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Hearing Set: July 20, 2018
Time: 9:00 am
Judge: Schaller

18 JUL 16 A9 53

THURSTON
SUPERIOR COURT

FILED

JUL 16 2018

Superior Court
Linda Myhre Enlow
Thurston County Clerk

THURSTON COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

Eric Johnson,

Plaintiff, No. 18-2-00943-34

vs.

Plaintiff's Reply Brief

Washington State University (WSU) Energy

Public Records Act

Program Office.

Penalties, Attorney's Fees & Costs

Defendant.

Summary Reply:

WSU asks this court to reject any penalty amount given the facts of this case,¹ devalues reasonable attorney's fees and objects to costs, including the transcript and \$2.05 postage.² WSU fails to recognize that government agencies that violate the PRA are strictly liable. WSU relies upon a mistaken understanding that "bad faith" requires intent, just as it relied on a mistaken interpretation of the unambiguous PRA that "public records" excludes those "retained" by a public agency. "Bad faith" does not depend on a finding that WSU engaged in a conspiracy or

¹ WSU Response Br. at 1-2.

² WSU Response Br. at 16

PLAINTIFF'S REPLY BRIEF
PENALTIES, ATTORNEY'S FEES
AND COSTS

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1 committed an intentional, wrongful act or gross negligence.³ WSU argues the court should
2 “reaffirm its finding that WSU did not act in bad faith.”⁴ However, this court made no “finding”
3 regarding “bad faith.” Any statements regarding “bad faith” at the liability hearing were
4 premature and erroneous given the record did not include briefing on the penalty issue.⁵ WSU
5 concedes the point because it later argues that “The Court should find that WSU did not act in
6 bad faith.”⁶

8 In this regard, WSU’s reliance on *Faulkner v. Washington Department of Corrections*⁷ is
9 mistaken. That Court of Appeals (Div. III) case concerned application of RCW 42.56.565(1)
10 which specifically prohibits an award of penalties to inmates for violations of the Public Records
11 act unless a court finds the agency acted in bad faith in denying the inmate the opportunity to
12 inspect or copy the public record.⁸ The court stated: “We hold that to establish bad faith, an
13 inmate must demonstrate a wanton or willful act or omission by the agency.”⁹ Inmates do not
14 have the same rights as citizens who are not incarcerated. In *Gronquist v. Dept. of Corr.*, 177
15 Wn.App. 389 (Div. 2 2013), the Court rejected an inmate’s argument that seizure of some PRA
16 documents DOC had mailed to him violated his freedom of speech.
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21 ³ See, Opening Br. at 5 citing *Francis v. Dep’t of Corr.*, 178 Wn. App. 42, 51 (2013) [Emphasis added].

22 ⁴ WSU Br. 9:15-16

23 ⁵ See, Public Records Act Deskbook: Washington’s Public Disclosure and Open Public Meetings Laws (Greg
24 Overstreet ed., Wash. State Bar Assoc. 2006) at sec. 17.4(2). By analogy, a criminal case involves two phases: trial
25 to determine guilt and sentencing. See, e.g. *Mitchell v. United States*, 526 U.S. 314, 329 (1999).

26 ⁶ WSU Br. 10:8-9

27 ⁷ 183 Wn.App. 93, 96 (2014).

28 ⁸ RCW 42.56.565(1) A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a
29 criminal sentence in a state, local, or privately operated correctional facility on the date the request for public
30 records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to
31 inspect or copy a public record.

32 ⁹ 183 Wn.App. 93, 103 (emphasis added).

1 The State Supreme Court has held that “a showing of bad faith is not required nor does
2 good faith reliance on an exemption exonerate an agency that mistakenly relies upon that
3 exemption.”¹⁰ In *Spokane Research & Defense Fund v. City of Spokane*, the Court held that:

4 Further, the PDA provides for attorney fees, costs, and sanctions to a party who
5 prevails against an agency when enforcing the right to inspect or copy public
6 records. RCW 42.17.340(4). The sanctions are calculated daily. Id. “This
7 provision has been treated by this court as a penalty to enforce the strong public
8 policies underlying the public disclosure act.” *Amren v. City of Kalama*, 131
9 Wn.2d 25, 35-36, 929 P.2d 389 (1997) (citations omitted). Strict enforcement of
10 this provision discourages improper denial of access to public records. Id. at 36.
11 A showing of bad faith is not required nor does good faith reliance on an
12 exemption exonerate an agency that mistakenly relies upon that exemption. Id.

13 *Spokane Research v. City of Spokane*, 155 Wn.2d 89, 100-101 (2005) [Emphasis added].

14 In *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 726
15 (2011),¹¹ the State Supreme Court stated:

16 We have additionally held that once a trial court finds an agency violated the
17 PRA, daily penalties are mandatory, but the amount is subject to the trial court's
18 discretion. *Yousoufian v. Office of King County Exec.*, 152 Wn.2d 421, 433, 98
19 P.3d 463 (2004). A violation therefore results in a remedy, with no discussion of
20 what causes the final disclosure, such as when suit was filed.

21 Here, WSU mistakenly claimed the PRA definition of “public record” does not include public
22 records “retained” by its Energy Office were “public records”. RCW 42.56.010(3). WSU, in
23 effect, was asserting that any records “retained” by WSU-Energy were “exempt” and, therefore,
24 could be withheld. That mistaken interpretation of an unambiguous statute set up a false claim

25 ¹⁰ *Spokane Research v. City of Spokane*, 155 Wn.2d 89, 101 (2005).

26 ¹¹ Contrary to WSU’s assertion, this case and its progeny were not “abrogated” by the legislature when it amended
27 RCW 42.56.550(4) to eliminate the minimum daily penalty of five dollars. This case continues to be relied upon by
28 the courts to this day. See, e.g. *Clapham v. Wash. State Patrol*, 2018 Wash. App. LEXIS 1413, *12; *Worthington v.*
29 *Wash. State Liquor & Cannabis Bd.*, 2017 Wash. App. LEXIS 2145, *10; *Rufin v. City of Seattle*, 199 Wn. App.
30 348, 356 (2017).

1 that WSU would have responded if Johnson simply submitted his PDRs to WSU's Public
2 Records Office. As noted by this Court:

3 THE COURT: And so, Mr. Feulner, had Mr. Johnson submitted the e-mail that
4 he sent to – I think it was Mr. Colombo, had he sent that to the public records –
5 Office of Public Records at WSU at their main campus, the response from WSU
6 was going to be, "This is not a public records request. We deny it because we
7 retain these documents. They aren't ours. They're not public records"? That's
8 what their response would have been had he submitted it to the proper place at
9 WSU?

10 MR. FEULNER: Your Honor, I'm not sure about that. The agency, I don't think,
11 had the opportunity to make that assessment at the time, which is why I think it
12 would have been important for Mr. Johnson to submit that request through the
13 public records office. In this litigation, the agency is arguing that those records
14 are not their own public records.¹²

15 As the State Supreme Court held in *Sanders v. State*,¹³

16 Disclosed records are either "produced" (made available for inspection and
17 copying) or "withheld" (not produced). A document may be lawfully withheld if
18 it is "exempt" under one of the PRA's enumerated exemptions. A document not
19 covered by one of the exemptions is, by contrast, "nonexempt." Withholding a
20 nonexempt document is "wrongful withholding" and violates the PRA.
21 *Yousoufian v. Office of King County Executive*, 152 Wn.2d 421, 429, 98 P.3d 463
22 (2004) (*Yousoufian II*).

23 As stated by this Court, "it appears to me that that statute is clear on its face. It's unambiguous,
24 and so I can use the normal definition."¹⁴ This court went on to conclude that "I don't think I
25 can read into it something that the legislature didn't put in there."¹⁵

26 ¹² Newman's Supp. Dec. Ex. 8: TR at 24:12-21 [Emphasis added]. To avoid confusion, the exhibit numbers pick up
27 from Newman's Dec. in Support of Fees and Costs filed with the Plaintiff's Opening Br.

28 ¹³ 169 Wn.2d 827, 836 (2010).

29 ¹⁴ Newman's Supp. Dec. Ex. 8: TR at 21:18-20.

30 ¹⁵ Newman's Supp. Dec. Ex. 8: TR at 48: 23-24.

1 WSU opened and closed Johnson's PDR three times.¹⁶ Johnson's opening brief was filed
2 on May 15, 2018. WSU reopened Johnson's PDR on May 22, 2018. On June 1, 2018, WSU
3 provided another 2,059 records¹⁷ for a total of 6,838 records.¹⁸ This Court commented on
4 WSU's late production of records after Johnson filed his opening brief stating:
5

6 THE COURT: After the opening brief was filed, something in that brief made the
7 public records office or the lawyer contact the public records office and say "Hey,
8 are there any documents that are missing? There was a check. There were
9 documents missing."¹⁹

10 The "something in that brief" was likely Moorehead's email to WSU IT staff dated April 24,
11 2018, directing them not to provide documents in response to a subpoena issued in this case.²⁰

12 On June 18, 2018, WSU reopened Johnson's PDR again for the third time and sends the
13 native email with the metadata.²¹ That was not provided in response to formal discovery
14 requests which were last responded to on July 12, 2018.²²

15 **Per-Page Penalty:**

16 WSU argues that this court should not apply a per-page penalty. This position is
17 consistent with WSU's mistaken argument that this court "adopt a broader definition of public
18 records as it relates to the word 'retained'."²³ The court rejected that argument. Likewise, the
19
20
21

22 ¹⁶ See Johnson's Opening Br. chronology at 2-3. WSU first opened Johnson's PDR on 2/26/18 closing it on 5/9/18;
23 reopened on 5/22/18 closing it on 6/1/18; reopened it again on 6/18/18 closing it on 6/18/18.

¹⁷ WSU's Response (liability issue) at 10:3.

24 ¹⁸ See Johnson's Reply Br. (liability issue) Newman Dec. at 3.

¹⁹ Newman's Supp. Dec. Ex. 8: TR at 50:22-25.

25 ²⁰ WSU's Response Br. (liability issue) Dec. of Counsel (Feulner) at page 10.

²¹ Newman's Dec. in Support of Costs and Fees [NextRequest communications log].

26 ²² See Newman's Supp. Dec. Ex. 12: Letter from Feulner to Newman (7/12/18).

²³ Newman's Supp. Dec. Ex. 8: TR 49: 10-12.

1 court should reject WSU's arguments that it ignore precedent²⁴ and disregard useful guidance
2 from recent decisions by other Superior Court judges regarding the per-page penalty.²⁵

3 **# Days Records Withheld:**

4 WSU concedes that the Court should award penalties for 42 days consisting of 19 days
5 from the five-business day response deadline imposed by RCW 42.56.520(1) and 23 days from
6 "when WSU closed the request on May 9, 2018, to when it produced the final batch of
7 responsive records on June 1, 2018."²⁶ WSU is correct regarding the 19 days but wrong on the
8 23 days. WSU ignores the fact that it withheld 6,838 documents for 19 days. WSU ignores it
9 withheld 2,059 records after closing Johnson's PDR on May 9, 2018. Those records were
10 eventually produced on June 1, 2018, twenty-three (23) days *after* Johnson filed his opening
11 brief on May 15, 2018. Furthermore, after the liability hearing on June 15, 2018, WSU reopened
12 Johnson's PDR on June 18, 2018 to provide the metadata and closed Johnson's PDR on that
13 same day.

14 Therefore, Johnson asks this Court to follow Judge Cuthbertson's analysis in *West v. Port*
15 *of Tacoma* and impose the following penalties:

- 16 1. Delaying 19 days x 6,838 records @ \$20.00/day = \$2,598,440.
17 2. Failing to produce 2,059 records after closing Johnson's PRA on May 9, 2018. WSU
18 reopened Johnson's PDR 12 days' later May 22, after receiving Johnson's Opening

19 ²⁴ See Defendant's Response fn 5 wherein WSU argues that *Wade's Eastside Gun Shop, Inc.*, was wrongly decided.

20 ²⁵ See, Johnson's Opening Br. Penalties, Attorney's Fees and Costs at pp. 6-9 citing: *West v. Port of Tacoma*, Pierce
21 County Superior Court No. 16-2-12200-6 (Judge Frank Cuthbertson); *West v. Vermillion*, Pierce County Superior
22 Court No. 14-2-05483-7 (Judge Stanley J. Rumbaugh); and *Banks v. City of Tacoma*, Pierce County Superior Court
23 No. 16-2-05416-7 (Judge G. Helen Whitener). Attached to Newman Dec. in Support of Fees and Penalties. There is
24 no state civil rule or local civil rule that prohibits citing other superior court decisions. Paul Telford used a prior
25 superior court decision issued by Judge Richard D. Hicks in his superior court case. He prevailed on appeal. *Telford*
26 *v. Board of Comm'rs*, 95 Wn.App. 149 (1999), *review denied*, 138 Wn.2d 1015 (1999). See Newman's Supp. Dec.

²⁶ WSU Br. at 7:3-8.

1 Brief on May 15. Those records were eventually produced 23 days' later June 1, 2018:
2 23 days x 2,059 records @ \$70.00/day = \$3,314,990.

3 3. For failing to produce metadata for 130 days²⁷ @ \$100.00/day = \$13,000.

4 **Costs:**

5 Regarding costs, WSU takes issue with virtually all costs.²⁸ Yet, "all costs" is liberally to
6 include "all of the reasonable expenses incurred in gaining access to the requested records,"
7 including "reasonable costs incurred in litigating the dispute."²⁹ For example, in *West v. Port of*
8 *Tacoma*, Judge Cuthbertson awarded West \$1,100 in costs, including: filing fee, transcript,
9 mileage (@\$.50/mile); parking fees, printing, electronic filing and copy costs.³⁰

11 Here, WSU's argument that the costs should be denied are petty and absurd. For
12 example, they contest copy costs [\$15.85] and mailing costs [\$2.05] apparently under the
13 mistaken impression that Fed-Ex is only for delivery services.

15 The University does object to the cost that was purportedly incurred to Fed-Ex
16 (\$15.85) and mail a copy of the Plaintiff's reply brief (\$2.05) to the Attorney
17 General's Office. It is unclear if these expenses are duplicative, but they are
unnecessary.³¹

18 FedEx bought Kinkos, the copy service, in 2004.³²

19 As for the video, counsel did not have the transcript from the June 15, 2018 hearing until
20 July 2, 2018 and needed to work on the reply brief as soon as possible due to deadlines.³³

22 ²⁷ WSU produced the metadata in response to Johnson's PDR on June 18, 2018.

23 ²⁸ See WSU Br. at 16. Counsel did not send the brief to WSU via FedEx. FedEx Kinkos is where the copies were
24 made. Due to the size of the opening brief, counsel mailed a copy as a matter of professional courtesy.

25 ²⁹ *Am. Civil Liberties Union of Wash. v. Blaine Sch. Dist. No. 503*, 95 Wn. App. 106, 117, 975 P.2d 536 (1999).

26 ³⁰ Newman's Dec. in Support of Fees and Costs, Ex. 1 Agreed Order on Costs.

27 ³¹ WSU Br. at 16:12-15.

28 ³² Rick Brooks, *FedEx to Buy Kinko's for \$2.2 Billion*, Wall Street Journal (12/31/03).

29 ³³ See Newman's Supp. Dec.

1 Finally, Plaintiff has not presented sufficient evidence for WSU to determine the
2 reasonableness of the cost of obtaining a transcript of the hearing because Plaintiff
3 does not provide an invoice of this charge. It is not clear when that cost was
4 incurred and that is potentially important for the offer of judgment. Additionally,
5 it is unclear why a transcript of the entire hearing was necessary and reasonably
6 incurred, or how many copies were ordered as WSU received a quote for only
7 \$140 for a complete copy of the transcript. At the very least, this expense should
8 be reduced by the percentage of pages that Plaintiff attached to his briefing.³⁴

9 Attached are invoices for all costs, including \$275 for the video and \$280 for the transcript.³⁵

10 **Attorney Fees:**

11 Finally, regarding attorney fees, WSU admits the issue was novel but opposes any
12 lodestar multiplier arguing that “Plaintiff’s briefing on this issue was sparse.”³⁶ Johnson’s brief
13 was 20 pages long in keeping with LCR 10(d)(2) but included 143 footnotes. The Court noted
14 that that “this is a very interesting issue”³⁷ and went on to state:

15 The matter was well briefed by both sides, as well as there were significant
16 exhibits that were submitted as well for the purposes of the hearing today.³⁸

17 The Court specifically cited Mr. Newman’s brief for the definition of “retain” in addition to its
18 own research to conclude WSU was mistaken regarding its interpretation of the PRA.³⁹

19 Nevertheless, WSU claims the hours spent should be reduced claiming the case “involved
20 two relatively short court hearings, very minimal discovery,⁴⁰ and very little motion practice.”⁴¹

21
22 ³⁴ WSU Br. at 17:1-5 [Emphasis added].

23 ³⁵ Newman Supp. Dec. Ex. 9

24 ³⁶ WSU Br. at 18:25.

25 ³⁷ Newman’s Supp. Dec. Ex. 8: TR: 46:20-21.

26 ³⁸ Newman’s Supp. Dec. Ex. 8: TR: 36:1-6.

27 ³⁹ Newman’s Supp. Dec. Ex. 8: TR: 21:1-4.

28 ⁴⁰ See Newman’s Supp. Dec. Ex. 10 [Plaintiff’s Requests for Production]; Ex. 11 [Defendant’s Supp. Objections and
Answers Thereto].

29 ⁴¹ WSU Br. at 19: 25-26.

1 Johnson issued requests for production based on his PDR.⁴² WSU asserted various objections to
2 those requests⁴³ and supplemented them as late as July 12, 2018.⁴⁴

3 WSU suggests the attorney fee award could be \$554,80.⁴⁵ This case involved review of
4 over 6,838 records and extensive briefing. WSU only very recently (July 12, 2018) provided a
5 final response to Johnson's discovery requests.⁴⁶ Johnson respectfully suggests that the court ask
6 how much WSU spent on this case, including the salaries paid to its two attorneys and staff.
7

8 **CONCLUSION:**

9 WSU argues that this court should not "engage in unnecessarily formalistic calculation of
10 penalties."⁴⁷ In that regard, the State Supreme Court noted:

11
12 Rather, we provide the considerations below to avoid a *Yousoufian V*, or similar
13 protracted litigation. The dissent characterizes our guidance as a "16-part test"
14 that "endangers trial courts' discretion and will also prove unhelpful for litigants
15 and courts alike." Dissent at 471. But how then are trial courts and litigants
16 supposed to avoid a Goldilocks-like scenario whereby appellate courts find
17 penalties too low or too high but provide no meaningful guidance as to where, on
18 a vast range, they should fall? Here, King County, the party against whom the
19 penalty was assessed, is so ready to put this matter to rest that it asked this court
20 to set the penalty.

21 *Yousoufian v. Office of Ron Sims, King County Executive*, 165 Wn.2d 439, 456 (2009).

22 WSU's efforts to nickel and dime Johnson on penalties, costs and attorney's fees
23 demonstrates the daunting challenges facing plaintiffs in PRA cases. Here, WSU has two
24
25
26
27

28 ⁴² Newman's Supp. Dec. Ex 10.

29 ⁴³ Newman's Supp. Dec. Ex. 11.

30 ⁴⁴ Newman's Supp. Dec. Ex. 12.

31 ⁴⁵ WSU Br. at 23: 8

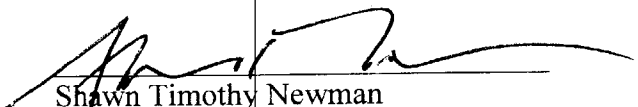
32 ⁴⁶ See Newman's Supp. Dec. Ex. 12.

33 ⁴⁷ WSU Br. at 9:11-12.

1 attorneys and staff working this case. As Attorney Jon E. Cushman states in his declaration⁴⁸ in
2 support of attorney's fees,

3 Public records cases are always complex and generally involve an imbalance in
4 power and resources. The Government has many resources compared to the
5 private litigant.

6 DATED: 7/16/18


Shawn Timothy Newman
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2507 Crestline Dr., N.W.
Olympia, WA 98502

10 **CERTIFICATE OF SERVICE**

11
12 I certify under penalty of perjury under the laws of the State of Washington that I served
13 a copy of Plaintiff's Reply Brief on the date below as follows:

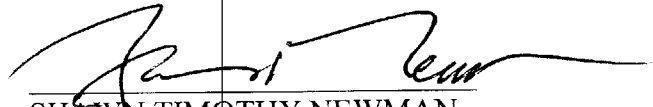
14
15 TO: Thurston County Superior Court Clerk (Personally original)

16 TO: The Honorable Christine Schaller (Personally Bench Copy)

17 TO Timothy J. Feulner, WSBA #45396 [TimF1@ATG.WA.GOV]
18 Adam N. Malcolm, WSBA #32126 [adam.malcolm@wsu.edu]

19 VIA EMAIL PER AGREEMENT

20 Date: 7/16/18


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26 ⁴⁸ Newman's Dec. in Support Ex. 5.

27
28 PLAINTIFF'S REPLY BRIEF
PENALTIES, ATTORNEY'S FEES
AND COSTS

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NEWMAN SUPPLEMENTAL DECLARATION

Hearing Set: July 20, 2018.
Time: 9:00 am
Judge: Schaller

THURSTON COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

Eric Johnson,

Plaintiff, No. 18-2-00943-34

vs.

Supplemental Declaration of

Washington State University (WSU) Energy

Shawn Newman

Program Office.

In Support of Attorney's Fees and Costs

Defendant.

SHAWN TIMOTHY NEWMAN declares the following is true and correct:

1. Transcript excerpts: Attached and marked as Exhibit 8 are excerpts from the July 15, 2018 liability hearing cited in the reply brief. To avoid confusion, the exhibit numbers pick up from Newman's Dec. in Support of Fees and Costs filed with the Plaintiff's Opening Brief.

2. Costs: Invoices for all costs as of July 3, 2018 are attached and marked as Exhibit 9. They total \$833.20. This includes the \$240 filing fee, transcript, video and copy costs.

Regarding the video, I contacted Mr. Green afterward the June 15, 2018 hearing because of the

NEWMAN SUPPLEMENTAL DECLARATION
IN SUPPORT OF FEES AND COSTS

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1 anticipated delay is getting the transcript. I ordered the video to expedite my briefing given the
2 July 4th holiday, briefing deadline and other time limitations.

3 I ordered the transcript after the liability hearing on June 15, 2018. I followed up with an
4 order via the court's website and emails to and from Aurora Shackell, the Court Reporter. This
5 includes an email dated July 2, 2018 stating:
6

7 Aurora, I did not receive the transcript and am working on finalizing my opening
8 brief which is due this Friday, July 6, 2018. I understand this is a difficult week
9 with the holiday and perhaps I missed your email with the transcript. If not, what
is the ETA? Thanking you in advance for your time and consideration.

10 Ms. Shackell responded later that day stating:


11 Shawn, I just received the ruling back today. I am currently in a murder trial and
12 so will have this to do first thing tomorrow morning.

13 Ms. Shackell emailed me the transcript and invoice later that day. The invoice was paid and
14 mailed on July 3, 2018.

15 **3. Discovery:** Attached as Exhibit 10 is a true and correct copy of Defendant's First
16 Requests for Production filed and served with the lawsuit on February 16, 2018. Exhibit 11 is
17 WSU's objections and answers thereto dated May 31, 2018. Also attached as Exhibit 12 is a
18 letter dated July 12, 2018 from Mr. Feulner supplementing WSU's discovery responses.
19

20 Note, Mr. Feulner's statement that these records were already provided on June 1, 2018,
21 is wrong. The metadata was not provided until June 18, 2018. This was after the liability
22 hearing on June 15, 2018.
23

24 DATED: 7/16/18
25 Olympia


Shawn Newman

26
27
28 NEWMAN SUPPLEMENTAL DECLARATION
IN SUPPORT OF FEES AND COSTS

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NEWMAN
SUPPLEMENTAL
DECLARATION
EXHIBIT #8

ERIC JOHNSON,
Plaintiff,

WASHINGTON STATE
UNIVERSITY,

THURSTON COUNTY
NO. 18-2-00943-34

BE IT REMEMBERED that on June 20, 2018, the above-entitled matter came on for hearing before the HONORABLE CHRISTINE SCHALLER, Judge of Thurston County Superior Court.

1

1 cambridge.org, and then Mr. Newman in his brief gave
2 a definition from Black's Law Dictionary. In the
3 *Nissen* case, the court used -- I think it used the
4 Webster definition. But in each of these
5 definitions, the main portion is "to keep possession
6 of." That's dictionary.com. Thefreedictionary.com,
7 "to keep possession of, continue to have," as it
8 relates to the definition of retain.
9 Merriam-webster.com, "to keep in possession or use."
10 Cambridge.org, "to keep or continue to have
11 something." And Black's Law Dictionary, "to continue
12 to hold, have, use, recognize, etc., and to keep."

13 And so the definition of the public record, which
14 is whether or not the document or the written -- the
15 writing is used or retained by any state or local
16 agency, prepared, owned, used or retained by any
17 state or local agency regardless of physical form or
18 characteristics. When I read RCW 42.56.010(3), which
19 is the definition of the public record, it appears to
20 me that that statute is clear on its face. It's
21 unambiguous, and so I can use the normal definition.

22 And so it appears to me that the State is actually
23 asking that I do something different to interpret or
24 define the term "retained" on a statute that's
25 unambiguous. And so that's my question to you. I

1 THE COURT: All right. Thank you. This
2 matter is before the court for the full Public
3 Records Act hearing in this case. The matter was
4 well briefed by both sides, as well as there were
5 significant exhibits that were submitted as well for
6 the purposes of the hearing today.

7 The plaintiff is Eric Johnson. Mr. Johnson, as it
8 relates specifically to the facts of this case,
9 obviously is a member of the public, but he is also a
10 board member of the Thurston Conservation District.

11 The defendant is the Washington State
12 University -- is Washington State University, but
13 specifically as it relates to this case, I'm looking
14 at the actions of the Washington State University
15 Energy Program office. It's one of the satellite
16 offices for Washington State University. It provides
17 technology services to different entities that
18 contract with it or have memorandums of understanding
19 with it. And as part of those different services
20 that it can provide, it provides servers and backup
21 servers and storage for different entities.

22 Washington State University itself, because the
23 Energy Program office is simply part of Washington
24 State University, and, again, it has satellite
25 offices throughout the State, the Washington State

1 because you've made it to the wrong place," or they
2 should have sent it to the public records office. I
3 think that's what -- I don't think -- that is what
4 the Public Records Act requires, and it did not
5 happen in this case in either format.

6 And unlike the *Parmelee* case, Mr. Johnson was
7 making the request to the place that, like, literally
8 held the records. And so it is not -- it seems very
9 reasonable that he would believe, absent being told
10 differently, that that is how he should make his
11 request or where he would make his request.

12 So we have this request. And so then the issue
13 is, is it a public records request. And the issue,
14 from the -- raised by the defendant is, does an
15 agency's storage of records on a server for a second
16 public agency mean that the records stored are the
17 storing agency's public records that must produced in
18 response to a public records request to the agency
19 that is storing the records."

20 This issue has not been decided. I actually think
21 this is a very interesting issue, and I think that
22 because -- although I know that the Public Records
23 Act is this strongly worded mandate that it is for
24 broad disclosure of public records, and, clearly, we
25 have just a long list of caselaw on that issue, just

1 doesn't apply.

2 "Owned." They're not owned by the Energy Program
3 office, so that doesn't apply.

4 "Used." They're not used by the Energy Program
5 office, simply stored there.

6 But the statute goes on to say "or retained by any
7 state or local agency regardless of physical form or
8 characteristics." This statute is clear on its face.
9 It is clear that the legislature picked these words,
10 and there is nothing that defines "retained" as
11 anything other than what would be a normal
12 definition.

13 And again, in *Nissen vs. Pierce County*, they
14 briefly talk about "retained." They're looking at
15 other words more specifically, and they said because
16 it's not defined, we would use a simple definition
17 from basically a dictionary. Every single dictionary
18 that this court looked at, as I've already indicated,
19 indicates that "retain" is to keep possession of.
20 That's it. Without "to keep possession of," and as
21 the State argues -- and I don't think it's a bad
22 argument, but when a statute is unambiguous, I don't
23 think I can read into it something that the
24 legislature didn't put in there. Because I think
25 it's a reasonable argument that the "retain" should

1 apply, retained to the work that they are doing or
2 that an agency is doing. So when it's applied to
3 this third party, that's not what the legislature
4 said.

5 And, additionally, the legislature specifically
6 said "retained by a state or local agency." And so,
7 clearly, this doesn't apply to this private
8 third-party entity, but it does apply to any state or
9 local agency that chooses to retain records.

10 And so I will not, as the State has argued, adopt
11 a broader definition of public records as it relates
12 to the word "retained." Although, again, I think
13 that makes a reasonable result for me to do that, I
14 don't think that that is how the law is written and
15 that I should go beyond plain language of a statute.
16 So I do find that this -- the documents sought were
17 public records as is defined by the statute.

18 It's next then argued that there was no denial or
19 failure to produce records and that the e-mail on
20 February 8th was not a denial. That communication
21 directed Mr. Johnson through Ms. Moorehead or to make
22 a request through the conservation district, and if
23 he went through the proper channels, they would be
24 happy to produce the records. In fact, that was a
25 denial, because the other thing they could have done

1 was said, "If you make the request through the public
2 records office, that could be different -- or that's
3 another option that you have."

4 And, again, I don't believe that Mr. Pierson or
5 Mr. Colombo or anyone in the Energy Program office
6 were acting in bad faith. I think they were acting
7 without properly perhaps educating themselves or
8 asking questions of other people. There's also
9 nothing in this record to suggest they didn't know
10 anything about the public records office that exists
11 at WSU.

12 Were all of the records produced? There were
13 multiple -- once the records started being produced
14 to Mr. Johnson, which WSU did, once the records
15 office was provided with a copy of those requests,
16 once this lawsuit was filed, they immediately and
17 timely began searching for those records.

18 Mr. Johnson received multiple -- people are referring
19 to them as dumps, but multiple separate productions
20 of records, and he received thousands of pages of
21 records.

22 After the opening brief was filed, something in
23 that brief made the public records office or the
24 lawyer contact the public records office and say,
25 "Hey, are there any documents that are missing?"

NEWMAN
SUPPLEMENTAL
DECLARATION
EXHIBIT #9

OFFICIAL RECEIPT
 Thurston County Superior Court
 Linda Nylund Esq
 Thurston County Clerk
 1000 Lakeland Dr SW
 Olympia, WA 98502
<http://www.co.thurston.wa.us/clock>

Receipt No. 24-2017-40025-14
 Transaction Date 07/10/2018
 Payer
 CHATTIN, TRACER, INC. (CHATTIN)

Description	Amount
JOHNSON, ERIC	
18-2-00940-01	
ERIC JOHNSON vs	
WASHINGTON STATE	
UNIVERSITY	
Civil Filing Fee	240.00
SUBTOTAL	240.00
Remaining Balance	
Due:	0.00
PAYMENT TOTAL	240.00
Cheq. (Ref. 000000)	
Unrecorded	240.00
TOTAL PAID	240.00



✓ Johnson opening
BRICE

May 15, 2018 11:14 Page: 1
Receipt #: 2294512037
Invoice #: 22940P003439
Customer #: 0000062020-0004
Customer : 71789
Auth. User: Shawn Newman
Reference : <PO not entered>
2018/05/15 11:08

Qty	Description	Amount
117	ES B&W S/S White 8.5 x11	15.21
SubTotal		15.21
Taxes		1.34
Total		16.55

The Cardholder agrees to pay the issuer of the charge card in accordance with the agreement between the issuer and the Cardholder.

FedEx Office Print & Ship Centers

2915 HARRISON AVE NE
OLYMPIA, WA 98502
(360) 943-4993
www.FedExOffice.com

Tell us how we're doing and receive
5% off your next print order
fedex.com/we listen or 1-800-398-0242
Offer Code: _____ Offer expires 06/30/2018

Get your message out in a big way with
everything from full-color banners to
photo-quality posters, yard signs,
auto magnets and more.

Please Recycle This Receipt



June 07, 2018 11:28 Page: 1
Receipt #: 2294512874
Invoice #: 22940P003442
Customer #: 0000062020-0004
Customer : 71789
Auth. User: Shawn Newman
Reference : <PO not entered>
2018/06/07 11:24

Qty	Description	Amount
112	ES B&W S/S White 8.5 x11	14.56
SubTotal		14.56
Taxes		1.29
Total		15.85

The Cardholder agrees to pay the Issuer of the charge card in accordance with the agreement between the Issuer and the Cardholder.

FedEx Office Print & Ship Centers:

2915 HARRISON AVE NE
OLYMPIA, WA 98502
(360) 943-4993
www.FedExOffice.com

Tell us how we're doing and receive
\$5 off your next \$30 print order
fedex.com/we listen or 1-800-398-0242
Offer Code: _____ Offer expires 12/31/2018

Get your message out in a big way with
everything from full-color banners to
photo-quality posters, yard signs,
auto magnets and more.

Please Recycle This Receipt

Johnson ✓

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WESTSIDE OLYMPIA
400 COOPER POINT RD SW STE 27
OLYMPIA
WA
98502-0001
5461500668
06/07/2018 (800)275-8777 11:53 AM

=====

Product Description	Sale Qty	Final Price
First-Class Mail Large Envelope (Domestic) (OLYMPIA, WA 98504) (Weight:0 Lb 5.20 Oz) (Estimated Delivery Date) (Saturday 06/09/2018)	1	\$2.05
Peace Rose Bklt (Unit Price:\$10.00)	2	\$10.00
Total		\$12.05

=====

@newmanlawolympia.com

Shawn Newman <newmanlawolympia@outlook.com>

Sunday, July 01, 2018 10:15 AM

'marianne@newmanlaw.us'

FW: Pierce County Clerks Office Order #206715245V

Subject:

Add this to costs in Johnson's case

-----Original Message-----

From: Pierce County Clerks Office <PCCLKCOPIES@co.pierce.wa.us>

Sent: Sunday, July 01, 2018 10:05 AM

To: Newmanlaw@comcast.net

Subject: Pierce County Clerks Office Order #206715245V

Date: Sun, Jul, 01, 2018

Order ID: 206715245V

Order Total: \$2.25

eCommerce Fee: \$1.50

Total Paid: \$3.75

16-2-05416-7 - COURT'S DECISION - (Standard Copy) - 1 at \$2.25 = \$2.25

You can download your Standard Copies at:

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fflinxonline.co.pierce.wa.us%2Fflinxweb%2FCase%2FCaseFiling%2FdocumentView.cfm%3Foid%3D206715245V%26ea%3DNewmanlaw%40comcast.net&data=02%7C01%7C%7C7C66660614835823585&sdata=SbRIYVqffSIks7ZNV5XwmaWBK5JbtLT3n%2FZUN5ingAs%3D&reserved=0>

Notice: You have 5 days to access your purchased copies before the above link expires.

Thank you,
Pierce County Clerks Office

THIS E-MAIL IS PRIVILEGED AND/OR CONFIDENTIAL AND INTENDED ONLY FOR THE LISTED RECIPIENT. IF YOU RECEIVED THIS E-MAIL IN ERROR OR THROUGH UNAUTHORIZED INTERCEPT, PLEASE REPLY TO THIS EMAIL, AND THEN DELETE THIS E-MAIL.

Invoice

Brian Green
351 Burchett Rd
Onalaska, Washington
360 791-3812

Date: 07/02/2018
Invoice No.: 10000
Due Date: 07/07/2018

Bill To:
Shawn Newman
2507 Crestline Dr., NW
Olympia, WA 98502
Ph: 360.866.2322
Fax: 866.800.9941

Qty	Item	Description	Unit Price	Total
1		Courtroom Video Recording	\$150.00	\$150.00
1		Courtroom Video Editing / Upload	\$125.00	\$125.00
				#6568 7/3/18

Total \$275.00
Balance Due \$275.00

Please contact us for more information about payment options.

Thank you for your business.

AURORA J. SHACKELL
Court Reporter No. 2439
2000 Lakeridge Dr. SW, Bldg 2
Olympia, WA 98502
(360) 786-5572

Date: July 2, 2018

SHAWN NEWMAN
Attorney at Law
2507 Crestline Dr. NW
Olympia, WA 98502-4327

INVOICE NUMBER: AZWA17166

Date Taken	Reference	Charges
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	Johnson v WSU TC # 18-2-00943-34	
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6-20-18	VRP (56 pages)	280.00
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TOTAL: \$ 280.00

#6569
7/2/18

NEWMAN
SUPPLEMENTAL
DECLARATION
EXHIBIT #10

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THURSTON COUNTY SUPERIOR COURT OF THE

Eric Johnson,
Plaintiff,

vs.

Washington State University (WSU)
Energy Program Office

Defendant.

NO. 18-2-00943-34

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION TO DEFENDANT

Pursuant to Court Rules of Civil Procedure 26 and 34, Plaintiff requests Defendant identify and produce for inspection and copying all documents, papers, books, accounts, letters, objects, and tangible things identified herein, to the extent such documents are in the possession, or custody, or control of Defendant, including its agents, employees, and attorneys. All documents shall be **number stamped**, and categorized by request number to which it is responsive. All documents responsive to these requests shall be produced at 10:00 a.m., 40 days from service upon you, or at another mutually agreeable time, at the Law Office of Shawn Timothy Newman, 2507 Crestline Dr., N.W., Olympia, WA 98502.

INSTRUCTIONS FOR ANSWERING

1. In responding to this request, you are required to obtain and furnish all information available to you and any of your representatives, employees, agents, brokers, servants, or attorneys and to obtain and furnish all information that is in your possession or under your control, or in the possession or under the control of any of your representatives, employees, agents, servants, or attorneys.

2. Each request which seeks information relating in any way to communications to, from, or within a business or corporate entity, is hereby designated to demand, and should be construed to include, all communications by and between representatives, employees, agents, brokers or servants of the business or corporate entity.

3. Each request should be responded to separately. However, a document which is the response to more than one request may, if the relevant portion is marked or indexed, be produced and referred to in a later response. All documents produced shall be segregated and

1 identified by the paragraph(s) or request to which they are primarily responsive. Where
2 required by a particular request, documents produced shall be further segregated and identified
3 as indicated.

4 4. For any documents that are stored or maintained in files in the normal course of
5 business, such documents shall be produced in such files, or in such a manner as to preserve and
6 identify the file from which such documents were taken, including by producing a copy of the
7 index tabs and any other information contained on the file or storage medium itself, and by the
8 use of document numbering which maintains the identity of the source of the document.

9 5. If you object to part of any request, furnish documents responsive to the
10 remainder of the request.

11 6. Each request refers to all documents that are either known by Defendant to exist
12 or that can be located or discovered by reasonably diligent efforts of employees and agents of
13 Defendant.

14 7. The documents produced in response to this Request shall include all
15 attachments and enclosures.

16 8. These requests should be construed broadly. Towards that end, for example,
17 references to the singular include the plural, and the use of any tense of any verb shall be
18 considered also to include within its meaning all other tenses of the verb so used.

19 9. Pursuant to Rule 26(e), you are under a continuing duty to seasonably
20 supplement the production with documents obtained subsequent to the preparation and filing of
21 a response to each request. In addition, this instruction imposes upon you a continuous
22 obligation to supplement your answers to this production request.

23 10. For each document encompassed by these requests which Defendant claims to be
24 privileged from or otherwise protected against discovery on any ground, including work product
25 protection, attorney/client or other privilege, or any statutory authority, Defendant shall
26 expressly make the claim, fully setting forth all grounds for the privilege or protection and shall
27 expressly describe the document with a degree of specificity that will enable counsel for
28 Plaintiffs to assess the applicability of the claimed privilege or protection.

Each request to produce a document or documents shall be deemed to call for the
production of the original document or such copies as are in the possession, or subject to the
control of, the party to whom this request is addressed. In addition, each request should be
considered as including a request for separate production of all copies and preliminary drafts of
documents that differ in any respect from the original or final draft or from each other (e.g., by
reason of differences in form or content or by reason of handwritten notes or comments having
been added to one copy of a document but not on the original or other copies thereof).

1 12. All documents produced in response to this Request shall be produced
2 notwithstanding the fact that portions thereof may contain information not requested.

3 13. If any documents requested herein have been lost or destroyed, the documents so
4 lost or destroyed shall be identified by author, date, and subject matter. Further, you shall state
5 who lost or destroyed said document and at whose direction it was destroyed; the approximate
6 date of the destruction or loss.

7 14. Where exact information cannot be furnished, estimated information is to be
8 supplied to the extent possible. Where estimation is used, it should be so indicated, and an
9 explanation should be given as to the basis on which the estimate was made and the exact
10 reason information cannot be furnished.

11 15. With respect to any document requested which was once in possession, custody
12 or control of Defendant, but no longer is, please indicate the date the document ceased to be in
13 possession, custody, or control, the manner in which it ceased to be in possession, custody or
14 control, and the name and address of its present custodian.

15 16. Unless otherwise indicated, each request is to be construed as encompassing all
16 documents which relate to the stated subject matter and to events which transpired since January
17 1, 2016, until the present. However, unless otherwise specified, each request also requires a full
18 answer for every period of time with respect to which Defendant intends to offer evidence.

19 DEFINITIONS

20 1. "You," "your" and "yourself" refer to WSU – Energy Program or the party to
21 whom the following requests are addressed, and its agents, representatives, officers, directors,
22 affiliates, predecessors and successors in interest, parents, departments, divisions, subsidiaries,
23 area and regional offices and employees, including persons or entities outside of the United
24 States, and where applicable, your attorneys.

25 2. "Person" means natural persons, firms, proprietorships, associations,
26 partnerships, corporations and every other type of organization or entity.

27 3. "Communication" shall mean any transmission of information, the information
28 transmitted, and any process by which information is transmitted, and shall include written,
electronic, and oral communications.

4. "Document" or "documents" includes all those within the scope of CR 34 (a)(1)
and without limitation any written, typed, printed, recorded, or graphic matter (however
preserved, produced, or reproduced) of any type or description, regardless of origin or location,
including without limitation any employment application, binder, cover note, folder label,
certificate, letter, correspondence, record, table, chart, analysis, graph, schedule, report, test,
eliminate materials, course materials, study memorandum, note, list, diary, log, files (including
but not limited to official and unofficial personnel records and otherwise), calendar, telex,

1 message (including, but not limited to, inter-office and intra-office communications),
2 computer/electronic data, E-mail, questionnaire, bill, purchase order, shipping order, contract,
3 memorandum of contract, agreement, conciliation or settlement agreement with any municipal,
4 state, federal or governmental entity, assignment, license, certificate, permit, ledger, ledger
5 entry, book of account, check, order, invoice, receipt, statement, financial data,
6 acknowledgment, computer or data processing card, computer or data processing disk,
7 computer-generated matter, photograph, photographic negative, sound recording, transcript or
8 log of an such recording, projection, videotape, film, microfiche, any other data compilations
9 from which information can be obtained or translated, reports or summaries of investigations,
10 drafts and revisions of drafts of any documents and original preliminary notes or sketches, no
11 matter how produced or maintained, in your actual or constructive possession, custody or
12 control, or the existence of which you have knowledge, and whether prepared, published or
13 released by you or by any other person. If a document has been prepared in several copies, or
14 additional copies have been made, or copies are not identical (or which by reason of subsequent
15 modification of a copy by the addition of notations or other modifications, are no longer
16 identical), each non-identical copy as a separate document.

17 5. "Relating to" means consisting of, referring to, regarding describing, discussing,
18 constituting, evidencing, containing, reflecting, mentioning, concerning, relating to, citing,
19 summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

20 6. "Defendant" means any or all Defendants and any subsidiaries, departments,
21 divisions, officers, employees, agents, representatives, and others known to you to have acted on
22 his, her, or its respective behalf, including attorneys where applicable.

23 7. "During the relevant time period" shall mean any period(s) that the Defendant(s)
24 had direct or indirect contact with Plaintiff. It shall also include any time since January 1, 2016.

25 8. These requests shall be construed as broadly as is reasonable. To this end, "any"
26 shall also mean "all" and vice versa. In addition, "and" shall mean "or" and "or" shall mean
27 "and" as necessary to call for the broadest possible answer.

28 PRODUCE THE FOLLOWING DOCUMENTS:

1. All records responsive to Mr. Johnson's first request sent via email to Mr. Colombo on
1/31/18:

First Request:

I Eric Johnson, Chair, Thurston Conservation District (TCD), request,
specifically, looking at an e-mail created at TCD on 11-29-17 at 3:33pm and
modified on 11-30-17 at 9:47 am. What computer was this created on, who
created this and where was it sent? A copy of this e-mail and meta data send to:
ericjohnsontcd@gmail.com.

1 RESPONSE:

2
3 2. All records responsive to Mr. Johnson's second request sent via email to Mr. Colombo on
4 1/31/18:

5 I Eric Johnson, Chair, Thurston Conservation District (TCD), request any and all
6 e-mails sent to and from TCD, containing the names Eric Johnson, Richard
7 Mankamyer, Samantha Fleischner, Doug Rushton, Sarah Moorehead, Shana Joy,
8 Mark Clark, Amy Franks, Amy Hatch-Winecka, between the dates 112017 to
9 120517, send information to: ericjohnsontcd@gmail.com

10 RESPONSE:

11 3. All records related to the MOU between the Thurston Conservation District [TCD] and
12 the defendants.

13 RESPONSE:

14 4. All records between Samantha Fleischner, including those to/from
15 SamanthaH@WasteConnections.com and sfleischner@thurstoncd.com, and Shana Joy, Puget
16 Sound Regional Manager, Washington State Conservation Commission [SJoy@scc.wa.gov]
17 regarding Eric Johnson or Richard Mankamyer.

18 RESPONSE:

19 5. All records between Samantha Fleischner, including those to/from
20 SamanthaH@WasteConnections.com and sfleischner@thurstoncd.com, and Sarah Moorehead
21 [SMoorehead@thurstoncd.com] regarding Eric Johnson or Richard Mankamyer.

22 RESPONSE:

23 6. All records between Samantha Fleischner, including those to/from
24 SamanthaH@WasteConnections.com and sfleischner@thurstoncd.com, and Mark Clark,
25 Executive Director, Washington State Conservation Commission [mclark@scc.wa.gov]
26 regarding Eric Johnson or Richard Mankamyer.

27 RESPONSE:

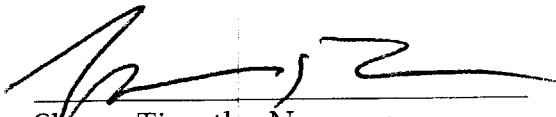
28 7. All records by or to James Colombo, WSU – Energy Program Information Systems
Department Manager, regarding the plaintiff, Eric Johnson, including, but not limited to, his
meeting with him on January 25, 2018 and January 31, 2018.

RESPONSE:

1 8. All records by or to Michael Pierson, WSU – Energy IT Support Specialist, regarding the
2 plaintiff, Eric Johnson, including, but not limited to his contact with him on January 25, 2018.

3 RESPONSE:

4
5 DATED: 2/16/18


Shawn Timothy Newman
Attorney at Law, P.S.
WSBA #14193
2507 Crestline Drive, N.W.
Olympia, WA 98502
PH: (360) 866-2322
Newmanlaw@comcast.net

10 CERTIFICATION OF COUNSEL

11 I certify the foregoing answers and responses are true to the best of my
12 knowledge and are made in good faith and in compliance with the civil rules.

13 DATED this _____ day of _____, 2018.

14
15 State of Washington
16 Office of the Attorney General

17
18 By: _____
19 Opposing Counsel, WSBA # _____
20 Attorneys for Defendant

21 VERIFICATION

22 State of WASHINGTON)
23) ss.
24 County of THURSTON)

25 _____ [name], _____
26 [title] of the Defendant, being first duly sworn, on oath deposes and says that (s)he is an
27
28

1 authorized agent for the said Defendant and that (s)he has read the foregoing Answers to
2 Plaintiff's First Interrogatories, knows the contents thereof, and believes the same to be true.
3

4 _____
5 SUBSCRIBED and SWORN to before me this _____ day of _____, 2003.

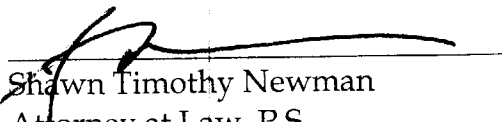
6 _____
7 NOTARY PUBLIC in and for the State of
8 Washington, residing at _____
9 My commission expires: _____

10 CERTIFICATE OF SERVICE

11 I hereby certify under penalty of perjury under the laws of the State of Washington that
12 on this 16th day of February, 2018, I served the foregoing PLAINTIFF'S FIRST
13 INTERROGATORIES TO DEFENDANT on the following parties at the following addresses
14 (postage prepaid if by mail): Washington State Attorney General's Office.

15 By causing a true and correct copy thereof to be hand delivered to said counsel.

16 DATED: 2/16/18

17 
18 Shawn Timothy Newman
19 Attorney at Law, P.S.
20 WSBA #14193
21 2507 Crestline Drive, N.W.
22 Olympia, WA 98502
23 PH: (360) 866-2322
24 Newmanlaw@comcast.net
25
26
27
28

NEWMAN
SUPPLEMENTAL
DECLARATION
EXHIBIT #11

☐ EXPEDITE
☒ No Hearing Set
☐ Hearing is Set

Date:

Time:

The Honorable Christine Schaller

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

ERIC JOHNSON,

Plaintiff,

v.

WASHINGTON STATE
UNIVERSITY (WSU) ENERGY
PROGRAM OFFICE,

Defendant.

NO. 18-2-00943-34

PLAINTIFF'S FIRST REQUESTS
FOR PRODUCTION TO
DEFENDANT

**AND DEFENDANT'S
SUPPLEMENTAL OBJECTIONS
AND ANSWERS THERETO**

GENERAL OBJECTIONS

The Defendant objects generally to Plaintiff's prefatory instructions and definitions, to the extent they purport to require more than the civil rules. The Defendant neither agrees nor stipulates to the Plaintiff's definitions or procedure. Defendant specifically objects to Plaintiff purportedly requiring Defendant to produce documents at a specific time at the office of Plaintiff's counsel. Defendant's counsel was not consulted about such a requirement. Defendant will produce PDF copies of documents via email or upon request, via CD.

Additionally, Plaintiff's definition of "relevant time period" is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff defines the relevant time period as January 1, 2016. However, based on Plaintiff's own complaint, it appears that Plaintiff's first contact with Defendant was in January 2018.

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION TO DEFENDANT
AND DEFENDANT'S SUPPLEMENTAL
OBJECTIONS AND ANSWERS
THERETO
NO. 18-2-00943-34

1 Plaintiff's definition of the relevant time period to include a period two years before any
2 actions relevant to this case is overly broad and beyond the scope of appropriate discovery.

3 Furthermore, Defendant objects to these requests to the extent that they characterize
4 Mr. Johnson's email to Mr. Colombo as a public records request. As Defendant has indicated,
5 it is producing records in response to that email without waiving any legal argument about the
6 request.

7 These requests for production will be answered and supplemented in accordance with
8 Civil Rules 26 and 34. Without waiving such objections, responses are provided as set forth
9 below.

10 **REQUEST FOR PRODUCTION NO. 1:** All records responsive to Mr. Johnson's
11 first request sent via email to Mr. Colombo on 1/31/18:

12 First Request:

13 I Eric Johnson, Chair, Thurston Conservation District (TCD), request specifically,
14 looking at an e-mail created at TCD on 11-29-17 at 3:33pm and modified on 11-30-17 at
15 9:47am. What computer was this created on, who created this and where was it sent? A
16 copy of this e-mail and meta data sent to: ercijohnsontcd@gmail.com.

17 **OBJECTIONS:** This request is vague and confusing. Specifically, the "first
18 request" appears to seek a specific email sent at a specific time or in other words, one
19 email. However, the request for production appears to seek "all records." It is unclear
20 what Plaintiff is seeking in this request besides the single email mentioned. Additionally,
21 this request seeks certain information about the email and also "meta data" about the email.
22 However, it does not identify if it is seeking only the meta data that is identified in the
23 request (i.e, the computer that it was created on, etc.) or a broader category of meta data.
24 Additionally this request is unduly burdensome for two reasons. First, Plaintiff apparently
25 has a copy of this document already because it was an email that was sent to him. Second,
26 Plaintiff has already submitted a request for that document, and the Defendant is in the

1 process of responding to that request without waiving any legal argument related to the
2 request. Requesting the same document in discovery is unduly burdensome and appears to
3 be an attempt to circumvent the process for submitting public records requests.

4 **SUPPLEMENTAL RESPONSE:** Without waiving the above objections, a
5 record that is precisely responsive to the parameters of this request has not been located
6 after a reasonable search. However, Defendant believes that Plaintiff may be referring to
7 the email to the email previously produced at DEFS 397-401.

8
9 **REQUEST FOR PRODUCTION NO. 2:** All records responsive to Mr. Johnson's
10 second request sent via email to Mr. Colombo on 1/31/18:

11 I Eric Johnson, Chair, Thurston Conservation District (TCD), request any and all e-
12 mails sent to and from TCD, containing the names Eric Johnson, Richard Mankamyer,
13 Samantha Fleischner, Doug Rushton, Sarah Moorehead, Shana Joy, Mark Clark, Amy
14 Franks, Amy Hatch-Winecka, between the dates 112017 to 120517, send information to:
15 ericjohnsontcd@gmail.com

16 **OBJECTIONS:** This request is vague with respect to the dates identified in the
17 request. The dates are identified in a unique format. Defendant assumes that Plaintiff's
18 request for production is limited to emails between 11-20-17 and 12-05-17. This request is
19 also vague because it does not explain whether it is seeking emails with all of those names
20 that are identified or only one of those names. The sentence is asyndeton, and it does not
21 clarify the relationship between the names. Additionally this request is unduly burdensome
22 because Plaintiff has already submitted a request for that document, and the Defendant is in
23 the process of responding to that request without waiving any legal argument related to the
24 request. Requesting the same document in discovery is unduly burdensome and appears to
25 be an attempt to circumvent the process for submitting public records requests.

SUPPLEMENTAL RESPONSE: Without waiving the objections, see DEFS 736-4883. Defendant is producing these records without waiving any argument about whether they are responsive or whether Defendant was obligated to produce the records under the PRA.

THE UNDERSIGNED attorney has read the foregoing objections and responses to ***PLAINTIFF'S FIRST SET OF REQUEST FOR PRODUCTION TO DEFENDANT AND DEFENDANT'S SUPPLEMENTAL OBJECTIONS AND ANSWERS THERETO***, and they are in compliance with Civil Rules 26 and 34, dated this 31st day of May, 2018.

ROBERT W. FERGUSON
Attorney General

Tim Feulner
TIMOTHY J. FEULNER, WSBA #45396
Assistant Attorney General
TimF1@atg.wa.gov
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445
TimF1@atg.wa.gov

1 **CERTIFICATE OF SERVICE**

2 I certify that I served a copy of the foregoing document on all parties or their counsel of
3 record as follows:

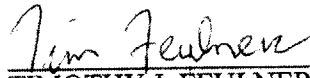
4 ☒ US Mail Postage Prepaid

5 ☒ Via Email newmanlaw@comcast.net

6
7 SHAWN TIMOTHY NEWMAN
8 ATTORNEY AT LAW INC. P.S.
9 2507 CRESTLINE DR NW
10 OLYMPIA WA 98502-4327

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

13 EXECUTED this 31st day of May, 2018, at Olympia, Washington.

14 

15 TIMOTHY J. FEULNER, WSBA #45396

16 Assistant Attorney General

17 Corrections Division

18 PO Box 40116

19 Olympia WA 98504-0116

20 (360) 586-1445

21 TimF1@atg.wa.gov

NEWMAN
SUPPLEMENTAL
DECLARATION
EXHIBIT #12



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

July 12, 2018

Shawn Newman
Law Office of Shawn Timothy Newman
2507 Crestline Dr., N.W.
Olympia, WA 98502

Re: *Johnson v. WSU*
Thurston County Cause No. 18-2-00943-34

Dear Mr. Newman:

Please find a CD with DEFS 4884-6943 enclosed. These are the records that have already been produced to your client on June 1 by WSU's Office of Public Records. However, since you also requested them in discovery, I am now providing additional copies as a supplemental to WSU's discovery responses.

Sincerely,

TIMOTHY J. FEULNER
Assistant Attorney General

TJF/aj

Enclosure