

**CONCISE EXPLANATORY STATEMENT**

**Attachment A**

WAC ch. 44-14

Office of the Attorney General  
Public Records Act Model Rules –  
2017 Proposed Updates;  
2018 Final Rules  
Summary of Comments and Responses

March 2018

**Concise Explanatory Statement – Attachment A - Table**  
**Chapter 44-14 WAC (Model Rules) - CR-102 Proposed Rulemaking – 2017 –**  
**Summary of Public Comments/Suggestions and Responses to Comments**

*Notes:*

The Legislature provided that the Attorney General’s Office (AGO) would adopt and may update Public Records Act (PRA) Model Rules. RCW 42.56.570. The Model Rules were adopted in 2006-2007. They are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. They are located in chapter 44-14 WAC. They are Model Rules, plus comments that include footnoted citations to several court decisions and Attorney General Opinions, and other references. WAC 44-14-00002. The Model Rules have three-digit WAC numbers; the comments have five-digit WAC numbers.

In 2017, the AGO filed a CR-102 with proposed amendments to chapter 44-14 WAC for limited reasons, primarily to address changes in law and technology since 2007, including proposed amendments and one proposed repeal, and invited public comment. The 2017 proposal also included a suggested prioritization/categorization approach to process records requests, based on the experiences of some local governments. The summary of comments/suggestions received on the 2017 proposal where changes were offered, and AGO responses, follow in a table format. The table does not provide details where commenters concurred in the proposed amendments, since no AGO response would be required. However, a list of persons (including entities) concurring specifically in their comments is in this table; and, a copy of all comments/suggestions received prior to or at the public hearing (both those concurring with the amendments and those with suggested changes) are available on the AGO website at [www.atg.wa.gov](http://www.atg.wa.gov) on the Rule Making Page. With respect to the table:

- Where persons comments/suggestions related to subjects outside the limited purposes that were stated for updating the Model Rules, the AGO has provided an “Overall Response to Comments/Suggestions” (“Overall Response”) at the beginning of the table. In addition, where persons’ comments also related to possible rulemaking on other records topics such as records creation, management and retention, the table refers to a separate document with a more detailed response and attached herein as Attachment B, titled “Concise Explanatory Supplemental Memorandum.” The table states “See Supp. Memo.” as a response to such comments when referring to that memorandum.
- Where persons had a comment/suggestion but did not identify a proposed amendment by a WAC number, or their comments/suggestions are general in nature, those are summarized in the introductory “General Comments/Suggestions and/or No WAC # Identified by Commenter” section of the table. The AGO response also provides or refers to a possible WAC citation to the most relevant WAC, if any.
- Where persons identified a specific WAC number or a specific WAC number clearly related to a person’s comment/suggestion, the person’s comments/suggestions are summarized in numerical order in the table by WAC number.
- The written comments/suggestions are assigned page numbers (Pg #). The oral comments from the public hearing are assigned a page number with an additional designation that they are in the hearing transcript (“TR”).

WAC #	Rule Topic	Person/ Entity Providing Comment/ Suggestion  Pg #	Comment/Suggestion Summary	Agency Response to Comments/Suggestions
<b>General Comments and/or No WAC # Identified by Commenter</b>				
	Ch. 44-14 WAC – Public Records Act – Model Rules	Various Persons/ Entities  Pg # 1 - 309	<ul style="list-style-type: none"> <li>• Suggestions regarding: additional topics in Model Rules WACs (including those suggesting new topics such as records creation, management and retention), re-doing the structure and numbering format of Model Rules, moving the location of some language in the Model Rules (suggesting language be moved from one WAC to another, or other style suggestions), and other comments not prompted the limited purposes for rulemaking to update the Model Rules (see CR-102).</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Overall Response to Comments/Suggestions:</i></li> <li>• The purpose of the proposed amendments and one repeal to the Model Rules, as provided in the CR-102 filed with the Code Reviser on August 23, 2017, was to update chapter 44-14 WAC for limited reasons, specifically, to reflect developments in statutes, case law and technology since 2007 so the rules are more functional. And, some minor editing was also proposed. WSR 17-17-157.</li> <li>• The purpose of the 2017 proposed amendments was not to substantially rewrite or rework chapter 44-14 WAC, to change the overall approach or structure to the Model Rules, to add other large and/or substantial new topics including those not prompted by the limited purposes stated in the CR-102, or to otherwise engage in entirely new rule making with substantially new or significantly revised rule language. The intended anticipated effect of the proposal was simply to modernize the Model Rules for the limited reasons specified, not to start rule making anew and/or rewrite the Model Rules. The approach taken in 2006-2007, which was adopted following substantial public input and comment, remains largely intact.</li> <li>• As a result, examples of the AGO’s proposed amendments reflect statutory changes (such as those relating to charges for copies, maintaining a log, new PRA language regarding what is not a public record, and others), statutory and case citations updates (such as removing references to RCW 42.17, and making other corrections or updates to citations), recent courts decisions (such as updates in the</li> </ul>

				<p>footnotes, and references to case law governing public records on personal devices, a requirement that requestors provide fair notice of a PRA request, a recommendation that agencies document searches for records given several PRA decisions on agency searches), other changes in technology with respect to public records (such as agencies' use of websites or portals, referring to texts and social media, providing information on producing electronic records, referring to the online <i>AGO Open Government Resource Manual</i>, referring to records retention schedules which are now online, as a means to index records), and similar examples.</p> <ul style="list-style-type: none"> <li>• In addition, the proposed amendments also suggested agencies could consider a prioritization/categorization approach as a sample best practice to process records requests. This approach has been used in a similar manner by some local jurisdictions. However, based on comments received on the CR-102, the AGO is not proceeding with proposed language with respect to that approach. The AGO recognizes agencies may continue to process request in a way that enables them to address simple as well as complex requests at their particular agency, but providing sample possible standard language in the Model Rules is not feasible at this time. More details are provided in the response to suggestions on WAC 44-14-040 and 44-14-04003 below.</li> <li>• The AGO also agrees with several of the suggested changes that are within the scope of the stated purposes of the proposed amendments, including minor editing or clarifying changes. Those suggestions and responses are detailed in this table.</li> <li>• In addition, one of the proposed suggestions, to eliminate most of the judicial review discussion in WAC 44-14-08004, is consistent with the approach proposed for the discussion of exemptions in WAC 44-14-06002, and that change to the judicial review language will also proceed. Further details are provided in the response below to comments/suggestions on WAC 44-14-08004.</li> <li>• Some persons commenting on the proposed amendments made suggestions to amend the Model Rules beyond the overall purposes of</li> </ul>
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				<p>the 2017 CR-102 proposal. The AGO is declining to engage in such additional rule making, for example, to expand the rules to address many of the other new topics, to change the formatting of the Model Rules, or to make many of the suggested changes in the text of several WACs that are not required by a change in law or technology, or do not need a citation error or minor edit. See also the Supp. Memo for a more detailed response declining to enact new rules on several of the new records topics suggested for rulemaking.</p> <ul style="list-style-type: none"> <li>• The AGO also declines to adopt another suggestion, which is to not proceed with the proposal and instead to file a new proposal with other new amendments to the Model Rules at some point in the future, or schedule additional public hearings around the state. Ten years have already passed since the last updates to the Model Rules. The AGO provided significant public notice of the 2017 proposal, along with many options for person to comment on the proposal. Further delay in updating the Model Rules, at minimum to reflect changes in the law and technology, will not assist requestors, public agencies, the public, the courts, and others interested in the PRA.</li> <li>• This “Overall Response” applies to all comments/suggestions received.</li> </ul> <p><b>The changes to the proposed amendments are summarized below.</b></p>
		<p>Various Persons/ Entities</p> <p>(See examples of persons/entities concurring in several of the proposed</p>	<ul style="list-style-type: none"> <li>• Various commenters concurred with several of the proposed amendments to chapter 44-14 WAC, or with many parts of the proposed amendments. (Note: not all commenters remarked on all proposed rules.) Given the volume of chapter 44-14 WAC, the number of concurring comments, and that no</li> </ul>	<ul style="list-style-type: none"> <li>• No response is necessary where persons concurred in the proposed amendments.</li> </ul> <p><b>No change is required where commenters concurred in the proposed amendments.</b></p>

		<p>amendments, in the next column).</p>	<p>response is needed to a comment agreeing with a proposed amendments, those comments are not detailed here but are available on the AGO website on the Rule Making Web Page. See comments from:</p> <ul style="list-style-type: none"> <li>• Doug Mitchell (Pg # 4) (WAC 44-14-01001)</li> <li>• April Atwood (Pg # 9) (General comment)</li> <li>• Stevens Clay Law Firm (Pg # 98-99) (General comment)</li> <li>• WCOG (Pg # 105 – 224) (concur in several WAC amendments including WAC 44-14-00001, 00002, 00004, 00005, 00006, 06001, 07003, 07004, 07005, 07006; and concurs in some parts or has no remarks on several other proposed WAC amendments, as described in the comments).</li> </ul>	
		<p>Rowland Thompson (Allied</p>	<ul style="list-style-type: none"> <li>• There should be more publicity on the proposed amendments and more public hearings around the</li> </ul>	<ul style="list-style-type: none"> <li>• Significant public notice was provided about the proposal, through Code Reviser filings, website notices, emails, media releases, social media and other means. The notices, and secondary notices through editorials and newspaper articles, invited public comment. See further</li> </ul>

		<p>Daily News-papers &amp; WA News-paper Publishers Ass'n)</p> <p>(Allied &amp; WPNA)</p> <p>Pg # 296-300 (TR)</p> <p><i>See also</i> Kathy George comments for Allied, Pg # 296 (TR).</p>	<p>state prior to adopting changes to the Model Rules.</p>	<p>discussion in the Concise Explanatory Statement section on “Public Notices of Anticipated Rule Making.” See also October 5, 2017 email from Nancy Krier to Rowland Thompson.</p> <ul style="list-style-type: none"> <li>Public hearings were held around the state in 2006 when the Model Rules were first adopted. The 2017 proposal is primarily an update due to changes in law and technology. In addition, as detailed in the Public Notices section of this CES, persons were invited to comment in several ways: through an online form, via email, via letter, or at the public hearing. The proposal with notices was posted online, filed in the <i>Washington State Register</i>, sent via email to more than 600 stakeholders and a Legislative Work Group, and sent to 3,119 media outlets. The AGO also provided notices via social media. Therefore, additional statewide hearings were not necessary.</li> </ul> <p><b>There has been significant opportunity provided for public comment on the Model Rules; there is not a need to conduct additional hearings particularly given the extensive public hearings statewide in 2006-2007 and the limited nature of the 2017 proposed amendments, and the several options provided in 2017 for methods to comment by the public.</b></p>
	<p>Electronic records requests and production systems like Seattle’s</p>	<p>Laurel Holliday (Writer)</p> <p>Pg # 2-3</p>	<ul style="list-style-type: none"> <li>Electronic records systems should identify the Public Records Officer assigned to the request.</li> <li>All charges should be based on actual costs.</li> <li>Estimates of time should be accurate and not based on boilerplate language.</li> <li>Digital technology to receive and fulfill requests should be easier to use.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The PRA does not require the specific person assigned to a specific request to be identified to a requestor, although often he or she is identified in communications with the requestor. The PRA only provides that the Public Records Officer be publically identified by the agency in the manner listed in the PRA, and contact information be made public. RCW 42.56.580.</li> <li>The Model Rule at WAC 44-14-020 provides that an agency identify a phone number for a public records officer, in the agency’s rules/procedures. The Model Rules are advisory only, so it will be within in agency’s discretion as to what “contact information” it provides with respect to a Public Records Officer. A public records</li> </ul>

			<ul style="list-style-type: none"> <li>Requestors should have to enter credit card payment information only once.</li> </ul>	<p>officer may have other persons assisting him/her in processing a request. WAC 44-14-02002. Those other persons are not required in the PRA to be publically identified by an agency.</p> <ul style="list-style-type: none"> <li>Agencies have options to assess costs for copies, and assessing actual costs is one option. Agencies have other options, including for example, using the statutory default fee schedule per procedures set out in the PRA, and assessing an up to \$2 flat fee. RCW 42.56.120. See WAC 44-14-070 through -07006.</li> <li>WAC 44-14-04003(7) already provides that agencies should not use the same estimate of time for each request.</li> <li>The PRA does not mandate that agencies use digital technology to receive and fulfill requests, although many agencies already use online request processes and portals. The Legislature has funded a study to see if a statewide portal is feasible. That study is not yet complete.</li> <li>The PRA does not specify payment procedures including credit card payment procedures. Not all agencies accept credit cards. This comment is better directed to the specific agency that accepts credit card payments.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>
	Charges for electronic files	Adam Long (City of Kent)  Pg # 5	<ul style="list-style-type: none"> <li>Agencies need guidance on what is a “file” and “electronic file” for the purposes of RCW 42.56.120(2)(b)’s authorized charges.</li> </ul>	<ul style="list-style-type: none"> <li>WAC 44-14-070 and WAC 44-14-07001 are proposals to address copying charges per the 2017 statutory changes. Under those changes, the PRA provides that agencies may charge five cents per each four “electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery.” RCW 42.56.120(2)(b)(ii). In the 2017 amendments adding this language to the PRA, the Legislature did not define “electronic file.” The commenter may wish to bring this issue to the attention of the Legislature, as a technical clean up. The AGO will await further legislative action on this topic. Meanwhile, an agency could look at how it will define “electronic file” at that agency. For example, an agency could define a “file” as a collection of data stored in one unit, identified by a filename.</li> </ul>

				<b>No change necessary to proposed amendments.</b>
	Oversight; document organization and destruction; use of personal devices	April Atwood Pg # 9	<ul style="list-style-type: none"> <li>• Oversight is needed to assure accountability.</li> <li>• Guidelines are needed to help agencies keep their documents organized and to prevent their destruction.</li> <li>• Agencies need more guidance to stop officials from using personal devices for agency business.</li> </ul>	<ul style="list-style-type: none"> <li>• The PRA provides enforcement through the courts.</li> <li>• Records retention and management guidance and oversight is provided through the Secretary of State – State Archives (pursuant to RCW 40.14), not through the AGO Model Rules (issued pursuant to the PRA at RCW 42.56). See Overall Response above, and see Supp. Memo.</li> <li>• The State Legislature has not prohibited public agency officials from using personal devices or accounts for agency business. In <i>Nissen v. Pierce County</i>, 182 Wn.2d 863, 357 P.3d 45 (2015), the State Supreme Court held that public records on personal devices are subject to the PRA, but it did not prohibit public agency officials from using personal devices or accounts for agency business. Per <i>Nissen</i>, agencies can adopt policies about use of personal devices and accounts. See also the proposed amendments at WAC 44-14-03001(3) and WAC 44-14-04003(10).</li> </ul>
	Customized access service charges	Tim Clemans Pg # 8	<ul style="list-style-type: none"> <li>• Agencies should explain to the requestor what they are going to program.</li> <li>• What is “use” with respect to what software an agency uses?</li> <li>• Is a simple SQL inquiry that exports existing data considered customized access?</li> </ul>	<ul style="list-style-type: none"> <li>• The PRA at RCW 42.56.120(3) now provides that an agency may include a customized service charge. The statute also provides that an agency may impose a customized service charge if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes. What software an agency uses may vary from agency to agency.</li> <li>• The statute also provides that, “An agency may not assess a customized service charge unless the agency has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his</li> </ul>

				<p>or her request in order to avoid or reduce the cost of a customized service charge.”</p> <p><b>No change necessary to proposed amendments.</b></p>
Agency public web sites	John Cruce Pg #10	<ul style="list-style-type: none"> <li>Agency web sites need to quickly guide persons to useful information (census, city directories, telephone directories, land grants and deeds, court records, school records, treaties, other examples).</li> <li>Web sites should have the phone number of records officers.</li> </ul>	<ul style="list-style-type: none"> <li>The PRA encourages, but does not require, agencies to post commonly requested records on their websites. See finding under RCW 42.56.520; <i>see also</i> RCW 43.105.351 and WAC 44-14-030.</li> <li>The PRA does not require agencies to post the phone numbers of their publicly-identified public records officers on their websites, although many agencies do that. Instead, the PRA requires that for state agencies, the name and “contact information” of the public records officer is to be filed with the Office of the Code Reviser. While “contact information” could be a street address or email address, a review of the <i>Washington State Register</i> shows that those filings typically include phone numbers. For local agencies, the name and “contact information” is to be made in a way reasonably calculated to provide notice to the public, including posting at the local agency’s place of business, posting on its internet site, or including it in its publications. Again, contact information could include, but is not required to include, a phone number. The Model Rule at WAC 44-14-020 provides that an agency identify a phone number for a public records officer, in the agency’s rules/procedures. The Model Rules are advisory only, so it will be within in agency’s discretion as to what “contact information” it provides with respect to a Public Records Officer.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>	
Requests	Terri LeFors (Spokane Schools) Pg # 18	<ul style="list-style-type: none"> <li>Agree that requestor should give “fair notice” of a request.</li> <li>Requestors should be required to respond to agency requests for</li> </ul>	<ul style="list-style-type: none"> <li>The “fair notice” requirement is addressed in WAC 44-14-03006 and WAC 44-14-04002(1), and case law.</li> <li>Agencies are permitted to charge for copies of records. RCW 42.56.120. One way to manage a large request, and to ensure the requestor stills seeks the records, is to require a deposit or charge by installment. If the requestor does not pay for the copies, the request is</li> </ul>	

			<p>communication or agencies should be allowed to close the requests after 30 days. Agency has huge requests with large staff hours and expenses invested, but no indication that requestor opens [records] or remains interested in record. Clarification not required; other requestors have to wait.</p> <ul style="list-style-type: none"> <li>• Very concerned about formal priority category process. Places additional time requirements and burdens on agencies when time is better spent processing requests.</li> <li>• New reporting requirement on requests adds work and takes time away from processing requests.</li> <li>• Requests should have a real, legitimate purpose, relating to the conduct of government (i.e. requests to see email 'to see what they said about me' do not relate to conduct of government but take staff time/expense to process).</li> </ul>	<p>considered abandoned and the agency may close it. RCW 42.56.120(4). Another way is to communicate with a requestor is to explain that if the requestor is not opening up agency-provided links to records (claiming records or reviewing records) the agency will consider the request abandoned and will close it. RCW 42.56.120(4).</p> <ul style="list-style-type: none"> <li>• The proposed approach for categorization of requests in WAC 44-14-040 and WAC 44-14-04003 was a suggestion for an agency to consider in processing records requests (an approach used successfully by other agencies); however, the proposed language on those categories is not proceeding. See further response under those WACs.</li> <li>• The new reporting requirements about PRA requests are statutory. RCW 40.14.026(5) (PRA data reporting requirements for certain agencies).</li> <li>• Agencies are prohibited from requiring a requestor provide the purpose of a request, unless a law permits that information be provided to the agency. See RCW 42.56.080.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>
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	Charges for electronic files, attachments	Terri LeFors (Spokane Schools)  Pg # 18	<ul style="list-style-type: none"> <li>• How are fees determined for copies of emails? Example: one PDF that has hundreds of emails, many with attachments that require redaction. Is the PDF one attachment, each email an attachment, or are the attachments included in the (cost) figure? One PDF may have thousands of pages but may technically be one attachment.</li> </ul>	<ul style="list-style-type: none"> <li>• See also response to Adam Long comment above.</li> <li>• The PRA provides that agencies may charge five cents per each four “electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery.” RCW 42.56.120(2)(b)(ii). See WAC 44-14-070 <i>et seq.</i></li> <li>• In the 2017 amendments adding this language to the PRA, the Legislature did not define “attachment.” The commenter may wish to bring this issue to the attention of the Legislature, as a technical clean up. The AGO will await further legislative action on this topic. Meanwhile, an agency could look at how it will define “attachment” at that agency. For example, an agency could define an attachment, or email attachment, as a file sent with an email message. It may be an image, video, text document, or any other type of file.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>
	Requests and processing requests	Cal Taki  Pg # 19	<ul style="list-style-type: none"> <li>• For “personal identifiable” records, state law should requires systems to be “locked down” and patches immediately applied.</li> <li>• PRA requests must be “securely trackable back to the requestor – location verified, providing the request is legitimate and there is a legal need to know, notarized.</li> <li>• Costs of producing public records should be billed by hours (time to verify if requestor is legitimate and has right to know, whether</li> </ul>	<ul style="list-style-type: none"> <li>• The comment regarding agency computer systems and patches is outside the scope of the Model Rules. See Overall Response and Supp. Memo.</li> <li>• The PRA does not permit agencies to determine if a request is “legitimate.” Some statutes require certain information from requestors depending upon the nature of the information in the record [example, requests for medical treatment files -- see RCW 70.02.030 (patient authorizations for release to specific persons or entities)].</li> <li>• The PRA sets out the options for agencies to charges costs for copies, and authorizes only certain charges. RCW 42.56.070; RCW 42.56.120. See WAC 44-14-070 <i>et seq.</i></li> </ul> <p><b>No change necessary to proposed amendments.</b></p>

			request is urgent, number of pages, etc.)	
	Processing requests	Cheri Skutley (Spokane Schools)  Pg # 88	<ul style="list-style-type: none"> <li>• Change 30 days required to respond to request for clarification from agency. If not received within 30 days, is entire request closed?</li> <li>• Proposal says agencies and requestors are to communicate with each other but requestors rarely confirm receipt of email or if they want the next installment, and the agency spends hours processing request.</li> <li>• If a requestor wants records from a vendor, he/she should ask the vendor. Agency should not be a one-stop shop for a requestor, with a threat of fine/penalty.</li> <li>• Priority categorizations are OK to suggest as a Model Rule but do not force agencies to separate requests into categories.</li> <li>• Fee schedule change was supposed to help diminish burdensome requests but</li> </ul>	<ul style="list-style-type: none"> <li>• WAC 44-14-04003(8) is a comment addressing requests for clarification. The 30 days is a suggested time period in the current rule for a response to the agency’s request; it is not required. An agency can set the time periods for response. Under the PRA, an agency is required to respond to those parts of a request that are clear, so the proposal refers to that change in law. RCW 42.56.520(3)(b).</li> <li>• WAC 44-14-04003(4) addresses communications. Agencies can set dates on which an installment of records are to be paid, for, picked up or reviewed, or the request is considered abandoned and may be closed. RCW 42.56.120: “If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.” An agency could also use a “read receipt” function for its emails with requestors.</li> <li>• Agencies are required to provide records relating to governmental and proprietary functions “prepared, owned, used or retained” by the agency. RCW 42.56.010(3). Requestors are not required to ask other public agencies or private agencies (vendors) for records first.</li> <li>• Proposed amendments to WAC 44-14-040 and the comment at WAC 44-14-04003 suggest a priority/categorization approach an agency could consider using in processing PRA requests. The AGO is not proceeding with rules on that approach at this time. See further details in response to WAC 44-14-040 and WAC 44-14-04003.</li> <li>• Fee schedule changes are statutory. RCW 42.56.070; RCW 42.56.120.</li> <li>• How agencies produce records will depend in part on the nature of the request (for example, if the records are requested in native format).</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>

			<p>installments released via email do not.</p> <ul style="list-style-type: none"> <li>• Agency process should be allowed to change, for example, keeping emails in native format, change emails needing redaction to a PDF but not bind them together which allows agency to collect a nominal fee.</li> </ul>	
	<p>General comments on format, number of Model Rules, nature and use of Model Rules, citations, AGO role</p>	<p>John Klinkert Pg # 91-96</p>	<ul style="list-style-type: none"> <li>• The Model Rules (WACs) are not worded as rules, they are worded as advice. They cannot bind requestors and the Washington Supreme Court should be forbidden to refer to the Model Rules. Most readers are not lawyers and will not know how to use case citations; do not give legal advice or cite cases in footnotes. Give only essential advice; wouldn't it be better to have only a few advisory Model Rules? Creation of the Model Rules in the AGO is a conflict with the citizens as the AGO is also an agency. The Ombuds should not draft Model</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• The Legislature tasked the AGO with writing and updating the Model Rules. RCW 42.56.570. The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. They are Model Rules, published with comments, including citations to several relevant court decisions. WAC 44-14-00002. The format was adopted in 2007-2007. The Model Rules have three-digit WAC numbers; the comments have five-digit WAC numbers. The Legislature also tasked the AGO with providing information, technical assistance, and training on the PRA. RCW 42.56.155. The Model Rules are part of that information and assistance; the AGO Ombuds assists in those tasks. State agencies are subject to the Administrative Procedure Act (APA) in RCW 34.05 for rule making. Local agencies are not subject to the APA. It is up to the courts to decide what to cite in court decisions; that is not a subject that can be addressed or prohibited in Model Rules.</li> <li>• A statement will be added to WAC 44-14-00002 that agencies are encouraged to consult the statutes, court cases, and Attorney General Opinions.</li> </ul> <p><b>Minor change will be made to proposed amendment at WAC 44-14-00002.</b></p>

			Rules. Will the Model Rules override the intent of the PRA? What is the procedure for an agency to adopt a rule? (Other comments not related to proposed amendments to chapter 44-14 WAC.)	
	Public records officers	John Klinkert  Pg # 94 – 95	<ul style="list-style-type: none"> <li>An agency can have other persons help the Public Records Officer but the agency is to have a sole point of contact named on an agency’s website.</li> </ul>	<ul style="list-style-type: none"> <li>RCW 42.56.580 provides that a Public Records Officer is to be appointed “to serve as a point of contact for members of the public in requesting disclosure of public records.” The Public Records Officer does not need to be only point of contact, if an agency wants to designate others or other addresses. WAC 44-14-020 provides a suggested format for that, and the comment at WAC 44-14-02002 repeats the statutory language. The WAC also describes that other persons can assist a Public Records Officer.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>
	Agency request forms	John Klinkert  Pg # 95	<ul style="list-style-type: none"> <li>Agencies should be required to state, near the form, that requestors need not use it and no particular format for a public records request is required.</li> </ul>	<ul style="list-style-type: none"> <li>WAC 44-14-030 provides a suggested format for agency request forms (including online requests). WAC 44-14-03006 provides the Public Records Act citation describing that there is no statutorily required format for a request, although agencies can recommend using an agency-provided form or web page. WAC 44-14-04002 provides information about the “fair notice” requirement in making a public records request.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>
	General comments regarding Model Rules for	Toby Nixon, WA Coalition for Open Gov’t	<ul style="list-style-type: none"> <li>Per RCW 42.56.100, Model Rule WACs should address procedures for agencies and a new Model Rule should be enacted</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>See Supp. Memo.</li> </ul>

<p>protecting records from damage/disorganization, and other records topics, per RCW 42.56.100</p>	<p>(“WCOG”) Pg # 105 – 107 (<i>see also</i> # 105 – 224 - WCOG proposals are duplicated in its attached Appendix; <i>and</i> WCOG testimony at # 279-286 (TR))</p>	<p>with respect to methods to protect records from damage and disorganization including but not limited to topics such as:</p> <ul style="list-style-type: none"> <li>• organization of agency records including agency emails and specifically Inbox and Sent mailboxes, and email subject lines;</li> <li>• organization of other electronic records, including word processing files, file systems and records naming conventions;</li> <li>• organization of agency records that are subject to commonly-asserted exemptions;</li> <li>• organization of agency legal files;</li> <li>• criteria for agency servers to be protected against virus, malware and unauthorized access;</li> <li>• design of agency forms;</li> <li>• an explanation of agency duties with respect to control of its records provided under other laws outside the PRA;</li> </ul>	<p><b>No change necessary to proposed amendments, except that additional reference to Secretary of State guidance will be added to WAC 44-14-03004. A statement will be added to WAC 44-14-00003 that the Model Rules are useful guidance for agencies adopting their rules and procedures. A statement will be added to WAC 44-14-03003 that agencies can use their retention schedules as a way to describe records they retain and for what periods of time.</b></p>
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			<ul style="list-style-type: none"> <li>• requirements for record-keeping/retention with respect to drafts;</li> <li>• creation of records including but not limited to creation of information to be included in attorney invoices and outside legal counsel agreements;</li> <li>• creation of procedures for common interest and joint defense agreements;</li> <li>• creation of procedures governing litigation correspondence;</li> <li>• other topics.</li> </ul>	
	<p>General comments regarding Model Rules for protecting records from damage/disorganization, and other topics, per RCW 42.56.100</p>	<p>Howard Gale</p> <p>Pg # 306-307 (TR)</p>	<ul style="list-style-type: none"> <li>• Agencies have a duty to preserve and organize records.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendments.</b></p>

**WAC 44-14-00001 – WAC 44-14-00006 – Introductory Comments**

			<i>See also "General Comments and/or No WAC # Identified by Commenter"</i>
44-14-00002	Format of model rules	<p>Katherine George (Allied Daily Newspapers of Wash.) ("Allied")</p> <p>Pg. # 226 (see also Allied testimony on proposal generally at # 292-296 (TR) – Allied testimony with overview of its written comments – responses to written comments detailed in this table).</p>	<ul style="list-style-type: none"> <li>• Each Model Rule comment title should have the word "Comment" added.</li> <li>• Suggested revised language with above consideration.</li> </ul> <ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• WAC 44-14-00002 already describes the format of chapter 44-14 WAC (rules have three digit WAC numbers, comments have five digit WAC numbers). This is the same format that chapter 44-14 WAC has used for more than ten years.</li> <li>• In codifying the WACs, the Code Reviser also makes it clear which WAC numbers are rule comments. See <a href="http://apps.leg.wa.gov/WAC/default.aspx?cite=44-14">http://apps.leg.wa.gov/WAC/default.aspx?cite=44-14</a>.</li> <li>• This response is applicable to all suggestions that the word "Comment" be added to the title of each WAC that is a comment.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>

44-14-00003	Model rules and comments are nonbinding	WCOG  Pg # 110-111	<ul style="list-style-type: none"> <li>• Revise the rules to include requirement that agencies adopt rules pursuant to RCW 42.56.100.</li> <li>• Remove the added word “state” because it implies the duties of state and local agencies differ.</li> <li>• Delete the sentence and footnote noting that WA courts have considered the Model Rules in decisions because it is irrelevant.</li> <li>• Include that agencies “should” consult the model rules pursuant to RCW 42.56.570(4).</li> <li>• Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> <li>• The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The Model Rules cannot direct agencies to adopt PRA rules and procedures; that obligation is in statute (RCW 42.56.100). To the extent an agency is required to do anything pursuant to the PRA, the statute contains the requirement.</li> <li>• The PRA does make a distinction for local agencies, which “should” consider (but are not required to adopt) the Model Rules. RCW 42.56.570. No similar language is in the PRA for state agencies. A minor change should be made to reflect the “should” language for local agencies.</li> <li>• The courts have considered the Model Rules in various decisions.</li> <li>• Clarifying language will also be added to reflect that the Model Rules are a useful guide in fulfilling the requirement for agencies to publish procedures and rules for making records available for inspection and copying, and citations will be added to RCW 42.56.040, RCW 42.56.070(1) and WAC 44-14-01002.</li> </ul> <p><b>Minor changes will be made to proposed amendments.</b></p>
44-14-00003		Allied  Pg # 226	<ul style="list-style-type: none"> <li>• The word “encouraged” should be used rather than “required.”</li> </ul>	<ul style="list-style-type: none"> <li>• See WCOG comments and response above.</li> </ul> <p><b>A minor change will be made to proposed amendments.</b></p>
44-14-00006	Additional resources	Joseph Molenda (Dept of Labor and Industries)  Pg # 6	<ul style="list-style-type: none"> <li>• Why are some proper nouns capitalized, but not others?</li> </ul>	<ul style="list-style-type: none"> <li>• In rule making, the AGO uses the Code Reviser’s style for capitalization. The proposal will be reviewed to see if the style was used consistently throughout, and using Code Reviser style.</li> </ul> <p><b>Possible minor change to proposed rules/comments to make capitalization consistent throughout rules/comments, if there are inconsistencies.</b></p>

44-14-00006		Jessica Nadelman (City of Seattle)  Pg # 21, 28	<ul style="list-style-type: none"> <li>Add the Washington Association of Public Records Officers (WAPRO) as another resource.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed that WAPRO is another resource that could be mentioned. WAPRO is already also listed as a resource on the Office's Open Government Training Web Page at <a href="http://www.atg.wa.gov/opengovernmenttraining.aspx">http://www.atg.wa.gov/opengovernmenttraining.aspx</a>.</li> </ul> <p><b>Minor change will be made to add WAPRO reference.</b></p>
<b>WAC 44-14-010 – WAC 44-14-01003 – Authority and Purpose</b>				
				<i>See also "General Comments and/or No WAC # Identified by Commenter"</i>
44-14-010	Authority and purpose	WCOG  Pg # 111-112	<ul style="list-style-type: none"> <li>The existing and proposed WACs lack a statement that agencies are required under 42.56.100 to adopt and enforce rules.</li> <li>Sentence regarding volunteers should be in 44-14-00001.</li> <li>Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>See Supp. Memo.</li> <li>See WAC 44-14-01002.</li> <li>This language is a Model Rule that an agency can consider adopting as its own rule to govern its PRA procedures. Therefore, a reference to "these model rules" would not be part of any agency rules or procedures.</li> <li>The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The Model Rules cannot direct agencies to adopt rules. To the extent an agency is required to do anything pursuant to the PRA, the statute contains the requirement.</li> <li>The PRA at RCW 42.56.010(3) now excludes from the definition of "public record" certain records of volunteers. WAC 44-14-010 is a Model Rule relating to the scope and purpose of the PRA, and referring to the definition of "public record" which necessarily includes the scope of what is a public record. The Legislature codified the language regarding volunteers' records in that "public records" definition, which makes a reference to that language appropriate here.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-010		Allied  Pg # 226 - 227	<ul style="list-style-type: none"> <li>The reference to "name of agency" should be added since this is a Model Rule an agency could adopt.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The rule sets out the general purpose of the PRA and why the agency has rules to provide access to "public records." The language has read</li> </ul>

			<ul style="list-style-type: none"> <li>References to the definition of public record are not related to authority and purpose pursuant to RCW 42.56.100. The purpose should reflect the procedures are to provide the fullest assistance and the most timely possible action.</li> </ul>	<p>this way since 2006-2007. Further details and background are provided in the comments to the rule, and other rules.</p> <ul style="list-style-type: none"> <li>RCW 42.56.100 is already referred to in WAC 44-14-01002, and is cited 19 times in the Model Rules.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-01001	Scope of Coverage of PRA	WCOG Pg # 112-113	<ul style="list-style-type: none"> <li>Opposes deletion of the sentence suggesting agencies coordinate responses to records requests across departmental lines.</li> <li>Rule should explain that cities and counties are agencies under the PRA and must have a public records officer for the agency even if they have public records officers for individual departments.</li> <li>Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The PRA defines “local agency” to include counties and cities (and other listed agencies). The current and proposed Model Rule comment here acknowledges that such entities are agencies subject to the PRA.</li> <li>Will revise sentence to add PRA reference to county and to local office, and departments.</li> <li>Will also retain sentence about coordinating requests, adding a clarifying description that requests may be necessary to be coordinated in some manner across departments when a request is directed to an entire county.</li> </ul> <p><b>Minor changes will be made to proposed amendment.</b></p>
44-14-01002	Reasonable regulations for records requests	WCOG Pg # 113-114	<ul style="list-style-type: none"> <li>Existing WAC and proposed WAC fail to address RCW 42.56.100 requirement to adopt and enforce rules</li> <li>The heading of the WAC refers to the obligation in</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The Model Rules cannot direct agencies to adopt rules. To the extent an agency is required to do anything pursuant to the PRA, the statute contains the requirement.</li> <li>This WAC already cites readers to RCW 42.56.100. RCW 42.56.100 is cited 19 times in the Model Rules.</li> </ul>

			<p>RCW 42.56.100 to adopt and enforce rules and the proposed first sentence thus creates confusion. The sentence should go at the end of the rule or in another section.</p> <ul style="list-style-type: none"> <li>• The proposed sentence regarding “strict compliance” and “reasonable procedures” is confusing and does not belong in the rule.</li> <li>• The AGO should not attempt to summarize or codify case law.</li> <li>• Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• RCW 42.56.040(1) begins by requiring state agencies to publish in WAC and local agencies to make publicly available guidance for the public on listed topics. The first sentence of the proposed amendment summarizes this portion of the statute and is consistent with the order in the statute (RCW 42.56.040 precedes RCW 42.56.100 in the codification).</li> <li>• RCW 42.56.570 requires the AGO to adopt advisory Model Rules. The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. Providing information regarding examples of PRA case law in footnotes was the approach adopted in 2006-2007 and that approach is not changed in the 2017 proposal. (See Overall Response.) This approach is consistent and required by these PRA obligations. The current Model Rules and the proposed updates to the Model Rules contain useful examples in a footnote of case law interpreting various portions of the PRA.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-01002		Allied Pg # 228	<ul style="list-style-type: none"> <li>• More of the PRA at RCW 42.56.100 should be quoted in this WAC.</li> <li>• The WAC should direct that agency rules need to manage records so as to comply with records retention schedules and have procedures for organizing records.</li> <li>• The <i>Parmelee v. DOC</i> case should be cited elsewhere in a separate WAC section regarding the duty to</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response with respect to the purpose of the proposed amendments. The <i>Parmelee</i> case is cited twice in the Model Rules.</li> <li>• RCW 42.56.100 is already quoted and cited in the comment, and readers are referred to the statute, as was the approach adopted in 2006-2007. RCW 42.56.100 is cited 19 times in the Model Rules. It is not necessary to always repeat an entire statute in a WAC, since the readers are referred to the statute by citing it in the WAC.</li> <li>• See Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>

			<p>publish procedures on all matters (the citation should be moved to a different rule).</p> <ul style="list-style-type: none"> <li>• The WAC needs more balance; the focus should be on preventing unnecessary delays and unauthorized destruction.</li> <li>• Suggests revised language with above considerations.</li> </ul>	
44-14-01002		<p>Doug Mitchell (Kittitas County Deputy Prosecutor)</p> <p>Pg # 4</p>	<ul style="list-style-type: none"> <li>• Due to change in legislation in 2017, should the AGO also reflect in this rule that a particular form for a request cannot be required?</li> </ul>	<ul style="list-style-type: none"> <li>• As amended in 2017, RCW 42.56.080 provides “Agencies shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.”</li> <li>• RCW 42.56.080 is already referenced in the proposed amendment to WAC 44-14-03006.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-01003	<p>Construction and application of act</p>	<p>WCOG</p> <p>Pg # 114</p>	<ul style="list-style-type: none"> <li>• Third paragraph of WAC contains incomplete discussion of burden of proof. Third paragraph contains incorrect explanation regarding agency liability for attorney fees – <i>Lakewood v. Koenig</i>, 182 Wn.2d 87, 343 P.3d 335 (2014).</li> <li>• The WAC should reflect agency liability for not</li> </ul>	<ul style="list-style-type: none"> <li>• Minor change will be made in third paragraph to cite the statute at RCW 42.56.550.</li> <li>• <i>Lakewood v. Koenig</i>, 182 Wn.2d 87, 343 P.3d 335 (2014), quoting RCW 42.56.550(4), explains that the “PRA provides that costs and reasonable attorney fees shall be awarded to a requestor for vindicating ‘the right to receive a response.’” A citation to this case will be added in the footnotes, explaining it provides that attorneys’ fees were awarded due to the agency’s inadequate response.</li> <li>• Agencies are not required by PRA to give an estimate as to when a response will be fully responded to. <i>Hobbs v. State</i>, 183 Wn. App. 925, 943, 335 P.3d 1004 (2014).</li> </ul>

			<p>giving an estimate on a “full” response.</p> <ul style="list-style-type: none"> <li>Discussions of case law do not belong in the Model Rules, which are supposed to address PRA compliance, not PRA litigation. Case law in footnote is incomplete; as AGO notes in discussion of WAC 44-14-060 [should be 44-14-06002] case law quickly becomes outdated.</li> <li>Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>Providing examples of case law in footnotes was the approach adopted in 2006-2007 and the 2017 proposal does not depart from that approach. (See Overall Response.) The footnotes with cases discussing the PRA’s purposes will be retained.</li> </ul> <p><b>Minor changes will be made to the proposed amendment.</b></p>
44-14-01003		<p>Flannary Collins (MRSC)</p> <p>Pg # 84</p>	<ul style="list-style-type: none"> <li>Both subsection (2) and (4) of RCW 42.56.550 should be cited.</li> </ul>	<ul style="list-style-type: none"> <li>Minor change will be made in third paragraph to cite to the entire statute without subsections.</li> </ul> <p><b>Minor changes will be made to the proposed amendment.</b></p>
<b>WAC 44-14-020 – WAC 44-14-02002 – Agency Description, Contact Information, Public Records Officer</b>				
				<i>See also “General Comments and/or No WAC # Identified by Commenter”</i>
44-14-020	<p>Agency description, contact information, public records officer</p>	<p>Jessica Nadelman (City of Seattle)</p> <p>Pg #21, 32</p>	<ul style="list-style-type: none"> <li>The Model Rule should provide that if an agency does not use a portal to receive public records requests, then the requestor should contact the public records officer.</li> </ul>	<ul style="list-style-type: none"> <li>WAC 44-14-020 is proposed rule language, which an agency can consider adopting, or adjusting to fit a particular agency. This Model Rule addresses the agency description, contact information, and public records officers. Many agencies do not use portals at this time. The Legislature has funded a study to examine whether a statewide portal could be feasible. That study is not yet complete.</li> <li>In addition, the PRA provides at RCW 42.56.580(1) that “Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to <u>serve as a point of contact</u> for members of the public in requesting disclosure of public records.”</li> </ul>

				<p>(Emphasis added). Requestors may contact the public records officer, even if the agency also uses a portal for submission of requests. It would not be consistent with the PRA to suggest in a Model Rule that if an agency does not have a portal only then a requestor can contact the public records officer. The current WAC already refers to an agency web site for more information about an agency's procedures. For agencies that use portals, or accept online requests via their websites or email, it would be up to them to adjust the Model Rule language to fit their particular PRA procedures. That adjustment could include, for example, listing one email address or online address for contacting the public records officer, or providing (in the address portion of subsection (2)) an explanation of where requests can be submitted at that particular agency.</p> <p><b>No change necessary to proposed amendment.</b></p>
44-14-020		WCOG Pg # 115	<ul style="list-style-type: none"> <li>• Fax number should be removed from WAC because faxes are obsolete technology.</li> <li>• Subsection (3) of current rule [no change suggested in proposed rule] omits RCW 42.56.100 requirement that agencies adopt and enforce reasonable rules to protect records from damage or disorganization.</li> <li>• Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• The fax number is suggested in the existing rule; the proposed rule adds only the words "if relevant", acknowledging that some agencies may have and some may not have fax machines. The PRA does not restrict agencies from using fax machines.</li> <li>• The commenter suggests that the public records officer "actually enforce" the agency rules. The PRA provides that an agency is to adopt and enforce reasonable rules and regulations. RCW 42.56.100. The PRA does not mandate that only the public records officer must enforce those procedures. The PRA provides that the public records officer is to "oversee compliance" (RCW 42.56.580) and that is already provided for in this Model Rule.</li> <li>• The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The Model Rules cannot direct agencies to adopt rules.</li> </ul>

				<p>To the extent an agency is required to do anything pursuant to the PRA, the statute contains the requirement.</p> <p><b>No change necessary to proposed amendment.</b></p>
44-14-020		Allied Pg # 229 - 230	<ul style="list-style-type: none"> <li>• RCW 42.56.040 should be interpreted as a statute that prevents the need for PRA requests. The WAC should be rewritten to include more of what an agency should have on its website under this reading of RCW 42.56.040.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• RCW 42.56.040 does not state, nor does a court decision hold, that the statute was enacted to avoid the need for PRA requests. WAC 44-14-03006 and 44-14-04004(2) already encourage agencies to post records on their websites, and encourage requestors to check agency websites before making a PRA request.</li> <li>• RCW 42.56.040 does not direct the suggested information must be posted on an agency's website. While the Legislature has encouraged, it has not required, agencies to post commonly requested records on their websites. See note following RCW 42.56.520 and see RCW 43.105.351.</li> <li>• Agency's websites vary in size, complexity, and staff support available to maintain the website. Suggesting the WAC be amended to provide that the listed information and records must be available on an agency's website may not be possible for all agencies.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-02001	Agency must publish its procedures	Allied Pg # 230-231	<ul style="list-style-type: none"> <li>• RCW 42.56.040 should be interpreted as a statute that prevents the need for PRA requests. The WAC should be rewritten.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See response to comments above under WAC 44-14-020.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-02002	Public records officers	WCOG	<ul style="list-style-type: none"> <li>• Existing WAC contains outdated citation to RCW 42.17, suggests updating.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed amendment in this WAC updates the citations from RCW 42.17 to RCW 42.56.</li> </ul>

		Pg # 115-116	<ul style="list-style-type: none"> <li>• Suggests change to existing rule, adding that it is responsibility of a public records officer to oversee agency's compliance with the PRA including to adopt and enforce rules pursuant to RCW 42.56.100.</li> <li>• Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• WAC 44-14-020 already provides that the public records officer is to "oversee compliance," per RCW 42.56.580.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
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**WAC 44-14-030 – WAC 44-14-03006 – Availability of Public Records**

				<i>See also "General Comments and/or No WAC # Identified by Commenter"</i>
44-14-030	Availability of public records	Jessica Nadelman (City of Seattle)  Pg # 21, 34	<ul style="list-style-type: none"> <li>• Subsection (4) of the WAC, which addresses making requests, should not include "name of requestor, address of requestor, and "other contact information" and instead should require "sufficient identifying and contact information to allow an agency to communicate regarding the request and provide requested records."</li> </ul>	<ul style="list-style-type: none"> <li>• WAC 44-14-030 is proposed rule language, which an agency can consider adopting, or adjusting to fit a particular agency. Subsection (4) addresses model language an agency can consider in explaining how requestors can make requests to a particular agency. The Model Rules are not binding.</li> <li>• The PRA does not prohibit agencies from asking for a requestor's name and address, and some laws require the identity of the requestor. Both the PRA as well as other laws govern public agencies. RCW 42.56.070; 42.56.080; see also <i>Progressive Animal Welfare Soc'y v. Univ. of Wash.</i>, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). In an intent section following RCW 42.56.050 (in Chap. 403, Laws of 1987), the Legislature described in part that, "Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records ..." This provision does not restrict agencies from asking for the identity of a requestor, it only restricts agencies from distinguishing among requestors based upon their identity, unless a law permits. Some of those laws that require an agency to know the identity of a requestor are, for example, RCW 70.02.020 (health care</li> </ul>

				<p>records); RCW 28A.605.030 and the Family Educational and Privacy Rights Act of 1974 (FERPA) (20 U.S.C. Sec. 1232 et seq.) (student education records); RCW 13.50 (juvenile dependency records); RCW 42.56.350(1) (health professional information); RCW 42.56.330(2) (utility information); RCW 42.56.330(3) (ride share services); RCW 42.56.330(5) (transit passes); RCW 42.56.380(9) (livestock records); RCW 42.56.240(14) (body cam recordings), and RCW 42.56.440 (veterans' records), to name just a few.</p> <p>Typically, an agency will request name, address, and other contact information, a common practice since the PRA was adopted and which has been in the current Model Rules for a decade, and which is currently included in most agency PRA request forms. A requestor can choose what information he/she submits (including only an email for example, or anonymously), and the agency will determine if it can process the request based on that information or whether it needs more (for example, a request for an individual's medical records, or a student's education records). If an agency chooses not to have a field on its request form that includes name and address, it is free to do so. Again, the Model Rule offers proposed language, but the language may not fit every agency, and the rule does not bind an agency or require an agency to adopt that language.</p> <p>Clarifying language will be added in a new (4)(e) to describe that if requestors refuse to identify themselves, or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.</p> <p><b>Minor change will be made to proposed amendment.</b></p>
44-14-030		WCOG Pg # 116-117	<ul style="list-style-type: none"> <li>• Reference to fax should be removed in WAC because the technology is outdated.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response and Supp. Memo.</li> <li>• This is a Model Rule for an agency's PRA procedures (a rule it can consider adopting). Therefore, stating it "shall adopt" rules is not appropriate - this is a model rule, for agencies to consider.</li> </ul>

			<ul style="list-style-type: none"> <li>• Subsection (3) of existing WAC fails to include requirements of RCW 42.56.100 to adopt and enforce rules and protect records from damage or disorganization. Proposed rule fails to cure the deficiency.</li> <li>• Subsection (4) of existing rule overstates the amount of information requestors must provide in a records request – proposes revising to state that requestor must provide sufficient contact information.</li> <li>• Suggests revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• The fax number is suggested in the existing rule; the proposed rule adds the words “if agency uses fax”, acknowledging that some agencies may have and some may not have fax machines. The PRA does not prohibit agencies from using fax machines.</li> <li>• The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The Model Rules cannot direct agencies to adopt rules. To the extent an agency is required to do anything pursuant to the PRA, the statute contains the requirement. The Model Rules direct readers to RCW 42.56.100 19 times.</li> <li>• See response to City of Seattle comments above with respect to subsection (4) (making a request). Clarifying language will be added to describe that if requestors refuse to identify themselves, or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.</li> <li>• The amendment contains no change to regarding the suggested information for requestors to include in a public records request. RCW 42.56.080(2) establishes that agencies may recommend that requestors submit requests using an agency provided form or web page. The existing and proposed rule amendment are consistent with this requirement and offer guidance to requestors regarding providing information that will enable the agency to provide the fullest of assistance in its response.</li> </ul> <p><b>Minor changes will be made to proposed amendment.</b></p>
44-14-030		Allied Pg # 231-232	<ul style="list-style-type: none"> <li>• The WAC should be rewritten to address in more detail the organization of agency records, procedures to protect records from damage.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> <li>• See response to City of Seattle comment with respect to information provided by a requestor; anonymous requests.</li> </ul> <p><b>Minor change will be made to proposed amendment.</b></p>

			<ul style="list-style-type: none"> <li>• The reference to providing the agency the name, address and “other” contact information, and time of day of request, should be deleted. Requestors are permitted to be anonymous.</li> <li>• Suggested revised language with above considerations.</li> </ul>	
44-14-03001	“Public record” defined	WCOG Pg # 118-122	<ul style="list-style-type: none"> <li>• The reference to “courts” in the first paragraph of the WAC implies that the three-part test for “public record” was created by the courts rather than defined by statute.</li> <li>• Subsection (1) should include that “all forms of electronic records and data” are “writings.”</li> <li>• Reference to <i>Hangartner v. City of Seattle</i>, 151 Wn.2d 439, 90 P.3d 26 (2004), in existing comment is outdated because the cited portion was reversed by the Legislature in 2005.</li> <li>• The existing WAC comment should not refer to “searches” because the term is a term of art that</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• RCW 42.56.010 defines public record as “any writing containing information relating to the conduct of government... prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” The quoted portions in the existing Model Rules are all from this statutory definition. The language of the proposal in the introduction will be clarified to refer to the PRA rather than the courts.</li> <li>• As with the current WAC, subsection (1) of this proposed Model Rule comment does not imply that it contains an exhaustive list of electronic writings. Rather the subsection is proposed to be updated simply to note that like emails, texts, social media posts, and databases are electronic writings.</li> <li>• Neither the Legislature nor the courts have reversed or overruled the portion of <i>Hangartner</i> that is cited in the existing Model Rule comment footnote, pertaining only to “unbridled searches of agency property.”</li> <li>• The reference to “searches” is in the existing Model Rule comment. Neither the existing comment nor the proposed comment define search or discuss the constitutional implications of the word.</li> <li>• Agencies have been held liable, under the PRA, when an employee possesses public records in a personal device or a personal account. <i>See</i></li> </ul>

			<p>means different things in different legal contexts.</p> <ul style="list-style-type: none"> <li>• Suggested revisions to clarify that the PRA does not require agencies to retain control over its own public records, or require agencies to retrieve public records from agency officials or employees.</li> <li>• Discussion regarding obtaining records from an uncooperative employee or contractor is beyond the scope of the Model Rules. The agency’s legal rights and remedies are not a function of the PRA.</li> <li>• The portions of the WAC relating to agency records on home computers and personal devices do not belong in this subsection and should be moved to WAC 44-14-03004 (organization of records).</li> <li>• Suggests revised language with above considerations.</li> </ul>	<p><i>Nissen v. Pierce County</i>, 183 Wn.2d 863, 357 P.3d 45 (2015) and <i>West v. Vermillion</i>, 196 Wn. App. 627, 384 P.3d 634 (2016).</p> <ul style="list-style-type: none"> <li>• See above bullet. The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. Providing information regarding PRA case law is consistent and required by these obligations. The Model Rules and the proposed Model Rules updates contain examples of case law interpreting various portions of the PRA, in footnotes. This was the same approach used in 2006-2007. (See Supp. Memo.) Case law shapes the law and contains obligations for agencies and requestors as well as guidance for agencies and requestors.</li> <li>• The location in this Model Rule comment of guidance on public records in non-agency accounts or on non-agency devices is appropriate because this comment also concerns where a record is “retained” pursuant to the PRA definition of “public record.” In addition, a note will be added following WAC 44-14-03004 directing readers to see WAC 44-14-03001 regarding agency records on personal devices and in personal accounts.</li> <li>• Regarding circumstances where it is impossible to obtain a record, there could be circumstances when a record is beyond the reach of a PRA request, for example, because it no longer existed on the date of the request.</li> <li>• See also response to comments under WAC 44-14-03004 below.</li> <li>• For discussion of guidance on references to records requirements in other laws, see Supp. Memo.</li> </ul> <p><b>Minor change will be made to proposed amendment.</b></p>
44-14-03001		Allied Pg # 232-235	<ul style="list-style-type: none"> <li>• Some sections of the WAC should be rewritten.</li> <li>• Delete first sentence with respect to the three-part test the courts use.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See response to WCOG comments regarding changing the first sentence and reference to three-part test. Minor change will be made to proposed amendment.</li> </ul>

			<ul style="list-style-type: none"> <li>• Add a new subsection title on records on personal devices; change “employment” to “business.”</li> <li>• Delete language about unbridled searches.</li> <li>• Suggested revised language with above considerations.</li> <li>• Write a new WAC titled “Retrieving records from personal devices”. Suggested language proposed.</li> </ul>	<ul style="list-style-type: none"> <li>• New subsection title is not needed to address records on personal devices since the current subsection refers to public records “prepared, owned, used or retained.” That phrase would include records on personal devices or accounts.</li> <li>• The word “employment” is from the <i>Nissen v. Pierce County Supreme Court</i> decision. (“An employee’s communication is ‘within the scope of employment’ only when the job requires it, the employer directs it, or it furthers the employer’s interests.”) The word “business” is already referred to in the first sentence of the WAC.</li> <li>• See response to WCOG comments above regarding searches.</li> <li>• A new rule to address searches of personal devices is not needed; language is already provided in the WAC and more specifically in WAC 44-14-04003(10)(subsection on “Searching for records.”)</li> </ul> <p><b>Minor change will be made to proposed amendment.</b></p>
44-14-03001		Joan Mell Pg # 268-269; see also # 300 – 305 (TR)	<ul style="list-style-type: none"> <li>• Regarding public records on personal devices/in personal accounts, and the <i>Nissen v. Pierce County</i> decision: The reference in the WAC to “within the scope of employment” is not correct. It should say “relating to the conduct of government.”</li> <li>• Supportive of officials and employees not being permitted to text.</li> <li>• There should be training.</li> </ul>	<ul style="list-style-type: none"> <li>• The PRA definition of “public record” already includes relating to the conduct of government at RCW 42.56.010. See the reference to that phrase in the rest of that sentence in subsection (3) of the WAC. With respect to the “within the scope of employment” phrase, see response to Allied comment above.</li> <li>• The PRA does not prohibit agency employees or officials from texting on matter related to the conduct of their government positions. The <i>Nissen</i> case held that public records on personal devices are subject to the PRA. As also described in <i>Nissen</i>, agencies can consider agency policies to address that activity (use of personal devices for agency business).</li> <li>• The PRA provides for records training of many individuals. See RCW 42.56.150; RCW 42.56.152; WAC 44-14-00005.</li> </ul> <p><b>No change to proposed amendment needed based on this comment.</b></p>

44-14-03002	Times for inspection and copying of records	Flannary Collins (MRSC) Pg # 84	<ul style="list-style-type: none"> <li>• First sentence should also refer to statutory requirement of 30 hours/week.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that the 30-hour a week requirement should be added to the first sentence.</li> </ul> <p><b>Minor change will be made to proposed amendment.</b></p>
44-14-03002		WCOG Pg # 122	<ul style="list-style-type: none"> <li>• WAC 44-14-03004 provisions should be in WAC 44-14-03002 because they relate to inspection and copying.</li> <li>• A citation to RCW 43.105.351 should not be included.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• WAC 44-14-03002 and WAC 44-14-03004 are both comments to the Model Rule at WAC 44-14-030, and follow in close succession after the Model Rule. It is not necessary to relocate the language from -03004 to -03002; both comments are available to the readers.</li> <li>• RCW 43.105.351 is a legislative statement about access to agency records.</li> <li>• See further response under WAC 44-14-03004 below.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-03003	Index of records	Allied Pg # 235-236	<ul style="list-style-type: none"> <li>• Language regarding history and technology changes should be removed. Searching and indexing are two different matters.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-03004	Organization of records	WCOG Pg # 123 - 137	<ul style="list-style-type: none"> <li>• The WAC should be deleted and replaced in its entirety to address: organization of agency records, location, prohibitions on use of personal devices and accounts, requirement that agencies issue agency</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> <li>• See WAC 44-14-03001, WAC 44-14-03004.</li> <li>• It is appropriate in 2018, as it was in 2006-2007, to note other legislative directives with respect to managing electronic records. Like the PRA, RCW 43.105.351 refers to access to public agency records. As the commenter noted, other laws also govern agency records, and this Model Rule comment simply refers to one such statute. That legislative directive was previously codified at RCW 42.105.250 and is</li> </ul>

			<p>devices or accounts, prohibitions on use of texts and social media for agency business with respect to non-agency devices and accounts, file folder structures, file names, managing in box and sent box email folders, adoption of “word processing” rules, how drafts are to be handled, exemptions, creating records of PRA compliance, requirements for attorney invoices, requirements for records of external legal counsel, participation in multi-agency organizations, correspondence with legislators, and, future records.</p> <ul style="list-style-type: none"> <li>• Suggested revised language with above considerations.</li> </ul>	<p>now at RCW 43.105.351. The proposal only updates the citation, providing some more statutory language.</p> <ul style="list-style-type: none"> <li>• A reference to the Secretary of State’s online guidance to organizing, inventorying and managing records will be added.</li> </ul> <p><b>Minor change will be made to proposed amendment.</b></p>
44-14-03004		Allied  Pg # 236-237	<ul style="list-style-type: none"> <li>• The WAC should be rewritten to provide more references to records retention and organization of records.</li> <li>• The WAC should refer to agency obligations to retain</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> <li>• WAC 44-14-03005 already refers to an agency’s obligation to retain a record that has been requested in a PRA request.</li> <li>• A reference to the Secretary of State’s online guidance to organizing, inventorying and managing records will be added.</li> </ul>

			<p>a record that has been requested.</p> <ul style="list-style-type: none"> <li>• Suggested revised language with above considerations.</li> </ul>	<p><b>Minor change will be made to proposed amendment.</b></p>
44-14-03005	Retention of Records	<p>WCOG</p> <p>Pg # 137 - 140</p>	<ul style="list-style-type: none"> <li>• The statement that the records retention laws and the PRA are two different laws should be moved into the text.</li> <li>• An agency's PRA public records officer, and records officer under the retention laws, should be the same person.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response. The location in the proposed Model Rule comment of the two laws does not change the basic information provided.</li> <li>• The law does not require the public records officer appointed under RCW 42.56 to be the same person as the records officer appointed under RCW 40.14, although an agency could choose to make that dual appointment to the same person.</li> <li>• See also Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-03006	Form of requests	<p>Jessica Nadelman (City of Seattle)</p> <p>Pg #21, 40</p>	<ul style="list-style-type: none"> <li>• A web portal reference should be added to how requests can be submitted.</li> </ul>	<ul style="list-style-type: none"> <li>• This comment is correct, some agencies now use portals; a reference to a web portal can be added in this comment, as it has been in others.</li> </ul> <p><b>This minor change will be made to proposed amendment.</b></p>
44-14-03006		<p>Howard Gale</p> <p>Pg # 101; 276-277 (TR)</p>	<ul style="list-style-type: none"> <li>• WACs should address multiple requests from one requestor; 24-hour periods is too simplistic.</li> </ul>	<ul style="list-style-type: none"> <li>• PRA does not direct that multiple requests from one requestor need to be treated in specific manner, except to address "bot" requests. Twenty-four hour period is statutory. RCW 42.56.080.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>

<p>44-14-03006</p>	<p>WCOG Pg # 140 - 148</p>	<ul style="list-style-type: none"> <li>• This WAC should make it clear that an agency cannot require a PRA request on a particular form or web page. The comment should not say agencies can “prescribe” the means of a request, or that it is to be directed to a particular person. <i>Parmelee v. Clarke</i> was rejected in <i>Germeau</i>.</li> <li>• The Model Rule comment should recognize fax is outdated technology.</li> <li>• Public records requests using an agency’s form or web page should be moved to a new rule.</li> <li>• “That” not “which” should be used in language regarding bot requests.</li> <li>• Agencies are required to respond to oral requests so long as the agency has “fair notice.”</li> <li>• An agency cannot inquire into the purpose of a request except for commercial purpose requests.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• The Model Rule comment proposal here provides that agencies may “recommend.” The word “recommend” does not mean require. The WAC also cites to the <i>Hangartner</i> language as well in a footnote.</li> <li>• <i>Parmelee v. Clarke</i> , 148 Wn. App. 748, 201 P.3d 1022 (2008) has not been overruled. In <i>Parmelee</i> the Court of Appeals held that “the published WAC regulation [was] sufficient to put the public on notice that a records request should be submitted to a designated public disclosure coordinator.” (Emphasis added). The State Supreme Court denied review. See also several later opinions referring to the <i>Parmelee</i> decision [<i>McKee v. DOC, Anderson v. DOC</i> (unpublished Court of Appeals decisions referring to DOC’s rule requiring PRA requests to be directed to the public records officer); see also <i>Hicks v. DOC</i> (same) (unpublished decision holding that “Where an agency has properly designated a public disclosure coordinator, the agency may not be penalized for failing to respond to requests submitted to other agency employees.”) ]</li> <li>• While the <i>Germeau v. Mason County</i> court referred to the <i>Parmelee</i> decision in a footnote, it did not overrule the holding. 166 Wn. App. 789, 281 P.3d 686 (2012). <i>Germeau</i> also pre-dates several later unpublished Court of Appeals decisions citing to <i>Parmelee</i>. See above bullet.</li> <li>• In addition, enabling an agency to designate the persons to whom a PRA request can be made makes sense, given the requirement for a prompt response and the possible PRA liabilities. That is, for example, if a requestor could lawfully submit a PRA request to any agency employee in an agency that employs thousands of workers, and if the particular worker he/she submitted it to was not the public records officer, and further if the employee was out of the office due to unexpected illness, death in the family, or other unexpected matters, the PRA request could sit in the worker’s in box for an extended period of time with no response or no action. This result benefits neither the requestor nor the agency. It is reasonable and consistent</li> </ul>
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			<ul style="list-style-type: none"> <li>Suggested revised language with above considerations.</li> </ul>	<p>with the purpose of the PRA to have procedures that enable the proper and trained staff in the agency to see a PRA request has been received and to timely and properly respond, and in so doing they provide the requestor the “fullest assistance.”</p> <ul style="list-style-type: none"> <li>Agencies can and some still use fax machines. There is no prohibition in the PRA prohibiting an agency using a fax. See further discussion in Supp. Memo.</li> <li>“Which” will be changed to “that” in the language describing bot requests.</li> <li>Agencies can provide that requests be directed to the appropriate agency person. See comments above.</li> <li>The PRA does not limit the circumstance under which an agency may need more information as to the purpose of a request. Instead it directs that, “ Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), <i>or other statute which exempts or prohibits disclosure of specific information or records to certain persons.</i>” RCW 42.56.080(2) (Emphasis added).</li> <li>This is a Model Rule comment. While a bit long, it is not necessary to separate part of it into a new WAC. See Overall Response.</li> </ul> <p><b>Minor change will be made to proposed amendment.</b></p>
44-14-03006		Allied  Pg # 237-240	<ul style="list-style-type: none"> <li>The language in the WAC about directing requests to a designated person should be deleted.</li> <li>The language about a requestor providing contact information such as a name, phone number, and</li> </ul>	<ul style="list-style-type: none"> <li>See response to WCOG comments above.</li> <li>See response to City of Seattle comments at WAC 44-14-030 above.</li> <li>Language will be added to WAC 44-14-030 to address anonymous requests.</li> </ul> <p><b>No change necessary to this proposed amendment; minor change will be made to proposed amendment at WAC 44-14-030.</b></p>

			<p>address or email should be deleted.</p> <ul style="list-style-type: none"> <li>• The reference to the <i>Parmelee v. Clarke</i> case should be deleted.</li> <li>• Suggested language with above considerations.</li> </ul>	
<b>WAC 44-14-040 – WAC 44-14-04007 – Processing of Public Records Requests – General</b>				
44-14-040	Processing of public records requests - general	<p>Jessica Nadelman (City of Seattle)</p> <p>Pg # 21, 43-46</p>	<ul style="list-style-type: none"> <li>• Change “priority” category in the WAC to “complexity category” or “assessment” throughout, reflecting the agency burden in responding to the request. Agencies cannot assign priorities to requests.</li> <li>• Add a reference to subsection (12) (closing a withdrawn or abandoned request) to make the rule consistent with WAC 44-14-04003(8), 44-14-04004(6) and 44-14-04006(1).</li> </ul>	<ul style="list-style-type: none"> <li>• The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The rules themselves provide one approach or alternative approaches, since a “one size fits all” approach is not the best for requestors or agencies. WAC 44-14-00001. However, based on public comments, the proposed categorization/prioritization approach and references to that approach will not be adopted in the Model Rules. While agencies may choose to process requests in a manner that permits the most efficient response to requestors (to handle both small and easy requests, and more complex and/or large requests), providing a standard suggested model for such an approach for all state and local agencies is determined to be not feasible at this time.</li> <li>• Reference in (12) to prior communications on closing a request will be added, to make it consistent with other Model Rule comments.</li> </ul> <p><b>Change to proposed amendment will be made to remove references to priorities/categories. In addition, a minor change to add reference in (12) to prior communications will be made.</b></p>
44-14-040		<p>Shelly Helder (City of Kenmore)</p>	<ul style="list-style-type: none"> <li>• Replace “will” with “should” evaluate requests to give them a category, which makes the rule</li> </ul>	<ul style="list-style-type: none"> <li>• See response to City of Seattle comments above.</li> </ul> <p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>

		Pg # 104	consistent with the comment at WAC 44-14-04003(1)(b)	
44-14-040		Stevens Clay Law Firm  Pg # 98 - 99	<ul style="list-style-type: none"> <li>• The proposal in WAC 44-14-040 is of great value to assist agencies, but agencies should be given more discretion in how they prioritize.</li> <li>• The proposal should be adjusted to add factors listed by the commenters.</li> <li>• Specific priority categories may be too prescriptive, and may result in otherwise avoidable disputes with requestors, including impeding a collaborative process and forcing agencies to defend an estimated production date. Also, timelines may not sufficiently take into account individual circumstances (size of agency, need for legal review with respect to some requests). There is a concern that the courts will adopt the priority categories as a “reasonable standard” so</li> </ul>	<ul style="list-style-type: none"> <li>• See response to City of Seattle comments above.</li> </ul> <p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>

			<p>an agency’s attempt to modify timelines may be viewed as presumptively unreasonable. Since the timelines are “one size fits all” it may be best to remove them.</p>	
44-14-040		<p>Flannary Collins (MRSC)  Pg # 84</p>	<ul style="list-style-type: none"> <li>• Priority categorization should be an option, not a mandate. Proposed language to provide that categorization is optional.</li> </ul>	<ul style="list-style-type: none"> <li>• See response to City of Seattle comments above.</li> </ul> <p><b>Change will be made to proposed amendment, to remove references to priorities/categories.</b></p>
44-14-040		<p>Howard Gale Pg # 100 - 102; <i>see also</i> comments at # 307-309 (TR)</p>	<ul style="list-style-type: none"> <li>• Model Rules should provide guidance on agencies stating how many installments they plan and when they will be complete.</li> <li>• General concerns about installments.</li> </ul>	<ul style="list-style-type: none"> <li>• It is often not possible for agencies to predict in advance how many installments of records will be provided, or when a final installment will be made. Under PRA case law, agencies are not required to provide a date of a final installment. <i>Hobbs v. State</i>.</li> <li>• The PRA authorizes agencies to provide records in installments. RCW 42.56.080; RCW 42.56.120; RCW 42.56.550.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-040		<p>WCOG  Pg # 216 – 220; Toby Nixon’s comments at # 286-292</p>	<ul style="list-style-type: none"> <li>• The WAC should also include an agency is required to enforce its PRA rules.</li> <li>• The priority/ categorization approach should be stricken.</li> <li>• The priority/categorization approach should be reworked if it moves forward to include elements such as</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See response to City of Seattle comments above.</li> <li>• The proposed Model Rule suggests the requestor should contact the agency if an internal agency deadline for producing records or further response is missed. This suggestion is consistent with <i>Hobbs v. State</i> at 183 Wn. App. 925, 335 P.3d 1004 (2014) at n. 4 and the Model Rule comment at WAC 44-14- 04004(3)(“Communication is usually the key to a smooth public records process for both requestors and agencies.”) This communication suggestion is also consistent with and is similar to the approach the courts use when there are disputes in discovery about information/records being provided by parties during the course of litigation. The courts will typically require parties to discuss the issue, and even to “meet and confer, prior to seeking relief</li> </ul>

			<p>Kirkland’s policy including having a commitment to a level of service by the agency and including performance measures, for example. (Nixon testimony).</p> <ul style="list-style-type: none"> <li>• There is no requirement that a requestor contact an agency when an agency deadline is missed.</li> <li>• 30 days may be insufficient for requestors to retrieve records.</li> <li>• The reference to “practical” should be removed in the language regarding installments.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<p>in the courts. <i>See</i> Wash. Civil Rule 26(i); Federal Rule of Civil Procedure 37.</p> <ul style="list-style-type: none"> <li>• Thirty days to retrieve records is a reasonable time period. Agencies are not restricted from providing a longer time period if appropriate. See also response to comments at WAC 44-14-04005.</li> <li>• As this Model Rule comment reflects, sometimes it is practical to provide records in installments; sometimes the request can be handled with one responsive set of records or one installment (for example, smaller requests).</li> </ul> <p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>
44-14-040		Allied  Pg # 240-245	<ul style="list-style-type: none"> <li>• The WAC should be rewritten in several respects, including to refer to fullest assistance, to remove the suggestion that a requestor contact the agency if he/she does not receive a response, to provide that “suitable” space should be set aside for records inspection, to extend the time to 60 days</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See responses to City of Seattle and WCOG above.</li> </ul> <p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>

			<p>for a requestor to claim records.</p> <ul style="list-style-type: none"> <li>• In addition, the proposal to have priority categories should be removed.</li> <li>• Suggested language with above considerations.</li> </ul>	
44-14-040		Howard Gale Pg # 308-309	<ul style="list-style-type: none"> <li>• Thirty days to claim records is an unnecessary burden.</li> </ul>	<ul style="list-style-type: none"> <li>• See response to City of Seattle and WCOG above.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04002	Obligations of requestors	Jessica Nadelman (City of Seattle)  Pg # 21, 48	<ul style="list-style-type: none"> <li>• Add a reference to requests submitted through web portals.</li> </ul>	<ul style="list-style-type: none"> <li>• Web portal reference will be added.</li> </ul> <p><b>This minor change will be made to proposed amendment.</b></p>
44-14-04002		Howard Gale  Pg # 101; 277-278 (TR)	<ul style="list-style-type: none"> <li>• “Objective” search methods should be used.</li> <li>• Records on agency servers should be searched.</li> <li>• The language regarding when an agency may interpret a request to be for records which directly and fairly address a topic is not good.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• The nature of a particular search will depend upon the language and scope of the request, the time periods covered, clarifications if any by the requestor if needed, an agency’s technology, and other factors. Many agency records are on agency servers; however, other records may be in other locations. It is not possible for the Model Rules to provide objective search criteria to address the wide variety of requests, records, agencies, and agency technologies. The courts have held an agency’s search must be “reasonable.” See more information on searches in WAC 44-14-04003.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04002		WCOG  Pg # 220 - 221	<ul style="list-style-type: none"> <li>• The WAC should reflect that a request for a future record can be “identifiable.”</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• A record must have been prepared, owned, used or retained by a public agency, in order to be an identifiable record subject to a PRA request. RCW 42.56.010. A record that does not exist at the time of a</li> </ul>

			<ul style="list-style-type: none"> <li>Agencies should organize their public records (details provided in other comments).</li> </ul>	<p>request is not subject to a PRA request. A requestor cannot have a “standing” request for records that may be available in the future. See <i>Sargent v. Seattle Police Dep’t</i> (2011), 167 Wn. App. 1 (2011) and further discussion in the <i>AGO Open Government Resource Manual</i> in the “identifiable records” requirement section. See also cases cited in the footnotes to this Model Rule comment.</p> <ul style="list-style-type: none"> <li>See Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04002		Allied Pg # 245-247	<ul style="list-style-type: none"> <li>The WAC language that a requestor cannot have a “standing” request should be deleted.</li> </ul>	<ul style="list-style-type: none"> <li>See response to WCOG comment above.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04003	Responsibilities of agencies in processing requests	Kelly Cairns (Office of the Insurance Comm’r)  Pg # 13-16	<ul style="list-style-type: none"> <li>The word “fully” should be removed from the title, as it is removed elsewhere in the subsection (7). This appears to be an oversight.</li> </ul>	<ul style="list-style-type: none"> <li>This suggestion is correct; this was an oversight.</li> </ul> <p><b>This minor change will be made to proposed amendment.</b></p>
44-14-04003		Howard Gale  Pg # 100	<ul style="list-style-type: none"> <li>By referring to staff who also provide other essential agency functions, agencies are encouraged to not have specialized full-time records staff (underfunding).</li> <li>Charges for “customized services” are not defined.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The PRA requires only the appointment of a public records officer, and does not require that person to be full-time. RCW 42.56.580. The PRA recognizes that agencies have other essential agency functions. RCW 42.56.100.</li> <li>PRA provides for charge for “customized service.” The PRA already describes it as “A customized service charge may only be imposed if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations</li> </ul>

			<ul style="list-style-type: none"> <li>• Providing a 30-day period for a requestor to retrieve an installment is not sufficient time.</li> </ul>	<p>and customized access services are not used by the agency for other agency purposes.” RW 42.56.120.</p> <ul style="list-style-type: none"> <li>• The PRA permits agencies to close a request when an installment is not claimed or reviewed. The PRA does not provide a time period, therefore, agencies could close the request immediately and comply with the PRA. Nevertheless, a time period is suggested in the Model Rules comments. While other shorter or longer time periods may be also be reasonable, thirty days is not unreasonable. See also response to comments on WAC 44-14-04005.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04003		<p>Jessica Nadelman (City of Seattle)</p> <p>Pg # 21, 50</p>	<ul style="list-style-type: none"> <li>• The requirement that agencies categorize requests according to the criteria set in the rule is excessively proscriptive and creates liability for agencies’ failure to properly categorize. Agencies should have flexibility. Most of subsection (1)(b) should be deleted.</li> </ul>	<ul style="list-style-type: none"> <li>• The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The rules themselves provide one approach or alternative approaches, since a “one size fits all” approach is not the best for requestors or agencies. WAC 44-14-00001. However, based on public comments, the proposed categorization/prioritization approach and references to that approach will not be adopted in the Model Rules. While agencies may choose to process requests in a manner that permits the most efficient response to requestors (to handle both small and easy requests, and more complex and/or large requests), providing a standard suggested model for such an approach for all state and local agencies is determined to be not feasible at this time.</li> </ul> <p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>
44-14-04003		<p>Flannary Collins (MRSC)</p>	<ul style="list-style-type: none"> <li>• There is a missing “and” in subsection (14) before “the date of the final disposition of the</li> </ul>	<ul style="list-style-type: none"> <li>• These changes will be made.</li> </ul> <p><b>These minor changes will be made to proposed amendment.</b></p>

		Pg # 84	request.” And footnote 13 has a wrong page cite for the <i>Neighborhood Alliance</i> case.	
44-14-04003		WCOG Pg # 221-223	<ul style="list-style-type: none"> <li>• The categorization approach in this WAC should be removed.</li> <li>• The subsection on “fullest assistance” (3) should refer to the (name of agency) requirement to adopt rules and to protect records from damage and disorganization.</li> <li>• The subsection on databases should not be amended as proposed.</li> <li>• Documentation on searches should be mandatory.</li> <li>• The third party notice language is inconsistent with RCW 42.56.540. And, an agency should assert an exemption itself rather than shifting the burden to a third party. The requestor should not be named as a party if the agency intends to defend against the lawsuit. Agencies should give “no more than” ten days for</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See response to City of Seattle comments.</li> <li>• The (name of agency) is the format for a Model Rule an agency could consider adopting; this WAC is a Model Rule comment.</li> <li>• The subsection on databases reflects case law since 2007 (<i>Fisher Broadcasting v. City of Seattle</i>, 180 Wn.2d 215, 326 P3d 688 (2014)) and legislation amended since 2007 (regarding customized access services).</li> <li>• This Model Rule comment is advisory only and cannot mandate documentation of searches, although such documentation is recommended.</li> <li>• RCW 42.56.540, the injunction statute, is cited three times in the Model Rule comment in subsection (12). Readers can turn to the statute for more details.</li> <li>• As noted, this Model Rule comment is advisory only. There is no set time requirement in RCW 42.56.540 for third party notice responses; it may be appropriate, given the nature of the records, the court schedule, or the parties’ situation (such as an out-of-state party who may need to retain local counsel) where some flexibility in providing a slightly longer time period than 10 days is reasonable.</li> <li>• There is no prohibition in the PRA for the records requestor being named a party in litigation involving his/her request for records. The nature of the records at issue may warrant the agency giving notice to the requestor about the litigation, or asking the court to designate the requestor in some other role (as a necessary or indispensable party under the courts’ civil rules), even if the agency defends against the litigation. It is also possible a requestor in a given circumstance may want to advance arguments that the agency is not willing or able to make.</li> </ul>

			<p>the time period to produce a court order.</p> <ul style="list-style-type: none"> <li>• Suggested revised language with above considerations.</li> </ul>	<p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>
44-14-04003		<p>Allied</p> <p>Pg # 247-255</p>	<ul style="list-style-type: none"> <li>• The phrase “as quickly as possible” should be added to the WAC with respect to how agencies should process PRA requests.</li> <li>• The priorities/categories approach should be deleted.</li> <li>• The reference to databases should be deleted.</li> <li>• The third party notice provision should be rewritten.</li> <li>• Suggested language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• The PRA does not provide the “as quickly as possible” requirement.</li> <li>• See response to City of Seattle and WCOG comments above.</li> </ul> <p><b>Change will be made to proposed amendment to remove references to priorities/categories.</b></p>
44-14-04004	<p>Responsibilities of agency in providing records</p>	<p>WCOG</p> <p>Pg # 223-224</p>	<ul style="list-style-type: none"> <li>• The redaction paragraph in this WAC is outdated and agencies should no longer redact with a black marker.</li> <li>• Some withholding exemptions (attorney client privilege for example) require more of an explanation (“additional explanation”).</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> <li>• The PRA does not direct a particular means to redact records.</li> <li>• The PRA does not mandate that certain explanations of withholding of information or records require an “additional explanation.”</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>

			<ul style="list-style-type: none"> <li>Suggested revised language with above considerations.</li> </ul>	
44-14-04004		Allied Pg # 255-259	<ul style="list-style-type: none"> <li>Language should be added in the WAC to the brief explanation requirement to say it is “how the exemption applies” and the exemption code option should be eliminated.</li> </ul>	<ul style="list-style-type: none"> <li>The suggested language is already in the first sentence of the subsection bolded titled “brief explanation of withholding.”</li> <li>The coding process for providing information on exemptions is an expeditious way to promptly inform requestors of exemptions and quickly redact records, and is used by various agencies in 2017. This option enables quicker production of records to requestors in many instances. An agency is not required to use this approach; other approaches are discussed in the WAC.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04005	Inspection of records	Jessica Nadelman (City of Seattle) Pg # 21, 37	<ul style="list-style-type: none"> <li>Agencies should not be required to commit to half-day intervals for records inspections. Any segment longer than two hours impacts the agency’s ability to conduct its regular business. The WAC should be revised.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The rules themselves provide one approach or alternative approaches, since a “one size fits all” approach is not the best for requestors or agencies. WAC 44-14-00001. WAC 44-14-04005 is a comment to a Model Rule. The comments provide background, examples, and court case citations and AGO opinions where appropriate. See WAC 44-14-00002. The half-day period is in the current comment in the WAC. It may work fine for some agencies, or need to be adjusted for others. Agencies can make those own adjustments in their PRA procedures.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-04005		WCOG Pg # 224	<ul style="list-style-type: none"> <li>A 30-day inspection period is not long enough. It should be at least 60 days.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. Thirty days for a requestor to claim records is a reasonable suggested time period. Agencies can extend that time if the circumstances warrant; language will be added to reflect that fact.</li> </ul>

				<b>Minor change will be made to proposed amendment.</b>
44-14-04005		Allied  Pg # 260-261	<ul style="list-style-type: none"> <li>References to 30-day period should be removed.</li> </ul>	<ul style="list-style-type: none"> <li>See response to WCOG comment above.</li> </ul> <b>Minor change will be made to proposed amendment.</b>
44-14-04006	Closing request and document-ing compliance	Jessica Nadelman (City of Seattle)  Pg # 21, 63	<ul style="list-style-type: none"> <li>Agencies are subject to the Records Retention Act. Additional requirements in subsection (3) of the WAC regarding commonly requested records are unnecessary.</li> </ul>	<ul style="list-style-type: none"> <li>The Model Rules are advisory and nonbinding. RCW 42.56.570; WAC 44-14-00001. The rules themselves provide one approach or alternative approaches, since a “one size fits all” approach is not the best for requestors or agencies. WAC 44-14-00001. WAC 44-14-04006 is a comment to a Model Rule. The comments provide background, examples, court case citations, AGO opinion citations, and other information where appropriate. See WAC 44-14-00002.</li> <li>Subsection (3) merely provides information about an agency considering requests for the same records from different requestors, and keeping a copy of that response at the agency. If an agency does not want to take that step, it is not required to do so.</li> </ul>
44-14-04006		WCOG  Pg # 148 - 150	<ul style="list-style-type: none"> <li>Concurs in proposed changes in WAC except that language regarding electronic records should be strengthened, for example, to direct that agencies should create and retain electronic copies of records provided to requestors (specifically, a PDF even for paper copies), and that agencies should use redaction</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The PRA provides that agencies can provide paper copies of paper records. In the 2017 amendments to the PRA, the Legislature recognized that some agency records exist on and are provided on paper. The Legislature retained the ability for agencies to charge for actual costs of “photocopies” including the “per page” cost for use of agency copying equipment. RCW 42.56.070. In the statutory default fee schedule, the Legislature retained the per-page copy fee of 15 cents/page “for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records,” RCW 42.56.120.</li> <li>The PRA does not require agencies create or retain records in a specific format (such as providing paper records in a PDF).</li> </ul>

			<p>software including with paper records.</p> <ul style="list-style-type: none"> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• The PRA does not require purchase of specific software or electronic records programs by public agencies.</li> <li>• See also Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
<b>WAC 44-14-050 – WAC 44-14-05005 – Processing of Public Records Requests – Electronic Records</b>				
44-14-050	Processing of public records requests – electronic records	WCOG Pg # 152-153	<ul style="list-style-type: none"> <li>• All paper records should be scanned to a PDF, including “whether or not” the requestor wants paper copies.</li> <li>• The WAC should also address databases, describe access to databases, and define “database.”</li> <li>• Agencies should not follow the <i>Mitchell v. Dept’ of Corrections</i> decision as it is misguided and outdated.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• The PRA provides that agencies can provide paper copies of paper records. In the 2017 amendments to the PRA, the Legislature retained the ability for agencies to charge for actual costs of “photocopies” including the “per page” cost for use of agency copying equipment. RCW 42.56.070. In the statutory default fee schedule, the Legislature retained the per-page copy fee of 15 cents/page “for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records.” RCW 42.56.120.</li> <li>• The PRA does not require paper records to be scanned into a PDF format. Requestors do still ask for records that exist only on paper, and copies of paper records to be provided on paper. An agency may choose to make a PDF of a paper record, or scan a paper record, as its copy for the requestor. In <i>Mitchell v. Dept’ of Corrections</i> the Court of Appeals held that “Nothing in the PRA obligates an agency to disclose records electronically” noting the Model Rules are not binding. 164 Wn. App. 597, 277 P.3d 670 (2011). The <i>Mitchell</i> case not been overruled by the State Supreme Court or rejected by the Legislature in subsequent statutes. For example, the Legislature could require that records be provided electronically but instead has to date encouraged agencies to do so, and to set priorities for doing so, but has not mandated it. RCW 42.105.351; see also legislative findings following RCW 42.56.520.</li> <li>• See further response under WAC 44-14-05001 below.</li> </ul>

				<ul style="list-style-type: none"> <li>• The PRA already defines “public record” to mean a writing which includes but is not limited “existing data compilations from which information may be obtained or translated.” RCW 42.56.010(4). In <i>Fisher Broadcasting v. City of Seattle</i>, the State Supreme Court held that that, “This broad definition includes electronic information in a database.” The <i>Fisher Broadcasting</i> Court further described that whether providing information in a database is creating a new record, which the PRA does not require, will depend upon the circumstances.</li> <li>• A citation to the <i>Fisher Broadcasting</i> decision will be added in a footnote to the comment on this WAC (in WAC 44-14-05001) to aid requestors, agencies and the courts with respect to database records.</li> </ul> <p><b>A citation to the <i>Fisher Broadcasting</i> case will be added in a footnote to WAC 44-14-05001; a minor change.</b></p>
44-14-050		Howard Gale  Pg # 275 - 276 (TR)	<ul style="list-style-type: none"> <li>• Agencies should be required in the WAC to produce records electronically.</li> </ul>	<ul style="list-style-type: none"> <li>• See comments above.</li> <li>• See WAC 44-14-05001 and cases cited in footnotes.</li> <li>• The Model Rules are advisory only. RCW 42.56.570.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-05001	Access to electronic records	Flannary Collins (MRSC)  Pg # 84	<ul style="list-style-type: none"> <li>• In the second paragraph, in the sentence beginning “While not required...” the sentence should end with “the PRA” not “copying fees.”</li> </ul>	<ul style="list-style-type: none"> <li>• This is correct; this change should be made.</li> </ul> <p><b>This minor change will be made to proposed amendment.</b></p>
44-14-05001		Howard Gale  Pg # 100	<ul style="list-style-type: none"> <li>• Digital records need to be provided in an “original” digital format with metadata preserved.</li> </ul>	<ul style="list-style-type: none"> <li>• The footnote to this comment provides citations to <i>Mechling v. City of Monroe</i>, 152 Wn. App. 830, 222 P.3d 808 (2009) (“[T]here is no provision in the PDA [PRA] that expressly requires a governmental agency to provide records in electronic form. ... [a]lthough the City has no express obligation to provide the requested email records in an electronic format, consistent with the statutory duty to provide the fullest assistance and the model rules, on remand the trial court shall determine whether it is reasonable and feasible for the City to do so.”);</li> </ul>

				<p><i>Mitchell v. Dep't of Corr.</i>, 164 Wn. App. 597 (2011) ("Nothing in the PRA obligates an agency to disclose records electronically.") In addition, <i>O'Neill v. City of Shoreline</i>, 170 Wn.2d 138, 187 P.3d 822 (2008) provides that metadata must be provided only when specifically requested. Finally, the PRA provides for copies of records, it does not require "original" records to be given to requestors although they can be inspected upon request. RCW 42.56.090.</p> <p><b>No change needed to proposed amendment.</b></p>
44-14-05001		WCOG Pg # 153-156	<ul style="list-style-type: none"> <li>• The sentence in the WAC that scanning paper records does not create a new record should be deleted in the WAC.</li> <li>• The WAC should provide that agencies should provide records over the Internet unless the size is small enough to send by email. Most agencies have a web portal or can use a product such as Drop Box.</li> <li>• The WAC should not state that agencies are not required to buy new software, hardware or licenses.</li> <li>• Documents should be required to be scanned.</li> </ul>	<ul style="list-style-type: none"> <li>• RCW 42.56.120(1) provides, "Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record."</li> <li>• The PRA does not mandate only one (via Internet) or one or two (via Internet and email) methods of records delivery.</li> <li>• Not all agencies have a portal through which they can delivery records or have purchased or use a Drop Box type of delivery system. The Legislature has not mandated such portals but is aware that portals may be a useful mechanism in the future, funding a study on a statewide portal concept. Chap. 303 (Laws of 2017), Sec. 8.</li> <li>• The PRA does not direct agencies to purchase new software, hardware or licenses. The PRA does not contain any funding for agencies to do so. What may be feasible to be funded or purchased at one agency might not be feasible at another agency.</li> <li>• The PRA does not require paper documents to be scanned, although an agency could choose to do so if it is reasonable and feasible to do so. See response under WAC 44-14-050 and response to comments under WAC 44-14-05002.</li> <li>• The PRA provides that agencies can provide paper copies of paper records. In the 2017 amendments to the PRA, the Legislature retained the ability for agencies to charge for actual costs of "photocopies" including the "per page" cost for use of agency copying equipment. RCW 42.56.070. In the statutory default fee schedule, the Legislature</li> </ul>

			<ul style="list-style-type: none"> <li>Suggested revised language with above considerations.</li> </ul>	<p>retained the per-page copy fee of 15 cents/page “for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records,” RCW 42.56.120.</p> <ul style="list-style-type: none"> <li>See Overall Response and Supp. Memo.</li> </ul> <p><b>No change needed to proposed amendment.</b></p>
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44-14-05002	“Reasonably locatable” and “reasonably translatable” electronic records.	Flannary Collins (MRSC)  Pg # 84 -85	<ul style="list-style-type: none"> <li>The Model Rules do not address if paper records are required to be provided in electronic format. Suggested amendment to this WAC to mirror -05001 that in general, if an agency only has a paper copy and the record is requested in electronic format, the agency should provide the record in electronic format, if it is reasonable and feasible to do so.</li> <li>When agencies provide records via email, the email may get caught in the requestor’s spam filter and the agency may not receive a “bounceback” and the requestor may not check his/her spam filter</li> </ul>	<ul style="list-style-type: none"> <li>See above comment.</li> <li>The PRA provides that agencies can provide paper copies of paper records. In the 2017 amendments to the PRA, the Legislature retained the ability for agencies to charge for actual costs of “photocopies” including the “per page” cost for use of agency copying equipment. RCW 42.56.070. In the statutory default fee schedule, the Legislature retained the per-page copy fee of 15 cents/page “for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records,” RCW 42.56.120. The Legislature also provided, “Scanning paper records to make electronic records of such records is a method of copying paper records and does not amount to the creation of a new public record.” As a result, it is within an agency’s authority under the PRA to make paper copies of paper records, and now, to scan paper records in order to make copies. The Legislature could have required, but did not require, agencies to make electronic copies of paper records, but it is within an agency’s authority to elect to do so.</li> <li>This suggestion regarding “read receipt” is reasonable and probably best fits the comment at WAC 44-14-04004 (Responsibilities of agency in providing records) under subsection (7) (Documenting compliance).</li> </ul>
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			and assumes the agency did not respond. It may be helpful to recommend that agencies apply a “read receipt” rule to their email or ask requestors for confirmation that he/she received the email.	<b>This minor change regarding “read receipt” will be made to proposed amendment at WAC 44-14-04004.</b>
44-14-05002		WCOG  Pg # 156-158	<ul style="list-style-type: none"> <li>• Similar comments to those provided above regarding copying paper records, PDFs. References should be removed in WAC to paper-only records.</li> <li>• WAC should state that agencies are to adopt and enforce reasonable rules to protect public records from disorganization and destruction, and failure to do so does not relieve the agency to produce reasonably locatable records.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See responses to comments above under WAC 44-14-050, WAC 44-14-05001 and MRSC comments above.</li> <li>• RCW 42.56.100 is already cited multiple (19) times in the Model Rules and comments, including but not limited to WA 44-14-03004.</li> <li>• See Overall Response and Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-050002		Allied  Pg # 262-264	<ul style="list-style-type: none"> <li>• “Reasonably locatable” is outdated and should be stricken in in the WAC light of <i>Neighborhood Alliance v. Spokane County</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• The test for an agency’s search is still “reasonableness” including under <i>Neighborhood Alliance v. Spokane County</i>, 172 Wn.2d 702, 261 P.3d 119 (2011), which the WAC reflects (“The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents. ....</li> </ul>

			<ul style="list-style-type: none"> <li>• The reference that an agency can function without a scanner is outdated and should be removed.</li> <li>• The reference to WordPerfect should be removed.</li> <li>• Providing a “useable copy” is not an option and the suggestion that it depends on what translation is “feasible” should be deleted.</li> <li>• Suggested language with above considerations.</li> </ul>	<p>What will be considered reasonable will depend on the facts of each case.”) See WAC 44-14-04003(10) which describes reasonable searches and in a footnote cites to <i>Neighborhood Alliance</i>.</p> <ul style="list-style-type: none"> <li>• The PRA does not mandate that an agency purchase a particular piece of equipment, such as a scanner.</li> <li>• Some agencies still use WordPerfect. It is only an example of a software program.</li> <li>• It is possible a requestor will ask for records to be translated into a program for which the agency does not have a license, or for which there are other barriers to translating it into a particular format. At that point, it is suggested that the agency would need to determine with the requestor what is feasible. See also WAC 44-14-05003.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
<b>WAC 44-14-060 – WAC 44-14-06002 – Exemptions</b>				
44-14-060	Exemptions	WCOG Pg # 55	<ul style="list-style-type: none"> <li>• The WAC should include a rule that agencies will organize their records to prevent commonly-asserted exemptions from causing delay.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Response.</li> <li>• See Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-06001	Agency must publish list of applicable exemptions	Jessica Nadelman (City of Seattle) Pg # 21, 69	<ul style="list-style-type: none"> <li>• The statutory obligation that each agency compile and maintain a list of laws that prohibit disclosure is complex, onerous, and will inevitably result in</li> </ul>	<ul style="list-style-type: none"> <li>• RCW 42.56.570(2) provides, “For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.” The Code Reviser’s list is a very</li> </ul>

			inconsistencies. Agencies should be permitted to meet this requirement by pointing to the Code Reviser's Schedule and/or the AGO website.	<p>useful resource, and the AGO has posted it on its website (on the Sunshine Committee web page). However, many of the exemptions in the Code Reviser's list would not be pertinent to many agency records (that is, they pertain to only certain agency records). While an agency can link to that list on the AGO web page, it should also have some determination that the exemptions listed there apply to the agency's records.</p> <p><b>No change necessary to proposed amendment.</b></p>
44-14-06001		WCOG Pg # 159-163	<ul style="list-style-type: none"> <li>The title of the WAC comment should be renamed to "exemptions."</li> <li>The WAC should address legal files including but not limited to requirements to create such and mark records in a particular format, and should address passwords.</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>WAC 44-14-060 is already titled "Exemptions."</li> <li>See Supp. Memo.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
<b>WAC 44-14-070 – WAC 44-14-07006 – Costs of Providing Public Records</b>				
				<i>See also "General Comments and/or No WAC # Identified by Commenter"</i>
44-14-070	Costs of providing copies of public records	Jessica Nadelman (City of Seattle) Pg # 21, 49	<ul style="list-style-type: none"> <li>Subsection (7) (payment) should also refer to the fact that agencies may accept credit card or online payments.</li> </ul>	<ul style="list-style-type: none"> <li>Not all agencies are able to accept credit card or online payments. An agency is free to add this payment option to its payment procedures rule, if it is set up to accept payments in that manner.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-070		WCOG	<ul style="list-style-type: none"> <li>Concurs in the changes except that there should be a reference in the WAC to</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The PRA does not limit actual costs to unique records, in the fee provisions of RCW 42.56.120.</li> </ul>

		Pg # 164-165	<p>“unique identified records for which actual costs can be determined” and that the fee waiver process should be referenced.</p> <ul style="list-style-type: none"> <li>• PRA does not permit agencies to require pre-payment of all costs, only a ten percent deposit or payment prior to providing an installment.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• The new fee waiver is already referred to in the proposed amendments to WAC 44-14-07005.</li> <li>• The Model Rule comment refers to the requestor paying for the “remainder” of the costs before providing “all the records.” This sentence follows the current sentence that states, “Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimate costs of copying all the records selected by the requestor.” The proposal would add the statutory reference to customized service. The word “remainder” relates back to the first sentence. That is, if the copies made in a single installment or the next installment exceed what the requestor has already paid in the deposit, the agency make require the remainder (the remaining payment needed) before providing copies. RCW 42.56.120 provides that, “If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.” Part of claiming an installment, including a request that has only one installment, is to pay for the copies, minus any deposit already made.</li> <li>• The Model Rule already refers to the ten percent deposit if that is the process the agency will be using.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-07001	General rules for charging for copies	Joseph Molenda (Dept of Labor and Industries)  Pg # 6	<ul style="list-style-type: none"> <li>• Why is the \$2 flat fee restricted to an entire request, including all installments? This is an exaggerated interpretation of the law.</li> </ul>	<ul style="list-style-type: none"> <li>• RCW 42.56.120(2)(d) provides, “An agency may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under (a) or (b) of this subsection when the agency reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments. An agency that has elected to charge the flat fee in this subsection for an initial installment may not charge</li> </ul>

				<p>the fees authorized under (a) or (b) of this subsection on subsequent installments.”</p> <p><b>No change necessary to proposed amendment.</b></p>
44-14-07001		<p>Jessica Nadelman (City of Seattle)</p> <p>Pg # 21, 75</p>	<ul style="list-style-type: none"> <li>Subsection (2) of the WAC should provide that agencies should be permitted to calculate the overhead and administrative costs of transmitting electronic records.</li> </ul>	<ul style="list-style-type: none"> <li>RCW 42.56.070(7)(a)(i)(B) provides that agencies may include all costs directly incident to copying public records, including “transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.”</li> </ul> <p><b>Minor changes will be made to proposed amendment.</b></p>
44-14-07001		<p>Flannary Collins (MRSC)</p> <p>Pg # 85</p>	<ul style="list-style-type: none"> <li>The reference to the archive fee in subsection (1) of the WAC raises the question of whether an agency can direct a requestor to the archives to get records once the records have been transferred to the State Archives per the retention schedule.</li> </ul>	<ul style="list-style-type: none"> <li>After an agency transfers records to the State Archives, those records are the property of the State Archives. See RCW 40.14 and Title 434 WAC. A request for those records would need to be directed to the State Archives.</li> <li>However, if an agency has transferred records to the State Archives, but has retained copies at the originating agency, the agency still needs to respond to requests for records at the agency.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
			<ul style="list-style-type: none"> <li>In the sample fee schedule, the word “list” appears after “Digital storage media or devices” and the word “describe” appears after “records for which other costs are authorized pursuant to specific fee statutes”.</li> </ul>	<ul style="list-style-type: none"> <li>Yes, the word “list” was intended so that an agency would list what types of digital storage or media devices it uses, and “describe” other fees for which other statutes authorize a copy charge. Both words can be italicized to make that clearer.</li> </ul> <p><b>Minor changes will be made to proposed amendment.</b></p>

			Were these intended? Maybe italicize both.	
			<ul style="list-style-type: none"> <li>In footnote 2, add “and sending records” after “making copies” in the first sentence.</li> </ul>	<ul style="list-style-type: none"> <li>That phrase should be added.</li> </ul> <p><b>Minor changes will be made to proposed amendment.</b></p>
44-14-07001		Sarah Leffler (Clark County)  Pg # 90	<ul style="list-style-type: none"> <li>Please consider addressing or defining in the WAC “5 cents/each 4 electronic files or attachments.” The agency routinely combines multiple electronic files into one PDF. It would be helpful if the Model Rules affirmed this is a reasonable practice and clarified that charges may be assessed for each individual electronic file that comprises a PDF package.</li> </ul>	<ul style="list-style-type: none"> <li>WAC 44-14-070 and WAC 44-14-07001 are proposals to address copying charges per the 2017 statutory changes. Under those changes, the PRA provides that agencies may charge five cents per each four “electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery.” RCW 42.56.120(2)(b)(ii). In the 2017 amendments adding this language to the PRA, the Legislature did not define “attachment” or “electronic file.” The commenter may wish to bring this issue to the attention of the Legislature, as a technical clean up. The AGO will await further legislative action on this topic. Meanwhile, an agency could look at how it will define “electronic file” at that agency. For example, an agency could define a “file” as a collection of data stored in one unit, identified by a filename.</li> </ul> <p><b>No change necessary to proposed amendment.</b></p>
44-14-07001		WCOG  Pg # 165-167	<ul style="list-style-type: none"> <li>The WAC language suggesting agencies also look at commercial copying center charges should be deleted.</li> <li>Estimate of costs should also be provided for customized access services.</li> <li>The WAC should not remove the reference to</li> </ul>	<ul style="list-style-type: none"> <li>See Overall Response.</li> <li>The suggestion in the current Model Rule comment for an agency to also look at commercial copying center charges was designed just to provide an agency more information or research about copy costs. That research with respect to costs at a commercial center is not required and can be removed from the WAC. The change will be made.</li> <li>The Model Rule proposed comment already directs agencies to the information that must be provided to requestors with respect to customized access services, in the reference to the list in RCW 42.56.120(3).</li> </ul>

			<p>informing requestors that inspection is free, in subsection (6).</p> <ul style="list-style-type: none"> <li>• There is an incorrect citation in subsection (7). The correct citation should be RCW 42.56.120(4).</li> <li>• Another alternative fee arrangement example can be provided, where a PRA request is not needed for future records but records are sent regularly per a schedule and billed for accordingly.</li> <li>• Suggested revised language with above considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• The Model Rule comment does provide the information that agencies should inform requestors that inspection is free, in the first paragraph of subsection (6). It is not needed to duplicate that language again in the second paragraph.</li> <li>• An agency's PRA obligations are not triggered until a PRA request for identifiable existing records is made by a requestor. The PRA does not govern future, non-existing records. Therefore, while an agency can use alternative fee arrangements, a PRA request for existing records is still part of processing a request.</li> <li>• The statutory citation will be corrected in subsection (7).</li> </ul> <p><b>Minor changes will be made to the proposed amendment.</b></p>
<b>WAC 44-14-080 – WAC 44-14-08004 – Reviews of Denials of Public Records</b>				
44-14-08004	Judicial review	David Plummer  Pg # 12	<ul style="list-style-type: none"> <li>• WAC should be expanded to describe how a person not able to afford an attorney may file a show cause petition to seek review of an agency's refusal to provide a record. An alternative would be to include more specific guidance in a</li> </ul>	<ul style="list-style-type: none"> <li>• See Overall Comments.</li> <li>• The AGO's <i>Open Government Resource Manual</i> (2016) contains references and links to the judicial review statutes, several cases discussing judicial review, the court's civil rules, and a brochure on the courts' website explaining civil proceedings in superior court for unrepresented parties. The website address of the manual is provided in WAC 44-14-06002.</li> <li>• Most of the language of this rule will be repealed, referring only to the statute and the <i>Manual</i>. See also response to WCOG comments below on this WAC.</li> </ul>

			publication like “Sunshine Laws 2016.”	<b>Changes will be made to this rule to remove most of the judicial review discussion.</b>
44-14-08004		Jason Howell (Dept of Ecology)  Pg # 7	<ul style="list-style-type: none"> <li>The proposed amendment to WAC does not refer to the per page penalty scenario from the <i>Wade’s Eastside Gunshop v. L &amp; I</i> decision (up to \$100/day). It may be worthwhile to reference judicial discretion to award penalties for groups or pages of records so as not to create unrealistic assumptions.</li> </ul>	<ul style="list-style-type: none"> <li>See response to Plummer (above) and WCOG (below) on this WAC.</li> </ul> <p><b>Changes will be made to this rule to remove most of the judicial review discussion.</b></p>
44-14-08004		WCOG  Pg # 167-169	<ul style="list-style-type: none"> <li>The Model Rules were not intended to address PRA litigation and the AGO has no authority to discuss judicial review. The WAC should be repealed.</li> <li>If not repealed, it should be amended: The <i>Hobbs v. State</i> case should not be cited. “Judicial review” commonly means review of a quasi-judicial tribunal and its use here is misleading. The reference to filing a motion is misleading. The burden of proof section is not</li> </ul>	<ul style="list-style-type: none"> <li>RCW 42.56.570(2) provides that the AGO is to adopt PRA Model Rules on listed subjects, and on “Any other issues pertaining to public disclosure as determined by the attorney general.” Therefore, under RCW 42.56.570(2) the AGO can provide a Model Rule on the subject of judicial review. In 2006-2007, the AGO determined that the topic of judicial review would be addressed in the Model Rules.</li> <li>However, given the amount of PRA litigation/proceedings subject to judicial review, the AGO agrees that much of the Model Rule could be repealed. The AGO will retain a reference to the judicial review statutes and will add a reference to the AGO <i>Open Government Resource Manual</i>. This approach is similar to how the AGO proposes to update the Model Rule comment on exemptions at WAC 44-14-06002.</li> <li>In addition, a statement will be added to WAC 44-14-00002 to encourage agencies to consult statutes, court cases, and Attorney General Opinions.</li> </ul>

			<p>needed. The “type of cases” is incorrect. The in camera review section and attorneys’ fees/costs/penalties subsections should be renumbered. The language should reflect a “partially” prevailing party.</p> <ul style="list-style-type: none"> <li>• Suggested revised language with above considerations.</li> </ul>	<p><b>Changes will be made to this rule to remove most of the judicial review discussion; see also change to proposed amendment at WAC 44-14-00002.</b></p>
44-14-08004		<p>Allied Pg # 264-267</p>	<ul style="list-style-type: none"> <li>• The judicial review WAC should be repealed.</li> </ul>	<ul style="list-style-type: none"> <li>• See response to WCOG above.</li> </ul> <p><b>Changes will be made to this rule to remove most of the judicial review discussion.</b></p>