

1 ☐ EXPEDITE

2 ☐ No Hearing Set

3 ☒ Hearing is Set

Date: June 15, 2018

Time: 9:00 a.m.

The Honorable Christine Schaller

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 ERIC JOHNSON,

Plaintiff,

10 v.

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

Defendant.

NO. 18-2-00943-34

DEFENDANT'S RESPONSE TO
PLAINTIFF'S BRIEFING ON
LIABILITY

15 Defendant, WASHINGTON STATE UNIVERSITY (WSU) ENERGY PROGRAM
16 OFFICE, by and through its attorneys of record, ROBERT W. FERGUSON, Attorney
17 General, ADAM MALCOLM, Assistant Attorney General, and TIMOTHY J. FEULNER,
18 Assistant Attorney General, respectfully submits the following response to Plaintiff's
19 briefing on liability.

20 **I. INTRODUCTION & RELIEF REQUESTED**

21 The Public Records Act (PRA) does not require agencies to be mind readers.
22 Requesters are expected to follow reasonable agency rules for submitting requests and provide
23 the agency fair notice that they are making a request for records under the PRA. In this case,
24 Plaintiff Eric Johnson, a board member of the Thurston Conservation District (TCD), requested
25 TCD records from a WSU information technology employee. This request did not mention the
26 PRA, was not submitted to WSU's Office of Public Records, and did not provide the agency

1 fair notice that it was being made under the PRA. Such a request was not a valid request under
2 the PRA and Johnson's claims must be dismissed as a result.

3 Additionally, contrary to Johnson's unsupported assertions, this case is not about
4 alleged corruption within TCD, an entity that is not a party to this litigation. Nor is this case
5 about an agency steadfastly refusing to provide records to a clear PRA request. Rather than
6 supporting Johnson's conspiracy theories, the evidence shows that WSU public records staff
7 expedited the production of records to Johnson despite legitimate arguments that WSU had no
8 duty to respond to the request under the PRA. Because WSU had no duty to respond to the
9 request and WSU did not otherwise violate the PRA, the Court should find that WSU has not
10 violated the PRA and dismiss Johnson's claims.

11 II. STATEMENT OF RELEVANT FACTS

12 The Washington State University is state university located and established in Pullman,
13 Washington. RCW 28B.30.010. WSU's administrative offices are located at the university's
14 main campus in Pullman. WAC 504-45-020(1). However, WSU has other campuses in
15 Spokane, the Tri-Cities, Vancouver, and Everett. WAC 504-45-020(1). WSU also operates
16 agricultural research centers in Mr. Vernon, Prosser, Puyallup, Vancouver, and Wenatchee,
17 and an Energy Program in Olympia. *See* WAC 504-45-020(1). This Energy Program consists
18 of, among other things, certain functions of the old state energy office that was eliminated by
19 the legislature in 1996. Laws of 1996, ch. 186.

20 A. WSU's Public Records Process

21 WSU has an Office of Public Records located on WSU's main campus in Pullman,
22 Washington. Declaration of Sheri Glaesman (Glaesman Declaration), at ¶ 3. WSU has
23 adopted a number of regulations that outline the process for submitting PRA requests to the
24 University. Specifically, WAC 504-45-020 states that "[a]ny person wishing to request access
25 to public records of the university, or seeking assistance in making such a request, should
26 contact the university's public records office located at the Pullman administrative offices."

1 WAC 504-45-020(2). WSU's Office of Public Records accepts PRA requests via the phone,
2 email, or through NextRequest.¹ Glaesman Declaration, at ¶ 3. WSU maintains information
3 about WSU's PRA process and a link to NextRequest on its website at [https://public-
4 records.wsu.edu/](https://public-records.wsu.edu/). Declaration of Counsel, Exhibit 6, at 68-70.

5 When a request is submitted via NextRequest, NextRequest automatically sends an
6 email to the requester acknowledging that the request has been received. Glaesman
7 Declaration, at ¶ 4. Then, within five business days, WSU will send an acknowledgement to
8 the requester that provides an estimated due date for completing the request or for a first
9 installment of records, if it is a larger request. *Id.* Staff in the Office of Public Records then
10 determine which WSU departments might have responsive records and use NextRequest to
11 send requests to those departments to search for records. *Id.* Departments that have responsive
12 records upload those responsive records through NextRequest and public records staff
13 download those records to a network drive. *Id.* When records are received by the Office of
14 Public Records, staff review the records to determine if records are exempt in whole or in part.
15 *Id.* If necessary, documents are converted into PDF format so that they can be reviewed for
16 redactions. *Id.* WSU uses a program called Discovery Assistant to convert records into PDF
17 format. *Id.* Discovery Assistant will also de-duplicate files that are exact duplicates. For
18 larger requests, records may be split into installments. *Id.* If information in records is exempt,
19 staff redact the documents and generate an index that provides information about the
20 redactions and identifies the basis for the redactions. *Id.* Additionally, staff determine if the
21 nature of the records requires notification to third parties. *Id.* Once an installment has been
22 reviewed and any notification has been provided, the records are uploaded to NextRequest to
23

24 ¹ NextRequest is a web-based application by which individuals can submit a PRA request to WSU and
25 through which WSU can then respond and provide records to the requester. Glaesman Declaration, at ¶ 3. WSU
26 has purchased NextRequest to assist it in more efficiently and effectively responding to PRA requests. Glaesman
Declaration, at ¶ 3.

1 be released to the requester. *Id.* The requester receives email notification that records have
2 been provided through NextRequest. *Id.*

3 WSU receives hundreds of public records requests per year. Glaesman Declaration, at
4 ¶ 5. WSU received 557 requests in 2017 and 305 requests so far in 2018. Glaesman
5 Declaration, at ¶ 5. WSU has four staff devoted to responding to those requests. *Id.* However,
6 for a period of time relevant to this lawsuit, WSU was only operating with 1.5 FTEs because
7 two staff left and one staff member has been dealing with health issues. *Id.*

8 **B. Johnson's Request for TCD Records and WSU's Response**

9 WSU's Energy Program, a department of WSU, provides information technology
10 services to various entities, including the TCD. Declaration of James L. Colombo (Colombo
11 Declaration), at ¶ 3. The Energy Program hosts 26 email accounts for TCD. Colombo
12 Declaration, at ¶ 3. These email accounts are maintained on a server and network that is
13 separate from the WSU server and network. Colombo Declaration, at ¶ 3. Energy Program
14 staff assist TCD staff with specific requests for IT assistance with TCD's computers, printers,
15 server, server backups, wireless access, and TCD's Local Access Network. Colombo
16 Declaration, at ¶ 3. WSU uses Barracuda email archive to manage TCD's emails. Colombo
17 Declaration, at ¶ 3. Barracuda records and stores every email that passes through the TCD
18 email system. Colombo Declaration, at ¶ 3.

19 On January 22, 2018, Information Technology Support Specialist Michael Pierson
20 received a call from someone who identified himself as Richard Mankamy. Declaration of
21 Michael Pierson (Pierson Declaration), at ¶ 3. Mankamy, who identified himself as a TCD
22 Board Member, indicated that he and another individual, Eric Johnson, wanted to come and see
23 the Energy Program's facility. Pierson Declaration, at ¶ 3. Mankamy did not mention
24 coming to inspect records during this conversation with Pierson. Pierson Declaration, at ¶ 3.
25 Instead, Mankamy suggested that he wanted to come and see what the Energy Program did,
26 how they did it, and how the backup of TCD's email records was taken care of. Pierson

1 Declaration, at ¶ 3. Mankamyer did not mention that he was looking for anything specific
2 during this conversation. Pierson Declaration, at ¶ 3. Pierson told Mankamyer that he could
3 come to see the facility on January 25, 2018. Pierson Declaration, at ¶ 3.

4 After speaking to Mankamyer, Pierson spoke to Information Technology Manager Jim
5 Colombo about the request. Pierson Declaration, at ¶ 4. Neither of them knew Mankamyer
6 and they wanted to verify who he was prior to allowing him access to the Energy Program's
7 facility. Pierson Declaration, at ¶ 4. As a result, they contact Sarah Moorehead, TCD's Acting
8 Executive Director. Pierson Declaration, at ¶ 4. Because Moorehead had not visited the
9 Energy Program's facility, she mentioned that it would be a good opportunity for her to do so.
10 Pierson Declaration, at ¶ 4.

11 On January 25, 2018, Pierson and Colombo met with Mankamyer, Plaintiff, and
12 Moorehead. Colombo Declaration, at ¶ 5. During this conversation, there was a discussion
13 in general terms about how Johnson and Mankamyer could obtain records and documents.
14 Pierson Declaration, at ¶ 5. There was also a discussion about setting up a computer so
15 that Mankamyer and Johnson could gain access to the TCD network and TCD computers.
16 Colombo Declaration, at ¶ 6; Pierson Declaration, at ¶ 5. The subject of the Memorandum
17 of Understanding (MOU) was discussed during this meeting. Pierson Declaration, at ¶ 5;
18 Colombo Declaration, at ¶ 6. Colombo mentioned that the Energy Program had a MOU
19 with the former TCD Director and Moorehead told everyone that requests for records
20 should be sent through her. Pierson Declaration, at ¶ 5. During the discussion, Pierson and
21 Colombo also went over various aspects of the services that WSU provided to TCD
22 including the servers, how WSU backed up TCD's systems, and to how WSU keeps TCD
23 data from being lost. Pierson Declaration, at ¶ 5. At this point in time, WSU did not
24 realize that there are apparently two warring factions in TCD. Pierson Declaration, at ¶ 5.
25 During this meeting, there was no specific request for records made by Johnson or
26 Mankamyer. Pierson Declaration, at ¶ 5; Colombo Declaration, at ¶ 6.

1 On January 31, 2018, Mr. Johnson showed back up at the Energy Program office
2 without any appointment. Colombo Declaration, at ¶ 7. Colombo was surprised to see him in
3 the Energy Program's lobby to talk to Colombo without an appointment. Colombo
4 Declaration, at ¶ 7. Despite Johnson showing up unannounced, Colombo met with Johnson.
5 *Id.* At a point in the conversation with Colombo, Johnson started asking about how he could
6 get the metadata on a specific document and find out who created it and on what computer it
7 was created. *Id.* Colombo was confused about what he was saying and asked Johnson to
8 clarify if he was talking about a Word document or an email. *Id.* At that point, Johnson
9 became very cryptic. *Id.* Colombo tried to explain that if it was a Word document then there
10 would be more useful metadata available, but Colombo did not think WSU could tell him on
11 which computer the document was created. *Id.* Johnson then showed Colombo his cell phone.
12 *Id.* On his cell phone, Johnson showed Colombo screen shots of a few fields that showed
13 "Accounting" as one of the completed fields. *Id.* Colombo continued to ask him if those
14 screenshots were a Word document or an email. *Id.* Johnson did not answer and did not show
15 Colombo the rest of the documents. Mr. Johnson then handed Colombo two handwritten
16 pages. *Id.* Johnson did not identify or say that these pieces of paper were a public records
17 request. *Id.* Colombo told him that it would take a few days to get the information. *Id.*
18 Colombo never Johnson that he would provide Johnson with the records in a few days because
19 Colombo knew that he would need to talk to his manager to see if it was even legal for
20 Colombo to provide Johnson with TCD records. *Id.*

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1 Later that day, Johnson sent an email to Colombo with these two requests. Colombo
2 Declaration, Exhibit 3. This email did not mention the PRA anywhere in it. *Id.* Instead, the
3 email read as follow:

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

5 First Request:

6 I Eric Johnson, Chair, Thurston Conservation District (TCD), request, specifly
7 (sic), looking at an e-mail created at TCD on 11-29-17 at 3:33pm and modified
8 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 (sic) to:
ericjohnsontcd@gmail.com.

9 Second Request:

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

13 Colombo Declaration, Exhibit 3. Neither Pierson nor Colombo interpreted this email to be a
14 public records request. Pierson Declaration, at ¶ 6; Colombo Declaration, at ¶ 8.

15 After speaking to one of the Deputy Directors of the Energy Program, Colombo called
16 Moorehead about the request and left her a voicemail. Colombo Declaration, at ¶ 8. Pierson
17 followed up with Moorehead via email multiple times in the following days. Pierson
18 Declaration, at ¶ 7; Johnson Declaration, Exhibits F & G. WSU Energy Program staff
19 gathered the records in anticipation of receiving further guidance of Moorehead. Colombo
20 Declaration, at ¶ 9; Pierson Declaration, at ¶ 7. Pierson later spoke to Moorehead and she
21 directed Pierson that all requests for TCD information needed to go through her. Pierson
22 Declaration, at ¶ 7. Colombo sent Johnson an email on February 8, 2018, with this information
23 and cc'd Moorehead. Colombo Declaration, at ¶ 10 & Exhibit 4. Specifically, Colombo told
24 Johnson that "We have been instructed that all Public Information Requests must come
25 through the Director of TCD. Please submit your request to Sarah Moorehead and we will be
26 happy to complete them." Colombo Declaration, Exhibit 4.

1 **C. The Filing of This Lawsuit and WSU's Production of Records Without Waiving**
2 **Any Arguments**

3 Johnson did not respond to Colombo's email, did not submit a public records request to
4 WSU's Office of Public Records, and did not submit a public records request to TCD. Instead,
5 Johnson filed a lawsuit against WSU eight days later. WSU Public Records staff were notified
6 of the lawsuit on February 21, 2018. Glaesman Declaration, at ¶ 3; Declaration of Stephanie
7 Kalasz (Kalasz Declaration), at ¶ 3. WSU at that point decided to produce the records without
8 waiving any argument that they were required to do so. Glaesman Declaration, at ¶ 3; Kalasz
9 Declaration, at ¶ 3. WSU notified TCD through counsel of its intent to produce records on
10 February 21, 2018. Counsel Declaration, Exhibit 1, at 4-5. WSU also uploaded the request
11 into NextRequest and the request was assigned a tracking number of 18-115. Glaesman
12 Declaration, at ¶ 7. WSU sent Johnson an acknowledgment email on February 26, 2018.
13 Kalasz Declaration, Exhibit 1.

14 WSU immediately began gathering records. WSU public records staff contacted the
15 Energy Program to gather records. Pierson Declaration, ¶ 8. Energy Program staff were
16 instructed to search for eight items to provide to Johnson.² Pierson Declaration, at ¶ 8. Pierson
17 gathered these records, which consisted of 1,736 emails and the MOU between TCD and
18 WSU's Energy Program, and provided them to the Office of Public Records in Pullman.
19 Pierson Declaration, at ¶¶ 8-9; Colombo Declaration, at ¶¶ 11-12. The emails were provided in
20 PST format. Pierson Declaration, at ¶ 1; Glaesman Declaration, at ¶ 7. As a result of an
21 innocent error, one of the PST did not contain all of the emails that were located in the Energy
22 Program's search. Pierson Declaration, at ¶ 11. As discussed in more detail below, this
23 oversight was fixed after it was caught. Pierson Declaration, at ¶ 11.

24
25 ² These eight items corresponded to Johnson's original two request items and the six items added in his
26 discovery requests that were served with the lawsuit. Pierson Declaration, at ¶ 8; Counsel Declaration, Exhibit 3,
at 20-21.

1 After public records staff received the records from the Energy Program. Glaesman
2 Declaration, at ¶ 7. Public records staff then had to extract the emails from the PST files and
3 upload the emails into a program called Discovery Assistant. Glaesman Declaration, at ¶¶ 4 &
4 7. Discovery Assistant converts the files into PDF and de-duplicate files that are exact
5 duplicates. Glaesman Declaration, at ¶ 4. Discovery Assistant also converts the documents
6 into PDF format. *Id.* Staff then had to review all of the records for redactions. *Id.*

7 Despite being understaffed, WSU public records staff prioritized Johnson's request and
8 began producing records at a frenetic pace. Specifically, WSU produced records in
9 installments as follows:

10	March 16, 2018:	WSU produced 637 pages of records to Johnson
11	April 6, 2018:	WSU produced 337 pages of records to Johnson
12	April 10, 2018:	SU produced 743 pages of records to Johnson
13	April 17, 2018:	WSU produced 336 pages of records to Johnson
14	April 23, 2018:	WSU produced 930 pages of records to Johnson
15	May 2, 2018:	WSU produced 496 pages of records to Johnson
16	May 9, 2018:	WSU produced 1,300 pages of records to Johnson as well
17		as a couple of documents in their native format because
18		they could not easily be converted into a different format.

19 Kalasz Declaration, at ¶¶ 7-13. After producing the records on May 9, 2018, WSU notified
20 Johnson that it had completed the request. Kalasz Declaration, at ¶ 13.

21 However, Energy Program staff were asked to double check the searches to make sure
22 that all emails had been captured. Pierson Declaration, at ¶ 11. During that check, Pierson
23 realized that one of the PST files that had been created using Barracuda did not contain all of
24 the emails. Pierson Declaration, at ¶ 11. Pierson did the search again and also checked all
25 other searches. Pierson Declaration, at ¶ 11. Pierson provided a new PST to the Office of
26 Public Records, at ¶ 11.

1 The Office of Public Records notified Johnson that additional records had been located
2 and that the request was being reopened on May 22, 2018. Kalasz Declaration, at ¶ 14. On
3 June 1, 2018, WSU provided Johnson with these additional records that consisted of 2,059
4 pages of emails. Kalasz Declaration, at ¶ 15. Johnson was then notified that his request was
5 considered completed. Kalasz Declaration, at ¶ 15.

6 III. ARGUMENT

7 The PRA's purpose is to provide the public full access to information concerning the
8 conduct of government. *See Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389
9 (1997). The statute sets forth the procedure to achieve this. Upon the motion of any person
10 having been denied an opportunity to inspect or copy a public record, the superior court may
11 require the agency to show cause why it has refused to allow inspection or copying of a
12 specific public record or class of records. RCW 42.56.550(1). "[S]how cause hearings are the
13 usual method of resolving litigation under [the PRA]." *Wood v. Thurston Cnty.*, 117 Wn. App.
14 22, 27, 68 P.3d 1084 (2003). These hearings may be conducted solely on affidavits. RCW
15 42.56.550(3).

16 A. The Court Should Not Address Issues Not Identified in the Scheduling Order

17 The parties held a scheduling conference on March 16, 2018. Consistent with Local
18 Civil Rule 16, the parties discussed the issues in dispute at this conference. Based on the
19 parties' discussion and input, the Court entered a scheduling order. The Order specifically
20 indicates that the issues identified in the Order "are the only issues in dispute" and that "the
21 briefing and any future discovery will be limited to the issues in dispute" identified in the
22 Order. Order at 1-2. Johnson's Opening Brief purports to follow the issues identified in the
23 Scheduling Order but also makes a passing argument that WSU violated the PRA by failing to
24 properly acknowledge the request within five business days as required by RCW 42.56.520.
25 However, that issue is not identified in the scheduling order. As such, this Court should
26 decline to address that issue.

1 **B. Johnson's Request Was Not Valid Because It Was Not Submitted Pursuant to**
2 **WSU's Published Policy for Submitting Public Records Requests**

3 State agencies must publish rules establishing methods of obtaining records under the
4 PRA. RCW 42.56.040. When an agency designates a person to whom requests should be
5 submitted under those rules, a requester cannot bring suit based on a request that was not
6 submitted to those established procedures. *See Parmelee v. Clarke*, 148 Wn. App. 748, 750,
7 201 P.3d 1022 (2008).

8 The WSU has adopted regulations related to requests for public records in WAC 504-
9 45, et seq. Under WAC 504-45-020(2), "[a]ny person wishing to request access to public
10 records of the university, or seeking assistance in making such a request, should contact the
11 university's public records office located at the Pullman administrative offices. Current
12 contact information and additional information regarding release of public records are
13 available on the university's website at <https://wsu.edu>." WAC 504-45-020(2). The term
14 "university" is defined to include all of WSU's campuses, research centers, cooperative
15 extension offices, and operations officers, and it includes the Energy Program as a result. *See*
16 WAC 504-45-020(1). In addition to defining where requests should be submitted, the
17 university also defines the form of a proper PRA request. Specifically, WAC 504-45-020(1)
18 states:

19 Any person wishing to inspect or copy public records of the university should
20 make the request in writing on the university's request form, or by letter, fax, or
21 email addressed to the public records officer or designee. The following
22 information must be included in the request:

- 21 (i) Name of the person requesting records;
- 22 (ii) Mailing address of requestor;
- 23 (iii) Other contact information, including telephone number and any
24 email address;
- 25 (iv) Identification of the public records adequate for the public records
26 officer or designee to locate the records; and
- 27 (v) The date of the request.

28 WAC 504-45-020(1).

1 The University has a dedicated webpage by which a person can submit requests. Glaesman
2 Declaration, at ¶ 4. This website identifies and contains links to the regulations as well as the
3 University policy governing the release of public records. Counsel Declaration, Exhibit 6, at
4 68-70. The website clearly identifies that a public records request should be made to the Office
5 of Public Records located in Pullman, Washington. *Id.* The website itself has a means of
6 submitting requests. *Id.*; Glaesman Declaration, at ¶ 4. Specifically, the University has
7 purchased and uses a system called NextRequest. Glaesman Declaration, at ¶ 4. NextRequest
8 is a system that WSU purchased to manage public records requests. A requester can access the
9 NextRequest system through links on the agency's website. Despite these clear means to
10 properly submit a PRA request, Johnson did not submit his request to WSU's Office of Public
11 Records. Instead, Johnson attempted to submit his request to WSU by providing his requests
12 in a confusing manner to IT employees at one of the University's departments outside of its
13 main campus. This renders his alleged request an invalid request under the PRA. *See*
14 *Parmelee v. Clarke*, 148 Wn. App. 748, 750, 201 P.3d 1022 (2008). Because the request was
15 invalid, WSU was under no obligation to respond. *Id.*

16 In *Parmelee v. Clarke*, an inmate, Alan Parmelee, had attempted to submit two public
17 records requests to Department of Corrections (Department) staff instead of staff designated to
18 respond to public records requests: the first Parmelee handed to a Department staff member in
19 his unit and the second to a grievance coordinator. *Parmelee v. Clarke*, 148 Wn. App. 748,
20 750, 201 P.3d 1022 (2008). The Department did not acknowledge the first request until after
21 receiving the lawsuit and in response to the second request, the requester was informed that he
22 should have submitted his request to the public disclosure coordinator at the facility. *Id.* at
23 752. The Department argued that it did not violate the PRA because Parmelee had not made
24 valid requests. The Court of Appeals agreed and affirmed the dismissal of Parmelee's claims.
25 148 Wn. App. at 759. In doing so, the Court recognized that an agency can establish
26 reasonable procedures for submitting public records requests and that the failure to follow such

1 a procedure relieves the agency from responding to the request. *Id.* at 754-59. The court
2 concluded that “[B]ecause the two record requests at issue were not submitted to the
3 designated public disclosure coordinator, the Department may not be penalized for failing to
4 respond to them in a timely fashion.” *Id.* at 759.

5 Here, like in *Parmelee*, Johnson did not follow the agency’s established procedures for
6 submitting public records requests and the University may not be punished for failing to
7 respond to the request in a timely fashion as a result. As discussed above, Johnson did not
8 submit his request to the University’s Public Records Officer or the University’s Office of
9 Public Records in Pullman, Washington. Instead, he submitted the request to a university IT
10 employee in a department located in one of WSU’s satellite locations. Although RCW
11 42.56.040(2) requires actual notice of a policy that is not published or prominently displayed in
12 order for a request to be adversely affected by the policy, it does not contain such a
13 requirement for a published policy. In this case, the University’s policy was a regulation that
14 was enacted pursuant to the Administrative Procedures Act and displayed prominently on the
15 agency’s website. Under *Parmelee*, Johnson’s failure to follow the University’s published
16 policies means that the agency cannot be penalized for failing to respond to Johnson’s request
17 in a timely manner.

18 Instead of addressing the *Parmelee* decision, Johnson presents three arguments about
19 why he properly submitted his request: 1) the PRA’s general purpose; 2) the fact that WSU
20 acknowledged the request and produced records; and 3) Johnson’s interpretation of a separate
21 statutory provision, RCW 42.56.580, that deals with an agency’s obligation to appoint a public
22 records officer. Johnson’s Brief, at 10. None of these provides a persuasive reason to depart
23 from *Parmelee*. First, although the PRA’s general purpose is to provide access to records, the
24 *Parmelee* court appropriately reached its decision that a requester must follow the identified
25 agency process for submitting requests despite the PRA’s general purpose of providing broad
26 disclosure. Furthermore, requiring a person to submit a request through a publically available

1 and reasonable process does not conflict with the general purpose of the PRA. Such a
2 requirement does not result in the denial of records. Instead, it channels PRA requests to
3 designated agency personnel who have specialized training and experience in dealing with
4 requests. This furthers the purpose of the PRA rather than harms it.

5 Second, the University's attempt to cooperate with Johnson in his request for records is not
6 determinative of the legal issue of whether Johnson's request was a properly submitted request
7 under the PRA. Instead, the *Parmelee* decision hinged on the agency's established procedures
8 for submitting public records requests, not the conduct of the agency. Johnson cites no
9 authority that the University's subsequent acknowledgment of Johnson's request affects this
10 legal determination. Courts have been hesitant to apply the doctrine of waiver when an agency
11 voluntarily provides documents or information that they would not otherwise be required to
12 provide under the PRA. *See Sanders v. State*, 169 Wn.2d 827, 849-50, 240 P.3d 120 (2010)
13 (declining to apply the doctrine of waiver to prevent an agency that produced records from
14 arguing that the records were exempt). Eschewing waiver in this context makes good sense in
15 light of the PRA's purpose. If courts penalized agencies that erred on the side of complying
16 with the PRA by applying the doctrine of waiver, courts would be creating an incentive for
17 agencies to withhold records to prevent a claim of waiver. *See Sanders*, 169 Wn.2d at 849
18 (describing this incentive and indicating that the result would be antithetical to the PRA's
19 purpose). Therefore, the Court should decline to apply any waiver doctrine and conclude that
20 the agency's conduct does not foreclose the agency from arguing that the request was invalidly
21 submitted.

22 Third, Johnson's interpretation of RCW 42.56.580 is both irrelevant to the issue at hand
23 and wrong. RCW 42.56.580 states in full:

24 (1) Each state and local agency shall appoint and publicly identify a public
25 records officer whose responsibility is to serve as a point of contact for
26 members of the public in requesting disclosure of public records and to oversee
the agency's compliance with the public records disclosure requirements of this

1 chapter. A state or local agency's public records officer may appoint an
employee or official of another agency as its public records officer.

2 (2) For state agencies, the name and contact information of the agency's public
3 records officer to whom members of the public may direct requests for
4 disclosure of public records and who will oversee the agency's compliance with
the public records disclosure requirements of this chapter shall be published in
the state register at the time of designation and maintained thereafter on the
code reviser web site for the duration of the designation.
5

6 RCW 42.56.580(1), (2). This provision does not answer the question about whether agencies
7 may designate a specific process by which requests are submitted or otherwise undermine the
8 *Parmelee* decision. Rather, all this provision establishes is that agencies must appoint a public
9 records officer and that the name and contact information of these public record officers must
10 be published. Contrary to Johnson's argument, it does not speak to the form or procedure of
11 submitting requests and therefore is not relevant to this Court's determination. Additionally,
12 Johnson's argument that the language "may direct requests" is permissive does not establish
13 that agencies cannot adopt reasonable rules by which requests are submitted or that a request
14 submitted contrary to the agency's reasonable rules is valid. Therefore, RCW 42.56.580 does
15 not support Johnson's argument and it certainly does not foreclose an agency's ability to adopt
16 reasonable rules for submitting request.

17 Ultimately, Johnson's apparent theory of the PRA that a requester can submit a request
18 to any agency employee regardless of what the agency's published policy states about
19 submitting requests is very troublesome. Under Johnson's theory, members of the public can
20 simply hand requests to any person who works for the agency and the request is valid. This
21 could mean requesters can hand the request to the Governor or WSU's football coach Mike
22 Leach and the agency is required to respond to such requests. But this result would actually
23 undermine the PRA not serve it. The PRA works best when public records requests are
24 directed to the individuals specifically designated and trained to respond to such requests. The
25 PRA is not designed to allow requesters to play a game of gotcha with a public agency. This
26

1 Court should avoid the chaos that would ensue under Johnson's interpretation of the PRA,
2 follow *Parmelee*, and conclude that Johnson's request was invalid.

3 **C. Johnson Request Did Not Provide Fair Notice That It Was Intended to Be a Public**
4 **Records Act Request**

5 An agency's obligations under the PRA only apply when the agency receives a specific
6 request for public records. *Germeau v. Mason Cnty.*, 166 Wn. App. 789, 804, 271 P.3d 932
7 (2012). In order to be a specific request for public records, the request must give the agency
8 fair notice that the request in question is a request made under the PRA. *Id.* at 804-05. The
9 PRA does not require agencies to be mind readers. *See Bonamy v. City of Seattle*, 92 Wn. App.
10 403, 451, 960 P.2d 447 (1998). Although the fact that a requester did not mention the PRA by
11 name is not dispositive, courts consider the range of circumstances to determine whether the
12 request provided fair notice to the agency. *Germeau*, at 804-06. In *Germeau*, the Court of
13 Appeals considered two categories of factors in determining the question of fair notice: 1) the
14 characteristics of the request itself and 2) the characteristics of the requested records. *Id.* This
15 inquiry is an objective inquiry.

16 Here the nature of the request and the characteristics of the request did not put WSU on
17 notice that Johnson was requesting records under the PRA. The request is similar to the
18 request at issue in *Germeau* that Division II concluded did not provide fair notice to the
19 agency. In *Germeau*, the request identified the requester as a guild representative and stated
20 that the purpose of the records was for investigation of an ongoing internal affairs
21 investigation. *Germeau*, 166 Wn. App. at 793-794. There, the court held that in light of these
22 characteristics, the agency did not have fair notice that the letter was a request. *Id.* at 805-807.
23 Here, Johnson's request identified himself as the Chair of TCD and sought TCD's own
24 records. Additionally, the request did not mention the PRA. In the same way as the
25 identification of *Germeau* as a guild representative evinced something other than a public
26 records request, Johnson's identifying himself as the chair of the TCD in his letter did not

1 provide fair notice to the University that he was requesting records under the PRA as opposed
2 to some other request in his official capacity.

3 Similarly, the characteristics of the requested records did not put WSU on fair notice
4 that this was a request made under the PRA. Although the request was for specific records, it
5 was reasonable for WSU to assume that a request made by the Board of Supervisors of an
6 agency was not making a request for the agency's own records absent some indication that it
7 was being made under the PRA. *See Germeau*, 166 Wn. App. at 807-08 (concluding that fact
8 that agency reasonably believed that requester was making request under the collective
9 bargaining agreement and not the PRA was dispositive of this issue). Additionally, the nature
10 of the requested records did not put the agency on notice because Johnson, a representative of
11 TCD, was requesting copies of TCD's public records that were merely stored by WSU. *See*
12 *Germeau*, 166 Wn. App. at 807 (identifying as one of the factors as whether it was reasonable
13 to assume the requester was seeking documents under another an independent, non-PRA
14 authority). Therefore, the characteristics of the request also did not provide WSU fair notice
15 that the request was being made under the PRA.

16 Johnson argues primarily that WSU understood that Johnson was requesting records.
17 Johnson's Brief, at 11. However, this ignores the relevant question of whether WSU
18 understood that Johnson was requesting records under the PRA as opposed to something else.
19 In the unique factual circumstances where a member of the agency and someone who
20 identified himself as the Chair of TCD requests for TCD's own records, there was not fair
21 notice that this request was made under the PRA as opposed to simply an entity requesting to
22 see its own records. Additionally, to the extent that Johnson is arguing that WSU waived this
23 argument by acknowledging the request later and providing records, this Court should reject a
24 waiver argument for the same reasons that it should reject the argument in the context of
25 whether Johnson submitted his request in a valid manner.

1 Because Johnson's request did not put WSU on fair notice that he was seeking records
2 under the PRA, WSU had no obligation to respond and the case should be dismissed.

3 **D. Johnson's Request Did Not Seek WSU's Public Records**

4 The PRA was enacted through a citizen's initiative in 1972. At that time, the public
5 could not have envisioned the technological advances that would occur in the last decades of
6 the 20th century. This case presents an issue of first impression: whether an agency's mere
7 storage of records on a server for second public agency means that those records are the storing
8 agency's public records that must be produced in response to a public records request to the
9 agency that is merely storing the records. The Court should conclude that mere storage of
10 those records does not transform those records into the storing agency's public records.

11 In order to be a public record, information must be (1) a writing; (2) related to the
12 conduct of government or the performance of a government functions that is (3) prepared,
13 owned, used, or retained by a state or local agency. RCW 42.56.010(3). The requester bears
14 the burden of showing that the requested documents are public records. *Dragonslayer, Inc. v.*
15 *Wash. State Gambling Comm'n*, 139 Wn. App. 433, 442-43, 161 P.3d 428 (2007).

16 There is no question that the records in question are writings. The requested emails
17 also could possibly contain records that relate to the conduct of the TCD's business. Because
18 TCD is not a party, WSU does not have information one way or the other about whether the
19 records relate to TCD's governmental functions. However, for the purposes of this analysis,
20 WSU will assume that at least some of the records relate to the conduct of TCD's business.
21 Therefore, the issue is whether the records were prepared, owned, used, or retained by WSU.

22 Johnson does not appear to allege and has provided no proof that the records were
23 prepared, owned, or used by WSU. The records are emails created or received by TCD staff so
24 they were not prepared by WSU; these are records that are stored for TCD so WSU does not
25 own the records; and WSU is simply storing the records as any email service provider would
26 so it does not use the records for purposes of the PRA. *See Nissen v. Pierce Cnty.*, 183 Wn.2d

1 863, 881-82, 357 P.3d 45 (2015) (discussing the definitions of prepared, owned, and used).
2 Again, Johnson does not argue that the records are prepared, owned, or used by WSU.
3 Therefore, the only question is whether WSU retains the records.

4 This Court should conclude that an agency that merely stores a record for another
5 agency does not “retain” such records. In *Nissen*, the Supreme Court looked to the dictionary
6 definition of retain and that definition is “to hold or continue to hold [it] in possession or use.”
7 *Nissen*, at 882 (alteration in original). However, because it was undisputed that the records in
8 question were retained by a private entity, Verizon Wireless, the Court did not further discuss
9 this definition. *Nissen*, 183 Wn.2d at 882. As such, it provides only limited guidance.
10 However, the Court should construe retain to be narrower than simply mere possession of a
11 document. Instead, an agency retains a document when it continues to hold the document
12 because it reflects a prior decision by the agency or because the document is needed for use in
13 the agency’s business. In other words, in order to retain a document, an agency must possess
14 that document for use in that agency’s business. Mere storage is not sufficient. Because WSU
15 was merely storing these emails for TCD’s use and benefit, WSU was not retaining the records
16 as contemplated by the PRA. Therefore, they were not WSU’s public records and WSU had
17 no obligation to produce them.

18 Johnson’s brief gives only a very cursory analysis of the definition of public record and
19 claims that the records are WSU’s public records because they are retained by WSU. Johnson
20 appears to equate possession with retention. However, not every record possessed by an
21 agency or its employees is a public record under the PRA. *Cf. West v. Puyallup*, 2 Wn. App.
22 2d 586, 599-600, 410 P.3d 1197 (2018) (determining whether posts were prepared by
23 employee within the employee’s scope of employment); *see also State ex rel. Daly v.*
24 *Information Technology Services Agency of City of St. Louis*, 417 S.W.3d 804, 809-10 (Mo. Ct.
25 App. 2013) (concluding technology agency did not have duty to produce records under the
26 Missouri’s Sunshine law and rejecting idea that technology agency retained the relevant

1 records); *Easton Area School District v. Baxter*, 35 A.3d 1259, 1263-64 (Pa. Commw. Ct.
2 2012) (collecting cases and concluding that emails should not be considered public records
3 simply because they are located on agency-owned equipment). Indeed, if mere possession was
4 sufficient to make a document a public record, the word “retain” would seemingly swallow up
5 the other words (“own”, “use”, and “prepare”) in the statute. It is difficult to see what use those
6 words would be in the statute if mere possession is sufficient. Therefore, this Court should
7 reject Johnson’s argument that mere possession is sufficient for an agency to retain the record
8 and conclude that these records are not WSU’s public records.

9 **E. WSU Has Not Violated the PRA by Failing to Provide Records**

10 One of the issues identified by the parties is whether WSU violated the PRA by failing
11 to produce records. The Court should conclude that WSU did not because WSU’s email from
12 February 8, 2018, to Johnson did not deny Johnson any records and WSU has now produced
13 all records that have been requested. In the factual circumstances of this case, WSU’s conduct
14 did not constitute a denial of the right to inspect or copy records.

15 **1. The Confusion over Johnson’s Request Did Not Constitute a Denial of**
16 **Records**

17 A requester is only entitled to statutory penalties if the requester shows that he or she
18 was denied the right to inspect or copy a public record. RCW 42.56.550(4). A denial of
19 records occurs when it reasonably appears that an agency will not or will no longer provide
20 responsive records. *Hobbs v. State*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014).

21 WSU’s February 8, 2018 email to Johnson was not a denial of records. Instead, WSU
22 referred Johnson to submit his request to another government agency and explicitly stated “we
23 will be happy to complete” the request. Colombo Declaration, Exhibit 4. An agency does not
24 violate the PRA by referring a requester to a second government agency when the requester is
25 seeking records that are the records of that second government agency. That is particularly
26

1 true here where WSU also indicated that it was more than happy to help complete any request.
2 Such a response to a public records request should not be considered a denial of records.

3 This result does not undermine the PRA. Johnson could have submitted his request to
4 TCD. And if Johnson believed that TCD did not comply, Johnson could have sued TCD. *See*
5 RCW 89.08.220(11) (indicating that a conservation district can sue and be sued in the name of
6 the district). Indeed, although Johnson indicates that he never submitted a request directly to
7 TCD, his attorney has submitted multiple requests to TCD. Counsel Declaration, Exhibit 1, at
8 2-3, 12-14. TCD responded to such requests. The PRA indicates that agencies are supposed to
9 provide the fullest assistance to public records requesters. RCW 42.56.100. In some
10 circumstances—such as the circumstances here—an agency who receives a request can
11 provide such “fullest assistance” to a requester by referring the requester to a separate, second
12 agency. Such circumstances would include when the request is for records that the separate
13 agency may be able to access more easily or quickly or when the request is for records of that
14 separate agency. Under circumstances such as those presented by this case, such a referral
15 does not constitute a denial of records, especially when the requester does not explicitly object
16 to being referred to that second agency. In this case, WSU informed Johnson that he should
17 submit his request to TCD. Johnson did not object to this referral and simply filed the lawsuit.
18 This Court should conclude that this initial response was not a denial under the PRA.

19 **2. WSU Has Provided All Responsive Records**

20 An agency has no duty to produce a record that is non-existent. *See Bldg. Indus. Ass’n*
21 *of Wash. v. McCarthy*, 152 Wn. App. 720, 734-35, 218 P.3d 196 (2009). Instead, agencies are
22 required to produce records that have been located after a reasonable search. *See, e.g., Kozol v.*
23 *Wash. State Dep’t of Corr.*, 192 Wn. App. 1, 8, 366 P.3d 933 (2015).

24 Agencies bear the burden of showing why they are refusing to inspect or copy a
25 specific public record or class of records. RCW 42.56.550(1). Despite the fact that agencies
26 bear the burden of showing compliance, the precise operation of this burden in a case where

1 the allegation is that the agency is wrongfully withholding (i.e. silently withholding)
2 responsive records is somewhat unclear. *See also* WSBA Public Records Act Deskbook:
3 Washington's Public Disclosure and Open Public Meetings Laws § 16-12 (2d. ed. 2014).³

4 This Court should adopt a burden shifting framework that is similar to the framework
5 that was discussed by the Washington Supreme Court and Justice Madsen in *Neighborhood*
6 *Alliance of Spokane Cnty. v. Spokane Cnty.*, 172 Wn.2d 702, 261 P.3d 119 (2011), related to
7 the adequacy of an agency's search. Under this framework, the agency has the obligation to
8 produce non-conclusory affidavits that it has provided all responsive records. *Cf.*
9 *Neighborhood Alliance*, 172 Wn.2d at 733-34 (Madsen, C.J., concurring) (describing federal
10 approach). At that point, the requester bears the burden of producing evidence that shows the
11 existence of responsive records that have not been provided. *Cf. id.* at 737. If the requester
12 presents such evidence, the Court must resolve as a matter of fact whether all records have
13 been produced, and the ultimate burden of persuasion still rests with the agency.

14 Here, WSU has produced sufficient non-conclusory evidence about the nature of its
15 searches and that it produced all responsive records. WSU has described its searches with
16 search terms and the number of documents that it located.⁴ WSU has described the number of
17 pages of the records that have been produced. Due to the volume of the requested records,
18 WSU has not provided every single document with this response because requiring the Court
19 to review such records would be a significant burden and does not appear necessary to resolve
20 this issue. If Johnson does contest individual documents or other elements of the production,
21 WSU is more than happy and capable of providing all installments to the Court to show that it
22 provided Johnson with the records described in the declarations.

23
24 ³ For purposes of this motion, WSU assumes that the question of whether all records have been produced
25 is distinct from the adequacy of the search. Johnson has not challenged the adequacy of the search in this case.

26 ⁴ The number of documents located in search does not account for documents that were de-duplicated.
WSU used a program called Discovery Assistant to de-duplicate records. Glaesman Declaration, at ¶ 4.

1 Johnson does little to show that all responsive documents have not been provided.
2 Johnson first references an email from which he says he wanted metadata. Johnson's Brief, at
3 13. Johnson does not attach that email to his response. And for good reason. Johnson's
4 description of the email does not match the email that he is apparently referencing. Johnson
5 describes the email in question as an email created on November 29, 2017, at 3:33 p.m.
6 However, this email actually appears to have been sent on November 30, 2017, at 10:02 a.m.
7 Counsel Declaration, Exhibit 3, at 24-28.. Because the record did not exist, there is no
8 metadata for the requested document.

9 Second, Johnson makes much of the fact that WSU has produced over 5,000 pages of
10 records and that emails between TCD and the Energy Program identified 1,037 emails.
11 Johnson asserts that these emails were identified "by name." However, an examination of the
12 emails in question show that they were actually identified by the staff person's name, not by
13 name of the email. Nor does Johnson really explain how there is a discrepancy between
14 number of emails and number of pages produced. Comparing number of emails and number of
15 pages is like comparing apples and oranges because the number of emails will not tell you the
16 number of pages of each email or the total number of pages.

17 Finally, Johnson's conspiracy theory that WSU was sending the email to TCD to screen
18 prior to producing them to Johnson is unsupported and absurd. WSU was not sending emails
19 to TCD to screen prior to producing them to Johnson. Kalasz Declaration, at ¶ 16; Glaesman
20 Declaration, at ¶ 8. In fact, the emails that Johnson is relying upon to show some kind of
21 conspiracy between WSU and TCD actually are related to a public records requests submitted
22 by Johnson's attorney to TCD directly. Counsel Declaration, Exhibit 2; Pierson Declaration, at
23 ¶ 10. Any allegation that WSU was helping TCD to cover up records is simply unsupported
24 and ridiculous. This Court should explicitly reject that argument. Therefore, Johnson has
25 failed to produce evidence that WSU has not produced all responsive records at this point.
26

1 Because WSU's email on February 8, 2018, was not a denial of records and WSU
2 promptly produced all responsive records after receiving this lawsuit, the Court should
3 conclude that WSU never denied Johnson the right to inspect or copy public records.

4 **F. The Last Issue Identified in the Scheduling Order and Discussed by Johnson is**
5 **Duplicative of Other Issues and Need Not Be Addressed Separately**

6 The last issue identified in the Scheduling Order and addressed in Johnson's Brief deals
7 with the question of what records WSU was obligated to produce. This issue appears
8 duplicative of the other issues in the case. If the records were public records (issues 3 and 4)
9 and WSU violated the PRA by failing to produce the records, there does not appear to be a
10 need to address this issue separately. To the extent that the Court does address this issue,
11 WSU's arguments about the adequacy of its production would apply equally here. Again,
12 WSU is more than willing to provide all records produced to Johnson to the Court if further
13 analysis of specific records is needed. Johnson's Brief does not engage in that type of detailed
14 analysis of individual records so such analysis does not appear necessary. Instead, this issue
15 appears to be duplicative of others issues in this case and need not be resolved by the Court.

16 **IV. CONCLUSION**

17 Defendant respectfully requests that the Court find that it did not violate the PRA and
18 dismiss Plaintiff's complaint with prejudice.

19 RESPECTFULLY SUBMITTED this 4th day of June, 2018.

20 ROBERT W. FERGUSON
21 Attorney General

22 

23 TIMOTHY J. FEULNER, WSBA #45396
24 Assistant Attorney General
25 Corrections Division
26 PO Box 40116
Olympia WA 98504-0116
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TimF1@atg.wa.gov

1 CERTIFICATE OF SERVICE

2 I certify that I served a copy of the DEFENDANT'S RESPONSE TO PLAINTIFF'S
3 BRIEFING ON LIABILITY on all parties or their counsel of record as follows:

4 ☒ Via Email

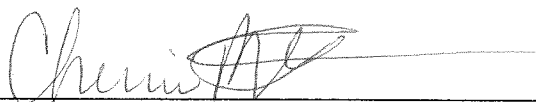
5 SHAWN TIMOTHY NEWMAN Newmanlaw@comcast.net

7 ☒ US Mail Postage Prepaid

8 SHAWN TIMOTHY NEWMAN
9 ATTORNEY AT LAW INC. P.S.
10 2507 CRESTLINE DR NW
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 4th day of June, 2018, at Olympia, Washington.

14 
15 _____
16 CHERRIE MELBY
17 Legal Assistant
18 Corrections Division
19 PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
CherrieK@atg.wa.gov

1 ☐ EXPEDITE

2 ☐ No Hearing Set

3 ☒ Hearing is Set

Date: June 15, 2018

Time: 9:00 a.m.

The Honorable Christine Schaller

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 ERIC JOHNSON,

Plaintiff,

10 v.

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

Defendant.

NO. 18-2-00943-34

DECLARATION OF SHERI
GLAESMAN

15 I, SHERI GLAESMAN, make the following declaration:

16 1. I have knowledge of the facts herein, am over eighteen years of age, and am
17 competent to testify to such facts. I am not a party to this case.

18 2. I am currently employed as a Public Records Program Specialist 2 for the
19 Washington State University (WSU) in Pullman, Washington. As a Public Records Program
20 Specialist 2, my primary duties include responding to Public Records Act (PRA) requests
21 submitted to WSU.

22 3. WSU's Office of Public Records is located on WSU's main campus in Pullman,
23 Washington. The Office of Public Records accepts PRA requests via phone, email, or through
24 NextRequest. NextRequest is a web-based application by which individuals can submit a PRA
25 request to WSU and through which WSU can then respond and provide records to the
26 requester. WSU has purchased NextRequest to assist it in more efficiently and effectively

1 responding to PRA requests. WSU maintains information about WSU's PRA process and a
2 link to NextRequest on its website at <https://public-records.wsu.edu/>.

3 4. When a request is submitted via NextRequest, NextRequest automatically sends
4 an email to the requester acknowledging that the request has been received. Then, within five
5 business days, WSU will send an acknowledgement to the requester that provides an estimated
6 due date for completing the requester or for a first installment of records, if the request is
7 larger. Staff in the Office of Public Records then determine which WSU departments might
8 have responsive records and use NextRequest to send requests to those departments to search
9 for records. Departments that have responsive records upload those responsive records
10 through NextRequest and public records staff download those records to a network drive.
11 When records are received by the Office of Public Records, staff review the records to
12 determine if records are exempt in whole or in part. If necessary, documents are converted into
13 PDF format so that they can be reviewed for redactions. WSU uses a program called
14 Discovery Assistant to convert records into PDF format. Discovery Assistant will also de-
15 duplicate files that are exact duplicates. For larger requests, records may be split into
16 installments. If information in records is exempt, staff redact the documents and generate an
17 index that provides information about the redactions and identifies the basis for the redactions.
18 Additionally, staff determine if the nature of the records requires notification to third parties.
19 Once an installment has been reviewed and any notification has been provided, the records are
20 uploaded to NextRequest to be released to the requester. The requester receives email
21 notification that records have been provided through NextRequest.

22 5. WSU receives hundreds of PRA requests per year. WSU received 557 requests
23 in 2017 and has received 305 requests so far in 2018. WSU has approximately 118 open
24 requests at this time. At the time that we were notified of Mr. Johnson's request on February
25 21, 2018, WSU had approximately 145 open requests. WSU's Office of Public Records has
26 four positions that are allocated to respond to PRA requests. However, Stephanie Kalasz has

1 only been able to work half-time due to some health issues. Additionally, in February 2018,
2 we had two staff members who quit. For a period of time while we were handling Mr.
3 Johnson's request, we were operating with 1.5 FTEs as a result. In late March and early April,
4 we hired two new staff people and now are operating with 3.5 FTEs.

5 6. Our office learned of the request for records from Plaintiff Eric Johnson when
6 we received a copy of the lawsuit filed by Eric Johnson on February 21, 2018. We decided to
7 gather the records and produce the records as if the request had been properly submitted to
8 WSU and without waiving any argument about whether WSU had a duty to provide the
9 requested records.

10 7. To begin with the processing of this request, the request was inputted by WSU
11 staff into NextRequest and assigned tracking number 18-115 on February 22, 2018. Staff at
12 the Energy Program were then asked to gather records. James Colombo submitted records
13 through NextRequest on February 28, 2018. These records were primarily submitted in PST
14 format. One record, the Memorandum of Understanding, was submitted in PDF format and
15 remaining records, which were emails, were submitted in PST format. I extracted the emails
16 from the PST into a format that could be uploaded into Discovery Assistant. Then, Stephanie
17 converted the emails into PDF using Discovery Assistant and reviewed the records. After the
18 installments were reviewed by Stephanie, I would upload each installment into NextRequest so
19 that they were released to Mr. Johnson through NextRequest.

20 8. I understand that Plaintiff Eric Johnson is alleging that WSU has been sharing
21 records with the Thurston Conservation District (TCD) prior to releasing the records to him.
22 Other than Mr. Johnson, I have had no contact with anyone from TCD about this request. I
23 have not shared any records with employees from TCD prior to releasing the records. I have
24 not allowed TCD employees to provide any input about what records should be released or

25 ///

26 ///

1 redacted. To my knowledge, I have never even had spoken to or interacted with anyone from
2 TCD, other than Mr. Johnson, about this request or any other matter.

3 I declare under the penalty of perjury under the laws of the state of Washington that the
4 foregoing is true and correct to the best of my knowledge.

5 EXECUTED this 30th day of May, 2018, at Pullman, Washington.

6
7 
8 SHERI GLAESMAN
9 PUBLIC RECORDS PROGRAM SPECIALIST 2
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CERTIFICATE OF SERVICE

I certify that I served a copy of the DECLARATION OF SHERI GLAESMAN on all parties or their counsel of record as follows:

☒ Via Email

SHAWN TIMOTHY NEWMAN

Newmanlaw@comcast.net

☒ US Mail Postage Prepaid

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

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

EXECUTED this 4th day of June, 2018, at Olympia, Washington.



CHERRIE MELBY
Legal Assistant
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PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
CherrieK@atg.wa.gov

1 ☐ EXPEDITE
2 ☐ No Hearing Set
3 ☒ Hearing is Set
4 Date: June 15, 2018
5 Time: 9:00 a.m.
6 The Honorable Christine Schaller

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 ERIC JOHNSON,

10 Plaintiff,

11 v.

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

15 Defendant.

NO. 18-2-00943-34

DECLARATION OF JAMES L.
COLOMBO

16 I, JAMES L. COLOMBO, make the following declaration:

17 1. I have knowledge of the facts herein, am over eighteen years of age, and am
18 competent to testify to such facts. I am not a party to this case.

19 2. I am the Information Technology Manager for the Washington State
20 University's (WSU) Energy Program in Olympia, Washington. I started with the Washington
21 State Energy Office in 1987 as a Computer Information Consultant. I was later promoted to
22 Information Technology Manager. In 1996, the State Energy Office was eliminated and I,
23 along with some other staff from the State Energy Office, moved to the new WSU Energy
24 Program.

25 3. WSU's Energy Program provides information technology services to certain
26 entities, including other governmental entities. One of the entities to which we provide such
services is the Thurston Conservation District (TCD). Our office helps manage TCD's data,

1 servers, and office computers as well as host TCD's email accounts. We currently host 26
2 email accounts for TCD with domain names of "@thurstoncd.com". The email accounts that
3 the Energy Program hosts for TCD are maintained on a server and a network that is separate
4 from the WSU server and network. The majority of IT services that we provide involve
5 responding to specific requests from TCD for help. Our staff help them with their computers,
6 printers, server, server backups, wireless access, and TCD's Local Area Network. Information
7 Technology Specialist Michael Pierson is the primary IT Specialist that assists our external
8 clients, including TCD.

9 4. One of the programs that we use to manage the emails of these other entities is
10 Barracuda Email archiver. Barracuda records and stores every email that passes through our
11 system. Even if a staff person deletes the email from a live email account, the emails would
12 still be stored on Barracuda.

13 5. On or about January 22, 2018, I spoke to Information Technology Specialist
14 Michael Pierson about a call that he had received from an individual who identified himself as
15 Richard Mankamyer. Mr. Mankamyer had told Mr. Pierson that Mr. Mankamyer and Eric
16 Johnson were TCD board members and wanted to inspect the facility. We thought it was a
17 little strange that they wanted to see our facility and did not know who they were so Mr.
18 Pierson contacted TCD's Acting Executive Director Sarah Moorehead.

19 6. On January 25, 2018, Mr. Pierson and I met with Ms. Moorehead, Mr. Johnson,
20 and Mr. Mankamyer. We showed them the facility including the network room and the servers
21 where the data is stored. We also discussed Mr. Johnson and Mr. Moorehead's desire to access
22 records in general terms. There was a discussion about setting up a computer that they could
23 use to gain access to the TCD network and TCD computers. I mentioned that we had a
24 Memorandum of Understanding (MOU) with the former director of TCD Kathleen Whalen and
25 that we would need permission from the current director to work on their network in this way.
26 A true and correct copy of the MOU is attached to this declaration as Exhibit 1. At that point,

1 they said they were Ms. Moorehead's bosses. I do not remember either of them making a
2 specific request for records during this meeting and never did I think that they were making or
3 inquiring about a specific public records request.

4 7. On January 31, 2018, Mr. Johnson showed back up at our office without any
5 appointment. I was surprised to see him in the lobby of our building and surprised that he
6 wanted to talk to me without an appointment. I agreed to meet with him and we met in the first
7 floor conference room. We talked a little about the January 25, 2018 meeting and he asked
8 why I had invited Ms. Moorehead to the meeting. I explained that we had contacted Ms.
9 Moorehead to verify that they were actually board members. Mr. Johnson then stated that he
10 was doing an investigation of Ms. Moorehead. I explained that I would be billing TCD for the
11 time that we met and Ms. Moorehead would see the detailed entry showing the reason that
12 TCD was billed. Mr. Johnson stated that he was fine with that. Mr. Johnson then started
13 asking about how he could get the metadata on a specific document and find out who created it
14 and on what computer it was created. I was confused about what he was saying and I asked
15 him to clarify if he was talking about a Word document or an email. At that point, he became
16 very cryptic. I tried to explain that if it was a Word document then there would be more useful
17 metadata available, but I did not think we could tell him on which computer the document was
18 created. Mr. Johnson then showed me his cell phone. On his cell phone, he showed me screen
19 shots of a few fields that showed "Accounting" as one of the completed fields. I continued to
20 ask him if those screenshots was a Word document or an email. Mr. Johnson did not answer
21 and did not show me the rest of the documents. Mr. Johnson then handed me two handwritten
22 pages. A copy of these two handwritten pages is attached to this declaration as Exhibit 2. Mr.
23 Johnson did not identify or say that these pieces of paper were a public records request. I told
24 him that it would take a few days to get the information. I never told him that I would provide
25 him the records in a few days because I knew that I would need to talk to my manager to see
26 how I should proceed and if it was even legal for me to provide him with TCD records.

1 8. Later on the same day, January 31, 2018, I received an email from Mr. Johnson
2 that repeated his two requests. A true and correct copy of this email is attached to this
3 declaration as Exhibit 3. I did not interpret this email to be a public records request. After
4 receiving the email, I talked to one of the Deputy Directors of the Energy Program, Todd
5 Currier, about how I should proceed with the request. Again, I was concerned about providing
6 the records to Mr. Johnson. Mr. Currier suggested that I make Ms. Moorehead aware of the
7 request so that she could consult with an attorney, if she wanted. I called Ms. Moorehead and
8 left her a voicemail asking her what she wanted me to do with the request. I followed up over
9 the course of the next couple of days and left her several messages. Based on the discussion on
10 January 25, I wanted to know how I should proceed. In the past, we had received requests for
11 emails for records from Ms. Moorehead and Amy Hatch-Winecka, and we provided emails
12 directly to them. Under the circumstances, I wanted guidance from TCD on how to proceed.

13 9. In the beginning of February, I asked Mr. Pierson to complete the requests so
14 that we would have them ready to go once we heard back from Ms. Moorehead. Mr. Pierson
15 also sent Ms. Moorehead follow up emails asking her how she wanted to proceed.

16 10. On or about February 8, I spoke to Mr. Pierson who told me that he had talked
17 to Ms. Moorehead. Mr. Pierson told me that Ms. Moorehead had told him that she had spoken
18 to an attorney and that all requests for TCD information needed to go through her. I then sent
19 Mr. Johnson an email later that day with the instruction that Ms. Moorehead gave us. I fully
20 expected that Mr. Johnson would simply ask Ms. Moorehead to complete the request. A true
21 and correct copy of the email that I sent Mr. Johnson is attached to this declaration as Exhibit
22 4.

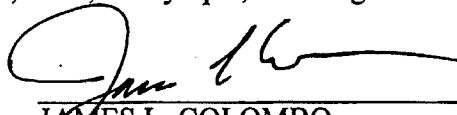
23 11. I did not hear from Mr. Johnson until I was notified that we had received a
24 lawsuit filed by Mr. Johnson. At that point, I was asked to gather records related to eight
25 different requests and provide them to the Office of Public Records in Pullman. I gathered one
26 of the items, the MOU. Except for the MOU that I gathered, I asked Mr. Pierson to search for

1 the remaining items. These items were all emails. Mr. Pierson searched for the emails and
2 provided them to me. These documents were then provided to the Office of Public Records
3 through NextRequest.

4 12. In May 2018, our office was contacted to double check the searches that had
5 previously been performed. In the course of double checking those searches, Mr. Pierson
6 determined that one of the PST files did not contain all of the emails that had come back
7 responsive. Mr. Pierson performed another search and a new PST with those emails was
8 created. I provided this PST to the Office of Public Records in Pullman, Washington.

9 I declare under the penalty of perjury under the laws of the state of Washington that the
10 foregoing is true and correct to the best of my knowledge.

11 EXECUTED this 4th day of June, 2018, at Olympia, Washington.

12 

13 JAMES L. COLOMBO
14 Information Services Department Manager
15
16
17
18
19
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21
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23
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25
26

CERTIFICATE OF SERVICE

I certify that I served a copy of the DECLARATION OF JAMES L. COLOMBO on all parties or their counsel of record as follows:

☒ Via Email

SHAWN TIMOTHY NEWMAN

Newmanlaw@comcast.net

☒ US Mail Postage Prepaid

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

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

EXECUTED this 4th day of June, 2018, at Olympia, Washington.

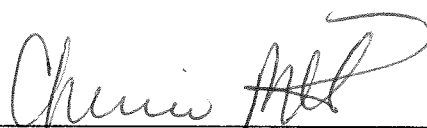

CHERRIE MELBY
Legal Assistant
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
CherrieK@atg.wa.gov

EXHIBIT 1

AUG 10 2011

WASHINGTON STATE UNIVERSITY



EXTENSION ENERGY PROGRAM

August 8, 2011

Kathleen S. Whalen
District Administrator
Thurston Conservation District
2918 Ferguson St. SW
Tumwater, WA 98512

Subject: WSU Energy Program Service Center Agreement to Support the
Thurston Conservation District's Data Network, Servers and Computers.

Dear Ms. Whalen:

Thank you for the opportunity to provide support for your organization's data network, servers and computers. We pride ourselves in quickly responding to your Information Technology needs. With today's high-tech resources, we can resolve many of your computer related problems – without traveling to your office – saving you time and money. This letter will formalize our agreement and serve as your Washington State University (WSU) Energy Program Service Center Agreement.

The Thurston Conservation District (TCD) will be invoiced monthly – at \$100 per hour – for only the time spent working on tasks requested and authorized by you down to the 10th of an hour. This saves you money when you have tasks that only require 10 to 20 minutes to complete. Invoices – accompanied with a report showing time spent for each task – will be emailed to bruddell@thurstoncd.com (Bonnie Ruddell), shortly after the end of each month. *and kwhalen@thurstoncd.com.*

I have an excellent service oriented staff capable of handling all of your Information Technology needs, and we look forward to working with you and your staff in the months ahead.

August 8, 2011

EXHIBIT 1

Please sign and return one copy of this Agreement at your earliest convenience to:

James L. Colombo
Information Technology Manager
WSU Energy Program
PO Box 43165
905 Plum Street SE
Olympia, WA 98504-3165

Signatures Required:

Thurston Conservation District:



Kathleen Whalen

8/6/11
Date

WSU Energy Program:



James L. Colombo

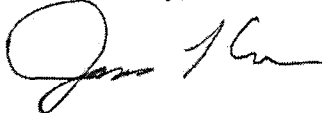
8-8-2011
Date

Please use the following Program Identification No. when referencing this agreement:
15T-4177-1018.

Thank you again for selecting the WSU Energy Program to provide support for
the Information Technology needs of the Thurston Conservation District.

If you have any questions or concerns, please do not hesitate to call me at (360) 956-
2027.

Sincerely,



James L. Colombo
Information Technology Manager

EXHIBIT 2

DATE 1-31-17

#2

I Eric Johnson, Chair, Thurston
Conservation District (TCD), request
any and all emails sent to and
from TCD, containing the
names Eric Johnson, Richard Mankamyer,
Samantha Fleischer, Doug Rushton,
Sarah Moorehead, Shannon Joy
Amy Franks, Amy Hatch-Winecka
and Mark Clark between 11-20-17
to 12-05-17. Send information to
ericjohnsontcd@gmail.com

E. Johnson

360-701-4322

DATB 1-31-18

#1

I Eric Johnson chair, Thurston
Conservation District (TCD) request
information specify, looking at
email created at TCD on
11-29-17 at 3:33 pm and modified
on 11-30-17 at 9:47 AM, what
computer was it created on, who created
it and where was it sent? copy
of this email and Meta Data Send
to ~~4~~ ericjohnson@tcd@gmail.com

A. Johnson

360 701 4322

Johnson v. WSU
DEFS-000004

EXHIBIT 3

Jim Colombo

From: Eric Johnson <ericjohnsontcd@gmail.com>
Sent: Wednesday, January 31, 2018 3:33 PM
To: Jim Colombo
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 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

EXHIBIT 4

Jim Colombo

From: Jim Colombo
Sent: Thursday, February 8, 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

1 ☐ EXPEDITE
2 ☐ No Hearing Set
3 ☒ Hearing is Set
4 Date: June 15, 2018
5 Time: 9:00 a.m.
6 The Honorable Christine Schaller
7

8 **STATE OF WASHINGTON**
9 **THURSTON COUNTY SUPERIOR COURT**

10 ERIC JOHNSON,

11 Plaintiff,

12 v.

13 WASHINGTON STATE
14 UNIVERSITY (WSU) ENERGY
15 PROGRAM OFFICE,

16 Defendant.

NO. 18-2-00943-34

DECLARATION OF MICHAEL
PIERSON

17 I, MICHAEL PIERSON, make the following declaration:

18 1. I have knowledge of the facts herein, am over eighteen years of age, and am
19 competent to testify to such facts. I am not a party to this case.

20 2. I am an Information Technology Support Specialist with the Washington State
21 University's Energy Program in Olympia, Washington. I have held this position since 2000.

22 3. On January 22, 2018, I received a call from a person who identified himself as
23 Richard Mankamyer. Mr. Mankamyer identified himself as a Board Member of the Thurston
24 Conservation District (TCD). Mr. Mankamyer indicated that he and another individual, Eric
25 Johnson, wanted to come and see our facility. Mr. Mankamyer did not mention coming to
26 inspect records during this conversation. Instead, he suggested that he wanted to come and see
what the Energy Program did, how we did it, how the backup of email records was taken care

DECLARATION OF MICHAEL
PIERSON NO. 18-2-00943-34

1 of. Mr. Mankamyer did not mention that he was looking for anything specific. I told Mr.
2 Mankamyer that he could come to see the facility on January 25, 2018.

3 4. After I spoke to Mr. Mankamyer, I briefly discussed the situation with
4 Information Technology Manager Jim Colombo. Neither of us knew who Mr. Mankamyer
5 was, and we thought that it would be best to verify who this person was prior to providing
6 access to our facility. As such, we decided to contact TCD's Acting Director Sarah
7 Moorehead to confirm that Mr. Mankamyer was a Board Member. Ms. Moorehead
8 confirmed that Mr. Mankamyer was a Board Member. Ms. Moorehead also said that she
9 had never been to our facility and thought that it would be a good opportunity to visit it.
10 Verifying a person's identity prior to giving that person access to our facility is standard
11 practice, and I did not consider it unusual to do so. In fact, during the meeting on January
12 25, 2018, Mr. Mankamyer even commented about us verifying with Ms. Moorehead that he
13 was a Board Member. Specifically, Mr. Mankamyer said something to the effect of "That
14 was test. You passed."

15 5. On January 25, 2018, Jim Colombo and I met with Mr. Mankamyer, Eric
16 Johnson, and Sarah Moorehead to provide them a tour of our facility. During this
17 conversation, we discussed in general terms how Mr. Johnson and Mr. Mankamyer could
18 obtain records and documents. The subject of the Memorandum of Understanding (MOU)
19 was discussed during this meeting. Ms. Moorehead told everyone that requests for records
20 should be sent through her. We also discussed setting up a workstation at TCD, with Ms.
21 Moorehead's approval, so that they could search for records on their own. During the
22 discussion, we went over various aspects of our services from the servers that host their
23 services to how we back up their systems to how we keep TCD data from being lost. At
24 one point, they did ask to view the email search tool/email archiver. Because we did not
25 want them to see confidential information from other clients of the Energy Program, I told
26 them that they could not see the tool. However, I did have some documents and screen

1 captures of searches available, and I showed them those. At no point during this meeting
2 did they request specific records. At this point, it was also not clear to us or even
3 considered that there were two factions that were working separately in TCD.

4 6. In early February, Jim Colombo showed me an email from Eric Johnson. I
5 did not interpret this email to be a public records request because I did not think TCD's
6 Board would submit a public records request to obtain their own data. I notified Ms.
7 Moorehead of the request via email on February 2, 2018. I notified her because during the
8 meeting on January 25, 2018, she had made clear to everyone that she wanted any requests
9 for email to go through her so that she could then relay the requests to us. I sent her
10 several follow up emails over the next couple of days.

11 7. I was anticipating getting quick approval from Ms. Moorehead to give the
12 records to Mr. Johnson so I completed the search for records. Our office searches emails
13 using an application called Barracuda Message Archiver. Barracuda allows us to run
14 comprehensive searches for emails using specific criteria, such as sender, key words in the
15 email or attachments, and/or date and time sent. One of the follow up emails that I sent
16 Ms. Moorehead contained the preliminary information about the email search. This
17 preliminary information contained the counts of various emails that had been identified in
18 my searches. I also later spoke to Ms. Moorehead on the phone about the request from Mr.
19 Johnson because I had not received a response through email. Ms. Moorehead indicated
20 that she had spoken to an attorney and she gave us direction that all requests for TCD
21 information needed to go through her. I passed this information onto Jim Colombo.

22 8. On or about February 22, 2018, we received notice that Mr. Johnson had
23 filed a lawsuit. I was directed to search for emails so that these emails could be provided
24 to WSU's Office of Public Records in Pullman. At that point, the Energy Program was
25 directed to search for eight different items. The first two of the eight items were the same
26 as my initial searches so I had already completed those searches. The third item was

1 handled by Jim Colombo. The fourth, fifth, sixth, seventh, and eighth items were different
2 than the preliminary searches. I conducted new searches for these items. The searches that
3 I performed and the number of items that were identified were as follows:

4 Item 1 requested an email created at TCD on 11-29-17 at 3:33 p.m. and
5 modified on 11-30-17 at 3:33 p.m. I searched for any email message to or from
6 "@thurstoncd.com" between 11-29-17 at 3:33 p.m. and 11-30-19 at 9:47 a.m. There were
7 156 emails that were found.

8 Item 2 requested any emails to or from "@thurstoncd.com" between
9 11/20/17 and 12/5/2017 containing the names: Eric Johnson (75 emails), Richard
10 Mankamyer (35 emails), Samantha Fleischner (27 emails), Doug Rushton (34 emails),
11 Sarah Moorehead (348 emails), Shana Joy (94 emails), Mark Clark (27 emails), Amy
12 Franks (156 emails), and Amy Hatch-Winecka (236 emails). I searched for any email from
13 "@Thurstoncd.com" with the identified names in any part of the message. The total
14 number of emails was 1,032.

15 Item 4 requested emails to or from Samantha Fleischner to or from Shana
16 Joy that contained Eric Johnson or Richard Mankamyer. I searched emails where the
17 From/To/Cc field contained Samantha Fleischer and where From/To/Cc field contained
18 Shana Joy and where the message contained Eric Johnson. I found 165 emails for this
19 search. I did a similar search except with messages containing Richard Mankamyer instead
20 of Eric Johnson and found 109 emails.

21 Item 5 requested emails to or from Samantha Fleischner to or from Sarah
22 Moorehead that contained Eric Johnson or Richard Mankamyer. I searched emails where
23 the From/To/Cc field contained Samantha Fleischer and where From/To/Cc field contained
24 Sarah Moorehead and where the message contained Eric Johnson. I found 135 emails for
25 this search. I did a similar search except with messages containing Richard Mankamyer
26 instead of Eric Johnson and found 95 emails.

1 Item 6 requested emails to or from Samantha Fleischer to or from Mark
2 Clark that contained Eric Johnson or Richard Mankamyer. I searched emails where the
3 From/To/Cc field contained Samantha Fleischer and where From/To/Cc field contained
4 "Mclark@scc.wa.gov" and where the message contained Eric Johnson. I found 22 emails
5 for this search. I did a similar search except with messages containing Richard Mankamyer
6 instead of Eric Johnson and found 13 emails.

7 Item 7 requested emails to or from Jim Colombo containing Eric Johnson
8 between January 25, 2018, and January 31, 2018. I did a search of emails to or from
9 "Colomboj@energy.wsu.edu" containing Eric Johnson between January 25, 2018, and
10 January 31, 2018. I found 1 email for this search.

11 Item 8 requested emails to or from Michael Pierson containing Eric Johnson
12 on or before February 16, 2018. I did a search of emails to or from
13 "piersonm@energy.wsu.edu" containing Eric Johnson on or before February 16, 2018. I
14 found 8 emails for this search.

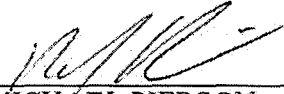
15 9. Based on my searches, I located 1,736 emails. Some of these emails may
16 have contained duplicate results. For example, if a specific email was responsive to two
17 different searches because it met the search criteria for both, it would have been provided
18 in both PSTs. All of these emails were provided in PST format and given to the Office of
19 Public Records in Pullman.

20 10. On March 1, 2018, I received a call from Amy Hatch-Winecka at TCD. Ms.
21 Hatch-Winecka indicated that she had received a public records request and asked for my
22 assistance in completing it. I asked that she send me the request in email. She sent me an
23 email later that same day with the request. A true and correct copy of the email is attached
24 as Exhibit 1. I gathered the emails into a PST and provided the PST to Ms. Hatch-
25 Winecka. This is the PST that is referenced in my emails to Ms. Hatch-Winecka
26

1 11. In May 2018, I was asked to help double check the searches to make sure
2 that all emails had been captured in our searches. I was provided a list of emails that were
3 supposedly missing from the documents that had been provided. During the time that I was
4 researching these emails, I noticed that one of the PST files that had been created using
5 Barracuda only contained 34 emails instead of the 348 emails that had come back in the
6 search. I reran the search and exported all of the emails into a new PST. I then verified that
7 this new PST had all 348 emails. This new PST was then provided to the Office of Public
8 Records. I also double checked all of the other searches and verified that all of the PST
9 files that were previously provided to the Office of Public Records contained all of the
10 emails that came back in the searches.

11 I declare under the penalty of perjury under the laws of the state of Washington that the
12 foregoing is true and correct to the best of my knowledge.

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

14 
15 MICHAEL PIERSON
16 Information Technology Support Specialist
17
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26

CERTIFICATE OF SERVICE

I certify that I served a copy of the DECLARATION OF MICHAEL PIERSON on all parties or their counsel of record as follows:

☒ Via Email

SHAWN TIMOTHY NEWMAN

Newmanlaw@comcast.net

☒ US Mail Postage Prepaid

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

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

EXECUTED this 4th day of June, 2018, at Olympia, Washington.



CHERRIE MELBY
Legal Assistant
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
CherrieK@atg.wa.gov

EXHIBIT 1

Feulner, Tim (ATG)

From: Amy Hatch-Winecka <AmyHW@thurstoncd.com>
Sent: Thursday, March 1, 2018 2:19 PM
To: Michael Pierson
Cc: Sarah Moorehead
Subject: Newman PDR

Hi Michael,

To follow up on our phone conversation, I have another public records request. For this one, I need all emails to and from me and anyone at the South Puget Sound Salmon Enhancement Group; the domain would be @spsseg.org. There have been numerous employees at SPSSEG over the last 15 years that I've exchanged emails with, so please pull everything. I will go through them individually to determine if they pertain to the request.

Thanks,

Amy

Amy Hatch-Winecka
Deputy Director
Thurston Conservation District
360.754.3588 ext 103

1 ☐ EXPEDITE
2 ☐ No Hearing Set
3 ☒ Hearing is Set
4 Date: June 15, 2018
5 Time: 9:00 a.m.
6 The Honorable Christine Schaller
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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

ERIC JOHNSON,

Plaintiff,

v.

WASHINGTON STATE
UNIVERSITY (WSU) ENERGY
PROGRAM OFFICE,

Defendant.

NO. 18-2-00943-34

DECLARATION OF STEPHANIE
KALASZ

15 I, STEPHANIE KALASZ, make the following declaration:

16 1. I have knowledge of the facts herein, am over eighteen years of age, and am
17 competent to testify to such facts. I am not a party to this case.

18 2. I am currently employed as a Public Records Coordinator for the Washington
19 State University (WSU) in Pullman, Washington. As the Public Records Coordinator, one of
20 my primary duties include responding to Public Records Act (PRA) requests submitted to WSU.

21 3. Our office learned of the request for records from Plaintiff Eric Johnson when we
22 received a copy of the lawsuit filed by Eric Johnson on February 21, 2018. We decided to gather
23 the records and produce the records as if the request had been properly submitted to WSU and
24 without waiving any argument about whether WSU had a duty to provide the requested records.

25 4. In responding to Mr. Johnson's request, another employee in WSU's Office of
26 Public Records, Sheri Glaesman, would extract the records from a PST file producing emails

1 that could be used in Discovery Assistant. Discovery Assistant is a program that WSU uses to
2 convert records into PDF format. Discovery Assistant will also de-duplicate files that are exact
3 duplicates. Once the records were uploaded into Discovery Assistant, I would convert the
4 records to PDF using Discovery Assistant and then redact the records in PDF. I was the only
5 person from WSU's Office of Public Records who reviewed the records provided in the first ten
6 installments of records. Once I reviewed the records, the records were sent to Sheri so that she
7 could upload them into NextRequest.

8 5. WSU staff prioritized Mr. Johnson's request as much as possible considering the
9 other requests that we were handling. During this time, WSU's Office of Public Records had a
10 staff shortage because two individuals quit. Additionally, I only work part-time due to some
11 health issues. During this time, our office committed a large portion of time to fulfilling Mr.
12 Johnson's request. Additionally, Mr. Johnson's request was somewhat difficult to complete due
13 to certain attachments to some emails being difficult to convert into PDF. When using Discovery
14 Assistant, the program sometimes converts an Excel Spreadsheet into an unwieldy number of
15 pages. For example, there was one spreadsheet for Mr. Johnson's request that converted into
16 18,000 pages when it was converted using Discovery Assistant. Rather than producing the
17 spreadsheet as an 18,000-page document, we decided to produce this email with the spreadsheet
18 in its native format and provided it with the tenth installment.

19 6. On February 26, 2018, our office sent an acknowledgement letter to Mr. Johnson
20 through NextRequest. This acknowledgement letter informed Mr. Johnson that we anticipated
21 providing a first installment of records by March 15, 2018. A true and correct copy of this
22 acknowledgement letter is attached to this declaration as Exhibit 1.

23 7. On March 16, 2018, we provided a first installment of 637 pages of records to
24 Mr. Johnson through NextRequest. We also notified Mr. Johnson that we anticipated providing
25 him another installment by April 12, 2018.
26

1 8. On April 6, 2018, we provided a second installment of 337 pages of records to
2 Mr. Johnson through NextRequest. We also notified Mr. Johnson that we anticipated providing
3 him another installment by April 12, 2018.

4 9. On April 10, 2018, we provided a third installment of 265 pages of records and a
5 fourth installment of 478 pages of records to Mr. Johnson through NextRequest. We also
6 notified Mr. Johnson that we anticipated providing him another installment by April 17, 2018.

7 10. On April 17, 2018, we provided a fifth installment of 336 pages of records to Mr.
8 Johnson through NextRequest. We also notified Mr. Johnson that we anticipated providing him
9 another installment by April 24, 2018.

10 11. On April 23, 2018, we provided a sixth installment of 430 pages of records and a
11 seventh installment of 500 pages of records to Mr. Johnson through NextRequest. We also
12 notified Mr. Johnson that we anticipated providing him another installment by May 8, 2018.

13 12. On May 2, 2018, we provided an eighth installment of 496 pages of records to
14 Mr. Johnson through NextRequest. We also notified Mr. Johnson that we anticipated providing
15 him another installment by May 8, 2018.

16 13. On May 9, 2018, we provided a ninth installment of 602 pages of records and a
17 tenth installment of 698 pages to Mr. Johnson through NextRequest. We also provided copies
18 of six documents in a .zip file. These documents were two PDFs, one excel spreadsheet, and
19 three emails in their native format. These documents were provided in native format because
20 they were difficult to convert to a different format. We notified Mr. Johnson through
21 NextRequest that his request had been completed on the same day.

22 14. After the request was closed, we were notified by the Energy Program that they
23 had discovered a problem with one of the PST files. This PST file was for email from the search
24 for "Sarah Moorehead" emails. Based on information from the Energy Program, the search came
25 back with 348 emails but only 34 of those emails were in the original PST file. The Energy
26 Program notified us of this issue on May 21, 2018. The next day, on May 22, 2018, we notified

1 Mr. Johnson that we had received more records from the Energy Program and that we were
2 reopening the request.

3 15. On June 1, 2018, we provided an eleventh installment of 1114 pages of records,
4 a twelfth installment of 552 pages of records, and a thirteenth installment of 393 pages to Mr.
5 Johnson through NextRequest. We also provided copies of seven emails in a .zip file. Those
6 emails were provided in native format because they were difficult to convert to a different format.
7 We notified Mr. Johnson through NextRequest that his request had been completed on the same
8 day.

9 16. I understand that Plaintiff Eric Johnson is alleging that WSU has been sharing
10 records with the Thurston Conservation District (TCD) prior to releasing the records to him.
11 Other than Mr. Johnson, I have had no contact with anyone from TCD about this request. I have
12 not shared any records with employees from TCD prior to releasing the records. I have not
13 allowed TCD employees to provide any input about what records should be released or redacted.
14 To my knowledge, I have never spoken or interacted with anyone from TCD, other than Mr.
15 Johnson, about this request or any other matter.

16 I declare under the penalty of perjury under the laws of the state of Washington that the
17 foregoing is true and correct to the best of my knowledge.

18 EXECUTED this 1st day of June, 2018, at Pullman, Washington.

19
20 

21 _____
22 STEPHANIE KALASZ
23 Public Records Coordinator
24
25
26

CERTIFICATE OF SERVICE

I certify that I served a copy of the DECLARATION OF STEPHANIE KALASZ on all parties or their counsel of record as follows:

☒ Via Email

SHAWN TIMOTHY NEWMAN

Newmanlaw@comcast.net

☒ US Mail Postage Prepaid

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

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

EXECUTED this 4th day of June, 2018, at Olympia, Washington.


CHERRIE MELBY
Legal Assistant
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
CherrieK@atg.wa.gov

EXHIBIT 1

Feulner, Tim (ATG)

From: Washington State University Public Records <wsu@public-records-requests.com>
Sent: Monday, February 26, 2018 6:14 PM
To: wsu.pubrecords
Subject: [External Message Added] Washington State University records request 18-115

-- Write ABOVE THIS LINE to post an EXTERNAL message that will be sent to both the requester & staff. --

Washington State University Public Records

A message was added to 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 112017 to 120517, 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

[View Request #18-115](#)

Too many emails? [Change your email settings here](#)

Trouble with the request button? Copy the URL below into your web browser:

<http://wsu.nextrequest.com/requests/18-115>

Technical support: See our [help pages](#) or email us at support@nextrequest.com

Powered by [NextRequest](#)

1 ☐ EXPEDITE

☐ No Hearing Set

2 ☒ Hearing is Set

Date: June 15, 2018

3 Time: 9:00 a.m.

The Honorable Christine Schaller

4
5
6
7 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

8 ERIC JOHNSON,

9 Plaintiff,

10 v.

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

14 Defendant.

NO. 18-2-00943-34

DECLARATION OF COUNSEL

15 I, TIMOTHY J. FEULNER, make the following declaration:

16 1. I am an Assistant Attorney General and am the Assistant Attorney General
17 assigned to represent the Defendant in this matter. I have personal knowledge of the following
18 events regarding the above referenced case.

19 2. True and correct copies of documents produced by the Thurston County
20 Conservation District in response to a subpoena issued by Defendant in this case is attached to
21 this declaration as Exhibit 1.

22 3. A true and correct copy of Johnson's First Requests for Production to Defendant
23 that was served on our office with the complaint in this lawsuit is attached to this declaration as
24 Exhibit 2.

25 4. A true and correct copy of a document produced to Johnson in discovery is
26 attached to this declaration as Exhibit 3.

1 5. A true and correct copy of an email received by me from Plaintiff's attorney is
2 attached to this declaration as Exhibit 4.


3 6. A true and correct copy of an email received from me to Plaintiff's attorney is
4 attached to this declaration as Exhibit 5.

5 7. A true and correct copy of a printed version of <https://public-records.wsu.edu/>
6 that I printed on June 4, 2018, is attached to this declaration as Exhibit 6.

7 I declare under penalty of perjury that the foregoing is true and correct to the best of my
8 knowledge.

9 EXECUTED this 4th day of June, 2018, at Olympia, Washington.

10 ROBERT W. FERGUSON
11 Attorney General

12 

13 TIMOTHY J. FEULNER, WSBA #45396
14 Assistant Attorney General
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CERTIFICATE OF SERVICE

I certify that I served a copy of the DECLARATION OF COUNSEL on all parties or their counsel of record as follows:

☒ Via Email

SHAWN TIMOTHY NEWMAN

Newmanlaw@comcast.net

☒ US Mail Postage Prepaid

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

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

EXECUTED this 4th day of June, 2018, at Olympia, Washington.



CHERRIE MELBY
Legal Assistant
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
CherrieK@atg.wa.gov

EXHIBIT 1

NEWMAN LAW

<http://www.newmanlaw.us>

Shawn Timothy Newman
Attorney at Law, Inc. 91-2011944
2507 Crestline Dr., N.W.
Olympia, WA 98502
P: 360.866.2322
F: 1.866.800.9941

December 18, 2017

Thurston Conservation District
Board of Supervisors
2918 Ferguson St., S.W., Suite A
Tumwater, WA 98512
www.thurstoncd.com

RE: Notice of representation for Eric L.T. Johnson and Richard Mankamyre
AND: Public Records Requests

To Whom It May Concern:

I have been retained by TCD Supervisors Eric L.T. Johnson and Richard Mankamyre regarding complaints made against them. These allegations include claims of "ongoing harassment and discrimination", "neglect of duties and spread of malicious misinformation"; "unethical conduct" and "lack of good governance." These complaints are set forth in various memos and letters, including the following:

- February 25, 2017 memo from TCD Staff to the TCD Board re: Unintended Consequences (Dissenting Opinion);
- November 1, 2017 letter to the Board (cc to others) from Shana Joy, Conservation Commission Puget Sound Regional Manager regarding "District Operations and Behavior"; and a
- November 29, 2017 memo from Samantha Fleischer, TCD Board Supervisor, regarding the same subject.

I am asking for any and all public records as defined by RCW 42.56.010 regarding this memos and letters. This includes staff email and electronic metadata.

According to WAC 135-110-960: Removal from Office

- (1) As provided in RCW 89.08.200, a conservation district supervisor may be removed from office by the conservation commission governing board upon notice and hearing for neglect of duty or malfeasance.
- (2) The conservation commission must provide notice to the supervisor detailing the specific elements of the neglect of duty or malfeasance for which removal is sought. The supervisor shall be given the opportunity to respond in writing to the elements contained in the notice within thirty days of the notice to the supervisor from the conservation commission.

Notice to the supervisor from the conservation commission shall be by certified mailing to the address of record for that supervisor.

(3) The conservation commission must hold at least one public hearing no earlier than sixty days from the date of certified mailing to the supervisor in the area served by the conservation district supervisor before acting to remove the incumbent from office.

(4) Following the public hearing, the conservation commission shall vote on the removal of the supervisor based on official findings of fact detailing the cause or causes of removal.

The State Open Public Meetings Act provides that agencies may receive and evaluate complaints brought against a public officer in executive session. "However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge." RCW 42.30.110(1)(f).

If it is the intention of the board to consider these complaints, my clients want it known that they insist on being afforded full due process. This includes a full public hearing conducted pursuant to the Administrative Procedures Act. RCW 34.05.410 et seq.

My clients believe these complaints are defamatory and retaliatory. They believe these complaints derive from their attempts to be good stewards of the tax dollars that support the district. This includes raising questions about employee conduct, travel expenditures and allowances, as well as conflicts of interest.

In that regard, please provide public records regarding:

- Expenses associated with any and all staff and supervisor travel for TCD including any use of pass through fund (since January, 2015)
- Any conflict of interest policy
- Contracts between the TCD and South Puget Sound Salmon Enhancement Group, including any correspondence and invoices.

Please contact me if you have any questions regarding these requests.

Sincerely,

Shawn Newman

Shawn Newman

Attorney at Law, P.S.

Cc: Sarah Moorehead, TCD Acting Director [smoorehead@thurstoncd.com]
Mark Clark, Executive Director, Washington State Conservation Commission [mclark@scc.wa.gov]
Shana Joy, Puget Sound Regional Manager [sjoy@scc.wa.gov]

Feulner, Tim (ATG)

From: Sarah Moorehead <SMoorehead@thurstoncd.com>
Sent: Wednesday, February 21, 2018 4:46 PM
To: Malcolm, Adam Nelson
Cc: Haas, Rita; TCD Board Members; Chris Stearns; JoelHansen (joelahansen.tcd@gmail.com); Joy, Shana(SCC); Shultz, Ron (SCC); 'MarkClark'; sbrandt@enduris.us
Subject: RE: Johnson v. WSU Public Records Lawsuit

Thank you for your notice Adam,

Thurston CD is fully supportive of providing any and all records requested by the public. Please let me know if there is anything we can do to support the fulfillment of this request.

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

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: Malcolm, Adam Nelson [mailto:adam.malcolm@wsu.edu]
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 its 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>

Feulner, Tim (ATG)

From: Michael Pierson <PiersonM@energy.wsu.edu>
Sent: Thursday, March 1, 2018 2:31 PM
To: Amy Hatch-Winecka
Subject: RE: Newman PDR

With just you there are 6037 email messages. This is going to be a lot of email and attachments... I will start the export now and let you know when it has finished.

-Michael

From: Amy Hatch-Winecka [mailto:AmyHW@thurstoncd.com]
Sent: Thursday, March 1, 2018 2:19 PM
To: Michael Pierson <PiersonM@energy.wsu.edu>
Cc: Sarah Moorehead <SMoorehead@thurstoncd.com>
Subject: Newman PDR

Hi Michael,

To follow up on our phone conversation, I have another public records request. For this one, I need all emails to and from me and anyone at the South Puget Sound Salmon Enhancement Group; the domain would be @spsseg.org. There have been numerous employees at SPSSEG over the last 15 years that I've exchanged emails with, so please pull everything. I will go through them individually to determine if they pertain to the request.

Thanks,

Amy

Amy Hatch-Winecka
Deputy Director
Thurston Conservation District
360.754.3588 ext 103

THURSTON COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

Eric Johnson,

Plaintiff,

No. 18-2-00943-34

vs.

Washington State University (WSU) Energy

Program Office.

SUBPOENA DUCES TECUM
FOR
AMY HATCH-WINEKA
CR 45

Defendant.

The State of Washington to Amy Hatch-Wineka:

You are commanded to appear at the offices of Dixie Cattell & Associates, 2102 Carriage Drive, S.W., Building C, Olympia, Washington, 98502 at 11:00 am on May 8th, 2018, to testify under oath before a court reporter as a witness at the request of the plaintiff in the above entitled cause and to remain in attendance until discharged by the undersigned.

You are further commanded to bring with you at said time and place the following documents:

1. Any emails from and to Michael Pierson, WSU Energy Office.
2. Any emails from and to James Colombo, WSU Energy Office.

SUBPOENA

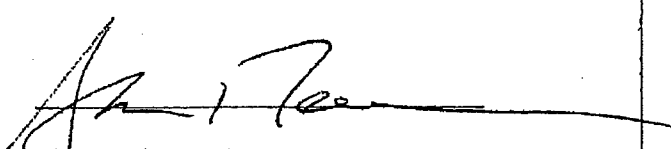
Shawn Timothy Newman
Attorney at Law, Inc., P.S.
WSBA 14193
2507 Crestline Dr. NW
Olympia, WA 98502-4327
(P) 360-866-2322

1 3. Any emails from and to Adam Malcolm, Assistant Attorney General.

2 4. Any emails from and to Tim Feulner, Assistant Attorney General.

3 Civil Rule 45(a)(1)(D) requires the attached text be included with the subpoena.
4
5

6
7 DATED: 4/17/18


8 Shawn Timothy Newman
9 Attorney at Law, P.S.
10 WSBA #14193
11 2507 Crestline Drive, N.W.
12 Olympia, WA 98502
13 PH: (360) 866-2322
14 Newmanlaw@comcast.net

15 DECLARATION OF SERVICE

16 I declare, under penalty of perjury under the laws of Washington that I personally served this
17 Subpoena Duces Tecum on Amy Hatch-Wineka on this date:

18 _____
19 Date & Place

20 Print

21 Sign

22
23
24
25
26
27
28 SUBPOENA

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

CR 45, Sections (c) & (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or

expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance. If such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that, the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

[Amended effective July 1, 1972; September 1, 1983; September 1, 1993; September 1, 2007; January 12, 2010]

Feulner, Tim (ATG)

From: Mike Steele <steelem@energy.wsu.edu>
Sent: Monday, April 30, 2018 11:04 AM
To: Amy Hatch-Winecka
Cc: Sarah Moorehead; IT Help Staff
Subject: RE: request for emails for lawsuit

Amy,

Are there any cases in items #1-4 where search results should be limited to messages sent to or from your email address?

Mike Steele
360-956-2088

From: Sarah Moorehead <SMoorehead@thurstoncd.com>
Sent: Tuesday, April 24, 2018 12:32 PM
To: Amy Hatch-Winecka <AmyHW@thurstoncd.com>; IT Help Staff <ithelp@energy.wsu.edu>
Subject: RE: request for emails for lawsuit

Please note that we are requesting that this is not fulfilled by either party mentioned in the subpoena (Michael and Jim). Please copy me on all items of fulfillment.

Sarah Moorehead

Interim Executive Director | Agricultural Outreach Specialist
Thurston Conservation District
2918 Ferguson St. SW, Ste A Tumwater, WA 98512
(360) 754-3588 ext. 136

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: Amy Hatch-Winecka
Sent: Tuesday, April 24, 2018 12:20 PM
To: ithelp@energy.wsu.edu
Cc: Sarah Moorehead
Subject: request for emails for lawsuit

Hello,

I just received a subpoena requesting my appearance and emails on May 8. I will need the following, per the order:

1. Any emails from and to Michael Pierson, WSU Energy Office
2. Any emails from and to James Colombo, WSU Energy Office
3. Any emails from and to Adam Malcolm, Assistant Attorney General
4. Any emails from and to Tim Feulner, Assistant Attorney General

There is no date range contained within the request.

I appreciate your help in pulling together the records requested. I will need them by May 7 at the latest, please.

Thank you,

Amy

Amy Hatch-Winecka
Deputy Director
Thurston Conservation District
360.754.3588 ext 103

Feulner, Tim (ATG)

From: Sarah Moorehead <SMoorehead@thurstoncd.com>
Sent: Friday, March 9, 2018 11:49 AM
To: Shawn Newman
Cc: Ashley McBee
Subject: RE: Public disclosure request.
Attachments: RE: Johnson v. WSU Public Records Lawsuit

Hello Mr. Newman,

From my initial search, we do not have any (0) records of communication with Tim Feulner and have only one (1) record of communication with Adam Malcolm (attached).

I will follow up as stated by March, 16, 2018 with any additional records, and/or a notice that no additional records exist.

Thank you,
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

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: Shawn Newman [mailto:newmanlawolympia@outlook.com]
Sent: Friday, March 09, 2018 10:52 AM

To: Sarah Moorehead
Subject: RE: Public disclosure request.

Thank you.

From: Sarah Moorehead <SMoorehead@thurstoncd.com>
Sent: Friday, March 09, 2018 10:43 AM
To: newmanlaw@comcast.net
Subject: RE: Public disclosure request.

Mr. Newman,

I have received your request for public record. I will have the information you requested provided to you by March 16, 2018.

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

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: newmanlaw@comcast.net [mailto:newmanlaw@comcast.net]
Sent: Thursday, March 08, 2018 6:21 AM
To: Sarah Moorehead
Subject: Public disclosure request.

Dear Ms. Moorehead:

Please provide all records of communications, including emails, between the TCD and Tim Feulner, Assistant Attorney General, as well as between TCD and Adam Malcom. Mr. Feulner's email is: TimF1@ATG.WA.GOV and Mr. Malcolm's email is: adam.malcolm@wsu.edu.

Thank you.

Shawn Newman
Attorney at Law, Inc.
2507 Crestline Dr., N.W.
Olympia, WA 98502
PH: 360-866-2322

EXHIBIT 2

RECEIVED
H.L.B.

THURSTON COUNTY SUPERIOR COURT OF THE

2018 FEB 16 AM 11:19

Eric Johnson,

Plaintiff,

vs.

Washington State University (WSU)
Energy Program Office

Defendant.

NO.

ATTORNEY GENERAL
OF WASHINGTON

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
as indicated.

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

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

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

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

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

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

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

22 11. Each request to produce a document or documents shall be deemed to call for the
23 production of the original document or such copies as are in the possession, or subject to the
24 control of, the party to whom this request is addressed. In addition, each request should be
25 considered as including a request for separate production of all copies and preliminary drafts of
26 documents that differ in any respect from the original or final draft or from each other (e.g., by
27 reason of differences in form or content or by reason of handwritten notes or comments having
28 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.

1 "Document" or "documents" includes all those within the scope of CR 34 (a)(1)
2 and without limitation any written, typed, printed, recorded, or graphic matter (however
3 preserved, produced, or reproduced) of any type or description, regardless of origin or location,
4 including without limitation any employment application, binder, cover note, folder label,
5 certificate, letter, correspondence, record, table, chart, analysis, graph, schedule, report, test,
6 eliminate materials, course materials, study memorandum, note, list, diary, log, files (including
7 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 11/20/17 to
9 12/05/17, 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:

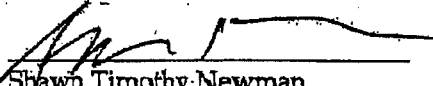
28 7. All records by or to James Colombo, WSU – Energy Program Information Systems
Department Manager; regarding the plaintiff, Eric Johnson, including, but not limited to, his
meeting with him on January 25, 2018 and January 31, 2018.

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
17 DATED: 2/16/18

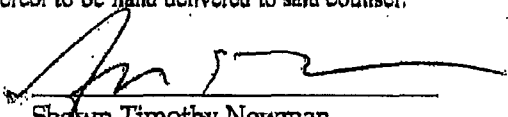

Shawn Timothy Newman
Attorney at Law, P.S.
WSBA #14193
2507 Crestline Drive, N.W.
Olympia, WA 98502
PH: (360) 866-2322
Newmanlaw@comcast.net

EXHIBIT 3

From: Samantha Fleischner <SamanthaH@WasteConnections.com>
Sent: Thursday, November 30, 2017 10:02 AM
To: SJoy@scc.wa.gov; Sarah Moorehead; mclark@scc.wa.gov
Subject: Letter to WSCC.docx
Attachments: Letter to WSCC.docx; ATT00001.txt

Please see the attached for my statement with regards to the current health of Thurston Conservation District.

To: Washington State Conservation Commission Executive Committee

November 29, 2017

RE: Thurston Conservation District Operations and Behavior

I am writing to the Washington State Conservation Commission Executive Committee to request the immediate removal of Thurston Conservation District Board Supervisors Eric Johnson and Richard Mankamy. Due to issues of ongoing harassment and discrimination of board and staff, neglect of duties, unethical conduct, spread of malicious misinformation and general lack of good governance procedures detailed below, it is imperative to the survival of Thurston Conservation District that the Washington State Conservation Commission Executive Committee removes the Board Supervisors mentioned above immediately.

Ongoing Harassment and Discrimination of Board and Staff

On September 26th, 2017, Thurston Conservation District concluded a six month harassment and discrimination investigation performed by Enduris Washington regarding the treatment of staff at the District by Eric Johnson and Richard Mankamy. This investigation yielded extensive documentation of harassment and discrimination situations targeting the majority of District staff creating an unhealthy and unproductive work environment for all. In addition, these two Supervisors continue to make retaliatory actions towards staff and ignore the advice that legal counsel provided to resolve the situation and reduce risk to the organization. One example, is a particular situation regarding a perceived conflict of interest involving the work of one District employee that was resolved by the Board of Supervisors in June 2017, then subsequently investigated and reported on by legal counsel provided by Enduris Washington on September 26th, 2017 finding no conflict of interest, continues to be portrayed by Eric and Richard to the community as an unethical situation and misuse of public funding. Many of the citizens, stakeholders and funders involved in this District staff member's work have shared their outrage at the continual and deliberate actions of Eric and Richard to perpetuate a non-issue and slander the name of the District and the individual staff member throughout the community and in public meetings.

Neglect of Duties and Spread of Malicious Misinformation

Many times throughout the course of their terms, Eric and Richard have shown severe neglect of their duties as Board Supervisors and in officer positions on the board. At our most recent board meeting on November 21st, 2017, Eric Johnson Thurston CD's current Board Chair made several attempts with nearly thirty (30) stakeholders, partners, citizens, staff and fellow supervisors in the room to cancel our public meeting before it began for fear that he would not be able to pass certain agenda items. After wasting nearly half an hour and being unsuccessful, Eric proceeded to not even allow all members of the public who came to share their comments during our public meeting a 2 minute timeslot to share their feedback. This is an appalling display of disrespect to our community, as we are a publicly funded entity here to serve its people. During this same meeting, Richard Mankamy, our new Thurston CD Auditor declared that he will refuse to perform his duties as Auditor, including signing checks. He states that even after ample training and serving for over a year on our Board that he is uncomfortable with performing the duties of the Auditor role. His solution is not to work together to feel comfortable

enough with the responsibilities of this position, but to take absolute power over District finances by forcefully taking all authorities currently delegated to our extremely qualified District Staff Treasurer through policy changes that only Eric and Richard discussed prior to the November 21st, 2017 Board meeting. Rather than allowing our professional staff carry out the mission of the District on our behalf, it appears that Eric and Richard wish to run the district entirely by themselves. It is common for Eric and Richard to not involve the entire board in making decisions, creating agenda items, scheduling Board meetings and even being allowed to offer discussion on motions made during the meeting. I have personally been not allowed to provide comment, disregarded, interrupted and in general disrespected in public meetings by Eric and Richard, along with many other Supervisors, staff and members of the public.

Unethical Conduct

During our November 21st, 2017 board meeting, Eric and Richard took it upon themselves to circumvent our current efforts to develop a Request for Proposals (with consultation and support from the Washington State Conservation Commission, Enduris Washington, and the Municipal Research Service Center) to obtain legal counsel to represent the District through these unnecessarily challenging times at Thurston CD, by hiring legal counsel to be present during the meeting. Neither the remainder of the Supervisors, nor District or WSCC Staff were aware of these actions. Considering that the lack of participation by Eric and Richard in our November 6th, 2017 public hearing and Special Meeting to adopt our Rates and Charges resolutions to obtain 2018 base funding resulted in a lack of quorum to proceed with the process, I am not clear who has hired this attorney, nor how they will be paid. I would like to emphasize the fact that: 1) Eric and Richard intentionally chose to remove our base funding mechanism of a System of Rates and Charges from the District by intentionally not participating in the process which will now result in a loss of nearly a third of our District's annual budget, and 2) that are attempting to use the District to fund legal counsel to further their specific agendas at the expense of Thurston CD, without prior knowledge, let alone approval from the entire Board of Supervisors. It is common for Eric and Richard to collude with each other, members of the public, locally elected officials and even attempt to sway the votes and decisions of new and existing board members through misinformation and threats. I have personally been threatened to vote on a particular item, or face they would share slanderous remarks about me with the area newspaper reporters.

Lack of Good Governance

It has become normal for Eric, as Thurston CD's Board Chair to call frequent meetings (several times per month) lasting 4 to 5+ hours each, without consideration of the entire board. These meetings are called with little to no notice, where little to no progress is made under Eric's leadership. It is clear there are a few objectives, not shared by the entire board, that take priority over essential duties of Board Supervisors. One example would be the attempt to remove authorities delegated to our current Acting Executive Director and our District Treasurer, to give Eric and Richard the power and authority to run the District. This is a blatant show of disrespect for the expertise of our talented Staff at Thurston CD and has created an embarrassing public display, as neither Eric nor Richard are capable of performing even the essential duties of a Board Supervisor, let alone the specialized and time intensive functions of District Staff.

This has become an increasingly public, unwieldy issue that I fear will not only destroy Thurston Conservation District, but also have a severe negative impact on the image of all of Washington's Conservation Districts and the Washington State Conservation Commission. I would like Thurston Conservation to continue to support our Staff and our community in advancing conservation projects on the ground and provide strong support for statewide initiatives to the legislature in our own backyard. I know that Thurston Conservation District will be able to recover and rebuild, despite the tremendous damage caused by these individuals.

I would like to thank the Washington State Conservation Commission Executive Committee for considering taking swift action to remove Thurston Conservation District Board Supervisors Eric Johnson and Richard Mankamy. I strongly believe this is the only course of action that will allow Thurston Conservation District to move forward on a positive and productive path, continue to serve the people of our community and get crucial conservation projects on the ground.

Sincerely,

Samantha L. Fleischner
Board Supervisor
Thurston Conservation District

Cc:

Mark Clark, Executive Director, Washington State Conservation Commission
Shana Joy, Puget Sound Regional Manager, Washington State Conservation Commission
Sarah Moorehead, Acting Executive Director, Thurston Conservation District

Thanks,
Samantha Fleischner

EXHIBIT 4

Feulner, Tim (ATG)

From: newmanlaw@comcast.net
Sent: Thursday, April 12, 2018 5:14 PM
To: Feulner, Tim (ATG)
Cc: newmanlaw@comcast.net
Subject: RE: Johnson v. WSU
Attachments: Johnson v WSU - Missing Mankamyer Records.docx

Tim, here's a list from Mr. Mankamyer. Let me know if you need clarification.

From: newmanlaw@comcast.net <newmanlaw@comcast.net>
Sent: Thursday, April 12, 2018 5:01 PM
To: 'Feulner, Tim (ATG)' <TimF1@ATG.WA.GOV>
Cc: newmanlaw@comcast.net
Subject: RE: Johnson v. WSU

Tim, thanks for your email. See below for my responses.

From: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Sent: Thursday, April 12, 2018 3:21 PM
To: newmanlaw@comcast.net
Cc: Malcolm, Adam (ATG/WSU) <adam.malcolm@wsu.edu>
Subject: RE: Johnson v. WSU

Mr. Newman,

I apologize for the slow response. In terms of records that have been provided to your client, I am assuming that we are speaking about the records that are being produced as part of his "public records request" (without waiving any legal arguments about the nature of the request). My understanding is that WSU is still producing records. I believe they have produced a couple of installments at this point and again are still producing records. Can you confirm this please? Are you saying that your client has not received any emails from TCC Supervisor Richard Mankamyer? I have received some documents referencing Mr. Mankamyer. Can you tell me which documents you are referencing so I can look into the issue? I will provide a list via separate email.

In terms of a deposition, we will let you know the availability of the three employees for WSU that you identified. You will have to work in terms of checking on the schedules of TCC as I don't have any knowledge of their schedules. Understood. I am simply putting you on notice. My goal would be to have them all in one day as well. I'm looking at either the first or second week of May if that works for you. I will follow up in the next couple of days. I will verify with my client. Based on your email, it sounds like you are hoping for the afternoon. Correct, but that depends on how the depositions go. I am a little unsure why Jacob Fey would be a necessary person to depose in this case as it appears that he was not involved in handling the request. Can you shed some light on that? Director Fey could speak to services provided by the WSU Energy Program, including data storage/retention, contracts and protocols. I also assume he spoke with Mr. Colombo, Mr. Pierson and others regarding this case.

Thanks,

Tim

Tim Feulner

Assistant Attorney General
Washington State Office of the Attorney General
Corrections Division
(360) 586-1445

Please save paper by printing only when necessary.

This e-mail may contain information that is legally privileged. If you have received this message in error, please notify me immediately and delete this message. Any disclosure, copying, distribution or other use of the contents of this information is prohibited. Thank you for your cooperation.

From: newmanlaw@comcast.net <newmanlaw@comcast.net>
Sent: Monday, April 9, 2018 3:04 PM
To: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Cc: Malcolm, Adam (ATG/WSU) <adam.malcolm@wsu.edu>
Subject: RE: Johnson v. WSU

Thank you, Tim.

I will review and get back to you. My client has already indicated that some documents are missing from your response to the first PRA, including those from TCC Supervisor Richard Mankamyer. I will hold off on any CR 26(i) conference until my client and I have had time to review your responses to the second set of RFPs.

Per my prior email, I want to set some depositions for the following people:

1. Jacob Fey
2. James Colombo (WSU – Energy Program Information Systems Department Manager)
3. Michael Pierson (WSU IT Support Specialist)

I don't think these should last more than an hour each so am looking for some afternoon that is mutually convenient.

In addition, I plan to subpoena TCC employees who are referenced in the complaint and responses to the RFP:

1. Sarah Moorehead, Acting Executive Director
2. Amy Hatch-Winecka, Deputy Director of the TCC

Let me know what dates work for your clients. The depositions would take place in Olympia at Dixie Cattell & Associates.

Shawn Newman

From: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Sent: Monday, April 09, 2018 11:48 AM
To: newmanlaw@comcast.net
Cc: Malcolm, Adam (ATG/WSU) <adam.malcolm@wsu.edu>
Subject: Johnson v. WSU

Mr. Newman,

Attached is a copy of Defendant's responses to Plaintiff's second requests for production. We are also sending a copy of the responses via the mail. The responsive documents are attached to this email. Let us know if you have questions or concerns.

Thank you,

Tim

Tim Feulner

Assistant Attorney General
Washington State Office of the Attorney General
Corrections Division
(360) 586-1445

Please save paper by printing only when necessary.

This e-mail may contain information that is legally privileged. If you have received this message in error, please notify me immediately and delete this message. Any disclosure, copying, distribution or other use of the contents of this information is prohibited. Thank you for your cooperation.

My e-mails that did not appear in the data from WSU.

1. 2018 Budget Development

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Amy Franks <Accounting@thurstoncd.com> 11/20/17

to TCD, Shana, Sarah

Good morning Board of Supervisors, Attached are the materials I will be circulating at the work session and board meeting tomorrow for the discussion on the 2018 budget. I am available for questions, clarification or suggestions before the meeting! Thank you!!

Amy

2. Weekly Updates: Nov 10 - 16

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/20/17

to TCD, TCD

Weekly updates for November 10 – 16 (please note: TCD Office closed on 11/10 in observance of Veteran's Day)

3. FW: Update: Legal Services RFP Attached

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/20/17

to me

Hey Richard,

For your reference, here is the email I sent on 10/19 which includes the latest draft (editable version) and last changes that were made.

Thanks,

Sarah

Plus 3 attachments.

4. Information request from 11/1 board meeting

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Amy Franks <Accounting@thurstoncd.com> 11/21/17

to TCD, Sarah, Shana, Ashley

Good morning, Attached are the travel vouchers from Amy Hatch Winecka for her travel reimbursements in September. This information was requested by the Board at the last meeting. Let me know if you have questions, thank you.

Amy

Plus attachment

5. TCD Motions To Pass 112117

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Motions To Pass 112117

Inbox x



Richard TCD

11/20/17

Hello Mick, Attached is a copy of the motions we want to pass tomorrow. I
alr...



Armand Resto-Spotts

Hi, Richard My name is Armand Resto-Spotts, and I will be attending the TCD 11/21/17
S...

Richard TCD

Hello Armand, Yes, I have questions. I will be at the district around 11 am. 11/21/17
L...

Armand Resto-Spotts <aresto-spotts@phillipsburgesslaw.com> 11/21/17

to me

Richard

Mick had me book the 1 pm meeting, which I plan to attend. However, I don't believe I'll be able to make it at
11 AM. I can be there around 12:30, but given the late notice, I can't make the 11 AM time this morning.....

6. FW: Letter for Public Comment for Nov21 Special Board Meeting

This is the e-mail heading above and this does not show in any of the PDR's first or
second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/21/17

to TCD, lindapowell

Please see the attached public comment: NO Attachment in PDR File another solicited letter
from staff to groups and people.

7. FW:

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/21/17

to TCD, lindapowell

Please see the letter from RCO attached

No Attachments Included.....

8. Response to questions

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sheryl Brandt <sbrandt@enduris.us> 11/21/17

to me, ericjohnsontcd

Hi Richard,

Please find below responses to your questions. My responses are in red, Michelle's in blue.

1. Who does Enduris represent, the board or the staff?

9. Auditor Duties for TCD 111017

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Richard TCD

Hello Samantha, I could use some help in learning the duties of TCD Auditor 11/10/17

a...

Samantha Fleischer

11/13/17

Hi Richard, I'm out of town until Thursday. I'll try and go over everything
y...

Samantha Fleischner <sfleischner@conservewa.net> 11/21/17

to me

Don't mind the misspelled words at the ending. Note the time stamp was sent Monday November
13th.

Thank you,
Samantha

10. FW: Supplemental / capital budget messaging and information

This is the e-mail heading above and this does not show in any of the PDR's first or
second installment. I got these from my e-mails.

Ashley McBee <AMcBee@thurstoncd.com> 11/22/17

to TCD, TCD

FYI -

11. Thurston CD board mtg 11/21/17 follow up

This is the e-mail heading above and this does not show in any of the PDR's first or
second installment. I got these from my e-mails.

Joy, Shana (SCC) <SJoy@scc.wa.gov> 11/22/17

to ericjohnsontcd, Sarah, doug.rushton, lindapowell, me, sfleischner, Stu

Eric and Sarah,

12. Automatic reply: Request for new PRISM account (this was addressed to Richard = me)

This is the e-mail heading above and this does not show in any of the PDR's first or
second installment. I got these from my e-mails.

RCO MI Prism Accounts (RCO) <prismaccounts@rco.wa.gov> 11/26/17

to me

RCO has received your new PRISM account request or password reset. Our goal is to respond to all requests within 4 hours. Our business hours are 8 am to 4:30 pm Monday through Friday.

13. TCD Delegation of Authority Treasurer, Acting Exec Director

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Richard TCD

Hello Mick, Thanks for attending our board meeting on the 21st. As you can
se...

11/27/17

Richard Phillips

Auditor The Auditor is the Board Supervisor who is primarily responsible
for ...

11/27/17

Richard TCD <rmtcd6@gmail.com> 11/27/17

to Richard

Mick,

Thanks

Richard

14. RE: Request for new PRISM account

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

RCO MI Prism Accounts (RCO) <prismaccounts@rco.wa.gov> 11/27/17

to me

Hi Richard,

I have created a new PRISM account for you with the following information:

Username: RMankamyer

15. Prism info

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Eric Johnson <ericjohnsontcd@gmail.com> 11/28/17

to me

16. FW: Sample policy for Supervisor attending remotely

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/29/17

to TCD, Shana

Please see the attached sample policy PDF from Phillips Burgess Law, including his note below regarding electronic participation of a board supervisor.

Thanks,

Sarah

No attachments either.

17. FW: WDFW hosts meeting about Scatter Creek Wildlife Area wildfire

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/29/17

to TCD, TCD

FYI – please see below

18. FW: Public Comment regarding November 21 Board of Supervisors Meeting (another solicitation by staff)

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/29/17

to TCD, Shana

Please see the public comment below from Jerilyn Walley. (letter was in original e-mail)

19. Reminder for editable versions of Delegations of Authority Policy Revisions

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 11/29/17

to me, Shana

Good Afternoon Richard,

Just a reminder, please send me editable Microsoft Word versions of both policy revisions (Delegation to Acting Director and Delegation to Treasurer) that you created so that I may send to the full board for comment. I currently only have them in PDF. Fellow supervisors have requested these versions so that they may get their comments in for compiling before the December 19th work session.

Much appreciated,

Sarah

20. Policy & Procedure

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Jenifer Sliva <JSliva@masoncd.org> 12/1/17

to me

Richard

Jen gave me a message yesterday that you are looking for policy and procedures. She was unclear about exactly what you are looking for. Give me a call or send me an email regarding what you are looking for and I am more than happy to share what we have.

Thanks in advance

Jenifer Sliva, Financial Accountant

Mason Conservation District

21. Wira13 committees same people

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Eric Johnson <ericjohnsontcd@gmail.com> 12/2/17

to me

Looks like amy Jas 2 staff on the committees - and 8 attachments not shown.

22. FW: Extended through Dec 8: Draft Shoreline Armoring Implementation Strategy available for public comment

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 12/4/17

to TCD, TCD

FYI,

Greetings,

The public comment period for the Draft Shoreline Armoring Implementation Strategy has been extended through Friday, December 8, 2017.

23. Letter Sarah is sending out

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails. (another solicitation by staff)

Eric Johnson <ericjohnsontcd@gmail.com> 12/4/17

to me

Kathleen Berger presented this letter to habitat work group.

12/4/17

23. Action Required: Feedback on Suggested Policy Revisions to Acting Director and Treasurer

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead

Greetings Folks and Happy Friday! Attached are workable versions of the polic... 12/1/17

Joy, Shana (SCC) SJoy@scs.wa.gov via thurstoncd.com 12/4/17

to Sarah, TCD, Amy

Hi Sarah,

My comments on the two draft documents are attached. Also, the agenda is still under development for the December 19th board work session. I am not certain if these two specific documents will be tackled during that meeting or not. At least the regular board meeting occurs on the next day, December 20th, as another opportunity to discuss them.

Shana Joy

Puget Sound Regional Manager & Policy Assistant

WA State Conservation Commission

Ph: 360-480-2078

Two Attachments and None showed.

24. TCD Auditor Statement November 29, 2017

I found this letter in the PDR's however NO Attachments?

Richard TCD <rmtcd6@gmail.com> 12/4/17

to Sarah, Eric, mclark, bcc: Clyde

Hello Sarah,

Please forward to the entire board ASAP, the attached letter
"TCD Auditor Statement November 29, 2017"

Thank You

Richard Mankamyer
TCD Board, Auditor

25. FW: November 2017 Billing Letter and Invoice

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Sarah Moorehead <SMoorehead@thurstoncd.com> 12/4/17

to TCD, Shana, Amy

FYI - One attachment not shown either.

26. Fwd: Letter to WSCC.docx

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Eric Johnson <ericjohnsontcd@gmail.com> 12/4/17

to me

----- Forwarded message -----

From: "Joy, Shana (SCC)" <SJoy@scc.wa.gov>

Date: Dec 4, 2017 5:03 PM

Subject: Fwd: Letter to WSCC.docx

To: "Eric Johnson" <ericjohnsontcd@gmail.com>

Cc: "Joy, Shana (SCC)" <SJoy@scc.wa.gov>, "Ledgerwood, Ray (SCC)" <RLedgerwood@scc.wa.gov>

Eric

Samantha's letter is attached. I'll also forward the motion wording from the Commission meeting in a separate message.

Shana Joy

Sent from my iPhone

Begin forwarded message: - NO Attachments

27. Fwd: Motion from SCC meeting please?

This is the e-mail heading above and this does not show in any of the PDR's first or second installment. I got these from my e-mails.

Eric Johnson <ericjohnsontcd@gmail.com> 12/5/17

to me

----- Forwarded message -----

From: "Joy, Shana (SCC)" <SJoy@scc.wa.gov>

Date: Dec 4, 2017 5:05 PM

Subject: Fwd: Motion from SCC meeting please?

To: "Eric Johnson" <ericjohnsontcd@gmail.com>

Cc: "Joy, Shana (SCC)" <SJoy@scc.wa.gov>, "Ledgerwood, Ray (SCC)"
<RLedgerwood@scc.wa.gov>

Eric

This is the motion language below from Lori on our staff. Let me know if you have any questions.

Shana Joy

Sent from my iPhone

Begin forwarded message:

Misc e-mail near the end of the response

E-mails from WSU energy to TCD

From: Jim Colombo

To: "Eric Johnson"

Cc: "Sarah Moorehead"

Subject: RE: Eric Johnson TCD follow up 01.31.18

Date: Thursday, February 8, 2018 12:18:57 PM

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

Johnson

From: Sheila Riggs

To: Michael Pierson; IT Help Staff

Subject: RE: Eric Johnson Record Request #18-115

Date: Friday, February 23, 2018 6:18:56 PM

Thank you, Michael.

From: Michael Pierson

Sent: Friday, February 23, 2018 5:06 PM

To: IT Help Staff

Cc: Sheila Riggs

Subject: Eric Johnson Record Request #18-115

Sheila, I have just finished the additional searches you requested. I have them stored here

H:\External Clients\TCD\TCD PRR\Request #18-115. Myself or any of the guys can get access.

I will be in Monday morning until about 9am then I have a crown appointment... Either myself, if I'm here, Mike Steele or Colombo will be able to help you get these uploaded on Monday when you get in and hear back from the Public Records Officer for WSU.

They are organized how you asked, Responses 1 – 8, I included a small readme in each directory so it was clear what the search was for.

Michael Pierson

IT Support Specialist

WSU Extension Energy Program

Voice: 360-956-2045

piersonm@energy.wsu.edu

Johnson

From: Michael Pierson

To: Amy Hatch-Winecka (AmyHW@thurstoncd.com)

Subject: PDR for Eric Johnson

Date: Tuesday, March 6, 2018 8:31:12 AM

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

From: Michael Pierson

To: Sarah Moorehead

Subject: PDR and board members

Date: Friday, February 2, 2018 12:58:57 PM

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: Amy Hatch-Winecka

To: Michael Pierson - WSU

Subject: RE: PDR for Eric Johnson

Date: Wednesday, March 7, 2018 12:42:20 PM

Hi Michael,

How about tomorrow – after noon work for you? I've got several meetings in the morning.

Thank you! Amy

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

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?...

Johnson v. WSU DEFS-000671

Michael Pierson

IT Support Specialist

WSU Extension Energy Program

Voice: 360-956-2045

piersonm@energy.wsu.edu

From: Michael Pierson

To: Sarah Moorehead

Subject: Records request and Eric Johnson

Date: Monday, February 5, 2018 9:04:01 AM

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, 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.

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 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

Number of emails in request, by name

Eric Johnson – 75

Richard Mankamy – 35

Samantha Fleischer – 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

Johnson v. WSU

DEFS-000704

Voice: 360-956-2045

piersonm@energy.wsu.edu

Johnson

From: ParrishT@energy.wsu.edu

To: ColomboJ@energy.wsu.edu

Subject: WSU Energy Program Invoice

Date: Wednesday, August 7, 2013 12:05:02 PM

Attachments: Statement_13-0412.PDF

Eric Johnson:

Please note Invoice 13-0412 is attached to this Email.

If making payment by VISA or MASTERCARD, please
contact:

Donna Cowsert

WSU Energy Program

PO Box 43165

Olympia, WA 98504-3165

(360) 956-2084

~ Tamara Parrish

Administrative Services

WSU Energy Program

(360) 956-2137

Cc: "Sarah Moorehead"

Subject: RE: Eric Johnson TCD follow up 01.31.18

Date: Thursday, February 8, 2018 12:18:57 PM

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

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To: IT Help Staff

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Subject: Eric Johnson Record Request #18-115

Sheila, I have just finished the additional searches you requested. I have them stored here

H:\External Clients\TCD\TCD PRR\Request #18-115. Myself or any of the guys can get access.

I will be in Monday morning until about 9am then I have a crown appointment... Either myself, if I'm here, Mike Steele or Colombo will be able to help you get these uploaded on Monday when you get in and hear back from the Public Records Officer for WSU.

They are organized how you asked, Responses 1 – 8, I included a small readme in each directory so it was clear what the search was for.

Michael Pierson

IT Support Specialist

WSU Extension Energy Program

Voice: 360-956-2045

piersonm@energy.wsu.edu

Johnson

From: Michael Pierson

To: Amy Hatch-Winecka (AmyHW@thurstoncd.com)

Subject: PDR for Eric Johnson

Date: Tuesday, March 6, 2018 8:31:12 AM

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IT Support Specialist

WSU Extension Energy Program

Voice: 360-956-2045

piersonm@energy.wsu.edu

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Thank you Sarah.

Michael Pierson

IT Support Specialist

WSU Extension Energy Program

Voice: 360-956-2045

piersonm@energy.wsu.edu

From: Amy Hatch-Winecka

To: Michael Pierson - WSU

Subject: RE: PDR for Eric Johnson

Date: Wednesday, March 7, 2018 12:42:20 PM

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How about tomorrow – after noon work for you? I've got several meetings in the morning.

Thank you! Amy

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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

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?...

Johnson v. WSU DEFS-000671

Michael Pierson

IT Support Specialist

WSU Extension Energy Program

Voice: 360-956-2045

piersonm@energy.wsu.edu

From: Michael Pierson

To: Sarah Moorehead

Subject: Records request and Eric Johnson

Date: Monday, February 5, 2018 9:04:01 AM

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

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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

Johnson v. WSU

DEFS-000704

Voice: 360-956-2045

piersonm@energy.wsu.edu

Johnson

From: ParrishT@energy.wsu.edu

To: ColomboJ@energy.wsu.edu

Subject: WSU Energy Program Invoice

Date: Wednesday, August 7, 2013 12:05:02 PM

Attachments: Statement_13-0412.PDF

Eric Johnson:

Please note Invoice 13-0412 is attached to this Email.

If making payment by VISA or MASTERCARD, please

contact:

Donna Cowsert

WSU Energy Program

PO Box 43165

Olympia, WA 98504-3165

(360) 956-2084

~ Tamara Parrish

Administrative Services

WSU Energy Program

(360) 956-2137

EXHIBIT 5

Feulner, Tim (ATG)

From: Feulner, Tim (ATG)
Sent: Monday, June 4, 2018 7:25 AM
To: 'newmanlaw@comcast.net'
Cc: Malcolm, Adam (ATG/WSU)
Subject: RE: Johnson v. WSU
Attachments: Response- Missing Mankamyer Records.docx

Mr. Newman,

Sorry for the delay in responding to this email as I wanted to wait until my client finished producing records. They completed that process on Friday, June 1. The majority of the emails that Mr. Mankamyer identified in his list have been produced to Johnson. There are some emails that we were unable to either identify or find. Without seeing the actual emails, it is hard to give a definitive answer. However, most of the emails appear to be between your two clients, Mankamyer and Johnson. I believe that they use gmail email addresses. As I understand it, such emails would not pass through the TCD email system that has an email domain name of @thurstoncd.com and there would be no copy in TCD's email system as a result. There is also one email that was listed that was outside of the timeframe that Johnson provided. I'm attaching a list with each email name that was provided by Mankamyer that contains where each email is located in the various installments produced by WSU. Please let us know if you have follow up questions.

Tim

Tim Feulner

Assistant Attorney General
Washington State Office of the Attorney General
Corrections Division
(360) 586-1445

Please save paper by printing only when necessary.

This e-mail may contain information that is legally privileged. If you have received this message in error, please notify me immediately and delete this message. Any disclosure, copying, distribution or other use of the contents of this information is prohibited. Thank you for your cooperation.

From: newmanlaw@comcast.net <newmanlaw@comcast.net>
Sent: Thursday, April 12, 2018 5:01 PM
To: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Cc: newmanlaw@comcast.net
Subject: RE: Johnson v. WSU

Tim, thanks for your email. See below for my responses.

From: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Sent: Thursday, April 12, 2018 3:21 PM
To: newmanlaw@comcast.net
Cc: Malcolm, Adam (ATG/WSU) <adam.malcolm@wsu.edu>
Subject: RE: Johnson v. WSU

Mr. Newman,

I apologize for the slow response. In terms of records that have been provided to your client, I am assuming that we are speaking about the records that are being produced as part of his "public records request" (without waiving any legal arguments about the nature of the request). My understanding is that WSU is still producing records. I believe they have produced a couple of installments at this point and again are still producing records. Can you confirm this please? Are you saying that your client has not received any emails from TCC Supervisor Richard Mankamyer? I have received some documents referencing Mr. Mankamyer. Can you tell me which documents you are referencing so I can look into the issue? I will provide a list via separate email.

In terms of a deposition, we will let you know the availability of the three employees for WSU that you identified. You will have to work in terms of checking on the schedules of TCC as I don't have any knowledge of their schedules. Understood. I am simply putting you on notice. My goal would be to have them all in one day as well. I'm looking at either the first or second week of May if that works for you. I will follow up in the next couple of days. I will verify with my client. Based on your email, it sounds like you are hoping for the afternoon. Correct, but that depends on how the depositions go. I am a little unsure why Jacob Fey would be a necessary person to depose in this case as it appears that he was not involved in handling the request. Can you shed some light on that? Director Fey could speak to services provided by the WSU Energy Program, including data storage/retention, contracts and protocols. I also assume he spoke with Mr. Colombo, Mr. Pierson and others regarding this case.

Thanks,

Tim

Tim Feulner

Assistant Attorney General
Washington State Office of the Attorney General
Corrections Division
(360) 586-1445

Please save paper by printing only when necessary.

This e-mail may contain information that is legally privileged. If you have received this message in error, please notify me immediately and delete this message. Any disclosure, copying, distribution or other use of the contents of this information is prohibited. Thank you for your cooperation.

From: newmanlaw@comcast.net <newmanlaw@comcast.net>
Sent: Monday, April 9, 2018 3:04 PM
To: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Cc: Malcolm, Adam (ATG/WSU) <adam.malcolm@wsu.edu>
Subject: RE: Johnson v. WSU

Thank you, Tim.

I will review and get back to you. My client has already indicated that some documents are missing from your response to the first PRA, including those from TCC Supervisor Richard Mankamyer. I will hold off on any CR 26(i) conference until my client and I have had time to review your responses to the second set of RFPs.

Per my prior email, I want to set some depositions for the following people:

1. Jacob Fey
2. James Colombo (WSU – Energy Program Information Systems Department Manager)

3. Michael Pierson (WSU IT Support Specialist)

I don't think these should last more than an hour each so am looking for some afternoon that is mutually convenient.

In addition, I plan to subpoena TCC employees who are referenced in the complaint and responses to the RFP:

1. Sarah Moorehead, Acting Executive Director
2. Amy Hatch-Winecka, Deputy Director of the TCC

Let me know what dates work for your clients. The depositions would take place in Olympia at Dixie Cattell & Associates.

Shawn Newman

From: Feulner, Tim (ATG) <TimF1@ATG.WA.GOV>
Sent: Monday, April 09, 2018 11:48 AM
To: newmanlaw@comcast.net
Cc: Malcolm, Adam (ATG/WSU) <adam.malcolm@wsu.edu>
Subject: Johnson v. WSU

Mr. Newman,

Attached is a copy of Defendant's responses to Plaintiff's second requests for production. We are also sending a copy of the responses via the mail. The responsive documents are attached to this email. Let us know if you have questions or concerns.

Thank you,

Tim

Tim Feulner
Assistant Attorney General
Washington State Office of the Attorney General
Corrections Division
(360) 586-1445

Please save paper by printing only when necessary.

This e-mail may contain information that is legally privileged. If you have received this message in error, please notify me immediately and delete this message. Any disclosure, copying, distribution or other use of the contents of this information is prohibited. Thank you for your cooperation.

1. 2018 Budget Development: dated 11/20/17

This email was produced in the second installment starting at page 3.

2. Weekly Updates: Nov 10 – 16

This email was produced in the thirteenth installment.

3. FW: Update: Legal Services RFP Attached dated 11/20/17

This email was produced in the third installment starting at page 37.

4. Information request from 11/1 board meeting dated 11/21/17

This email was produced in the third installment starting at page 75.

5. TCD Motions To Pass 112117

Based on the description of this email, it does not appear that this email involved TCD staff.

6. FW: Letter for Public Comment for Nov21 Special Board Meeting

This email was produced in the first installment starting at page 356 and it does appear to contain the attachment.

7. FW:

This email was produced in the twelfth installment.

8. Response to question

Based on the description of this email, it does not appear that this email involved TCD staff.

9. Auditor Duties for TCD 111017

A version of this email string was produced by WSU in the sixth installment starting at page 428. This email string will confirm that the original email was not responsive to Johnson's "public records request" because it was created prior to November 20.

10. FW: Supplemental / capital budget messaging and information

This email was produced in the sixth installment starting at page 3.

11. Thurston CD board mtg 11/21/17 follow up

This email was produced in the fifth installment starting at page 330.

12. Automatic reply: Request for new PRISM account (this was addressed to Richard = me)

Based on the description of this email, it does not appear that this email involved TCD staff.

13. TCD Delegation of Authority Treasurer, Acting Exec Director

Based on the description of this email, it does not appear that this email involved TCD staff.

14. RE: Request for new PRISM account

Based on the description of this email, it does not appear that this email involved TCD staff.

15. Prism info

Based on the description of this email, it does not appear that this email involved TCD staff.

16. FW: Sample policy for Supervisor attending remotely

This email was produced in the eighth installment starting at page 408.

17. FW: WDFW hosts meeting about Scatter Creek Wildlife Area wildfire

This email was produced in the eleventh installment

18. FW: Public Comment regarding November 21 Board of Supervisors Meeting

This email was produced in the eighth installment starting at page 401.

19. Reminder for editable versions of Delegations of Authority Policy Revisions

This email was produced in the fifth installment starting at page 287.

20. Policy & Procedure

Based on the description of this email, it does not appear that this email involved TCD staff.

21. Wira13 committees same people

Based on the description of this email, it does not appear that this email involved TCD staff.

22. FW: Extended through Dec 8: Draft Shoreline Armoring Implementation Strategy available for public comment

This email was produced in the sixth installment starting at page 1.

23. Letter Sarah is sending out

Based on the description of this email, it does not appear that this email involved TCD staff.

23. Action Required: Feedback on Suggested Policy Revisions to Acting Director and Treasurer**

****the number 23 appears twice in Mankamyer's list**

This email was produced in the third installment starting at page 162.

24. TCD Auditor Statement November 29, 2017

This email was produced in the first installment starting at page 580 and it does appear to contain the attachment.

25. FW: November 2017 Billing Letter and Invoice

This email was produced in the second installment starting at page 324 and it does appear to contain the attachment.

26. Fwd: Letter to WSCC.docx

Based on the description of this email, it does not appear that this email involved TCD staff.

27. Fwd: Motion from SCC meeting please?

Based on the description of this email, it does not appear that this email involved TCD staff.

EXHIBIT 6

Washington State University
Public Records

Search Manuals Forms Index Print

Washington State University has adopted a web-based Public Records Request management system. Requests can be submitted, tracked, and fulfilled at wsu.nextrequest.com

BPPM 90.05:
Release of Public Records

Submit Request at
wsu.nextrequest.com

WAC 504-45:
WSU Public Records

Public Records -- Frequently Asked Questions

What are public records?

Public records:

- Include any writing in virtually any form, including, but not limited to, electronic media, paper, e-mail, microfilm, videotape, magnetic tape, and disks (CDs); and
- Contain information relating to the conduct of University business or the performance of any University governmental or proprietary function; and
- Are prepared, owned, used, or retained by the University.

What is a valid public records request?

- It is a request from a member of the public for University records that meet the definition of a public record.
- It is not a request from a University department or employee acting in an official University capacity. An employee acting on his or her own behalf and not on behalf of the University may submit a public records request. If this is the case, University resources must not be used to make the request.

How does one make a request?

- Submit a request online at wsu.nextrequest.com
- A request must seek an "identifiable record." This means that the requester must tell the University how to identify the records requested and, if possible, where at WSU the records can be found.
- If the request is not clear, the University may request clarification. If the requester fails to clarify, the University need not continue processing the request.
- Only existing identifiable records are public records. The law does not require the creation of new records to respond to a public records request.
- Requests are also accepted via phone, email or post.

To whom should a request be made?

The request should be provided to the Office of Public Records, Info Tech Bldg 3011, 3013 and 3015, Mail Code 1225, Pullman, WA 99164-1225; PHONE 509-335-3928, via wsu.nextrequest.com

Must all University records be provided without deletions?

No. The law provides that certain records are exempt from public disclosure. Just a few examples follow, but refer to the public records law for more exemptions at:

<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56>.

- Social security numbers.
- Lists of individuals requested for commercial purposes.
- Medical records of University personnel.
- Unsuccessful applicants' applications for public employment, including the names of applicants, resumes, and other related materials submitted by applicant.
- Test questions, scoring keys, and other examination data used to administer any examination.
- Student education records as provided under the FERPA, the Family Educational Rights and Privacy Act.
- Library information about library users.
- Credit and debit card numbers, account numbers, expiration dates, and personal financial data.

What is the University's response time?

Once the Public Records Office receives a request, it responds within five business days.

The response consists of one of the following actions:

- Release of the records.
- Denial of the request.
- Request for clarification.
- Providing an acknowledgment and a time estimate for when the University believes it might be able to provide the records. This time period is subject to change depending on the difficulties and size of the public records request.

Is a public records request confidential?

No. Once a public records request is received, it becomes a public record of the University. When records are gathered to fulfill a request, the records may contain the names of employees, students or third parties. The University may notify individuals regarding disclosure of records that contain their name or other identifiers. Requestors should be aware that such notices typically include the name of the requestor and/or a copy of the request.

Are there costs connected with a public records request?

- No, if the requester only wants to view the requested records. The Public Records Request form has a box one can check if this is the requester's choice. During inspection of the records, University personnel will be present with a person who views the records to insure protection of the records and to maintain the order of the records.
- Yes, if the requester wants a copy of requested paper records. WSU charges a 15-cents per page fee for copying or scanning paper records. WSU may also charge for the costs of mailing records to the requester.

Can an employee make a public records request for his or her personnel file?

The law provides that employees can view their own personnel records. They should contact University Human Resource Services if they wish to do so. An employee should not submit a public records request to view his or her own personnel file. See BPPM 90.07.

Can a student make a public records request for his or her own student education records?

Students have the right to view their own student education records. They should contact the University Registrar's Office if they wish to do so. A student should not submit a public records request to view his or her own personal student education records. See BPPM 90.06.

Should a University department that wants information or documents from another University department go through the Public Records Office for those records?

University departments are not the public and should not use a public records request as a method to obtain assistance from another University department. Official University business should be a direct transaction between the departments involved.

Do you still have questions about the public records process?

If so, please contact the Public Records Office between 8 a.m. and 5 p.m. on regular University workdays. You may telephone the Public Records Coordinator, Stephanie Kalasz, at 509-335-3928. We will try to help you.

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