

FILED
COURT OF APPEALS
DIVISION II

2013 OCT 28 PM 3:45

No. 44964-1-II

STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II ^{BY} _____
OF THE STATE OF WASHINGTON DEPUTY

ARTHUR WEST
APPELLANT

VS.
PORT OF OLYMPIA,
RESPONDENT

RESPONSE BRIEF OF RESPONDENT PORT OF OLYMPIA

CAROLYN A. LAKE
WSBA #13980
Attorney for Respondent
PORT OF OLYMPIA,
501 South G Street
Tacoma, Washington 98405
(253)779-4000

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

I. INTRODUCTION / SUMMARY1

II. RESPONDENT PORT’S RESTATEMENT OF ISSUE PRESENTED:2

III. PROCEDURAL FACTS 2

 A. MR. WEST SEPTEMBER 14, 2012 PRR 2

 B. PORT FIRST INCREMENTAL RELEASE – OCTOBER 24, 2012 7

 C. PORT SECOND INCREMENTAL RELEASE – JANUARY 11,
 2013 9

 D. PORT THIRD INCREMENTAL RELEASE – JANUARY 16 201315

 E. PORT ADDITIONAL REQUESTS FOR CLARIFICATION17

 F. PORT’S FOURTH INCREMENTAL RELEASE – FEBRUARY 6,
 2013 18

 G. WEST SEPTEMBER 14 2012 PRR AS CLARIFIED ON
 FEBRUARY 1, 2013 20

 H. PORT RESPONSE TO MR. WEST’S FEBRUARY 1, 2013
 CLARIFICATION TO HIS SEPTEMBER 14, 2012 WEST
 RECORDS REQUEST: 22

IV. PROCEDURAL FACTS RELATED TO THIS APPEAL 29

V. AUTHORITY & ARGUMENT: AUTHORITY RE: PUBLIC RECORD
ACT COMPLIANCE..... 32

 A. PRA - GENERALLY..... 34

 B. PORT TIMELY COMPLIED..... 35

 C. PORT’S EXEMPTIONS COMPLY WITH PRA 35

 D. THE PORT PROPERLY APPLIED PERSONAL- RELATED
 EXEMPTIONS PURSUANT TO RCW 42.56.050 AND RCW
 42.56.230(2) TO MODESTLY REDACT PERSONAL RELATED
 RECORDS.....36

E.	THE PORT'S REDACTIONS DID NOT INTERFERE WITH THE PUBLIC'S LEGITIMATE CONCERN: A CITIZENS' ABILITY TO INFORM THEMSELVES ABOUT PORT OPERATIONS	45
F.	CONTRARY TO APPELLANT'S CLAIMS, PORT REDACTIONS DO NOT HIDE THE SUBJECT OF THE INVESTIGATION.....	47
G.	NO WRONGDOING ALLEGATIONS WERE SUBSTANTIATED, THUS PRIVACY PROTECTIONS ATTACHED & REACTIONS ARE PROPER.	51
H.	PORT REDACTIONS ALSO NECESSARY TO PROTECT EMPLOYEE WHISTLEBLOWER IDENTITY	54
I.	WEST IMPROPERLY ASKS THIS COURT TO CREATE NEW LAW.....	55
J.	THE PORT PROPERLY COMPLIED WITH APPELLANT WEST'S PRA REQUEST.....	57
K.	PORT SHOULD BE AWARDED FEES & COSTS	59
VI.	CONCLUSION	61

TABLE OF AUTHORITIES

CASES

164 Wash.2d at 211, 189 P.3d 139	40
American Civil Liberties Union of Washington v. City of Seattle, 121 Wn.App. 544, 548, 89 P.3d 295 (2004).....	58
Amren v. City of Kalama, 131 Wn.2d 25, 37, 929 P.2d 389 (1997)	58
Bellevue John Does 1-11 v. Bellevue School Dist. #405, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008	passim
BIAW v. McCarthy, 152 Wn. App. 720, 218 P.2d 196 (2009)..	24, 25
Dawson v. Daly (1993) 120 Wash.2d 782, 845 P.2d 995.....	42
Kearney v. Kearney, 95 Wn. App. 405, 417, 974 P.2d 872, review denied, 138 Wn.2d 1022 (1999).....	61
Morgan v. City of Federal Way (2009) 166 Wash.2d 747, 213 P.3d 596	43
Police Guild v. Liquor Control Board, 112 Wn.2d 30, 769 P.2d 283 (1989)	59
Progressive Animal Welfare Soc'y v. Univ. of Wash. (PAWS), 125 Wn.2d 243, 250, 884 P.2d 592 (1994).....	58
Spokane Research & Defense Fund v. City of Spokane (2000) 99 Wash. App. 452, 994 P.2d 267	42
State v. Ellis, 21 Wn. App. 123, 124, 584 P.2d 428 (1978).....	36
State v. Rolax, 104 Wn.2d 129, 132, 702 P.2d 1185 (1985)	61
Tacoma Public Library v. Woessner, 90 Wn. App. 205, 218 (1998)	6
Tiger Oil Corp. v. Department of Licensing, 88 Wash.App. 925, 938, 946 P.2d 1235 (1997).....	60

STATUTES

RCW 42.17A.001	34
RCW 42.41.030 (7)	28, 37
RCW 42.56.030.....	34
RCW 42.56.050.....	passim
RCW 42.56.070(1)	43
RCW 42.56.230(2)	passim

RCW 42.56.270.....	17
RCW 42.56.310(1)(b) (2002).....	40
RCW 42.56.520.....	5, 35
RCW 42.56.540.....	6
RCW 5.60.060(2).....	1, 28

I. INTRODUCTION / SUMMARY

The Port timely and properly made available to Appellant West all requested records, with the exception that a small portion of responsive records were properly and modestly redacted based on state law exemptions. At the Trial Court below and on appeal, West takes issue with the Port's modest redactions to an employee investigative report and 5 associate emails, despite that these redactions are specifically allowed for (1) personal investigations pursuant to RCW 42.56.050 and RCW 42.56.230(2)¹, and (2) whistleblower protections via RCW 42.41.030(7). The Trial Court found the redactions wholly proper. This Appeals Court should deny Mr West's appeal. The Port should be awarded its cost pursuant to RAP 18.1, 18.9, and RCW 4.84.185.

¹ The redacted portions of these records include protected communication which if disclosed would be an invasion of privacy, and is exempt pursuant to RCW 42.56.050. That exemption defines that a person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in the PRA, is invaded or violated where disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The records are further exempt as the records include unsubstantiated or false accusations against an employee such that the employee has a right to privacy in their identities, as protected under public disclosure act, because the unsubstantiated or false allegations are matters concerning the employee's private lives and are not specific incidents of misconduct during the course of employment. RCW 42.56.230(2) and *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008.

II. RESPONDENT PORT'S RESTATEMENT OF ISSUE PRESENTED:

1. Did the Port violate the Public Records Act by making unlawfully excessive redactions under claim of exemption, thereby unlawfully withholding responsive records? **NO.**

III. PROCEDURAL FACTS²

Appellants Opening Brief provides the Court with only a fraction of the scope of the Public Records Request Mr. West submitted to the Port. Below is the full breadth and depth of his PRA request and the Port's responsive actions.

A. MR. WEST SEPTEMBER 14, 2012 PRR

Appellant Mr. West submitted a Public Record Request (PRR) to the Port which was received on **September 14, 2012**. See CP100-201, **Exhibit 1**. Mr. West's **14 September, 2012** records request consists of 4 parts, each of which will be referred to throughout this declaration as they are numbered below. The "Mr. Ferguson" to which Mr. West refers to in his PRR request is a former Port employee. CP 102. Part 4 of Mr. West's PRR asks for all records requested by Mr. Ferguson, who submitted a wholly independent public records request (PRR). Mr. Ferguson's PRR in turn consisted

² Facts are found at CP 100-210, which is the 21 February 2013 Declaration of Jeri Sevier, Port of Olympia Public Records Officer on file, and exhibits attached thereto, unless otherwise stated.

of three very extensive parts. CP 102. When Mr. Ferguson's three PRRs are folded into Mr. West's records request, Part 4, Mr. West's PRR and its complexity and numbering is greatly expanded as follows:

All records or correspondence related to Mr. Ferguson's complaints,

Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and

Any correspondence or communications with the State auditor 2011 to present.

All records requested by Mr. Ferguson and any records of or related to any consideration, review or processing of his whistle blower complaint.

West PRR 4.A. Mr. Ferguson's January 11, 2012 Request:

All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

All Port procedures which may be included and or a part of any of the policies provided in request A) above.

All Forms which may be an included part of part A) above.

A copy of each email sent by m from February 1, 2009 to November 4, 2011.

A copy of each email received by me between February 1, 2009 and November 4, 2011.

A copy of the Port organization chart

For ease of use by me please put all other policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two Folders (Sent -- Received) and place the emails contained in each Folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the

emails I sent or received.

West PRR 4. B. Mr. Ferguson's March 15, 2012 Request:

Part One:

A. Please provide me with copies of all files contained on the C: drive on my desk Computer as of November 4, 2011, the K: drive on the Port server as of November 4, 2011 and the H: drive of the accounting server as of November 4, 2011. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2011. Please segregate the emails in folders using the same title as the original Lotus Notes folder

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2011.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The initial investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where

the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

West PRR Part 4.C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10th in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1 2011 and the end date for the search is today's date, April 16.

CP 103-105.

The Port timely responded on **September 19, 2012**, which was within five working days as required by statute. RCW 42.56.520.

See CP100-201, **Exhibit 2**. The Port's **September 19, 2012**, response noted West's PRR and estimated it would take until **October 24, 2012** to identify gather and respond to his request.

See CP100-201, **Exhibit 2**.

On September 19, 2012, in the Port's initial response, the

Port advised also advised Mr. West that the Port determined that there may be responsive records to his request, for which third parties may be affected or have an interest in their disclosure. See CP 100-201, **Exhibit 2**. The purpose of the Public Records Act (PRA) is “to allow public scrutiny of government,” not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows the public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540) Pursuant to this provision of state law, the Port advised Mr. West that the Port of Olympia would be notifying the potentially affected third party about the requested records, and we provided him a copy of that third party notice. See CP100-201, **Exhibit 2 and CP100-201, Exhibit 2 A** (Port notice to affected Third Party, Mr. Ferguson). The Port also advised that it would notify Mr. West when the records are available for his review, and that the Port would release records incrementally as they are gathered, reviewed and determined to be responsive. See CP100-201, **Exhibit 2**. Thereafter the Port notified Mr. West of four incremental releases of records responsive to his request. CP107-

118.

**B. PORT FIRST INCREMENTAL RELEASE –
OCTOBER 24, 2012**

On October 24, 2012 the Port provided Mr. West with its **First Incremental Release** of records, which consisted of a DVD of the Port's response to Mr. Ferguson's January 11, 2012 PRR. (Mr. West's Request No 4, Part A, as described herein). See CP100-201, **Exhibit 3. One Privilege Log** (and its Update) was provided with this First Incremental response. See CP100-201, **Exhibit 3A**. On **October 24**, the Port also updated Mr. West by describing the large volume of records associated with Part 4 of his PRR, and requested clarification from him:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining. Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records.

After reviewing the list of Mr. Ferguson's records requests, we asked you to please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

See CP100-201, **Exhibit 3**. Alternatively, the Port gave Mr. West

the option of providing the Port with Memory Sticks to transfer the data on. The Port requested that the Memory Sticks be new and in the original packaging for protection of Port data files. CP 108. The Port advised Mr. West that if he chose this option, he would need to purchase at a minimum of nine memory sticks of 16GB or larger. Id. Last, on **October 24, 2012** the Port also advised Mr. West that because of the volume of information he requested, the Port estimated that it will respond by **December 5, 2012**. See CP100-201, **Exhibit 3**.

On December 5, 2012 the Port had not yet heard back from Mr. West in response to the Port's October 24th letter and request for confirmation. See CP100-201, **Exhibit 4**. The Port repeated its request, and set a new estimated response date of **January 5, 2013**:

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5, 2013. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive.

See CP100-201, **Exhibit 4**. **On December 5**, Mr. West responded with clarification that he was amending his PRA Request No. 4 to include only the following:

For the January 11 request, how about limiting it to sections D, E, and F?

For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?

For the April 16 request, how about the investigation materials and final report described in section C?

See CP100-201, **Exhibit 5. On December 7, 2012** the Port acknowledged Mr. West's clarification, and advised it would shortly provide an update on estimated response time. CP 100-201, **Exhibit 6. On January 8**, the Port updated its response with a new estimated response date of **January 16, 2013**. CP 100-201, **Exhibit 7**.

**C. PORT SECOND INCREMENTAL RELEASE –
January 11, 2013**

On **January 11, 2013** the Port made its **Second Incremental Release** as described below. No redactions or exemptions were claimed and no Privilege Logs were included with this response. CP100-201, **Exhibit 8**. Also on **January 11, 2013**, the Port also updated Mr. West on the status of his records request which consists of the four Parts. CP109. The four Parts of Mr. West's PRR ***as clarified by him on December 5th*** are described below. Mr. West's original Request No. 4 is re-stated entirely, the highlighted portion reflects his **clarified** request. *Id.*

**West PRR Part 1. All records or correspondence
related to Mr. Ferguson's complaints**

On **January 11, 2013**, the Port requested further clarification to the extent that Mr. West's Request No. 1 was redundant with his Request No. 4, described herein. CP 100-201, **Exhibit 8**. The Port asked Mr. West to please advise what additional records he requests under this category, or if this Request No. 1 is modified consistent with his December 5 clarification. See CP 100-201, **Exhibit 8**. On **January 11, 2013** the Port's Legal Counsel also informed Mr. West's Legal Counsel of this request for clarification as to West PRR Part 1. See CP 100-201, **Exhibit 9**.

West PRR Part 2. Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting

On **January 11, 2013**, the Port advised Mr. West that it is aware of no records which related to: "*Any evidence, records or correspondence concerning*" any actual "*impropriety, fraud or gross negligence in port contracting*". For purposes of responding to this portion of Mr. West's records request, the Port considered his request to include records related to claims of "*impropriety, fraud or gross negligence in port contracting*". CP 100-201, **Exhibit 8**.

On **January 11, 2013**, the Port advised Mr. West that some records responsive to this request are contained in the Port's

response to Mr. West's Request 4.A (Emails to and from Kevin Ferguson), provided to him **on October 24, 2012**. See CP 100-201, **Exhibit 8**.

On **January 11, 2013**, the Port advised Mr. West that additional records responsive to this request are located in the records of the Port's response to his Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with the Port's **January 11, 2013** response. See CP 100-201, **Exhibit 8**. The Port's response to this West PRR Part 2 portion of the request was therefore complete as of January 11, 2013.

West PRR Part 3. Any correspondence or communications with the State auditor 2011 to present.

On **January 11, 2013** the Port advised Mr. West that some records responsive to this request were contained in the Port's response to Mr. West's Request 4.A (Emails to and from Kevin Ferguson), provided to him **on October 24, 2012**. CP 110. Additional records responsive to this request are located in the records of the Port's response to his Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with his **January 11, 2013** response. See CP 100-201, **Exhibit 8**. On **January 11, 2013** the Port advised Mr. West that the Port is continuing to gather and identify whether any additional responsive

records exists, and that the Port expected to complete the remaining portion of this request by **January 16, 2013**. See CP 100-201, **Exhibit 8**.

West PRR Part 4. All records requested by Mr. Ferguson and any records of or related to any consideration, review or processing of his whistleblower complaint.

West 4.A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All Forms which may be an included part of part A) above.

D) A copy of each email sent by m from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all other policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two Folders (Sent -- Received) and place the emails contained in each Folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

On December 5, Mr. West amended this Part 4. A request to include only parts D, E & F, the sections **bolded** above. See CP 100-201, **Exhibit 5**. **On October 24, 2012**, the Port had already provided Mr. West with all records responsive to this Request No. 4.A. See CP 100-201, **Exhibit 3**. The Port's response to this Section 4.A portion of Mr. West's PRR request was complete on

October 24, 2012. See CP 100-201, **Exhibit 3.**

West PRR 4. B. Mr. Ferguson's March 15, 2012 Request:

Part One:

A. Please provide me with copies of all files contained on the C: drive on my desk Computer as of November 4, 2011, the K: drive on the Port server as of November 4, 2011 and the H: drive of the accounting server as of November 4, 2011. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2011.

Please segregate the emails in folders using the same title as the original Lotus Notes folder

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2011.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The initial investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the

submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

On December 5, 2012 Mr. West clarified and limited his above Part 4.B request to “section 2, parts A, B, and C”, as bold highlighted above. See CP 100-201, **Exhibit 5**. **On January 11, 2013**, the Port enclosed a CD containing the records responsive to this request. See CP 100-201, **Exhibit 8**. The cost of the CD was \$2.50. The Port asked Mr. West to make arrangements pay for that CD at any time during business hours. See CP 100-201, **Exhibit 8**. The Port’s response to this Part 4.B portion of the West PRR request was complete on January 11, 2013. See CP 100-201, **Exhibit 8**.

West PRR Part 4.C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

*C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include **the investigation recommended by Carolyn Lake on or near October 10th** in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed*

*communications (emails, instant messages and text's messages) should be included. This expansion also includes **any report investigative materials as well as any written or discussed final report made for this second investigation.** Start date should be October 1 2011 and the end date for the search is today's date, April 16.*

On December 5, 2012 Mr. West clarified and limited his above Part 4.C PRR request to “the investigation materials and final report described in Section C”, as bold highlighted above. See CP 100-201, **Exhibit 5.**

On **January 11, 2013**, The Port made available to Mr. West a CD containing final report responsive to this request. The cost of the CD was \$2.50. See CP 100-201, **Exhibit 8.** On **January 11, 2013**, the Port also advised Mr. West that the Port was continuing to review the investigative materials to determine whether exemptions apply, and that if exemptions are determined, the Port would supply Mr. West redacted records with a Privilege Log. The Port advised it expected to complete the remaining portion of this request by **January 16, 2013.** See CP 100-201, **Exhibit 8.**

**D. PORT THIRD INCREMENTAL RELEASE –
JANUARY 16 2013**

On January 16, The Port provided Mr. West with a status update on his request and a **Third Incremental Release** in which the Port made available additional records responsive to his **PRR Section No. 3:**

3. Any correspondence or communications with the State auditor 2011 to present.

See CP 100-201, **Exhibit 10** and CP 100-201, **Exhibit 11**. The Port's **January 16, 2013 Third Incremental Release** consisted of a CD containing the records responsive to this West PRR Part 3 request. The cost of the CD was \$2.50. See CP 100-201, **Exhibit 11**. Five of the approximately 381 responsive records and attachments have one word redacted. The Port also enclosed an accompanying privilege log. See CP 100-201, **Exhibit 12**. (The second Privilege Log associated with Mr. West's PRR request.)

On **January 16**, the Port also explained to Mr. West that some records responsive to this request were contained in the Port's response to his Request 4.A (Emails to and from Kevin Ferguson), provided to Mr. West **on October 24, 2012**. (First Incremental Release). See CP 100-201, **Exhibit 11**.

On **January 16**, the Port also explained to Mr. West that additional records responsive to this Part 3 request are located in the records of the Port's response to his Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with the Port's **January 11, 2013** response. (Second Incremental Release). See CP 100-201, **Exhibit 11**. Accordingly, the Port's response to Mr. West's PRR Part 3 was complete on January 16,

2013. See **Exhibit 11**.

E. PORT ADDITIONAL REQUESTS FOR CLARIFICATION

Also on **January 16, 2013**, the Port again requested that Mr. West clarify to the extent that Mr. West's Request Part 1 is redundant with his Request Part 4, described above, and for which the Port's response is complete. See CP 100-201, **Exhibit 11**.

On **January 16, 2013**, Port Legal Counsel also requested Mr. West's Legal Counsel to please advise what additional records her client requests under Part 1, or if his Part 1 request is modified consistent with his December 5 clarification. See CP 100-201.

Exhibit 13.A.

On **January 16, 2013**, Port Legal Counsel also advised Mr. West's Legal Counsel of the Port's plans to redact one word related to pass word protection for a web site used by the Port Comptroller and State Auditor to certify Port financial records. Port counsel sought consensus with Mr. West's Legal Counsel on the application of the Public Records Act exemption contained in RCW 42.56.270 for Financial, Commercial and Proprietary information, in this case consisting of the password. See CP 100-201, **Exhibit 13.B**. Mr. West's Counsel did not reply.

On **January 29, 2013**, Port Legal Counsel again sought

dialogue and consensus with Mr. West's Legal Counsel of the Port's plans to redact one word related to pass word protection for the Port- Auditor web site and password. See CP.100-201, **Exhibit 13.C**. Mr. West's Counsel again did not reply. CP 116.

F. PORT'S FOURTH INCREMENTAL RELEASE – February 6, 2013

On **February 6, 2013**, the Port issued its final and **Fourth Incremental release** to Mr. West. See CP 100-201, CP 100-201, **Exhibit 14**. The records of this Fourth Port release relates to the below remaining categories of September 14, 2012 PRR records request as clarified by Mr. West on December 5th, in reverse order.

West PRR Part 4.C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

*C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include **the investigation recommended by Carolyn Lake on or near October 10th** in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes **any report investigative materials as well as any written or discussed final report made for this second investigation**. Start date should be October 1 2011 and the end date for the search is today's date, April 16.*

On December 5, 2012 Mr. West clarified and limited his

above request to “the investigation materials and final report described in Section C”, as bold highlighted above. See CP 100-201, **Exhibit 5. On January 11, 2013**, as part of its **Second Incremental Release**, the Port made available to Mr. West a CD containing final report, responsive to this request. See CP 100-201, **Exhibit 8**. The Port also advised it is continuing to review the investigative materials to determine whether exemptions apply, and had initially expected to complete the remaining portion of this request by **January 16, 2013**; however the Port advised Mr. West on **January 16th** that it required additional time to complete this review. See CP 100-201, **Exhibit 11. On February 6, 2013**, the Port made available to Mr. West its **Fourth Incremental Release** which contains the additional records responsive to this request. See CP 100-201, **Exhibit 14**. Accordingly, the Port completed its response to Mr. West’s PRR Part 4.C as clarified on December 5th on February 6, 2013. See CP 100-201, **Exhibit 14**.

West PRR Part 1. All records or correspondence related to Mr. Ferguson's complaints

On **January 11, 2013** the Port requested further clarification from Mr. West to the extent that his Request No. 1 is redundant with his Request No. 4, described above. See CP 100-201, **Exhibit 8**. The Port had not heard back from Mr. West by **January 16**,

2013, so the Port again requested him to advise what additional records he requested under this Part 1, or if this Request Part No. 1 is modified consistent with his December 5 clarification. See CP 100-201, **Exhibit 11**. The Port also sent this request for clarification to Mr. West's attorney on **January 16, 2013**, See CP 100-201, **Exhibit 9** and **January 29, 2013**. See CP 100-201, **Exhibit 13A**.

On **February 1, 2013** Mr. West's attorney wrote back to clarify his PRR Part 1 request, as described below. See CP 100-201, **Exhibit 15**.

**G. WEST SEPTEMBER 14 2012 PRR AS
CLARIFIED ON February 1, 2013**

On February 1, 2013, Mr. West's attorney Ms. Bird advised the Port as follows:

So far as Mr. West's Part 1 of his September 14 request is redundant of Part 4, I want to clarify that Mr. West does still wish the following categories of records: For Ferguson's March 15 Request, Arthur would like Part 2 (D) and (E), as expanded by April 16 Part (C), and also April 16 Part (A), as expanded by April 16 Part (C). Let me know if you need clarification.

And so far as Mr. West's Part 1 of his September 14 request is NOT redundant of Part 4 of the same September 14 request, he would still like those non-redundant records (for example, letters). Again, let me know if you need clarification.

See CP 100-201, **Exhibit 15**. As part of the Port's **February 6th**

Fourth Incremental Response, for clarity and confirmation of the Port's understanding, the Port repeated Ms Bird's above clarification by highlighting the new portions of the PRR which formerly had been clarified on **December 5th** by Mr. West to be ***excluded*** from his PRR, and which on **February 1, 2013** were ***added back*** as part of the requested records by Mr. West's attorney.

Mr. West's PRR Part 4, A-C

A. Ferguson's January 11 request:

- A) Port policies
- B) Port procedures
- C) Port forms

B. Ferguson's March 15 request:

Part 1:

- A) Copies of files on C: drive, K: drive, and H: drive
- B) Emails in any folder other than inbox/sent
- C) Transcript of a tape recorded meeting between Ferguson/Galligan on 8/24/11

Part 2.

- D) Emails regarding whistle blowing and investigation
- E) IMs regarding whistle blowing and investigation
- F) Phone log regarding whistle blowing and investigation

C. Ferguson's April 16 request:

- A) All text messages regarding whistle blowing and investigation
- B) Expansion of date range for files requested on March 15
- C) Expansion of subjection matter for March 15 Part 2 D, E, and F, and April 16 Part A, to include the second investigation that you recommended on or around 10/10

See CP 100-201, **Exhibit 14**. On **February 6**, the Port requested Mr. West to please contact us as soon as possible if this does not accurately describe his February 1st updated request. See CP 100-201, **Exhibit 14**. The Port was not subsequently contacted by Mr. West with any clarification. On **February 6, 2013**, as part of its **Fourth Incremental Release**, the Port provided the following response to Mr. West's February 1st Second Clarification to his September 14 PRR. See CP 100-201, **Exhibit 14**.

H. PORT RESPONSE TO MR. WEST'S FEBRUARY 1, 2013 CLARIFICATION TO HIS SEPTEMBER 14, 2012 WEST RECORDS REQUEST:

West PRR Part 4.B.D
KF March 15 request:
(None from Part 1)
Part 2:

D. "All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip ..."

On **February 6** the Port advised Mr. West that it has determined that records responsive to this clarified request are included within those disclosed to him on **October 24, 2012** as part of the Port's response to your request for records responsive to Mr. Ferguson's **January 11, 2011** PRR. See CP 100-201, **Exhibit 14**. Accordingly, the Port had completed its

response to this February 1, 2013 clarified West PRR Part 4.B.D on January 11, 2013. See CP 100-201, **Exhibit 8**.

Mr. West's PRR Part 4.B.E. *“All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip”*

On **February 6, 2013** the Port advised Mr. West that any use of Instant Messages is for non-substantive communications only, pursuant to both state records retention policy and the Port's Email Retention Policy 905, which states in relevant part:

Retention and disposition requirements for e-mail messages are always based on the content of the correspondence and the purpose of the message, Port of Olympia Policy 905:

E-MAIL RETENTION.

The retention requirements for e-mail messages and attachments are the same as paper documents with identical content. The messages must be managed individually according to the designated retention period for the content.

E-mail messages that have no administrative, legal, or fiscal significance are not subject to retention and may be deleted as soon as the message has served its reference purpose. For examples, see E-mail Messages not typically subject to Retention on page 3.

Instant Messaging (IM) is to be used for non-essential business ONLY. Texting on a cell phone is to be used for non-essential business ONLY. Examples of non-essential business include: confirming an appointment, notification of a visitor, confirming availability, invitation to lunch, etc.

In addition, Port Policy Electronic Communications and Technology 704 states:

Instant Messaging (IM) and texting is to be used for non-essential business ONLY. See examples in Policy 905.

See CP 100-201, **Exhibit 14** and See CP 100-201, **Exhibit 16**, Port Policy 905. On **February 6, 2013** the Port advised Mr. West that thus, Instant Messages are not saved as they qualify as non-essential records which are subject to deletion immediately. See CP 100-201, **Exhibit 14**. Properly deleted messages are not required to be disclosed, *BIAW v. McCarthy*, 152 Wn. App. 720, 218 P2d 196 (2009). Accordingly, the Port completed its response to this February 1 clarified West PRR Part 4.B.E on February 6, 2013. See CP 100-201, **Exhibit 14**.

Mr. West's PRR Part 4.C.A
KF April 16, 2012 PRR Request:

“All text messages sent by any individual to any other individual regarding the whistleblower submission³, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip”.

On **February 6, 2013** the Port advised Mr. West that any use of Text Messages is for non-substantive communications only, pursuant to both state records retention and the Port's Email Retention Policy 905, which states, in relevant part:

Retention and disposition requirements for e-mail

³ This PRR relates to a 2011 whistleblower matter, as distinguished from the action subject of the December 2010 Burton Investigative Report.

messages are always based on the content of the correspondence and the purpose of the message, Port of Olympia Policy 905:

E-MAIL RETENTION.

The retention requirements for e-mail messages and attachments are the same as paper documents with identical content. The messages must be managed individually according to the designated retention period for the content.

Text messages that have no administrative, legal, or fiscal significance are not subject to retention and may be deleted as soon as the message has served its reference purpose. For examples, see E-mail Messages not typically subject to Retention on page 3.

Instant Messaging (IM) is to be used for non-essential business ONLY. Texting on a cell phone is to be used for non-essential business ONLY. Examples of non-essential business include: confirming an appointment, notification of a visitor, confirming availability, invitation to lunch, etc.

In addition, Port Policy Electronic Communications and Technology 704 states:

Instant Messaging (IM) and texting is to be used for non-essential business ONLY. See examples in Policy 905.

See CP 100-201, **Exhibit 14**, and see CP 100-201, **Exhibit 16**, Port Policy 905 and CP 100-201, **Exhibit 17**, Port Policy 704. Thus, Text Messages are not saved as they qualify as non-essential records which are subject to deletion immediately. Properly deleted messages are not required to be disclosed, *BIAW v. McCarthy*, 152 Wn. App. 720, 218 P2d 196 (2009). Accordingly, the Port

completed its response to this February 1, 2013 clarified West PRR Part 4.C.A on February 6, 2013. See CP 100-201, **Exhibit 14**.

Mr. West's PRR Part 4.C.C:

C. Expansion of subjection matter for March 15 Part 2 D, E, and F, and April 16 Part A, to include the second investigation that Carolyn Lake recommended on or around 10/10

On **February 6** the Port advised Mr. West that the Port has determined that records responsive to this request are included within those previously disclosed to him:

On **October 24, 2012** as part of the Port's **First Incremental Release** containing records responsive to Mr. West's request for records responsive to Mr. Ferguson's January 11, 2012 PRR, and

On **January 11, 2013** as part of the Port's **Second Incremental Release** containing records responsive to his request for records responsive to Mr. Ferguson's March 15, 2012 PRR.

See CP 100-201, **Exhibit 14**. In addition, the Port previously advised Mr. West on **January 16, 2013** that it was still reviewing potentially responsive records consisting of investigative materials, and that these investigative records are also responsive to his PRR as clarified on February 1, 2013. See CP 100-201, **Exhibit 11**. On **February 6, 2013**, the Port advised Mr. West that it had completed that review and makes available to him a **Fourth Incremental Release** which contains the records responsive to his **February 1, 2013** clarified PRR Part 4.C.C request. See CP

100-201, **Exhibit 14**. The Port made no claim of exemptions or redactions.

The Port made available to Mr. West a CD containing the responsive records. The cost of the CD was \$2.50. Accordingly, the Port completed its response to this February 1 clarified West PRR Part 4.C.C on February 6, 2013. See CP 100-201, **Exhibit 14**. On **February 6, 2013**, Mr. West was also advised that:

The Port's response to his September 14 PRR as clarified on December 5, 2012 and clarified again on February 1, 2013 is now complete and closed.

The Port's disclosure of any records which contain communications with its Legal Counsel or attorneys at the Goodstein Law Group PLLC is not to be construed in any way as a waiver of the Port's attorney-client privilege, in whole or in part, and

The Port's release of records herein which are responsive to the request for "Whistleblower related" materials is provided pursuant to signed waiver(s) submitted to the Port.

See CP 100-201, **Exhibit 14**.

The Port responded fully, timely and properly to Mr. West's expansive September 14, 2012 PRR, as clarified twice on December 5, 2012 and again on February 1, 2013. The Port made Four Incremental Releases, and provided extensive amounts of records. The Port provided Two Privilege Logs for this entire request, with limited redacted records. See CP 100-201, **Exhibit 3A** and See CP 100-201, **Exhibit 12**. On **October 24, 2012, Port's First**

Incremental Release – The Port’s Privilege Log lists redactions for **seventeen** records related to (1) personal investigations pursuant to RCW 42.56.050 and RCW 42.56.230(2)⁴, and (2) Attorney Client Privileged litigation, Attorney Client Work Product, see *Hangartener v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2). See CP 100-201, **Exhibit 3A**. This is the same log provide to Mr. Ferguson in response to his January 11, 2012 PRR (West PRR Part 4.A).

Certain records requested and disclosed as part of the **Port’s First Incremental Release** consist of a Port employee Investigative Report by Attorney Chris Burton dated December 2010, consisting of 19 pages plus Exhibits A-O, and five emails

⁴ The redacted portions of these records include protected communication which if disclosed would be an invasion of privacy, and is exempt pursuant to RCW 42.56.050. That exemption defines that a person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in the PRA, is invaded or violated where disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

The records are further exempt as the records include unsubstantiated or false accusations against an employee such that the employee has a right to privacy in their identities, as protected under public disclosure act, because the unsubstantiated or false allegations are matters concerning the employee’s private lives and are not specific incidents of misconduct during the course of employment. RCW 42.56.230(2) and *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008.

associated with the Investigative Report. See CP 100-201, **Exhibit 3A**. In the Report, the Port hired outside counsel to investigate Port employee accused of misconduct by another (whistleblower) employee.⁵ The Investigation exonerated the Employee. These redacted portions of the documents are exempt pursuant to the RCW 42.56.050, RCW 42.56.230(2), and RCW 42.41.030 (7), “The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing”.

IV. PROCEDURAL FACTS RELATED TO THIS APPEAL

West’s Original Complaint. In West’s Original August 2, 2012 Complaint, he took issue with the Port’s response to certain portions of his July 13, 2012 PRA, as well as attempting to reach back to a 2007 PRA request, which has been the subject of prior litigation brought by West against the Port, Thurston County Cause No 07-2-01198-3, and which is now dismissed. See CP 5-10 West Original Complaint Section III, on file.⁶

⁵ At the Port of Olympia, the local Whistleblower process is contained in Port “Policy 107” and Employee Disclosure Act Report. CP126. That Whistleblower “Policy 107” outlines a procedure for processing whistleblower reports.

⁶West’s Original Complaint claimed the following:

III ALLEGATIONS

3.1 On or about **April of 2007**, plaintiff West submitted a request to the Port of Olympia for disclosure of records about the Weyerhaeuser lease as well as other 16 matters.

West's Amended Complaint. In West's December 28, 2012 First Amended Complaint, Plaintiff West changes the focus of his litigation: he **omits** any reference to the 2007 PRA, and finds fault with **other** portions of his July 2012 PRA request, and **adds** a whole new allegation pertaining to a September 2012 PRA. See CP 322-340, West First Amended Complaint Section III, on file, emphasis provided:

8. On **September 13, 2012, Mr. West submitted a follow-up public records request**, of which the Port acknowledges receipt on September 14, 2012. This follow-up public records request sought the following four categories of records:

3.2 Despite clear, palpable, and manifest violations of the PRA by the Port, and the identification and filing with the court of records for in camera review, the Port, by means of the misconduct and vindictive, bellicose, and retaliatory conduct of counsel Lake, has managed to obstruct and delay the due course of justice for over 5 years.

3.3 Again in **July of 2012**, West submitted a request for records that included the records identified in the privilege log provided in Thurston County Cause No 07-2-01198-3,

3.7 The Port of Olympia failed to respond to **plaintiffs 2012 request** as required by law, by failing to disclose the records in a reasonably timely manner, or assert particular identifiable exemptions in a reasonably specific privilege log, **in regard to records that the Port has had over 5 years to collect, copy and review.**

3.8 by illegally failing to disclose records for over five years, and by failing to respond to the **plaintiffs 2012 request**, the Port committed a series of interrelated actions tolling the statute of limitations back to the original records request in 2007, violated RCW 42.56, and contributed to further unreasonable delays and expenses in the disclosure of public records. This pattern of delay, denial, and retaliation continues to the present day and the requested relief is necessary to compel compliance with the Public Records Act

- a. "All records or correspondence related to Mr. Ferguson's complaints;"
- b. "Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting;"
- c. "Any correspondence or communications with the State auditor 2011 to present;" and d. "Any records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint."

9. The Port responded to this follow-up request and produced records and an exemption log. The Port's response violated the Public Records Act by making unlawfully excessive redactions under claim of exemption, thereby unlawfully withholding responsive records.

Id., CP 322-340.

Court Status Conference Clarification

At the Court's January 4, 2012 PRA Status Conference, the parties reached clarity on the Issues currently claimed by Plaintiff West. CP 516-519.

1. **Issues in Dispute:** Parties clarified and the Court finds that the sole issues in dispute in this case are the allegations contained in Plaintiff's Amended Complaint, **Paragraphs 8 and 9.**

See CP510-519, *Order Following Status Conference & Setting Briefing & Hearing Dates*, dated January 15, 2013. Emphasis provided.

Plaintiff's *Amended Complaint* Paragraph 8 is a factual assertion with which the Port does **not** disagree: Yes, "On September 13, 2012, Mr. West submitted a follow-up public records

request, of which the Port acknowledges receipt on September 14, 2012.” See CP 100, *Declaration of Jeri Sevier*, paragraph 1 and 2. The Port also does not disagree with Appellant’s description of Appellant West’s September 13, 2012 PRR, as described in Plaintiff’s *Amended Complaint* Paragraph 8, *Id*, and as later amended and clarified by Appellant on December 5, 2012 (CP 100-201, **Exhibit 5**), and again clarified by his Legal Counsel on February 1, 2013. (CP 100-201, **Exhibit 12**).

Trial Court Ruling

At the Trial Court Show Cause hearing and again here on appeal, West’s sole issue is his Plaintiff’s Amended Complaint Paragraph 9 allegation, restated as follows:

Did the Port's response violate the Public Records Act by making unlawfully excessive redactions under claim of exemption, thereby unlawfully withholding responsive records?

The Trial Court found the answer was clearly: **No**. This Appeals Court should similarly find, and deny this Appeal.

V. AUTHORITY & ARGUMENT: AUTHORITY RE: PUBLIC RECORD ACT COMPLIANCE

At the Trial Court level and on appeal, Appellant West does **not** contest the Port’s application of the attorney client- exemption to the requested records. CP239-253. West also did **not** at the Trial

Court level and does not on appeal object to that category of exemption based on the Whistleblower Act's mandate to maintain the confidentiality of a reporting employee per RCW 42.41.030 (7) in his briefing, so argument is waived. West also **conceded** the Port's appropriate redaction of computer passwords under RCW 43.56.270. See CP240, *West Show Cause Memorandum* at 2: 2-4. Appellant West does however still complain that the Port's limited redactions to records under the personal exemptions of RCW 42.56.050 and RCW 42.56.230(2) are somehow too many. On this sole point of contention, the Trial Court found, and this Appeals Court should find the Port's response did not violate the Public Records Act by making unlawfully excessive personal related redactions. Here, all of the Port's limited redactions fall squarely within the four walls of that allowed by RCW 42.56.050 and RCW 42.56.230(2), and interpreting case law: Redactions are limited to that necessary to avoid identification of an employee, subject of an investigation where no wrong doing was conclusively established, all employee allegations are clearly identified, the Port's redactions do not interfere with the legitimate public purpose of showing how the Port carried out its investigation, and the redactions maintain the confidentiality of the reporting "whistleblower" employee.

Instead, Appellant West would have this Court either ignore established precedent or create new law, in direct contradiction to recent Supreme Court rulings which are directly on point. The Trial Court correctly found that the Port properly redacted limited records pursuant to lawful exemptions as authorized by statute, and the Port's response did not violate the Public Records Act by making unlawfully excessive redactions under claim of exemption, and dismissed Plaintiff West's Public Records Act Complaint. This Appeals Court should similarly deny this appeal.

A. PRA - GENERALLY

Under Washington's Public Records Act, Chapter 42.56 RCW, ("PRA"), all state and local agencies are to disclose any requested public record, unless the record falls within a specific exemption. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wash.2d 243, 250, 884 P.2d 592 (1994). The PRA enables citizens to retain their sovereignty over their government and to demand full access to information relating to their government's activities. See RCW 42.17A.001, and RCW 42.56.030 (Formerly RCW 42.17.010, .251.). The Act's provisions are to be liberally construed to promote the public policy, and exemptions from it must be strictly construed. *Id.* When an agency declines to disclose information, it bears the

burden of proving that its refusal is valid based on one of the exemptions included in the Act. *Id.* citing *King County v. Sheehan*, 114 Wn.App. 325, 337, 57 P.3d 307 (2002).

B. PORT TIMELY COMPLIED

Pursuant to RCW 42.56.520, an agency is **not** required to respond *instantaneously* on the very date of the request. An agency properly may notify the requestor that additional time is needed to gather the records and to notify third parties, and to consider possible exemptions.⁷ Here the Port timely responded with a series of Four Incremental Releases to Appellant West's massive request, (**Exhibits 3, 6, 11 and 14**) and thereafter responded within a reasonable timeline made known in advance to Appellant West. The timelines are reasonable given the very expansive scope of Appellant West's request.

C. PORT'S EXEMPTIONS COMPLY WITH PRA

After carefully reviewing its records, the Port maintains, the trial court agreed, that those limited redacted portions of the responsive records are exempt from disclosure under one of the exemptions for

⁷ See RCW 42.56.520: "**Additional time required to respond** to a request may be based upon the need to clarify the intent of the request, **to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt** and that a denial should be made as to all or part of the request."

personal investigations pursuant to RCW 42.56.050 and RCW 42.56.230(2), and RCW 42.56.230(2), including the Whistleblower Act's mandate to maintain the confidentiality of a reporting employee. RCW 42.41.030 (7).

Due to the interplay and sometimes overlapping application, in some cases the Port has determined records exempt or redacted under one or more of the exemptions authorized in the Public Disclosure Act. If the Court finds that any one of the exemptions applies, the Port's determination should be ruled proper. The Court may affirm a finding of exemption on any ground supported by the record. *State v. Ellis*, 21 Wn. App. 123, 124, 584 P.2d 428 (1978). Below we describe the applicability of the particular exemptions relied on by the Port, as well as the authority for denial of any penalties or fees associated with the record disclosure.

D. THE PORT PROPERLY APPLIED PERSONAL-RELATED EXEMPTIONS PURSUANT TO RCW 42.56.050 AND RCW 42.56.230(2)⁸ TO MODESTLY

⁸ The redacted portions of these records include protected communication which if disclosed would be an invasion of privacy, and is exempt pursuant to RCW 42.56.050. That exemption defines that a person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in the PRA, is invaded or violated where disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

The records are further exempt as the records include unsubstantiated or false accusations against an employee such that the employee has a right to privacy in their identities, as protected under public disclosure act, because the unsubstantiated or false allegations are matters concerning the employee's

REDACT PERSONAL RELATED RECORDS

West confines his objections on appeal to redactions made to a Port employee Investigative Report by Attorney Chris Burton dated December 2010, consisting of 19 pages plus Exhibits A-O, and five emails associated with the Investigative Report. See CP 100-201 **Exhibit 3A, CP 324** and *West Opening Brief* at page 4. In the Report, the Port hired outside counsel to investigate a Port employee accused of misconduct by another (whistleblower) employee.⁹ The Investigation exonerated the Employee. These redacted portions of the documents are exempt pursuant to the RCW 42.56.050, 42.56.230(2), and RCW 42.41.030 (7), “The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing”.

The redacted portions of this Investigative Report and associated materials include information which if disclosed would be an invasion of privacy, and are exempt pursuant to RCW 42.56.050. That exemption defines that a person's "right to privacy," "right of

private lives and are not specific incidents of misconduct during the course of employment. RCW 42.56.230(2) and *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008.

⁹ At the Port of Olympia, the local Whistleblower process is contained in Port “Policy 107” and Employee Disclosure Act Report. That Whistleblower “Policy 107” outlines a procedure for processing whistleblower reports.

privacy," "privacy," or "personal privacy," as these terms are used in the PRA, is invaded or violated where disclosure of information about the person: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

The records are further exempt as the records include unsubstantiated or false accusations against an employee such that the employee has a right to privacy in their identities, as protected under public disclosure act, because the unsubstantiated or false allegations are matters concerning the employee's private lives and are not specific incidents of misconduct during the course of employment. RCW 42.56.230(2) and *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008.

The PRA exempts from production "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." Former RCW 42.56.230(2).

Here, to determine whether the Investigative Report falls within this exemption, this Court must decide (a) whether the reports constitute personal information, (b) whether the employee subject of the Investigation and Report has a right to privacy in their

identity, and (c) whether the production of the employee's identity in connection with alleged and unsubstantiated misconduct would violate that right to privacy. *Bellevue John Does 1–11 v. Bellevue Sch. Dist. No. 405*, 164 Wash.2d 199, 210, 189 P.3d 139 (2008).

Because all criteria is met, as explained below, the Trial Court found and this Appeals Court should find the Port's limited personal privacy redactions were proper.

1. Personal information. Here, the Port properly determined that the redacted portions of the Report constitute personal information under former RCW 42.56.230(2). Although not defined in the PRA, the Washington Courts have defined "personal information" as "information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general." *Bellevue John Does*, 164 Wash.2d at 211, 189 P.3d 139.¹⁰

In *Bellevue John Does*, the Washington Supreme Court held that a teacher's identity in connection with an unsubstantiated allegation of sexual misconduct is "personal information" under

¹⁰ In *Bellevue John Does*, the Courts defined "personal information" in former RCW 42.56.310(1)(b) (2002). 164 Wash.2d at 211, 189 P.3d 139. That provision was amended and recodified as former RCW 42.56.230(2) and provides identical language for the personal information exemption. Former RCW 42.17.310(1)(b) (2002).

former RCW 42.56.230(2). 164 Wash.2d at 211–12, 189 P.3d 139.

Similar to *Bellevue John Does*, an employee's identity in connection with an allegation of employee misconduct (here, theft) is also personal information under former RCW 42.56.230(2). There is no reasonable basis to distinguish this case from *Bellevue John Does* on this issue. This Appeals Court should find the Port properly determined that the Investigative Report and associated emails contain personal information.

2. Right to Privacy. Personal information is exempt from production only when that production violates an employee's right to privacy. Former RCW 42.56.230(2). RCW 42.56.050 sets forth the test for determining when the right to privacy is *violated*,¹¹ but does not explicitly identify when the right to privacy *exists*.

Bellevue John Does, 164 Wash.2d at 212, 189 P.3d 139.

In *Bellevue John Does*, the Washington Supreme Court held that teachers have a right to privacy in their identities in connection with an unsubstantiated allegation of sexual

¹¹ “A person's ‘right to privacy,’ ‘right of privacy,’ ‘privacy,’ or ‘personal privacy,’ as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.” RCW 42.56.050.

misconduct, because the unsubstantiated allegations are matters concerning the teachers' private lives. *Id.* at 215–16, 189 P.3d 139.

As applied to the Investigative Report and associated materials subject of this PRR, the investigation resulted in the allegations being found “unsubstantiated,” and the employee was exonerated. Under the precedent established in *Bellevue John Does*, the employee has a right to privacy in their identity in connection with the unsubstantiated allegation of employee misconduct.

Similarly, evaluations of public employees ordinarily are not subject to public disclosure, since in the normal course, both the supervisor and the employee reasonably expect those evaluations to remain confidential, and the disclosure of that information would be offensive to a reasonable person and of small public concern. *Spokane Research & Defense Fund v. City of Spokane* (2000) 99 Wash. App. 452, 994 P.2d 267. And see *Dawson v. Daly* (1993) 120 Wash.2d 782, 845 P.2d 995, (“Employee evaluations contain “personal information” within meaning of public disclosure act employee privacy exemption”).

3. No Legitimate public concern. Generally, the public as a rule has no legitimate interest in finding out the names of people who have been falsely accused, for purposes of applying the right-

to-privacy exemption under public disclosure act. *Bellevue John Does 1-11 v. Bellevue School Dist. #405* (2008) 164 Wash.2d 199, 189 P.3d 139.

In *Bellevue John Does*, The Washington Supreme Court held that the public has no legitimate interest in finding out the identity of someone accused of an *unsubstantiated* allegation of sexual misconduct. *Id.* at 221, 189 P.3d 139. The same is true here as well. The Port's redactions to the Investigative Report and associated emails and exhibits were limited to those needed to protect the identity of the exonerated employee.

Under personal information exemption of Public Records Act (PRA), unsubstantiated allegations against a public employee or official are exempt from disclosure. *Morgan v. City of Federal Way* (2009) 166 Wash.2d 747, 213 P.3d 596.

4. Port Properly Applied Personal Privacy Exemption to Its limited Redactions. Here, the Port properly applied the test and properly found the redacted information in the Investigative Report falls within the personal exemption, because:

(a) The Investigative Report did constitute personal information,

(b) The employee subject of the Investigation and Report has a right to privacy in their identity, and

(c) The production of the employee's identity in connection with alleged and unsubstantiated misconduct would violate that right to privacy.

Once the personal privacy exemptions is deemed to apply, the agency shall redact identifying details, to the extent necessary to prevent an unreasonable invasion of personal privacy interests protected by the PRA, and produce the remainder of the record. RCW 42.56.070(1).

Here, the Port of Olympia has but 41 full time employees (FTE(s)), divided into seven departments: Finance, Engineering, Marine Terminal, Environmental, Harbor/Swantown Marina, Airport, and Human Resources & Administration. Given the small number of employees, redactions were made where departmental references would identify either the reporting employee or the employee subject of the unsubstantiated investigation, pursuant to whistleblower and privacy exemptions. See CP313-321, *Declaration of Port Director Ed Galligan*.

In *Bellevue John Does*, the general nature of the public records request in that case allowed the court to protect the teachers' identities by producing the records with only the teachers' names redacted. *Id.* at 227, 189 P.3d 139. Thus, in that case, the Court approved exempting the name and identifying information of the

teachers from production, while permitting disclosure of portions of the “documents related to the allegations and investigations (subject to redactions), thus maintaining the citizens' ability to inform themselves about school district operations.” 164 Wash.2d at 222, 189 P.3d 139. Here as well, the Port did not seek to exempt the entire Report, or even wide sections of it. Instead, the Port’s narrow redactions are limited solely to protecting the identity of the employee to whom the Investigation was directed and the identity of the initiating employee pursuant to whistleblower protections.

Additionally, the Investigative Report was prepared by an attorney, and was marked “attorney client confidential.” CP251. This is undisputed. *See* CP251, *West’s Trial Court Memorandum* at 13:18. Therefore, the Port conceivably could have totally withheld the record under the attorney client exemption. Instead, the Port took time and effort to **increase** public disclosure by making the document available to the Plaintiff, in a redacted form that protects the privacy rights set forth in both. Yet, inexplicably, Appellant West still complains of “unlawfully excessive redactions,” despite the Port’s considerable effort in redacting a multiple-page document that it could have entirely withheld pursuant to the attorney client privilege exemption which Plaintiff does not contest.

The Court should find that the Port's limited redactions comports wholly with controlling case law, including *Bainbridge Island Police Guild*.

E. The Port's Redactions Did Not Interfere With The Public's Legitimate Concern: A Citizens' Ability To Inform Themselves About Port Operations

Appellant West cites to controlling case law, but seems to ignore either relevant present facts or the substance of the quoted holdings in trying to somehow argue that the Port violated the PRA. For instance, West observes in his Opening Brief the following points:

- Likewise, the Supreme Court held: "Although lacking a legitimate interest in the name of a police officer who is the subject of an unsubstantiated allegation of sexual misconduct, **the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer.**" *Bainbridge Island*, 172 Wn.2d at 416. *West's Opening Brief*, at page 8.
- We hold that while [the officer's] identity is exempt from production under former RCW 42.56.230(2) [now RCW 42.56.550(3)], **the remainder of the [reports] is nonexempt.**" *Bainbridge Island*, 172 Wn.2d at 418. *West's Opening Brief* at page 21.

The Port embraces West's recognition of this controlling case law, because the Port complied precisely with its dictates, and in fact, this case law exonerates the Port from Plaintiff's claims of wrongdoing. Here as well, the Port did not seek to exempt the entire

Report, or even wide sections of it. Instead, the Port's narrow redactions are limited solely to protecting the identity of the employee to whom the Investigation was directed and the identity of the initiating employee pursuant to whistleblower protections. By releasing the Investigative Report and supporting records, much of which is not redacted, The Port acknowledges and addresses the public's legitimate interest in how the Port responded to and investigated the allegations against a Port employee.

West is forced to concede this Port action complies with controlling case law, based on citation within West's own briefing: **"To the extent necessary to prevent an unreasonable invasion of personal privacy interests protected by the PRA, the agency shall redact identifying details and produce the remainder of the record.** RCW 42.56.070(1). Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d, 407, 259 P3d. 190 (2011)." *West's Opening Brief*, page 10. Emphasis provided. This describes the Port's redactions to a "T".

Likewise in *Bellevue John Does*, the general nature of the public records request in that case allowed the court to protect the teachers' identities by producing the records with only the teachers' names redacted. *Id.* at 227, 189 P.3d 139. In that case, the Court

approved exempting the name and identifying information of the teachers from production, while permitting disclosure of portions of the “documents related to the allegations and investigations (subject to redactions), thus maintaining the citizens' ability to inform themselves about school district operations.” 164 Wash.2d at 222, 189 P.3d 139. The Port did exactly that, no PRA violation occurred.

F. Contrary To Appellant’s Claims, Port Redactions Do Not Hide The Subject Of The Investigation.

West improperly claims that the Port “redactions include not just names and pronouns...but also **all factual details** concerning the allegations of an employee committing “improper governmental actions and all factual details concerning the employees duties and responsibilities” *West Opening Brief* at page 10. It is from this false premise, that West claims the Port violates the PRA. In truth however, the redactions do **not** hide the allegations levied against the Port employee. This wholly un-redacted section of the Investigative Report clearly discloses the precise allegations being investigated:

The initial inquiry conducted by the Port, prior to the investigation, also resulted in employees raising concerns about the improper disposal of environmentally sensitive materials, Port employees being directed to undertake

unsafe tasks, Port employees being directed to work holidays and/or being forced to take a regularly scheduled work day off after being forced to work a holiday in order to minimize overtime accrual, and the [redacted] failing to use proper accounting procedures as an internal control.

See CP253, Report at page 4. The un-redacted sections of the Report also supplies details on the six categories of alleged improper governmental misconduct, and clearly allows the reader to understand the nature of the allegations, contrary to Appellant's characterization, as the following excerpts attest:

- **Allegation #1**—[redacted] for **Personal Gain**:
 - “The complaint is that the [redacted] but no check for such an estimated amount has ever been received by the Port, leaving the whistleblower to believe that the [redacted] kept the proceeds of the [redacted].” See CP256, Report at page 3.
 - “property deposited through accounting.” See CP259, Report at page 6.
 - The receipts provided by [redacted] also do not contain a list of the [redacted] items they were asking a payment for, but at least listed [redacted]. CP259-260, Report at p 6-7
 - “stated that [redacted] had not ever personally profited from the sale [redacted] “including consideration, material benefit, favor, or otherwise.”” CP260, Report at page 7.
- **Allegation #2—Exceeding Scope of Authority and Failing to Follow Established Accounting Practices.**
 - Witness Accounts: Related to allegation number (1) and complicating the ability to ascertain the facts and/or refute or prove the allegation contained in (1), is allegation (2). At the request of the investigator, work orders 9237 and 9427 were provided as an example of a failure to follow accounting practices

expected by the Finance Director. See CP261, Report at page 8.

- A witness explained that this is an example where the [redacted] amount does not match the Commission-approved rates and fees schedules. [redacted] runs from October through March, but the time from shown on this work order is late April through mid-May, and the calculations do not match. In addition, there is no detail provided in the estimates detailing this portion of the bill. Also illustrative is that a quote on the work order simply says [redacted]. See CP261, Report at page 8.
- In addition, work order 9427, although describing the general items charged for, does not include a breakdown of those charges, which would allow for financial review. See CP261, Report at page 8.

- **Allegation #3—Improper Disposal of Environmentally Sensitive Material.**

- Witness Accounts: Although most employees said that [redacted] does not take any risk in or around ecological matters, specifically described safety measures and precautions and processes that [redacted] adhered to, See CP266, Report at page 13.
- [redacted] stated that when they first began to [redact] it was “a learn as you go process,” and that if the initial precautions were not sufficient then the protocols and procedures were promptly corrected.
- [redacted] denied this allegation and said [redacted] took its environmental responsibilities seriously. See CP266, Report at page 13.

- **Allegation #4—Violating Port Policy #312, Leave & Holidays.**

- Witness Accounts: It was common knowledge amongst witnesses that [redacted] was open 365 days a year. Witnesses stated that when they were hired it was “understood that you would work holidays.” Witnesses who work holidays say they never considered saying “no” because they needed their jobs and [redacted] “expected them to work.” Witnesses stated that they would prefer to not work holidays unless it was in the summer

[redacted] was busy. Witnesses said they work only four (4) hours and aren't sure why they can't be on-call or why [redacted] doesn't work such a small fraction of time if this level of security, and customer service is important to [redacted].

- Witnesses stated they were also discouraged from taking sick leave and vacation time by having to arrange with other employees to cover their shift in their absence. Witnesses stated that there are not substitutes for their absences so there needs to be coverage, and with limited staff, this means supervisors have to cover if employees are absent or can't arrange coverage with another, and that this creates resentment from supervisors towards employee absenteeism.
 - Witnesses said there is pressure to work and, although not in the past year, there were examples of [redacted] raising [redacted] voice to employees who did not work when they were expected to.

- **Allegation #5—Directing Employees to Undertake Unsafe Tasks.**

- Witness Accounts: The only example that Witnesses provided was that [redacted] recently directed an employee to [redacted]. These [redacted] and were within the [redacted].
- A witness provided an email from the Port confirming that the Port notified [redacted] in a timely fashion. The Port's Environmental Manager seemed to have received no additional concerns from [redacted]. See CP269, Report at page 16.

- **Allegation #6—Working on Matters Related to Private Consulting While on Port Time.**

- Witness Account: Witnesses did not report that [redacted] was absent from the Port at any level that caused them concern or suspicions. Multiple witnesses did report that [redacted] is frequently on the phone and they could not explain what Port related tasks would call for or justify the time they believed [redacted] was on phone. See Report at page 16.
- [redacted] stated that [redacted] private consulting business made no more than \$3000 three years ago and

that he made \$0 in 2009. This was confirmed when the investigator was allowed to review [redacted] tax statements. See CP269, Report at page 16.

In addition to the above un-redacted entries, the Port even calls out the nature of the principle allegation “(theft)” in its Trial Court Opening Brief, CP213, at page 12:18. Last, the clearest proof that the Report allowed understanding of the allegation against the employee is that Appellant was able to recite ***exactly the allegations*** made, in his own Brief:

In this case, it appears that the alleged wrongdoing was not sexual misconduct, but some type of “improper governmental action,” like **the use of the Port employee’s public position for personal gain; that the Port employee exceeded authority and engaged in careless and sloppy practice of internal control; allegations concerning reporting to the Department of Ecology; allegations concerning violations of Port’s holiday policy; that the Port employee may have worked on matters unrelated to Port business.** See, e.g. Bird Dec., Exhibit B, pp. 17-19.

West’s Opening Brief, Footnote 1, pages 1-4.

G. No Wrongdoing Allegations Were Substantiated, Thus Privacy Protections Attached & Reactions Are Proper.

Appellant West also appears to argue that here, the outcome of the investigation does not support redactions based on employee privacy. Again, West either ignores the facts or completely misconstrues relevant case law. West states:

Thought (sic) it is hard to tell from the redactions in one of the redacted records, the December 2010 Report: “Investigation to ascertain facts related to a whistleblower complaint that [redacted] undertook improper government action,” it appears that certain of the allegations were unsubstantiated and others were substantiated.

CP240, West’s Show Cause Memorandum, page 2. The false part of West’s characterization is his claim that some allegations against the employee were “substantiated”. That is flatly not the case, and appears to be situation where the facts are wishfully contorted to fit a desired outcome or legal argument. See *CP261-279, Report*, included in *CP254-288 Exhibit B*, confidential records attached to Judge’s Copy of *Port Notice of Confidential Redacted Records To Be Reviewed In Camera*, and see *CP313-321, Declaration of Ed Galligan*.

Next, West resorts to splitting hairs, and again ignores plain controlling case law, by seemingly arguing that privacy does not attach **unless and only if** an investigation completely exonerates the subject employee. But that is **not** the actual test for when privacy exemptions attaches, per the controlling case law of *Bainbridge Island* and *Bellevue John Does.* In fact, West in his own briefing includes the Court’s actual criteria to be applied – when an allegation is “unsubstantiated”:

While Bainbridge Island and Bellevue John Does both found that a public employee's identity in connection with "**an unsubstantiated** allegation of sexual misconduct," **was indeed "personal information"** under former RCW 42.56.230(2) [now RCW 42.56.230(3)],....

West's Opening Brief, Footnote 1, pages 15. Emphasis added, and

Likewise, the Supreme Court held: "Although lacking a legitimate interest in the name of a police officer who is the subject of an **unsubstantiated** allegation of sexual misconduct, the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer." Bainbridge Island, 172 Wn.2d at 416.

West's Opening Brief, page 18. Emphasis added. The

Bainbridge Island and Bellevue John Does holdings are entirely consistent with the policy considerations of prior Court rulings, that determined that even **evaluations** of public employees ordinarily are not subject to public disclosure, since in the normal course, both the supervisor and the employee reasonably expect those evaluations to remain confidential, and the disclosure of that information would be offensive to a reasonable person and of small public concern. *Spokane Research & Defense Fund v. City of Spokane* (2000) 99 Wash. App. 452, 994 P.2d 267. And see *Dawson v. Daly* (1993) 120 Wash.2d 782, 845 P.2d 995, ("Employee evaluations contain "personal information" within meaning of public disclosure act employee privacy exemption"). Here, this Appeals Court should find that (1) employee protections

did attach and were properly redacted, as the Report resulted in no substantiated allegations of employee wrong doing, and (2) The Port committed no violations of the Public Records Act.

H. Port Redactions Also Necessary To Protect Employee Whistleblower Identity

The Investigative Report subject of this request was prompted by an employee, whose confidentiality is protected by RCW 42.41.030 (7). The reporting employee is to remain confidential. RCW 42.41.030 (7), “The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing”. The Port properly redacted that reporting employee identity¹².

The state Whistleblower Program, enacted by the Washington State Legislature in 1982, provides a means for employees to report suspected improper governmental actions. The state Whistleblower Act includes strong protections against retaliatory conduct directed to employees which report these behaviors. At the Port of Olympia, the local Whistleblower process is contained in Port “Policy 107” and Employee Disclosure Act Report. That Whistleblower “Policy

¹² While this exemption does not specifically appear on the Port’s Log, no PRA violation is warranted. The Court may affirm a finding of exemption on any ground supported by the record. *State v. Ellis*, 21 Wn. App. 123, 124, 584 P.2d 428 (1978).

107” outlines a procedure for processing whistleblower reports, including echoing the state law prohibition of revealing the reporting employee identity. Thus the Port properly redacted any information within the Investigative Report and related emails which would reveal that employee’s identity as well.

I. West Improperly Asks This Court to Create New Law

Appellant West cannot realistically argue that the Port failed to follow the precise mandates of current controlling case law on how the privacy exemption is applied. *Bainbridge Island* and *Bellevue John Does, supra*. Instead, West asks this Court to create new law:

While Bainbridge Island and Bellevue John Does both found that a public employee’s identity in connection with “an unsubstantiated allegation of sexual misconduct,” was indeed “personal information” under former RCW 42,56,230(2) [now RCW 42.56.230(3)], **Mr. West will attempt to argue, below, that a public employee’s identity is connection with multiple substantiated and unsubstantiated allegations of “improper governmental action” is substantively different** from the case of an unsubstantiated allegation of sexual misconduct, and that **this Court may in that respect distinguish this case from both Bainbridge Island and Bellevue John Does.**

West’s Opening Brief, Footnote 1, pages 15. But West in fact does not have any case law or any convincing argument to support distinguishing this case from controlling Supreme Court rulings.

West presents solely a bare allegation that, “Here, there is no sexual misconduct, and thus no such question of the right of privacy.” *West Opening Brief at page 24*. But nowhere does either *Bainbridge Island* and *Bellevue John Does* restrict employee privacy protection to allegations of sexual misconduct only. Instead, Washington Courts have defined “personal information” as “information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general.” *Bellevue John Does*, 164 Wash.2d at 211, 189 P.3d 139. It is the fact that the allegations are unsubstantiated – not the particular category of the wrongdoing-- that renders the records outside the scope of “employment” and legitimate public scrutiny. Records exempt under this privacy prong include unsubstantiated or false accusations against an employee because the unsubstantiated or false allegations are matters concerning the employee’s private lives and are not specific incidents of misconduct during the course of employment. RCW 42.56.230(2) and *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008. See accord: *Spokane Research & Defense Fund v. City of Spokane* (2000) 99 Wash. App. 452, 994 P.2d 267 (even **evaluations** of public employees

ordinarily are not subject to public disclosure, since in the normal course, both the supervisor and the employee reasonably expect those evaluations to remain confidential, and the disclosure of that information would be offensive to a reasonable person and of small public concern...) And see *Dawson v. Daly* (1993) 120 Wash.2d 782, 845 P.2d 995, ("Employee evaluations contain "personal information" within meaning of public disclosure act employee privacy exemption"). *Spokane Research & Defense Fund v. City of Spokane* (2000) 99 Wash. App. 452, 994 P.2d 267. This Appeals Court should decline West's invitation to depart from established precedent and create new law.

J. THE PORT PROPERLY COMPLIED WITH APPELLANT WEST'S PRA REQUEST

"The public records portion of the public disclosure act ... requires all state and local agencies to disclose any public record upon request, unless the record falls within certain very specific exemptions." *American Civil Liberties Union of Washington v. City of Seattle*, 121 Wn.App. 544, 548, 89 P.3d 295 (2004); citing *Progressive Animal Welfare Soc'y v. Univ. of Wash. (PAWS)*, 125 Wn.2d 243, 250, 884 P.2d 592 (1994).

The Port has **not** erroneously redacted or withheld documents

and the Port should **not** have any penalties or fees levied against it. "(W)hen an agency wrongfully denies a public record and a party has prevailed against the agency in obtaining a copy of the public record an award is warranted." *Amren v. City of Kalama*, 131 Wn.2d 25, 37, 929 P.2d 389 (1997). The Port properly applied the state statute exemptions, and redacted records with precision and frugality.

The PRA provides for full access to public records under circumstances which promote the public interest. Achieving the goal of an informed citizenry can sometimes conflict with other public interests. However, as the court noted in *Police Guild v. Liquor Control Board*, 112 Wn.2d 30, 769 P.2d 283 (1989), there must be a balance. Though tensions among these competing interests are characteristic of a democratic society, their resolution lies in providing a workable formula which encompasses, balances and appropriately protects all interests, while placing emphasis on responsible disclosure. *Police Guild, supra* at 3.

Here, the Port has properly responded and will continue to properly respond in a timely manner to Mr. West's inquiries. The Port properly redacted limited records pursuant to proper Chapter 42.56 RCW exemption. The Trial Court properly made the

necessary determinations regarding the balance between the important but conflicting interests of the public, and concluded the Port properly applied the exemptions to make minimal exemptions. That determination should not be disturbed on appeal.

K. PORT SHOULD BE AWARDED FEES & COSTS

The Port requests attorney fees and costs based on this frivolous appeal. RAP 18.1;¹³ RCW 4.84.185.¹⁴ and RAP 18.9.¹⁵ A

¹³ RAP 18.1. **(a) Generally.** If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court. The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

¹⁴ **4.84.185. Prevailing party to receive expenses for opposing frivolous action or defense.** In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the non-prevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the non-prevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

¹⁵ **RULE 18.9 VIOLATION OF RULES**

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules **to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply** or to pay sanctions to the court.

lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts. *Tiger Oil Corp. v. Department of Licensing*, 88 Wash.App. 925, 938, 946 P.2d 1235 (1997).

Appellant Mr West wholly failed completely via before the Trial Court but still presses on, requiring scarce Port taxpayer dollars to be spent once again defending against his recycled claims. The Port requests this Court order Appellant West to pay its attorney fees and costs for having to respond yet again to these frivolous matters. RAP 18.1, RAP18.9 and or RCW 4.84.185.

An appeal is clearly without merit if the issues on review: (1) are clearly controlled by settled law; (2) are factual and supported by the evidence; or (3) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency. *State v. Rolax*, 104 Wn.2d 129, 132, 702 P.2d 1185 (1985). Under RAP 18.1(a), a party on appeal is entitled to attorney fees if a statute authorizes the award. RAP 18.9 authorizes the Court to award compensatory damages when a party files a frivolous appeal. *Kearney v. Kearney*, 95 Wn. App. 405, 417, 974 P.2d 872, *review denied*, 138 Wn.2d 1022 (1999). This appeal is frivolous. West presents no debatable point of law, his appeal (yet

again) lacks merit, and the chance for reversal is nonexistent. This was true in his pleadings before the Superior Court; it remains true now.

VI. CONCLUSION

The Port complied precisely with the Court's direction in *Bellevue John Does* and RCW 42.56.070(1) by redacting only the employee's name and identifying information. Pursuant to *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wash.2d 199, 210, 189 P.3d 139 (2008), this Court should accordingly find that the Port's personal privacy redactions were proper. The Court should decline to disturb the Trial Court's ruling that the Port properly redacted limited records pursuant to lawful exemptions as authorized by statute, and the Port's response did **not** violate the Public Records Act by making unlawfully excessive redactions under claim of exemption. In addition, the Port should be awarded its fees and costs.

RESPECTFULLY SUBMITTED this 28th day of October 2013.

GOODSTEIN LAW GROUP PLLC

By: _____

Carolyn A. Lake, WSBA #13980
Attorneys for Respondent Port of
Olympia.

Subject: FW: Records request (2)

From: Arthur West <awestaa@gmail.com>
To: Jeri Sevier <JeriS@portolympia.com>
Date: 09/13/2012 09:26 PM
Subject: Records request (2)

Please regard this as a formal PRA request for

1. all records or correspondence related to Mr. Ferguson's complaints,
2. any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and
3. any correspondence or communications with the State auditor 2011 to present.

Please also regard this as a request for

4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

Thank you

Arthur West

EXHIBIT 1



Commissioners
Bill McGregor
Jeff Davis
George Barner

September 19, 2012

Arthur West
120 State Ave N.E. #1497
Olympia, WA. 98502

Also Sent Via Email

Dear Mr. West:

This letter serves as the Port of Olympia's (the "Port") response, pursuant to RCW 42.56.520, to your public records request that the Port received on September 14, 2012. Because of the volume of information you have requested, the Port will make records available, however, we estimate that the records will be available by approximately **October 24, 2012**. I will notify you when the records are available for your review. We will release records incrementally as they are gathered, reviewed and determined to be responsive.

To insure the Port knows exactly what you are requesting, I have restated your request below.

1. *All records or correspondence related to Mr. Ferguson's complaints,*
2. *Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and*
3. *Any correspondence or communications with the State auditor 2011 to present.*
4. *All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.*

If I have not properly or fully described and or understood the scope of your request, please advise as soon as possible.

In addition, the Port of Olympia has determined that there may be responsive records to your request, for which third parties may be affected or have an interest in their disclosure. The purpose of the Public Records Act (PRA) is "to allow public scrutiny of government," not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows the public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540.) Pursuant to this provision of state law, please know that the Port of Olympia will be notifying the potentially affected party about the requested records. See copy of notice enclosed.

EXHIBIT 2

Arthur West
Page 2
September 19, 2012

To allow time for the option for this third party to respond, please know that the Port of Olympia intends to respond to your records request on October 24, 2012 unless (1) we are notified that an actual Court order was issued which blocks disclosure of any responsive records; or (2) you have expressly agreed to an additional delay or (3) unforeseen circumstances justify further delay, in which case the Port of Olympia will notify you of any new expected response date via an extension letter of explanation.

Thank you for your interest in the Port of Olympia. I may be contacted directly at 528-8003 if you have questions regarding this letter.

Sincerely,



Jeff Sevier, PHR

Human Resources &
Administrative Manager



Commissioners
Bill McGregor
Jeff Davis
George Barner

September 19, 2012

Kevin Ferguson
7740 Woods Estate Lane
Olympia, WA 98506

E Mailed & US Mail

Re: Follow up to Arthur West Public Records Request dated September 13, 2012 received on September 14, 2012 to the Port of Olympia

Dear Kevin:

We write to advise you that a Public Records Request was submitted to the Port of Olympia requests the following:

1. *All records or correspondence related to Mr. Ferguson's complaints,*
2. *Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and*
3. *Any correspondence or communications with the State auditor 2011 to present.*
4. *All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.*

The Port of Olympia has determined that there are responsive records to this request which may be of interest to you. The purpose of the Public Records Act (PRA) is "to allow public scrutiny of government," not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows a public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540.)

Pursuant to this provision of state law please know that the Port of Olympia is officially notifying you of Mr. West's request for records. The Port has also determined that some responsive records might normally have been redacted due to RCW 42.56.050 and RCW 42.56.230(2) (whistle blower material) but the records are now deemed public based the written waiver you provided the Port in response to your own Public Records Request. If you desire to prevent release of the records, you may wish to consult an attorney regarding any options you have. The Port of Olympia expects to respond to Mr. West's request for the public records on October 24, 2012 unless prior to that date we have been notified that a court has issued an order that prohibits the Port of Olympia from releasing the records.

You are encouraged to contact an attorney of your choice familiar with the Washington State Public Records Act to ensure any actions are timely taken. If you intend to take action to prevent disclosure, you are encouraged to notify both the Port of Olympia and Mr. West the requestor. We also will be notifying Mr. West of our notice given to you.

EXHIBIT 2A

Kevin Ferguson
September 19, 2012
Page 2

Please know that on October 24, 2012 the Port will act on the records request unless (1) we are notified that you have obtained an actual Court order blocking disclosure; or (2) Mr. West the requestor has expressly agreed to an additional delay (3) unforeseen circumstances justify further delay, in which case the Port will notify you and Mr. West, as the requestor, that more time is needed via an extension letter of explanation.

Sincerely,



Jeri Sevier, PHR
Human Resource &
Administrative Manager

cc: Carolyn Lake, Port General Legal Counsel,
Goodstein Law Group PLLC
Mr. Arthur West

Enclosure: Copy of Mr. West's PRR



Commissioners
Bill McGregor
Jeff Davis
George Barner

October 24, 2012

Arthur West
120 State Ave N.E. #1497
Olympia, WA. 98502

Also Sent Via Email

Dear Mr. West:

This letter serves as the Port of Olympia's (the "Port") response, pursuant to RCW 42.56.520, to your public records request that the Port received on September 14, 2012.

To insure the Port knows exactly what you are requesting, I have restated your request below and the Port's response.

1. All records or correspondence related to Mr. Ferguson's complaints,

Ports Response: Because of the volume of information you have requested, the Port estimates that it will respond by **December 5, 2012**. I will notify you when the records are available for your review. We will release records incrementally as they are gathered, reviewed and determined to be responsive. If any records are exempt we will provide a Privilege Log.

2. Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and

Ports Response: Because of the volume of information you have requested, the Port estimates that it will respond by **December 5, 2012**. I will notify you when the records are available for your review. We will release records incrementally as they are gathered, reviewed and determined to be responsive. If any records are exempt we will provide a Privilege Log.

3. Any correspondence or communications with the State auditor 2011 to present.

Ports Response: Because of the volume of information you have requested, the Port estimates that it will respond by **December 5, 2012**. I will notify you when the records are available for your review. We will release records incrementally as they are gathered, reviewed and determined to be responsive. If any records are exempt we will provide a Privilege Log.

EXHIBIT 3

4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

Ports Response: Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining.

Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records. After reviewing the below list, please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, you have the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All forms which may be an included part of part A) above.

D) A copy of each email sent by me from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all of the policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two folders (Sent -- Received) and place the emails contained in each folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

B. Mr. Ferguson's March 15, 2012 Request:

Part one:

A. Please provide me with copies of all files contained on the C: drive on my desk computer as of November 4, 2012, the K: drive on the Port server as of November 4, 2012 and the H: drive of the accounting server as of November 4, 2012. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2012. Please segregate the emails in folders using the same title as the original Lotus Notes folder.

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2012.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The final investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10 in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1, 2011 and the end date for the search is today's date, April 16.

With this letter I am providing you with a DVD containing the records responsive to Section A. Mr. Ferguson's January 11, 2012 request, along with the Port's privilege logs. The cost of the DVD is \$10.00. You may make arrangements to pick up and pay for that DVD at any time during business hours.

For the remainder of the requested items, because of the volume of information you have requested, the Port will make records available, however, we estimate that the records will be available by approximately **December 5, 2012**. Once you have confirmed that you are still interested and willing to pay for the DVD's and or bring memory sticks, I will notify you when the records are available for you. We will release records incrementally as they are gathered, reviewed and determined to be responsive.

If I have not properly or fully described and or understood the scope of your request, please advise as soon as possible. Thank you for your interest in the Port of Olympia. I may be contacted directly at 528-8003 if you have questions regarding this letter.

Sincerely,



Jeri Sevier, PHR
Human Resources &
Administrative Manager

PORT Of OLYMPIA PRIVILEGE LOG
Kevin Ferguson PRR
Updated Log Date for
PORT RESPONSE TO January 11, 2012 PRR – (Emails)

DOC Bates Stamped #	EXEMPTION	EXPLANATION
<p>Investigative Report by Attorney Chris Burton dated December 2010, 19 pages plus Exhibits A-O. (Appears as attachment to email)</p> <p>12 November 2010 11:23 AM <i>"Fw: Investigation Information"</i> Email sent from Kevin Ferguson to Carolyn Lake – 2 pages</p> <p>15 November 2010 12:57 PM <i>"Re: Investigation Information"</i> Email sent from Kevin Ferguson to Ed Galligan – 3 pages</p> <p>21 December 2010 12:04 PM <i>"Investigative Report"</i> Email and Attachments to Email of above date Sent from Chris Burton to Kevin Ferguson and Carolyn Lake – 1 page email 1 page cover letter 271 page report</p>	<p>RCW 42.56.050 and RCW 42.56.230(2).</p>	<p>The redacted portions of these records include protected communication which if disclosed would be an invasion of privacy, and is exempt pursuant to RCW 42.56.050. That exemption defines that a person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in the PRA, is invaded or violated where disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.</p> <p>The records are further exempt as the records include unsubstantiated or false accusations against an employee such that the employee has a right to privacy in their identities, as protected under public disclosure act, because the unsubstantiated or false allegations are matters concerning the employee's private lives and are not specific incidents of misconduct during the course of employment. RCW 42.56.230(2) and <i>Bellevue John Does 1-11 v. Bellevue School Dist. #405</i>, 164 Wash.2d 199, 189 P.3d 139, Wash., 2008.</p>

EXHIBIT 3A

PORT OF OLYMPIA PRIVILEGE LOG
Kevin Ferguson PRR
Updated Log Date for
PORT RESPONSE TO January 11, 2012 PRR – (Emails)

DOC Bates Stamped #	EXEMPTION	EXPLANATION
<p>Copy of above 21 December 2010 12:04 PM "Fw: Investigative Report" Email with 20 December 2010 12:07 PM Email and Attachments Sent from Chris Burton to Kevin Ferguson and Carolyn Lake 1 page email, 1 page cover letter 271 page report</p> <p>21 December 2010 2:27 PM "Fw: Investigative Report" Email, forwarded email and Attachment to Email of above date Sent from Kevin Ferguson to Ed Galligan – 2 pages</p>		
<p>June 29 2011 "Please comment on OPA escrow process settlement escrow process" Email string between Kevin</p>	<p>Attorney Client Work Product See <i>Hangartner v. City of Seattle</i>, 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2)¹</p>	<p>The redacted portions of these records include communication that is protected and exempt from disclosure pursuant to the Attorney-Client Privilege, as it contains the Port's attorney's</p>

¹ The Port is mindful of the recent legislative enactment regarding attorney invoicing, and its exemptions are consistent with that recent directive. See RCW 42.56.904, which provides as follows:

It is the intent of the legislature to clarify that no reasonable construction of chapter 42.56 RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of

PORT OF OLYMPIA PRIVILEGE LOG
Kevin Ferguson PRR
Updated Log Date for
PORT RESPONSE TO January 11, 2012 PRR – (Emails)

DOC Bates Stamped #	EXEMPTION	EXPLANATION
<p>Ferguson and Carolyn Lake, Port legal counsel – 7 pages <i>OPA v. Port of Olympia, U.S.</i> <i>Western District Court of</i> <i>Washington No. 09-05756</i></p> <p>May 25, 2011 11:45 AM “IMPORTANT Atty Client – <i>Snarski Unemployment</i> <i>Application</i>” Email containing string between Kevin Ferguson and Carolyn Lake, Port legal counsel, 5 pages <i>Snarski Employment Security</i> <i>Appeal, DOCKET NO: 06-</i> <i>2011-20352</i></p> <p>May 25, 2011 8:38 AM “IMPORTANT Atty Client – <i>Snarski Unemployment</i> <i>Application</i>” Email containing string between</p>		<p>mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws,. See <i>Hangarter v. City of Seattle</i>, 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).</p>

work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

H.B. Rep. on HB 1897, at 3, 60th Leg., Reg. Sess. (Wash. 2007); S.B. Rep. on SHB 1897, at 2, 60th Leg., Reg. Sess. (Wash. 2007). RCW 42.56.904 took effect on July 22, 2007. Laws of Washington, at ii (2007).

PORT Of OLYMPIA PRIVILEGE LOG
Kevin Ferguson PRR
Updated Log Date for
PORT RESPONSE TO January 11, 2012 PRR – (Emails)

DOC Bates Stamped #	EXEMPTION	EXPLANATION
<p>Kevin Ferguson and Carolyn Lake, Port legal counsel, 4 pages <i>Snarski Employment Security Appeal, DOCKET NO: 06-2011-20352</i></p> <p>September 27, 2011 8:26 AM Email "<i>ATTY CLIENT – Addendum to the 1994 Port FEIS</i>" from Kevin Ferguson to Ed Galligan, containing Email string between Kevin Ferguson, Alex Smith Port Environmental Attorney and Carolyn Lake, Port legal counsel, 6 pages</p> <p>Former / Potential litigation, for example: <i>SEPA 07-02 SEPA Administrative Review & Appeal of Weyerhaeuser - Port SEPA Determination Thurston County Superior Court No. 07-2-01352-8 (OPA 1) and City Appeals City of Olympia Hearing Examiner No. 07-0209, 07-0210, 07-0234</i></p>		

From: Jeri Sevier
To: A West
Subject: Public Records Request
Date: Wednesday, December 05, 2012 5:08:53 PM

Mr. West:

The Port has not heard from you in response to the October 24, 2012 in which we offered the following:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining.

Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records. After reviewing the below list, please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, you have the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

A. Mr. Ferguson's January 11, 2012 Request:

- A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.*
- B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.*
- C) All forms which may be an included part of part A) above.*
- D) A copy of each email sent by me from February 1, 2009 to November 4, 2011.*
- E) A copy of each email received by me between February 1, 2009 and November 4, 2011.*
- F) A copy of the Port organization chart*

For ease of use by me please put all of the policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two folders (Sent -- Received) and place the emails contained in each folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

B. Mr. Ferguson's March 15, 2012 Request:
Part one:

EXHIBIT 4

A. Please provide me with copies of all files contained on the C: drive on my desk computer as of November 4, 2012, the K: drive on the Port server as of November 4, 2012 and the H: drive of the accounting server as of November 4, 2012. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2012. Please segregate the emails in folders using the same title as the original Lotus Notes folder.

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2012.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The final investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10 in which the State Auditor offered an opinion that there was a potential for fraud and or

gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1, 2011 and the end date for the search is today's date, April 16.

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2012. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive.

Jeri Sevier | Human Resources and Administrative Manager

Port of Olympia | 915 Washington Street NE | Olympia, WA 98501

☎: 360.528.8003 | 7: 360.528.8090 | ✉: jeris@portolympia.com | www.portolympia.com

Carolyn Lake

Subject: FW: Public Records Request

From: Arthur West <awestaa@gmail.com>
To: Jeri Sevier <Jeris@portolympia.com>
Date: 12/05/2012 11:35 PM
Subject: Re: Public Records Request

Thank you for the response.

I will be in Oregon tomorrow until the late afternoon,
and have several hearings on Friday morning.

However, I can come in Friday afternoon, if that is convenient,
and review some of the paper copies available.

Due to there being such a high volume of records,
I will try to see about providing suitable memory space, or, hopefully,
restricting the scope of the request to a more manageable amount.

If I provide a new and unused portable hard drive, would that be
easier than thumbnail drives?

For the January 11 request, how about limiting it to sections D, E, and F?

For the March 15 request, how about limiting further responses to
section 2, parts A, B, and C?

For the April 16 request, how about the investigation materials and final report
described in section C?

Of course, any records related to the foregoing deemed exempt
or withheld would still be of interest.

If the request is limited to these records,
does this cut down the amount?

Thanks for your assistance.

1:00 Friday works for me.

On Wed, Dec 5, 2012 at 5:08 PM, Jeri Sevier <Jeris@portolympia.com> wrote:

Mr. West:

The Port has not heard from you in response to the October 24, 2012 in which we offered the following:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining.

Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records. After reviewing the below list, please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, you have the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All forms which may be an included part of part A) above.

D) A copy of each email sent by me from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all of the policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two folders (Sent -- Received) and place the emails contained in each folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

B. Mr. Ferguson's March 15, 2012 Request:

Part one:

A. Please provide me with copies of all files contained on the C: drive on my desk computer as of November 4, 2012, the K: drive on the Port server as of November 4, 2012 and the H: drive of the accounting server as of November 4, 2012. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2012. Please segregate the emails in folders using the same title as the

original Lotus Notes folder.

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2012.

Part Two:

A. *The Original Whistleblower submission.*

B. *All investigative materials used to formulate the final report.*

C. *The final investigation report.*

D. *All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.*

E. *All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and*

F. *A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.*

C. Mr. Ferguson's April 16, 2012 Request:

A. *All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.*

B. *The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.*

C. *The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10 in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1, 2011 and the end date for the search is today's date, April 16.*

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2012. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive.

Jeri Sevier | Human Resources and Administrative Manager

Port of Olympia | 915 Washington Street NE | Olympia, WA 98501

☎: [360.528.8003](tel:360.528.8003) | 📞: [360.528.8090](tel:360.528.8090) | ✉: jeris@portolympia.com | www.portolympia.com

Carolyn Lake

Subject: FW: Public Records Request

From: Jeri Sevier [mailto:JeriS@portolympia.com]
Sent: Friday, December 07, 2012 9:16 AM
To: Arthur West
Subject: Re: Public Records Request

Arthur -- Thank you for narrowing down your request. This will substantially reduce the data requested. I will give you an estimate on the data size soon.

Jeri Sevier | Human Resources and Administrative Manager
Port of Olympia | 915 Washington Street NE | Olympia, WA 98501
☎: 360.528.8003 | 📠: 360.528.8090 | ✉: jeris@portolympia.com | www.portolympia.com

From: Arthur West <awestaa@gmail.com>
To: Jeri Sevier <JeriS@portolympia.com>
Date: 12/05/2012 11:35 PM
Subject: Re: Public Records Request

Thank you for the response.

I will be in Oregon tomorrow until the late afternoon,
and have several hearings on Friday morning.

However, I can come in Friday afternoon, if that is convenient,
and review some of the paper copies available.

Due to there being such a high volume of records,
I will try to see about providing suitable memory space, or, hopefully,
restricting the scope of the request to a more manageable amount.

If I provide a new and unused portable hard drive, would that be
easier than thumbnail drives?

For the January 11 request, how about limiting it to sections D, E, and F?

For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?

For the April 16 request, how about the investigation materials and final report described in section C?

Of course, any records related to the foregoing deemed exempt or withheld would still be of interest.

If the request is limited to these records, does this cut down the amount?

Thanks for your assistance.

1:00 Friday works for me.

On Wed, Dec 5, 2012 at 5:08 PM, Jeri Sevier <Jeriis@portolympia.com> wrote:

Mr. West:

The Port has not heard from you in response to the October 24, 2012 in which we offered the following:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining.

Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records. After reviewing the below list, please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, you have the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All forms which may be an included part of part A) above.

D) A copy of each email sent by me from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all of the policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two folders (Sent -- Received) and place the emails contained in each folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

B. Mr. Ferguson's March 15, 2012 Request:

Part one:

A. Please provide me with copies of all files contained on the C: drive on my desk computer as of November 4, 2012, the K: drive on the Port server as of November 4, 2012 and the H: drive of the accounting server as of November 4, 2012. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2012. Please segregate the emails in folders using the same title as the original Lotus Notes folder.

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would be by Mr. Galligan during the meeting on August 24, 2012.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The final investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10 in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1, 2011 and the end date for the search is today's date, April 16.

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2012. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive.

Jeri Sevier | Human Resources and Administrative Manager

Port of Olympia | 915 Washington Street NE | Olympia, WA 98501

☎: [360.528.8003](tel:360.528.8003) | 📠: [360.528.8090](tel:360.528.8090) | ✉: jeris@portolympia.com | www.portolympia.com

From: Jeri Sevier
To: A West
Subject: Public Records Request
Date: Tuesday, January 08, 2013 4:25:31 PM

Mr. West,

In response to your public records request dated September 14, 2012, this follows up on my previous communication with you on December 7th in which I acknowledged your desire to reduce the scope of your request. We expect to give you an estimate of the data size and incremental release of records by January 16, 2013.

Jeri Sevier | Human Resources and Administrative Manager
Port of Olympia | 915 Washington Street NE | Olympia, WA 98501
☎: 360.528.8003 | 7: 360.528.8090 | ✉: jeris@portolympia.com | www.portolympia.com

EXHIBIT 7

Carolyn Lake

From: Jeri Sevier [JeriS@portolympia.com]
Sent: Friday, January 11, 2013 10:35 AM
To: A West
Subject: Public Records Request
Attachments: A West Response 1 11 13.pdf

Mr. West -- please find attached a response letter to your public records request. Also note I have two CD's available at the Port office for you to pick up. The cost is \$5.00.

Please let me know if you are still planning on coming in to review the records that have been pulled for you. If so, when?
Thanks.

Jeri Sevier | Human Resources and Administrative Manager
Port of Olympia | 915 Washington Street NE | Olympia, WA 98501
☎: 360.528.8003 | 📞: 360.528.8090 | ✉: jeris@portolympia.com | www.portolympia.com

EXHIBIT 8



Serving All of Thurston County

Commissioners
George Barner
Jeff Davis
Bill McGregor

January 11, 2013

Arthur West
120 State Ave NE #1497
Olympia, WA 98502

Also Sent Via Email

Dear Mr. West:

This letter is a follow up to the Port of Olympia's (the "Port") response, pursuant to RCW 42.56.520, to your public records request that the Port received on **September 14, 2012**. We initially responded to your request on **September 19, 2012** and advised that because of the volume of information you have requested, the Port estimated that the records would be available by approximately **October 24, 2012**. We also advised that we would notify you when the records are available for your review, and that we would release records incrementally as they are gathered, reviewed and determined to be responsive.

On **September 19, 2012**, in the Port's initial response, we also advised you that we determined that there may be responsive records to your request, for which third parties may be affected or have an interest in their disclosure. The purpose of the Public Records Act (PRA) is "to allow public scrutiny of government," not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows the public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540.) Pursuant to this provision of state law, we advised you that the Port of Olympia would be notifying the potentially affected party about the requested records, and we provided you a copy of that third party notice.

On **October 24**, we advised you that because of the volume of information you have requested, the Port estimated that it will respond by **December 5, 2012**. Also on **October 24**, the Port updated you by describing the large volume of records associated with your Request No.4:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining. Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records.

Our mission is to create economic opportunities by connecting Thurston County to the world by air, land, and sea.

AIRPORT | MARINA | REAL ESTATE | SEAPORT

915 Washington Street NE, Olympia WA 98501 Tel (360) 528.8000 Fax (360) 528.8090 www.portolympia.com Executive Director, Ed Galligan

Port Response to Mr. West PRR of September 14, 2012
January 11, 2012

- 2 -

After reviewing the list of Mr. Ferguson's records requests, we asked you to please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, the Port gave you the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

Also on October 24, the Port provided you with its first incremental release of records, which consisted of a DVD of the Port's response to one of Mr. Ferguson's three PRRs. (Your Request No 4, Part A, as described below).

On December 5, the Port had not yet heard back from you in response to the Port's October 24th letter and request for confirmation. The Port repeated its request, and set a new estimated response date of January 5, 2013:

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2013. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive

On December 5, you responded with clarification that you were amending your PRA Request No. 4 to include only the following:

For the January 11 request, how about limiting it to sections D, E, and F?
For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?
For the April 16 request, how about the investigation materials and final report described in section C?

On December 7, the Port acknowledged your clarification, and advised it would shortly provide an update on estimated response time.

On January 8, the Port updated its response with a new estimated response date of January 16, 2013.

Today on January 11, The Port provides you with a status update on your request and a Second Incremental Release. The status of your records request which consists of four categories, and as clarified by you on December 5 is described below, in reverse order.

Port Response to Mr. West PRR of September 14, 2012
January 11, 2012

- 3 -

Your original Request No. 4 is re-stated entirely, the highlighted portion reflects your clarified request.

4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All Forms which may be an included part of part A) above.

D) A copy of each email sent by me from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all other policy, procedure and forms information in numerical order using the policy number. For emails I am hopeful you can create two Folders (Sent -- Received) and place the emails contained in each Folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

On December 5, you amended this request to include only parts D, E, & F.

However, on October 24, 2012, the Port had already provided you all records responsive to this Request No. 4.A.

The Port's response to this portion of the request is now complete.

B. Mr. Ferguson's March 15, 2012 Request:

Part One:

A. Please provide me with copies of all files contained on the C: drive on my desk Computer as of November 4, 2011, the K: drive on the Port server as of November 4, 2011 and the H: drive of the accounting server as of November 4, 2011. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2011. Please segregate the emails in folders using the same title as the original Lotus Notes folder

Port Response to Mr. West PRR of September 14, 2012
January 11, 2012

- 4 -

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2011.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The initial investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

On December 5, 2012 you limited your above request to "section 2, parts A, B, and C", as bold highlighted above.

Today on January 11, 2013, the Port encloses a CD containing the records responsive to this request. The cost of the CD is \$2.50. You may make arrangements pay for that CD at any time during business hours.

The Port's response to this portion of the request is now complete.

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

Port Response to Mr. West PRR of September 14, 2012

January 11, 2012

- 5 -

C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10th in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1 2011 and the end date for the search is today's date, April 16.

On December 5, 2012 you limited your above request to "the investigation materials and final report described in Section C", as bold highlighted above.

Today January 11, 2013, The Port has available to you a CD containing final report responsive to this request. The cost of the CD is \$2.50. You may make arrangements to pick up and pay for that CD at any time during business hours. The Port is continuing to review the investigative materials to determine whether exemptions apply. If exemptions are determined, we will supply you redacted records with a Privilege Log. We expect to complete the remaining portion of this request by January 16, 2013.

3. Any correspondence or communications with the State auditor 2011 to present.

Some records responsive to this request are contained in the Port's response to your Request 4.A (Emails to and from Kevin Ferguson), provided to you on October 24, 2012. Additional records responsive to this request are located in the records of the Port's response to your Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with this January 11, 2013 response.

The Port is continuing to gather and identify whether any additional responsive records exists. We expect to complete the remaining portion of this request by January 16, 2013.

2. Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and

The Port is aware of no records which related to: "*Any evidence, records or correspondence concerning*" any actual "*impropriety, fraud or gross negligence in port contracting*". For purposes of responding to your records request, the Port will consider your request to include records related to claims of "*impropriety, fraud or gross negligence in port contracting*". Some records responsive to this request are contained in the Port's response to your Request 4.A (Emails to and from Kevin Ferguson), provided to you on October 24, 2012. Additional records responsive to this request are located in

Port Response to Mr. West PRR of September 14, 2012
January 11, 2012

- 6 -

the records of the Port's response to your Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with this January 11, 2013 response. The Port's response to this portion of the request is now complete.

1. All records or correspondence related to Mr. Ferguson's complaints,

The Port request further clarification to the extent that your Request No. 1 is redundant with your Request No. 4, described above, and for which the Port's response is complete. Please advise what additional records you request under this category, or if this Request No. 1 is modified consistent with your December 5 clarification. Thank you.

Note: The Port's disclosure of any records which contain communications with its Legal Counsel or attorneys at the Goodstein Law Group PLLC is not to be construed in any way as a waiver of the Port's attorney-client privilege, in whole or in part.

The Port's release of records herein which are responsive to the request for "Whistleblower related" materials is provided pursuant to signed waiver(s) submitted to the Port.

I may be contacted directly at 528-8003 if you have questions regarding this response.

Sincerely,



Jeri Sevier, PHR
Human Resources &
Administrative Manager

**GOODSTEIN
LAW GROUP**

PLLC

501 S. G Street
Tacoma, WA 98405
Fax: (253) 779-4411
Tel: (253) 779-4000

Carolyn A. Lake
Attorney at Law
clake@goodsteinlaw.com

January 11, 2013

E-Mailed

Stephanie Bird
Cushman Law Offices, P.S.
924 Capital Way South
Olympia, WA 98501

Re: 2012 West PRR, West v. Port of Olympia
Thurston County Superior Court No. 12-2-01629-9

Dear Stephanie:

We respond to your letter of yesterday, in which you request clarification. While generally accurate, two corrections are needed. First, at the December 21 initial status conference, I described that the Port had only redacted records based on the attorney client exemption. This was true, because at the time, your client's Complaint objected to the Port's responses to his July 2012 and his 2007 public records request.

At the second status conference on January 4, I requested clarification from you as to which of Mr. West's three recent Port records requests was the focus of the now amended complaint. You clarified that only one of the three records request was at issue: the records request described in West's Amended Complaint Paragraphs 8 and 9. At that time, I expressed to the Court that the Port had not yet finalized its response to that records request; if I said or you heard that the Port had not responded at all, either I misspoke or you misinterpreted. The Port had responded in part, but was also still gathering and reviewing records. We expect to complete the request shortly. The Port however does plan to file a CR 12(b) (6) motion, as we do not believe Mr. West has filed a claim for which relief is warranted. It may well be that because the date the Court set for show cause is fairly soon, we may choose to use that date to combine the show cause and 12(b)(6) motion.

We ask that you reconsider deleting any information from the Port's Proposed Order. This is because one primary purpose of the status conference under the Thurston County local rule 3(e)(2)(B)(v) is to clarify what is at issue. You'll recall Judge Tabor stressed the importance of that task at hearing. Therefore, the Order reflects what was represented to the Court as the focus of the litigation. Your January 3, 2013 written pleading in response to the Port's request for clarification also is in accord. If you disagree with the Order, please advise today by 11:00 so we may note the matter for presentment on January 18, 2013.

EXHIBIT 9

For further clarity, below we describe the history of Mr. West's public records request, which is the focus of this litigation, below. Please let me know if this addresses the questions raised in your January 10, 2013 letter.

West September 14, 2012 PRR

The Port received the West records request on **September 14, 2012**. The Port initially responded to the request on **September 19, 2012** and advised that because of the volume of information Mr. West requested, the Port estimated that the records would be available by approximately **October 24, 2012**. The Port also advised that it would notify Mr. West when the records are available for review, and that it would release records incrementally as they are gathered, reviewed and determined to be responsive.

On September 19, 2012, in the Port's initial response, the Port also advised Mr. West that it determined that there may be responsive records to his request, for which third parties may be affected or have an interest in their disclosure. The purpose of the Public Records Act (PRA) is "to allow public scrutiny of government," not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows the public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540.) Pursuant to this provision of state law, the Port advised Mr. West that the Port of Olympia would be notifying the potentially affected party about the requested records, and the Port provided Mr. West a copy of that third party notice.

On October 24, the Port advised Mr. West that because of the volume of information he requested, the Port estimated that it will respond by December 5, 2012. Also on October 24, the Port updated Mr. West by describing the large volume of records associated with his Request, part No.4:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining. Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records.

After reviewing the list of Mr. Ferguson's records requests, we asked you to please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, the Port gave you the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

Also on **October 24**, the Port provided Mr. West with its first incremental release of records, which consisted of a DVD of the Port's response to one of Mr. Ferguson's three PRRs. (West's 14 September 2012 Request No 4, Part A, as described below).

On **December 5**, the Port had not yet heard back from Mr. West in response to the Port's October 24th letter and request for confirmation. The Port repeated its request, and set a new estimated response date of **January 5, 2013**:

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2013. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive

On **December 5**, Mr. West responded with clarification that he amended his PRA Request No. 4 to include only the following:

For the January 11 request, how about limiting it to sections D, E, and F?
For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?
For the April 16 request, how about the investigation materials and final report described in section C?

On **December 7**, the Port acknowledged Mr. West's clarification, and advised it would shortly provide an update on estimated response time.

On **January 8**, the Port updated its response with a new estimated response date of January 16, 2013.

On **January 11**, The Port provided Mr West with a status update on his request and a Second Incremental Release. The status of his records request which consists of four categories, and as clarified by him on December 5 is described below, in reverse order. Mr. West's original Request No. 4 is re-stated entirely, the highlighted portion reflects his clarified request.

4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All Forms which may be an included part of part A) above.

D) A copy of each email sent by m from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all other policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two Folders (Sent -- Received) and place the emails contained in each Folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

On December 5, Mr. West amended this request to include only parts D, E & F.

However, on **October 24, 2012**, the Port had already provided Mr. West with all records responsive to this Request No. 4.A. **Please confirm your client's receipt of the above records**; this material includes the 120319.Privledge Log and the Report which were attached as Exhibits to your 10 January 2013 letter to me.

The Port's response to this portion of the request is now complete.

B. Mr. Ferguson's March 15, 2012 Request:

Part One:

A. Please provide me with copies of all files contained on the C: drive on my desk Computer as of November 4, 2011, the K: drive on the Port server as of November 4, 2011 and the H: drive of the accounting server as of November 4, 2011. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2011. Please segregate the emails in folders using the same title as the original Lotus Notes folder

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2011.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The initial investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

On December 5, 2012 Mr. West limited his above request to “section 2, parts A, B, and C”, as bold highlighted above.

On January 11, 2013, the Port enclosed a CD containing the records responsive to this request. The cost of the CD is \$2.50. The Port asked Mr. West to make arrangements pay for that CD at any time during business hours.

The Port’s response to this portion of the request is now complete.

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include the investigation recommended by Carolyn Lake on or near October 10th in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes any report investigative materials as well as any written or discussed final report made for this second investigation. Start date should be October 1 2011 and the end date for the search is today's date, April 16.

On December 5, 2012 Mr. West limited his above request to “the investigation materials and final report described in Section C”, as bold highlighted above.

On January 11, 2013, The Port has available to Mr. West a CD containing final report responsive to this request. The cost of the CD is \$2.50. He may make arrangements to pick up and pay for that CD at any time during business hours. The Port is continuing to review the investigative materials to determine whether exemptions apply. If exemptions are determined, the Port will supply Mr. West redacted records with a Privilege Log. The Port expects to complete the remaining portion of this request by **January 16, 2013**.

3. Any correspondence or communications with the State auditor 2011 to present.

Some records responsive to this request are contained in the Port’s response to Mr. West’s Request 4.A (Emails to and from Kevin Ferguson), provided to him on **October 24, 2012**. Additional records responsive to this request are located in the records of the Port’s response to his Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with his **January 11, 2013** response.

The Port is continuing to gather and identify whether any additional responsive records exists. The Port expects to complete the remaining portion of this request by **January 16, 2013**.

2. Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and

The Port is aware of no records which related to: “*Any evidence, records or correspondence concerning*” any actual “*impropriety, fraud or gross negligence in port contracting*”. For purposes of responding to this portion of Mr. West’s records request, the Port will consider his request to include records related to claims of “*impropriety, fraud or gross negligence in port contracting*”. Some records responsive to this request are contained in the Port’s response to Mr. West’s Request 4.A (Emails to and from Kevin Ferguson), provided to him on **October 24, 2012**. Additional records responsive to this request are located in the records of the Port’s response to his Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with the Port’s **January 11, 2013** response.

The Port’s response to this portion of the request is now complete.

1. All records or correspondence related to Mr. Ferguson's complaints,

On January 11, 2013, the Port requested further clarification to the extent that Mr. West’s Request No. 1 is redundant with his Request No. 4, described above, and for which the Port’s response is complete. The Port asked Mr. West to please advise what additional records he requests under this category, or if this Request No. 1 is modified consistent with his December 5 clarification.

January 11, 2013 - 7 -

Response to Ms Bird re: 2012 West PRR, West v. Port of Olympia
Thurston County Superior Court No. 12-2-01629-9

Please contact me if you have any question regarding this matter. Thank you.

Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake

Carolyn A. Lake

CAL:dkl

cc: Jeri Sevier, Port of Olympia

From: Jeri Sevier
To: A West
Subject: Public Record Response
Date: Wednesday, January 16, 2013 4:23:11 PM
Attachments: A West Response 1 16 13 .pdf

Mr. West -- please find attached an additional response to your records request. Please contact me to come in and pick up these records and all the others still waiting for you to pick up that have been released in the past. In addition, I have records for your review.

Thank you.

Jeri Sevier | Human Resources and Administrative Manager
Port of Olympia | 915 Washington Street NE | Olympia, WA 98501
☎: 360.528.8003 | 7: 360.528.8090 | ✉: jeris@portolympia.com | www.portolympia.com

EXHIBIT 10

January 16, 2012

Arthur West
129 State Ave NE #1497
Olympia, WA 98502

Also Sent Via Email

Dear Mr. West:

This letter is a follow up to the Port of Olympia's (the "Port") response, pursuant to RCW 42.56.520, to your public records request that the Port received on **September 14, 2012**. We initially responded to your request on **September 19, 2012** and advised that because of the volume of information you have requested, the Port estimated that the records would be available by approximately **October 24, 2012**. We also advised that we would notify you when the records are available for your review, and that we would release records incrementally as they are gathered, reviewed and determined to be responsive.

On **September 19, 2012**, in the Port's initial response, we also advised you that we determined that there may be responsive records to your request, for which third parties may be affected or have an interest in their disclosure. The purpose of the Public Records Act (PRA) is "to allow public scrutiny of government," not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows the public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540.) Pursuant to this provision of state law, we advised you that the Port of Olympia would be notifying the potentially affected party about the requested records, and we provided you a copy of that third party notice.

On **October 24**, we advised you that because of the volume of information you have requested, the Port estimated that it will respond by December 5, 2012. Also on October 24, the Port updated you by describing the large volume of records associated with your Request No.4:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining. Below we share with you the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records.

EXHIBIT 11

Our mission is to create economic opportunities by connecting Thurston County to .

After reviewing the list of Mr. Ferguson's records requests, we asked you to please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, the Port gave you the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

Also on October 24, the Port provided you with its first incremental release of records, which consisted of a DVD of the Port's response to one of Mr. Ferguson's three PRRs. (Your Request No 4, Part A, as described below).

On December 5, the Port had not yet heard back from you in response to the Port's October 24th letter and request for confirmation. The Port repeated its request, and set a new estimated response date of **January 5th**:

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2013. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive

On December 5, you responded with clarification that you were amending your PRA Request No. 4 to include only the following

For the January 11 request, how about limiting it to sections D, E, and F?
For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?
For the April 16 request, how about the investigation materials and final report described in section C?

On December 7, the Port acknowledged your clarification, and advised it would shortly provide an update on estimated response time

On January 8, the Port updated its response with a new estimated response date of January 16, 2013. On **January 11**, the Port made its second incremental release as described below.

Today on January 16, The Port provides you with a status update on your request and a Third Incremental Release in which we make available additional records responsive to your **PRR Section No. 3**:

3. Any correspondence or communications with the State auditor 2011 to present.

Some records responsive to this request are contained in the Port's response to your Request 4.A (Emails to and from Kevin Ferguson), provided to you on **October 24, 2012**. Additional records responsive to this request are located in the records of the Port's response to your Request 4. B, (investigative materials used to formulate the final report) on the DVD enclosed with the **January 11, 2013** response.

On January 11, we advised that the Port is continuing to gather and identify whether any additional responsive records exists, and that we expected to complete the remaining portion of this request by **January 16, 2013**.

Today on January 16, 2013, the Port has available a CD containing the records responsive to this request. Five of the approximately 381 records and attachments have one word redacted. We also enclose the accompanying privilege log. The cost of the CD is \$2.50. You may make arrangements pay for that CD at any time during business hours.

Balance of Your September 14, 2012 PRR

Below we summarize the status of your three other categories of your September 14, 2012 PRR records request as clarified by you on December 5th, in reverse order. Your original Request No. 4 is re-stated entirely, the highlighted portion reflects your **clarified** request.

4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.

C) All Forms which may be an included part of part A) above.

D) A copy of each email sent by m from February 1, 2009 to November 4, 2011.

E) A copy of each email received by me between February 1, 2009 and November 4, 2011.

F) A copy of the Port organization chart

For ease of use by me please put all other policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two Folders (Sent -- Received) and place the emails contained in each Folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.

On December 5, you amended this request to include only parts D & E.

However, on October 24, 2012, the Port had already provided you all records responsive to this Request No. 4.A. The Port's response to this portion of the request is now complete.

B. Mr. Ferguson's March 15, 2012 Request:

Part One:

A. Please provide me with copies of all files contained on the C: drive on my desk Computer as of November 4, 2012, the K: drive on the Port server as of November 4, 2012 and the H: drive of the accounting server as of November 4, 2012. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2012. Please segregate the emails in folders using the same title as the original Lotus Notes folder

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2012.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The initial investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

On December 5, 2012 you limited your above request to “section 2, parts A, B, and C”, as bold highlighted above.

On January 11, 2013, the Port enclosed a CD containing the records responsive to this request. **The Port’s response to this portion of the request is now complete.**

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

*C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include **the investigation recommended by Carolyn Lake on or near October 10th** in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes **any report investigative materials as well as any written or discussed final report made for this second investigation.** Start date should be October 1 2011 and the end date for the search is today's date, April 16.*

On December 5, 2012 you limited your above request to “the investigation materials and final report described in Section C”, as bold highlighted above.

On January 11, 2013, the Port made available to you a CD containing final report, responsive to this request. The Port also advised it is continuing to review the investigative materials to determine whether exemptions apply. If exemptions are determined, we will supply you redacted records with a Privilege Log. We initially expected to complete the remaining portion of this request by January 16, 2013, however the Port requires additional time through **January 31, 2013** to complete this review.

1. All records or correspondence related to Mr. Ferguson's complaints,

Port Response to Mr. West PRR of September 14, 2012
Section No. 3
January 16, 2012 - 6 -

On **January 11**, the Port requested further clarification to the extent that your Request No. 1 is redundant with your Request No. 4, described above, and for which the Port's response is complete. We have not heard back yet. Please advise what additional records you request under this category, or if this Request No. 1 is modified consistent with your December 5 clarification. Thank you.

Note: The Port's disclosure of any records which contain communications with its Legal Counsel or attorneys at the Goodstein Law Group PLLC is not to be construed in any way as a waiver of the Port's attorney-client privilege, in whole or in part.

The Port's release of records herein which are responsive to the request for "Whistleblower related" materials is provided pursuant to signed waiver(s) submitted to the Port.

I may be contacted directly at 528-8003 if you have questions regarding this response.

Sincerely,



Jeri Sevier, PHR
Human Resources &
Administrative Manager

**PORT Of OLYMPIA PRIVILEGE LOG
A West PRR received September 14, 2012**

Section 3. Any correspondence or communications with the State auditor 2011 to present.

Incremental Release date: 16 January 2013

Date/ Bates Stamped No.	To/From	Subject	Pages	EXEMPTION	EXPLANATION
09/22/2011 09:02 AM 000001	FROM: Angela Cady To: ANDIM@PORTOLYMPI A.COM	Subject: Data Collection Form	1	RCW 42.56.270 Financial, commercial, and proprietary information. The following financial, commercial, and proprietary information is exempt from disclosure under this chapter: (1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;	Within these emails, the state Auditor sends the Port Financial Comptroller a computer password by which the Port Comptroller may log onto a website and certify certain financial records as true. For security, the state auditor then sends by separate email the address for the web site. However, in this records release, the Port provides copies of sets of emails, the web site and the pass word. Release of the password in this circumstance would compromise the integrity of the financial reporting system and allow outsiders access to the certification process. Only the pass word is redacted. This exemption is per RCW 42.56.270, the exemption for "computer source code or object code", because if any member of the public could access Port financial records and tamper with the certification, it would lead to public loss.
09/22/2011 09:27 AM 000002	From: Andi Mounts To: Angela Cady	Subject: Re: Data Collection Form	1	Same as above	Same as above
09/22/2011 09:27 AM 000003	From: Andi Mounts To: Angela Cady	Subject: Re: Data Collection Form	1	Same as above	Same as above
09/22/2011 09:30 AM 000004-05	From: Angela Cady To: Andi Mounts	Subject: RE: Data Collection Form Attachments: Port of mpia ar1006400.pdf (public)	2	Same as above	Same as above
09/26/2012 09:44 AM 000006	From: Angela Cady To: ANDIM@PORTOLYMPI A.COM	Subject: Data Collection Form	1	Same as above	Same as above

EXHIBIT 12

**GOODSTEIN
LAW GROUP**

PLLC

501 S. G Street
Tacoma, WA 98405
Fax: (253) 779-4411
Tel: (253) 779-4000

Carolyn A. Lake
Attorney at Law
clake@goodsteinlaw.com

January 29, 2013

E-Mailed

Stephanie Bird
Cushman Law Offices, P.S.
924 Capital Way South
Olympia, WA 98501

Re: 2012 West PRR, West v. Port of Olympia
Thurston County Superior Court No. 12-2-01629-9

Dear Stephanie:

You have clarified to the Port and Court that Mr. West's September 14, 2012 Public Records is the subject of his current litigation with the Port. I enclose a copy of our previous letter to you dated January 11, 2013. That letter contains the detailed history of Mr. West's September 14th PRR, and his subsequent December 5th clarification of same. The detailed history of his records request for brevity sake is attached and not repeated here in total. We write to repeat our request for clarification as to Part 1 of your client's records request.

To re-cap in relevant part, Mr. West's 14 September, 2012 records request consists of 4 parts.

1. All records or correspondence related to Mr. Ferguson's complaints,
2. Any evidence, records or correspondence concerning impropriety, fraud or gross negligence in port contracting, and
3. Any correspondence or communications with the State auditor 2011 to present.
4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

The Port received the West records request on **September 14, 2012**. The Port initially responded to the request on **September 19, 2012** and advised that because of the volume of information Mr. West requested, the Port estimated that the records would be available by approximately **October 24, 2012**. The Port also advised that it would notify Mr. West when the records are available for review, and that it would release records incrementally as they are gathered, reviewed and determined to be responsive.

On October 24, the Port provided Mr. West with its first incremental release of records, which consisted of a DVD of the Port's response to one of Mr. Ferguson's three PRRs.

EXHIBIT 13A

Also on **October 24**, the Port advised Mr. West that because of the volume of information he requested, the Port estimated that it will respond by December 5, 2012. And, on October 24, the Port updated Mr. West by describing the large volume of records associated with his Request, part No.4, and requested clarification.

On **December 5**, the Port had not yet heard back from Mr. West in response to the Port's October 24th letter and request for confirmation. The Port repeated its request, and set a new estimated response date of **January 5, 2013**:

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5th, 2013. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive

As a result on **December 5**, Mr. West responded with clarification that he amended his 14 September 2012 PRA Request Part No. 4 to include only the following:

For the January 11 request, how about limiting it to sections D, E, and F?
For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?
For the April 16 request, how about the investigation materials and final report described in section C?

On **December 7**, the Port acknowledged Mr. West's clarification, and advised it would shortly provide an update on estimated response time.

On **January 8**, the Port updated its response with a new estimated response date of January 16, 2013.

On **January 11**, The Port provided Mr. West with a status update on his request and a Second Incremental Release. On **January 11, 2013**, the Port also requested further clarification to the extent that Mr. West's Request Part 1 is redundant with his Request Part 4, described above, and for which the Port's response is complete. The Port asked Mr. West to please advise what additional records he requests under this category, or if this Request Part 1 is modified consistent with his December 5 clarification.

On **January 11, 2013** we also informed you of this request for clarification.

On **January 16**, the Port provided Mr. West its Third incremental release and again the Port requested that Mr. West clarify to the extent that Mr. West's Request Part 1 is redundant with his Request Part 4, described above, and for which the Port's response is complete. We have not heard back yet. Please advise what additional records your client requests under Part 1, or if his Part 1 request is modified consistent with his December 5 clarification.

January 29, 2013 - 3 -

Repeat: Request for Clarification re: 2012 West PRR, West v. Port of Olympia
Thurston County Superior Court No. 12-2-01629-9

The Port has completed its response and release of records as to Part 2-4. The sole remaining issue to address is Mr. West's response to the Port's request for clarification as to Part 1. We request a response to this request for clarification no later than **February 1st**, or will consider the request closed.

Please contact me if you have any question regarding this matter. Thank you.

Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake

Carolyn A. Lake

CAL:dkl

cc: Jeri Sevier, Port of Olympia

From: Carolyn Lake
Sent: Wednesday, January 16, 2013 1:11 PM
To: Stephanie Bird
Cc: 'Jennifer Harkins'
Subject: Action requested re: Mr. West's 14 September 2012 PRR , section No. 3,

Importance: High

Follow Up Flag: Follow up

Flag Status: Flagged

Stephanie:

We completed our review of and plan to release about 318 emails with attachments that are responsive to Mr. West's 14 September 2012 PRR , section No. 3, in which he requests:

3. Any correspondence or communications with the State auditor 2011 to present.

Within 5 of the 318 emails, the Auditor sends the Port a computer password by which the Port may log onto a website and certify certain financial records as true. For security, the auditor then sends by separate email the address for the web site.

However, in this release, we will be providing copies of both sets of emails, the web site and the pass word. This would compromise the integrity of the system and allow outsiders access to the certification process.

We plan to redact only the pass word. We plan to cite to RCW 42.56.270, the exemption for "computer source code or object code" on the theory that if any member of the public could access Port financial records and tamper with the certification, it would lead to public loss.

Alternatively, we seek your agreement that the pass word is not responsive to your client's request.

Please let me know if you have any questions or concerns, and or if you would agree that the password is not responsive. Otherwise, there are no other redactions to these emails.

RCW 42.56.270

Financial, commercial, and proprietary information.

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

EXHIBIT 13B

Thank you.

Carolyn A. Lake

Goodstein Law Group PLLC 501 South "G" Street Tacoma, WA 98405
253.779.4000 office 253.229.6727 cell 253.779.4411 fax

CONFIDENTIALITY NOTICE

This email message may be protected by the attorney/client privilege, work product doctrine or other confidentiality protection. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, and then delete it. Thank you.

"An appeaser is one who feeds a crocodile, hoping it will eat him last." Sir Winston Churchill

From: Carolyn Lake
To: "Stephanie Bird"
Cc: "Jennifer Harkins"
Bcc: Deena Lazzareschi
Subject: RE: Action requested re: Mr. West's 14 September 2012 PRR , section No. 3,
Date: Tuesday, January 29, 2013 7:14:00 AM

May we have a reply to the below email of January 16th?
Thank you.

Carolyn A. Lake

Goodstein Law Group PLLC 501 South "G" Street Tacoma, WA 98405
253.779.4000 office 253.229.6727 cell 253.779.4411 fax

CONFIDENTIALITY NOTICE

This email message may be protected by the attorney/client privilege, work product doctrine or other confidentiality protection. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, and then delete it. Thank you.

"An appeaser is one who feeds a crocodile, hoping it will eat him last." Sir Winston Churchill

From: Carolyn Lake
Sent: Wednesday, January 16, 2013 1:11 PM
To: Stephanie Bird
Cc: 'Jennifer Harkins'
Subject: Action requested re: Mr. West's 14 September 2012 PRR , section No. 3,
Importance: High

Stephanie:

We completed our review of and plan to release about 318 emails with attachments that are responsive to Mr. West's 14 September 2012 PRR , section No. 3, in which he requests:

3. Any correspondence or communications with the State auditor 2011 to present.

Within 5 of the 318 emails, the Auditor sends the Port a computer password by which the Port may log onto a website and certify certain financial records as true. For security, the auditor then sends by separate email the address for the web site.

However, in this release, we will be providing copies of both sets of emails, the web site and the pass word. This would compromise the integrity of the system and allow outsiders access to the certification process.

We plan to redact only the pass word. We plan to cite to RCW 42.56.270, the exemption for "computer source code or object code" on the theory that if any member of the public could access Port financial records and tamper with the certification, it would lead to public loss.

EXHIBIT 13C

Alternatively, we seek your agreement that the pass word is not responsive to your client's request.

Please let me know if you have any questions or concerns, and or if you would agree that the password is not responsive. Otherwise, there are no other redactions to these emails.

RCW 42.56.270

Financial, commercial, and proprietary information.

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

Thank you.

Carolyn A. Lake

Goodstein Law Group PLLC 501 South "G" Street Tacoma, WA 98405
253.779.4000 office 253.229.6727 cell 253.779.4411 fax

CONFIDENTIALITY NOTICE

This email message may be protected by the attorney/client privilege, work product doctrine or other confidentiality protection. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, and then delete it. Thank you.

"An appeaser is one who feeds a crocodile, hoping it will eat him last." Sir Winston Churchill

February 6, 2013

Arthur West
120 State Ave NE #1497
Olympia, WA 98502

Also Sent Via Email

Re: Port Response to Mr. West PRR of September 14, 2012
& Response to February 1, 2013 Clarification/ Expansion of PRR

Dear Mr. West:

This letter is a follow up to the Port of Olympia's (the "Port") response, pursuant to RCW 42.56.520, to your public records request that the Port received on **September 14, 2012**. We initially responded to your request on **September 19, 2012** and advised that because of the volume of information you have requested, the Port estimated that the records would be available by approximately **October 24, 2012**. We also advised that we would notify you when the records are available for your review, and that we would release records incrementally as they are gathered, reviewed and determined to be responsive.

On September 19, 2012, in the Port's initial response, we also advised you that we determined that there may be responsive records to your request, for which third parties may be affected or have an interest in their disclosure. The purpose of the Public Records Act (PRA) is "to allow public scrutiny of government," not third parties. *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 218 (1998). When a requestor seeks records that contain information about third parties, the PRA allows the public agency the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. (See RCW 42.56.540.) Pursuant to this provision of state law, we advised you that the Port of Olympia would be notifying the potentially affected party about the requested records, and we provided you a copy of that third party notice.

On October 24, 2012 we advised you that because of the volume of information you have requested, the Port estimated that it will respond by December 5, 2012. Also on October 24, the Port updated you by describing the large volume of records associated with your Request No.4:

Mr. Ferguson has submitted three records requests, which have been very extensive. The Port's response to Mr. Ferguson's multiple requests is still ongoing. To date, the Port has provided him with over 125 GB of electronic data and still has an additional estimated 40 GB of electronic data remaining. Below we share with you

Our mission is to create economic opportunities by connecting Thurston County to the **EXHIBIT 14**

AIRPORT | MARINA | REAL ESTATE | SEAPORT

the list of Mr. Ferguson's records requests, the estimated volume of responsive records and your estimated cost to receive a copy of those records.

After reviewing the list of Mr. Ferguson's records requests, we asked you to please confirm (1) whether you are still interested in receiving the records and 2) that you are approving the expense related to providing these to you on DVD, which is estimated to be 35 DVDs, at \$10.00 per DVD for an estimated total of \$350.00.

Alternatively, the Port gave you the option of providing the Port with Memory Sticks to transfer the data on. The Port requests that the Memory Sticks be new and in the original packaging for protection of Port data files. If you choose this option, you will need to purchase at a minimum of nine memory sticks of 16GB or larger.

Also on October 24, 2012 the Port provided you with its **First incremental release** of records, which consisted of a DVD of the Port's response to Mr. Ferguson's January 11, 2012 PRR. (Your Request No 4, Part A, as described below). **One Privilege Log** (and its Update) was provided with this response.

On December 5, 2012 the Port had not yet heard back from you in response to the Port's October 24th letter and request for confirmation. The Port repeated its request, and set a new estimated response date of **January 5, 2013**:

Please provide me with a response as to how you wish to receive the volumes of records you have requested. As for the balance of the request the Port needs additional time and estimates that it will respond by January 5, 2013. I will notify you when the records are available for your review and will release records incrementally as they are gathered, reviewed, and determined to be responsive.

On December 5, you responded with clarification that you were amending your PRA Request No. 4 to include only the following:

For the January 11 request, how about limiting it to sections D, E, and F?
For the March 15 request, how about limiting further responses to section 2, parts A, B, and C?
For the April 16 request, how about the investigation materials and final report described in section C?

On December 7, the Port acknowledged your clarification, and advised it would shortly provide an update on estimated response time.

On January 8, the Port updated its response with a new estimated response date of January 16, 2013.

Port Response to Mr. West PRR of September 14, 2012
& Response to February 1, 2013 Clarification/ Expansion of PRR
February 6, 2013 - 3 -

On **January 11, 2013** the Port made its **Second incremental release** as described below. No Privilege Logs were included with this response.

On **January 16**, The Port provided you with a status update on your request and a **Third Incremental Release** in which we make available additional records responsive to your PRR Section No. 3:

3. Any correspondence or communications with the State auditor 2011 to present.

Some records responsive to this request are contained in the Port's response to your Request 4.A (Emails to and from Kevin Ferguson), provided to you on **October 24, 2012**. Additional records responsive to this request are located in the records of the Port's response to your Request 4. B, (investigative materials used to formulate the final report) on the CD enclosed with the **January 11, 2013** response.

On January 11, we advised that the Port is continuing to gather and identify whether any additional responsive records exists, and that we expected to complete the remaining portion of this request by **January 16, 2013**.

On **January 16, 2013**, the Port provided a CD containing the records responsive to this request. Five of the approximately 381 records and attachments have one word redacted. We also enclosed an accompanying privilege log. (The second Privilege Log associated with this request.)

Please also know that as part of this **February 6, 2013 Fourth Incremental Release** the Port updates this portion of your PRR with additional emails found responsive to your request. There are no exemptions or redactions with this release. . The Port has available to you a CD containing the responsive records. The cost of the CD is \$2.50. Please make arrangements to pay the cost and pick up the CD. **This portion has now been completed.**

Balance of Your 14 September 2012 PRR

Below we summarize the status of your three other categories of your September 14 2012 PRR records request as clarified by you on December 5th, in reverse order. Your original Request No. 4 is re-stated entirely, the highlighted portion reflects your request, as **clarified** on December 5, 2012.

4. All records requested by Mr. Ferguson, and any records of or related to any consideration, review or processing of his whistle blower complaint.

A. Mr. Ferguson's January 11, 2012 Request:

A) All Port policies, this should include Port, Executive and Marketing policies and or any other combination of names currently used to categorize policies.

Port Response to Mr. West PRR of September 14, 2012
& Response to February 1, 2013 Clarification/ Expansion of PRR
February 6, 2013 - 4 -

- B) All Port procedures which may be included and or a part of any of the policies provided in request A) above.*
 - C) All Forms which may be an included part of part A) above.*
 - D) A copy of each email sent by m from February 1, 2009 to November 4, 2011.*
 - E) A copy of each email received by me between February 1, 2009 and November 4, 2011.*
 - F) A copy of the Port organization chart*
- For ease of use by me please put all other policy, procedure and form information in numerical order using the policy number. For emails I am hopeful you can create two Folders (Sent -- Received) and place the emails contained in each Folder in chronological order starting with February 1, 2009. Please note, my Lotus Notes email file at the time of my departure contained virtually all of the emails I sent or received.*

On December 5, you amended this request to include only parts D & E. However, **on October 24, 2012**, the Port had already provided you all records responsive to this Request No. 4.A. **The Port's response to this portion of the request is now complete.**

B. Mr. Ferguson's March 15, 2012 Request:

Part One:

A. Please provide me with copies of all files contained on the C: drive on my desk Computer as of November 4, 2012, the K: drive on the Port server as of November 4, 2012 and the H: drive of the accounting server as of November 4, 2012. These files do not need to include any software files necessary to operate the computer rather only the Microsoft WORD etc. files created by me and or other members of the Port staff are required.

B. Copies of all emails in any folder other than INBOX or SENT (These were previously requested) within my Lotus email account as of November 4, 2012. Please segregate the emails in folders using the same title as the original Lotus Notes folder

C. An authentic transcript of the private meeting between Mr. Galligan and myself on August 24, 2011 when Mr. Galligan presented me with a performance correction notice. In a series of emails and at the time of the meeting both of us agreed that taping the meeting would be allowed. Mr. Galligan retained a copy of this tape. Please note that my earlier request for all materials contained in my personnel file did not include this item as stated it would by Mr. Galligan during the meeting on August 24, 2012.

Part Two:

A. The Original Whistleblower submission.

B. All investigative materials used to formulate the final report.

C. The initial investigation report.

D. All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

E. All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip, and

F. A log detailing the date and time of all phone calls where the whistleblower submission, investigation, final report or any action taken as a result of the submission was discussed. Parties who participated in the phone calls should also be listed with the date and time.

On December 5, 2012 you limited your above request to “section 2, parts A, B, and C”, as bold highlighted above.

On January 11, 2013, the Port enclosed a CD containing the records responsive to this request. **The Port’s response to this portion of the request is now complete.**

C. Mr. Ferguson's April 16, 2012 Request:

A. All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip.

B. The date range in the March 15 request should be expanded to include all dates from the June 1, 2011 to present, April 16.

*C. The coverage of emails, instant messages and the above mentioned text messages should be expanded to include **the investigation recommended by Carolyn Lake on or near October 10th** in which the State Auditor offered an opinion that there was a potential for fraud and or gross negligence by Port employees regarding contracting. This second investigation was to be conducted through Ed Gilligan's office. Again, any and all individuals who passed formal or gossip related typed communications (emails, instant messages and text's messages) should be included. This expansion also includes **any report investigative materials as well as any written or discussed final report made for this second investigation.** Start date should be October 1 2011 and the end date for the search is today's date, April 16.*

Port Response to Mr. West PRR of September 14, 2012
& Response to February 1, 2013 Clarification/ Expansion of PRR
February 6, 2013 - 6 -

On December 5, 2012 you limited your above request to “the investigation materials and final report described in Section C”, as bold highlighted above.

On January 11, 2013, as part of its Second Incremental Release, the Port made available to you a CD containing final report, responsive to this request. The Port also advised it is continuing to review the investigative materials to determine whether exemptions apply. If exemptions are determined, we will supply you redacted records with a Privilege Log. We initially expected to complete the remaining portion of this request by January 16, 2013; however the Port advised you on January 16th that it required additional time to complete this review.

Today, on **February 6, 2013**, the Port makes available to you a Fourth Incremental Release which contains the records responsive to this request. The Port has available to you a CD containing the responsive records. The cost of the CD is \$2.50. Please make arrangements to pay the cost and pick up the CD. **This portion has now been completed.**

1. All records or correspondence related to Mr. Ferguson's complaints,

On **January 11, 2013** the Port requested further clarification to the extent that your Request No. 1 is redundant with your Request No. 4, described above, and for which the Port's response is complete. We had not heard back from you by January 16, 2013, so we again requested you to advise what additional records you request under this category, or if this Request No. 1 is modified consistent with your December 5 clarification. We also sent this request for clarification to your attorney on January 16, 2013 and January 28, 2013. On February 1, your attorney wrote back to clarify your request, as described below.

Your September 14 2012 PRR As Clarified on February 1, 2013

On February 1, 2013, your attorney Ms. Bird advised the Port as follows:

So far as Mr. West's Part 1 of his September 14 request is redundant of Part 4, I want to clarify that Mr. West does still wish the following categories of records: For Ferguson's March 15 Request, Arthur would like Part 2 (D) and (E), as expanded by April 16 Part (C), and also April 16 Part (A), as expanded by April 16 Part (C). Let me know if you need clarification.

And so far as Mr. West's Part 1 of his September 14 request is NOT redundant of Part 4 of the same September 14 request, he would still like those non-redundant records (for example, letters). Again, let me know if you need clarification.

For clarity and confirmation of our understanding, we repeat the above clarification by highlighting the new portions of the PRR which were clarified on December 5th to be

excluded from the PRR, and which on February 1, 2013 were *added back* as part of the requested records.

Ferguson's January 11 request:

- A) Port policies
- B) Port procedures
- C) Port forms

Ferguson's March 15 request:

Part 1:

- A) Copies of files on C: drive, K: drive, and H: drive
- B) Emails in any folder other than inbox/sent
- C) Transcript of a tape recorded meeting between Ferguson/Galligan on 8/24/11

Part 2.

- D) Emails regarding whistleblowing and investigation
- E) IMs regarding whistleblowing and investigation
- F) Phone log regarding whistleblowing and investigation

Ferguson's April 16 request:

- A) All text messages regarding whistleblowing and investigation
- B) Expansion of date range for files requested on March 15
- C) Expansion of subjection matter for March 15 Part 2 D, E, and F, and April 16 Part A, to include the second investigation that you recommended on or around 10/10

Please contact us as soon as possible if this does not accurately describe your February 1 updated request. Below we respond.

**Port Response to February 1, 2013 Clarification to
September 14, 2012 West Records Request:**

KF March 15 request:

(None from Part 1)

Part 2:

D. "All emails sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip ..."

Port Response: The Port has determined that records responsive to this request are included within those disclosed to you on October 24, 2012 as part of the Port's response

to your request for records responsive to Mr. Ferguson's January 11, 2011 PRR. **This portion has now been completed.**

E. *"All instant messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip"*

Port Response: Any use of Instant Messages is for non-substantive communications only. Pursuant to both state records retention and the Port's Email Retention Policy 905, which states in relevant part:

Retention and disposition requirements for e-mail messages are always based on the content of the correspondence and the purpose of the message, Port of Olympia Policy 905:

E-MAIL RETENTION.

The retention requirements for e-mail messages and attachments are the same as paper documents with identical content. The messages must be managed individually according to the designated retention period for the content. E-mail messages that have no administrative, legal, or fiscal significance are not subject to retention and may be deleted as soon as the message has served its reference purpose. For examples, see E-mail Messages not typically subject to Retention on page 3.

Instant Messaging (IM) is to be used for non-essential business ONLY. Texting on a cell phone is to be used for non-essential business ONLY. Examples of non-essential business include: confirming an appointment, notification of a visitor, confirming availability, invitation to lunch, etc.

In addition, Port Policy Electronic Communications and Technology 704 states:

Instant Messaging (IM) and texting is to be used for non-essential business ONLY. See examples in Policy 905.

Thus, Instant Messages are not saved as they qualify as non-essential records which are subject to deletion immediately. Properly deleted messages are not required to be disclosed, *BIAW v. McCarthy*, 152 Wn. App. 720, 218 P2d 196 (2009). **This portion has now been completed.**

KF April 16, 2012 PRR Request:

A. *"All text messages sent by any individual to any other individual regarding the whistleblower submission, investigation, final report or any action taken as a result of the submission whether mentioned formally or in gossip"*.

Port Response: Any use of Text Messages is for non-substantive communications only. Pursuant to both state records retention and the Port's Email Retention Policy 905, which states, in relevant part:

Retention and disposition requirements for e-mail messages are always based on the content of the correspondence and the purpose of the message, Port of Olympia Policy 905:

E-MAIL RETENTION.

The retention requirements for e-mail messages and attachments are the same as paper documents with identical content. The messages must be managed individually according to the designated retention period for the content.

Text messages that have no administrative, legal, or fiscal significance are not subject to retention and may be deleted as soon as the message has served its reference purpose. For examples, see E-mail Messages not typically subject to Retention on page 3.

Instant Messaging (IM) is to be used for non-essential business ONLY. Texting on a cell phone is to be used for non-essential business ONLY. Examples of non-essential business include: confirming an appointment, notification of a visitor, confirming availability, invitation to lunch, etc.

In addition, Port Policy Electronic Communications and Technology 704 states:

Instant Messaging (IM) and texting is to be used for non-essential business ONLY. See examples in Policy 905.

Thus, Text Messages are not saved as they qualify as non-essential records which are subject to deletion immediately. Properly deleted messages are not required to be disclosed, *BIAW v. McCarthy*, 152 Wn. App. 720, 218 P2d 196 (2009). **This portion has now been completed.**

C. Expansion of subjection matter for March 15 Part 2 D, E, and F, and April 16 Part A, to include the second investigation that Carolyn Lake recommended on or around 10/10

Port Response: The Port has determined that records responsive to this request are included within those previously disclosed to you:

- On October 24, 2012 as part of the Port's **First Incremental Release** containing records responsive to your request for records responsive to Mr. Ferguson's January 11, 2012 PRR, and

Port Response to Mr. West PRR of September 14, 2012
& Response to February 1, 2013 Clarification/ Expansion of PRR
February 6, 2013 - 10 -

- On January 11, 2013 as part of the Port's **Second Incremental Release** containing records responsive to your request for records responsive to Mr. Ferguson's March 15, 2012 PRR.

In addition, the Port previously advised you on January 16, 2013 that it was still reviewing potentially responsive records consisting of investigative materials. These records are also responsive to your PRR as clarified on February 1, 2013. Please know the Port has completed that review. Today, **on February 6, 2013**, the Port makes available to you a **Fourth Incremental Release** which contains the records responsive to this request. No exemptions apply. The Port has available to you a CD containing the responsive records. The cost of the CD is \$2.50. Please make arrangements to pay the cost and pick up the CD. **This portion has now been completed.**

Conclusion

This **Fourth Incremental Release** completes the Port's response to your September 14 2012 Records Request, as clarified on December 5, 2012 and again on February 1, 2013. **The request is now closed.**

The Fourth Incremental Release as discussed throughout this letter contains one CD in the amount of \$2.50. This CD is available for you to pick up during business hours.

Note: The Port's disclosure of any records which contain communications with its Legal Counsel or attorneys at the Goodstein Law Group PLLC is not to be construed in any way as a waiver of the Port's attorney-client privilege, in whole or in part.

The Port's release of records herein which are responsive to the request for "Whistleblower related" materials is provided pursuant to signed waiver(s) submitted to the Port.

I may be contacted directly at 360-528-8003 if you have questions regarding this response.

Sincerely,



Jeri Sevier, PHR
Human Resources &
Administrative Manager

cc: Carolyn Lake, GLG, Port Counsel

From: Stephanie Bird
To: Carolyn Lake
Subject: West v. Port of Olympia
Date: Friday, February 01, 2013 3:51:51 PM

Dear Carolyn,

Thank you for your letters – they are very clear and helpful.

You are seeking clarification on part 1 of Arthur's September 14 request, to the extent to which it is redundant of part 4 of his request, which he limited. In shorthand (I'm not quoting verbatim; to the extent that I paraphrase something, please take it as a paraphrase and refer to the original for the exact wording); Arthur's clarification of Part 4 of his September 14 request EXCLUDED the following:

Ferguson's January 11 request:

- A) Port policies
- B) Port procedures
- C) Port forms

Ferguson's March 15 request:

Part 1)

- A) Copies of files on C: drive, K: drive, and H: drive
- B) Emails in any folder other than inbox/sent
- C) Transcript of a tape recorded meeting between Ferguson/Galligan on 8/24/11

Part 2)

- D) Emails regarding whistleblowing and investigation
- E) IMs regarding whistleblowing and investigation
- F) Phone log regarding whistleblowing and investigation

Ferguson's April 16 request:

- A) All text messages regarding whistleblowing and investigation
- B) Expansion of date range for files requested on March 15
- C) Expansion of subject matter for March 15 Part 2 D, E, and F, and April 16 Part A, to include the second investigation that you recommended on or around 10/10

So far as Mr. West's Part 1 of his September 14 request is redundant of Part 4, I want to clarify that Mr. West does still wish the following categories of records: For Ferguson's March 15 Request, Arthur would like Part 2 (D) and (E), as expanded by April 16 Part (C), and also April 16 Part (A), as expanded by April 16 Part (C). Let me know if you need clarification.

And so far as Mr. West's Part 1 of his September 14 request is NOT redundant of Part 4 of the same September 14 request, he would still like those non-redundant records (for example, letters). Again, let me know if you need clarification.

Now, please let me know how much Arthur owes the Port for copies and whether we need to send you blank disks, zip drives, etc.

EXHIBIT 15

Thank you!
--Stephanie

Stephanie M. R. Bird

Law Offices, P.S.

924 Capitol Way S.

Olympia, Washington 98501

Phone: 206-812-3144

Fax: 360-956-9795

E-mail: stephaniebird@cushmanlaw.com

This e-mail and any attachments thereto are intended only for the use of the named addressee(s) and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please notify me by return e-mail and by telephone at 360-534-9183. Please also permanently delete the original e-mail and all copies and printouts. Thank you.

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	1 of 4
Section:	900 RECORDS / PUBLIC DISCLOSURE	Revision Date:	12/12
Policy:	E-MAIL RETENTION	Policy No.	905
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

POLICY: To provide guidance regarding retention and management of electronic mail (e-mail) messages. To help employees determine what information sent or received by e-mail should be retained and for what period of time.

LIMITATIONS AND REQUIREMENTS.

E-mail messages are subject to the guidelines provided in chapter 40.14 RCW for the preservation and destruction of public records; as such they are managed through records retention schedules.

This e-mail retention is secondary to the General Retention Schedule for the Port of Olympia (hereinafter, "retention schedule"); and current public record requests for specific public records; and any litigation hold notice for records in response to potential litigation.

This procedure addresses typical records that may be contained in e-mail and does not necessarily reference other types of records, such as paper or other types of electronic files or data. Those records are covered in depth by the retention schedule.

E-mail is defined as the messages sent and received by e-mail systems, including all transmission and receipt data. The body of the message, transactional information, and any attachments associated with the message are all considered a part of the retainable record.

Confidential and sensitive information should not be sent via e-mail. The privacy and integrity of an e-mail message cannot be guaranteed. Also, once created, there is no guarantee that attempts to erase or delete e-mail are effective.

Instant Messaging (IM) is to be used for non-essential business ONLY. Texting on a cell phone is to be used for non-essential business ONLY. Examples of non-essential business include: confirming an appointment, notification of a visitor, confirming availability, invitation to lunch, etc.

Retention and disposition requirements for e-mail messages are always based on the content of the correspondence and the purpose of the message.

E-MAIL RETENTION.

The retention requirements for e-mail messages and attachments are the same as paper documents with identical content. The messages must be managed individually according to the designated retention period for the content.

E-mail messages that have no administrative, legal, or fiscal significance are not subject to retention and may be deleted as soon as the message has served its reference purpose. For examples, see E-mail Messages not typically subject to Retention on page 3. Only the official record copy of an e-mail must be retained. If the e-mail is part of a chain of e-mails, only the last message in the chain must be saved assuming all prior messages are contained within the chain.

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	2 of 4
Section:	900 RECORDS / PUBLIC DISCLOSURE	Revision Date:	12/12
Policy:	E-MAIL RETENTION	Policy No.	905
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

Generally the sender is responsible for retaining e-mail messages generated within the Port and the recipient is responsible for retaining e-mail messages that originate outside the Port.

MANAGEMENT OF E-MAIL RECORDS.

The Port does not have an automated process for managing e-mail records; therefore, any Port employee who creates or receives an e-mail message is responsible for the proper retention and disposition of that record.

E-mail messages subject to retention must be retained in their electronic and native format until they meet their designated retention period. Printing and retaining a hard copy is not an acceptable substitute for the electronic message.

Employees may use one or more of the following methods for managing e-mail messages with designated retention periods.

For short-term or temporary retention, retain the message in the original e-mail application in the employees Lotus Notes. E-mail applications capture and preserve all relevant metadata related to the record.

To facilitate retrieval, retention, and disposition, the employee should establish separate electronic folders for filing e-mail messages within the e-mail application. Each folder should correspond to a retention period (see example on page 4).

The employee is responsible for the retention and disposition of the records in accordance with the retention schedule.

E-mail messages that have met retention requirements should be deleted and documented on a Port Records Disposition Log when the record is deleted.

E-MAIL MESSAGES TYPICALLY SUBJECT TO RETENTION.

Listed below are samples of e-mail messages that are usually subject to retention or archival requirements; that list is not comprehensive. **The Port sender is responsible for retention of the record.**

Policy and Procedure Directives. Administrative policies and procedures addressing Port-wide operations, critical Port function, or issues of public visibility or concern. May include formal directives, formal policy statements, bulletins, orders, rules or notices.

Executive Correspondence or Memoranda Related to Official Port Business. Correspondence and memos at the executive level, to and from public officials, the public, and others concerning policy issues, concerns, actions or issues.

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	3 of 4
Section:	900 RECORDS / PUBLIC DISCLOSURE	Revision Date:	12/12
Policy:	E-MAIL RETENTION	Policy No.	905
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

Routine Correspondence Concerning Day-to-Day Office Activities. Includes correspondence between other departments within the Port, routine correspondence with other agencies, and correspondence with the public on routine matters.

Agenda and Minutes of Meetings. Includes management team meetings, governing body meetings, agency staff meetings, meetings which formulate policies, rules, or regulations, internal committees, task force committees, and other internal agency meetings which meet to coordinate activities, resolve problems, or serve as sounding boards or vehicles of communication.

Messages which document Port actions, decisions, operations and responsibilities.

Documents related to legal or audit issues.

Documents that initiate, authorize, or complete a business transaction.

Drafts of documents that are circulated for comment or approval.

Final reports or recommendations.

E-MAIL MESSAGES NOT TYPICALLY SUBJECT TO RETENTION

Most e-mail consists of transitory messages and attachments that may be deleted when no longer needed. An e-mail message that is considered to have no administrative, legal, fiscal, or archival retention requirements may be deleted as soon as it has served its purpose. Such messages may include:

Informational messages and announcements not related to official business, such as announcements of retirement parties or holiday celebrations.

Informational-only copies, duplicate copies, copies of published materials.

Miscellaneous Notices or Memoranda. Memos, bulletins or direction of a general information and non-continuing nature (i.e., meetings notices and requests for meetings, reservations, confirmations, itineraries, etc.).

Preliminary drafts of memos, letters, reports, worksheets, etc., that represent stylistic, spelling or grammatical changes.

Requests for information. Routine memos or forms used to request, or respond to requests for information, forms, publications, etc.

Instant Messaging and Texting is to be used for non-essential business and therefore is not subject to retention.

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	4 of 4
Section:	900 RECORDS / PUBLIC DISCLOSURE	Revision Date:	12/12
Policy:	E-MAIL RETENTION	Policy No.	905
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

RELATED INFORMATION.

Chapter 40.14 RCW, Preservation and Destruction of Public Records
 Chapter 434-662 WAC, Preservation of Electronic Public Records

SAMPLE FILE STRUCTURE WITHIN LOTUS NOTES

This is a sample only. Everyone will have a different structure to meet their own needs.

- ~ Temporary Retention (Destroy Monthly)
- ~ 2010 General Correspondence (Destroy 2014)
- ~ 2010 Budget Documentation (Destroy 2014)
- ~ Project Files
- ~ East Bay Project (Destroy Date)
- ~ 2010 East Bay (Destroy Date)
- ~ 2010 East Bay Financials (Destroy Date)
- ~ Marina Dock Rehab (Destroy Date)
- ~ 2010 Legal Correspondence (Destroy Date)

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	1 of 4
Section:	700 USE OF PORT RESOURCES	Revision Date:	12/12
Policy:	ELECTRONIC COMMUNICATIONS AND TECHNOLOGY	Policy No.	704
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

POLICY: It is the policy of the Port of Olympia to maximize the cost-effective use of computer systems as a means of improving productivity. The Port provides communication resources capable of offering computing resources, electronic mail (e-mail), internet access, telephones and other electronic communications devices (collectively referred to as the Ports Technology Resources) to employees to assist in and facilitate Port business and communications. The primary purpose of the Port's network and systems is to provide service to the public as part of the Port business, in a manner that is consistent with the Port's vision and values. De minimus incidental personal use consistent with the Port's Technology Resources by employees is permitted if accomplished in compliance with the provisions of this policy as set forth below.

This policy does not address all required, allowed, or prohibited behaviors by employees, but merely covers common examples. In general, the Port relies on the good judgment of employees to ensure that Port Technology Resources are used in the public's best interest.

Overview: Access to computers, the Internet, and e-mail is a Port resource and, as such is subject to the existing policies dealing with the appropriate and ethical use of Port resources.

When utilizing a computer, accessing the Internet, or using e-mail Port employees are representing the Port, and therefore, all rules of conduct which apply in the workplace also apply. These resources are provided to assist in performing official duties.

When utilizing a computer system provided by the Port, the following guidelines apply:

1. To protect against downloading viruses, users must virus-check all downloaded files. This applies to sound and video files as well as files attached to e-mail messages. If in doubt about the safety of a file, please forward it to the properly authorized Port official (without opening it).
2. Users will not download software onto their computer from the Internet or load software from any other source onto their computer. If software is needed to perform job duties, the employee should contact the properly authorized Port official to obtain it.
3. Users will not alter the hardware configuration of their computer in any way. This includes but is not limited to opening the case to remove or alter memory, hard drives, cards, etc. If something is wrong with a computer, a properly authorized Port official should be contacted and employees should not attempt to fix the problem.
4. E-mail messages shall be professional in content. The message sent may be printed and sent, or forwarded to others outside the office. The content and tone of the message reflects the Port of Olympia. Employees shall use Port e-mail systems to conduct Port Business. Employees may send incidental personal messages that are insignificant in cost and resource usage, provide that they comply with statements in this policy. Incidental use should involve a very small percentage of an employee's overall use of e-mail.
5. Instant Messaging (IM) and texting is to be used for non-essential business ONLY. See examples in Policy 905.

DOWNLOADING FILES FROM THE INTERNET OR OPENING E-MAIL ATTACHMENTS: Downloading files from the internet or opening e-mail attachments from sources outside the Port can lead to spyware and/or virus attacks that can severely damage, or degrade the Port's network and/or data. The IT Department has

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	2 of 4
Section:	700 USE OF PORT RESOURCES	Revision Date:	12/12
Policy:	ELECTRONIC COMMUNICATIONS AND TECHNOLOGY	Policy No.	704
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

installed anti-virus and anti-spyware software on all Port computers and continuously updates signature definition files. However, that does not guarantee that all spyware is blocked, or that all viruses are caught.

If you are downloading a file and receive a message that a virus or spyware has been detected, you must call the IT Department immediately for assistance. Similarly if you receive an e-mail with a suspicious attachment, or from an unusual source, you should notify the IT Department before opening it. If you notice that your computer is behaving strangely or you suspect spyware or a virus, notify the IT Department.

Allowed & Non-allowed Uses: The following are guidelines for allowed and non-allowed uses:

Allowed Uses:

1. All work-related ordinary and necessary business uses.
2. Subscription to job-related mailing lists.
3. Communications for those who are hearing-impaired (rather than telephones).
4. Notice of social and public service events to employees and others.
5. Gatherings such as lunches, birthdays, receptions, etc.
6. Port-wide notifications which are used for communicating goodwill among employees (holiday greetings, congratulatory messages, etc.).
7. The Port's Technology Resources are to be used by employees. Incidental, de minimus personal use may be permitted where, in the judgment of the employee's supervisor or department director, such use does not interfere with employee or department productivity, take time away from the worker or co-worker assigned work.
8. Generally speaking, incidental, de minimus personal use means: (1) it is occasional and of short duration; (2) it is done on an employee's personal time, such as on a lunch break; (3) it does not interfere with job responsibilities; (4) it does not result in any expense to the Port; (5) it does not solicit for or promote commercial ventures; (6) it does not utilize excessive network resources; and (7) it does not constitute any prohibited use, as discussed below.

Use caution when sending an e-mail message to a large number of recipients. Digital images as well as mass distribution of smaller messages may delay other traffic, overload the system, and subsequently cause system failure. When possible send a link to the file, instead of attaching the file.

Non-allowed Uses:

1. Promotion of discrimination on the basis of race, national origin, sex, sexual orientation, age, disability, or religious or political beliefs.
2. Sending harassing, intimidating, abusive, or offensive material to or about others.
3. Excessive personal use.
4. Copyright infringement.
5. Causing congestion on the network by such things as the propagation of chain letters, broadcasting inappropriate messages to groups or individuals, or excessive use of the data storage space on the e-mail host server.

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	3 of 4
Section:	700 USE OF PORT RESOURCES	Revision Date:	12/12
Policy:	ELECTRONIC COMMUNICATIONS AND TECHNOLOGY	Policy No.	704
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

Non-allowed Uses (Cont.):

6. Promotion of personal political or religious beliefs.
7. Activities for personal or commercial financial gain. This includes, but is not limited to, chain letters, commercial solicitation, and sale of personal property.
8. Stock trading.
9. Personal business use.
10. Accessing, receiving or sending pornographic, sexual explicit or indecent materials, including materials of an unreasonably offensive nature (unless as part of a law enforcement investigation conducted by authorized Police personnel).
11. Gambling.
12. Usage for recreational purposes including the loading of computer games or playing online games
13. Usage that precludes or hampers Port network performance; such as viewing or listening to streaming audio/or video (unless for Port business, such as for online training).
14. Deliberately propagating any virus, worm, Trojan horse, malware, spyware, or other code or file designed to disrupt, disable, impair, or otherwise harm either the Port's networks or systems, or those of any other individual or entity.
15. Use of Technology Resources in an excessive manner so as to deprive others of system use or resources, including the sending of bulk e-mail for other than official business or forwarding "chain letter" e-mails of any kind.
16. Storing, processing, displaying, sending, or otherwise transmitting offensive or obscene language or material. This is to include "hate literature", sexually harassing materials, pornography, and other sexually explicit materials.
17. Participating in political campaigns, political communication in a partisan election or other partisan activity, or solicitation for or against a political candidate or issue.
18. Any other unlawful activity.

Security: Employees will comply with the following guidelines:

1. Protect access passwords by: not writing them down, not sharing them with others (except a properly authorized Port official), and utilizing a password comprised of at least 6 characters to include numbers and letters.
2. Employees shall not attempt to illegally access other networks or systems through the Internet.
3. Employees shall not read the e-mail of another employee when there is not substantial business purpose for obtaining access to the communications of that employee.
4. Employees shall not send e-mail under another employee's name without that employee's authorization. Sending a message using someone else's PC and e-mail with permission and in compliance with this policy is allowed.

 Port of Olympia POLICIES & PROCEDURES MANUAL		Page:	4 of 4
Section:	700 USE OF PORT RESOURCES	Revision Date:	12/12
Policy:	ELECTRONIC COMMUNICATIONS AND TECHNOLOGY	Policy No.	704
Approver:	EXECUTIVE DIRECTOR	Resolution No.	

The Internet is an unsecured network. Employees should not have an expectation of privacy in the use of Internet resources.

Monitoring/Access: Other than normal audit trail activities, e-mail and Internet monitoring or access shall not take place except when conducted as a part of:

1. An authorized training program or planned application design.
2. An authorized investigation into suspected misuse of computer resources.
3. Network troubleshooting procedures.
4. Follow up to an employee's departure from the Port, where files could not be reassigned to another employee.

E-mails sent to All Port Staff are restricted to Port related matters.

Appropriate Example:

- a) Sharing pertinent and appropriate information about Port events or news

Inappropriate Example:

- a) –Selling personal items (tickets to sporting events, fundraiser items, etc.)
- b) Jokes, anecdotes, or personal stories

NO EXPECTATION OF PRIVACY: *All saved files and e-mail are the property of the Port of Olympia.*

Employees have no expectations of privacy in the use of e-mail communications. Electronic mail messages are "public records" and subject to public disclosure and supervisory review at any time. Saved files and e-mail logs are copied to back-up tapes daily by the properly authorized Port official. Back-ups are retained for a scheduled period of time. Electronic mail messages are not physically "deleted" when deleted from your mailbox. The record still exists on the back up system.

Where there has been a clear violation of acceptable use principles, guidelines, standards, or policy, the Port may discontinue an employee's access to the computer systems, e-mail, or Internet. Employees also may be subject to any disciplinary action or penalties as prescribed elsewhere in this manual.

OWNERSHIP AND CONFIDENTIALITY: All software, programs, applications, templates, data, data files and web pages residing on Port computer systems or storage media or development in Port computer systems are the property of the Port. The Port retains the right to access, copy, modify, destroy or delete this property. Data files containing confidential or sensitive data should be treated accordingly and should not be removed from the workplace without proper authorization.

COPYING SOFTWARE, PROGRAMS, APPLICATIONS, TEMPLATES, ETC: Employees must notify the IT Department and receive proper authorization before attempting to copy software, applications, programs or templates. In many cases, copyright laws and/or license for commercial software, programs, applications and templates used by the Port prohibit the making of multiple copies. The Port and its employees are required to abide by the federal copyright laws and to abide by all licensing agreements.

FILED
COURT OF APPEALS
DIVISION II

2013 OCT 28 PM 3:45

STATE OF WASHINGTON

BY _____
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ARTHUR WEST

Plaintiff,

v.

PORT OF OLYMPIA,

Defendant.

NO. 44964-1-II

DECLARATION OF SERVICE

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. I caused this Declaration and the following documents:

1. PORT OF OLYMPIA'S MOTION TO FILE OVER-LENGTH RESPONSE BRIEF
2. RESPONSE BRIEF OF RESPONDENT PORT OF OLYMPIA

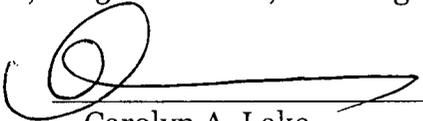
was served on October 28, 2013 on the following parties and in the manner indicated below:

Stephanie Bird
Cushman Law Offices, P.S.
924 Capital Way South
Olympia, WA 98501

by United States First Class Mail
 by Legal Messenger
 by Electronic Mail

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

Dated this 28th day of October, 2013 at Tacoma, Washington.


Carolyn A. Lake

ORIGINAL