Overstreet, Greg (ATG)
From: Schenck, Jessica (ATG)
Sent: Tuesday, January 10, 2006 9:53 AM
To: Overstreet, Greg (ATG)
Cc: Rohr, Shelley (ATG)
Subject: FW: Comments to Public Records Act -- Model Rules

-----Original Message-----
From: Lee, Patti
Sent: Tuesday, January 10, 2006 9:35 AM
To: ATG WWW Public Records Requests
Subject: Comments to Public Records Act -- Model Rules

Enclosed are *my* comments to the proposed Public Records Act -- Model Rules. Please contact me if you have any questions about the comments.

Thanks,

Patti Lee

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Comments on PDR model Rules.do...

Chapter 44-14 WAC
PUBLIC RECORDS ACT--MODEL RULES

NEW SECTION

WAC 44-14-010 Authority and purpose. (1) RCW 42.17.260(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public records" 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." These include electronic records. RCW 42.17.260(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.

(2) The purpose of these rules is to implement the act. These rules provide information to persons wishing to request access to public records of the (agency) and establish expectations both of requestors and of (agency) staff who are to assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full 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 (agency) will be guided by the provisions of the act describing its purposes and interpretation.

NEW SECTION

WAC 44-14-020 Agency description--Contact information--Public records officer. (1) The agency (describe services provided by agency). The agency's central office is located at (describe). The 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 (agency):

Public Records Officer
(Agency)
(Address)
(Telephone number)
(fax number)
(e-mail)

Information is also available at the (agency's) web site at www.(******).

(2) The public records officer will oversee compliance with the act but another agency staff member ~~can~~ may process the request. The public records officer and ~~the~~ (agency) will provide the "fullest assistance" to requestors ~~in~~ making requests for identifiable records under the act~~, to create and maintain for use by the public and (agency) officials an index to public records of the (agency, if applicable), to ensure that public records are protected from damage or disorganization, and to prevent fulfilling public records requests from causing excessive interference with essential functions of the (agency)~~. [Comment: the remainder of this paragraph simply repeats or paraphrases statutory language without adding anything.]

NEW SECTION

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 (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 (agency).

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

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

(3) ~~**Organization**~~ **Protection of records.** ~~The agency shall maintain its records in a reasonably organized manner. The agency shall take reasonable actions to protect records from damage and disorganization.~~ [Comment: The first sentence goes beyond anything required under the act and imposes an obligation that does not exist by statute. Yet, without defining what is considered "reasonably organized," agencies have no way to know if they are complying. The second sentence just repeats or paraphrases the statutory language.] A requestor shall not take agency records from agency offices without the permission of the public records officer. A variety of records is available on the (agency) web site at (web site address). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**
(a) Any person wishing to inspect or copy public records of the (agency) should make the request in writing~~ on the agency's request form, or~~ by ~~letter~~mail, fax, or electronic mail, addressed to the public records officer and including the following information:

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

(b) If the requestor wishes to have copies of the records sent instead of simply being made available for inspection and copying, he or she should so indicate and indicate a willingness to pay for the records. Pursuant to section (insert section), standard photocopies will be provided at (amount) cents per page.
(c) A form is available for use by requestors at the office of the public records officer and on-line at (web site address). Use of the form is not mandatory.
(d) The public records officer may accept requests for public records that contain the above information by telephone or in person. However, requestors are strongly encouraged to submit their requests in writing to avoid confusion or misunderstanding about the public records being requested, the date the agency receives the request, or other information relating to the request. If the public records officer accepts ~~such~~ a request by telephone or in person, he or she will confirm receipt of the information and the substance of the request in writing. ~~It~~

NEW SECTION

WAC 44-14-040 Processing ~~of~~ public records requests--general.
(1) **Providing "fullest assistance."** The agency is charged by statute with providing the "fullest assistance" to requestors. The public records officer ~~shall~~ will process requests in the order allowing the most requests to be processed in the most efficient manner.
(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer shall do one or more of the following:
(a) Make the records available for inspection or copying (or, if so requested and payment for the records is made or terms of payment are agreed upon, send copies of the requested records to the requestor);

(b) Provide a reasonable estimate of when records will be available; or

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available.

(3) **Consequences of failure to respond.** If the public records officer does not respond in writing within five ~~working~~ business days of receipt of the request for disclosure, the request may be deemed denied and the requestor may obtain internal agency review or seek judicial review of the denial. See WAC 44-14-080 (2) and (4).

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

(5) **Records exempt from disclosure.** Some records are exempt from disclosure. If the agency believes ~~that~~ a record or portion of a record ~~-~~is exempt from disclosure and should be withheld, the public records officer will state in the response to the request the specific exemption ~~and provide a brief explanation of why the record is being withheld~~relied on to withhold the record or to redact the exempt portion of the record~~. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer shall redact the exempt portions, provide the remaining portions, and indicate to the requestor why portions of the record are being redacted~~.

(6) **Inspection of records.**

(a) The (agency) shall provide space to inspect public records and ~~provide~~ staff assistance to make ~~any~~ requested copies. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate ~~which~~ the documents, if any, ~~he or she wishes to have~~ to be copied.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to ~~him or her~~the requestor that the records are available for inspection or copying. If the requestor or a representative of the requestor fails to make arrangements to claim or review the records within the thirty-day period, the (agency) may close the request and

refile the assembled records. ~~A subsequent request for the same or almost identical records can be processed last.~~[Comment: the last sentence gives the impression that requests are processed in the order received, which may not be the case.]

(7) **Providing copies of inspected records.** ~~After inspection is complete~~If the requestor asks for copies after inspecting the records, the public records officer ~~shall~~ will ~~make~~ have copies made ~~the requested copies~~ and sent to the requestor. [Comment: as originally written implies that the public records officer must be the one making the copies and that the copies will always be made and delivered to the requestor at the time of inspection. In many cases, this will not be feasible.]

(8) **Large requests.** When the request is for a large number of records, the public records officer may provide access for inspection and copying, or may copy and provide the records, in installments, if the officer reasonably determines that it would be practical to provide the records in that way. ~~If, within a reasonable time, the requestor fails to inspect the entire set of records or one or more of the~~Subsection 6(b) above shall apply to each installments~~, the public records officer may stop searching for the remaining records and close the request~~.

(9) **Completion of inspection.** ~~When the inspection of the requested records is complete and all requested copies are provided, or when the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the~~The public records officer shall close the request~~ and indicate to the requestor that the (agency) has completed a diligent search for the requested records.~~ when the requestor:

(a) completes inspection of the records and the public records officer provides the requested copies;
(b) withdraws the request;
(c) fails to make arrangements to claim or review the records within the thirty-day period;
(d) fails to pay the deposit or final payment for requested copies.

(10) **Later discovered documents.** If, after the (agency) has informed the requestor that it has provided all available records, the (agency) becomes aware of additional responsive documents existing at the time of the request, ~~it~~ the public records officer shall promptly ~~inform~~ notify the requestor of the additional documents and provide ~~them~~ copies or an opportunity to inspect the additional documents on an expedited basis, along with a written explanation of why ~~they~~ the documents were not previously ~~located and~~ provided.

NEW SECTION

WAC 44-14-050 Processing ~~of~~ public records requests--Electronic records. (1) **General.** The process for requesting electronic records is the same as for requesting paper records, see WAC 44-14-040, with the exceptions set forth in this section.

(2) **Providing electronic records.** The public records officer may provide electronic public records either in an electronic format or by reducing the electronic records to a paper format.

(3) **Customized access to data bases.**

(a) The (agency) is not required to create a public record, create a data base or reformat or alter a data base pursuant to a requestor's search criteria ~~in order~~ to produce a record in a manner not maintained by the (agency) for its business purposes. The (agency) is not required to write code to extract a report from a data base to respond to a public records request. The (agency) will not reconstruct a record in an electronic format if it is no longer retained in that format for its business purposes. The (agency) will not provide a copy of software programs or data retrieval systems it does not own and/or for which it has signed license agreements restricting the requested customized access, or provide other proprietary information protected by trade secret or other laws governing proprietary information.

(b) However, the (agency) may, in providing assistance to the requestor, choose to reformat or otherwise customize existing electronic records in a data base in order to respond to the information request. The process for customized access is provided in (c) through (f) of this subsection.

(c) In determining whether to provide ~~such~~ customized access to a data base, the agency will consider the following nonexclusive list of factors:

(i) The impact on staff including programming time and effort;

(ii) The (agency's) resources including specific appropriations provided to the (agency) to conduct customized programming;

(iii) The (agency's) software search capabilities;

(iv) The (agency's) ability to electronically redact or mask electronic information that is ~~not disclosable~~exempt from disclosure;

(v) The (agency's) ability to respond to similar requests from other requestors;

(vi) The impact on other programming needs and data base access needs for the (agency) and the prevention of interference with other essential functions;

(vii) The need to maintain the security and integrity of the records and software including information such as source codes, security passwords, software applications and other

information described and exempted from disclosure in RCW 42.17.310 (1)(h) and (ddd);
(viii) The need, if any, and ability to notify individuals referenced in the data base;
(ix) The number of data base programming requests from this requestor and/or programming time needed to respond;
(x) The alternatives to providing customized access to the requestor; and
(xi) The overall cost of such customized access.
(d) The (agency) may limit the number of customized access requests an individual or organization may make per year, or the number of programming hours it will devote to a request.
(e) If the public records officer and the requestor agree that customized access is a reasonable means of providing access to the information requested ~~by which the agency can provide such access~~ given ~~(~~(c) and (d) of this subsection), then, pursuant to RCW 43.105.280, the public records officer may charge the requestor for the cost of such access, including programming costs, other staff time, and other direct costs.
~~(f) The (agency) will publish the cost for its programming time, other staff time, and other direct costs by separate rule or schedule.~~
(g) The (agency) may choose to provide the electronic public records in a requested electronic format (such as a compact disk).
The (agency) may choose another format if that format is consistent with its business purposes and the factors in (c) of this subsection.

NEW SECTION

WAC 44-14-060 Exemptions. (1) The Public Records Act sets forth a number of documents that are exempt from public inspection and copying in RCW 42.17.310(1) and 42.17.311 through 42.17.31915. In addition, pursuant to RCW 42.17.260(1) if any "other statute" exempts or prohibits the disclosure of specific information or records, that law controls. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents for inspection and copying: (List other laws)
(2) The (agency) is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 44-14-070 Costs of providing copies of public records.

(1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for (amount) cents per page~~ and color copies for (amount) cents per page~~.

If agency decides to charge more than fifteen cents per page, use the following language: The agency charges (amount) per page for a standard black and white photocopy of a record selected by a requestor. A statement of the factors and the manner used to determine this charge is available from the public records officer.

Before ~~beginning to make the copies~~copying, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing ~~an~~ that installment. The (agency) may not charge sales tax ~~of~~ on the costs of copies.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be (amount) for information on a floppy disk and (amount) for information on a CD-ROM. If the request requires customized access to electronic records, the public records officer will charge actual costs of such access, including staff time and other direct costs.

(3) **Costs of mailing.** The public records officer may also charge actual costs of mailing.

(4) **Payment.** Payment may be made by cash at the (agency's) main office or by check ~~to "Public Records Officer (of agency)."~~ payable as provided in the (agency's) invoice.

NEW SECTION

WAC 44-14-080 Review of denials of public records. (1) **Petition for review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include ~~or refer~~a copy of or reasonably identify~~ to~~ the written statement by the public records officer denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to (public records officer's supervisor or other agency official). That person shall immediately consider the petition and either affirm or reverse ~~such~~ the denial within two business days following receipt of the petition.

(3) **(Applicable to state agencies only.) Review by the attorney general's office.** Pursuant to RCW 42.17.325, if the (state agency)

denies a requestor access to public records because it claims the record is exempt from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review**. Court review of denials of public records request is available pursuant to RCW 42.17.340 at the conclusion of the agency internal appeal process, or two business days after the initial denial, whichever occurs first.