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Administration Division

CONCISE EXPLANATORY STATEMENT

WAC ch. 44-06

Office of the Attorney General

Public Records Rules

2019 Proposed Update;

Final Rules Filed March 31, 2020

April 2020

I. Introduction

The Office of the Attorney General (AGO or Office) prepared this document in compliance with RCW 34.05.325, the Concise Explanatory Statement (CES) requirement of the Administrative Procedure Act. Included are: (1) reasons for adopting the amendments to and repeals of several rules in chapter 44-06 WAC; (2) a description of the differences between the proposal and the text of the final rules, and, (3) a summary of comments received on the CR-102 (Proposed Rule Making) and responses to comments.

II. Statutory Authority

The Public Records Act (PRA) is at chapter 42.56 RCW. The PRA provides that state agencies must have procedures in rule describing from whom and how the public may make PRA requests. RCW 42.56.040; RCW 42.56.100; RCW 42.56.070; RCW 42.56.120.

The AGO is a state agency. Chapter 43.10 RCW. The attorney general also has the power and duty “to perform any other duties that are, or may from time to time be required of him or her by law.” RCW 43.10.110.

III. Reason for Adoption

The AGO’s PRA rules are in chapter 44-06 WAC. Many rules in chapter 44-06 WAC have not been updated since the 1990’s. Since then, there have been changes in the PRA law and in office procedures as well as technology. The AGO is therefore adopting amendments to eight AGO rules and is repealing eight rules in chapter 44-06 WAC.

The purpose in making these changes is to update the AGO public records rules to reflect current laws and AGO practices. These changes will provide better and more current procedures for full public access to public records, protecting public records from damage or disorganization, preventing excessive interference with other essential functions of the agency, and providing records requestors the fullest assistance in processing their PRA requests. RCW 42.56.100. For example, some of the rules had referred to RCW 42.17, the prior codification of RCW 42.56, and some referred to old procedures or former office divisions that no longer exist. The amendments address updated procedures to make records requests, procedures to process requests, other new PRA requirements, technology developments, statutory citations, and other topics. The updated rules also take into account some suggested procedures and rule language provided in the advisory and nonbinding AGO PRA Model Rules in chapter 44-14 WAC as amended in 2018 pursuant to RCW 42.56.570(2) and (3).

All the AGO public records rules in chapter 44-06 WAC are amended or repealed, except for WAC 44-06-092 (Copying fees - Payments) which was recently updated following PRA amendments in 2017. In order to assist requestors and the agency, the AGO has moved some repealed language into other more logical rule locations.

IV. CR-103P (Rule Making Order) – Final Rules

Following consideration of comments received on the CR-102 (see further discussion below), on March 31, 2020 the Office filed a CR-103P (Rule Making Order) with the adopted amendments to eight rules and repealing eight rules in chapter 44-06 WAC. WSR 20-08-115. The amendments and repeals become effective 31 days after filing (on May 1, 2020).

The AGO will make the amended rules available on the AGO web site (www.atg.wa.gov). The rules will also be made available on the web site of the Office of the Code Reviser (<http://leg.wa.gov/CodeReviser/Pages/default.aspx>) in the online publication of the *Washington State Register*. After the Code Reviser incorporates the changes into the Washington Administrative Code (WAC), the updated rules will also be available in the online Washington Administrative Code published on the Code Reviser's website, in chapter 44-06 WAC.

V. Differences Between Proposed and Final Rules

The AGO adopted one minor insubstantial change in one rule (WAC 44-06-160) between what was published in the CR-102 proposal and the final rules published in the CR-103P Rule Making Order. The AGO agrees with a comment that an AGO email address should be included in WAC 44-06-160 (requests for review). That small change has been made to WAC 44-06-160 in the final rulemaking order.

There are no other differences between the amended and repealed rules proposed in the CR-102 and the final rules adopted in the CR-103P.

VI. Summary of Comments and Office Responses; Public Hearing

The Office received three written comments on the CR-102 proposed rules prior to the December 10, 2019 public hearing in Olympia, Washington. The hearing was held to provide an opportunity for additional public comment. The written comments were from Janet Totten (Totten), Tom Thiersch, member of the Washington Coalition on Open Government (Thiersch), and Hannah Marclely on behalf of the Washington Coalition for Open Government (WCOG). No one appeared at the rulemaking hearing to testify and/or submit written or oral comments at the hearing. No one submitted comments after the hearing.

As an overall response to the comments, as noted, the Office's purpose in making these changes is to update the Office public records rules to reflect current laws and AGO practices. The updated rules also take into account several suggestions provided in the updated Model Rules in chapter 44-14 WAC.

More specifically, the next pages provides a summary of the written comments and the AGO's response. The AGO received no comments on the repeal of WAC 44-06-020 (definitions). The AGO received comments regarding the other rules proposed to be amended or repealed in chapter 44-06 WAC, as follows.

WAC 44-06-XXX; Topic; (Commenter)	Comment Summary	AGO Response
No WAC # provided in comment – Copy fees (Totten)	The AGO should require requestors to pay for the AGO time to gather, photocopy and mail records.	The AGO is not proposing changes to its copy fee schedule adopted pursuant to WAC 44-06-092, RCW 42.56.120, and RCW 42.56.070. Copying and mailing costs allowed by law are included in that schedule. The PRA does not permit agencies to charge for search time. <i>No change necessary to proposed amendments.</i>
No WAC # provided in comment – Laws (Totten)	The AGO should not change the laws to make it more difficult to obtain records.	This procedure underway is a rulemaking process. No laws are being changed in this process. The rules are being updated to reflect changes in law and agency practice. <i>No change necessary to proposed amendments.</i>
010 – Purpose (WCOG)	The new language does not match RCW 42.56.100. WCOG agrees with removing the repealed language.	RCW 42.56.100 requires agencies to adopt and enforce reasonable rules to provide access to public records, protect them from damage or disorganization, and to prevent excessive interference with essential agency functions. The amendment to WAC 44-06-010 is consistent with these requirements. <i>No change necessary to proposed amendments.</i>
030 – Function, organization, general inquiries (WCOG)	Identify the difference between a general inquiry and a public records request.	The language of the amendment distinguishes between a PRA request and inquiries, and other correspondence. The original rule did not contain any additional distinction between these items. Given the extremely large volume of correspondence and inquiries to the AGO, the amendments are an important step to implement the PRA by distinguishing among those contacts from the public that trigger the PRA and those that do not, and which enable timely agency responses to requestors. The AGO follows the PRA and case law which require that a request must be for identifiable records. RCW 42.56.080(1) and WAC 44-14-04002(2), citing <i>Bonamy v. City of Seattle</i> , 92 Wn. App. 403, 410, 960 P.2d 447 (1998). See also <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) (must be a request for “identifiable” records). The AGO follows the PRA caselaw directing that a request must give the agency fair notice that it is a PRA request (<i>Wood v. Lowe</i> , 102 Wn. App. 7, 994 P.2d 857 (2000); <i>Germeau v. Mason County</i> , 166 Wn. App. 789, 271 P.2d 932 (2012)). The procedures for making a public records request to the AGO are set out in detail in WAC 44-06-080.

	<p>The rule should refer to RCW 42.56.040.</p>	<p>RCW 42.56.040 provides that a state agency is to publish in the Washington Administrative Code (WAC) descriptions of its organization, places and methods by which the public may obtain information, and other listed items. The AGO has provided those general descriptions in this rule and referred readers to its website for more details. In addition, the AGO's specific roles are not set in PRA rules; they are provided in the State Constitution (Art. III) and statutes (just one example is chapter 43.10 RCW; many other provisions of state law describe AGO authority).</p> <p>Other AGO procedures and rules of general applicability, beyond those governing public records, are located in other chapters of Title 44 WAC.</p> <p><i>No change necessary to proposed amendments.</i></p>
<p>040 – Public records available (WCOG)</p>	<p>Agrees with repeal.</p>	<p><i>No change necessary to proposed repeal.</i></p>
<p>050 – Index (WCOG)</p>	<p>The proposal deletes (repeals) the indexing but WAC 44-06-080 still refers to indexing. RCW 42.56.070(3) and (4) require an index.</p>	<p>The indexing language is not being deleted; it is being moved from the former rule location at WAC 44-06-050 into amendments to WAC 44-06-080.</p> <p>RCW 42.56.070(3) and (4) addresses local agency requirements. The AGO is a state agency, not a local agency. RCW 42.56.070(5) requires state agencies to have a system for indexing certain specific records. The only type of records the AGO maintains that might fall within this statute are formal Attorney General Opinions and some orders. The amendments to WAC 44-06-080(1) explain where these records can be found, consistent with the requirements of RCW 42.56.070(5). They are indexed on the AGO website, which is updated on an ongoing basis. See language in WAC 44-06-808(1).</p> <p>In addition, while not required by the PRA, the AGO has also provided on its website public access to thousands of other records beyond those require to be indexed. Those records can be publically viewed and accessed/searched using the website's search function and other fields. While making these many additional public records available online is not required by the PRA, the AGO has nevertheless made them available without the need to submit a PRA request. The AGO has done so in recognition of the Legislature's finding in Laws of 2010, Chap. 69, Sec. 1 that, "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." See Code Reviser's note following RCW</p>

		<p>42.56.520. In other words, the AGO has both met and exceeded the PRA’s indexing of certain public records.</p> <p><i>No change necessary to proposed repeal.</i></p>
<p>060 – Public records officer (WCOG)</p>	<p>This WAC should not be repealed. It should be amended to include the Public Records Officer’s (PRO’s) email address. RCW 42.56.580 requires an agency to designate a PRO and include an email address to which PRA requests may be sent.</p>	<p>This language regarding the Public Records Officer (PRO) was moved to WAC 44-06-080. The AGO has a designated PRO and the name and contact information are filed separately from these rules with the Code Reviser in the <i>Washington State Register</i> under RCW 42.56.580. See the Code Reviser’s website page titled “Washington State Register – Public Records Officer Designations” for a list of all state agency PROs, which includes the AGO PRO; <i>see also</i> the reference in the amendments to WAC 44-06-080(2).</p> <p>RCW 42.56.580 does not require an agency to provide the PRO’s email address, but as stated above, the AGO has done so with the both the Code Reviser in its separate filing in the <i>Washington State Register</i>, and in the amended rule at WAC 44-06-080(2).</p> <p>While also not required by the PRA, the AGO has also posted the email address of the PRO on its agency website, as additional public notice.</p> <p><i>No change necessary to proposed repeal.</i></p>
<p>070 – Hours for inspection and copying (WCOG)</p>	<p>Agree with the amendments, which bring the hours for inspection into the digital age.</p>	<p><i>No change necessary to proposed amendments.</i></p>
<p>080 – PRA requests (WCOG)</p>	<p>Has no objection to repealed language. Objects to requiring PRA requests to be submitted to designated addresses; the language should be changed from “must” to “should.” Suggests that rule should be changed to permit PRA requests or those that “appear” to be</p>	<p><u>Summary of Amendments.</u> The amendments to WAC 44-06-080 direct that PRA requests are to be submitted to the Public Records Officer (PRO) who is located at the AGO Olympia main office. The amendments provide the PRO’s email address, an online form (which includes the PRO’s email and U.S. mail addresses), and a U.S mail address. Records requests sent to unauthorized AGO staff or other AGO addresses not designated to accept PRA requests will be addressed by the AGO, but they will be considered requests for information or general inquiries or correspondence, not PRA requests. If a person attempts to submit a PRA request to an unauthorized person or address, they can resubmit their request to the authorized person/address. The amendments with the designated address and persons to whom to submit PRA requests, and the name of the PRO and their contact information, have been published as proposed and final rules in the <i>Washington State Register</i>. They will also be published in the Washington Administrative Code (WAC).</p> <p><u>Reasons Why Amendments Are Reasonable and Necessary.</u> The rule at WAC 44-06-080(2) provides information on the reasons for the rule amendments. Here are more details of why these</p>

	<p>PRA requests to be submitted to any AGO office email or location and require they be responded to within five business days. Suggests deleting new language providing that PRA requests submitted to non-authorized persons or addresses will be treated as general inquiries or correspondence, not a PRA request. Suggests deleting “explanatory” language.</p>	<p>amendments to WAC 44-06-080 are reasonable and necessary. The amendments take into account the following italicized issues.</p> <p><i>Size of AGO & Number of Employees.</i> The AGO is made up of more than 30 legal and operational divisions located in 12 different cities. The main office is in Olympia; this is also where the PRO and the AGO Public Records Unit are located and where the office is open a minimum of 30 hours per week (RCW 42.56.090). The AGO has more than 1,200+ employees, each of whom has an email address. Permitting PRA requests to be submitted to any AGO employee’s email address creates significant issues. For example, in any given week, many of the 1,200+ AGO employees are out of their office for extended periods, perhaps days or even weeks, either on a scheduled basis (for trials, hearings, travel, witness interviews, discovery, meetings, vacations, and other scheduled matters) or an unscheduled basis (due to illness, death in the family, emergency hearings, or for other emergencies or unanticipated circumstances). Those employees may or may not have access to their AGO email or AGO written correspondence, depending upon the circumstances. Those other AGO employees may also be responding to non-PRA records requests, such as in discovery. Those other AGO employees may not be in a position to promptly identify a PRA request so it can be forwarded to the PRO who can process it within the five business days mandated in RCW 42.56.520. In contrast, the main AGO email address (the PRO’s address) listed in the rule for submitting PRA requests to the PRO is checked each business day, sometimes multiple times per business day. The U.S. mail received at that Olympia address, and other mail or deliveries to the Olympia office, are also reviewed each business day. Establishing a process whereby PRA requests are submitted to locations that are checked each business day provides requestors the fullest assistance. RCW 42.56.100.</p> <p><i>PRA Liability.</i> Under the PRA, an agency can incur significant financial risk including penalties and attorneys’ fees if it fails to respond to a PRA request. This potential risk is particularly present where an agency like the AGO receives a high volume of PRA requests each year among thousands of other non-PRA emails, letters, phone calls and pleadings. Just one missed PRA request in an employee’s email box, or just one request that is not timely responded to because it was not identified as a PRA request by an employee, can create PRA liability. Penalties can range in the tens of thousands of dollars, and more. <i>See</i> RCW 42.56.550 (PRA penalties); <i>Yousoufian v. Office of Ron Sims</i>, 168 Wn.2d 444, 229 P.3d 735 (2010) (agency PRA liability calculation procedures); <i>see also West v. Dep’t of Natural Resources</i>, 163 Wn. App. 235, 258 P.3d 78 (2011) (agency violated the PRA when it failed to respond within five business days).</p> <p><i>Reasonable Agency PRA Procedures.</i> The PRA authorizes agencies to adopt reasonable PRA procedures including those designed to</p>
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		<p>PRA requests are to be submitted, no matter where the requestor is located, all requestors are treated the same.</p> <p><i>Fair Notice of PRA Requests.</i> The AGO receive thousands of pieces of correspondence, emails and other inquiries each year. In its litigation, it also receives subpoenas for records and discovery requests. It is important for the AGO, and for the requesting person/entity, to distinguish between PRA and non-PRA requests. In several appellate decisions, the courts have upheld the requirement that a requestor must provide “fair notice” that he or she is making a PRA request. <i>Wood v. Lowe</i>, 102 Wn. App. 7, 994 P.2d 857 (2000); <i>Germeau v. Mason County</i>, 166 Wn. App. 789, 271 P.2d 932 (2012). An easy and reasonable method for a requestor to provide “fair notice” to the agency that he or she is making a PRA request is to submit requests to the agency’s designated addresses where persons trained in the PRA can recognize PRA requests and process them in compliance with the law. For the AGO, those addresses and locations are listed in the amendments to WAC 44-06-080.</p> <p><i>Summary.</i> As a result, and as stated in the amendatory language to this AGO rule at WAC 44-06-080, the PRA request procedure providing that requests to the AGO are to be submitted only to the listed email or U.S. mail/office address provides the fullest assistance to requestors by:</p> <ul style="list-style-type: none">• Establishing a uniform point of contact for all PRA requests to the AGO and PRA related inquiries, consistent with the public records officer contact information published in the <i>Washington State Register</i>, and pursuant to RCW 42.56.580 and RCW 34.05.220(1)(b);• Enabling the office to promptly differentiate PRA requests from the high volume of other daily communications to the office on multiple topics, so as to facilitate appropriate and timely responses; and,• Ensuring that records requests submitted under the PRA are centrally reviewed during business hours by the PRO or designee, so the office may more efficiently assign a tracking number to the request, log it in, review it, timely provide an initial or other response within five business days after receipt as provided in RCW 42.56.520, and otherwise timely process the request pursuant to the PRA and AGO rules. <p>The updated procedures also assists the AGO in processing PRA requests by enabling it to:</p> <ul style="list-style-type: none">• Provide the same intake process for all persons submitting request to the AGO;• Prevent excessive interference with other essential agency functions; and,
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		<ul style="list-style-type: none"> • Reduce risk potential financial penalties and attorneys’ fees/costs and thereby preserve limited taxpayer resources. <p>By way of a final response to this comment, what follows is a helpful comparison. A procedure to require PRA requests to be submitted to designated addresses and persons operates much like a court’s requirement that all filings with a court must be submitted to and filed only with the clerk of court, and at designated addresses. This judicial requirement preserves an orderly process for the court to manage the pleadings as the court rules and laws require, including to make sure they get to the correct person who will review and process the filing, such as clerk and eventually the assigned judge.</p> <p>While not required by the PRA, the AGO will be posting the updated procedures on the AGO website, as an additional means of public notification beyond the publications in the <i>Washington State Register</i> and the Washington Administrative Code.</p> <p><i>No change necessary to proposed amendments.</i></p>
<p>080 – PRA requests (Thiersch)</p>	<p>The rule should include PRO “or designee” where appropriate, like other rules. The wording conflicts with the Model Rules that allow for a PRA request to be submitted to any staff at an agency. Why is there a change? The agency should notify the sender if their request is not a PRA request when it is not submitted correctly.</p>	<p>See response above. In addition, the email and street address of the PRO is also the address of the PRO’s designees, and the designees’ roles are described elsewhere in the rules. The Model Rules comments provide that agencies are to publish their PRA procedures. WAC 44-14-02001. They also provide that an agency’s PRO is to serve as a “point of contact” for PRA requests although others may help process the request. WAC 44-14-02002. The Model Rules provide that agencies should designate that an “email addressed to the public records officer at the email address designated” by the agency is recommended. WAC 44-14-030(4). Given the issues and potential liabilities discussed above, the AGO is designating the only addresses that can be used to submit PRA requests. The Model Rules and their comments do not have language that recommends PRA requests should be submitted to any agency employee. The referenced Model Rules comments at WAC 44-14-03006 indicate some agencies accept oral requests but they are also “problematic.”</p> <p><i>No change necessary to proposed amendments.</i></p>
<p>085 – Response to PRA requests (WCOG)</p>	<p>Subsection (1) incorrectly counts the five-day period as beginning the day the</p>	<p>Regarding subsection (1), the amended rules explain where a PRA request is to be properly submitted. See response to comments submitted with respect to WAC 44-06-080; <i>see also Parmelee v. Clarke</i>, 147 Wn. App. 1035, 201 P.3d 1022 (2008). Once a requestor properly submits a PRA request and thus receives “fair</p>

	<p>Olympia office receives the request.</p> <p>Subsection (3) provides additional time to respond based on the “need” to notify third persons. WCOG recommends a 10-day notice period, in accord with the <i>Open Government Resource Manual</i>.</p> <p>Subsection (4) should not admonish requestors to communicate with the agency’s PRO while limiting its own duty to communicate.</p> <p>Subsection (5) allows for third party notice and we recommend 10 days be stated in the rule.</p> <p>Subsection (8)(b) does not comply with the PRA because it</p>	<p>notice”, the five business-day time period for responses begins to run at that point. RCW 42.56.520(1).</p> <p>Regarding subsection (3) and third party notice, RCW 42.56.520(2) provides that “Additional time required to respond to a request may be based upon the <i>need</i> to ...to notify third persons or agencies affected by the request.” (Emphasis added). No specific time period for third party notice is mandated by law or is required to be in rule. While 10 days is an often-used timeframe in practice, other timeframes may be appropriate in certain circumstances or other under laws. The courts and our office have also encouraged communications from requestors to agencies about PRA requests prior to litigation. See next response.</p> <p>Regarding subsection (4), this part of the rule encourages requestors to contact the AGO if they have questions or concerns about their request. This encouragement is consistent with and urged by <i>Hobbs v. State</i>, 183 Wn. App. 925, 335 P.3d 1004 (2014) (encouraging requestors to communicate with agencies and as a policy matter, stating that the purposes of the PRA are best served by communications between agencies and requestors, and further stating, “We stress that this opinion should not be read to encourage requestors to remain silent and wait until final agency action to voice concerns regarding agency actions or inaction.”); <i>Bonamy v. City of Seattle</i>, 92 Wn. App. 403, 409, 960 P.2d 447 (1998) (the PRA does not “require agencies to be mind readers”); <i>see also</i> our office’s Model Rule comment at WAC 44-14-04003(3) (“Communication is usually the key to a smooth public records process for both requestors and agencies.”)</p> <p>Regarding subsection (5), see response above under subsection (3).</p> <p>Regarding subsection (8)(b), the PRA does not require records to be emailed or provided in a particular electronic format. <i>Mechling v. Monroe</i>, 152 Wn. App. 830, 222 P.3d 808 (2009) (no provision</p>
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	<p>does not provide the fullest assistance. The AGO should email responses to small requests especially where the request was submitted by email or the requestor states that is their preference.</p> <p>Subsection (9) should not read that the PRA “will” provide records in installments; it should say “may.”</p> <p>Subsection (10) does not provide the fullest assistance because it is based on physical inspection of records and digital copies are more useful. It also does not refer to procedures for withheld records.</p> <p>Subsection (11) should delete</p>	<p>in the PRA that expressly requires an agency to provide records in electronic form); <i>Mitchell v. Department of Corrections</i>, 164 Wn. App. 597, 277 P.3d 670 (2011) (same); <i>Doe v. Pierce County</i>, Zink, 7 Wn. App. 2d 157, 433 P.3d 838 (2019) (same); <i>Benton County v. Zink</i>, 191 Wn. App. 269, 361 P.3d 901 (2015) (same); <i>see also Washington Coalition for Open Government v. City of Tacoma</i>, No. 50718-8-II (Feb. 20, 2019) (county did not violate PRA by refusing to provide records electronically); <i>Strahm v. Snohomish County</i>, No. 79254-7-I (May 6, 2019) (unpublished) (county not required to produce records in a particular alternative electronic format; county’s response providing link to records on its website was proper; county not required to provide paper records electronically).</p> <p>In addition, delivery records via email can be sometimes problematic particularly if the records are caught in the agency’s or requestor’s spam or virus filters and then are not sent or delivered. That being said, the AGO does provide records via email in certain circumstances. WAC 44-06-092(4)(a)(ii).</p> <p>Regarding subsection (9), the rule provides that records will be provided in installments if the PRO or designee “reasonably determines that it would be practical to provide records that way.” The PRA authorizes agencies to provide records in installments. RCW 42.56.080; RCW 42.56.120; RCW 42.56.550; <i>West v. Department of Licensing</i>, 182 Wn. App. 500, 331 P.3d 72 (2014); <i>Gipson v. Snohomish County</i>, 194 Wn.2d 365, 449 P.3d 1055 (2019). It is common practice for the AGO to provide records in installments. The amendments simply memorialize that fact.</p> <p>Regarding subsection (10), there is nothing in the amendment that applies only to inspection of paper records, if that is what was meant by “physical inspection.” The inspection procedures also apply to electronic records that a requestor inspects at the AGO. RCW 42.56.210(3) and RCW 42.56.520(4) provide that if an agency redacts or withholds any records, it must explain that in writing. The statutes speak for themselves and a rule is not required to repeat a statute. Nevertheless, the AGO provides some basic exemption information in WAC 44-06-100.</p>
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	<p>“unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances.”</p>	<p>Regarding subsection (11), the PRA does not require an agency to explain multiple times to a requestor when a request will be closed.</p> <p><i>No change necessary to proposed amendments.</i></p>
<p>100 – Protection of public records (WCOG)</p>	<p>Agree with repeal.</p>	<p><i>No change necessary to proposed repeal.</i></p>
<p>110 – Exemptions (WCOG)</p>	<p>This entire section should be repealed in its entirety. WCOG does not agree with it. (No reason is given.)</p>	<p>Since no details were provided in this comment, it is unknown why the commenter suggests repealing this entire section and why it does not agree with the amendments.</p> <p>To assist requestors, this rule and the proposed amendments provide a short description of the fact that some AGO records are exempt from disclosure under the PRA and other laws. It explains where the AGO publishes and maintains its list of exemptions, which is located on the AGO website. This rule and the amendments are consistent with RCW 42.56.100 (providing fullest assistance) and RCW 42.56.070(2) (“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.”)</p> <p><i>No change necessary to proposed amendments.</i></p>
<p>120 – Reviews of denials, estimates of time, estimates of costs (WCOG)</p>	<p>No opposition to internal formal review of a denial. But amendatory language appears to make such a review a requirement before a court hearing.</p>	<p>RCW 42.56.520(4) provides that, “Agencies ... shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action ... for the purposes of judicial review.”</p> <p>Communications between agencies and requestors on denials of records, as well as other PRA issues, is encouraged. <i>Hobbs v. State</i>, 183 Wn. App. 925, 335 P.3d 1004 (2014) (encouraging requestors to communicate with agencies and as a policy matter, stating that the purposes of the PRA are best served by</p>

	<p>If the intent is to apply it to a review of other agencies' decisions, it belongs in WAC 44-06-160 or deleted.</p>	<p>communications between agencies and requestors, and further stating, “We stress that this opinion should not be read to encourage requestors to remain silent and wait until final agency action to voice concerns regarding agency actions or inaction.”); <i>Bonamy v. City of Seattle</i>, 92 Wn. App. 403, 409, 960 P.2d 447 (1998) (the PRA does not “require agencies to be mind readers”); <i>see also</i> our office’s Model Rule comment at WAC 44-14-04003(3) (“Communication is usually the key to a smooth public records process for both requestors and agencies.”)</p> <p>This amended rule does not require PRA requestors to use the AGO internal review procedures for the listed issues (denials and redactions, estimates of time and estimates of costs) related to PRA requests to the AGO. The amended rule, as with the prior rule provides a requestor “may” petition for AGO review. WAC 44-06-120(2). This “may” language in the rule is the same as when it was adopted in 1994. What has been added is where to direct such requests, and while not required by the PRA, optional no-cost procedures for a requestor to seek a review of estimates of time and costs as well. These updated procedures help provide the “fullest assistance” to requestors. RCW 42.56.100.</p> <p>The cross reference in WAC 44-06-120(6) to the optional AGO review procedure under RCW 42.56.530 for state agency denials is the same as when the rule was enacted in 1994. Only the subsection number has changed. Under that statute, a requestor is not required to use that optional procedure with respect to state agency denials of records prior to seeking court review.</p> <p><i>No change necessary to proposed amendments.</i></p>
<p>130 – Consumer protection compliance (WCOG)</p>	<p>Agrees with repeal.</p>	<p><i>No change necessary to proposed repeal.</i></p>
<p>140 – Adoption of form (WCOG)</p>	<p>Agrees with repeal.</p>	<p><i>No change necessary to proposed repeal.</i></p>
<p>150 – Availability of pamphlet (WCOG)</p>	<p>RCW 42.56.570 requires a pamphlet. Rather than deleting rule, change it to state the</p>	<p>RCW 42.56.570 requires the AGO to “publish” a pamphlet and the AGO has done that, and made it available on its website. A rule is not needed to implement this statute.</p> <p><i>No change necessary to proposed repeal.</i></p>

	pamphlet will be available on the AGO website and include a link.	
160 – Requests for review (WCOG)	Should be clarified to state a person may request an AGO review “of another agency’s Public Records Act response” and this section applies only to such requests. It should also include an email address.	<p>RCW 42.56.530 (AGO review) does not apply to “any agency” and it does not apply to any PRA “response.” Instead, the statute applies only to state agency denials of records where an exemption is cited. The updated rule simply provides more detail on where to submit such requests.</p> <p>The AGO agrees that an email address should be included and it is the same address as in WAC 44-06-120 (publicrecords@atg.wa.gov). The AGO will make that minor addition to the rule.</p> <p><i>One minor change is being adopted in this rule to add the email address.</i></p>