

FILED

MAR 08 2018

Superior Court
Linda Myhre Enlow
Thurston County Clerk

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
Date:
Time:

4 The Honorable Christine Schaller

5
6
7 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

8 ERIC JOHNSON,

9 Plaintiff,

10 v.

11 WASHINGTON STATE
12 UNIVERSITY (WSU) ENERGY
13 PROGRAM OFFICE,

14 Defendant.

NO. 18-2-00943-34

DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
VIOLATION OF THE PUBLIC
RECORDS ACT (PRA)

15 Defendant, WASHINGTON STATE UNIVERSITY (WSU) ENERGY PROGRAM
16 OFFICE, by and through its attorneys of record, ROBERT W. FERGUSON, Attorney
17 General, ADAM MALCOLM, Assistant Attorney General, and TIMOTHY J. FEULNER,
18 Assistant Attorney General, respectfully submits the following Answer to Plaintiff's
19 Complaint for Violation of the Public Records Act (PRA).

20 Under CR 8(b), Defendant generally denies each allegation of fact in the Plaintiff's
21 complaint unless the allegation of fact is expressly admitted. Defendant will not respond to
22 legal arguments contained in the Plaintiff's complaint and denies allegations if it is unclear
23 if Plaintiff is asserting a factual or legal claim.

24 **I. INTRODUCTION**

25 Defendant generally denies the assertions made in Plaintiff's introductory paragraph as
26 it simply contains prefatory language and argument rather than factual assertions. Defendant is

1 without sufficient information or knowledge to admit or deny whether the quote is properly
2 attributable to Jeremy Bentham. Defendants admit that Plaintiff has characterized this case as
3 a case seeking review of Defendant's refusal to provide records retained by Defendant.
4 Defendant denies that this statement accurately characterizes this case. Defendant admits that
5 Plaintiff is currently the Chairman of the Thurston Conservation District Board of Supervisors.
6 Defendant is without sufficient information or knowledge about the intent behind Plaintiff's
7 actions, and therefore denies the same. Defendant denies that Plaintiff has accurately captured
8 the full extent of Defendant's legal position in this case.

9 II. JURISDICTION

10 2.1 Defendant admits that this Court has subject-matter jurisdiction over Plaintiff's
11 claims.

12 2.2 Defendant admits that this Court is a proper venue for Plaintiff's claims.

13 III. PARTIES

14 3.1 Defendant admits that Eric Johnson is currently the Chairman of the Thurston
15 Conservation District Board of Supervisors. Defendant is without sufficient knowledge or
16 information to admit or deny the remaining allegations in Paragraph 3.1, and therefore denies
17 the same.

18 3.2 Defendant admits that the Washington State University is a state agency and
19 that the Energy Program is a Department that is part of the Washington State University.
20 Defendant admits that it has an office located on Plum Street in Olympia. Defendant denies
21 the remaining allegations contained in Paragraph 3.2 as it calls for a legal conclusion.

22 IV. FACTS

23 4.1 Defendant admits that Eric Johnson is currently a Thurston County
24 Conservation District (TCD) Supervisor and Chairman. Defendant is without sufficient
25 knowledge or information to admit or deny the remaining allegations in Paragraph 4.1, and
26 therefore denies the same.

1 4.2 Defendant is without sufficient knowledge or information to admit or deny the
2 allegations in Paragraph 4.2, and therefore denies the same.

3 4.2.1 Defendant is without sufficient knowledge or information to admit or deny the
4 allegations in Paragraph 4.2.1, and therefore denies the same.

5 4.2.2 Defendant is without sufficient knowledge or information to admit or deny the
6 allegations in Paragraph 4.2.2, and therefore denies the same.

7 4.3 Defendant is without sufficient knowledge or information to admit or deny the
8 allegations in Paragraph 4.3, and therefore denies the same.

9 4.3.1 Defendant is without sufficient knowledge or information to admit or deny the
10 allegations in Paragraph 4.3.1, and therefore denies the same.

11 4.3.2 Defendant is without sufficient knowledge or information to admit or deny the
12 allegations in Paragraph 4.3.2, and therefore denies the same.

13 4.3.3 Defendant is without sufficient knowledge or information to admit or deny the
14 allegations in Paragraph 4.3.3, and therefore denies the same.

15 4.5¹ Defendant admits that Michael Pearson scheduled an appointment with Mr.
16 Mankamyer and Plaintiff on January 25, 2018, at 3:00 p.m. at Mr. Mankamyer's request.
17 Defendant admits that it has an office located on Plum Street in Olympia. Defendant is
18 without sufficient knowledge or information to admit or deny the remaining allegations in
19 Paragraph 4.5, and therefore denies the same.

20 4.6 Defendant admits that Johnson and Mankamyer were met by Mr. Pearson,
21 James Colombo, and Sarah Moorehead when they arrived on January 25, 2018. Defendant
22 admits that it informed Ms. Moorehead of the appointment. Defendant admits that Mr.
23 Colombo is an Information Systems Department Manager. Defendant is without sufficient
24

25 ¹ Plaintiff's complaint does not contain a Paragraph 4.4. Defendant adopts Plaintiff's numbering scheme
26 in this Answer.

1 knowledge or information to admit or deny the remaining allegations in Paragraph 4.3.3, and
2 therefore denies the same.

3 4.7 Defendant admits that Plaintiff met with Mr. Colombo on January 31, 2018.
4 Defendant lacks sufficient information or knowledge to admit or deny Plaintiff's intention in
5 going to the meeting, and therefore denies the same. Defendant lacks sufficient information or
6 knowledge to admit or deny Plaintiff's allegations about Plaintiff's inspection of the
7 Memorandum of Understanding (MOU) between Defendant and TCD. Defendant admits that
8 it has a MOU with TCD, that the MOU began in 2011, and that it was signed by former
9 director Kathleen Whalen. Defendant denies that the MOU was only in existence until 2014
10 and that there is no current MOU.

11 4.7.1 Defendant admits that Plaintiff showed Mr. Colombo a document on his phone
12 and mentioned metadata during this conversation. Defendant is without sufficient knowledge
13 or information to admit or deny the remaining allegations in Paragraph 4.7.1, and therefore
14 denies the same.

15 4.7.2 Defendant admits that Mr. Colombo asked Plaintiff why he did not want Ms.
16 Moorehead involved. Defendant admits that Mr. Johnson suggested that he was investigating
17 Ms. Moorehead and others at TCD. Defendant denies that Mr. Colombo told Mr. Johnson that
18 he could get the information in a couple of days. Defendant admits that Mr. Colombo told
19 Plaintiff that he had been advised that all public records requests must be submitted to Sarah
20 Moorehead in an email dated February 8, 2018. Defendant is without sufficient knowledge or
21 information to admit or deny the remaining allegations in Paragraph 4.7.2, and therefore denies
22 the same.

23 4.8 Defendant admits that Plaintiff sent an email to Mr. Colombo on January 31,
24 2018. Defendant admits that the complaint almost accurately captures the language in the
25 email, but denies that the email contained the language as precisely written in the complaint.
26

1 Defendant denies that Plaintiff's email constituted a submission of a public records request as
2 that allegation calls for a legal conclusion.

3 4.9 Defendant admits that Ms. Moorehead sent Plaintiff an email on February 8,
4 2018, and that it contained the language quoted in the complaint. Defendant also admits that
5 Michelle Fossum was copied on the email. Defendant is without sufficient knowledge or
6 information to admit or deny the remaining allegations in Paragraph 4.9, and therefore denies
7 the same.

8 4.10 Defendant denies the allegations contained in Paragraph 4.10 as it calls for a
9 legal conclusion.

10 V. CAUSE OF ACTION

11 Defendant denies that it has relied upon an outdated MOU in responding to the request.
12 Defendant denies that WSU has not responded to Plaintiff's request. Defendant denies the
13 remaining allegations contained in Section V as it calls for legal conclusions.

14 VI. CLAIMS FOR RELIEF

15 Defendant denies that Plaintiff is entitled to any of the relief requested in Section V.

16 VII. AFFIRMATIVE DEFENSES

17 Having answered the allegations of Plaintiff's Complaint, and by way of further answer
18 and affirmative defense, Defendant affirmatively alleges:

- 19 1. Plaintiff failed to properly submit his "request" to the Washington State
20 University;
- 21 2. Plaintiff's email did not provide fair notice that it was a request made under the
22 PRA;
- 23 3. Plaintiff has failed to state a claim upon which relief can be granted;
- 24 4. Defendant reserves the right to allege additional affirmative defenses after the
25 completion of discovery.

1 Having fully answered Plaintiff's Complaint and having stated affirmative defenses,
2 Defendant prays for judgment dismissing the complaint and action with prejudice.

3 RESPECTFULLY SUBMITTED this 8th day of March, 2018.

4 ROBERT W. FERGUSON
Attorney General

5 

6 TIMOTHY J. FEULNER, WSBA #45396

7 Assistant Attorney General

8 Corrections Division

9 PO Box 40116

10 Olympia WA 98504-0116

11 (360) 586-1445

12 TimF1@atg.wa.gov

1 CERTIFICATE OF SERVICE

2 I certify that I served a copy of the DEFENDANT'S ANSWER TO PLAINTIFF'S
3 COMPLAINT FOR VIOLATION OF THE PUBLIC RECORDS ACT (PRA) on all parties or
4 their counsel of record as follows:

5 Via Email

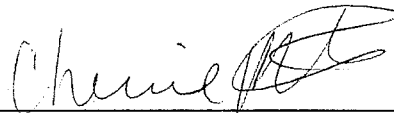
6 SHAWN TIMOTHY NEWMAN Newmanlaw@comcast.net

7
8 US Mail Postage Prepaid

9 SHAWN TIMOTHY NEWMAN
10 ATTORNEY AT LAW INC. P.S.
11 2507 CRESTLINE DR NW
12 OLYMPIA WA 98502-4327

13 I declare under penalty of perjury under the laws of the State of Washington that the
14 foregoing is true and correct.

15 EXECUTED this 8th day of March, 2018, at Olympia, Washington.

16 

17 _____
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19 Legal Assistant
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25
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