From:	Tom Thiersch
To:	Steele, Jennifer (ATG)
Subject:	Notice of Proposed Rulemaking: AGO Public Records Rules: Comments
Date:	Wednesday, October 30, 2019 3:23:26 PM
Attachments:	scan-10242019025336.pdf

Ms. Steele,

These are my comments on your agency's Notice of Proposed Rulemaking for "AGO Public Records Rules", posted at
https://www.atg.wa.gov/rulemaking-activity

First, please note that the link for your contact information is listed on that page as:
" Email Jennifer Steele [http://Jennifer.Steele@atg.wa.gov/] "

(the "http://" part and the trailing "/" should not be there).

On the substance of the matter:

I agree with (or don't object to) most of the changes in the proposed rules. However, referring to Page [3] (attached)

> (2) Public Records Act requests. Public Records Act requests to the office must be sent or submitted **only** to the public records officer in the Olympia main office, in one of the following ways:
> Online form at http://www.atg.wa.gov/request-ago-public-records Email: nublicrecords@ata.wa.aov
> U.S. Mail or Delivery:
> Public Records Unit
> Office of the Attorney General
> 1125 Washington Street S.E.
> P.O. Box 40100
> Olympia, WA 98504-0100
> Requestors are strongly encouraged to make requests in writing. Requestors are encouraged to use the online Public Records Act request form, which, once completed, is automatically submitted to the Olympia main office and to the attention of the public records officer. The office accepts in-person requests at the Olympia main office during normal office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the office is closed. If the office receives an oral request, the office will reduce the request to writing and verify in writing with the requestor that it correctly memorialized the request.
> [3]

[emphasis added]

That wording seems excessively restrictive and somewhat self-contradictory. If a request can only be submitted to the the single individual serving as the Public Records Officer and the term "in-person" is taken literally, a requestor would have to personally hand-deliver a written request, or personally state an oral request, only to that individual; the PRO would have to be available thoughout all of the posted hours to make that possible. Obviously, that's not the intent. What's missing here is the "or designee" phrase, as it appears

elsewhere in the proposed rule.

That wording also seems to be somewhat in conflict with the Model Rules. It's been an acceptable practice that a request for records can be made to any staff of an agency, not just the PRO, and it then becomes the responsibility of that staffer to ensure that the request is memorialized and processed in accordance with the agency's procedures; e.g., WAC 44-14-03006 Form of requests. "Oral Requests"

As long as the requestor meets their obligation to provide "fair notice" that a request for public records is being made, I believe the request should be honored in the spirit of "fullest assistance to requestors".

Why change what's working? And, how is a requestor supposed to know who the "designees" are?

At the top of Page [4], the proposed rule becomes even more restrictive:

> Other office locations outside the Olympia main office, other office email addresses, other office fax or phone numbers, and other office staff are not authorized to accept Public Records Act requests to the office.
> Communications seeking office records, but which are sent or provided to unauthorized locations addresses or staff, will not be accepted as or processed as Public Records Act requests. The office will process such communications as general informal inquiries, general correspondence, General requests for information, or discovery, as appropriate.

If that's really intended to be the bright line rule, then the agency has an obligation to notify the sender of any communication which is interpreted by the agency as a request for public records that the sender's communication is being so-interpreted and that the sender, if that was their intent, is obligated to submit their request through the limited means specified elsewhere in the rule [at (2)] in order to receive a PRA response.

In the absence of such notice, a person might submit a question that was not intended to be a public records request but which the agency interprets to be such and the agency's resulting "general inquiry" response could be incorrect or incomplete.

Thank you for considering these comments, and please let me know if you have any questions,

Tom Thiersch
Member, Washington Coalition for Open Government

==== [RCW 42.30.010 Open Public Meetings Act] ==== ==== [RCW 42.56.030 Public Records Act] ====
"The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created."
###

SAVE PAPER - Please do not print this e-mail unless absolutely necessary.

From: janetotten@comcast.net
To: Steele, Jennifer (ATG)
Subject: Public Records Rules Comment Form
Date: Friday, October 25, 2019 12:05:10 PM

The following message has been submitted.

Information Submitted:

Section 1: Comment

Last Name:	totten
First Name:	jane
Middle Name:	v
Email Address:	janetotten@comcast.net
Comment:	I WANT FULL DISCLOSURE OF PUBLIC DOCUMENTS THAT UNDER CURRENT LAW I AM ENTITLED TO REVIEW AND OBTAIN. HOWEVER, I WANT ALL PEOPLE TO PAY FOR THE TIME IT TAKES EMPLOYEES TO GATHER UP THE INFORMATION AND FOR ALL PHOTOCOPYING AND MAILING AND COSTS INVOLVED FOR THEIR PUBLIC DOCUMENT REQUESTS. I DONT WANT THE AG OFFICE TO PROVIDE A LOT OF PUBLIC DISCLOSURE REQUESTS TO EVERYONE FREE OF CHARGE. I WANT THE AG OFFICE TO CHARGE FOR THIS SERVICE SO THAT THEY ARE NOT HAVING TO PAY FOR THIS SERVICE TO THE PUBLIC OUT OF THE AG BUDGET. WHEN I ASK FOR PUBLIC DISCLOSURE REQUEST I PAY MONEY TO HAVE MY REQUEST HANDLED. THIS SHOULD BE STANDARD OPERATING PROCEEDURE FOR THE AG OFFICE. I DONT WANT THE AG OFFICE TO CHANGE ANY LAWS AND MAKE IT EVEN MORE DIFFICULT FOR THE PUBLIC TO OBTAIN INFORMATION. MEN AND WOMENT HAVE DIED IN THE MILITARY FOR US TO HAVE OUR FREEDOM FOR INFORMATION AND I WANT ACCESS TO THESE RECORDS.

Section 2: Privacy Notice, Disclimer and signature

Signed name:	JANE TOTTEN
Date:	10/25/2019
Submitted on:	10/25/2019

December 9, 2019

Jennifer Steele
Office of the Attorney General
PO Box 40100
Olympia, WA 98504

Dear Ms. Steele,

I am writing on behalf of the Washington Coalition for Open Government**.** The Coalition appreciates the Office's proactive approach in bringing the rules into conformance with current law and practices. We are primarily in support of the proposed changes, but have a few suggestions outlined below.

The Coalition is an independent, nonpartisan, nonprofit organization that works through the courts and the Legislature to defend and strengthen Washington's open government laws. We have members who are citizen activists, government officials, and representatives of business, labor, media, law, and public policy organizations. We are honored to participated in this important rulemaking process.

To facilitate your review, we have taken the rule section by section below.

- WAC 44-06-010
    - The new language does not match RCW 42.56.100. The section should be deleted or brought into alignment.
- WAC 44-06-010
    - The Coalition agrees with this deletion.
- WAC 44-06-030
    - Please identify what distinguishes a general inquiry or correspondence from a Public Records Act request.
    - This section should also reference RCW 42.56.040
- WAC 44-06-040
    - The Coalition agrees with this deletion.
- WAC 44-06-050
    - The proposal deletes the Index section. However, the proposed changes to WAC 44-06-080 still reference "indexed records." Also, an index is required under RCW 42.56.070(3) and (4). Please explain why the Office intends to delete this section.
- WAC 44-06-060
    - This section should not be deleted, but should be amended to include the Public Records Officer's email address. Removing this section is unwise because the proposal later requires requestors to submit any PRRs to the public records officer. Also, RCW 42.56.580 requires the agency to designate a Public Records Officer and include an email address to which Public Records Act requests may be sent.

- WAC 44-06-070
    - The proposal brings the hours for inspection into the digital era, which is nice.
- WAC 44-06-080
    - The Coalition has no objection to deleting the existing section. However, Subsection 2 of the new rule limits the requests far too much. First, the rule states that requests received by agency personnel who are not at the Public Records Office in Olympia will not be processed. This is unacceptable and violates the duty to provide fullest assistance to the requestor. We propose the following language:
    - (2) Public Records Act requests. Public Records Act requests to the office ~~must~~ should be sent or submitted only to the public records officer in the Olympia Main office, in one of the following ways:
        - Online form at http://ww.atg.wa.gov/request-ago-public-records
        - Email: publicrecords@atg.wa.gov
        - US Mail or delivery:
        - Public Records Unit
        - Office of the Attorney General
        - 1125 Washington Street SE
        - PO Box 40100
        - Olympia WA 98504
        - Requestors are strongly encouraged to make requests in writing. Requestors are encouraged to use the online Public Records Act request form, which, once completed is automatically submitted to the Olympia main office and to the attention of the public records officer. The office accepts in person requests at the Olympia main office during normal office hours, 8:00 am to 5:00 pm Monday through Friday, excluding holidays and days the office is closed. If the office receives an oral request, the office will reduce the request to writing and verify in writing with the requestor that it correctly memorialized the request.
        - Other office locations outside the Olympia main office, other office email addresses, other office fax or phone numbers and other office staff are not authorized to accept Public Records Act requests to the office, but must respond to any Public Records Act request, or request that appears intended to invoke the Public Records Act, within five business days by either providing records or clarifying to the requestor that only the public records office may process requests for records under the Public Records Act and providing the appropriate contact information for the public records office.~~.~~
        - Communications seeking office records, but which are sent or provided to unauthorized locations, addresses, or staff, will not be ~~accepted as or~~ processed as public records act requests. ~~The office will process such communication as general informal inquiries, general correspondence, general requests for information, or discover, as appropriate. The~~

~~requestor may resubmit his/her request to the public records officer at the Olympia main office.~~

- ~~This public records act request procedure provides the fullest assistance to the requestor by:~~
    - DELETE all explanatory subpoints for the above assertion.

- The section references indexes and public records officers, both of which were deleted in previous changes.

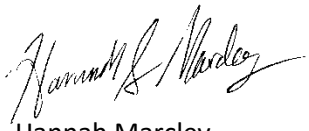
- WAC 44-06-085
    - Subsection (1) is inappropriate because it provides the Office more than five days to respond to a Public Records Act request by insisting that the count begins with the Olympia Office receives the request. This is not providing the fullest assistance to the requestor.
    - Subsection (3) allows for additional time to respond based upon the "need" to notify third persons or agencies affected by the request. To bring this into alignment with Open Government Resource Manual, the Coalition recommends including a ten-day notice period so that disclosure cannot be extended beyond a reasonable time by adding more than ten days for notice.
    - Subsection(4)(a) includes an admonition for requestors to communicate with the public records officer if the response is not what they wanted. I find it shocking that the AGO has the audacity to encourage requestors communicate while limiting its own duty to communicate where a request is not submitted properly. Communication is a two-party activity.
    - Subsection(5) allows notice to parties who may be affected by disclosure. It states that notice should be given with time to seek a court order. We again recommend a ten-day window to limit the amount of time that a notice may delay disclosure.
    - Subsection(8)(b) does not comply with the PRA because it is not tailored to the fullest assistance to the requestor. The Office should respond to small requests by emailing the records when possible, especially where the request was made over email or the requestor specified that was their preference.
    - Subsection (9) should read: When the request is for a large number of records, the public records officer or designee ~~will~~ may provide ~~access for inspection and copying~~the records in installments, if he or she reasonably determines that it would be practical to provide the records in that way.
    - Subsection (10) does not provide for fullest assistance to the requestor. The subsection is predicated on physical inspection when digital copies are the more useful to a requestor. The subsection also does not mention the requirement that the agency notify the requestor of any withheld records and related justifications.
    - Subsection (11) The proposed language should delete the portion reading "unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances."

- WAC 44-06-100
    - The Coalition agrees with this deletion.

- WAC 44-06-110
    - The Coalition does not support this section. It should be deleted in its entirety.
- WAC 44-06-120
    - The proposal includes an optional, internal, formal review of a denial or estimate, which the Coalition does not oppose. However, Subsection(6) makes it appear as if the review is either not optional or not internal. If the intent is to cause the review of the Office of the Attorney General's public records officer's decision to be a prerequisite for seeking a court order, this subsection must be deleted. If the intent is to apply the review process to the Attorney General's Office's review of other agencies' actions in the Public Records Act context, it does not belong in this section and should be moved to WAC 44-06-160 or deleted.
- WAC 44-06-130
    - The Coalition agrees with this deletion.
- WAC 44-06-140
    - The Coalition agrees with this deletion.
- WAC 44-06-150
    - RCW 42.56.570 requires a pamphlet be provided. Rather than deleting the rule, the Coalition recommends changing it to state that the pamphlet will be available on the Office's website and including a link.
- WAC 44-06-160
    - This section should be clarified to state that a person may request Attorney General's Office review of another agency's Public Records Act response and that this section applies only to such requests. This section should also include an email address at which review requests may be received.

The Coalition is dedicated to openness and appreciates the Office's efforts in this arena. If you have any questions, do not hesitate to reach out.

Sincerely,



Hannah Marcley
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