Overstreet, Greg (ATG)

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Sent: Thursday, January 12, 2006 3:16 PM
To: Overstreet, Greg (ATG)
Subject: Public Record Comments

The following message was submitted to the Office of Attorney General:

From:	VanNocken, Victoria
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Comments:

COMMENTS TO PUBLIC RECORDS ACT-MODEL RULES Submitted by: The King County Sheriff's Office, The King County Prosecutor's Office, The King County Executive's Office, Anne Noris, Clerk of the King County Council (legislative branch public records officer), and Jim Brewer, Legal Counsel for The Metropolitan King County Council WAC 44-14-0100: The last paragraph of this section reads: Some agencies, most notably counties, are a collection of separate quasi-autonomous departments which are governed by different elected officials (such as a county assessor and prosecuting attorney). However, the act defines the county as a whole as an "agency" subject to the act. RCW 42.17.020(1). The act requires an agency to coordinate responses to records requests across departmental lines. RCW 42.17.253(1) (2005). We recommend that this interpretation of the statute be amended as follows: Some agencies, most notably counties, are a collection of separate quasi-autonomous offices which are governed by different elected officials (such as a count assessor and prosecuting attorney). The statute defines an agency as a "county...or any office, department, division...(etc.) or agency thereof." Accordingly, each office is separately responsible for complying with the act. If a county office believes that another county office has responsive records, it should notify the requestor and provide contact information for the public records officer of the other county office. As the largest county in the state with thirteen different elected officials and several different departments within each office, it would be impractical to have one public disclosure officer charged with the responsibility for all public disclosure requests made to the county. In addition, as a home rule charter county, there are separate legislative and executive branches in the same manner as the state. These branches are not required to jointly adopt a single public records officer or obtain records from separate offices in response to a request. Practically speaking, each office fulfills a specific role in our county government and each understands its records--not only the content but the most efficient means to access the requested data. In addition, individuals within each office are in the best position to know if particular documents are subject to exemption. It should be up to each office, not the county as a whole, to make these important determinations under the Public Records Act. WAC 44-14-030 (3): This provision reads in pertinent part, "A requestor shall not take agency records from agency offices without the permission of the public records officer." Because requestors can already receive copies of

the original documents, we recommend that this sentence be stricken. Each agency is responsible for maintaining its own records. Allowing removal of the original records from agency offices jeopardizes the safety of the original records and also could potentially compromise the integrity of the original records. WAC 44-14-04003(9): The first two sentences of this provision read as follows: An agency can provide a record within the time provided in its reasonable estimate or can communicate with the requestor to obtain additional time to fulfill the request based on specific criteria. Unless the agency properly obtains additional time to fulfill the request, the agency is obligated to provide the record with the reasonable estimate period. We recommend that this provision be amended as follows: An agency can provide a record within the time provided in its reasonable estimate or can communicate with the requestor to provide a revised reasonable estimate of time based on further information about the time required to complete review. Unless the agency properly provides a revised reasonable estimate of the time to fulfill the request, the agency is obligated to provide the record within the initial reasonable estimate period. The use of the word "obtains" implies that the requestor must consent to additional time to fulfill the request if the agency cannot do so within the initial time estimate. An agency is always required to justify its time estimate, but it should not be required to obtain permission from the requestor if the agency is unable to comply with its original time estimate. WAC 44-14-03006 This section reads in pertinent part, An agency cannot require the requestor to disclose the purpose of the request with two exceptions. RCW 42.17.270. First, if the request is for a list of individuals, an agency may ask the requestor if he or she intends to use the records for a commercial purpose and intends to directly contact or personally affect the individuals named in a list. An agency should specify on its request form that the agency is not required to provide public records consisting of a list of individuals for a commercial use. RCW 42.17.260(9). In the last sentence, the word "required" should be changed to "authorized" because the statute prohibits disclosure of lists of names requested for commercial purposes. Also, the text uses the phrase "directly contact or personally affect". Where does this phrase come from? The phrase is unclear and should be clarified. What if the requestor admits that the information is going to be used for "commercial purposes"? What does the agency do in that case?