



**Seattle**  
**City Attorney's Office**

Ann Davison, City Attorney

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April 30, 2025

*Via electronic mail to:*

Honorable Mary I. Yu, Chair  
Supreme Court Rules Committee  
c/o Clerk of the Supreme Court  
Temple of Justice  
P.O. Box 40929

Re: Proposed Revision to Civil Rule 68

Dear Justice Yu:

The Seattle City Attorney's Office (SCAO) submits this letter in response to the proposed changes to Civil Rule (CR) 68. The proposed rule change seeks to remove litigation under the Public Records Act (PRA), RCW 42.56, from the settlement construct created by CR 68, rejecting the findings in *Rufin v. Seattle*, 199 Wn. App. 348, 361-62 (2017).

First, our office wants to emphasize that declining to adopt this proposed rule change, does not alter any obligation of an agency to comply with the PRA or change the statutory penalties available to courts to deter non-compliance. Our concerns with the proposed rule change align with those cited in the Superior Court Judges' Associations comments, dated April 20, 2025. Specifically, that the rule change will undermine the judicial economy CR 68 is in place to promote and eliminate an important tool for responding to litigious PRA petitioners.

To provide additional context – the rationale offered to support amending the rule is that excepting PRA cases from offers of judgment will deter state and local agencies from not complying with the PRA. However, the PRA already includes a mechanism for deterring public agencies from continued non-compliance through the application of per diem penalties of up to \$100 per day per records. Case law has established that courts may specifically shape the penalties to deter continued non-compliance.<sup>1</sup>

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<sup>1</sup> Yousoufian v. Office of Ron Sims 168 Wn. 2d. 444, 467

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Moreover, CR 68 continues to make attorney fees available to PRA petitioners who are successful in obtaining records under the PRA<sup>2</sup>, ensuring requestors have access to legal counsel when pursuing legitimate claims under the Act. The rule only acts to limit attorney fees to those incurred at the point of the offer of judgment, unless the court awards penalties in excess of the offered settlement. Removing PRA litigation from CR 68 incentivizes the generation of legal fees beyond what is necessary to achieve the result found by the court where the penalties found to be appropriate are less than the amount offered in the CR 68 settlement. This encourages unnecessary discovery and prolonged motion practice at the expense of public monies, without benefit to the petitioner or the public.

If the remedy sought in PRA litigation is to ensure agency compliance with the technical requirements of the Act – allowing for CR 68 settlements and limitations on fees does nothing to compromise that goal.

Lastly, if there is a special exception to be afforded the award of attorney fees PRA litigation, that is an issue best left to the Legislature to decide rather than the Judiciary via one-off amendment to CR 68.

With respect, we believe the proposed change to CR 68 should not be adopted. Thank you for considering our comments.

Sincerely,

ANN DAVISON  
Seattle City Attorney

By: *Aaron Valla*

Aaron Valla  
Assistant City Attorney

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<sup>2</sup> RCW 42.56.540

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
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Good afternoon,

Please find attached the Seattle City Attorney's Office's response to the proposed rule change to CR 68.

Thank you,

Aaron Valla



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