency) will first attempt to determine if the requestor missed the notification of availability and/or still wants the records, and may suspend processing of ~~close~~ the request ~~and refile until~~ the assembled records are reviewed or claimed. ~~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.~~

(9) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies

or arrange for copying. Where (name of agency) charges for copies, the requestor must pay for the copies.

(10) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee shall make records promptly available including, if necessary, providing records on a partial or installment basis once they are ready for disclosure~~will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way~~. The (name of agency) will be diligent when ¹processing requests by installment. When charging for copies, the (name of agency) will accept payments online and not solely by mail. Installments will be sent electronically or, to the extent that electronic transmission is not reasonably possible or not preferred by the requestor, by the fastest alternative method.~~If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.~~

(11) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the (name of

¹ Cantu v. Yakima School Dist. No. 7, 23 Wn.App.2d 57, 93-94 (Div. 3 2022) (lack of diligence is a constructive denial of records); Freedom Foundation v. Wash. St. Dept. of Social and Health Services, 9 Wn.App.2d 654, 673 (Div. 2 2019) (providing fullest assistance requires thoroughness and diligence).

agency) has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(12) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer will close the request. Before closing a request as abandoned, the public records officer will attempt to confirm that the requestor received actual notice of the availability of records and is choosing to abandon the request, and will keep the request open if the requestor still wants the records and is not refusing to pay and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the (name of agency) has closed the request.

(13) **Later discovered documents.** If, after the (name of agency) has informed the requestor that it has provided all available records, the (name of agency) becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

Note: ¹In calculating the five business days, the following are not counted: The day the agency receives the request, Saturdays, Sundays and holidays. RCW 1.12.040. See also WAC 44-14-03006.

EXPLANATION: This model rule on processing records requests is at the heart of the news media’s rulemaking petition. The Attorney General’s leadership is needed to bring this rule into closer conformance with the language and intent of the Public Records Act.

Section (1): Fullest assistance.

As it is, some agencies use a “first in, first out” approach to processing requests so that a journalist seeking a single record relevant to breaking news, or a citizen who just needs a few easily accessible records to understand a matter of concern, may have to wait months at the back of the line while larger requests are processed. For example, in April 2024 the Seattle Police Department estimated it would take 10 months to produce a single easily identifiable record to a Seattle Times reporter, and rationalized the long wait by stating that all requests were processed in the order received. Even more common, some agencies knowingly understaff their public records offices and then use the resulting backlogs as an excuse for delay. For example, in May 2024, the Seattle School District extended the time estimate for a single record requested by a Times reporter from one month to two months because the district’s sole records officer was going on paternity leave and a second records officer had been eliminated by budget cuts. In April 2024, the University of Washington told a Seattle Times reporter he would have to wait 19 months to receive the first installment of records from a closed investigation, similarly blaming a backlog. This rule should make clear that such avoidable delays do not satisfy requirements for “fullest assistance.”

The proposed amendments to the “fullest assistance” section would clarify what it means to process requests “in the order allowing the most requests to be processed in the most efficient manner.” That is, agencies would prioritize small and simple requests over large ones, while providing single records in one day if possible. Agencies would have discretion to define what is small and simple enough to qualify for fast-tracking, but the important concept is that a fast track must exist.

The proposed amendments also would make clear that agencies must devote enough resources to records requests to provide prompt responses, giving teeth to a concept already reflected in the adopted comments to the rules (WAC 44-14-04003(3)). Without a rule requiring adequate resources, agencies will continue to neglect their obligations under the Act, resulting in unacceptably long waits for records and a loss of transparency and accountability. The Attorney General’s leadership is needed to raise the bar so that agencies will take the “fullest assistance” requirement seriously and actually do what is most helpful.

Section (3): Getting started.

Often, agencies wait five business days (the maximum allowed) to provide an initial response to a request but provide an estimated response time that is based solely on the agency’s backlog – without first determining the actual effort needed to satisfy the request. The proposed amendments would clarify that some assessment of the request is necessary *before* the first response. This would ensure compliance with RCW 42.56.520, which allows delay based on the time needed to process the request and requires the estimated delay to

be “reasonable.” It is simply not possible to provide a “reasonable” time estimate for producing records without any inquiry into the nature or availability of the records.

Section (4): Initial response.

Agencies do not provide the “fullest assistance” or “most timely possible action” when they insist on mailing records instead of sending them electronically, which is much faster. The proposed amendments would expressly require transmission in electronic form unless it is not reasonably possible to do so or not preferred by the requestor. This is consistent with the adopted comments to the rules (e.g. WAC 44-14-05001) and with *Mechling v. Monroe*, which recognized that the obligation for fullest assistance requires production in an electronic format when requested and when reasonable and feasible. Also, the proposed amendments would spell out requirements for a brief explanation of an applicable exemption when denying all or part of a request.

Section (6): Third party notice.

As it is, agencies use third-party notice when they don’t want to provide records but don’t want to risk liability for wrongfully denying them. Third-party injunction suits are costly for everyone and can hold up disclosure for years, even when the injunction test is not met (which is most of the time.) Such suits should be discouraged. The Attorney General’s leadership is needed to prevent unnecessary costs and delays which too often characterize the third-party process.

The proposed amendments would limit third-party notice to those situations where disclosure may substantially and irreparably harm a person, since such harm is an element of the injunction test under RCW 42.56.540 and it would be pointless to launch a third-party lawsuit when the requisite harm is not truly threatened. More importantly, the amendments would allow third-party notice only after the agency has made an effort to determine if the records are exempt. If the agency believes the records are *not* exempt, the injunction test cannot be met and there is no point in notifying the third party of an opportunity to obtain an injunction, so the agency must release the records without providing third-party notice. In those situations, RCW 42.56.060 protects the agency from liability.

As it is, agencies giving third-party notice typically take the position that records are not exempt and will be released in the absence of an injunction. Presumably they believe this is better than wrongly claiming an exemption, but the effect on the requestor is the same. Even in non-meritorious cases, the courts will enjoin disclosure until the third party exhausts all opportunities for appeal, sometimes over a period of years. The adopted comments to this rule suggest that third-party notice is inappropriate for non-exempt records but a stronger statement is needed to draw a clear line against current practices which needlessly waste resources and delay disclosure of non-exempt records.

Section (8): Inspection.

The proposed amendments would prevent permanent closure of requests when the requesters still want the records. The amendments would replace the 30-day deadline (which is not in any statute) with an “agreed period” to claim or review records, and require

agencies to make some effort to determine why a requester has not inspected records within the agreed period and to keep the request open if desired, instead of assuming it has been abandoned. This is consistent with providing fullest assistance and liberally construing the Act's disclosure requirements. There is nothing in the Act itself that sets a 30-day deadline to claim or review records or that authorizes permanent closure (as opposed to indefinite suspension) for non-payment, and there are instances when the deadline is missed because of vacations or honest mistakes.

Section (10): Installments.

Many agencies have fallen into a pattern of providing virtually all requested records in installments over a long period of time, forgetting that the purpose of allowing installments is to speed up disclosure. RCW 42.56.080(2) states: "agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure." This is fundamentally a mandate to make records *promptly* available once they are ready, instead of waiting for the entire "larger set" to be processed. It does not authorize the leisurely pace that too often characterizes installments. The proposed amendments would add language from the statute to make clear that promptness is required, while also adding language from case law requiring agencies to be diligent when producing records by installment. The amendments also would require electronic transmission for installments, using the same language as for requests satisfied within five days. The Attorney General's leadership is needed to change the culture of public records processing so that installments are provided in conformance with the spirit and letter of the act.

Section 12: Closing Withdrawn or Abandoned Requests

The proposed amendments here would again prevent unwarranted closure of requests that the requestor does not intend to abandon, consistent with fullest assistance and liberal construction.