

Hearing Set: June 15, 2018
Time: 9:00 am
Judge: Schaller

FILED

MAY 15 2013

Superior Court
Linda Moore Ellison
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 Opening Brief

Washington State University (WSU) Energy

Public Records Act

Program Office.

Liability Issue

Defendant.

Summary:

Eric Johnson submitted Public Disclosure Requests [PDRs] to WSU-Energy Program Office¹ for records it retains for the Thurston Conservation District [TCD]. Johnson is a TCD Supervisor and Board Chair.² He and TCD Board Auditor, Supervisor Richard Mankamy, became concerned about ongoing fiscal mismanagement and conflicts of interest at TCD.³

¹ According to its website, "Operating similar to a consulting firm, the Washington State (WSU) Energy Program is a self-supported department within the university." Customers include local and state governments.

www.energy.wsu.edu/AboutU.aspx

² Supervisors serve without compensation. RCW 89.08.200.

³ This is not new for the TCD. See, Ex. A: Allen, Chester. "Conservation District leaders have history of accepting favors." *The Olympian*, A 1 (4/2/00); Editorial, "District board must resign", *The Olympian* A 11 (4/9/00).

PLAINTIFF'S OPENING BRIEF
PRA LIABILITY ISSUE

Shawn Timothy Newman
Attorney at Law, Inc., P.S.
WSBA 14193
2507 Crestline Dr. NW
Olympia, WA 98502-4327
(P) 360-866-2322

1 Johnson and Mankamyer attempted to work with TCD staff regarding these issues but
2 believed that they were being stonewalled. They learned that WSU's Energy Program retains
3 TCD's records. On January 25, 2018, Mankamyer made an appointment with Michael Pierson,
4 WSU IT Support Specialist, to inspect records with Johnson.⁴ However, they were met by
5 Pierson's boss, the Information Systems Department Manager (James Colombo), and TCD
6 Interim Executive Director (Sarah Moorehead). Although Colombo showed Johnson and
7 Mankamyer the server where TCD's records were retained, he told them they would have to
8 work through Moorehead per a Memorandum of Understanding [MOU]. Johnson told Colombo
9 that he and Mankamyer were Moorehead's boss and wanted the records directly from WSU.
10
11

12 On January 31, 2018, Johnson went back to WSU Energy Office and met with Colombo.
13 Johnson told him that there was no MOU with Moorehead. Johnson explained he was doing an
14 investigation concerning Moorehead and staff involving board members.⁵ Johnson asked how
15 long it would be to get him the records. Columbo said it would take "a couple of days."⁶
16 Johnson followed up with an email that same day, January 31, 2018 at 3:33 PM, stating:⁷
17

18 To: James L. Colombo Energy.wsu.edu

19 First Request:

20 I Eric Johnson, Chair, Thurston Conservation District (TCD), request, specify,
21 looking at an e-mail created at TCD on 11-29-17 at 3:33pm and modified on 11-
22 30-17 at 9:47 am. What computer was this created on, who created this and where
23 was it sent? A copy of this e-mail and metadata send
to: ericjohnsontcd@gmail.com.

24 ⁴ Ex. B: Johnson Declaration.

25 ⁵ Ex. A: Allen, Chester. "Conservation District leaders have history of accepting favors." *The Olympian*, A 1
(4/2/00). Referring to former and current board members, including current TCD Supervisor Doug Rushton.

26 ⁶ Ex. B: Johnson Declaration.

27 ⁷ Ex. C: Email from Johnson to Colombo (1/31/18).

1 Second Request:

2
3 I Eric Johnson, Chair, Thurston Conservation District (TCD), request any and all
4 e-mails sent to and from TCD, containing the names Eric Johnson, Richard
5 Mankamyer, Samantha Fleischner, Doug Rushton, Sarah Moorehead, Shana Joy,
6 Mark Clark, Amy Franks, Amy Hatch-Winecka, between the dates 112017 to
7 120517, send information to: ericjohnsontcd@gmail.com

8 Eric Johnson
9 360.701.4322

10 After the PRA's statutory 5-day time limit to respond had passed,⁸ Johnson emailed Colombo on
11 February 8, 2018, at 11:30 AM asking:

12 I was wondering when I would get a response on the 2 requests that where made
13 on 01.31.18. At this time, I haven't received any of the information requested or a
14 time line on when the information would be available for me. Look forward to
15 hearing from you.⁹

16 Despite his promise to get Johnson the information in "a couple of days," Colombo responded
17 later that day at 12:19 PM on February 8, 2018 stating:

18 We have been instructed that all Public Information Requests must come through
19 the Director of TCD. Please submit your request to Sarah Moorehead and we will
20 be happy to complete them.¹⁰

21 Johnson never submitted a PDR to TCD.¹¹

22 Unknown to Johnson, WSU already agreed to screen any responses to his PDRs through
23 Moorehead. A week before, on February 2, 2018, Pierson emailed Moorehead regarding "PDR
24 and board members" stating:

25 ⁸ RCW 42.56.520(1).

26 ⁹ Ex. D: Email from Johnson to Colombo (2/8/18)

27 ¹⁰ Ex. E: Email from Colombo to Johnson, cc Moorehead (2/8/18).

28 ¹¹ Ex. B: Johnson Declaration.

1 I've received a request for information and emails associated with several TCD
2 users from Eric Johnson, TCD's Board chair. When we all met, on Thursday
3 January 25th, I felt it was pretty clear from the meeting that you wanted all
4 requests to go through you rather than individual board members. Can you
5 please give me a call when you have a moment to discuss how I should proceed?¹²

6 On February 5, 2018, Pierson emailed¹³ Moorehead regarding "Records request and Eric
7 Johnson" stating:

8 I've received a records request from Eric Johnson through my IT manager. As
9 Eric and/or the board have no MOU with us I thought I should check with you on
10 how or if to proceed. Thank you, Sarah.

11 The records request is two parts...

12 First Request:

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

18 I could find zero messages for this request. A little more information and I may
19 have more luck.

20 Second Request:

21 I Eric Johnson, Chair, Thurston Conservation District (TCD) request any and all
22 e-mails sent to and from TCD, containing the names Eric Johnson, Richard
23 Mankamy, Samantha Fleischner, Doug Ruston, Sarah Moorehead, Shana Joy,
24 Mark Clark, Amy Franks, Amy Hatch-Winecka, between the dates 11/2017 to
25 12/2017, send information to: ericjohnsontcd@gmail.com.

26 Eric Johnson
27 360.701.4322

28 Number of emails in request, *by name*:

29 ¹² Ex. F: Email from Pierson to Moorehead (2/2/18) re: PDR and board members [Emphasis added].

30 ¹³ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

1 Eric Johnson – 75
2 Richard Mankamyer -35
3 Samantha Fleischner -27
4 Doug Ruston – 34
5 Sarah Moorehead -348
6 Shana Joy – 94
7 Mark Clark – 27
8 Amy Franks -156
9 Amy Hatch-Winecka -236

10 Pierson sent WSU's response to Moorehead who was not the requestor and had no authority to
11 screen responses to Johnson's PDRs. As noted in his email, Pierson could find nothing
12 responsive for the first request and asked for more information from Moorehead. She neither
13 provided any clarification nor asked Johnson to clarify. As for the second request, Pierson
14 identified a total of 1032 emails *by name*.

15 This lawsuit commenced on February 16, 2018. WSU's counsel (Malcolm) subsequently
16 emailed¹⁴ Moorehead on February 21, 2018 stating:

17 Thank you for speaking to me on Tuesday, February 20, 2018, concerning the
18 public records lawsuit filed against WSU by Eric Johnson in Thurston County
19 Superior Court. *As you know, Mr. Johnson requested Thurston Conservation
20 District (TCD) records that are hosted on WSU Energy Department servers.*
21 WSU does not concede that it is legally responsible for the records or required to
22 produce them under the Public Records Act. Nevertheless, given that WSU is the
23 defendant in Mr. Johnson's lawsuit, the university is compelled to respond.

24 As we discussed, one of the options WSU considers is to collect the responsive
25 records (belonging to TCD), forward them to the WSU Public Records Office,
26 and prepare to release them. Again, while reserving its legal defenses, WSU will
27 release the records as soon as possible with minimal or no redactions as the
28 university did not create records or otherwise use them. *WSU will not provide
29 judicial notice to TCD once the records are prepared for release. Although WSU
30 wants to work with TCD in order to resolve this matter, the university must move
31 forward to avoid possible court-imposed fines.* As the records are being collected
32 and released, WSU will engage Mr. Johnson's counsel in an attempt to resolve the

33 ¹⁴ Ex. H: Email from Malcolm to Moorehead (2/21/18) [Emphasis added].

1 underlying lawsuit. *It must be noted that TCD may be added to the suit as a*
2 *necessary party by WSU and WSU may ask that TCD be responsible for*
3 *associated fees, costs, and possible fines.* However, as we discussed, the
university is not interested in engaging in protracted litigation with any party.

4 The WSU Energy program will begin the process of gathering records and
5 providing them to the Public Records Office **today**. The Public Records Office
6 will immediately begin formatting the records into a releasable installment(s). *If*
7 *you have any concerns about release, redaction of information, or enjoining WSU*
8 *from moving forward, I recommend you contact appropriate legal counsel.*

9 Apparently, WSU did not choose this *option* since it already agreed to silently screen any
10 response to Johnson's PDRs through Moorehead.¹⁵ Hence, she did not need an injunction or
11 legal counsel.

12 On February 23, 2018 AAG Malcolm emailed Johnson's counsel (Newman) stating WSU
13 Public Records Office has received Mr. Johnson's request and is collecting
14 records on behalf of the Thurston Conservation District.¹⁶

15 However, since Johnson had not received any response from WSU to his PDRs (again¹⁷) within
16 five business days as required by the PRA,¹⁸ Newman emailed WSU counsel (Malcolm and
17 Feulner) on February 26, 2018 at 9:17 a.m., asking:

18 Does WSU intend to follow PRA protocol in responding to my client's PRA
19 request? The protocol is set forth in the statute and PRA Deskbook.¹⁹

20 At 6:23 p.m. that same day (February 26, 2018), WSU sent an email directly to Johnson
21 acknowledging receipt of his "Public Records Request #18-115."²⁰ The belated
22
23

24 ¹⁵ Ex. F: Email from Pierson to Moorehead (2/2/18) re: PDR and board members.

25 ¹⁶ Ex. I: Email from Malcolm to Newman (2/23/18).

26 ¹⁷ Ex. D: Email from Johnson to Colombo (2/8/18)

27 ¹⁸ RCW 42.56.520(1).

28 ¹⁹ Ex. J: Email from Newman to Malcolm and Feulner (2/26/18).

²⁰ Ex. K: Letter from WSU Public Records Office (Sheri Glaesman) to Johnson (2/26/18).

acknowledgment echoed Malcolm's earlier email to Moorehead on February 21, 2018²¹ by stating:

WSU may send a notice to people named in the records informing them that their name, identifiers, or other information about them will be disclosed under the Public Records Act and provide them sufficient time in which to *seek legal counsel to determine whether to file a motion in Whitman County Superior Court to enjoin disclosure.*

The belated acknowledgment did not inform Johnson that WSU had already agreed to screen responses through Moorehead.²² This belated acknowledgement was sent 26 days after Johnson made his records requests on January 31, 2018. This was 21 days beyond the statutory 5-day time limit to respond to PDRs set forth in the PRA.²³

Frustrated with WSU's failure to respond to him directly on his PDRs, Johnson emailed Moorehead on March 2, 2018 at 2:14 PM stating:

I recently did a public disclosure request with WSU energy and expected a reply directly from them. I wanted to ask if they sent the answers to my PDR request to you instead. If they have please forward to me. If they haven't please reply with an answer as well.²⁴

Moorehead responded that same day (March 2, 2018) at 2:42 PM stating:

WSU Energy *did not provide the fulfillment* of your request for TCD records to me. They did share some preliminary information: *there was no record found for the first request* and then a series of email counts associated with your second request (Eric Johnson – 75, Richard Mankamy – 35, Samantha Fleischner – 27, Doug Rushton – 34, Sarah Moorehead – 348, Shana Joy – 94, Mark Clark – 27, Amy Franks – 156, Amy Hatch-Winecka – 236).

It was my understanding from speaking with Assistant Attorney General, Adam Malcom, that WSU Energy was going to comply with your request as result of the

²¹ Ex. H: Email from Malcolm to Moorehead (2/21/18) [Emphasis added].

²² Ex. F: Email from Pierson to Moorehead (2/2/18) re: PDR and board members [Emphasis added].

²³ RCW 42.56.520(1).

²⁴ Ex. L: Email from Johnson to Moorehead (3/2/18) re: Public Disclosure Request.

lawsuit, with the notation that they are not responsible for providing records owned by Thurston CD.²⁵

I know that you originally intended for this request not to be fulfilled by TCD staff. However, I'm offering again to help fulfill this request if you would like me to. I'm more than happy to help, please let me know.²⁶

Moorehead was being disingenuous. She was already collaborating with WSU to fulfill Johnson's PDRs. WSU was treating her as *the requestor* rather than Johnson, *the real requestor*. This is important because the PRA calls for the agency to ask "*the requestor* to provide clarification for a request that is unclear." RCW 42.56.520(1)(d). Here, Moorehead paraphrased Pierson's email to her dated February 5, 2018 [quoted above] omitting his request for clarification regarding Johnson's first request.²⁷ Pierson's request for clarification was never sent to Johnson.

On March 6, 2018, Pierson emailed²⁸ TCD Deputy Director, Amy Hatch-Winecka, regarding the "PDR for Eric Johnson" stating:

Amy, I have the PST²⁹ for the requested parameters ready to go for you. You can swing by and get them today if you like, I'll put them on a USB, or I can drop off tomorrow and show you how to load it into outlook again. What say you?

Again, Johnson never made a PDR to TCD. Yet, WSU acted as Moorehead was the *requestor* and allowed TCD staff under investigation³⁰ to screen responses contrary to the PRA.

²⁵ Referring to TCD.

²⁶ Ex. M: Email from Moorehead to Johnson (3/2/18) [Emphasis added].

²⁷ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson. ["I could find zero messages for this request. A little more information and I may have more luck."]

²⁸ Ex. N: Email from Pierson to Hatch-Winecka (3/6/18) re: PDR for Eric Johnson.

²⁹ In computing, a Personal Storage Table (.pst) is an open proprietary file format used to store copies of messages, calendar events, and other items within Microsoft software such as Microsoft Exchange Client, Windows Messaging, and Microsoft Outlook.

³⁰ See Ex. B: Johnson Declaration at para. 4 regarding Deputy Director Amy Hatch-Winecka.

1 Beginning on March 16, 2018 and ending on May 9, 2018, WSU sent Johnson ten
2 installments consisting of over 5,000 pdf files, including birth announcements and scientific
3 journal articles. Because the documents were sent in pdf format, they did not include the
4 metadata³¹ associated with Johnson's first request. Contrast this voluminous response with
5 Pierson's previous email to Moorehead on February 5, 2018³² where he asked Moorehead for
6 clarification regarding Johnson's first request and specifically identified 1032 emails - *by name* -
7 in response to Johnson's second request. WSU's response does not specifically reference these
8 emails by name as Pierson previously had done. WSU did not ask Johnson for clarification³³ or
9 explain why it did not provide³⁴ that information. WSU's belated response and collaboration
10 with Moorehead seems designed to frustrate this requestor. This is contrary to the public policy
11 and public interest.³⁵
12
13
14
15
16
17

18 ³¹ Metadata is "data about data," or hidden information about electronic documents created by software programs,
19 including information describing the history, tracking, or management of an electronic document. Examples of e-
20 mail metadata include such information as the dates the mail was sent, received, replied to, or forwarded; carbon
21 copy information; and sender address book information. Metadata from electronic files can include information
22 about a particular data set that describes how, when, and by whom it was collected, created, accessed, or modified,
23 and how it is formatted (including data demographics such as size, location, storage requirements, and media
24 information). Most metadata generally is not visible when an electronic document is printed or when the document
25 is converted to an image file. See, *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 145-146 (2010).

26 ³² Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

27 ³³ RCW 42.56.520(1)(d).

28 ³⁴ RCW 423.56.520 provides that "denials of requests must be accompanied by a written statement of the specific
29 reasons therefore."

30 ³⁵ RCW 42.56.030: "The people of this state do not yield their sovereignty to the agencies that serve them. The
31 people, in delegating authority, do not give their public servants the right to decide what is good for the people to
32 know and what is not good for them to know. The people insist on remaining informed so that they may maintain
33 control over the instruments that they have created. This chapter shall be liberally construed and its exemptions
34 narrowly construed to promote this public policy and to assure that the public interest will be fully protected."

ISSUES:³⁶

1. Whether Plaintiff properly submitted a public records request to the Washington State University when he sent an email to Information Systems Department Manager James Colombo.

Yes. The intent of the PRA is “to provide full public access to public records” and to “provide for the fullest assistance to inquirers and the most timely possible action on requests for information.”³⁷ RCW 42.56.580 provides that state agencies “*shall* appoint” a public records officer “to whom members of the public *may* direct requests for disclosure.” Where a provision contains both the words “*shall*” and “*may*,” it is presumed that lawmakers intended to distinguish between them, “*shall*” being construed as mandatory and “*may*” as permissive.³⁸ In any case, there is no dispute that Johnson submitted a request for records retained by WSU. Colombo acknowledged it was a records request when they met on January 31, 2018.³⁹ Pierson specifically referred to Johnson’s PDR in his emails to Moorehead⁴⁰ and Hatch-Winecka.⁴¹ Finally, WSU’s Public Records Office belatedly sent Johnson receipt of his PDR on February 26, 2018.⁴²

³⁶ The case scheduling order dated March 16, 2018 set forth eight issues. The first six concern whether or not the defendant violated the Public Records Act [PRA]. If so, the remaining issues related to penalties, attorney’s fees and costs would then be addressed separately on July 20, 2018. Therefore, the six salient issues are addressed below.

³⁷ RCW 42.56.100.

³⁸ See, e.g., *Scannell v. Seattle*, 97 Wn.2d 701, 704 (1982).

³⁹ See, Ex. B: Johnson Declaration; Ex. E: Email from Colombo to Johnson (2/8/18).

⁴⁰ Ex. F: Email from Pierson to Moorehead (2/2/18); Ex. G: Email from Pierson to Moorehead (2/5/18).

⁴¹ Ex. N: Email from Pierson to Hatch-Winecka (3/6/18).

⁴² Ex. K: Letter from WSU Public Records Office (Sheri Glaesman) to Johnson (2/26/18).

1 **2. Whether Plaintiff's January 31, 2018 email provided fair notice that it was a request**
2 **made under the Public Records Act.**

3 Yes. "The PRA should be liberally construed and its exemptions should be narrowly
4 construed in favor of disclosure."⁴³ Colombo acknowledged it was a records request when
5 he met with Johnson on January 31, 2018.⁴⁴ Colombo understood it was a records request
6 and initially and erroneously directed Johnson to the TCD presumably per a MOU.
7 However, as Pierson pointed out, there was no MOU addressing PDRs for Johnson or the
8 TCD board.⁴⁵ Pierson specifically referred to Johnson's PDR in his emails to Moorehead⁴⁶
9 and Hatch-Winecka.⁴⁷ Finally, WSU's Public Records Office belatedly sent Johnson receipt
10 of his PDR on February 26, 2018.⁴⁸

11 **3. Whether the records requested by Plaintiff are public records.**

12 Yes. RCW 42.56.010(3) states:

13 "Public record" includes any writing containing information relating to the
14 conduct of government or the performance of any governmental or proprietary
15 function prepared, owned, used, or *retained* by any state or local agency
16 regardless of physical form or characteristics.⁴⁹

17 As the State Supreme Court stated in *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 146-147
18 (2010), "In sum, "public record" is defined very broadly, encompassing virtually any record
19 related to the conduct of government."
20
21
22

23 ⁴³ *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 146 (2010).

24 ⁴⁴ See, Ex. B: Johnson Declaration; Ex. E: Email from Colombo to Johnson (2/8/18).

25 ⁴⁵ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

26 ⁴⁶ Ex. F: Email from Pierson to Moorehead (2/2/18); Ex. G: Email from Pierson to Moorehead (2/5/18).

27 ⁴⁷ Ex. N: Email from Pierson to Hatch-Winecka (3/6/18).

28 ⁴⁸ Ex. K: Letter from WSU Public Records Office (Sheri Glaesman) to Johnson (2/26/18).

29 ⁴⁹ Emphasis added.

1 In *O'Neill*, the State Supreme Court found that metadata associated with public records is
2 subject to disclosure under the PRA. The court stated:

3 Metadata may contain information that relates to the conduct of government and
4 is important for the public to know. It could conceivably include information
5 about whether a document was altered, what time a document was created, or who
6 sent a document to whom. Our broad PRA exists to ensure that the public
maintains control over their government, and we will not deny our citizenry
access to a whole class of possibly important government information.⁵⁰

7 The Court of Appeals (Division 2) recently held that records relating to public business on
8 personal computer are subject to disclosure.⁵¹ Johnson's PDR concerns documents "relating to
9 the conduct of government" or the performance of any governmental or proprietary function,
10 "prepared, owned, used, or *retained*" by WSU.

11
12 **4. Whether the records requested by Plaintiff are Defendant's public records.**

13 Yes. It is undisputed that WSU – Energy *retains* TCD's records as one of the services it
14 provides to clients.⁵² Nevertheless, WSU engaged in a shell game with Colombo showing
15 Johnson the repository on servers but initially directing him to route his PDR thru Moorehead.
16 Although Johnson did not make a PDR to TCD, WSU routed its responses through Moorehead
17 as "PDR for Eric Johnson" allowing TCD staff to silently screen what would be disclosed.
18

19
20 **5. Whether Defendant violated the PRA in failing to produce the requested records.**

21 Yes. WSU made a choice early on to route responses to Johnson's PDR via Moorehead.
22 This was contrary to the PRA. Presumably, this was based on a MOU but Pierson pointed out to
23

24 ⁵⁰ 170 Wn.2d at 147 (2010).

25 ⁵¹ *West v. Vermillion*, 196 Wn.App. 627 (2016), *review denied*, 187 Wn.2d 1024, *cert. denied*, 86 U.S.L.W. 3153
(2017).

26 ⁵² WSU – Energy acts as a repository to public and private clients for data storage services. See WSU-Energy
website <http://www.energy.wsu.edu/AboutUs.aspx>

1 Moorehead that “*Eric and/or the board have no MOU with us I thought I should check with you*
2 *on how or if to proceed.*”⁵³ In any case, a MOU cannot supplant WSU’s statutory obligations to
3 disclose public records to Johnson, the requestor. It was not until after commencement of this
4 case on February 16, 2018 and after counsel wrote to defense counsel on February 26, 2018⁵⁴
5 that WSU belatedly acknowledged Johnson’s PDR. This acknowledgment was 26 days after
6 Johnson made his records requests – 21 days beyond the 5-day time limit set forth in RCW
7 42.56.520(1).
8

9 **6. If the Court finds that the Defendant was obligated to produce records, what**
10 **records was the Defendant obligated to produce.**

11 WSU closed out Johnson’s PDR on May 9, 2018 but did not produce metadata
12 specifically requested by him in his first request or produce the 1032 emails Pierson identified by
13 *name* in response to Johnson’s second request.⁵⁵
14

15 Johnson’s first request was for a specific e-mail and metadata created at TCD on 11-29-
16 17 at 3:33 pm and modified on 11-30-17 at 9:47 am. Embedded metadata is a public record
17 subject to disclosure under the PRA.⁵⁶ The email Johnson requested was from TCD Supervisor
18 Samantha Fleischner to the State Conservation Commission, Moorehead and others. It contained
19 defamatory allegations against Johnson and Mankamyer of mismanagement and improper
20 conduct, including harassment, neglect of duties and unethical conduct.⁵⁷ This is similar to the
21
22

23 ⁵³ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

24 ⁵⁴ Ex. J: Email from Newman to Malcolm and Feulner (2/26/18).

25 ⁵⁵ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

26 ⁵⁶ See *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 146-147 (2010). In that case, the plaintiff requested copies of an
27 e-mail chain which had been circulated among members of the City Council and which contained certain allegations
28 of governmental mismanagement.

29 ⁵⁷ Ex. B: Johnson Declaration at para. 13.

1 email and metadata at issue in the *O'Neill* case which concerned allegations that the City Council
2 engaged in improper conduct.⁵⁸ While WSU did provide the email, it did so in pdf format that
3 stripped off any metadata.⁵⁹ According to the email⁶⁰ from Moorehead to Johnson, dated March
4 2, 2018:

5
6 WSU Energy did not provide the fulfillment of your request for TCD records to
7 me. They did share some preliminary information: *there was no record found for*
8 *the first request* and then a series of email counts associated with your second
9 request (Eric Johnson – 75, Richard Mankamy – 35, Samantha Fleischner – 27,
Doug Rushton – 34, Sarah Moorehead – 348, Shana Joy – 94, Mark Clark – 27,
Amy Franks – 156, Amy Hatch-Winecka – 236).

10 It was my understanding from speaking with Assistant Attorney General, Adam
11 Malcom, that WSU Energy was going to comply with your request as result of the
12 lawsuit, with the notation that they are not responsible for providing records
owned by Thurston CD.

13 Although Johnson was the requestor, he never received this assessment from WSU or any
14 request for clarification.⁶¹

15 As for the second request, WSU provided over 5,000 documents in 10 large installments.
16 Many were duplicative and irrelevant, including birth announcements and scientific journal
17 articles. Contrast this with Pierson's previous email to Moorehead on February 5, 2018.⁶²
18 Pierson specifically identified 1032 emails - *by name*. It is difficult to understand why the
19 number of document ballooned from 1032 to over 5,000 or why they were not provided based on
20 Pierson's specific identification – *by name*.
21
22

23
24 ⁵⁸ *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 142 (2010).

25 ⁵⁹ "Most metadata is generally not visible when a document is printed or when the document is converted to an
image file." *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 146 (2010).

26 ⁶⁰ Ex. M: Email from Moorehead to Johnson (3/2/18).

27 ⁶¹ RCW 42.56.520 (3)(a).

28 ⁶² Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

1 Pierson clearly had reservations about running Johnson's request through Moorehead.⁶³
2 Shortly after Johnson's initial meeting with Colombo, Pierson wrote Moorehead stating:

3 When we all last met, on Thursday January 25th, I felt it was pretty clear from the
4 meeting that you wanted all requests to go through you rather than individual
5 board members. Can you please give me a call when you have a moment to
6 discuss how I should proceed?⁶⁴

7 Shortly thereafter, Pierson pointed out to Moorehead that "Eric and/or the board have no MOU
8 with us" (WSU).⁶⁵ WSU should have worked directly with Johnson, the requestor, per the
9 PRA.⁶⁶ Instead, Pierson was directed to process Johnson's request through Moorehead and TCD
10 staff who screened the responses and stuffed the files with irrelevant documents. Consequently,
11 it is Johnson's position that WSU did not provide the 1032 emails Pierson identified by name in
12 response to his second request.

13 **Conclusion:**

14 WSU cannot have it both ways. On the one hand, it retains TCD's records and
15 acknowledged Johnson's PDRs for those records. On the other hand, WSU asserts it cannot
16 provide the records it has directly to Johnson because they are "owned" by TCD. WSU
17 apparently relies on a MOU with TCD. But, as Pierson pointed out to Moorehead, "Eric and/or
18 the board have no MOU with us."⁶⁷ Whether or not there was a MOU in place, Johnson was not
19
20
21
22
23

24 ⁶³ Ex. F: Email from Pierson to Moorehead (2/2/18) re: PDR and board members.

25 ⁶⁴ Ex. F: Email from Pierson to Moorehead (2/2/18) re: PDR and board members.

26 ⁶⁵ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson.

27 ⁶⁶ RCW 42.56.520(3)(a).

28 ⁶⁷ Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson.

1 a party and any such contract could not legally supplant WSU's statutory obligation to disclose
2 public records.⁶⁸ As the State Supreme Court stated in *O'Neill v. City of Shoreline*,

3 Most importantly, the courts are charged with carrying out the PRA. We are here
4 to declare the law and effect of the statute; we need provide no deference to an
5 agency's interpretation of the PRA. *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 130,
6 580 P.2d 246 (1978). Furthermore, when there is the possibility of a conflict
between the PRA and other acts, the PRA governs.

7 170 Wn.2d 138, 149 (2010).

8 WSU conspired with TCD staff to silently screen WSU's response to Johnson's PDR. As
9 the State Supreme Court stated in *PAWS v. Univ. Of Washington*,

10 The Public Records Act clearly and emphatically prohibits *silent* withholding by
11 agencies of records relevant to a public records request. The statute explicitly
12 mandates that:

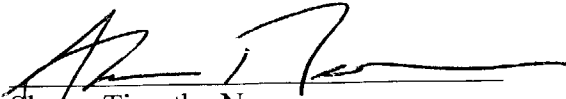
13 Agency responses refusing, *in whole or in part*, inspection of *any* public
14 record shall include a statement of the specific exemption authorizing the
15 withholding of the record (or part) and a brief explanation of how the
exemption applies to *the record withheld*.

16 (Italics ours.) RCW 42.17.310(4). *Silent* withholding would allow an agency to
17 retain a record or portion without providing the required link to a specific
18 exemption, and without providing the required explanation of how the exemption
19 applies to the specific record withheld. *The Public Records Act does not*
20 *allow silent withholding of entire documents or records, any more than it*
21 *allows silent editing of documents or records*. Failure to reveal that some records
22 have been withheld in their entirety gives requesters the misleading impression
that all documents relevant to the request have been disclosed. *See Fisons*, 122
Wn.2d at 350-55. Moreover, without a specific identification of each individual
record withheld in its entirety, the reviewing court's ability to conduct the
statutorily required *de novo* review is vitiated.

23 125 Wn.2d 243, 270 (1994) [Emphasis added].

26 ⁶⁸ RCW 42.56.030.

1 DATED: 5/16/18


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

28 PLAINTIFF'S OPENING BRIEF
PRA LIABILITY ISSUE

Shawn Timothy Newman
Attorney at Law, Inc., P.S.
WSBA 14193
2507 Crestline Dr. NW
Olympia, WA 98502-4327
(P) 360-866-2322

Private work, public expense



Rochester beef rancher Bill Arney tosses hay to his cattle. Arney says the Thurston Conservation Board of Supervisors approve grants and technical

help for themselves and their friends while small farmers are left to fend for themselves.

Conservation District leaders have history of accepting favors

STORIES BY CHESTER ALLEN ■ THE OLYMPIAN

OLYMPIA — By state law, Olympia City Council members can't have city park workers mow their lawns or paint their houses. Thurston County commissioners can't have road crews patch their driveways.

But past and present members of the Thurston Conservation District Board of Supervisors have a long tradition of accepting public money and bringing district workers onto their land to do work at public expense.

That was true even when it was against the law.



A public hearing notice for a proposed 6 million-gallon manure lagoon stands near the Doelman Dairy on 183rd Street in Rochester.

In 1993, then-board member Rick Nelson got \$31,558 worth of bank stabilization work done where the Deschutes River runs through his ranch.

Former board member Hank Doelman — Thurston County's largest dairy farmer — has received at least \$5,000 to build a manure lagoon and hundreds of hours' worth of technical help. Between January and September of 1993, Doelman's dairies got at least 147 hours of technical help from the district — even as Fred Colvin, Doelman's business manager, sat on the board.

In 1999, the district allocated another \$10,000 to Doelman.

Board President Jackie Reid got \$1,429 of bank stabilization work done on her Woodland

Creek land. Reid paid the district back in November, after former employees started leveling accusations of corruption at the district.

Former board member Tom Wynne got more than \$14,000 to reroute a stream on his property.

District documents show that present board member Doug Rushton repeatedly asked for a district crew to fence his land — even though no animals were present and the five acres had never been a farm.

Before 1990 — when Washington's conservation districts got friendly legislators to add a rider to House Bill 1747 — it was illegal for supervisors to get public money to improve their land.

er's back, and that's wrong.

"I see where the money is going, and it's not going to the small farmer," he said.

Supervisors were collecting cost-share payments and help even as the district began falling apart.

All of the district's managers have quit or been fired since former employees Marilyn Mead and Julie Clougherty leveled charges of falsified timecards, misused state grants and improper use of public money at the district.

All told, 10 of the district's 18 employees have resigned or been fired since March 1990.

The state Auditor's Office launched an investigation into the corruption charges, and a report is expected this month.

But the district's problems haven't stopped it from getting more state money.

Local conservation districts are now lead agencies in the state's \$70 million salmon recovery program, and some of that money will go toward cost-share programs, said state Conservation Commission executive director Steve Meyer.

Current and former board members say they didn't vote on their own requests for public money, and that they didn't take advantage of their position.

Despite district documents that record four

Board benefits?

Thurston Conservation District supervisors are unpaid volunteers, but some past and present members have received substantial services from district workers or grants.

Hank Doelman
Former supervisor
Received \$5,223 in 1994. District also approved \$10,000 grant in 1999 for a manure lagoon.

Rick Nelson
Former supervisor
Received \$31,558 in 1993 to stabilize a section of Deschutes River that runs through his farm.

Jackie Reid
Board member
Received \$1,429 for her Woodland Creek property. Reid paid district back in November 1999.

See CONSERVATION, Page A5

Ex A

We pay the conservation district's assessment like everyone else. And we need help too.

— Bill Arney, Rochester beef rancher

District largess yields little for small farmers



Dairy farmer and former Thurston Conservation District Supervisor Hank Doelman owns this Rochester farm. He and Fred Colvin — Doelman's farm manager and current Thurston Conservation District

supervisor — have gotten more than 100 hours of free technical help from the district to build a 6 million-gallon manure lagoon on the farm.

Photo by Steve Gault/The Olympian

CONSERVATION

Continued from Page One

of his requests for a funding curve. Ranshaw says he never made a final decision.

"I was exploring, seeing what my options were," Ranshaw says. "I decided that it was too much hassle for me."

Nelson said he didn't vote when the board approved the bank stabilization project on his land in 1993.

"I think we were doing something good," Nelson said. "The community and I benefited from it."

"The conservation district benefited because they could experiment with things they couldn't do before," Colvin says he always abstains from voting when Doelman's dairy farms are the issue.

A cozy network?

Arney, the Rochester rancher, said Doelman got a lot of free help when he joined the district, and Colvin kept the gravy train going when his boss left, Arney said.

"I'd have to know how much money and help Doelman has had put into his farm — I bet it's a lot," Arney said.

Small farmers don't get the technical help — or money — that folks connected to the district enjoy, Arney said.

Arney said he's asked the district for help — often-called cost share — on his Summer Creek farm, but was told all the cost-share money was already committed — even after the 1996 floods that damaged farms along Scatter Creek.

Nearby dairy farmers got plenty of help, but small operators were left out, Arney says.

According to district records, \$20,617 has been spent on cost-share since 1994, said acting Conservation District administrator George Fox.

In cost share, the district agrees to pay for part of a project that will protect streams or other land from erosion, erosion or other hazards. The farmers agree to pay the rest of the costs.

Rochester rancher Tommy Phelps says the Thurston Conservation District bends over backward for Hank

Doelman.

Phelps, who lives next to Doelman's dairy on 183rd Avenue, is fighting his plans to build a 6-million-gallon manure lagoon on his land.

But Phelps says the Conservation District and Fred Colvin have pushed hard to get county approval of the lagoon, which was to be built in an area where the Chehalis River floods every winter.

Despite the danger of floods, Phelps says Colvin and Doelman enlisted the Conservation District to help get the lagoon built.

Records dated Aug. 2, 1996, from the Thurston County Hearing Examiner show that the district did help Colvin and Doelman plan and lobby for the manure lagoon. Thurston Conservation District program manager Wynn Matthews, testified for the lagoon's construction.

And the records show that the district in March 1997 studied Chehalis River flood patterns as part of the lagoon's design.

The hearing examiner ruled that Doelman must get an Environmental Impact Study before the lagoon can be built. The project is currently on hold.

"I couldn't believe that Fred Colvin, who was there talking for Mr. Doelman and runs his dairies, is on the board of the Thurston Conservation District," Phelps says.

Colvin says Doelman hasn't gotten more than \$5,000 in cost-share from the district.

But district documents tell a different story. According to district meeting minutes, supervisors approved \$80,000 in cost share for Doelman on July 27, 1999 for the lagoon.

A changed law

Until last April, it was illegal for conservation district supervisors — like any other elected official — to get cost-share dollars from the jurisdiction that they represented.

According to a Nov. 24, 1998 memo from assistant attorney general Mark Johnson to the state Conservation Commission, districts could not give supervisors cost-share.

Johnson said his memo speaks for itself, and before April 1999, cost-share arrangements with conservation district supervisors were against the law. That means Thurston Conserva-



Jackie Reid, president of the Thurston Conservation District Board of Supervisors, had district workers perform \$1,429 of bank stabilization work on her Woodland Creek property. Reid paid the district back in November after former workers began accusing the district of misusing public funds.

tion District supervisors repeatedly violated the law — even if they didn't vote when cost-share benefits were allocated for their property.

On Feb. 12, 1999, after consulting with Johnson and the state Conservation Commission, supervisors recommended that local districts stop granting cost-share projects to supervisors.

While supervisor cost-share was a common practice in many conservation districts before 1999, there was a growing concern that the practice may have violated state law, said Steve Meyer, state Conservation Commission executive director.

However, conservation districts lobbied the 1999 Legislature to change the law.

Legislators listened, and they asked a rider onto an unrelated bill. Now, individual districts decide whether to

grant supervisors cost-share, Meyer said.

"We've encouraged them to set up a very objective policy — including getting people who are off the district — to evaluate programs," Meyer said.

While state, city and county officials still can't benefit from their positions, conservation district supervisors now can, Johnson said.

Impact

While Thurston Conservation District supervisors who applied for cost-share dollars claim they didn't campaign for their projects, the paper trail tells a different story.

Nelson's \$21,598 streambank project was one of city three chosen in 1998; 30 sites qualified for the money. Another property owner received

\$2,092, and the third got \$34,486.

According to district documents, "political considerations" were one of the nine criteria used to select the projects.

Nelson says he invested plenty of his own money and sweat into the project, and he let other landowners visit the strengthened riverbank for three years as an example of stream work.

The work is still holding the bank together, Nelson says, but he would not allow "The Olympian" to visit or photograph his land.

Nelson still is an associate member of the board, but he says he hasn't been involved with the district for years.

Other benefits

Cost-share isn't the only way districts supervisors benefit from their ties with the Thurston Conservation District.

Former board member Hank Doelman's dairy farms — which are under the management of current board member Colvin — have gotten thousands of dollars worth of technical help.

The district has coordinated technical plans, soil tests and other documents for Doelman's farms.

In one example, the district worked with engineers from the U.S. Department of Agriculture to design the proposed 6-million-gallon manure lagoon at Doelman's farm on 183rd Avenue in Rochester.

The lagoon — along with another 8.5-million-gallon lagoon at Doelman's James Road dairy that also got heavy technical support — is still unbuilt.

Colvin said he wasn't sure how much technical help the district provided Doelman's farms.

"I wouldn't even bother to guess — I have no idea," Colvin said. "There's no way I can even take a estimate of that."

Why?

Wyane, Colvin and Meyer say supervisors should get conservation district help so they can demonstrate the best ways to take care of land.

Farmers and ranchers bring a lot of expertise to conservation district boards, and they deserve a shot at the cost-share money, Colvin said.

But Arney contends that while the district connected farmers get plenty of help, other farmers have been turned away.

"We pay the conservation district's assessment like everyone else," Arney says. "And we need help too."

Phelps — who has never gotten any district help for her land — says she doesn't believe it when supervisors say they don't vote or campaign for free work or cost-share dollars for their land.

The Thurston Conservation District is secretive and doesn't reveal how much money or help everyone is getting, Phelps says.

"What happens when the door shuts and there's a wink?" Phelps says. "You don't know what's going on behind closed doors."

Doelman asked county Thurston County for the Olympian but can be reached at 743-2255.

SPORTS Rodriguez HR leads Mariners past Yankees, 7-5. B 1

The Olympian

SERVING WASHINGTON'S SOUTH PUGET SOUND

SATURDAY, APRIL 8, 2000

www.theolympian.com

40¢ IN STORES / 50¢ IN COW BUCKS

GOOD MORNING!
HIGH 60 LOW 40
FORECAST: A6

INSIDE
FEATURES



Blue's Clues
comes alive

Audit: District misused funds

BY CHESTER ALLEN
THE OLYMPIAN

OLYMPIA — A state auditor's report released Friday says the Thurston Conservation District mismanaged public money and projects for years.

In a sometimes scathing re-

port, auditors said the district was forced to fill out the management disbursement and effort activity on timesheets, the report says.

The district didn't have enough control over spending

to prevent or detect misappropriation of public assets.

The district's accounting was sloppy.

Disbursements were noted that lacked original documentation or sufficiently detailed expenditures paid, auditors

wrote. "We noted checks made payable to cash payments made from copies of invoices, payments made from a copy of invoices, and a copy of invoices.

Payments made on contracts that had expired and payments made for which there was no supporting documentation."

State grants were charged for work that was not performed. Some state grants were over-charged, and the district will have to reimburse the state.

There was clearly mismanagement, Sullivan said.

There is not a legal penalty, Sullivan said. Repayments will have to be made or accounts be-

mask right.

But Thurston County Commissioner Kevin O'Sullivan said the district could face criminal charges.

There was clearly mismanagement, Sullivan said.

There is not a legal penalty, Sullivan said. Repayments will have to be made or accounts be-

SULLIVAN, Page A2

DISTRICT

Continued from Page One

"There was no accountability in how public tax dollars were spent."

The district, which had a \$1 million budget in 1999, collected \$430,000 of that from county landowners.

Every Thurston County property owner pays the district \$5 a year for each lot. An additional tax of 10 cents per acre is charged for parcels larger than 1 acre.

O'Sullivan said he will ask county prosecutor Ed Holm to examine the audit and determine whether criminal or civil charges should be filed against district employees or supervisors.

Former district employees — and whistle-blowers — said the audit reports were no surprise.

"They did find that our allegations are true, and that's pretty darn cool," said former employee Julie Clougherty, who quit the district in disgust in October and now works for the Kitsap Conservation District.

George Fox, acting district administrator since January, said the district accepts the audit and will do everything it can to make things right.

The district's Board of Supervisors had no idea that so many bad things were happening, said board President Jackie Reid.

"There were just a lot of things we weren't aware of fully," Reid said.

No other district officials returned The Olympian's phone calls.

Sonntag said the audit's findings were unusual for conservation districts.

In fact, auditors concluded that the district has grossly misused state grants for years.

"Because of this condition, the public and grantors are unable to determine if the District is managing state and local grants in compliance with contract terms," auditors reported. "Additionally, it increases the potential that resources may be used in a manner inconsistent with the terms and conditions of grants and that resources are not safeguarded against waste, loss and misuse."

Ecology grants

Auditors think that the district has misused grants from the state Department of Ecology for years.

They asked the department whether it wanted to launch an extensive investigation of the district's use of grants, Sonntag said.

But Ecology didn't want to pursue the matter, Sonntag said.

Why didn't the Department of Ecology request a full-scale investigation?

Ecology officials haven't had a chance to review the audit, but they might have comments on Monday, spokeswoman Sandy Howard said.

Howard said the agency, which provided \$198,140 of the district's \$366,000 of state grants in 1999, welcomed the audit.

"It helps us be attentive to potential problems," Howard said.

Sonntag said the audit's findings could hurt the district's chances for future state grants.

Whistle-blowers

The state audit comes five months after The Olympian reported that former employees Marilyn Mead, Clougherty and others were claiming that the district had misused state grants, falsified timecards and misused state money.

A Dec. 19 story in The Olympian reported the district's practice of falsifying timecards.

A story in Sunday's Olympian described how some members of the district's board of supervisors received thousands of dollars in grants and hundreds of hours of free work and technical help from district employees for their own land.

Mead said the district's board should be held accountable for numerous years of mismanagement.

Management woes

The audit hurts, but the district is cleaning up its act, said administrator Fox.

The old management team is now gone, and tight new controls are going into place, Fox said.

District Board Members

- **Jackie Reid**, also a member of state Conservation Commission.
- **Doug Rushton**, a state Department of Ecology employee.
- **Peter Moulton**, a state Department of Ecology employee.
- **Harry Peterson**, a farmer.
- **Fred Colvin**, farm manager for former board member Hank Doelman.

While auditors found plenty of problems with the district's handling of state grants and accounting, no one is accused of breaking the law, Fox said.

"There was a lot of disruption and manipulation on the part of management," said Fox, who was brought in February to help right the struggling district. "That is easy to rectify."

While all of the district's managers have quit or been fired since former employees started filing complaints, the five members of the Board of Supervisors, which oversees the managers, remain in office.

Supervisors Fred Colvin, Doug Rushton, Peter Moulton and Harry Peterson did not return The Olympian's calls.

Whistle-blower Clougherty said it's time for the whole board to step down.

The board is responsible for the district's actions, Clougherty said.

"They get more arrogant every time they scuttle by without being held accountable," Clougherty said. "Where is the accountability for board members?"

Reid, the board's president, said she isn't asking any member to resign.

Reid originally defended the now-departed management team.

In October, after The Olympian began running stories on the district's turmoil, Reid sent the Thurston County Commission a letter saying that everything was fine.

"Whether at the end of a grant or in the middle, we always have sought permission from the granting agency to reprioritize or reallocate dollars," Reid wrote in her Oct. 27 letter to the commissioners.

"We are conservative grant managers," Reid wrote in another part of the letter.

On Friday, Reid said she thought the board was doing the best job it could for taxpayers and the district.

New policies and new management are already getting the district back together, Reid said.

Sonntag said the district is cooperating with auditors, and more oversight is already scheduled.

What's next

State auditors will review the district's new procedures in October or November, and another full-scale audit is scheduled for next year, Sonntag said.

"There is hope for a positive outcome," Sonntag said.

Fox, who will remain as the district's private auditor after new administrator Bruce Mackey starts April 17, said state auditors will help guide the district toward tight controls of taxpayer money.

"We've got an open book," Fox said. If Commissioner O'Sullivan has his way, the district also will answer to Thurston County.

O'Sullivan said he wants the district to agree to county oversight of how the property tax money is spent.

Thurston County Commissioners approved the \$5-per-lot conservation district assessment in 1992, and they can take it away, O'Sullivan said.

Or the commissioners can put the \$5-per-lot assessment in an escrow account until everyone is satisfied that the district is cleaned up, O'Sullivan said.

"We have to have checks and balances between the county and the conservation district," O'Sullivan said. "We have to make sure this type of thing doesn't happen again."

Greene & Associates Inc., Olympia, was the auditor for The Olympian's investigation. Call 360-425-1225.

The Olympian

EDITORIAL BOARD

Fred R. Hamilton, president and publisher
Vivian Kilgore, executive editor
Mike Osherson, editorial page editor
Tom Allen, online coordinator
Joanne Koenigs, community member
Paul Senfner, community member

OUR VIEWS

District board must resign

The state auditor's report released Friday confirms that the Thurston Conservation District has shown reckless disregard toward the taxpayers of Thurston County.

The district's elected and appointed supervisors — Jackie Reid, Harry Peterson, Doug Reslston, Peter Moulton and Fred Colvin — have lost our trust and respect.

They failed to safeguard and properly spend money received through property tax assessments and state grants.

They stood idly by while their bungling, fumbling managers falsified time cards, stuffed grant money around like it was a shell game and spent money as if it grew on trees.

They ignored for years well-founded complaints from district employees, complaints that mirrored the findings of the state auditor.

"State grants were charged for work that was not performed," the audit concluded.

How arrogant. How unprofessional. How downright illegal.

"The District does not have adequate internal controls over disbursements to sufficiently prevent or detect unallowable expenditures or misappropriation of public assets," the audit concluded.

How sloppy. How unethical. How insulting to us all. Then there's the longstanding practice of board members using public money for work on their own private property. It adds insult to injury. It is gratuitous.

And it was illegal as well until conservation district lobbyists secured self-serving legislation in 1999 to allow it.

District's future hangs by a thread

So much must be done to save the Thurston Conservation District from self-destruction.

First of all, the five supervisors must resign.

This is not a position we come to lightly. But if the district is ever to gain stature in this community as a guardian of clean water, fish and wildlife, this board must go.

It is not enough to hire new managers. It is not enough to improve accounting and fiscal controls.

This board must go.

And we won't tolerate any more of the insular, secretive elections that are the tradition at the district. No more stopping by the office and casting a ballot without a check of voter identification.

The elections must be well-publicized. And the elections must be held at a more public place.

Then there's the question: Should the district continue receiving the generous property tax assessment it has garnered since 1992?

Last year, the \$5 per parcel and 10 cents per additional acre brought in \$471,000.

The answer is "yes" but only if the Thurston County commissioners oversee use of the money.

At the very least, the county should require regular reports on how the money is spent.

Historically, the commissioners have ignored charges of fiscal mismanagement at the district.

On at least three separate occasions, dating back to 1995, they were urged to investigate alleged corruption at the district. They turned a deaf ear, referring complaints back to the district and the state Attorney General's Office.

Meanwhile, they kept dishing out our cash.

So far, the only commissioner who seems to be taking this whole thing seriously is Commissioner Kevin O'Sullivan.

Well, the commissioners owe the taxpayers of this county more. It's our money and we want to know how it's being spent.

Taxpayers deserve a full accounting

And what about the state Department of Ecology? Ecology last year doled out the bulk of the \$366,000 in grant money received by the district.

Ecology officials told the state auditor they aren't interested in taking any action against the district or seeking reimbursement of mispent grant money.

What gives? Why this nonchalance with taxpayer money?

Let it be known we expect and demand a full accounting of all the money. It's not enough to simply uncover fiscal irregularities.

Auditor Brian Sonntag said the district must refund overcharged state grants. Why doesn't Ecology demand the same?

The audit found that the lack of internal controls opened the door for waste, loss and misuse of funds.

The audit documented falsified time sheets through a review of four state grants.

The people responsible for squandering the money must be held accountable, too.

It's time the district board of supervisors gets off its dinal kick. There's too much evidence of wrongdoing.

The board must go.

District audit

For the full report from the state Auditor's Office, go to www.theolympian.com.

Hearing Set: June 15
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.

Declaration of

Washington State University (WSU) Energy

Eric Johnson

Program Office.

Defendant.

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am the plaintiff in this case, over 18 and competent to testify.
2. I am a Supervisor and Chairman of the Thurston Conservation District [TCD]. I was appointed by the Washington State Conservation Commission and receive no compensation.
3. TCD Supervisor and Board Auditor, Richard Mankamy, and I became concerned over on-going fiscal mismanagement and corruption at TCD. The *Olympian* reported that these

Ex B

JOHNSON DECLARATION

Shawn Timothy Newman
Attorney at Law, Inc., P.S.
WSBA 14193
2507 Crestline Dr. NW
Olympia, WA 98502-4327
(t) 360-866-2322

1 problems date back to 1995. This includes longtime TCD Supervisor Doug Rushton accepting
2 public money and bringing district workers onto their land to do work at public expense.

3 4. Supervisor/Auditor Mankamyer and I learned from a whistleblower that the TCD Deputy
4 Director [Amy Hatch-Winecka], while employed by TCD, was terminated by the Mason
5 Conservation District as WRIA 14 Lead Entity Coordinator (salmon recovery) for alleged illegal
6 and/or unethical behavior, including conflicts of interest. In addition to being TCD's Deputy
7 Director, Amy Hatch-Winecka is also TCD's Lead Entity Coordinator for WRIA 13 (salmon
8 recovery).

9 5. The whistleblower raised the issue of a potential conflict of interest arising from the TCD
10 Deputy Director being TCD's Lead Entity Coordinator and her husband, Lance Winecka, being
11 Executive Director of a nonprofit [South Puget Sound Salmon Enhancement Group] which
12 submits proposals to her for projects. As the Lead Entity, Mrs. Hatch-Winecka acts as the
13 district contact and fiscal agent for these joint ventures.

14 6. Supervisor/Auditor Mankamyer and I believed TCD staff might conceal information and
15 learned that WSU's Energy Program held TCD's records.

16 7. So, on January 25, 2018, Mankamyer made an appointment with Michael Pierson, WSU
17 IT Support Specialist, to inspect records. I accompanied him.

18 8. Supervisor/Auditor Mankamyer and I were surprised to be met by Pierson's boss, the
19 Information Systems Department Manager (James Colombo), and TCD Interim Executive
20 Director (Sarah Moorehead). Although Colombo showed us the server where TCD's records
21 were stored, he told us we would have to make any records request through Ms. Moorehead per a
22
23
24
25
26
27

1 Memorandum of Understanding [MOU]. I told Colombo that Mankamyer and I were her boss
2 and we wanted the records directly from WSU.

3 9. On January 31, 2018, I went back to WSU Energy Office and met with Colombo. I told
4 him there was no MOU with Moorehead. I explained to him about the investigation and that I
5 needed the records directly from him. He then told me that he would get me the records "in a
6 couple of days." I followed up with an email to Colombo later that same day at 3:33 PM stating:

8 First Request:

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

13 Second Request:

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

18 Eric Johnson
19 360.701.4322

20 10. I had to followed up with an email to Colombo on February 8, 2018, since he never
21 honored my requests. Colombo emailed later that day stating:

22 We have been instructed that all Public Information Requests must come through
23 the Director of TCD. Please submit your request to Sarah Moorehead and we
24 will be happy to complete then.¹

26
27 ¹ Ex. E: Email from Colombo to Johnson (2/8/18)

1 11. I never made a PDR to TCD because I was concerned that the information would be
2 screened by staff to protect themselves and others.

3 12. Although WSU belatedly acknowledged receipt of my PDR on February 26, 2018, it did
4 not indicate that my PDR requests were being screened by TCD staff.

5
6 13. Among the records not provided by WSU was the metadata associated with my first
7 request. This request concerns an email/letter dated November 29, 2017, from Supervisor
8 Samantha Fleischner to the Washington State Conservation Commission Executive Committee
9 calling for the "immediate removal" of me and Supervisor/Board Auditor Richard Mankamyer
10 for harassment, discrimination, neglect of duties and unethical conduct. These allegations are
11 defamatory. The allegations caused the State Conservation Commission to launch an
12 investigation of the TCD board. <http://scc.wa.gov/thurston-0218/> I wanted to know who was
13 involved in creating it, what computer was this created on and where was it sent. Therefore, I
14 specifically asked that a copy of the e-mail and metadata be sent directly to me. I never received
15 the metadata.
16

17
18 14. As for the second request, WSU provided over 5,000 documents in 10 large installments.
19 Many were duplicative and irrelevant, including birth announcements and scientific journal
20 articles. Contrast this with Pierson's previous email to Moorehead on February 5, 2018.²
21 Pierson specifically identified 1032 emails - *by name*. It is difficult to understand why the
22 number of document ballooned from 1032 to over 5,000 or why they were not provided directly
23 to me based on Pierson's specific identification - *by name*. Instead, Pierson was directed to
24 process my PDRs through Moorehead who screened the responses and stuffed the files with
25

26
27 ² Ex. G: Email from Pierson to Moorehead (2/5/18) re: Records request and Eric Johnson [Emphasis added].

1 irrelevant documents. Consequently, it is my position that WSU did not provide me the 1032
2 emails Pierson identified by name in response to my second request.

3 DATED: 5/16/18

4 Olympia


Eric Johnson

28 JOHNSON DECLARATION

From: Eric Johnson <ericjohnsontcd@gmail.com>
Sent: Wednesday, January 31, 2018 3:33 PM
To: colomboj@energy.wsu.edu
Subject: Eric Johnson TCD follow up 01.31.18

To: James L. Colombo Energy.wsu.edu

First Request:

I Eric Johnson, Chair, Thurston Conservation District (TCD), request, specifly, 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.

Second Request:

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

Eric Johnson
360.701.4322

Ex C

From: "Eric Johnson" <ericjohnsontcd@gmail.com>
Date: Feb 8, 2018 11:30 AM
Subject: Re: Eric Johnson TCD follow up 01.31.18
To: <colomboj@energy.wsu.edu>
Cc:

Hi James

I was wondering when I would get a response on the 2 requests that were made on 01.31.18. At this time I haven't received any of the information requested or a time line on when the information would be available for me.

Look forward to hearing from you .

Eric Johnson Chair TCD
360.701.4322

Ex D

From: Jim Colombo <ColomboJ@energy.wsu.edu>
Sent: Thursday, February 08, 2018 12:19 PM
To: 'Eric Johnson'
Cc: 'Sarah Moorehead'
Subject: RE: Eric Johnson TCD follow up 01.31.18

Eric:

We have been instructed that all Public Information Requests must come through the Director of TCD.
Please submit your request to Sarah Moorehead and we will be happy to complete them.

James L. Colombo
Information Technology Manager
Washington State University
Energy Program
905 Plum Street SE
Olympia WA 98504-3165
(360) 956-2027

From: Michael Pierson <PiersonM@energy.wsu.edu>
Sent: Friday, February 02, 2018 12:59 PM
To: Sarah Moorehead
Subject: PDR and board members

I've received a request for information and emails associated with several TCD users from Eric Johnson, TCD's board chair. ~~When we all last met, on Thursday January 25th, I felt it was pretty clear from the meeting that you wanted all requests to go through you rather than individual board members.~~ Can you please give me a call when you have a moment to discuss how I should proceed.

Thank you Sarah.

Michael Pierson
IT Support Specialist
WSU Extension Energy Program
Voice: 360-956-2045
piersonm@energy.wsu.edu

From: Michael Pierson <PiersonM@energy.wsu.edu>
Sent: Monday, February 05, 2018 9:04 AM
To: Sarah Moorehead
Subject: Records request and Eric Johnson

I've received a records request from Eric Johnson through my IT manager. As Eric and/or the board have no MOU with us I thought I should check with you on how or if to proceed. Thank you Sarah

The records request is two parts...

First Request:

I Eric Johnson, Chair, Thurston Conservation District (TCD), request, specify, 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.

I could find zero messages for this request. A little more information and I may have more luck.

Second Request:

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

Eric Johnson
360.701.4322

Number of emails in request, by name

Eric Johnson – 75
Richard Mankamy – 35
Samantha Fleischner – 27
Doug Rushton – 34
Sarah Moorehead – 348
Shana Joy – 94
Mark Clark – 27
Amy Franks – 156
Amy Hatch-Winecka - 236

Michael Pierson
IT Support Specialist
WSU Extension Energy Program
Voice: 360-956-2045
piersonm@energy.wsu.edu

Ex G

Sent: Wednesday, February 21, 2018 3:44 PM
To: Sarah Moorehead
Cc: Haas, Rita
Subject: Johnson v. WSU Public Records Lawsuit

Hello Sarah,

Thank you for speaking to me on Tuesday, February 20, 2018, concerning the public records lawsuit filed against WSU by Eric Johnson in Thurston County Superior Court. As you know, Mr. Johnson requested Thurston Conservation District (TCD) records that are hosted on WSU Energy Department servers. WSU does not concede that it is legally responsible for the records or required to produce them under the Public Records Act. Nevertheless, given that WSU is the defendant in Mr. Johnson's lawsuit, the university is compelled to respond.

As we discussed, one of the options WSU considers is to collect the responsive records (belonging to TCD), forward them to the WSU Public Records Office, and prepare to release them. Again, while reserving it's legal defenses, **WSU will release the records as soon as possible with minimal or no redactions as the university did not create records or otherwise use them. WSU will not provide judicial notice to TCD once the records are prepared for release. Although WSU wants to work with TCD in order to resolve this matter, the university must move forward to avoid possible court-imposed fines. As the records are being collected and released, WSU will engage Mr. Johnson's counsel in an attempt to resolve the underlying lawsuit. It must be noted that TCD may be added to the suit as a necessary party by WSU and WSU may ask that TCD be responsible for associated fees, costs, and possible fines. However, as we discussed, the university is not interested in engaging in protracted litigation with any party.**

The WSU Energy program will begin the process of gathering records and providing them to the Public Records Office today. The Public Records Office will immediately begin formatting the records into a releasable installment(s). If you have any concerns about release, redaction of information, or enjoining WSU from moving forward, I recommend you contact appropriate legal counsel.

Please feel free to contact me if you have any questions or concerns.

Thank you,
Adam



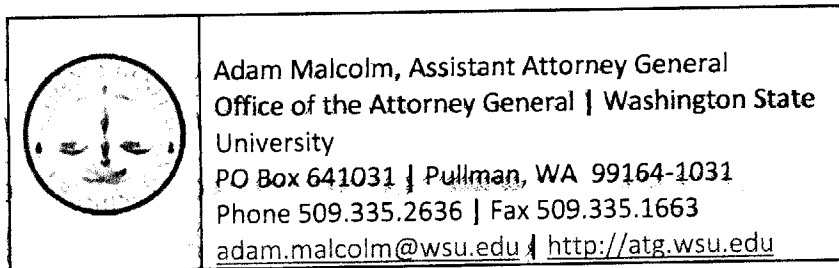
Adam Malcolm, Assistant Attorney
General
Office of the Attorney General |
Washington State University
PO Box 641031 | Pullman, WA 99164-
1031
Phone 509.335.2636 | Fax 509.335.1663
adam.malcolm@wsu.edu |
<http://atg.wsu.edu>

From: Malcolm, Adam Nelson <adam.malcolm@wsu.edu>
Sent: Friday, February 23, 2018 5:03 PM
To: Shawn Newman <newmanlawolympia@outlook.com>
Subject: RE: Johnson v. WSU - Energy Program

Mr. Newman,

Note that Washington State University (WSU) does not waive any legal claims, defenses, or arguments under the Public Records Act (or any other law) and preserves all legal arguments pursuant to your claim. However, in an effort to resolve this matter, the WSU Public Records Office has received Mr. Johnson's request and is collecting records on behalf of the Thurston Conservation District. Mr. Johnson should receive notice from WSU shortly and records will be released to him as soon as possible.

Assistant Attorney General Tim Feulner will enter a Notice of Appearance on behalf of WSU in Thurston County Superior Court. Questions concerning the motion docket can be directed to him. He is with the Department of Corrections Division and can be contacted at 360-586-5140. I will be associated counsel and my Notice of Appearance is pending. Questions concerning records release can be directed to me.



From: Shawn Newman <newmanlawolympia@outlook.com>
Sent: Monday, February 26, 2018 9:17 AM
To: ~~Malcolm, Adam Nelson~~ <adam.malcolm@wsu.edu>; TimF1@atg.wa.gov
Cc: Eric Johnson <ericjohnsonfarms@gmail.com>; 'newmanlaw@comcast.net'
~~newmanlaw@comcast.net~~
Subject: RE: Johnson v. WSU - Energy Program

Adam & Tim,

Does WSU intend to follow PRA protocol in responding to my client's PRA request? The protocol is set forth in the statute and PRA Deskbook.

Shawn Newman

From: "Washington State University Public Records" <wsu@public-records-requests.com>
Date: Feb 26, 2018 6:13 PM
Subject: [External Message Added] Washington State University public records request 18-115
To: <ericjohnsontcd@gmail.com>
Cc:

-- Write ABOVE THIS LINE to post a message that will be sent to staff. --
Washington State University Public Records

A message was sent to you regarding record request #18-115:
Dear Requester:

This letter is to acknowledge receipt of your Public Records Request 18-115, seeking:

First Request:

I Eric Johnson, Chair, Thurston Conservation District (TCD), request, specify, looking at an email 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

Second Request:

I Eric Johnson, Chair, Thurston Conservation District (TCD), request any and all e-mails sent to and from TCD, containing the names Eric Johnson, Richard Mankamy, Samantha Fleischner, Doug Rushton, Sarah Moorehead, Shana Joy, Mark Clark, Amy Franks, Amy Hatch-Winecka, between the dates 11/20/17 to 12/05/17, send information to: ericjohnsontcd@gmail.com

We understand your request was submitted to the Energy Program earlier, but it was received by the Washington State University Public Records Office in Pullman on February 22, 2018. We hope to complete our review of a 1st installment of records responsive to your Public Records Request and respond to you by March 15, 2018, however, more time may be necessary.

Your request for WSU records is not confidential. All Public Records Requests are public records. The records responsive to a request may contain names, identifiers, or information about other people (such as employees, former employees, students, former students, or third parties). WSU may send a notice to people named in the records informing them that their name, identifiers, or other information about them will be disclosed under the Public Records Act and provide them sufficient time in which to seek legal counsel to determine whether to file a motion in Whitman County Superior Court to enjoin disclosure. When we send such notices to people named in records, we also provide a copy of the request with the notice.

Please contact this office if you have any questions.

Sincerely,

WSU Public Records Office

Ex K

www.thurstoncd.com



*Legal Disclaimer:** The contents of all e-mail transmissions to and from this office may be considered public information and subject to the provisions of the State of Washington Public Records Act.*

From: Eric Johnson [mailto:ericjohnsontcd@gmail.com]
Sent: Friday, March 02, 2018 2:14 PM
To: Sarah Moorehead
Subject: Public disclosure request.

Hi Sarah

I recently did a public disclosure request with WSU energy and expected a reply directly from them. I wanted to ask you if they sent the answers to my PDR request to you instead. If they have please forward to me. If they haven't please reply with a answer as well.

Thanks

Eric Johnson

Ex L

From: "Sarah Moorehead" <SMoorehead@thurstoncd.com>
Date: Mar 2, 2018 2:42 PM
Subject: RE: Public disclosure request.
To: "Eric Johnson" <ericjohnsontcd@gmail.com>
Cc: "Joy, Shana (SCC)" <SJoy@scc.wa.gov>, "TCD Board Members" <board_members@thurstoncd.com>

Eric,

WSU Energy did not provide the fulfillment of your request for TCD records to me. They did share some preliminary information: there was no record found for the first request and then a series of email counts associated with your second request (Eric Johnson – 75, Richard Mankamyer – 35, Samantha Fleischner – 27, Doug Rushton – 34, Sarah Moorehead – 348, Shana Joy – 94, Mark Clark – 27, Amy Franks – 156, Amy Hatch-Winecka – 236).

It was my understanding from speaking with Assistant Attorney General, Adam Malcom, that WSU Energy **was** going to comply with your request as result of the lawsuit, with the notation that they are not responsible for providing records owned by Thurston CD.

I know that you originally intended for this request **not** to be fulfilled by TCD staff. However, I'm offering again to help fulfill this request if you would like me to. I'm more than happy to help, please let me know.

Thanks,

Sarah

Sarah Moorehead (Acting Executive Director)

Agricultural Outreach Specialist | Thurston Conservation District

2918 Ferguson St. SW, Ste A Tumwater, WA 98512

(360) 754-3588 ext. 136

Ex M

From: Michael Pierson [mailto:PiersonM@energy.wsu.edu]
Sent: Tuesday, March 06, 2018 8:31 AM
To: Amy Hatch-Winecka
Subject: PDR for Eric Johnson

Amy, I have the PST for the requested parameters ready to go for you. You can swing by and get them today if you like, I'll put them on a USB, or I can drop off tomorrow and show you how to load it into outlook again. What say you?...

Michael Pierson
IT Support Specialist
WSU Extension Energy Program
Voice: 360-956-2045
piersonm@energy.wsu.edu