



November 18, 2011

Washington State Supreme Court
c/o Associate Chief Justice Charles Johnson
Chair, Rules Committee
PO Box 40929
Olympia, WA 98504

Re: Suggested New Rule GR 31A (Access to Administrative Records)

Honorable Justices:

The Association of Washington Cities (AWC) and Washington State Association of Municipal Attorneys (WSAMA) have reviewed the proposed new rule GR 31A, regarding Access to Administrative Records. We commend the Court for considering this issue. Transparency in all aspects of government is of key importance to city officials, and we are committed to ensuring that citizens have access to the records that they need. **However, we have grave concerns about the practicality of implementing the new rule as proposed and ask that you not advance it.**

We have become increasingly dismayed at the way Washington's Public Records Act has been abused by a few individuals more interested in harassment and financial gain than the public good. To that end, we applaud some of the features of the proposed rule. Specifically, we have long requested that the Legislature allow the charging of fees to cover the cost of lengthy requests and the limitation of penalties under the Public Records Act.

However, we have concerns about several aspects of the proposed rule. The state's Public Records Act (PRA), adopted by the voters in 1972, is something that both the public and local government officials are familiar with. We are deeply concerned that creating a parallel set of records rules would result in a great deal of confusion for the public and for our local city officials, who would have to administer both sets of rules. We fear the end result will be even more costly litigation in the area of public records.

For instance, the proposed rule refers to a Public Records Officer (PRO), but it is unclear whether that position is intended to be the same PRO established under the PRA or a new appointment made by the presiding judge. The rule is also unclear as to whom the PRO is to consult with when interpreting this new rule – the city attorney or the judge. Such confusion is likely to lead to inconsistencies in how the rule is administered.

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We are also concerned about inconsistencies in the new rule as to the implied importance of providing public records. The proposal in its first section (a) states that "access shall not unduly burden the business of the judiciary" and in Section 3A5 indicates that the "judicial agency should comply to the extent practicable." These types of statements seem to suggest that individual judicial officers would exercise a great deal of latitude as to when and how they respond to records requests. It is conceivable that individual courts could end up having vastly different interpretations of how they must comply with this rule.

Further, we are concerned about the distinction between administrative and chamber records. We appreciate the distinction and the Court's desire to keep chamber records confidential; however, we believe that in many cases the difference between the two will be subject to individual, and likely inconsistent, interpretation that will lead to disputes and costly litigation.

Section 3, Process for Access, creates a number of inconsistencies that are problematic. It establishes a standard of response that is different from the existing PRA. It also creates an administrative review process that is both different from and inconsistent with the existing PRA. We note that the rule prohibits monetary sanctions against the court and judicial agency but doesn't clarify whether the local jurisdiction operating the court would be subject to such sanctions for violating the terms of this rule.

The proposed rule indicates that "best practices" guidelines for handling records requests will be developed by the Court. It would seem that, to be truly effective, such guidelines should be available prior to the adoption of the rule so local jurisdictions would have a better understanding of the actual local impacts of the rule. Additionally, the proposed rule indicates that the PRA, while it doesn't apply, can be used for non-binding guidance. However, the proposed rule is in many ways inherently inconsistent with the PRA. This conflicting guidance will likely lead to confusion for both local jurisdictions and citizens.

Cities are dedicated to upholding the Public Records Act and providing transparency and public access. We are concerned that, while this attempt to make court records more accessible is laudable, the result of the proposed rule will be greater confusion and more litigation over public records. We recommend that the Court **not** advance this proposed rule. Thank you for your consideration.

Sincerely,



Mike McCarty
Chief Executive Officer
Association of Washington Cities



Joe Syoboda
President
Washington State Association of Municipal Attorneys