WSR 26-11-042
PROPOSED RULES
ATTORNEY GENERAL'S OFFICE
[Filed May 18, 2026, 1:38 p.m.]

Supplemental notice to WSR 25-20-108.

Preproposal statement of inquiry was filed as WSR 24-21-023.

Title of Rule and Other Identifying Information: Public Records Act—Model rules, chapter 44-14 WAC.

Hearing Location(s): On June 30, 2026, at 3:00 to 5:00 p.m., at John A. Cherberg Building, Rooms ABC, 304 15th Avenue S.W., Olympia, WA 98501. Oral and written comments will be accepted at the hearing.

Date of Intended Adoption: On or after July 15, 2026.

Submit Written Comments to: Morgan Damerow, P.O. Box 40100, Olympia, WA 98504, email agorulemaking@atg.wa.gov, fax 360-570-3418, beginning May 20, 2026, at 8:00 a.m., by June 30, 2026, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Elaine Ganga, phone 360-280-5370, fax 360-664-0228, email elaine.ganga@atg.wa.gov, by June 29, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The attorney general's office (AGO) has proposed amendments to several advisory Public Records Act (PRA) model rules and a comment in chapter 44-14 WAC. The purpose of the proposal is to update the model rules and comments for WAC 44-14-030 to reflect the court decisions in *Cousins v. Dept. of Corrections*, 3 Wn.3d 19, 546 P.3d 415 (2024) on the content of notices sent by agencies to requestors when a request is closed, *O'Dea v. City of Tacoma*, 19 Wn. App.2d 67, 493 P.3d 1245 (2021) on the submission of records requests, address concerns raised by the media in its petition for rule making, clarify in WAC 44-14-030 that state and local agencies have different obligations relating to maintaining records indices, and include gender-neutral language. The media's petition for rule making can be found at www.atg.wa.gov/rulemaking-activity. It generally requests that certain [sections] of the model rules be amended to clarify or emphasize an agency's obligation to respond to requests promptly and to process requests diligently as provided in PRA. In response to that petition, AGO is proposing, for example, amendments to: WAC 44-14-010 and 44-14-020 to emphasize promptness; WAC 44-14-030 to ensure public records are available to be produced; and WAC 44-14-040 on evaluating the complexity of a request and factors for considering estimate of time to respond to a request, use of third party notices, and exercising diligence in providing installments. Following publication, public hearing on the proposed amendments, and after consideration of public comment to the proposed amendments to model rules, AGO is updating its proposed amendments and scheduling a public hearing seeking additional comments.

Reasons Supporting Proposal: PRA at chapter 42.56 RCW provides the public access to state and local government agency public records. PRA directs AGO to adopt, and from time-to-time revise, advisory model rules; RCW 42.56.570 (2) and (3). Under RCW 42.56.570(2), AGO is required to adopt model rules addressing the following subjects: (a) Providing fullest assistance to requestors; (b) fulfilling large requests in the most efficient manner; (c) fulfilling requests for electronic records; and (d) any other issues pertaining to public disclosure as determined by AGO. RCW 42.56.570(4) provides that local agencies should consult the model rules when establishing local ordinances for compliance with the requirements and responsibilities under chap-

ter 42.56 RCW. RCW 42.56.152 provides that records training must be consistent with the model rules. The model rules are at chapter 44-14 WAC. The purpose of the model rules and their comments is to provide information to records requestors and state and local agencies about "best practices" for complying with PRA; WAC 44-14-00001. The model rules are advisory, but they provide public agencies model language, and other information in comments, to consider when adopting their PRA regulations, ordinances, or policies. While the model rules and comments are advisory only, they are a resource. Over time, new caselaw and the experience of agencies and requestors bring to light areas of the model rules that can be updated or clarified to better reflect current law and provide improved guidance on compliance with PRA.

Statutory Authority for Adoption: RCW 42.56.570.

Statute Being Implemented: RCW 42.56.570 and chapter 42.56 RCW.

Rule is necessary because of state court decision, while the rules are advisory, the court decisions in *Cousins v. Dept. of Corrections*, 3 Wn.3d 19, 546 P.3d 415 (2024) and *O'Dea v. City of Tacoma*, 19 Wn. App.2d 67, 493 P.3d 1245 (2021) have been issued since the model rules and their comments were originally adopted in 2006-2007, as updated in 2018. These decisions provide guidance for the content of notices sent by agencies to requesters when a request is closed and in the submission of requests for records. The model rules should be amended to reflect this guidance so that agencies and the public have clarity about the closing of requests and the starting of the one-year statute of limitations for judicial review as well as in submitting requests for records.

Name of Proponent: Nick Brown, Washington state attorney general, governmental.

Name of Agency Personnel Responsible for Drafting: Morgan Damerow, Olympia, Washington, 360-570-3418.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), AGO is not an agency mandated to comply with RCW 34.05.328. Further, AGO does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 42.56.570, 42.56.070, and 42.56.120.

Explanation of exemptions: The model rules are advisory only and apply only to governmental agencies, not small businesses (RCW 42.56.570). To the extent there are costs assessed by public agencies providing records in response to PRA requests by small businesses, the authorized costs are set out in statute and apply to all requestors (RCW 42.56.070 and 42.56.120).

Scope of exemption for rule proposal:

Is fully exempt.

May 15, 2026
Nick Brown
Attorney General

RDS-6700.4

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-010 Authority and purpose. (1) RCW 42.56.070(1) and 42.56.080(2) requires each agency to make promptly available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" at RCW 42.56.010(3) to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.010(3) excludes from the definition of "public record" the records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures (name of agency) will follow in order to provide full and prompt access to public records. These rules provide information to persons wishing to request access to public records of the (name of agency) and establish processes for both requestors and (name of agency) staff that are designed to best assist members of the public in obtaining such access.

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

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

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

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

Public Records Officer
(Agency)
(Address)
(Telephone number)
(fax number if relevant)
(email)

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

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

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

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

(2) **Records index.** (*If a state agency has records for which it is required to keep((s)) an index.*) An index of public records is available for use by members of the public, including (describe contents of records maintained by the agency that are required to have an index pursuant to RCW 42.56.070(5)). The index may be accessed online at (website address), and the index is revised or updated (describe schedule). (If there are multiple indices, describe each ((~~and~~)), its availability, and schedule for being revised or updated.)

(*If a local agency has records for which it is required to keep an index and it has not opted out.*) An index of public records is available for use by members of the public, including (describe contents of records maintained by the agency that are required to have an index pursuant to RCW 42.56.070(3)). The index may be accessed online at (website address), and the index is revised or updated (describe schedule). (If there are multiple indices, describe each, its availability, and schedule for being revised or updated.)

(*If ((~~agency is~~)) a local agency is opting out of the index requirement.*) The (name of agency) finds that maintaining an index of (specify which type of records) is unduly burdensome and would interfere with agency operations. The requirement would unduly burden or interfere with (name of agency) operations in the following ways (specify reasons). The agency has issued and published a formal order describing these reasons which can be found at (provide description of how order can be located).

(3) **Organization of records.** The (name of agency) will maintain its records in a reasonably organized manner and accessible to staff responsible for searching and producing records. The (name of agency) will take reasonable actions to protect records from damage and disorganization, including preventing unauthorized destruction or removal of original records by employees, elected officials, and others. A re-

questor shall not take (name of agency) records from (name of agency) offices without the permission of the public records officer or designee. If (name of agency) employees create or receive public records on personal devices or in personal accounts, such employees shall transfer or copy the records to work devices or work accounts within five business days, or in unusual circumstances as soon as practicable. A variety of records is available on the (name of agency) website at (website address). Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the (name of agency) should make the request in writing. The (name of agency) recommends submitting requests through (designate preferred method, i.e., the agency's online portal or preferred email address). A request may also be submitted on the (name of agency's) request form ((~~or~~)), through ((~~an~~)) the online form or portal (if the agency provides an online form or portal), or by letter, fax (*if the agency uses a fax*), or email addressed to the public records officer at the email address publicly designated by (name of agency), or by submitting the request in person at (name of agency and address) ((~~and including~~)).

(b) When submitting a request to inspect or copy records, please provide the following information:

• Name of requestor (optional);

• ((~~Address of requestor;~~

~~•~~)) Mailing address, email address, telephone number or other contact information((~~, including telephone number and any email address~~));

• Identification of the public records adequate for the public records officer or designee to locate the records; and

• The date and time of day of the request.

((~~(b)~~)) (c) If the requestor wishes to have copies of the records made instead of simply inspecting them, ((~~he or she~~)) the requestor should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to section (insert section), charges for copies are provided in a fee schedule available at (agency office location and website address).

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

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

((~~(e)~~)) (f) If a requestor((~~s~~)) refuses to ((~~identify themselves~~)) provide their identity or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-03006 Form of requests. There is no statutorily required format for a valid public records request. RCW 42.56.080(2).

Agencies may recommend that requestors submit requests using an agency-provided form or web page. However, a person seeking records must make a "specific request" for "identifiable records" which provides "fair notice" and "sufficient clarity" that it is a records request.[1] An agency may prescribe the means of requests in its rules. RCW 42.56.040; RCW 42.56.070(1); RCW 42.56.100; RCW 34.05.220 (1)(b) (state agencies). An agency can adopt reasonable procedures ((~~requiring requests to be submitted only to~~)) for submitting a request which may include recommending request submission to a designated persons[2] (such as the public records officer), or a specific agency address (such as a dedicated agency email address for receiving requests, or a mailing/street address of the office where the public records officer is located, or a web portal).

Agency public internet website records - No request required. A requestor is not required to make a public records request before inspecting, downloading or copying records posted on an agency's public website. To save resources for both agencies and requestors, agencies are strongly encouraged to post commonly requested records on their websites. Requestors are strongly encouraged to review an agency's website before submitting a public records request.

In-person requests. An agency must honor requests received in person during normal business hours. RCW 42.56.080(2). An agency should have its public records request form available at the office reception area so it can be provided to a "walk-in" requestor. The form should be directed to the agency's public records officer.

Mail, email and fax requests. A request can be sent to the appropriate person or address by U.S. mail. RCW 42.56.100. A request can also be made by email, fax (if an agency still uses fax), or orally (but should then be confirmed in writing; see further comment herein).

Public records requests using the agency's form or web page. An agency should have a public records request form. An agency is encouraged to make its public records request form available at its office, and on its website. Some agencies also have online public records request forms or portals on a page on their websites, set up to specifically receive public records requests. Agencies may recommend that requestors submit requests using an agency-provided form or web page. RCW 42.56.080(2). In this comment, requestors are strongly encouraged to use the agency's public records request form or online form or portal to make records requests, and then provide it to the designated agency person or address. Following this step begins the important communication process under the act between the requestor and the agency.[3] This step also helps both the requestor and the agency, because it better enables the agency to more promptly identify the inquiry as a public records request, timely confirm its receipt with the requestor, promptly seek clarification from the requestor if needed, and otherwise begin processing the agency's response to the request under the act.

An agency request form or online form or portal should ask whether the requestor ((~~whether he or she~~)) seeks to inspect the records, receive a copy of them, or to inspect the records first and then consider selecting records to copy. An agency request form or online portal should recite that inspection of records is free and provide information about copying fees.

An agency request form or online form or portal should require the requestor to provide contact information so the agency can communicate with the requestor to, for example, clarify the request, inform

the requestor that the records are available, or provide an explanation of an exemption. Contact information such as a name, phone number, and address or email should be provided. Requestors should provide an email address because it is an efficient means of communication and creates a written record of the communications between them and the agency. An agency should not require a requestor to provide a driver's license number, date of birth, or photo identification. This information is not necessary for the agency to contact the requestor and requiring it might intimidate some requestors.

Bot requests. An agency may deny a "bot" request that is one of multiple requests from a requestor to the agency within a ((~~twenty-four~~)) 24-hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential agency functions. RCW 42.56.080(3). A "bot" request means a records request that an agency reasonably believes was automatically generated by a computer program or script.

Oral requests. A number of agencies routinely accept oral public records requests (for example, asking to look at a building permit). Some agencies find oral requests to be the best way to provide certain kinds of records. However, for some requests such as larger or complex ones, oral requests may be allowed but are problematic.[4] An oral request does not memorialize the exact records sought and therefore prevents a requestor or agency from later proving what was included in the request. Furthermore, as described in this comment and in WAC 44-14-04002(1), a requestor must provide the agency with fair notice that the request is for the disclosure of public records; oral requests, especially to agency staff other than the public records officer or designee, may not provide the agency with the required notice or satisfy the agency's Public Records Act procedures. Therefore, requestors are strongly encouraged to make written requests, directed to the designated agency person or address.

If an agency receives an oral request, the agency staff person authorized to receive the request such as the public records officer, should immediately reduce it to writing and then verify in writing with the requestor that it correctly memorialized the request. If the staff person is not the proper recipient, ((~~he or she~~)) the staff person should inform the ((~~person~~)) requestor of how to contact the public records officer to receive information on submitting records requests. The public records officer serves "as a point of contact for members of the public in requesting disclosure of public records and oversees the agency's compliance with the public records disclosure requirements." RCW 42.56.580.

Prioritization of records requested. An agency may ask a requestor to prioritize the records ((~~he or she is requesting~~)) being sought so that the agency is able to provide the most important records first. An agency is not required to ask for prioritization, and a requestor is not required to provide it.

Purpose of request. An agency cannot require the requestor to disclose the purpose of the request, apart from exceptions permitted by law. RCW 42.56.080. For example, if the request is for a list of individuals, an agency may ask if the requestor ((~~if he or she~~)) intends to use the records for a commercial purpose and require the requestor to provide information about the purpose of the use of the list.[5] An agency should specify on its request form that the agency is not authorized to provide public records consisting of a list of individuals for a commercial use. RCW 42.56.070(8).

And, an agency may seek information sufficient to allow it to determine if another statute prohibits disclosure. For example, some statutes allow an agency to disclose a record only to identified persons. In such cases, an agency is authorized to ask if the requestor ((~~if he or she~~)) fits the statutory criteria for disclosure of the record.

Indemnification. An agency is not authorized to require a requestor to indemnify the agency.[6]

Notes:

[1]RCW 42.56.080 (1) and (2); *Hangartner v. City of Seattle*, 151 Wn.2d 439, 447, 90 P.3d 26 (2004) ("there is no official format for a valid ((~~PDA [PRA]~~)) PRA request."); *Wood v. Lowe*, 102 Wn. App. 872, 10 P.3d 494 (2000) (an agency's duty under the act is triggered when it receives a "specific request" for records and when the requestor states "the request with sufficient clarity to give the agency fair notice that it had received a request for public records").

[2]*O.Dea v. City of Tacoma*, 19 Wn. App.2d 67, 493 P.3d 1245 (2021) (The characteristics of the request and the nature of the records sought in a request received by city attorney's office placed the agency on fair notice of a PRA request). See also *Parmelee v. Clarke*, 148 Wn. App. 748, 201 P.3d 1022 (2008) (upholding agency's procedures requiring public records requests to be made to a designated person).

[3]See *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004 (2014) (Court of Appeals encouraged requestors to communicate with agencies about issues related to their PRA requests) and WAC 44-14-04003(3) ("Communication is usually the key to a smooth public records process for both requestors and agencies.").

[4]Oral requests make it "unnecessarily difficult" for the requestor to prove what was requested. *Beal v. City of Seattle*, 150 Wn. App. 865, 874-75, 209 P.3d 872 (2009); see also *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 151, 240 P.3d 1149 (2010) (holding that an oral request for "that email" did not provide the city with sufficient notice that metadata was also being requested).

[5]*SEIU Healthcare 775W v. State et al.*, 193 Wn. App. 377, 377 P.3d 214 (2016).

[6]Op. Att'y Gen. 12 (1988). See also RCW 42.56.060 which provides: "No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter."

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-040 Processing of public records requests—General. (1) **Providing "fullest assistance."** The (name of agency) is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner including, when appropriate, triaging requests into simple and complex tracks to ensure that processing times are proportionate to the difficulty of each request. Where a request has been made for a single, specific, available, identifiable record, that requires limited review for exempt content, the (name of the agency) will endeavor to produce the request within five business days if practicable to do so.

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

(3) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records before providing the initial response. When evaluating the nature of the request, the (name of the agency) should consider if the requestor has identified a reason that time is of the essence for the production of the records and if it is reasonable to produce the records in the time frame provided by the requestor. If due to the availability of records, the quantity of responsive records or the record's content, production of all the requested records is not practicable within the time frame provided by the requestor, the

public records officer will work with the requestor in an effort to identify and prioritize individual records.

(4) **Acknowledging receipt of request.** Following the initial evaluation of the request under (3) of this subsection, and within five business days[1] of receipt of the request, the public records officer will do one or more of the following:

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

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

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

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

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

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

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

(d) Deny the request and provide the requestor the information in subsection (7) of this section regarding any records that are withheld in their entirety or are redacted.

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

(6) **Third party notice and protecting rights of others.**

(a) In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to a person named in such ((~~others whose rights may be affected by the disclosure~~)) records or to whom the records specifically pertain. Before sending a notice, an agency should have a reasonable belief that the records are arguably exempt from disclosure. Such notice should be given so as to make it possible for ((~~those other persons to contact~~)) the requestor ((~~and ask him or her~~)) to revise the request, or, if necessary, allow the affected person to seek an order from a court to prevent or limit the disclosure. The notice to the affected person((~~s~~)) will include a copy of the request and inform them that the disclosure will occur on a date certain, generally within 10 business days of the notice, unless an injunction is obtained under RCW 42.56.540.

(b) The public records officer will provide third party notice required by law. RCW 42.56.250(2) requires notification of requests for information exclusively in an employee's personnel, payroll, supervisor, or training file. (*If a state agency*) RCW 42.56.660 requires

that state agencies provide agency employees notice of certain workplace employment investigation records requests.

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

(8) **Inspection of records.**

(a) Consistent with other demands, the (name of agency) shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents ((~~he or she~~)) the requestor wishes the agency to copy.

(b) The requestor must claim or review the assembled records within ((~~thirty~~)) 30 days of the (name of agency's) notification ((~~to him or her~~)) that the records are available for inspection or copying, unless another time frame is agreed upon by the agency and the requestor. The agency will notify the requestor in writing of this requirement and inform the requestor ((~~that he or she should~~)) to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the ((~~thirty-day~~)) specified time period or make other arrangements, the (name of agency) may close the request and refile the assembled records. ((~~Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.~~)) The requestor may make a subsequent request for the same or almost identical records, which may be processed by the agency as a new request. In evaluating the time to process the new request, the agency will consider how recently the prior request was closed and the number of assembled unproduced records from the prior request.

(9) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying. Where (name of agency) charges for copies, the requestor must pay for the copies.

(10) **Providing records in installments.** ((~~When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way.~~)) The (name of agency) shall, upon request for identifiable public records, make them promptly available including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection and disclosure. The (name of agency) will be diligent when processing requests by installment. If, within ((~~thirty~~)) 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(11) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the (name of agency) has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(12) **Closing ((~~withdrawn or abandoned~~)) a request.** A records request will be closed when a requestor has inspected all the requested records, or copies of all responsive records have been provided, or a web link has been provided, or there are no records responsive to the request. A records request will also be closed when the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to provide information legally required to obtain the records, or fails to fulfill ((~~his or her~~)) their obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies((~~, the public records officer will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the (name of agency) has closed the request~~)). The (name of the agency) will provide the requestor a written communication stating the reason the request is closed, the date on which the request is closed, the fact that the agency will not further address the request, the date from which the one-year statute of limitations to seek judicial review begins to run, and the requestor may ask follow-up questions within a reasonable time frame. In those circumstances where the (name of agency) is asking the requestor to take an action, it may provide this written communication either at the time it requests action from the requestor by explaining the consequences of failing to take action, or after the requestor has failed to take the requested action, or both.

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

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

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-04001 Introduction. Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records.[1] A requestor has a duty to give fair notice that ((~~he or she~~)) the requestor is making a records request, request identifiable records,[2] follow the agency's reasonable procedures, inspect the assembled records or pay for the copies, and be respectful to agency staff. Both the agency and the requestor have a responsibility to communicate with each other when issues arise concerning a request.[3]

Requestors should keep in mind that all agencies have essential functions in addition to providing public records. Agencies also have greatly differing resources. The act recognizes that agency public records procedures should prevent "excessive interference" with the other "essential functions" of the agency. RCW 42.56.100. Therefore, while providing public records is an essential function of an agency,

it is not required to abandon its other, nonpublic records functions. Agencies without a full-time public records officer may assign staff part-time to fulfill records requests, provided the agency is providing the "fullest assistance" and the "most timely possible" action on the request. The proper level of staffing for public records requests will vary among agencies, considering the complexity and number of requests to that agency, agency resources, and the agency's other functions.

The burden of proof is on an agency to prove its estimate of time to provide a full response is "reasonable." RCW 42.56.550(2). An agency should be prepared to explain how it arrived at its estimate of time and why the estimate is reasonable.

Agencies are encouraged to use technology to provide public records more quickly and, if possible, less expensively. An agency is allowed, of course, to do more for the requestor than is required by the letter of the act. Doing so often saves the agency time and money in the long run, improves relations with the public, and prevents litigation. For example, agencies are encouraged to post many nonexempt records of broad public interest on the internet. This may result in fewer requests for public records. See chapter 69, Laws of 2010 (agencies encouraged to post frequently sought documents on the internet); RCW 43.105.351 (legislative intent that agencies prioritize making records widely available electronically to the public).

Notes: [1]RCW 42.56.070(1) (agency "shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions" listed in the act or other statute).

[2]See RCW 42.56.080 ("identifiable record" requirement); RCW 42.56.120 (claim or review requirement); RCW 42.56.100 (agency may prevent excessive interference with other essential agency functions).

[3]See *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004 (2014) (Court of Appeals encouraged requestors to communicate with agencies about issues related to their PRA requests) and WAC 44-14-04003(3). ("Communication is usually the key to a smooth public records process for both requestors and agencies.")

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-04002 Obligations of requestors. (1) **Fair notice that request is for public records.** A requestor must give an agency fair notice that the request is being made pursuant to the act. Requestors are encouraged to cite or name the act but are not required to do so.[1] A request using the agency's request form or online request form or portal, or using the terms "public records," "public disclosure," "FOIA," or "Freedom of Information Act" (the terms commonly used for federal records requests), especially in the subject line of an email or letter, is recommended. The request should be directed to the agency-designated person to receive requests (such as the public records officer) or the agency-designated address or submitted through the agency-designated portal for public records requests, which should provide an agency with fair notice in most cases. A requestor should not submit a "stealth" request, which is buried in another document in an attempt to trick the agency into not responding.

(2) **Identifiable record.** A requestor must request an "identifiable record" or "class of records" before an agency must respond to it. RCW 42.56.080 and 42.56.550(1).

An "identifiable record" is one that is existing at the time of the request and which agency staff can reasonably locate. The act does not require agencies to be "mind readers" and to guess what records

are being requested.[2] The act does not allow a requestor to make "future" or "standing" (ongoing) requests for records not in existence; nonexistent records are not "identifiable."[3]

A request for all or substantially all records prepared, owned, used or retained by an agency is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records. RCW 42.56.080(1). A "keyword" must have some meaning that reduces a request from all or substantially all of an agency's records. For example, a request seeking any and all records from the department of ecology which contain the word "ecology" is not a request containing a keyword. The word "ecology" is likely on every agency letterhead, email signature block, notice, order, brochure, form, pleading and virtually every other agency document. A request for all of an agency's emails can encompass substantially all of an agency's records, and such a request contains no keywords. The act does not allow a requestor nor require an agency to search through agency files for records which cannot be reasonably identified or described to the agency.[4] It benefits both the requestor and the agency when the request includes terms that are for identifiable records actually sought by the requestor, and which produce meaningful search results by the agency.

However, a requestor is not required to identify the exact record ((~~he or she seeks~~)) being sought. For example, if a requestor requested an agency's "2001 budget," but the agency only had a 2000-2002 budget, the requestor made a request for an identifiable record.[5]

An "identifiable record" is not a request for "information" in general.[6] For example, asking "what policies" an agency has for handling discrimination complaints is merely a request for "information."[6] A request to inspect or copy an agency's policies and procedures for handling discrimination complaints would be a request for an "identifiable record."

Public records requests are not interrogatories (questions). An agency is not required to answer questions about records, or conduct legal research for a requestor.[7] A request for "any law that allows the county to impose taxes on me" is not a request for an identifiable record. Conversely, a request for "all records discussing the passage of this year's tax increase on real property" is a request for an "identifiable record."

When a request uses an inexact phrase such as all records "relating to" a topic (such as "all records relating to the property tax increase"), the agency may interpret the request to be for records which directly and fairly address the topic. When an agency receives a "relating to" or similar request, it should seek clarification of the request from the requestor or explain how the agency is interpreting the requestor's request.

(3) **"Overbroad" requests.** An agency cannot "deny a request for identifiable public records based solely on the basis that the request is overbroad." RCW 42.56.080. However, if such a request is not for identifiable records or otherwise is not proper, the request can still be denied. When confronted with a request that is unclear, an agency should seek clarification.

Notes: [1]*Wood v. Lowe*, 102 Wn. App. 872, 10 P.3d 494 (2000).

[2]*Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998), ("identifiable record" requirement is satisfied when there is a "reasonable description" of the record "enabling the government employee to locate the requested records.").

[3]*Limstrom v. Ladenburg*, 136 Wn.2d 595, 604, n.3, 963 P.2d 869 (1998), *appeal after remand*, 110 Wn. App. 133, 39 P.3d 351 (2002); *Sargent v. Seattle Police Dep't*, 16 Wn. App. 1, 260 P.3d 1006 (2011), *aff'd in part, rev'd in part on other grounds*, 179 Wn.2d 376, 314 P.3d 1093 (2013) ("We hold that there is no standing request under the PRA."); *Smith v. Okanogan County*, 100 Wn. App.7, 994 P.2d 857 (2000) (agency not required to create a record to respond to a PRA request).

[4]*Bonamy*, 92 Wn. App. at 409.

[5]*Violante v. King County Fire Dist. No. 20*, 114 Wn. App. 565, 571, n.4, 59 P.3d 109 (2002).

[6] *Bonamy,* 92 Wn. App. at 409.

[7]See *Limstrom*, 136 Wn.2d at 604, n.3 (act does not require "an agency to go outside its own records and resources to try to identify or locate the record requested."); *Bonamy*, 92 Wn. App. at 409 (act "does not require agencies to research or explain public records, but only to make those records accessible to the public").

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-04003 Responsibilities of agencies in processing requests. (1) **Similar treatment and purpose of the request.** The act provides: "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 determine if the request is seeking a list of individuals for a commercial use or would violate another statute prohibiting disclosure or restricting disclosure to only certain persons). RCW 42.56.080.[1] The act also requires an agency to take the "most timely possible action on requests" and make records "promptly available." RCW 42.56.100 and 42.56.080. However, treating requestors similarly does not mean that agencies must process requests strictly in the order received because this might not be providing the "most timely possible action" for all requests. A relatively simple request need not wait for a long period of time while a much larger or more complex request is being fulfilled. Agencies are encouraged to be flexible and process as many requests as possible even if they are out of order.

(2) **Purpose of request.** An agency cannot require a requestor to state the purpose of the request (with limited exceptions). RCW 42.56.080. However, in an effort to better understand the request and provide all responsive records, the agency can inquire about the purpose of the request. The requestor is not required to answer the agency's inquiry (with limited exceptions as previously noted).

(3) **Provide "fullest assistance" and "most timely possible action."** The act requires agencies to adopt and enforce reasonable rules to provide for the "fullest assistance" to a requestor. RCW 42.56.100. The "fullest assistance" principle should guide agencies when processing requests. In general, an agency should devote sufficient staff time to processing records requests, consistent with the act's requirement that fulfilling requests should not be an "excessive interference" with the agency's "other essential functions." RCW 42.56.100. The agency should recognize that fulfilling public records requests is one of the agency's duties, along with its others.

The act also requires agencies to adopt and enforce rules to provide for the "most timely possible action on requests." RCW 42.56.100. This principle should guide agencies when processing requests. It should be noted that this provision requires the most timely "possible" action on requests. This recognizes that an agency is not always capable of fulfilling a request as quickly as the requestor would like.

(4) **Communicate with requestor.** Communication is usually the key to a smooth public records process for both requestors and agencies.[2] Clear requests for a small number of records usually do not require predelivery communication with the requestor. However, when an agency receives a large or unclear request, the agency should communicate with the requestor to clarify the request. If a requestor asks for a summary of applicable charges before any copies are made, an agency must provide it. RCW 42.56.120 (2)(f). The requestor may then revise the request to reduce the number of requested copies. If the request is clarified or modified orally, the public records officer or designee should memorialize the communication in writing.

For large requests, the agency may ask the requestor to prioritize the request so that ((~~he or she receives~~)) the most important records are produced first. If feasible, the agency should provide periodic updates to the requestor of the progress of the request. Similarly, the requestor should periodically communicate with the agency and promptly answer any clarification questions. Sometimes a requestor finds the records ((~~he or she is seeking~~)) at the beginning of a ((~~request~~)) response. If so, the requestor should communicate with the agency that the requested records have been provided and ((~~that he or she is canceling~~)) the remainder of the request is canceled. If the requestor's cancellation communication is not in writing, the agency should confirm it in writing.

(5) **Failure to provide initial response within five business days.** Within five business days of receiving a request, an agency must provide an initial response to requestor. The initial response must do one of four things:

(a) Provide the record;

(b) Acknowledge that the agency has received the request and provide a reasonable estimate of the time it will require to further respond;

(c) Seek a clarification of the request and if unclear, provide to the greatest extent possible a reasonable estimate of time the agency will require to respond to the request if it is not clarified; or

(d) Deny the request. RCW 42.56.520. An agency's failure to provide an initial response is arguably a violation of the act.[3]

(6) **No duty to create records.** An agency is not obligated to create a new record to satisfy a records request.[4] However, sometimes it is easier for an agency to create a record responsive to the request rather than collecting and making available voluminous records that contain small pieces of the information sought by the requestor or find itself in a controversy about whether the request requires the creation of a new record. The decision to create a new record is left to the discretion of the agency. With respect to databases, for example, there is not always a simple dichotomy between producing an existing record and creating a new record.[5] In addition, an agency may decide to provide a customized service and if so, assess a customized service charge for the actual costs of staff technology expertise needed to prepare data compilations, or when such customized access services are not used by the agency for other business purposes. RCW 42.56.120.

If the agency is considering creating a new record instead of disclosing the underlying records, or creating new records from a database, it should obtain the consent of the requestor to ensure that

the requestor is not actually seeking the underlying records, and describe any customized service charges that may apply.

Making an electronic copy of an electronic record is not "creating" a new record; instead, it is similar to copying a paper copy. If an agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record. RCW 42.56.120(1). Similarly, eliminating a field of an electronic record can be a method of redaction; it is like redacting portions of a paper record using a black pen or white-out tape to make it available for inspection or copying. Scanning paper copies to make electronic copies is a method of copying paper records and does not create a new public record. RCW 42.56.120(1).

(7) **Provide a reasonable estimate of the time to respond.** Unless it is providing the records or claiming an exemption from disclosure within the five-business day period, an agency must provide a reasonable estimate of the time it will take to respond to the request. RCW 42.56.520. Responding can mean processing the request (locating and assembling records, redacting, preparing a withholding log, making an installment available, or notifying third parties named in the records who might seek an injunction against disclosure) or determining if the records are exempt from disclosure.

An estimate must be "reasonable." The act provides a requestor a quick and simple method of challenging the reasonableness of an agency's estimate. RCW 42.56.550(2). See WAC 44-14-08004 (5)(b). The burden of proof is on the agency to prove its estimate is "reasonable." RCW 42.56.550(2).

To provide a "reasonable" estimate, an agency should not use the same estimate for every request. An agency should roughly calculate the time it will take to respond to the request and send estimates of varying lengths, as appropriate. Some very large requests can legitimately take months or longer to fully provide. There is no standard amount of time for fulfilling a request so reasonable estimates should vary.

Some agencies send form letters with ((~~thirty~~)) 30-day estimates to all requestors, no matter the size or complexity of the request. Form letter ((~~thirty~~)) 30-day estimates for every requestor, regardless of the nature of the request, are rarely "reasonable" because an agency, which has the burden of proof, could find it difficult to prove that every single request it receives would take the same ((~~thirty~~)) 30-day period.

While not required,[6] in order to avoid unnecessary litigation over the reasonableness of an estimate, an agency could briefly explain to the requestor the basis for the estimate in the initial response. The explanation need not be elaborate but should allow the requestor to make a threshold determination of whether ((~~he or she should~~)) to question that estimate further or ((~~has a basis to~~)) seek judicial review of the reasonableness of the estimate.

An agency should either fulfill the request within the estimated time or, if warranted, communicate with the requestor about clarifications or the need for a revised estimate.[7] An agency should not ignore a request and then continuously send extended estimates. Routine extensions with little or no action to fulfill the request would show that the previous estimates probably were not "reasonable." Extended estimates are appropriate when the circumstances have changed (such as an increase in other requests or discovering that the request will require extensive redaction). An estimate can be revised when appropri-

ate, but unwarranted serial extensions have the effect of denying a requestor access to public records.

(8) **Seek clarification of a request or additional time.** An agency may seek a clarification of an "unclear" or partially unclear request. RCW 42.56.520. An agency can only seek a clarification when the request is objectively "unclear." Seeking a "clarification" of an objectively clear request delays access to public records.

If the requestor fails to clarify an entirely unclear request, the agency need not respond to it further. RCW 42.56.520. However, an agency must respond to those parts of a request that are clear. If the requestor does not respond to the agency's request for a clarification within ((~~thirty~~)) 30 days of the agency's request or other specified time, the agency may consider the request abandoned. If the agency considers the request abandoned, it should send a closing letter to the requestor if it has not already explained when it will close a request due to lack of response by the requestor.

An agency may take additional time to provide the records or deny the request if it is awaiting a clarification. RCW 42.56.520. After providing the initial response and perhaps even beginning to assemble the records, an agency might discover it needs to clarify a request and is allowed to do so. A clarification could also affect a reasonable estimate.

(9) **Preserving requested records.** If a requested record is scheduled shortly for destruction, and the agency receives a public records request for it, the record cannot be destroyed until the request is resolved. RCW 42.56.100.[8] Once a request has been closed, the agency can destroy the requested records in accordance with its retention schedule.

(10) **Searching for records.** An agency must conduct an objectively reasonable search for responsive records. The adequacy of a search is judged by the standard of reasonableness.[9] A requestor is not required to "ferret out" records on ((~~his or her~~)) their own. A reasonable agency search usually begins with the public records officer for the agency or a records coordinator for a department of the agency deciding where the records are likely to be and who is likely to know where they are. One of the most important parts of an adequate search is to decide how wide the search will be. If the agency is small, it might be appropriate to initially ask all agency employees and officials if they have responsive records. If the agency is larger, the agency may choose to initially ask only the staff of the department or departments of an agency most likely to have the records. For example, a request for records showing or discussing payments on a public works project might initially be directed to all staff in the finance and public works departments if those departments are deemed most likely to have the responsive documents, even though other departments may have copies or alternative versions of the same documents. Meanwhile, other departments that may have documents should be instructed to preserve their records in case they are later deemed to be necessary to respond to the request. The agency could notify the requestor which departments are being surveyed for the documents so the requestor may suggest other departments.

If agency employees or officials are using home computers, personal devices, or personal accounts to conduct agency business, those devices and accounts also need to be searched by the employees or officials who are using them when those devices and accounts may have responsive records.[10] If an agency's contractors performing agency

work have responsive public records of an agency as a consequence of the agency's contract, they should also be notified of the records request. It is better to be over inclusive rather than under inclusive when deciding which staff or others should be contacted, but not everyone in an agency needs to be asked if there is no reason to believe ((~~he or she has~~)) they have responsive records. An email to staff or agency officials selected as most likely to have responsive records is usually sufficient. Such an email also allows an agency to document whom it asked for records. Documentation of searches is recommended. The courts can consider the reasonableness of an agency's search when considering assessing penalties for an agency's failure to produce records.[11]

Agency policies should require staff and officials to promptly respond to inquiries about responsive records from the public records officer.

After records which are deemed potentially responsive are located, an agency should take reasonable steps to narrow down the number of records to those which are responsive. In some cases, an agency might find it helpful to consult with the requestor on the scope of the documents to be assembled. An agency cannot "bury" a requestor with nonresponsive documents. However, an agency is allowed to provide arguably, but not clearly, responsive records to allow the requestor to select the ones ((~~he or she wants~~)) wanted, particularly if the requestor is unable or unwilling to help narrow the scope of the documents. If an agency does not find responsive documents, it should explain, in at least general terms, the places searched.[12]

(11) **Expiration of reasonable estimate.** An agency should provide a record within the time provided in its reasonable estimate or communicate with the requestor that additional time is required to fulfill the request based on specified criteria. A failure of an agency to meet its own internal deadline is not a violation of the act, assuming the agency is working diligently to respond to the request.[13] Nevertheless, an agency should promptly communicate with a requestor when it determines its original estimate of time needs to be adjusted.

(12) **Notice to affected third parties.** Sometimes an agency decides it must release all or a part of a public record affecting a third party. The third party can file an action to obtain an injunction to prevent an agency from disclosing it, but the third party must prove the record or portion of it is exempt from disclosure. RCW 42.56.540. Before sending a notice, an agency should have a reasonable belief that the record is arguably exempt. Notices to affected third parties when the records could not reasonably be considered exempt might have the effect of unreasonably delaying the requestor's access to a disclosable record.

The act provides that before releasing a record an agency may, at its "option," provide notice to a person named in a public record or to whom the record specifically pertains (unless notice is required by law). RCW 42.56.540.[14] This would include all of those whose identity could reasonably be ascertained in the record and who might have a reason to seek to prevent the release of the record. An agency has wide discretion to decide whom to notify or not notify. First, an agency has the "option" to notify or not (unless notice is required by law). RCW 42.56.540. Second, if it acted in good faith, an agency cannot be held liable for its failure to notify enough people under the act. RCW 42.56.060. However, if an agency had a contractual obligation to provide notice of a request but failed to do so, the agency might

lose the immunity provided by RCW 42.56.060 because breaching the agreement probably is not a "good faith" attempt to comply with the act.

The practice of many agencies is to give ((~~ten~~)) 10 days' notice. Many agencies expressly indicate the deadline date on which it must receive a court order enjoining disclosure, to avoid any confusion or potential liability. More notice might be appropriate in some cases, such as when numerous notices are required, but every additional day of notice is another day the potentially disclosable record is being withheld. When it provides a notice, the agency should include in its calculation the notice period in the "reasonable estimate" of time it provides to a requestor.

The notice informs the third party that release will occur on the stated date unless ((~~he or she~~)) the third party obtains an order from a court enjoining release. The requestor has an interest in any legal action to prevent the disclosure of the records ((~~he or she~~)) requested. Therefore, the agency's notice should inform the third party that ((~~he or she should name~~)) the requestor should be named as a party to any action to enjoin disclosure. If an injunctive action is filed, the third party or agency should name the requestor as a party or, at a minimum, must inform the requestor of the action to allow the requestor to intervene.

(13) **Later discovered records.** If the agency becomes aware of the existence of records responsive to a request which were not provided, the agency should notify the requestor in writing, provide a brief explanation of the circumstances, and provide the nonexempt records with a written explanation of any redacted or withheld records.

(14) **Maintaining a log.** Effective July 23, 2017, the agency must maintain a log of public records requests to include the identity of the requestor if provided by the requestor, the date the request was received, the text of the original request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request. RCW 40.14.026(4).

Notes:

[1]See also Op. Att'y Gen. 2 (1998).

[2]See *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004, n.12 (2014) (Court of Appeals encouraged requestors to communicate with agencies about issues related to their records requests).

[3]See *Smith v. Okanogan County*, 100 Wn. App. 7, 13, 994 P.2d 857 (2000) ("When an agency fails to respond as provided in RCW 42.17.320 (42.56.520), it violates the act and the individual requesting the public record is entitled to a statutory penalty."); *West v. State Dep't of Natural Res.*, 163 Wn. App. 235, 243, 258 P.3d 78 (2011) (failure to respond within five business days); *Rufin v. City of Seattle*, 199 Wn. App. 348, 398 P.3d 1237 (2017) (failure to respond within five business days entitles plaintiff to seek attorneys' fees but not penalties).

[4]*Smith*, 100 Wn. App. at 14.

[5]*Fisher Broadcasting v. City of Seattle*, 180 Wn.2d 515, 326 P.3d 688 (2014).

[6]*Ockerman v. King County Dep't of Dev. & Envtl. Servs.*, 102 Wn. App. 212, 214, 6 P.3d 1215 (2000) (agency is not required to provide a written explanation of its reasonable estimate of time when it does not provide records within five days of the request).

[7]*Andrews v. Wash. State Patrol*, 183 Wn. App. 644, 334 P.3d 94 (2014) (the act recognizes that agencies may need more time than initially anticipated to locate records).

[8]An exception is some state-agency employee personnel records. RCW 42.56.110.

[9]*Neighborhood Alliance v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011); *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 288 P.3d 384 (2012).

[10]*O'Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010); *Nissen v. Pierce County*, 182 Wn.2d 363, 357 P.3d 45 (2015); *West v. Vermillion*, 196 Wn. App. 627, 384 P.3d 634 (2016).

[11]*Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010); *Neighborhood Alliance*, 172 Wn.2d at 728.

[12]*Neighborhood Alliance,* 172 Wn.2d at 722.

[13]*Andrews v. Wash. State Patrol*, 183 Wn. App. 644 at 653; *Hikel v. Lynnwood*, 197 Wn. App. 366, 389 P.3d 677 (2016).

[14]The agency holding the record can also file a RCW 42.56.540 injunctive action to establish that it is not required to release the record or portion of it. An agency can also file an action under the Uniform Declaratory Judgments Act at chapter 7.24 RCW. *Benton County v. Zink*, 191 Wn. App. 194, 361 P.2d 283 (2015).

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-04004 Responsibilities of agency in providing records. (1) **General.** An agency may simply provide the records or make them available within the five-business day period of the initial response. When it does so, an agency should also provide the requestor a written cover letter or email briefly describing the records provided and informing the requestor that the request has been closed. This assists the agency in later proving that it provided the specified records on a certain date and told the requestor that the request had been closed. However, a cover letter or email might not be practical in some circumstances, such as when the agency provides a small number of records or fulfills routine requests.

An agency can, of course, provide the records sooner than five business days. Providing the "fullest assistance" to a requestor would mean providing a readily available record as soon as possible. For example, an agency might routinely prepare a premeeting packet of documents three days in advance of a city council meeting. The packet is readily available so the agency should provide it to a requestor on the same day of the request so ((~~he or she~~)) the requestor can have it for the council meeting.

(2) **Means of providing access.** An agency must make nonexempt public records "available" for inspection or provide a copy. RCW 42.56.080. An agency is only required to make records "available" and has no duty to explain the meaning of public records.[1] Making records available is often called "access."

Access to a public record can be provided by allowing inspection of the record, providing a copy, or posting the record on the agency's website and assisting the requestor in finding it (if necessary). An agency must mail a copy of records if requested and if the requestor pays the actual cost of postage and the mailing container.[2] The requestor can specify ((~~which~~)) the preferred method of access (or combination, such as inspection and then copying) ((~~he or she prefers~~)). Different processes apply to requests for inspection versus copying (such as copy charges) so an agency should clarify with a requestor ((~~whether he or she seeks to inspect or copy a public record~~)) which process the requestor is choosing.

An agency can provide access to a public record by posting it on its public internet website. Once an agency provides a requestor an internet address and link on the agency's website to the specific records requested, the agency has provided the records, and at no cost to the requestor. RCW 42.56.520. If requested, an agency should provide reasonable assistance to a requestor in finding a public record posted on its website. If the requestor does not have internet access, the agency may provide access to the record by allowing the requestor to view the record on a specific computer terminal at the agency open to the public. An agency shall not impose copying charges for access to or downloading records that the agency routinely posts on its website prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means. RCW 42.56.120 (2)(e).

(3) **Providing records in installments.** The act provides that an agency must provide records "if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure." RCW

42.56.080. An installment can include links to records on the agency's internet website. The purpose of this installments provision is to allow requestors to obtain records in installments as they are assembled and to allow agencies to provide records in logical batches. The provision is also designed to allow an agency to only assemble the first installment and then see if the requestor claims or reviews it before assembling the next installments. An agency can assess charges per installment for copies made for the requestor, unless it is using the up to two-dollar flat fee charge. RCW 42.56.120(4).

Not all requests should be provided in installments. For example, a request for a small number of documents which are located at nearly the same time should be provided all at once. Installments are useful for large requests when, for example, an agency can provide the first box of records as an installment. An agency has wide discretion to determine when providing records in installments is "applicable." However, an agency cannot use installments to delay access by, for example, calling a small number of documents an "installment" and sending out separate notifications for each one. The agency must provide the "fullest assistance" and the "most timely possible action on requests" when processing requests. RCW 42.56.100.

(4) **Failure to provide records.** A "denial" of a request can occur when an agency:

Fails to respond to a request;

Claims an exemption of the entire record or a portion of it;

Without justification, fails to provide the record after the reasonable estimate of time to respond expires; or

Determines the request is an improper "bot" request. An agency is only required to provide access to public records it has or has used.[3] An agency is not required to create a public record in response to a request.

An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

Sometimes more than one agency holds the same record. When more than one agency holds a record, and a requestor makes a request to the first agency (agency A), agency A cannot respond to the request by telling the requestor to obtain the record from the second agency (agency B). Instead, an agency must provide access to a record it holds regardless of its availability from another agency.[4]

However, an agency is not required to go outside its own public records to respond to a request.[5] If agency A never prepared, owned, used or retained a record, but the record is available at agency B, the requestor must make the request to agency B, not agency A.

An agency is not required to provide access to records that were not requested. An agency does not "deny" a request when it does not provide records that are outside the scope of the request because they were never asked for.

(5) **Claiming exemptions.**

(a) **Redactions.** If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder. RCW 42.56.210(1). There are a few exceptions.[6] Withholding an entire

record where only a portion of it is exempt violates the act.[7] Some records are almost entirely exempt but small portions remain non-exempt. For example, information revealing the identity of a crime victim is exempt from disclosure if certain conditions are met. RCW 42.56.240(2). If a requestor requested a police report in a case in which charges have been filed, and the conditions of RCW 42.56.240(2) are met, the agency must redact the victim's identifying information but provide the rest of the report.

Statistical information "not descriptive of any readily identifiable person or persons" is generally not subject to redaction or withholding. RCW 42.56.210(1). For example, if a statute exempted the identity of a person who had been assessed a particular kind of penalty, and an agency record showed the amount of penalties assessed against various persons, the agency must provide the record with the names of the persons redacted but with the penalty amounts remaining.

Originals should not be redacted. For paper records, an agency should redact materials by first copying the record and then either using a black marker on the copy or covering the exempt portions with copying tape, and then making a copy. Another approach is to scan the paper record and redact it electronically. It is often a good practice to keep the initial copies which were redacted in case there is a need to make additional copies for disclosure or to show what was redacted; in addition, an agency is required under its records retention schedules to keep responses to a public records request for a defined period of time. For electronic records such as databases, an agency can sometimes redact a field of exempt information by excluding it from the set of fields to be copied. For other electronic records, an agency may use software that permits it to electronically redact on the copy of the record. However, in some instances electronic redaction might not be feasible and a paper copy of the record with traditional redaction might be the only way to provide the redacted record. If a record is redacted electronically, by deleting a field of data or in any other way, the agency must identify the redaction and state the basis for the claimed exemption as required by RCW 42.56.210(3).

(b) **Brief explanation of withholding.** When an agency claims an exemption for an entire record or portion of one, it must inform the requestor of the statutory exemption and provide a brief explanation of how the exemption applies to the record or portion withheld. RCW 42.56.210(3). The brief explanation should cite the statute the agency claims grants an exemption from disclosure. The brief explanation should provide enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is for the agency to provide a withholding log, along with the statutory citation permitting withholding, and a description of how the exemption applies to the information withheld. The log identifies the type of record, its date and number of pages, and the author or recipient of the record (unless their identity is exempt).[8] The withholding log need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.

Another way to properly provide a brief explanation is to use another format, such as a letter providing the required exemption citations, description of records, and brief explanations. Another way to

properly provide a brief explanation is to have a code for each statutory exemption, place that code on the redacted information, and attach a list of codes and the brief explanations with the agency's response.

(6) **Notifying requestor that records are available.** If the requestor sought to inspect the records, the agency should notify ((~~him or her~~)) the requestor that the entire request or an installment is available for inspection and ask the requestor to contact the agency to arrange for a mutually agreeable time for inspection.[9] The notification should recite that if the requestor fails to inspect or copy the records or make other arrangements within ((~~thirty~~)) 30 days of the date of the notification that the agency will close the request and refile the records. An agency might consider on a case-by-case basis sending the notification by certified mail to document that the requestor received it.

If the requestor sought copies, the agency should notify ((~~him or her~~)) the requestor of the projected costs and whether a copying deposit is required before the copies will be made. Such notice by the agency with a summary of applicable estimated charges is required when the requestor asks for an estimate. RCW 42.56.120 (2)(f). The notification can be oral to provide the most timely possible response, although it is recommended that the agency document that conversation in its file or in a follow-up email or letter.

(7) **Documenting compliance.** An agency should have a process to identify which records were provided to a requestor and the date of production. An agency may wish to apply a "read receipt" rule to emails to requestors or ask the requestor to confirm if ((~~he/she received~~)) the email from the agency has been received. In some cases, an agency may wish to number-stamp or number-label paper records provided to a requestor to document which records were provided. The agency could also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided; and, an agency is required to keep copies of its response to a request for the time period set out in its records retention schedule. However, the agency should balance the benefits of stamping or labeling the documents and making extra copies against the costs and burdens of doing so. For example, it may not be necessary to affix a number on the pages of records provided in response to a small request.

If memorializing which specific documents were offered for inspection is impractical, an agency might consider documenting which records were provided for inspection by making a list of the files or records made available for inspection.

Notes:

[1] *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998).

[2] *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997); RCW 42.56.120.

[3] *Sperr v. City of Spokane*, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).

[4] *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 132, 580 P.2d 246 (1978).

[5] *Limstrom v. Ladenburg* (*Limstrom II*), 136 Wn.2d 595, 963 P.2d 896 (1998) n.3 ("On its face the Act does not require, and we do not interpret it to require, an agency to go outside its own records and resources to try to identify or locate the record requested."); *Koenig v. Pierce County*, 151 Wn. App. 221, 232-33, 211 P.3d 423 (2009) (agency has no duty to coordinate responses with other agencies, citing to and quoting *Limstrom II*).

[6] The two main exceptions to the redaction requirement are state "tax information" (RCW 82.32.330 (1)(c)) and law enforcement case files in active cases *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376, 314 P.3d 1093 (2013). Neither of these two kinds of records must be redacted but rather may be withheld in their entirety.

[7] *Seattle Firefighters Union Local No. 27 v. Hollister*, 48 Wn. App. 129, 132, 737 P.2d 1302 (1987).

[8] *Progressive Animal Welfare Soc'y. v. Univ. of Wash.*, 125 Wn.2d 243, 271, n.18, 884 P.2d 592 (1994) ("*PAWS II*").

[9] For smaller requests, the agency might simply provide them with the initial response or earlier so no notification is necessary.

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-04006 Closing request and documenting compliance. (1) **Fulfilling request and closing letter.** A records request has been fulfilled and can be closed when there are no records responsive to the request, a requestor has inspected all the requested records, all copies have been provided, a web link has been provided (with assistance from the agency in finding it, if necessary), an entirely unclear request has not been clarified, a request or installment has not been claimed or reviewed, or the requestor cancels the request. An agency should provide a closing letter stating the scope of the request and memorializing the outcome of the request. A closing letter ((~~may not be necessary for smaller requests, or where the last communication with the requestor established that the request would be closed on a date certain~~)) should include the reason the request is closed, the date on which the request is closed, the fact that the agency will not further address the request, the date from which the one-year statute of limitations to seek judicial review begins to run, and the requestor may ask follow-up questions within a reasonable time frame. In those circumstances where the agency is asking the requestor to take an action, the agency may provide this written communication either at the time it requests action from the requestor by explaining the consequences of failing to take action, or after the requestor has failed to take the requested action, or both.[1] The outcome described in the closing letter might be that the requestor inspected records, copies were provided (with the number range of the stamped or labeled records, if applicable), the agency sent the requestor the web link, the requestor failed to clarify the request, the requestor failed to claim or review the records within ((~~thirty~~)) 30 days, or the requestor canceled the request. The closing letter should also ask the requestor to promptly contact the agency if ((~~he or she~~)) the requestor believes additional responsive records have not been provided.

(2) **Returning assembled records.** An agency is not required to keep assembled records set aside indefinitely. This would "unreasonably disrupt" the operations of the agency. RCW 42.56.080. After a request has been closed, an agency should return the assembled records to their original locations. Once returned, the records are no longer subject to the prohibition on destroying records scheduled for destruction under the agency's retention schedule. RCW 42.56.100.

(3) **Retain copy of records provided.** In some cases, particularly for commonly requested records, it may be wise for the agency to keep a separate copy of the records it copied and provided in response to a request. A growing number of requests are for a copy of the records provided to another requestor, which can easily be fulfilled if the agency retains a copy of the records provided to the first requestor. The copy of the records provided should be retained for the period of time consistent with the agency's retention schedules for records related to disclosure of documents.

Notes: [1] *Cousins v. Dept. of Corrections, 3 Wn.3d 19, 546 P.3d 415 (2024).*

AMENDATORY SECTION (Amending WSR 18-06-051, filed 3/2/18, effective 4/2/18)

WAC 44-14-07001 General rules for charging for copies. (1) **No fees for costs of locating records or preparing records for inspection or copying.** An agency cannot charge a fee for locating public records or for preparing the records for inspection or copying. RCW 42.56.120.[1] An agency cannot charge fees for a person to inspect or access records on the agency's public internet website. An agency cannot charge a fee for access to or downloading records the agency routinely posts on its public internet website prior to the receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means. RCW 42.56.120 (2)(e).

An agency cannot charge a "redaction fee" for the staff time necessary to prepare the records for inspection, for the copying required to redact records before they are inspected, or an archive fee for getting the records from off-site. Op. Att'y Gen. 6 (1991). These are the costs of making the records available for inspection or copying and cannot be charged to the requestor.

(2) **Actual costs.** If assessing actual costs, an agency must establish a statement of the "actual cost" of the copies it provides, which must include a "statement of the factors and the manner used to determine the actual per page cost." RCW 42.56.070(7) and 42.56.120 (2)(a).[2] The actual costs include the actual cost of the paper and the per page cost for use of agency copying (including scanning) equipment; the actual cost of the electronic production or file transfer of the record; the use of any cloud-based data storage and processing service; costs directly incident to the cost of postage or delivery charges and the cost of any container or envelope used; and, the costs directly incident to transmitting such records in an electronic format, including the cost of any transmission charge and the use of any physical media device provided by the agency. An agency may include staff salaries, benefits or other general administrative or overhead charges only if those costs are directly related to the actual cost of copying or transmitting the public records. Staff time to copy and send (transmit) the records may be included in an agency's actual costs. An agency's calculations and reasoning need not be elaborate but should be detailed enough to allow a requestor or court to determine if the agency has properly calculated its copying charges. An agency should generally compare its copying charges to those of commercial copying centers.

An agency's statement of such actual costs may be adopted by an agency only after providing notice and public hearing. RCW 42.56.070(7).

(3) **Statutory default costs.** If an agency opts for the default copying charges pursuant to RCW 42.56.120, it need not calculate its actual costs. RCW 42.56.120 (2)(b). However, it must declare the reasons for why calculating the actual costs would be unduly burdensome, and then it is limited to the statutory costs for those records. *Id.*

The statutory default costs include different charges per record or groups of records, or an alternative flat fee of up to two dollars for any request when the agency reasonably estimates and documents that the allowable statutory costs are clearly equal to or more than two dollars. RCW 42.56.120 (2)(d). If using the statutory flat fee, the agency can charge the flat fee only for the first installment for

records produced in multiple installments, and no fees can be assessed for subsequent installments.

Statutory default charges can be combined to the extent that more than one type of charge applies to a particular request, unless the agency is assessing the statutory flat fee for a request. RCW 42.56.120 (3)(c). The statutory default costs include actual costs of digital storage media, mailing containers, and postage. RCW 42.56.120 (3)(d).

(4) **Fee schedule.** The agency should make its fee schedule publicly available on its website and through other means.

(5) **Estimate of costs for requestor.** If a requestor asks, an agency must provide a summary of the applicable charges before copies are made and the requestor may revise the request to reduce the number of copies to be made, thus the applicable charges. RCW 42.56.120 (2)(f). An agency must also provide a requestor, in advance, information concerning customized service charges if the request involves customized service. RCW 42.56.120(3).

(6) **Copying charges apply to copies selected by requestor.** Often a requestor will seek to inspect a large number of records but only select a smaller group of them for copying. Copy charges can only be charged for the records selected by the requestor. RCW 42.56.120 (charges allowed for "providing" copies to requestor).

The requestor should specify ((~~whether he or she seeks~~)) a preference for inspection or copying. The agency should inform the requestor that inspection is free. This can be noted on the agency's request form. If the requestor seeks copies, then the agency should inform the requestor of the copying charges for the request. An agency should not assemble a large number of records, fail to inform the requestor that inspection is free, and then attempt to charge for copying all the records.

Sometimes a requestor will choose to pay for the copying of a large batch of records without inspecting them. This is allowed. Informing the requestor on a request form that inspection is free is sufficient.

(7) **Use of outside vendor.** Typically an agency makes the requested copies. However, an agency is not required to copy records at its own facilities. An agency can send the project to a commercial copying center and bill the requestor for the amount charged by the vendor.[3] An agency is encouraged to do so when an outside vendor can make copies more quickly and less expensively than an agency. An agency can ((~~arrange with~~)) make arrangements for the requestor ((~~for him or her~~)) to pay the vendor directly. This is an example of where any agency might enter into an alternative fee arrangement under RCW 42.56.120(4). An agency cannot charge the default charges when its "actual cost" at a copying vendor is less. The default rates are only for agency-produced copies. RCW 42.56.120.

(8) **Sales tax.** An agency cannot charge sales tax on copies it makes at its own facilities. RCW 82.12.02525 and 82.08.02525.

(9) **Costs of mailing or sending records.** If a requestor asks an agency to mail copies, the agency may charge for the actual cost of postage and the shipping container (such as an envelope or CD mailing sleeve). RCW 42.56.070 (7)(a).

(10) **Sample fee statutory default schedule.** A sample statutory default fee schedule is provided in this comment. Some agencies may have other statutes that govern fees for particular types of records and which they may want to also include in the schedule. See RCW

42.56.130. Or, an agency may use the statutory default schedule for the majority of its records and go through the process to determine actual costs for some specialized records (for example, for large blueprints or oversized colored maps that are printed onto paper). While not included in the sample schedule below, an agency might also decide to use the up to two dollar statutory flat fee for some types of requests, per RCW 42.56.120 (2)(d).

(Name of Agency) Fee Schedule	
Inspection:	
No fee	Inspection of agency records on agency public internet website or scheduled at agency office.
No fee	Accessing or downloading records the agency routinely posts on its public internet website, unless the requestor asks the agency for records to be provided through other means (the following copy charges below then apply).
Copies:	
15 cents/page	Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.
10 cents/page	Scanned records, or use of agency equipment for scanning.
5 cents/each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
10 cents/gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices (*list*): • CD • DVD • Thumb drive • Other
Actual cost	Postage or delivery charges - Specific amount based upon postage/delivery charges for specific mailings or deliveries.
(Varies)	Records for which other costs are authorized pursuant to specific fee statutes. (*Describe*)
↑ *Copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request.*	
Customized Service:	
Actual cost	Data compilations prepared or accessed as a customized service (cost is in addition to above fees for copies).

Notes: [1]See also Op. Att'y Gen. 6 (1991).

[2]The costs of staff time is allowed only for making and sending copies. An agency cannot charge for staff time for locating records or other noncopying functions. See RCW 42.56.120. ("No fee shall be charged for locating public documents and making them available for copying.")

[3]*Benton County v. Zink*, 191 Wn. App. 269, 361 P.3d 801 (2015).