

YRCAA Administrative Code
Part C
Public Records Policy—Model Rules

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1.0 INTRODUCTORY COMMENTS

(1.1) Statutory authority and purpose: The legislature directed the attorney general to adopt advisory model rules on public records compliance and to revise them from time to time. RCW [42.56.570](#) (2) and (3). The purpose of the model rules is to provide information to records requestors and state and local agencies about "best practices" for complying with the Public Records Act, chapter [42.56](#) RCW ("PRA" or "act"). The overall goal of the model rules is to establish a culture of compliance among agencies and a culture of cooperation among requestors by standardizing best practices throughout the state. The attorney general encourages state and local agencies to adopt the model rules (*but not necessarily the comments*) by regulation or ordinance. The act provides that local agencies should consult the model rules when establishing local ordinances implementing the act. RCW [42.56.570](#)(4). The act further provides that public records officer training must be consistent with the model rules. RCW [42.56.152](#)(3).

The act applies to all state agencies and local units of government. The model rules use the term "agency" to refer to either a state or local agency. Upon adoption, each agency would change that term to name itself (such as changing references from "name of agency" to "city"). To assist state and local agencies considering adopting the model rules, an electronic version of the rules is available on the attorney general's web site, <http://www.atg.wa.gov/model-rules-public-disclosure>.

The initial model rules in 2006-2007 were the product of an extensive outreach project. The attorney general held thirteen public forums all across the state to obtain the views of requestors and agencies. Many requestors and agencies also provided detailed written comments. The model rules reflect many of the points and concerns presented in those forums. For the model rules updates in 2018, the attorney general considered case law and legislative developments since 2006-2007. The attorney general sought additional comments from requestors, agencies, and others.

The model rules provide one approach (or, in some cases, alternate approaches) to processing public records requests. Agencies vary enormously in size, resources, and complexity of requests received. Any "one-size-fits-all" approach in the model rules, therefore, may not be best for requestors and agencies.

(1.2) Format of model rules: The model rules are published with comments. The comments have five-digit WAC numbers such as WAC [44-14-04001](#). The model rules themselves have three-digit WAC numbers such as WAC [44-14-040](#).

The comments are designed to explain the basis and rationale for the rules themselves as well as provide broader context and legal guidance. To do so, the comments contain many citations to statutes, cases, and formal attorney general opinions. Agencies are encouraged to consult them.

(1.3) Model rules and comments are nonbinding: The model rules, and the comments accompanying them, are advisory only and do not bind any agency. Accordingly, many of the comments to the model rules use the word "should" or "may" to describe what an agency or requestor is encouraged to do. The use of the words "should" or "may" are permissive, not mandatory, and are not intended to create any legal duty.

The model rules and comments are a useful guide in fulfilling the requirement to publish procedures and rules for making records available for inspection and copying. RCW [42.56.040](#), [42.56.070](#)(1), and WAC [44-14-01002](#). While the model rules and comments are nonbinding, they should be carefully considered by requestors and state agencies. Local agencies should consider them in establishing local ordinances implementing the act. RCW [42.56.570](#). The Washington courts have also considered the model rules in several appellate decisions.

(1.4) Training is required: The act is complicated, and compliance requires training. Training on the act is required for local elected officials, statewide elected officials, persons appointed to fill vacancies in a local or statewide office, and public records officers. RCW [42.56.150](#); [42.56.152](#). Public records officers must also receive training on electronic records. RCW [42.56.152](#)(5). All agency employees should receive basic training on public records compliance and records retention; public records officers should receive more intensive training. Agencies are encouraged to document training for persons required to receive training. The attorney general's office has training resources including sample training documentation forms available on its web site at <http://www.atg.wa.gov/OpenGovernmentTraining.aspx>. Training can

be the difference between a satisfied requestor and expensive litigation. The courts can consider lack of training as a penalty factor in actions filed under RCW [42.56.550](#), the act's enforcement provision.

(1.5) Additional Resources: Several web sites provide information on the act. The attorney general office's web site on public records is <http://www.atg.wa.gov/obtaining-records>, which also includes a link to an Open Government Resource Manual. The Municipal Research and Services Center (MRSC), an entity serving local governments, provides public records resources on its web site at <http://mrsc.org/Home.aspx>. A requestor's organization, the Washington Coalition for Open Government, has materials on its web site at www.washingtoncog.org. The Washington Association of Public Records Officers has resources for public records officers on its web site at <http://wapro.memberclicks.net>. More materials are available from other organizations such as the Washington State Bar Association.

2.0 AUTHORITY AND PURPOSE

(2.1) RCW [42.56.070](#)(1) requires each agency to make 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.

(2.2) The purpose of these rules is to establish the procedures the Yakima Regional Clean Air Agency (YRCAA) will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the YRCAA and establish processes for both requestors and YRCAA staff that are designed to best assist members of the public in obtaining such access.

(2.3) 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 YRCAA will be guided by the provisions of the act describing its purposes and interpretation.

3.0 AGENCY DESCRIPTION—CONTACT INFORMATION—PUBLIC RECORDS OFFICER (PRO)

(3.1) The YRCAA is the local air pollution control agency for Yakima County and was created pursuant to Chapter 70.94 RCW, the Washington State Clean Air Act (WCAA). The YRCAA's office is located at 329 N. 1st Street, Yakima, WA 98908.

(3.2) Any person wishing to request access to public records of the YRCAA, or seeking assistance in making such a request should contact the Public Records Officer (PRO) of the YRCAA:

Mary Wurtz

YRCAA, 186 Iron Horse Court, Suite 101, Yakima, WA 98901

(509) 834-2050, fax. (509) 834-2060

maryw@yrcaa.org

Information is also available at the YRCAA's web site at <https://www.yakimacleanair.org>

(3.3) The public records officer will oversee compliance with the act but another YRCAA 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 YRCAA will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the YRCAA.

4.0 AVAILABILITY OF PUBLIC RECORDS

(4.1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the YRCAA, Monday through Friday, 9:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the offices of the YRCAA.

(4.2) Records index. The YRCAA finds that maintaining an index is unduly burdensome and would interfere with agency operations. The Governing Board of Directors adopted Resolution 2011-01 exempting the Agency from maintaining a records index under the provisions of RCW 42.56.070(4).

(4.3) Organization of records. The YRCAA will maintain its records in a reasonably organized manner. The YRCAA will take reasonable actions to protect records from damage and disorganization. A requestor shall not take YRCAA records from YRCAA offices without the permission of the YRCAA PRO. Some records are available on the YRCAA web site at <https://www.yakimacleanair.org>. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4.4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the YRCAA should make the request in writing on the YRCAA request form, or by letter, fax, or email addressed to the public records officer at maryw@yrcaa.org, or by submitting the request in person at YRCAA, 186 Iron Horse Court, Suite 101, Yakima, WA 98901 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 PRO or designee 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 made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to section 8, standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the PRO and online at <https://www.yakimacleanair.org>.

(d) The PRO 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 accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

(e) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

5.0 PROCESSING OF PUBLIC RECORDS REQUESTS—GENERAL

(5.1) Providing "fullest assistance." The YRCAA 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 PRO or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

Upon receipt of a request, the YRCAA will assign it a tracking number and log it in. The PRO or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.

(5.2) Acknowledging receipt of request. Following the initial evaluation of the request under (3) of this subsection, and within five business days of receipt of the request, the PRO 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 YRCAA's internet web site, provide an internet address and link on the web site to specific records requested;
 - (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 PRO 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 YRCAA 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 YRCAA need not respond to it. The YRCAA will respond to those portions of a request that are clear; or

(d) Deny the request.

(5.3) Consequences of failure to respond. If the YRCAA does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contacting the PRO to determine the reason for the failure to respond.

(5.4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the PRO may, prior to providing the records, give notice to such others whose rights may be affected by the 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, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5.5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the YRCAA 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 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.

(5.6) Inspection of records.

(a) Consistent with other demands, the YRCAA 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 wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the YRCAA's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should 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 period or make other arrangements, the YRCAA 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.

(5.7) Providing copies of records. After inspection is complete, the PRO or designee shall make the requested copies or arrange for copying. Where the YRCAA charges for copies, the requestor must pay for the copies.

(5.8) Providing records in installments. When the request is for a large number of records, the PRO 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. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the PRO or designee may stop searching for the remaining records and close the request.

(5.9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the PRO or designee will indicate that the YRCAA has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(5.10) Closing withdrawn or abandoned request. When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the PRO 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 YRCAA has closed the request.

(5.11) Later discovered documents. If, after the YRCAA has informed the requestor that it has provided all available records, the YRCAA 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.

6.0 PROCESSING OF PUBLIC RECORDS REQUESTS— ELECTRONIC RECORDS

(6.1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(6.2) Providing electronic records. When a requestor requests records in an electronic format, the PRO will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the YRCAA and is generally commercially available, or in a format that

is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by RCW [42.56.120](#) and [42.56.130](#). The fee schedule is available at <https://www.yakimacleanair.org>.

(6.3) Customized access to data bases. While not required, and with the consent of the requestor, the YRCAA may decide to provide customized electronic access services and assess charges under RCW [42.56.120](#) (2)(f). A customized service charge applies only if the YRCAA estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The YRCAA may charge a fee consistent with RCW [42.56.120](#) (2)(f) for such customized access. The fee schedule is available at <https://www.yakimacleanair.org>.

(7.0) EXEMPTIONS

(7.1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "*other statute*" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by YRCAA for inspection and copying:

Washington State Statutes

<u>Citation</u>	<u>Records/Information</u>
RCW 2.64.113	Confidentiality - violations
RCW 5.60.060	Privileged communications
RCW 5.60.070	Court-ordered mediation records
RCW 10.97.070	Disclosure of identity of suspect to victim
RCW 18.04.405	Confidentiality of information gained by CPA
RCW 19.215.020	Destruction of personal health and financial information
RCW 19.215.030	Compliance with federal rules
RCW 40.14	Preservation and destruction of public records
RCW 42.23.070(4)	Municipal officer disclosure of confidential information prohibited
RCW 42.41.030(7)	Identity of local government whistleblower
RCW 42.41.045	Non-disclosure of protected information (whistleblower)
RCW 42.56.610	Certain information from dairies and feedlots limited-Rules
RCW 46.52.130(2)	Abstract of driving record
RCW 48.62.101	Local government insurance transactions – access to information
RCW 50.13.060	Access to employment security records by local government agencies
RCW 50.13.100	Disclosure of non-identifiable information or with consent
RCW 51.28.070	Worker's compensation records
RCW 51.36.060	Physician information on injured workers
RCW 70.58.104	Vital records, research confidentiality safeguards
RCW 70.94.205	Confidential business information

Selected Federal Confidentiality Statutes and Rules

5 USC § 552a	Privacy Act records maintained on individuals
20 USC § 1232g	Family Education Rights and Privacy Act
42 USC 405(c)(2)(vii)(I)	Limits on Use and Disclosure of Social Security Numbers.
45 FR 160-164	HIPAA Privacy Rule

NOTE: The YRCAA is prohibited by statute from disclosing lists of individuals for commercial purposes.

(8.0) COSTS OF PROVIDING COPIES OF PUBLIC RECORDS

(8.1) Inspection. There is no fee for inspecting public records, including inspecting records on the YRCAA web site.

(8.2) Statutory default costs. The YRCAA is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: The YRCAA does not have the resources to conduct a study to determine actual copying costs for all its records; to conduct such a study would interfere with other essential agency functions; and, through the legislative process, the public and

requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act including RCW [42.56.120](#) and other laws. Therefore, in order to timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious and in the public interest for the YRCAA to adopt the state legislature's approved fees and costs for most of the YRCAA's records, as authorized in RCW [42.56.120](#) and as published in the agency's fee schedule.

(8.3) Fee schedule. The YRCAA fee schedule is available at 186 Iron Horse Court, Suite 101, Yakima, WA 98901

and on YRCAA's web site at <https://www.yakimacleanair.org>.

(8.4) Processing payments. Before beginning to make the copies or processing a customized service, the PRO or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The PRO or designee 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 that installment. The YRCAA will not charge sales tax when it makes copies of public records.

(8.5) Costs of mailing. The YRCAA may also charge actual costs of mailing, including the cost of any shipping container.

(8.6) Payment. Payment may be made by cash, check, or money order to the YRCAA.

9.0 REVIEW OF DENIALS OF PUBLIC RECORDS

(9.1) Petition for internal administrative 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 PRO for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the PRO or designee denying the request.

(9.2) Consideration of petition for review. The PRO shall promptly provide the petition and any other relevant information to the Executive Director. The Executive Director will immediately consider the petition and either affirm or reverse the denial within two business days following the YRCAA's receipt of the petition, or within such other time as the YRCAA and the requestor mutually agree to.

(9.3) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW [42.56.550](#) at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.