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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

No. 95441-1

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK, KING-TV (“KING 5”), KIRO 7, ALLIED DAILY NEWSPAPERS OF WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING, INC., TACOMA NEWS, INC. (“THE NEWS TRIBUNE,”) and THE SEATTLE TIMES,  
Respondents,

v.

THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON STATE SENATE, THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, Washington state agencies; and SENATE MAJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON, and HOUSE MINORITY LEADER DAN KRISTIANSEN each in their official capacity  
Petitioners.

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**MOTION FOR DISCRETIONARY REVIEW**

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	IDENTITY OF PETITIONERS.....	2
III.	DECISION BELOW.....	2
IV.	ISSUES PRESENTED FOR REVIEW.....	2
1.	Are the Washington Legislature, House of Representatives, and Senate excluded from the PRA definition of “agencies” and subject to the PRA only in a limited capacity? .....	2
2.	Are individual Washington state legislators and their offices “agencies” as defined in the PRA and thus each broadly subject to the PRA?.....	3
V.	STATEMENT OF THE CASE.....	3
VI.	ARGUMENT .....	7
A.	The determination of what legislative entities constitute “agencies” under the PRA is a controlling legal question. ....	7
B.	There is substantial ground for a difference of opinion on the controlling legal questions.....	9
C.	Discretionary review of the trial court’s certified Order will materially advance the termination of this litigation.....	11
D.	Discretionary review is warranted because of the broad issues of public importance presented.....	12
VII.	CONCLUSION .....	13

## Table of Authorities

### Federal Cases

<i>Ahrenholz v. Bd. Of Trustees of Univ. of Illinois</i> , 219 F.3d 674 (7th Cir. 2000) .....	8
<i>McFarlin v. Conseco Servs., LLC</i> , 381 F.3d 1251 (11th Cir. 2004) .....	8
<i>Reese v. BP Exploration (Alaska) Inc.</i> , 643 F.3d 681 (Ninth Cir. 2011) .....	9

### State Cases

<i>Am. Mobile Homes of Wash., Inc. v. Seattle-First Nat'l Bank</i> , 115 Wn.2d 307, 796 P.2d 1296 (1990).....	8
<i>Columbia Riverkeeper v. Port of Vancouver USA</i> , 188 Wn. 2d 421, 395 P.3d 1031 (2017).....	10
<i>Ensley v. Pitcher</i> , 152 Wn. App. 891, 222 P.3d 99 (2009).....	10
<i>Estate of Haviland</i> , 161 Wn. App. 851, 251 P.3d 289 (2011).....	10
<i>Frechin v. King Cty. Dep't of Transp.</i> , 194 Wn. App. 1002, 2016 WL 2874323 (Wash. Ct. App. May 16, 2016) .....	8
<i>Gillett v. Conner</i> , 132 Wn. App. 818, 133 P.3d 960 (2006).....	8
<i>Newman v. Highland Sch. Dist. No. 203</i> , 186 Wn.2d 769, 381 P.3d 1188 (2016).....	12
<i>Rhinehart v. Seattle Times Co.</i> , 98 Wn.2d 226, 654 P.2d 673 (1982).....	12

### Federal Statutes

28 U.S.C. § 1292(b) .....	8, 9
---------------------------	------

**State Statutes**

RCW 40.14.100 ..... 4  
RCW 42.30.030 ..... 10  
RCW 42.56 ..... 1  
RCW 42.56.010(3)..... 4

**State Rules**

General Rule 14.1(a)..... 8  
RAP 2.3(b)(4) ..... passim

**Other Authorities**

3 Federal Procedure, Lawyers Edition § 3:212 (2010)..... 9

## I. INTRODUCTION

In a case of first impression, the trial court held that individual Washington state legislators and their legislative offices were “state agencies” under the Washington Public Records Act<sup>1</sup> (PRA). Order on Cross-Motions for Summary Judgment (Order). The court reached this determination while also recognizing that the State Legislature, Senate, and House of Representatives constitute a separate branch of government and are not “state agencies” under the PRA.

The trial court’s determinations are controlling and dispositive questions of law for which there is substantial ground for a difference of opinion. Resolution of these issues of statutory interpretation by this Court will materially advance the ultimate termination of this litigation, and confirm the records disclosure obligations of the Legislative branch of government. Recognizing the public importance of these legal issues, and following a joint motion by the Parties, the trial court certified its Order for appellate review. Accordingly, the Legislature defendants respectfully ask this Court to grant discretionary review of the trial court’s certified Order pursuant to RAP 2.3(b)(4).

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<sup>1</sup> RCW 42.56

## **II. IDENTITY OF PETITIONERS**

Petitioners are the Washington State Legislature, the Washington State Senate, the Washington State House of Representatives, Senate Majority Leader Mark Schoesler, House Speaker Frank Chopp, Senate Minority Leader Sharon Nelson, and House Minority Leader Dan Kristiansen<sup>2</sup>, each in their official capacity (collectively, the Legislature), Defendants in the case below.

## **III. DECISION BELOW**

The Legislature seeks review of the Order on Cross-Motions for Summary Judgment entered by the Thurston County Superior Court in *The Associated Press, et al v. The Washington State Legislature, et al*, Case No. 17-2-04986-4, dated January 19, 2018, App. at 133-160.<sup>3</sup>

## **IV. ISSUES PRESENTED FOR REVIEW**

On March 9, 2018, the trial court approved a Joint Motion for Order Certifying Questions of Law to this Court,<sup>4</sup> pursuant to RAP 2.3(b)(4), certifying the following questions for review:

1. Are the Washington Legislature, House of Representatives, and Senate excluded from the PRA definition of “agencies” and subject to the PRA only in a limited capacity?

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<sup>2</sup> Effective March 6, 2018, Mr. Kristiansen is no longer serving as House Minority Leader.

<sup>3</sup> “App.” refers to the Appendix included with this Motion.

<sup>4</sup> Additionally, the trial court also stayed all further proceedings in the case.

2. Are individual Washington state legislators and their offices “agencies” as defined in the PRA and thus each broadly subject to the PRA?

App. at 161-162.

#### **V. STATEMENT OF THE CASE**

This case centers on the question of the records retention, maintenance, and disclosure obligations of the Washington State Legislature, its individual members, and their legislative offices under the PRA. The facts and history are undisputed. Between January 30 and July 26, 2017, members of the Associated Press, Northwest News Network, KING-TV (KING 5), KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishers Association, Sound Publishing, Inc., Tacoma News Inc. (The News Tribune) and The Seattle Times (collectively, the Media) made the over one-hundred PRA requests at issue in this lawsuit. App. at 85. The Media made their PRA requests to individual legislators’ offices, directly to the Senate and House, as well as to the leadership of both bodies. App. at 87. The requests sought legislators’ calendars and schedules, text messages, “legislative videos,” emails, documentation of staff complaints made against lawmakers, and reports documenting investigations and/or actions taken as a result of those personnel

complaints. *Id.* On behalf of the recipients at the Legislature, each request was timely responded to by Senate Counsel on behalf of the Secretary and/or House Counsel on behalf of the Chief Clerk. App. at 87-88. Senate and House Counsel released certain records that had already been made public as well as some records voluntarily supplied by individual legislators. *Id.* Senate and House Counsel did not produce other requested documents because they believed those documents did not fall within the definitions of “public record” set forth in RCW 42.56.010(3) and RCW 40.14.100. *Id.*

Specifically, RCW 42.56.010(3) sets out the following definition:

“Public Record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representative, public records means legislative record as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

RCW 40.14.100 in turn defines “Legislative Records” as follows:

“Legislative records” shall be defined as correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or

subcommittees in connection with the exercise of legislative or investigatory functions, but does not include the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature.

The Legislature argued that these definitions set forth the limited types of records that must be produced by the Legislature (“legislative records” and other specified categories of records), and further designate the Secretary and Chief Clerk as those responsible for these record keeping and production obligations. App. at 109. The Legislature also asserted that the PRA’s definition of “agency”—those most broadly subject to the PRA—is distinct from the definitions in related statutes, including the Campaign Disclosure and Contribution Act Chapter 42.17A RCW, which specifically include “legislative offices.” App. at 109.

The Media disagreed with the disclosure responses of the Legislature and brought this lawsuit, attaching four of the prior records requests to their Complaint. App. at 40-60. The Parties agreed there were no material facts in dispute and filed cross motions for summary judgment on this controlling legal issue. App. at 62; 112.

On January 19, 2018, the trial court granted in part and denied in part each Party's motion. App. at 133. Specifically, the trial court held that the Legislature, House of Representatives, and Senate are not "agencies" as defined in the PRA and are only subject to the PRA in a limited capacity. App. at 158. The trial court also held that each individual state legislator and their legislative offices are "agencies" as defined in the PRA and are thus broadly subject to the PRA. App. at 159-160. The Legislature then filed a Notice of Appeal and a Motion to Stay the trial court's Order pending appeal to this Court. The Media also filed a Notice of Cross-Appeal or Cross-Notice of Discretionary review. The Legislature also filed its Statement of Grounds for Direct Review to which the Media Responded.

On March 6, 2018, this Court issued a ruling re-designating the Parties' notices as notices for discretionary review. On March 7, 2018, this Court issued a ruling granting the Legislature's Motion to Stay. Two days later, the trial court approved a Joint Motion for Order Certifying Questions of Law to this Court for discretionary review pursuant to RAP 2.3(b)(4), certifying for review the issues in its Order presented above. On its own motion, the trial court also stayed all proceedings in this case pending outcome of appeal.

## VI. ARGUMENT

This Court should grant discretionary review pursuant to RAP 2.3(b)(4) because the trial court's Order on Cross-Motions for Summary Judgment involves controlling questions of law for which there is substantial ground for a difference of opinion, and which if addressed by this Court will materially advance the ultimate resolution of this litigation.<sup>5</sup> Review is further warranted because of the critical public importance of the legal issues raised in this case and the need to provide clarity to both the Legislative branch of government and the public.

### A. **The determination of what legislative entities constitute “agencies” under the PRA is a controlling legal question.**

First, the Order certified by the trial court pursuant to RAP 2.3(b)(4) establishes that there are controlling questions of law appropriate for immediate review by this Court. Washington adopted RAP 2.3(b)(4) from the corollary federal law, 28 U.S.C. § 1292(b).<sup>6</sup> 2A Karl B. Tegland, *Washington Practice: Rules Practice*, at 161 (6th ed. 2004). Cases

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<sup>5</sup> The rule states that review may be granted where: The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

<sup>6</sup> 28 U.S.C. § 1292(b) mirrors RAP 2.3(b)(4) and permits review of an order that “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation[.]” *See also Gillett v. Conner*, 132 Wn. App. 818, 823, 133 P.3d 960 (2006) (stating Washington courts look to decisions interpreting analogous federal rule for guidance); *Am. Mobile Homes of Wash., Inc. v. Seattle-First Nat'l Bank*, 115 Wn.2d 307, 313, 796 P.2d 1296 (1990) (holding same).

analyzing the federal law establish that appropriate “controlling questions of law” include “the meaning of a statutory or constitutional provision, regulation, or common law doctrine,” *Ahrenholz v. Bd. Of Trustees of Univ. of Illinois*, 219 F.3d 674, 676–77 (7th Cir. 2000), and other purely legal issues. *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004) (in determining whether certification is appropriate, courts “should ask if there is substantial dispute about the correctness of any of the pure law premises the [trial] court actually applied in its reasoning leading to the order sought to be appealed”).

Further, discretionary review should be granted where the controlling question of law is capable of being “analyzed without delving too deeply into the factual details of the case.” *Frechin v. King Cty. Dep’t of Transp.*, 194 Wn. App. 1002, 2016 WL 2874323, at \*2 (Wash. Ct. App. May 16, 2016)<sup>7</sup>; *see also, McFarlin*, 381 F.3d at 1258 (“[W]hat the framers of § 1292(b) had in mind is more of an abstract legal issue or what might be called one of ‘pure’ law, matters the court of appeals ‘can decide quickly and cleanly’ without having to study the record.”) (quoting *Arenholtz, supra*).

The issues before the Court fit within these principles. At issue is the statutory interpretation of the PRA. The parties and trial court agreed

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<sup>7</sup> Pursuant to General Rule 14.1(a) this Court may consider this unpublished opinion as nonbinding authority and accord it such persuasive value as the Court deems appropriate.

there was no disputed issue of fact involved. The appeal raises purely legal questions that do not require the Court to weigh complex factual issues in order to determine the answers.

**B. There is substantial ground for a difference of opinion on the controlling legal questions.**

The trial court's certified Order also satisfies the second prong of RAP 2.3(b)(4): that a substantial ground for differences of opinion exists on the controlling questions of law. To establish this finding, federal courts analyzing the analogous provisions of 28 U.S.C. § 1292(b) traditionally consider whether "the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point," or "if novel and difficult questions of first impression are presented." 3 Federal Procedure, Lawyers Edition § 3:212 (2010) (footnotes omitted); *see also Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681 (Ninth Cir. 2011) ("[W]hen novel legal issues are presented, on which fair-minded jurists might reach contradictory conclusions, a novel issue may be certified for interlocutory appeal without first awaiting development of contradictory precedent.").

Importantly, Washington courts have granted review where the controlling legal question presents an issue of first impression. *See, e.g., Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn. 2d 421, 395

P.3d 1031 (2017) (granting discretionary review of legal questions of first impression regarding the Open Public Meetings Act, RCW 42.30.030); *Estate of Haviland*, 161 Wn. App. 851, 854, 251 P.3d 289 (2011) (granting review of legal question of first impression regarding the retroactivity of a statute); *Ensley v. Pitcher*, 152 Wn. App. 891, 898, 222 P.3d 99 (2009) (holding similarly).

Both parties and the trial court agreed that there is a substantial ground for a difference of opinion on the controlling issues of law here. And that agreement is well-grounded. The Parties presented the trial court with extensive briefing on these unique legal issues, reflecting the Parties' strong differences of opinion. And, the trial court's Order addressed these differences in substantial detail, analyzing the law contrary, in part, to both parties. Lastly, in granting the Legislature's motion to stay, the Supreme Court Commissioner recognized that the question of whether the Legislature and its individual members are "agencies" under the PRA is a "reasonably debatable issue of first impression of statewide significance." Ruling Granting Stay at 3. The unique legal issues presented here are matters of first impression with a substantial ground for a difference of opinion.

**C. Discretionary review of the trial court’s certified Order will materially advance the termination of this litigation.**

Discretionary review by this Court is further warranted because review will materially advance the termination of the litigation. RAP 2.3(b)(4); *see also Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d at 688 (holding it is not required that an “interlocutory appeal have a final, dispositive effect on the litigation, only that it ‘may materially advance’ the litigation” (citing 28 U.S.C. § 1292(b))). First, if discretionary review is accepted and the Court agrees with the Legislature, such a ruling would effectively end the lawsuit—the Legislature’s withholding of records would be deemed correct and no further issues would be before the trial court. Second, if the Media prevail in their arguments to this Court, all that will remain for the trial court to decide are limited factual issues regarding which records, if any, were responsive to the Media’s records requests and whether any penalty is appropriate for withholding those records.

On the other hand, if discretionary review is denied and the Order is allowed to stand, the litigation in this case will continue for the foreseeable future. Following resolution by the trial court of the remaining issues and entry of final judgment, the non-prevailing party will almost certainly appeal. The case will then be back in the appellate courts until this Court ultimately resolves the legal issues presented in the certified

Order. Discretionary review would allow the Parties to materially advance this litigation more expediently.

**D. Discretionary review is warranted because of the broad issues of public importance presented.**

While not a specific requirement of certification pursuant to RAP 2.3(b)(4), this Court should also accept review given the broad public import of this case. *See e.g., Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20, 104 S. Ct. 2199 (1984) (granting discretionary review of protective order limiting to trial the purpose for which media defendants could use discovered information, where issue balanced restraint on free expression with “interest of the judiciary in integrity of its discovery process”); *Newman v. Highland Sch. Dist. No. 203*, 186 Wn.2d 769, 774, 381 P.3d 1188 (2016) (granting discretionary review of issue of first impression of whether post-employment communications between former employee and corporate counsel should be treated the same as with current employees for purpose of applying corporate attorney-client privilege where issue of privilege implicates public interest). If upheld, this ruling will have a significant impact on the operation of state government and the public’s access to legislative records. Early resolution of these issues is therefore vital.

## VII. CONCLUSION

This appeal involves controlling issues of law which, if addressed by this Court, will materially advance the ultimate resolution of this litigation and address vital issues of public significance. Discretionary review pursuant to RAP 2.3(b)(4) is therefore appropriate.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of March, 2018.

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## APPENDIX

<b>Description</b>	<b>Date</b>	<b>Pages</b>
Complaint for Public Records Act Violations	09/12/2017	App. 001 – App. 060
Plaintiffs' Motion for Summary Judgment	11/03/2017	App. 061 – App. 063
Declaration of Jeannie Gorrell in Support of Defendants' Cross Motion for Partial Summary Judgment	11/17/2017	App. 064 – App. 101
Defendants' Cross Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment	11/17/2017	App. 102 – App. 132
Order on Cross Motions for Summary Judgment	01/19/2018	App. 133 – App. 160
Order Granting Motion Petition to Certify Questions of Law to Supreme Court	03/09/2018	App. 161 – App. 163

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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK, KING-TV (“KING 5”), KIRO 7, ALLIED DAILY NEWSPAPERS OF WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING, INC., TACOMA NEWS, INC. (“THE NEWS TRIBUNE,”) and THE SEATTLE TIMES,

Plaintiffs,

vs.

THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON STATE SENATE, THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, Washington state agencies; and SENATE MAJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON, and HOUSE MINORITY LEADER DAN KRISTIANSEN each in their official capacity,

Defendants.

No. 17-2-04986-34

COMPLAINT FOR  
PUBLIC RECORD ACT  
VIOLATIONS

Comes now Plaintiffs The Associated Press, Northwest News Network, KING-TV (“KING 5”), KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., Tacoma News, Inc.

1 (“The News Tribune,”) and The Seattle Times, and for their cause of action against Defendants  
2 allege as follows:

### 3 I. PARTIES

#### 4 A. Plaintiffs

5 1. Plaintiff The Associated Press (“AP”) is an independent, not-for-profit news  
6 cooperative headquartered in New York City and with journalists located in every state,  
7 including Washington, and in over 100 countries. AP is one of the oldest newsgathering  
8 organizations in the world, with more than one billion readers, listeners, and viewers.

9 2. Plaintiff Northwest News Network (“NWN”) is a collaboration of public radio  
10 stations that broadcast in Washington, Oregon and Idaho.

11 3. Plaintiff KING-TV (“KING 5”) is a broadcast media company and NBC affiliate  
12 based in Seattle, Washington.

13 4. Plaintiff KIRO 7 is a broadcast media company and CBS affiliate based in  
14 Seattle, Washington.

15 5. Plaintiff Allied Daily Newspapers of Washington (“ADNW”) is a trade  
16 association representing 25 daily newspapers in Washington State.

17 6. Plaintiff The Spokesman-Review is a daily newspaper located in Spokane,  
18 Washington.

19 7. Plaintiff Washington Newspaper Publishers Association (“WNPA”) is a  
20 newspaper association representing more than 100 community newspapers in Washington State.

21 8. Plaintiff Sound Publishing is a media organization and publisher of 49  
22 newspapers within Washington State.

23 9. Plaintiff The Seattle Times is a daily newspaper located in Seattle, Washington  
24 published by The Seattle Times Company in King County, Washington.

1           10. Plaintiff Tacoma News, Inc., is the publisher of The News Tribune, which is a  
2 daily newspaper located in Tacoma, Washington.

3           11. The Plaintiffs above made public record act requests at issue in this case.

4           **B. Defendants**

5           12. Defendant The Washington State Legislature is an agency of the State of  
6 Washington.

7           13. Defendant The Washington State Senate is an agency of the State of Washington.

8           14. Defendant The Washington State House of Representatives is an agency of the  
9 State of Washington.

10          15. Defendant Mark Schoesler in the Senate Majority Leader of the Washington State  
11 Senate.

12          16. Defendant Frank Chopp is the House Speaker for the Washington State House of  
13 Representatives.

14          17. Defendant Sharon Nelson is the Senate Minority Leader of the Washington State  
15 Senate.

16          18. Defendant Dan Kristiansen is the House Minority Leader of the Washington State  
17 House of Representatives.

18          19. Defendants Schoesler, Chopp, Nelson, and Kristiansen are the respective leaders  
19 of the four caucuses at the Washington State Legislature.

20          20. Defendants Washington State Legislature, Washington State Senate, and  
21 Washington State House of Representatives are headquartered in Olympia, WA, in Thurston  
22 County.

23          21. Defendants Schoesler, Chopp, Nelson, and Kristiansen maintain official offices in  
24 Olympia, Washington on the State Capitol Campus.



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33. Initiative I-276 contained the following declaration of policy:

SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people to be the public policy of the State of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

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34. Initiative I-276 mandated that “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records.”

35. Initiative I-276 defined public record as follows: “‘Public record’ includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.”

36. Initiative I-276 defined “agency” as follows: “‘Agency’ includes all state agencies and all local agencies. ‘State agency’ includes **every state office, public official, department, division, bureau, board, commission or other state agency.** ‘Local agency’ includes every county, city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public ‘agency.’” (emphasis added)

37. Initiative I-276, by its definition of “agency” to include “every state office, public official, department, division, bureau, board, commission or other state agency” showed its intention that it apply to the Washington State Legislature, Washington State Senate, Washington State House of Representatives and the individual Washington State Senators and Washington State Representatives.

38. In 1977, the Legislature amended the definition of “agency” in the Act to remove the words “public official” but kept the remaining parts of the definition. The bill summary made clear the edit was “to be more specific in encompassing all governmental units at each level of state and local government.”

1           39.     In 1995, the Legislature amended the Act again, creating a definition for the  
2 words “State Office” in the Act. The amendment, passed into law and signed by the Governor,  
3 defined “State Office” for purposes of the definition of “agency” as follows: “‘State office’  
4 means state legislative office or the office of governor, lieutenant governor, secretary of state,  
5 attorney general, commissioner of public lands, insurance commissioner, superintendent of  
6 public instruction, state auditor, or state treasurer.”

7           40.     The 1995 amendment, signed by the Governor and enacted into law, defined  
8 “State Legislative Office” – a term contained within the definition “State Office” – as follows:  
9 “‘State legislative office’ means the office of a member of the state house of representatives or  
10 the office of a member of the state senate.”

11          41.     This same 1995 amendment contained an edit to the section defining “public  
12 record”. The 1995 amendment, signed and enacted into law by the Governor, kept the definition  
13 of public record as “‘Public record’ includes any writing containing information relating to the  
14 conduct of government or the performance of any governmental or proprietary function  
15 prepared, owned, used, or retained by any state or local agency regardless of physical form or  
16 characteristics.” It then added a specific definition for public records possessed by the Office of  
17 the Secretary of the Senate and the Office of the Chief Clerk of the House, which the same 1995  
18 amendment assigned collection and archival duties for transfer of certain materials to the  
19 Secretary of State or State Archives regarding the creation of State Laws and other specific  
20 documents. The sentences added to the definition of “public record” read as follows: “For the  
21 office of the secretary of the senate and the office of the chief clerk of the house of  
22 representatives, public records means legislative records as defined in RCW 40.14.100 and also  
23 means the following: All budget and financial records; personnel leave, travel, and payroll  
24 records; records of legislative sessions; reports submitted to the legislature; and any other record

1 designated a public record by any official action of the senate or the house of representatives.”  
2 This provision did not change the definition of “Agency”, and “agency” was defined in this same  
3 Amendment to still include “State Office,” and “State Office” was defined to include “State  
4 Legislative Office,” and “State Legislative Office” was defined as “the office of a member of the  
5 state house of representatives or the office of a member of the state senate.”

6 42. In 2003, lawmakers in the Senate introduced a bill that would have clearly  
7 exempted lawmakers from the public records portion of the Act. The bill did not pass.

8 43. In 2005, an amendment to a bill had the same language exempting lawmakers  
9 from the public records portion of the Act was adopted by the Senate but rejected by the House.

10 44. Although the legislative history and language of the provisions clearly show that  
11 The Legislature and State Legislative Offices of the individual members of the state house of  
12 representatives and state senate are “agencies” under the law and subject individually to the law  
13 – and in 2003 and 2005 lawmakers understood they were subject to the public records portion of  
14 the law as they tried to pass bills to exempt themselves, the State Legislature and individual  
15 legislators have recently begun claiming themselves, their legislative offices, and their records  
16 not subject to the law based on the 1995 amendment language.

17 45. The State Legislature, its staff, and the individual legislators taking this position  
18 are wrong, and this lawsuit is necessary to establish the Legislature did not reverse the will of the  
19 people in Initiative I-276 and remove or narrow its reach to the very elected individuals with  
20 which that initiative was so deeply concerned.

21 46. Hundreds of highly-important records of the Washington Legislature and elected  
22 legislators are being withheld from the public, depriving the media and public of information to  
23 which it is entitled and which is essential to informed governance.  
24

1 47. In 1992, the Legislature amended the Act to add the following mandate:

2 The people of this state do not yield their sovereignty to the agencies that serve  
3 them. The people, in delegating authority, do not give their public servants the  
4 right to decide what is good for the people to know and what is not good for them  
5 to know. The people insist on remaining informed so that they may maintain  
6 control over the instruments that they have created. The public records  
7 subdivision of this chapter shall be liberally construed and its exemptions  
8 narrowly construed to promote this public policy.

6 48. It is time for the Legislature to re-read these words and to follow them.

7 **B. January 25, 2017 PRA Request of Walker Orenstein, The News Tribune**

8 49. On January 25, 2017, Walker Orenstein of The News Tribune in Tacoma made a  
9 PRA request to Senator Doug Ericksen for his personal schedule or calendar from January 8,  
10 2016 through January 25, 2016.

11 50. On February 1, 2017, Senate Counsel Jeannie Gorrell responded to the PRA  
12 request. Ms. Gorrell purported to quote RCW 42.56.010(2) but quoted the then-version of RCW  
13 42.56.010(3) instead:

14 "Public record" includes any writing containing information relating to the  
15 conduct of government or the performance of any governmental or proprietary  
16 function prepared, owned, used, or retained by any state or local agency  
17 regardless of physical form or characteristics. For the office of the secretary of the  
18 senate and the office of the chief clerk of the house of representatives, public  
19 records means legislative records as defined in RCW 40.14.100 and also means  
20 the following: All budget and financial records; personnel leave, travel, and  
21 payroll records; records of legislative sessions; reports submitted to the  
22 legislature; and any other record designated a public record by any official action  
23 of the senate or the house of representatives.

20 She then quoted a portion of RCW 40.14.100. She then stated "Based on these definitions, what  
21 you have requested does not fall under the definitions of a public record as that term is applied to  
22 the Senate, and therefore, the Senate does not have any public records responsive to your  
23 request."

24 51. No documents were produced.

1 52. No further explanation was provided.  
2 53. Ms. Gorrell did not identify records being withheld.  
3 54. Ms. Gorrell did not identify any exemption authorizing the withholding or explain  
4 how any statute applied to the records being withheld.

5 **C. First January 30, 2017 PRA Request of Austin Jenkins of Northwest News**  
6 **Network and Joseph O’Sullivan of the Seattle Times.**

7 55. On January 30, 2017, Austin Jenkins of the Northwest News Network (“NWN”)  
8 and Joseph O’Sullivan of the Seattle Times made a Public Record Act request to Defendants the  
9 Washington State Legislature, Washington State Senate, Washington State House of  
10 Representatives, Speaker Chopp, Representative Kristiansen, Senator Schoesler and Senator  
11 Nelson.

12 56. The January 30, 2017 PRA request sought copies of office calendars or schedules  
13 of Kristiansen, Chopp, Schoesler, and Nelson from December 1, 2016 through January 30, 2017,  
14 any emails to or from these four leaders pertaining to the state budget or education funding  
15 matters from December 1, 2016 through January 30, 2017 and communications or documents,  
16 including emails from December 1, 2016 through January 30, 2017 between any of these four  
17 leaders and education lobbyists.

18 57. On February 6, 2017, Senate Counsel Jeannie Gorrell emailed Mr. Jenkins  
19 responding to his request on behalf of the Defendants. Ms. Gorrell stated she “expect[ed] to be  
20 ready with a full response to you by the end of next week (February 17).” Ms. Gorrell did not  
21 cite any exemptions for the records nor did she identify the responsive records.

22 58. On February 16, 2017, Mr. Gorrell again emailed Mr. Jenkins stating she was  
23 responding to the January 30, 2017 PRA request. Ms. Gorrell purported to quote the definition  
24 of “public record” in the PRA but incorrectly attributed it as RCW 42.56.010(2) rather than

1 RCW 42.56.010(3), which at the time read as follows:

2 "Public record" includes any writing containing information relating to the  
3 conduct of government or the performance of any governmental or proprietary  
4 function prepared, owned, used, or retained by any state or local agency  
5 regardless of physical form or characteristics. For the office of the secretary of the  
6 senate and the office of the chief clerk of the house of representatives, public  
7 records means legislative records as defined in RCW 40.14.100 and also means  
8 the following: All budget and financial records; personnel leave, travel, and  
9 payroll records; records of legislative sessions; reports submitted to the  
10 legislature; and any other record designated a public record by any official action  
11 of the senate or the house of representatives.

12 59. Ms. Gorrell then quoted a portion of RCW 40.14.100, omitting a relevant part.

13 RCW 40.14.100 reads in full as follows:

14 As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context  
15 requires otherwise, "legislative records" shall be defined as correspondence,  
16 amendments, reports, and minutes of meetings made by or submitted to  
17 legislative committees or subcommittees and transcripts or other records of  
18 hearings or supplementary written testimony or data thereof filed with  
19 committees or subcommittees in connection with the exercise of legislative or  
20 investigatory functions, but does not include the records of an official act of the  
21 legislature kept by the secretary of state, bills and their copies, published  
22 materials, digests, or multi-copied matter which are routinely retained and  
23 otherwise available at the state library or in a public repository, or reports or  
24 correspondence made or received by or in any way under the personal control of  
the individual members of the legislature.

60. Ms. Gorrell then stated "Given these definitions, the Legislature does not have  
any public records that are responsive to your request."

61. No documents were produced.

62. No further explanation was provided.

63. Ms. Gorrell did not identify records being withheld.

64. Ms. Gorrell did not identify any exemption authorizing the withholding or explain  
how any statute applied to the records being withheld.

1           **D.     Second January 30, 2017 PRA Request of Austin Jenkins, Northwest News**  
2           **Network, and Joseph O’Sullivan, Seattle Times**

3           65.     On January 30, 2017, Austin Jenkins of Northwest News Network and Joseph  
4           O’Sullivan of the Seattle Times made a joint request to Representative Melanie Stambaugh’s  
5           office for copies and transcripts of all legislative videos Representative Stambaugh has recorded  
6           between January 12, 2015 and January 30, 2017, copies of Representative Stambaugh’s office  
7           calendar for the same time period, and copies of Representative Stambaugh’s legislative emails  
8           between December 1, 2015 and January 30, 2017.

9           66.     On March 1, 2017, House Counsel Alison Hellberg responded to the request  
10          seeking clarification. It stated “The Chief Clerk is the records custodian for the House of  
11          Representatives and my office routinely responds to public records on his behalf.” She then  
12          purported to state the definition of “public record” from the PRA, but claimed to be quoting  
13          RCW 42.56.010(2), the wrong section, and then quoted only a portion of the actual definition, at  
14          RCW 42.56.010(3) omitting the definition of public record entirely. Instead she started with the  
15          clause “public records means legislative records as defined in RCW 40.14.100” omitting the  
16          precursor to that clause that that definition only applied to requests to the Office of the Chief  
17          Clerk of the House and the Office of the Secretary of the Senate in their capacity as the collector  
18          of certain materials related to the creation of legislation. The response further stated “The strict  
19          terms of these definitions may limit what is available under your request, but Representative  
20          Stambaugh wishes to be transparent and provide as many documents as possible.” The response  
21          purported to provide links to the videos Representative Stambaugh recorded since January 12,  
22          2015 through January 30, 2017. It stated the House Republican Caucus does not create  
23          transcripts of videos “so those documents do not exist.” It sought a narrowing of the date range  
24          for the calendars and emails but indicated a willingness to produce the records.

1           67.     On February 7, 2017, Mr. Jenkins and Mr. O’Sullivan narrowed their request for  
2 calendars and emails to one month, the last month, January 7, 2017 to February 7, 2017.

3           68.     On March 1, 2017, Ms. Hellberg emailed Mr. Jenkins and Mr. O’Sullivan what  
4 she said were copies of Representative Stambaugh’s calendar from January 7 to February 7,  
5 2017.

6           69.     On March 10, 2017, Ms. Hellberg emailed Mr. Jenkins and Mr. O’Sullivan what  
7 she claimed were Representative Stambaugh’s emails. She stated:

8           While the emails you requested do not meet the strict terms of the definition of  
9 “public records” that applied to the Legislature, Representative Stambaugh wishes  
10 to be transparent and provide you with redacted emails from January 7 to  
11 February 7, 2017. She is not providing legislatively privileged communications  
12 or communications with constituents regarding sensitive casework. With this  
13 response, I believe the House has fully complied with your request.

14           70.     No further documents were produced.

15           71.     No further explanation was provided.

16           72.     Ms. Hellberg did not identify the records being withheld.

17           73.     Ms. Hellberg did not identify any exemption authorizing the withholding or  
18 explain how any statute applied to the records being withheld.

19           **E.     January 30, 2017, PRA Request of Rachel La Corte, Associated Press**

20           74.     On January 30, 2017, Rachel La Corte of the Associated Press made three  
21 separate PRA requests to the Washington State Legislature, Washington State Senate, and  
22 Washington House of Representatives. The requests sought all investigative records related to  
23 the investigation of Representative Young’s behavior related to staffers, reports on staff  
24 complaints against lawmakers made over the past three years, reports on all Senate and House  
investigations made within that same timeframe of inappropriate or abusive behavior by

1 lawmakers toward staff, and actions taken by the Senate and House against lawmakers because  
2 of interactions with staff.

3 75. On February 6, 2017, Washington State House of Representatives Counsel Alison  
4 Hellberg and Washington State Senate Counsel Jeannie Gorrell jointly responded to the requests.  
5 They claimed to quote RCW 42.56.010(2) but quoted a portion of RCW 42.56.010(3) instead.  
6 They omitted the definition of “public record” in that statute and instead began with the language  
7 “public records means legislative records as defined in RCW 40.14.100...” They also quoted a  
8 portion of RCW 40.14.100. They then stated “Given these definitions, there are no responsive  
9 public records.”

10 76. No documents were produced.

11 77. No further explanation was provided.

12 78. They did not identify records being withheld.

13 79. They did not identify any exemption authorizing the withholding or explain how  
14 any statute applied to the records being withheld.

15 80. The response failed to disclose or identify a record disciplining Representative  
16 Young and informing him that he no longer would have supervisory oversight of legislative staff  
17 after reports he mistreated staffers.

18 **F. January 30, 2017, PRA Request of Melissa Santos, The News Tribune**

19 81. On January 30, 2017, Melissa Santos of The News Tribune in Tacoma made a  
20 PRA request to the Chief Clerk of the House for “a copy of the letter disciplining Jesse Young.”  
21 Mr. Young was disciplined by being barred from dealing with legislative assistants for at least a  
22 year after allegations of mistreatment. The information on the sanction was only learned after a  
23 copy of a letter sent to Rep. Young was leaked to the Associated Press. In that December 13,  
24

1 2016 letter sent from a House attorney, Rep. Young was notified that the chamber was taking  
2 actions to address a “pattern of hostile and intimidating behavior.”

3 82. House Counsel Alison Hellberg responded to the request on February 2, 2017.  
4 She purported to quote a portion of RCW 42.56.010(2) but actually quoted an excerpt of RCW  
5 42.56.010(3) instead. She omitted the definition of “public records” in that section and began  
6 instead with the words “public records means legislative records as defined in RCW  
7 40.14.100...”. She also quoted an excerpt of RCW 40.14.100. She then stated “Given these  
8 definitions, there are no responsive public records.”

9 83. No documents were produced.

10 84. No further explanation was provided.

11 85. She did not identify records being withheld.

12 86. She did not identify any exemption authorizing the withholding or explain how  
13 any statute applied to the records being withheld.

14 **G. February 16, 2017 PRA Request of Rachel La Corte, Associated Press**

15 87. On February 16, 2017, Rachel La Corte of the Associated Press made a PRA  
16 request to the Washington State Legislature and Washington State Senate for a copy of Senator  
17 Ericksen’s calendar from January 9, 2017 through February 16, 2017. Senator Ericksen had  
18 indicated during a press conference an openness to release of his calendars.

19 88. Senator Ericksen had accepted a temporary position in the Trump Administration  
20 at the Environmental Protection Agency and was splitting his time between Olympia and  
21 Washington D.C. during the most recent legislative session when the State Legislature was  
22 trying to agree on a budget and address educational funding to stop the daily judicial fines being  
23 levied against the State due to the Washington State Supreme Court ruling.

1 89. Senate Counsel Jeannie Gorrell responded to the request by email on February 22,  
2 2017.

3 90. In her response, Ms. Gorrell claimed to be quoting RCW 42.56.010(2) but quoted  
4 the then-version of RCW 42.56.010(3) instead. She also quoted RCW 40.14.100. She then  
5 stated “Based on these definitions, what you have requested does not fall under the definition of  
6 a public record as that term is applied to the Senate, and therefore, the Senate does not have any  
7 public records responsive to your request.”

8 91. No documents were produced.

9 92. No further explanation was provided.

10 93. She did not identify records being withheld.

11 94. She did not identify any exemption authorizing the withholding or explain how  
12 any statute applied to the records being withheld.

13 **H. February 16, 2017 PRA Request of Austin Jenkins, Northwest News  
14 Network**

15 95. On February 16, 2017, Austin Jenkins of Northwest News Network made a PRA  
16 request. It was emailed to Senate Secretary Hunter Goodman and Chief Clerk of the House  
17 Bernard Dean. It sought the following:

18 ...all records related to substantiated and unsubstantiated allegations of sexual  
19 harassment and or sexual misconduct against elected members of the Washington  
20 Legislature.... for the period Jan. 1, 2004 to the present. These records should  
include, but not be limited to, investigative reports and documents, statements or  
summaries of allegations, responses from the member, witness interviews and  
formal or informal letters of sanctions/warning to members.

21 96. On March 10, 2017, Senate Counsel Alison Hellberg responded to the request.  
22 She stated in relevant part “The Secretary of the Senate is the records custodian for the Senate  
23 and the Chief Clerk is the records custodian for the House of Representatives. Our offices  
24

1 routinely respond to public records requests on their behalf.” She then purported to quote RCW  
2 42.56.010(2) but actually quoted a portion of RCW42.56.010(3) instead. She omitted the  
3 definition of public records from that provision and instead began with the words “public records  
4 means legislative records as defined in RCW 40.14.100...” She then quoted an excerpt of RCW  
5 40.14.100. She then stated “Given these definition, the records you have requested are not  
6 subject to disclosure. With this response the Legislature has fully complied with your request.”

7 97. No documents were produced.

8 98. No further explanation was provided.

9 99. Ms. Hellberg did not identify records being withheld.

10 100. Ms. Hellberg did not identify any exemption authorizing the withholding or  
11 explain how any statute applied to the records being withheld.

12 **I. April 4, 2017 PRA Request of Melissa Santos, The News Tribune**

13 101. On April 4, 2017, Melissa Santos of The News Tribune in Tacoma made two  
14 identical PRA requests – one sent to Senate Counsel Jeannie Gorrell and cc’d to Hunter  
15 Goodman, Secretary of the Senate, and one sent to House Counsel Alison Hellberg and cc’d to  
16 House Clerk Bernard Dean. In both Ms. Santos sought copies of complaints against state  
17 lawmakers from legislative staff, lobbyists, members of the public or colleagues regarding  
18 lawmakers’ conduct filed or submitted between April 1, 2012 and April 1, 2017, investigations  
19 into lawmakers’ conduct and the results of investigations during that same time period, and all  
20 disciplinary actions, letters of reprimand or sanctions issued to lawmakers between April 1, 2012  
21 and April 1, 2017.

22 102. On April 11, 2017, Ms. Gorrell acknowledged both requests stating she would  
23 respond by April 26, 2017.

1           103. On April 26, 2017, Ms. Gorrell responded to the requests. She quoted the  
2 definition of public record found at RCW 42.56.010(3) incorrectly citing it as RCW  
3 42.56.010(2). She then quoted an excerpt of RCW 40.14.100. Ms. Gorrell produced a handful  
4 of records she claimed were the “public records responsive to your request.” They were 11 pdf  
5 documents totaling 154 pages along with an Excel spreadsheet containing four worksheets. The  
6 documents contained records that had already been made public. The records produced  
7 contained redactions, and Ms. Gorrell did not identify an exemption for those redactions or  
8 explain how the exemptions applied to the redacted material.

9           104. Ms. Gorrell did not include a record that Ms. Santos knew to exist that also fell  
10 within the scope of her request. It was a letter from House counsel informing State  
11 Representative Jesse Young that he no longer would have supervisory oversight of legislative  
12 staff after reports he mistreated staffers. The Associated Press had reported on this letter in  
13 January 2017, three months earlier. The document was not produced in response to Ms. Santos’s  
14 requests although it fell within the scope of her requests.

15           105. No further explanation was provided.

16           106. Ms. Gorrell did not identify any records as being withheld.

17           107. Ms. Gorrell did not identify any exemption authorizing the withholding or explain  
18 how any statute applied to the records being withheld.

19           **J. April 12, 2017 PRA Request of Rachel La Corte, Associated Press**

20           108. On April 12, 2017, Rachel La Corte of the Associated Press made a PRA request  
21 to the Washington State Legislature, Washington State Senate and Washington State House or  
22 Representatives. She emailed her PRA request to Senate Counsel Jeannie Gorrell and House of  
23 Representative’s Counsel Alison Hellberg. The PRA request sought reports on staff complaints  
24 against lawmakers made over the past five years, reports on all legislative investigations made

1 within that same time frame of inappropriate or abusive behavior by lawmakers toward staff, and  
2 actions taken by each chamber against lawmakers because of interactions with staff.

3 109. On April 14, 2017, Ms. Hellberg responded saying they required until April 26,  
4 2017 to provide a response.

5 110. On April 26, 2017, Ms. Hellberg responded to the PRA request. Ms. Hellberg  
6 purported to quote RCW 42.56.010(2) but actually quoted an excerpt of RCW 42.56.010(3). She  
7 omitted the definition of “public record” in that section and begin with the words “public records  
8 mean legislative records as defined in RCW 40.14.100...” She also quoted a portion of RCW  
9 40.14.100. She then stated simply “Attached are the public records responsive to your request.”  
10 Produced were a handful of documents with some information redacted. No exemption was  
11 cited for the redactions, nor was any explanation provided for how such an exemption applied to  
12 the redactions made. Ms. Hellberg did not disclose what other records existed that were not  
13 being produced, and the statutory basis for any such withholding.

14 **K. June 2, 2017, PRA Request of The Associated Press, Northwest News**  
15 **Network, The Spokesman-Review, Sound Publishing, The News Tribune,**  
16 **The Seattle Times, KING 5, KIRO 7, Allied Daily Newspapers of**  
**Washington and Washington Newspaper Publishers Association.**

17 111. On June 2, 2017, Rachel La Corte, Joe O’Sullivan, Jerry Cornfield, and Jim  
18 Camden collectively submitted 147 individual PRA requests on behalf of The Associated Press,  
19 Northwest News Network, The Spokesman-Review, Sound Publishing, The News Tribune, and  
20 The Seattle Times. The PRA requests were sent to every member of the Washington State  
21 Senate and every member of the Washington State House of Representatives. The senders  
22 carbon copied their fellow requestors on the communications, made clear the request was on  
23 behalf of all those news organizations and that responses should be sent to all those news  
24 organizations. In addition to the above named organization, the requests made to leaders of the

1 four caucuses – Senate Majority Leader Mark Schoesler, House Speaker Frank Chopp, House  
2 Minority Leader Dan Kristiansen, and Senate Minority Leader Sharon Nelson – were also made  
3 on behalf of and copied in representatives of KING 5, KIRO 7, Allied Daily Newspapers of  
4 Washington, and the Washington Newspaper Publishers Association. The PRA requests sought  
5 copies of the Senators’ and Representatives’ calendars/schedules from January 9, 2017 through  
6 June 1, 2017, and copies of any text messages received or sent by them related to their legislative  
7 duties between January 9, 2017 and June 1, 2017.

8 112. On June 2, 2017, Senator Jamie Pedersen of the 43<sup>rd</sup> Legislative District  
9 responded that “The Office of Senate Counsel will be responding to this request on my behalf.”

10 113. On June 2, 2017, Senator Jan Angel responded “I will forward this on to our  
11 attorney so it gets to the appropriate person.”

12 114. On June 2, 2015, Representative Mike Sells responded saying:

13 This is really a sad comment on the state of our press. 5 months down the road  
14 and you are asking for this stuff for 5 months back when you (the press overall)  
15 should have been on top of it in the first place. It was almost tempting to say, “I  
16 will, if Donald Trump will,” as a response. I have no problem with access to  
17 those communications that bear on my legislative duties and calendar, and staff  
18 are currently working on it for the appropriate response beyond my snarky  
19 remarks.

20 115. Representative Sells did not ultimately produce any records, nor were his records  
21 provided by anyone else.

22 116. On June 4, 2017, Washington State Representative Gerry Pollet responded by  
23 releasing his calendars to the requestors unredacted. His cover email stated in relevant part  
24 “Because I believe that openness and disclosure regarding any public duties are vital for media  
and public accountability, I have downloaded my calendar for you without delay. ... I believe  
that a case can be argued that calendars may be open to inspection, with appropriate redaction of

1 personal/privacy and internal decisionmaking related material per the normally applicable  
2 exemptions to the Public Records Act, to the extent your request is reasonably related to  
3 legislative “budget,” “financial,” and/or “travel” records which are within the definition of  
4 public records pursuant to RCW 42.56.010(3).” He produced 48 pages of calendars. He stated  
5 that he was referring the request for text message to the House of Representatives for an official  
6 reply.

7 117. On June 5, 2017, Representative Zack Hudgins responded “Thanks for your  
8 request. I am forwarding your request to House counsel to help with compliance.”

9 118. Records for Representative Hudgins were not ultimately produced by him or  
10 anyone else.

11 119. No other individual Senator or Representative responded directly to the  
12 requestors.

13 120. On June 7, 2017, Senate Counsel Jeannie Gorrell emailed the requestors  
14 acknowledging the requests to all the legislators. She stated “The Secretary of the Senate is the  
15 records custodian for the Senate and the Chief Clerk is the records custodian for the House of  
16 Representatives. Our offices routinely respond to public records requests on their behalf.” She  
17 stated “we anticipate that we will have a response for you by June 23.” The request was sent on  
18 behalf of herself and House of Representatives Counsel Alison Hellberg.

19 121. On June 8, 2017, Ms. La Corte responded stating:

20 Due to the lack of legislative activity right now, we believe a delay is unnecessary  
21 and hope that our request can received a response earlier than the anticipated June  
22 23 date (especially since the likelihood of yet another special session is highly  
23 possible at that time). Because our requests were made directly to the individual  
24 lawmakers--who maintain their own calendars and have sole control over their  
phones--it seems unnecessary for the secretary of the Senate and House counsel to  
respond on their behalf. One lawmaker gave us his calendar without delay,  
unredacted, so it’s clear that a quicker response is possible.

1 For those lawmakers that need additional time, we note that all potentially  
2 responsive documents must be maintained and can't be destroyed, deleted or  
3 modified during the period of our pending requests.

4 122. On June 12, 2017, Ms. Gorrell responded to Ms. La Corte's June 8, 2017  
5 email. She stated:

6 We understand that you would like to receive our response earlier and we are  
7 working to complete the process. If we are able to provide it before June 23 we  
8 certainly will do so. At this point we have asked all members to search for any  
9 responsive text messages, and we need to give them time to complete that search.

10 The official response to your requests will come from or on behalf of the  
11 Secretary of the Senate and the Chief Clerk of the House, as they are the records  
12 custodians for the Legislature. We recognize that you sent the requests through  
13 individual members, but no matter who receives a public records request in the  
14 Legislature, the process is to run the request through the administration. To  
15 implement RCW 42.56.100 (access to public records) and RCW 42.56.520  
16 (prompt response), any legislator or legislative staff who receives a request should  
17 route the response through the Chief Clerk or the Secretary to ensure that the  
18 requester receives a timely and appropriate response no matter to whom he or she  
19 submits the request.

20 Again, we will do our best to provide you with a response as soon as we are able.

21 123. On June 21, 2017, Ms. Gorrell responded to the June 2, 2017, PRA requests. She  
22 purported to quote the then-version of RCW 42.56.010(2) but quoted RCW 42.56.010(3) instead.  
23 She also quoted an excerpt of RCW 40.14.100. She then stated as follows:

24 Given these definitions, the calendars you have requested are not public records.  
We understand that one member has provided you with his calendar. We will let  
other members know that the public records act does not require them to release  
their calendars, but if they would like to provide them voluntarily, they may do  
so.

Text messages may be public records if the text would otherwise fit within the  
Legislature's definition of public records. We asked the members to search their  
text messages, but based upon the applicable definitions, it would be rare for  
someone to have a public record in a text message. The only responsive public  
record found in text format is attached.

1           124.    A single text message – a cell phone picture of a per diem report from Rep. Larry  
2 Springer – was attached.

3           125.    On June 23, 2017, Mike Pellicciotti, State Representative for the 30<sup>th</sup> Legislative  
4 District, provided Ms. Hellberg with the legislative schedule/calendar and text messages between  
5 himself and his legislative assistant from January 9, to June 1, 2017. His cover letter to Ms.  
6 Hellberg with these materials stated:

7           Enclosed please find my legislative schedule/calendar and text messages between me and  
8 my legislative assistant, from January 9<sup>th</sup> to June 1<sup>st</sup>.

9           While I know the law does not require that I disclose those records, I believe these  
10 legislative records are in the public interest, and so I am voluntarily providing them as  
11 requested.

12           I hope my colleagues join me in this voluntary disclosure.

13           The production was 144 pages of calendar and 30 pages of text messages. It was provided to the  
14 requestors on June 27, 2017.

15           **L.     Four July 26, 2017, PRA Requests**

16           126.    On July 26, 2017, the Plaintiffs issued four separate additional PRA Requests  
17 through counsel at Allied Law Group. These requests are attached hereto as **Appendixes A-D**.

18           127.    One of the four requests was sent to the State Legislative Offices of each  
19 Washington State Senator. It stated the following:

20           To: The State Legislative Office of each of the Senators identified on Attachment A.

21           Re: Public Records Act Request to Your State Legislative Office

22           Dear Senators:

23           This is a Public Record Act (“PRA”) request to your individual State Legislative  
24 Offices. This request is being made on behalf of my clients the Associated Press,  
Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily Newspapers  
of Washington, The Spokesman-Review, Washington Newspaper Publishers  
Association, Sound Publishing, Inc., The News Tribune and The Seattle Times.

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The State Senate and your State Legislative Office are “agencies” pursuant to RCW 42.56.010(3). The State Senate and your State Legislative Office are separate from the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate. The State Senate and your individual State Legislative Offices are obligated to respond to PRA requests based on the broader definition of “public records” contained in RCW 42.56.010(3), and not based on the narrower definition of records subject to disclosure by the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate.  
My clients earlier made a PRA request to your State Legislative Office, and you failed to adequately respond.

With this new PRA request we are giving you the opportunity to comply with the PRA and fully respond to this request. If you fail to adequately respond within 21 days from today we will be forced to file a lawsuit addressing the PRA violations.

This request seeks the following documents:

- Copies of your calendars/schedules from Jan. 9, 2017 through July 24, 2017;
- Copies of any text messages received or sent by you related to your legislative duties between Jan. 9, 2017 and July 24, 2017.

Please provide the records electronically. Because the requestors are news organizations and these records are of legitimate public concern, we are asking that you waive any fees associated with production. Please advise us in advance of any costs.

We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.

128. One of the four requests was sent to the State Legislative Offices of each Representative of the House of Representatives. It stated the following:

To: The State Legislative Office of each of the Representatives identified on Attachment A

Re: Public Records Act Request to Your State Legislative Office

This is a Public Record Act (“PRA”) request to your individual State Legislative Offices. This request is being made on behalf of my clients the Associated Press, Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., The News Tribune and The Seattle Times.

The State House of Representatives and your State Legislative Office are “agencies” pursuant to RCW 42.56.010(3). The State House of Representatives

1 and your State Legislative Office are separate from the Office of the Chief Clerk  
2 of the House or the Office of the Secretary of the Senate. The State House of  
3 Representatives and your individual State Legislative Offices are obligated to  
4 respond to PRA requests based on the broader definition of “public records”  
5 contained in RCW 42.56.010(3), and not based on the narrower definition of  
6 records subject to disclosure by the Office of the Chief Clerk of the House or the  
7 Office of the Secretary of the Senate.

8  
9 My clients earlier made a PRA request to your State Legislative Office, and you  
10 failed to adequately respond.

11 With this new PRA request we are giving you the opportunity to comply with the  
12 PRA and fully respond to this request. If you fail to adequately respond within 21  
13 days from today we will be forced to file a lawsuit addressing the PRA violations.

14 This request seeks the following documents:

- 15 -- Copies of your calendars/schedules from Jan. 9, 2017 through July 24, 2017;  
16 -- Copies of any text messages received or sent by you related to your legislative  
17 duties between Jan. 9, 2017 and July 24, 2017.

18 Please provide the records electronically. Because the requestors are news  
19 organizations and these records are of legitimate public concern, we are asking  
20 that you waive any fees associated with production. Please advise us in advance  
21 of any costs.

22 We look forward to your prompt response. Time is of the essence with this  
23 request. My clients and the public have been waiting far too long for these public  
24 records.

129. One of the four requests was sent to the Washington State Senate. It stated the  
following:

This is a Public Record Act (“PRA”) request to the Washington State Senate.  
This request is being made on behalf of my clients the Associated Press,  
Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily  
Newspapers of Washington, The Spokesman-Review, Washington Newspaper  
Publishers Association, Sound Publishing, Inc., The News Tribune and The  
Seattle Times.

The State Senate is an “agency” pursuant to RCW 42.56.010(3). The State Senate  
is separate from the Office of the Chief Clerk of the House or the Office of the  
Secretary of the Senate. The State Senate is obligated to respond to PRA requests  
based on the broader definition of “public records” contained in RCW  
42.56.010(3), and not based on the narrower definition of records subject to

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disclosure by the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate.

My clients earlier made a PRA request to the Washington State Senate, and it failed to adequately respond.

With this new PRA request we are giving you the opportunity to comply with the PRA and fully respond to this request. If you fail to adequately respond within 21 days from today we will be forced to file a lawsuit addressing the PRA violations.

This request seeks the following documents:

- Any documentation of staff complaints made against lawmakers made over the past five years;
- Reports on all legislative investigations made within that same timeframe of inappropriate or abusive behavior by lawmakers toward staff or each other;
- Actions taken by each chamber against lawmakers because of interactions with staff.

Please provide the records electronically. Because the requestors are news organizations and these records are of legitimate public concern, we are asking that you waive any fees associated with production. Please advise us in advance of any costs.

We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.

130. One of the four requests was sent to the Washington State House of Representatives. It stated the following:

This is a Public Record Act (“PRA”) request to the Washington State House of Representatives. This request is being made on behalf of my clients the Associated Press, Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., The News Tribune and The Seattle Times.

The State House of Representatives is an “agency” pursuant to RCW 42.56.010(3). The State House of Representatives is separate from the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate. The State House of Representatives is obligated to respond to PRA requests based on the broader definition of “public records” contained in RCW 42.56.010(3), and

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not based on the narrower definition of records subject to disclosure by the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate.

My clients earlier made a PRA request to the Washington State House of Representatives, and it failed to adequately respond.

With this new PRA request we are giving you the opportunity to comply with the PRA and fully respond to this request. If you fail to adequately respond within 21 days from today we will be forced to file a lawsuit addressing the PRA violations.

This request seeks the following documents:

- Any documentation of staff complaints made against lawmakers made over the past five years;
- Reports on all legislative investigations made within that same timeframe of inappropriate or abusive behavior by lawmakers toward staff or each other;
- Actions taken by each chamber against lawmakers because of interactions with staff.

Please provide the records electronically. Because the requestors are news organizations and these records are of legitimate public concern, we are asking that you waive any fees associated with production. Please advise us in advance of any costs.

We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.

131. On August 15, 2017, House Counsel Alison Hellberg responded by email to all four of the July 26, 2017 PRA Requests. Her response stated as follows:

This letter serves as the response to the two public records requests that you emailed to each member of the Legislature dated July 26, 2017. The Secretary of the Senate is the records custodian for the Senate and the Chief Clerk is the records custodian for the House of Representatives. Our offices routinely respond to public records requests on their behalf.

Your two requests seek:

1. Copies of each legislator's calendars/ schedules from January 9 through July 24, 2017;
2. Copies of any text messages received or sent by each legislator related to their legislative duties between January 9 and July 24, 2017;

- 1 3. Any documentation of staff complaints made against lawmakers over the past  
five years;
- 2 4. Reports on all legislative investigations made over the past five years of  
inappropriate or abusive behavior by lawmakers toward staff or each other;  
3 and
- 4 5. Actions taken by each chamber against lawmakers because of interactions  
with staff.

5 Please note that a specific definition of “public records” applies to the Legislature.  
RCW 42.56.010(2) provides (in relevant part):

6 ...public records means legislative records as defined in RCW 40.14.100 and also  
7 means the following: All budget and financial records; personnel leave, travel,  
8 and payroll records; records of legislative sessions; reports submitted to the  
legislature; and any other record designated a public record by any official action  
9 of the senate or the house of representatives.

10 RCW 40.14.100 further refines the scope of public records for the Legislature,  
defining “legislative records” as:

11 ... "[L]egislative records" shall be defined as correspondence, amendments,  
12 reports, and minutes of meetings made by or submitted to legislative committees  
or subcommittees and transcripts or other records of hearings or supplementary  
13 written testimony or data thereof filed with committees or subcommittees in  
connection with the exercise of legislative or investigatory functions, but does not  
14 include the records of an official act of the legislature kept by the secretary of  
state, bills and their copies, published materials, digests, or multi-copied matter  
15 which are routinely retained and otherwise available at the state library or in a  
public repository, or reports or correspondence made or received by or in any way  
16 under the personal control of the individual members of the legislature.

17 In regards to items 1 and 2, the only responsive record we have identified after a  
new search is what we provided your clients in response to a previous records  
18 request. We are including a text message from Representative Larry Springer to  
his legislative assistant that contains a photo of a financial form.

19 Strictly speaking, the records you are requesting in the items designated as 3-5 are  
not legislative public records under the applicable statutory definition. Even so,  
20 we are providing several documents in response to your request. These are  
documentation of final dispositions, many of which are already in the public  
21 domain. The following documents are included:

- 22 • A 2012 complaint regarding Senator Pam Roach, the resolution of that claim,  
and other documents arising from that claim that resulted in an additional  
23 investigation (also attached).
- 24 • The investigation of a complaint by Senator Don Benton against Senator Ann  
Rivers. The document titled “Complaint” consists of the initial decision of the

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Senate Facilities and Operations Committee, together with the underlying report of the Senate investigative committee and the original complaints. The document titled “Appeal” contains the final decision of the Senate Facilities and Operations Committee on the matter.

- The complaint from the Chief Clerk of the House and the Legislative Ethics Board opinion regarding former Representative Susan Fagan’s use of public resources for private and campaign purposes.
- A letter from the House Counsel to Representative Jesse Young regarding the House’s respectful workplace policy.

Two legislators have offered to voluntarily provide copies of their calendars or text messages related to their legislative duties. This response includes:

- Representative Pellicciotti’s calendar and text messages related to legislative business from January 9 through July 24, 2017.
- Representative Reeves’s calendar from January 9 through July 24, 2017. Please note that legislators are permitted to keep one calendar with both legislative and non-legislative appointments so the calendar she is providing is not limited to legislative business.

Because of the size of the files, I am sending the attachments in four separate emails that will follow this one. With this response, the Legislature has fully complied with your request. Please do not hesitate to contact us if you have questions.

132. Four emails were provided with the above-described attachments.

133. None of the remaining State Legislative Offices of the Senators or Representatives responded or provided responsive records.

134. The response disputes that any of the requested records were public records, and does not confirm if any other such documents exist that were not being produced based on this view that the records are not subject to the PRA.

**M. No Further Records of Responses Provided**

135. As of the date of this complaint Plaintiffs have received no further records or explanations or responses to their PRA requests discussed above.

1 IV. CAUSES OF ACTION

2 **A. Failure to Provide a Reasonable Estimate and Provide Fullest Assistance and**  
3 **Most Timely Possible Action on Request and to Make Records Promptly**  
4 **Available**

5 136. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in  
6 this cause of action.

7 137. RCW 42.56.520 requires an agency to provide a “reasonable estimate” of the time  
8 of production.

9 138. RCW 42.56.080 requires an agency to provide requested records “on a partial or  
10 installment basis as records that are part of a larger set of requested records are assembled or  
11 made ready for inspection or disclosure.”

12 139. RCW 42.56.100 requires an agency to have rules in place to provide the “most  
13 timely possible action on requests.”

14 140. RCW 42.56.080 requires an agency to make records “promptly available.”

15 141. RCW 42.56.550(2) provides:

16 Upon the motion of any person who believes that an agency has not made a  
17 reasonable estimate of the time that the agency requires to respond to a  
18 public record request, the superior court in the county in which a record is  
19 maintained may require the responsible agency to show that the estimate it  
20 provided is reasonable. The burden of proof shall be on the agency to show  
21 that the estimate it provided is reasonable.

22 142. RCW 42.56.550(3) provides: “Courts shall take into account the policy of this  
23 chapter that free and open examination of public records is in the public interest, even though  
24 such examination may cause inconvenience or embarrassment to public officials or others.”

143. RCW 42.56.550(4) provides:

Any person who prevails against an agency in any action in the courts  
seeking the right to inspect or copy any public record or the right to receive  
a response to a public record request within a reasonable amount of time  
shall be awarded all costs, including reasonable attorney fees, incurred in

1 connection with such legal action. In addition, it shall be within the  
2 discretion of the court to award such person an amount not less than five  
3 dollars and not to exceed one hundred dollars for each day that he or she  
4 was denied the right to inspect or copy said public record.

5 144. Defendants did not provide Plaintiffs with “a reasonable estimate of the time that  
6 the agency requires to respond to a public records request[.]” (RCW 42.56.550(2)).

7 145. Defendants violated the Public Records Act by not providing Plaintiffs “a  
8 reasonable estimate of the time that the agency requires to respond to a public records request[.]”  
9 (RCW 42.56.550(2)).

10 146. Defendants violated the PRA by not providing the requested records “on a partial  
11 or installment basis as records that are part of a larger set of requested records are assembled or  
12 made ready for inspection or disclosure.”

13 147. Defendants violated the PRA by not providing the “most timely possible action  
14 on requests.”

15 148. Defendants violated the PRA by not making records “promptly available.”

### 16 **B. Failure to Produce Public Records**

17 149. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in  
18 this cause of action.

19 150. The Washington State Supreme Court held in *Nissen v. Pierce County*, 183  
20 Wn.2d 863, 874, 876, 357 P.3d 45 (2015) as follows:

21 The definitions of “agency” and “public record” are each comprehensive on their  
22 own and, when taken together, mean the PRA subjects “virtually any record  
23 related to the conduct of government” to public disclosure. *O’Neill [v. Shoreline]*,  
24 170 Wn.2d at 147. This broad construction is deliberate and meant to give the  
public access to information about every aspect of state and local government.  
See Laws Of 1973, ch. 1, § 1 (11). As we so often summarize, the PRA “is a  
strongly worded mandate for broad disclosure of public records.” *Yakima County*  
*v. Yakima Herald-Republic*, 170 Wn.2d 775,791,246 P.3d 768 (2011) (quoting  
*Soter v. Cowles Publ’g Co.*, 162 Wn.2d 716, 731, 174 P.3d 60 (2007) (quoting  
*Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)).

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...  
One characteristic of a public record is that it is "prepared, owned, used, or retained by any state or local agency." RCW 42.56.010(3)... But those bodies lack an innate ability to prepare, own, use, or retain any record. They instead act exclusively through their employees and other agents, and when an employee acts within the scope of his or her employment, the employee's actions are tantamount to "the actions of the [body] itself." *Houser v. City of Redmond*, 91 Wn.2d 36, 40, 586 P.2d 482 (1978) (as to cities); *Hailey v. King County*, 21 Wn.2d 53, 58, 149 P.2d 823 (1944) (as to counties). Integrating this basic common law concept into the PRA, a record that an agency employee prepares, owns, uses, or retains in the scope of employment is necessarily a record "prepared, owned, used, or retained by [a] state or local agency." RCW 42.56.010(3).

...  
If the PRA did not capture records individual employees prepare, own, use, or retain in the course of their jobs, the public would be without information about much of the daily operation of government. Such a result would be an affront to the core policy underpinning the PRA-the public's right to a transparent government. That policy, itself embodied in the statutory text, guides our interpretation of the PRA. RCW 42.56.030; LAWS OF 1973, ch. 1, § 1(11); *Hearst Corp.*, 90 Wn.2d at 128.

151. The requested records are public records as defined by RCW 42.56.010(3).

152. RCW 42.56.010(3) defines "public record" as follows:

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

153. RCW 42.56.010(1) defines "agency as follows:

"Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

154. The 1995 Amendment on which Defendants rely in withholding records defined "State office" as "state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent

1 of public instruction, state auditor, or state treasurer.”

2 155. The 1995 Amendment on which Defendants rely in withholding records defined  
3 “State Legislative Office” – a term contained within the definition “State Office” – as “the office  
4 of a member of the state house of representatives or the office of a member of the state senate.”

5 156. All of the records requested by Plaintiffs were “writings containing information  
6 relating to the conduct of government or the performance of any governmental or proprietary  
7 function”.

8 157. All of the records requested by Plaintiffs were “writings ...prepared, owned,  
9 used, or retained by” the Washington State Legislature, Washington State Senate, Washington  
10 State House of Representatives, State Senators or State Representatives.

11 158. The Washington State Legislature, Washington State Senate, and Washington  
12 State House of Representatives are state agencies.

13 159. State Senators are agents of the State Legislature and State Senate.

14 160. State Representatives are agents of the State Legislature and State House of  
15 Representatives.

16 161. The State Legislative Office of every State Senator and State Representative is a  
17 “State Office” and thus a “State Agency” under the PRA.

18 162. The requested records were “prepared, owned, used, or retained” by the Senators  
19 and Representatives “in the course of their jobs” as Senators and Representatives and thus are  
20 “prepared, owned, used or retained” by the Legislature or Senate or House of Representatives  
21 themselves.

22 163. The July 26, 2017, PRA requests were not directed to the office of the secretary  
23 of the senate or the office of the chief clerk of the house in any way, as the requests made clear.  
24

1           164.    RCW 40.14.100 does not remove the Legislature, State Senate, State House of  
2 Representatives or the individual legislators or their offices from the reach of the PRA or the  
3 definition of “agency” in the PRA.

4           165.    The requested records are subject to disclosure unless exempt from disclosure  
5 under a specific statute. *See* RCW 42.56.070.

6           166.    If Defendants withheld or redacted any information from the requested records,  
7 they were required to explain each withholding or redaction in writing, to identify the statute  
8 allowing for such redaction or deletion, to explain how such statute applied to the record in  
9 question, and to provide a detailed withholding index as described by *Progressive Animal*  
10 *Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1995) and *Rental*  
11 *Housing Ass’n of Puget Sound, v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009).

12           167.    Defendants have not adequately identified each record redacted or withheld or the  
13 statute authorizing such redaction or withholding or explained how each such statute applies to  
14 the record withheld or portion redacted.

15           168.    Defendants have failed to produce all records in response to the July 26, 2017  
16 PRA requests.

17           169.    There are records responsive to Plaintiffs’ July 26, 2017, PRA requests.

18           170.    Many of these records have thus far been withheld by Defendants.

19           171.    Responsive records being withheld by Defendants are not exempt from disclosure  
20 under the PRA.

21    **C.    Failure to Provide Exemption Log or Justify Withholding**

22           172.    Plaintiffs reallege the preceding paragraphs and incorporates them by reference in  
23 this cause of action.

1           173. Defendants were required to provide Plaintiffs with a detailed exemption log or  
2 withholding index identifying all records or content being denied or redacted, the exemption  
3 authorizing the document or content's denial, and sufficient detail about the document or content  
4 to establish the exemption applied.

5           174. Defendants did not provide Plaintiffs sufficiently detailed withholding indexes or  
6 logs for documents that they withheld or redacted. This is a violation of the PRA.

7           175. Defendants are withholding records responsive to Plaintiffs' requests without  
8 adequately claiming exemptions. This is a violation of the PRA

9           176. Defendants bear the burden of identifying and proving any exemption applies to  
10 the responsive public records sought by Plaintiffs.

11           177. Defendants have not met and cannot meet its burden of identifying or providing  
12 an applicable exemption justifying the withholding of these responsive records.

13           178. The records should have been released to Plaintiffs when requested and must be  
14 released now.

15 **D. Records Improperly Withheld in Their Entirety**

16           179. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in  
17 this cause of action.

18           180. Defendants have denied Plaintiffs access to records in their entirety and have  
19 violated the PRA as a result.

20           181. Defendants have failed to provide access to records responsive to Plaintiffs'  
21 public records requests described above.

22           182. Defendants never provided Plaintiffs with any records responsive to most of the  
23 above requests.

24           183. Defendants have violated the PRA by failing to produce these records.

1 **E. Defendants are Silently Withholding Records**

2 184. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in  
3 this cause of action.

4 185. It is a violation of the PRA to fail to provide responsive public records without  
5 claiming an exemption or basis for withholding the records (silently withholding records).

6 186. Responsive public records have been silently withheld by Defendants as they  
7 have not been produced, made available for inspection, or had their existence made known by  
8 the Defendants coupled with an explanation for withholding.

9 **F. Right to Judicial Review**

10 187. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in  
11 this cause of action.

12 188. RCW 42.56.550 provides that any agency action denying access to public records  
13 for inspection and copying, denying an adequate response to such a request, or failing to provide  
14 a reasonable estimate of the time needed to respond to a record request is subject to judicial  
15 review:

16 (1) Upon the motion of any person having been denied an opportunity to  
17 inspect or copy a public record by an agency, the superior court in the county  
18 in which a record is maintained may require the responsible agency to show  
19 cause why it has refused to allow inspection or copying of a specific public  
20 record or class of records. The burden of proof shall be on the agency to  
21 establish that refusal to permit public inspection and copying is in accordance  
22 with a statute that exempts or prohibits disclosure in whole or in part of  
23 specific information or records.

24 (2) Upon the motion of any person who believes that an agency has not made a  
reasonable estimate of the time that the agency requires to respond to a public  
record request, the superior court in the county in which a record is maintained  
may require the responsible agency to show that the estimate it provided is  
reasonable. The burden of proof shall be on the agency to show that the estimate it  
provided is reasonable.

1           189. This right to judicial review against Defendants may be sought in Thurston  
2 County pursuant to 42.56.550(1).

3 **G. Right to Attorney Fees, Costs, and Penalties**

4           190. RCW 42.56.550(4) provides that any person who prevails against an agency in  
5 any action seeking the right to inspect or copy any public record or the right to receive a  
6 response within a reasonable amount of time *shall* be awarded all costs, including reasonable  
7 attorney's fees. The prevailing requester must also be awarded an amount imposed as a statutory  
8 penalty against the agency in an amount between \$0 and \$100 for each day that the requester has  
9 been denied the right to inspect and copy a public record or been denied an adequate response.  
10 Such penalties may be imposed per page.

11 **C. PRAYER FOR RELIEF**

12           WHEREFORE, the Plaintiffs The Associated Press, Northwest News Network, KING-  
13 TV, KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington  
14 Newspaper Publishers Association, Sound Publishing, Inc., Tacoma News, Inc., and The Seattle  
15 Times pray for judgment against Defendants as follows:

16           A. Order the Defendants to promptly provide Plaintiffs the records requested in their  
17 PRA requests discussed herein.

18           B. Issue an injunction prohibiting Defendants from failing to provide Plaintiffs with  
19 requested records based on RCW 40.14.100 or the definition of public records for the Chief  
20 Clerk of the House or Secretary of the Senate contained in RCW 42.56.010(3).

21           C. Award Plaintiffs all costs, including reasonable attorney's fees, incurred in  
22 connection with this action and efforts to obtain the records, as provided in RCW 42.56.550(4).

1 D. Award Plaintiffs monetary penalties pursuant to RCW 42.56.550(4) of \$100 per  
2 page per day from the date of the request until the date Defendants provide all the requested  
3 records in unredacted form or with redactions as approved by the Court after evaluating claimed  
4 exemptions and in camera review.

5 E. For such other relief as the Court deems just.

6 DATED this 12th day of September, 2017.

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ALLIED LAW GROUP LLC

By *Michele Earl-Hubbard*

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# Appendix A



Seattle

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**Michele Earl-Hubbard**  
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(206) 443-0200

July 26, 2017

Via Email (see Attachment A)

To: The State Legislative Office of each of the Senators identified on Attachment A.

Re: Public Records Act Request to Your State Legislative Office

Dear Senators:

This is a Public Record Act (“PRA”) request to your individual State Legislative Offices. This request is being made on behalf of my clients the Associated Press, Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., The News Tribune and The Seattle Times.

The State Senate and your State Legislative Office are “agencies” pursuant to RCW 42.56.010(3). The State Senate and your State Legislative Office are separate from the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate. The State Senate and your individual State Legislative Offices are obligated to respond to PRA requests based on the broader definition of “public records” contained in RCW 42.56.010(3), and not based on the narrower definition of records subject to disclosure by the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate.

My clients earlier made a PRA request to your State Legislative Office, and you failed to adequately respond.

With this new PRA request we are giving you the opportunity to comply with the PRA and fully respond to this request. If you fail to adequately respond within 21 days from today we will be forced to file a lawsuit addressing the PRA violations.

This request seeks the following documents:

- Copies of your calendars/schedules from Jan. 9, 2017 through July 24, 2017;
- Copies of any text messages received or sent by you related to your legislative duties between Jan. 9, 2017 and July 24, 2017.

Please provide the records electronically. Because the requestors are news organizations and these records are of legitimate public concern, we are asking that you waive any fees associated with production. Please advise us in advance of any costs.



We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.

Very truly yours,

  
MICHELE EARL-HUBBARD  
Allied Law Group, LLC

cc: Clients

## Attachment A

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Senate Minority Leader Sharon Nelson: [Sharon.Nelson@leg.wa.gov](mailto:Sharon.Nelson@leg.wa.gov)

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# Appendix B



Seattle

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**Michele Earl-Hubbard**

[michele@alliedlawgroup.com](mailto:michele@alliedlawgroup.com)

(206) 443-0200

July 26, 2017

Via Email (see Attachment A)

To: The State Legislative Office of each of the Representatives identified on Attachment A

Re: Public Records Act Request to Your State Legislative Office

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The State House of Representatives and your State Legislative Office are “agencies” pursuant to RCW 42.56.010(3). The State House of Representatives and your State Legislative Office are separate from the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate. The State House of Representatives and your individual State Legislative Offices are obligated to respond to PRA requests based on the broader definition of “public records” contained in RCW 42.56.010(3), and not based on the narrower definition of records subject to disclosure by the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate.

My clients earlier made a PRA request to your State Legislative Office, and you failed to adequately respond.

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Please provide the records electronically. Because the requestors are news organizations and these records are of legitimate public concern, we are asking that you waive any fees associated with production. Please advise us in advance of any costs.



We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.

Very truly yours,

A handwritten signature in blue ink that reads "Michele Earl-Hubbard". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

MICHELE EARL-HUBBARD

Allied Law Group, LLC

cc: Clients

## **Attachment A**

Presiding Office of the House/House Speaker Frank Chopp:

[Frank.Chopp@leg.wa.gov](mailto:Frank.Chopp@leg.wa.gov)

House Minority Leader Dan Kristiansen:

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# Appendix C



Seattle  
[www.alliedlawgroup.com](http://www.alliedlawgroup.com)

**Michele Earl-Hubbard**  
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(206) 443-0200

July 26, 2017

Via Email (see Attachment A)

To: The Washington State Senate

Re: Public Records Act Request to the Washington State Senate

This is a Public Record Act (“PRA”) request to the Washington State Senate. This request is being made on behalf of my clients the Associated Press, Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., The News Tribune and The Seattle Times.

The State Senate is an “agency” pursuant to RCW 42.56.010(3). The State Senate is separate from the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate. The State Senate is obligated to respond to PRA requests based on the broader definition of “public records” contained in RCW 42.56.010(3), and not based on the narrower definition of records subject to disclosure by the Office of the Chief Clerk of the House or the Office of the Secretary of the Senate.

My clients earlier made a PRA request to the Washington State Senate, and it failed to adequately respond.

With this new PRA request we are giving you the opportunity to comply with the PRA and fully respond to this request. If you fail to adequately respond within 21 days from today we will be forced to file a lawsuit addressing the PRA violations.

This request seeks the following documents:

- Any documentation of staff complaints made against lawmakers made over the past five years;
- Reports on all legislative investigations made within that same timeframe of inappropriate or abusive behavior by lawmakers toward staff or each other;
- Actions taken by each chamber against lawmakers because of interactions with staff.

Please provide the records electronically. Because the requestors are news organizations and these records are of legitimate public concern, we are asking that you waive any fees associated with production. Please advise us in advance of any costs.

We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.



Very truly yours,

A handwritten signature in blue ink that reads "Michele Earl-Hubbard". The signature is written in a cursive, flowing style.

MICHELE EARL-HUBBARD

Allied Law Group, LLC

cc: Clients

## Attachment A

President of the Senate Lieutenant Governor Cyrus Habib: [ltgov@ltgov.wa.gov](mailto:ltgov@ltgov.wa.gov):

Presiding Officer of the Senate/Senate Majority Leader Mark Schoesler:

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Senate Minority Leader Sharon Nelson: [Sharon.Nelson@leg.wa.gov](mailto:Sharon.Nelson@leg.wa.gov)

Senators:

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# Appendix D



Seattle

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**Michele Earl-Hubbard**  
michele@alliedlawgroup.com  
(206) 443-0200

July 26, 2017

Via Email (see Attachment A)

To: The Washington State House of Representatives

Re: Public Records Act Request to the Washington State House of Representatives

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We look forward to your prompt response. Time is of the essence with this request. My clients and the public have been waiting far too long for these public records.



Very truly yours,

A handwritten signature in cursive script that reads "Michele Earl Hubbard". The signature is written in dark ink and is positioned above the printed name.

MICHELE EARL-HUBBARD

Allied Law Group, LLC

cc: Clients

## **Attachment A**

Presiding Office of the House/House Speaker Frank Chopp:

[Frank.Chopp@leg.wa.gov](mailto:Frank.Chopp@leg.wa.gov)

House Minority Leader Dan Kristiansen:

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EXPEDITE  
 No hearing set  
 Hearing is set  
Date: December 22, 2017  
Time: 1:30 pm  
Judge/Calendar: Hon. Chris Lanese

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK, KING-TV (“KING 5”), KIRO 7, ALLIED DAILY NEWSPAPERS OF WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING, INC., TACOMA NEWS, INC. (“THE NEWS TRIBUNE,”) and THE SEATTLE TIMES,

Plaintiffs,

vs.

THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON STATE SENATE, THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, Washington state agencies; and SENATE MAJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON, and HOUSE MINORITY LEADER DAN KRISTIANSEN each in their official capacity,

Defendants.

No. 17-2-04986-34  
  
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

**ALLIED**  
LAW GROUP  
P.O.. Box 33744  
Seattle, WA 98133  
(206) 443-0200

1 **I. RELIEF REQUESTED**

2 Plaintiffs The Associated Press, Northwest News Network, KING-TV (“KING 5”), KIRO 7,  
3 Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper  
4 Publishers Association, Sound Publishing, Inc., Tacoma News, Inc. (“The News Tribune,”) and  
5 The Seattle Times (collectively “Media”) ask that the Court grant summary judgment for the  
6 Media on all claims.

7 **II. STATEMENT OF FACTS**

8 The facts are generally not in dispute. See Complaint and Answer. The Media made Public  
9 Record Act (“PRA”) requests to the State Legislative Office of each State Senator and State  
10 Representative seeking their calendars or schedules for specified times and their text messages  
11 received or sent by them for a specified time related to their legislative duties. See, e.g.,  
12 Complaint Attachments A and B; Earl-Hubbard Decl., ¶ 10. The calendars and schedules related  
13 to the most recent legislative session when the Legislature was addressing a budget and  
14 attempting to comply with the Washington State Supreme Court’s decision in *McCleary v. State*  
15 to stop the levying of daily fines against the State related to the budget and funding of K-12  
16 education.

17 The Media also made PRA requests to the Senate and the House, by copy to each of the  
18 Senators and Representatives and their State Legislative Offices as well as the leadership of both  
19 bodies, seeking documentation of complaints made against lawmakers over the past five years  
20 including sexual and workplace harassment claims, reports on all legislative investigations made  
21 within that same time frame of inappropriate or abusive behavior by lawmakers toward staff or  
22 each other, and actions taken by each chamber against lawmakers because of interactions with  
23 staff. See Complaint Attachments C and D; Earl-Hubbard Decl., ¶ 10. The requests made clear  
24 they were not directed to the Office of the Chief Clerk of the House or the Office of the

1 Secretary of the Senate and explained, as Plaintiffs' lawsuit Complaint does, why the PRA  
2 applies to the Senate, House and State Legislative Offices of each of the Senators and  
3 Representatives and to the requested records. Id. Senate and House Counsel responded jointly to  
4 all requests claiming to respond on behalf of the Offices of the Chief Clerk of the House and the  
5 Secretary of the Senate and claiming, as they had done in response to several earlier requests by  
6 the Media, that the PRA does not apply to these records or these offices or entities. This lawsuit  
7 followed. The parties and Court have agreed that a summary judgment proceeding addressing  
8 the basic legal issues is the most efficient means of addressing this dispute.

9 **III. EVIDENCE RELIED UPON**

10 The Media relies upon the Complaint, Answer, and the Declaration of Michele Earl-Hubbard  
11 filed herewith.

12 **IV. ARGUMENT AND AUTHORITY**

13 **A. Initiative I-276.**

14 In November 1972, the people of the State of Washington passed Initiative I-276 by a vote of  
15 959,143 for to 372,693 against. Earl-Hubbard Decl., Ex. F. The Initiative required all state,  
16 county, and city governments to allow and provide access to their records and required  
17 disclosure of all political campaign and lobbying contributions and expenditures as well as full  
18 access to information concerning the conduct of government. Id. The measure became the Public  
19 Disclosure Act and was codified at RCW 42.17 et seq. in 1973. The public record portion of the  
20 law was later re-named the Public Records Act and moved to RCW 42.56, et. seq. and the  
21 campaign finance portion was moved to RCW 42.17A, et seq. The separation of the laws into  
22 two separate chapters was to have no practical effect on the meaning of the laws or their  
23 interpretation.

1 Initiative I-276 contained the following declaration of policy:

2 SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people to be  
3 the public policy of the State of Washington:

4 (1) That political campaign and lobbying contributions and expenditures be fully  
5 disclosed to the public and that secrecy is to be avoided.

6 (2) That the people have the right to expect from their elected representatives at  
7 all levels of government the utmost of integrity, honesty and fairness in their dealings.

8 (3) That the people shall be assured that the private financial dealings of their  
9 public officials, and of candidates for those offices, present no conflict of interest  
10 between the public trust and private interests.

11 (4) That our representative form of government is founded on a belief that those  
12 entrusted with the offices of government have nothing to fear from full public disclosure  
13 of their financial and business holdings, provided those officials deal honestly and fairly  
14 with the people.

15 (5) That public confidence in government at all levels is essential and must be  
16 promoted by all possible means.

17 (6) That public confidence in government at all levels can best be sustained by  
18 assuring the people of the impartiality and honesty of the officials in all public  
19 transactions and decisions.

20 (7) That the concept of attempting to increase financial participation of  
21 individual contributors in political campaigns is encouraged by the passage of the  
22 Revenue Act of 1971 by the Congress of the United States, and in consequence thereof,  
23 it is desirable to have implementing legislation at the state level.

24 (8) That the concepts of disclosure and limitation of election campaign financing  
are established by the passage of the Federal Election Campaign Act of 1971 by the  
Congress of the United States, and in consequence thereof it is desirable to have  
implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and  
that not requiring the reporting of small contributions may tend to encourage such  
contributions.

(10) That the public's right to know of the financing of political campaigns and  
lobbying and the financial affairs of elected officials and candidates far outweighs any  
right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of  
the efficient administration of government, full access to information concerning the  
conduct of government on every level must be assured as a fundamental and necessary  
precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete  
disclosure of all information respecting the financing of political campaigns and  
lobbying, and the financial affairs of elected officials and candidates, and full access to  
public records so as to assure continuing public confidence in fairness of elections and  
governmental processes, and so as to assure that the public interest will be fully  
protected.

Earl-Hubbard Decl., Ex. F. Initiative I-276 mandated that "Each agency, in accordance with

1 published rules, shall make available for public inspection and copying all public records.” Id.  
2 Initiative I-276 defined public record as follows: “‘Public record’ includes any writing  
3 containing information relating to the conduct of government or the performance of any  
4 governmental or proprietary function prepared, owned, used or retained by any state or local  
5 agency regardless of physical form or characteristics.” Id. Initiative I-276 defined “agency” as  
6 follows: “‘Agency’ includes all state agencies and all local agencies. ‘State agency’ includes  
7 **every state office, public official, department, division, bureau, board, commission or other**  
8 **state agency.** ‘Local agency’ includes every county, city, city and county, school district,  
9 municipal corporation, district, political subdivision, or any board, commission or agency  
10 thereof, or other local public ‘agency.’” Id. (emphasis added).

11 Initiative I-276, by its definition of “agency” to include “every state office, public official,  
12 department, division, bureau, board, commission or other state agency” showed its intention that  
13 it apply to the Washington State Legislature, Washington State Senate, Washington State House  
14 of Representatives and the individual Washington State Senators and Washington State  
15 Representatives.

16 In 1977, the Legislature amended the definition of “agency” in the Act to remove the words  
17 “public official” but kept the remaining parts of the definition. The bill summary made clear the  
18 edit was “to be more specific in encompassing all governmental units at each level of state and  
19 local government.” Earl-Hubbard Decl., Ex. G.

20 **B. The 1995 Amendment, ESSB 5684.**

21 In 1995, the Legislature amended the Act through ESSB 5684 which was enacted into law.  
22 Earl-Hubbard Decl., Ex. A. The 1995 amendment continued to require all state and local  
23 agencies to produce public records, and continued to define public records as “any writing  
24 containing information relating to the conduct of government or the performance of any

1 governmental or proprietary function prepared, owned, used, or retained by any state or local  
2 agency regardless of physical form or characteristics.” Id., Ex. A p. 10 at (36). The word  
3 “agency” was not amended, and continued to be defined as” all state agencies and all local  
4 agencies.” Id., Ex. A p. 1 at (1). "State agency" continued to be defined as “every state office,  
5 department, division, bureau, board, commission, or other state agency.” Id. The amendment  
6 created a definition for the words “State Office” – which the Act defined as a “State Agency.”  
7 The amendment defined “State Office” for purposes of the definition of “agency” as follows:  
8 “‘State office’ means state legislative office or the office of governor, lieutenant governor,  
9 secretary of state, attorney general, commissioner of public lands, insurance commissioner,  
10 superintendent of public instruction, state auditor, or state treasurer.” Id., Ex. A p. 10 (39).

11 The same 1995 amendment also added a definition for “State Legislative Office” – a term  
12 contained within this new definition of “State Office.” “State legislative office” was defined as  
13 “the office of a member of the state house of representatives or the office of a member of the  
14 state senate.” Id., Ex. A p. 10 (38).

15 So the 1995 amendment made clear that “the office of a member of the state house of  
16 representatives or the office of a member of the state senate” was a “state agency,” and the  
17 amendment continued to require “state agencies” to comply with the Act and produce public  
18 records, which continued to be defined as “any writing containing information relating to the  
19 conduct of government or the performance of any governmental or proprietary function  
20 prepared, owned, used, or retained by any state or local agency regardless of physical form or  
21 characteristics.” Id., Ex. A p. 10 at (36). In other words, the 1995 amendment further established  
22 that the individual offices of each Senator and Representative were state agencies under the Act  
23 who had to respond to and produce records under the Act under the broad definition of “public  
24 records” that applies to all other state agencies.

1 The entire basis for Defendants’ position in this lawsuit is one other change made in this  
2 same 1995 amendment. The amendment added a specific definition for public records possessed  
3 by two newly-addressed entities—the “office of the secretary of the senate and the office of the  
4 chief clerk of the house of representatives.” These offices did not fall within the newly-created  
5 definition of “State Office” because they were not the “state legislative office or the office of  
6 governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands,  
7 insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.”  
8 They may have qualified, as a part of the Senate and House, as a “State Agency” as either a  
9 “department, division, bureau, board, commission, or other state agency”, but the amendment  
10 assigned certain custodian of record duties to these two offices to gather specified types of  
11 records and assign them to the Secretary of State or State Archives, and so the amendment  
12 sought to limit the scope of public records to those two specific new offices such that they would  
13 not need to gather up all the individual Senator and Representatives materials as those would be  
14 produced by the Senator and Representatives themselves as “State Agencies”.

15 The sentences added to the definition of “public record” for the offices of the clerk and  
16 secretary read as follows: “For the office of the secretary of the senate and the office of the chief  
17 clerk of the house of representatives, public records means legislative records as defined in RCW  
18 40.14.100 and also means the following: All budget and financial records; personnel leave,  
19 travel, and payroll records; records of legislative sessions; reports submitted to the legislature;  
20 and any other record designated a public record by any official action of the senate or the house  
21 of representatives.” *Id.*, Ex. A p. 10 (36).

22 The 1995 amendment did not change the definition of “State Agency”, and “State Agency”  
23 was defined in this same Amendment to still include “State Office,” and “State Office” was  
24 defined to include “State Legislative Office,” and “State Legislative Office” was defined as “the

1 office of a member of the state house of representatives or the office of a member of the state  
2 senate.” *Id.*, Ex. A p.1 & 10. So while the 1995 amendment created specific obligations for the  
3 newly-addressed offices of the chief clerk of the house and secretary of the senate, it did not in  
4 any way reduce the public record obligation on individual Senators or Representatives or their  
5 respective individual State Legislative Offices, nor did it alter the obligation of the Senate and  
6 House as State Agencies to comply with the public records law.

7 **C. 2003 ATTEMPTED BILL, SB 5638.**

8 In 2003, lawmakers in the Senate introduced a bill—SB 5638—that would have clearly  
9 exempted lawmakers from the public records law. Earl-Hubbard Decl., Ex. B p. 8 (36).<sup>1</sup> The bill  
10 sought to amend the definition of “public record” to add the words “state legislative offices” to  
11 the sentence that read “For the office of the secretary of the senate, and the office of the chief  
12 clerk of the house of representatives, public records means legislative records as defined in RCW  
13 40.14.100 and also means the following: All budget and financial records; personnel leave,  
14 travel, and payroll records; records of legislative sessions; reports submitted to the legislature;  
15 and any other record designated a public record by any official action of the senate or the house  
16 of representative.” *Id.* This would have made the “state legislative offices” subject to the  
17 narrower definition of “public record” that covers the offices of the chief clerk of the house and  
18 secretary of the senate. The definitions for State Agency, State Office and State Legislative  
19 Office were not changed. *Id.*, Ex. B p.1 and 8. The Bill Digest was clear that the goal of the Bill  
20 was to amend the Act to change the application of public records laws to state legislative offices.  
21 Earl-Hubbard Decl., Ex. C.

22 The Senate Bill Report for the Bill was even more clear regarding the understanding of the  
23

24 <sup>1</sup> See also legislative history at <http://app.leg.wa.gov/billsummary?BillNumber=5638&Year=2003> (last visited November 2, 2017).

1 legislators at the time, and the goal of the proposed bill. It read in relevant part as follows:

2 A public record, for public disclosure purposes, includes any writing containing  
3 information relating to the conduct of government or the performance of any  
4 governmental or proprietary function prepared, owned, used, or retained by any state or  
5 local agency. For the office of the Secretary of the Senate, and the office of the Chief  
6 Clerk of the House (**but not offices of members of the House or Senate**), public records  
7 means legislative records; all budget and financial records; personnel leave, travel, and  
8 payroll records; records of legislative sessions; reports submitted to the Legislature; and  
9 any other record designated a public record by any official action of the Senate or the  
10 House. **In other words, it appears that there could be a different standard for public  
11 disclosure of records in the possession of individual legislators than there is for  
12 records in the possession of the Senate and House of Representatives as institutions.**

13 Earl-Hubbard Decl., Ex D (emphasis added). The Bill Summary stated the goal of the Bill  
14 was to create the “same standard for disclosure of public records applies to each senator and  
15 representative as applies to the Secretary of the Senate and the Chief Clerk of the House.” Id.

16 The 2003 Bill is evidence the Legislators and the Legislature did not believe the 1995  
17 amendment had removed the Senate, House or the individual State Legislative Offices of the  
18 Senators and Representatives from the definition of State Agency and the broad definition of  
19 public record that applies to all State Agencies. Had they believed they were already subject  
20 to the narrower definition of “public records” that applies to the offices of the clerk and  
21 secretary the Bill would not have been necessary. The fact it was introduced is compelling  
22 evidence that eight years after the 1995 amendment the Legislators understood the 1995  
23 amendment did not do what they now claim it did.

24 The 2003 Bill did not pass and did not become law.

**D. 2005 Bill Attempt, SSB 1758.**

In 2005, the Senate again tried to pass a Bill with identical language to the 2003 Bill  
again trying to add the words “state legislative offices” to the sentence discussing the  
obligations of the offices of the clerk and the secretary, again trying to make Senators and  
Representative and their State Legislative Offices not covered by the broad definition of

1 public records. Earl-Hubbard Decl., Ex. E p. 34 line 2. The Senate amended HB 1758 to try  
2 and insert this language, but it was rejected by the House and the Senate withdrew this  
3 amendment before the Bill was passed.<sup>2</sup> The 2005 attempted Bill amendment again  
4 illustrates that the Legislators did not believe the 1995 amendment removed them from the  
5 reach of the public records law or the broad definition of public records for all State  
6 Agencies. Had the Legislators believed themselves already subject to the narrower definition  
7 of public records that applied to the offices of the clerk and secretary, they would not have  
8 felt the need to again try and add the words “state legislative offices” into this definitional  
9 section.

10 **E. Defendants’ Incorrect Characterization of the 1995 Amendment.**

11 The language of the 1995 amendment clearly show that The Legislature and State Legislative  
12 Offices of the individual members of the state house of representatives and state senate are  
13 “agencies” under the law and subject individually to the law. In 2003 and 2005 – realizing they  
14 were subject to the public records requirements for all State Agencies and not the narrower  
15 definition of records for the office of the clerk and secretary, the Senate tried—twice—to amend  
16 the law and claim the narrower definition for their State Legislative Offices, but could not get the  
17 measures passed either time. Instead, Legislators, staff and the Senate and House simply began  
18 to claim at some recent point that the 1995 amendment exempted the Legislature and all State  
19 Legislative Offices from the reach of the law and that only the offices of the clerk and secretary  
20 were subject to it, and only then for the narrow subset of records for those two offices. The  
21 Defendants are expected to point to the separation of the campaign finance portions of the law  
22 and the public record portions of the law from their previous location in RCW 42.17 et seq. to

23 \_\_\_\_\_  
24 <sup>2</sup> See complete legislative history available at [http://app.leg.wa.gov/billsummary?BillNumber=1758&Year=2005\(last](http://app.leg.wa.gov/billsummary?BillNumber=1758&Year=2005(last) visited November 2, 2017).

1 two new chapters – RCW 42.56 for the Public Record Act (“PRA”) and RCW 42.17A et seq. for  
2 the campaign finance laws—as a basis for their claim the Legislature and Legislators were  
3 allegedly removed from the reach of the PRA by the 1995 amendment language. Such an  
4 argument is meritless, as the definitions have not changed, and the definitions of “State Office”  
5 and “State Legislative Agency” now found in RCW 42.17A apply with equal force to the PRA  
6 which does not contain its own definitions of the terms. The definitions, further, are supported  
7 by other State Statutes in Chapter 42 which similarly show their application to the PRA. Having  
8 failed to amend the law to achieve the result they wanted, the Legislature and some Legislators  
9 adopt the pretense that the 1995 amendment did, and meant to do, something it clearly did not.

10 In 1995, 2003 and 2005, and all years in between and for many years since, the Legislature,  
11 Legislators, and Legislative staff all understood the public records laws applied to State  
12 Legislative Offices of every Senator and Representative and to the Senate and House as a whole  
13 the same as every legislative body of every local agency such as school boards and city and  
14 county councils. The Defendants now refuse to provide the Media and the public essential public  
15 records necessary for the public to hold them accountable. They do so under the pretense that the  
16 1995 amendment removed them, and most of their records, from the reach of the PRA.

17 The State Legislature, its staff, and the individual legislators taking this position are wrong,  
18 and this lawsuit was necessary to establish the Legislature did not reverse the will of the people  
19 in Initiative I-276 and remove or narrow its reach to the very elected individuals with which that  
20 initiative was so deeply concerned.

21 Hundreds of highly-important records of the Washington Legislature and elected legislators  
22 are being withheld from the public, depriving the media and public of information to which it is  
23 entitled and which are essential to informed governance.

1 In 1992, the Legislature amended the Act to add the following mandate:

2 The people of this state do not yield their sovereignty to the agencies that serve them.  
3 The people, in delegating authority, do not give their public servants the right to decide  
4 what is good for the people to know and what is not good for them to know. The people  
5 insist on remaining informed so that they may maintain control over the instruments that  
6 they have created. The public records subdivision of this chapter shall be liberally  
7 construed and its exemptions narrowly construed to promote this public policy.

8 It is time for the Legislature and the individual Senators and Representatives to re-read these  
9 words and to follow them.

10 **F. Other Relevant Statutory Definitions of State Agency.**

11 Several other statutes in Title 42 support the interpretation urged by Plaintiffs in this Motion,  
12 and contradict that suggested by Defendants.

13 The Ethics in Public Service Act at RCW 42.52 et seq., defines “agency” as follows:

14 any state board, commission, bureau, committee, department, institution, division, or  
15 tribunal in the legislative, executive, or judicial branch of state government. **“Agency”**  
16 **includes all elective offices, the state legislature**, those institutions of higher education  
17 created and supported by the state government, and those courts that are parts of state  
18 government.

19 RCW 42.52.010(1) (emphasis added).

20 The Campaign Disclosure and Contribution laws, previously located at RCW 42.17 with  
21 the public record law, and now found at RCW 42.17A et seq., define “State Agency” the same as  
22 the PRA and the same as the joint 1995 amendment to both laws:

23 (2) “Agency” includes all state agencies and all local agencies. “State agency” includes  
24 every state office, department, division, bureau, board, commission, or other state agency.  
“Local agency” includes every county, city, town, municipal corporation, quasi-  
municipal corporation, or special purpose district, or any office, department, division,  
bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.17A.005(2). It also defines “State Office” the same as the 1995 joint amendment:

“State office” means state legislative office or the office of governor, lieutenant governor,  
secretary of state, attorney general, commissioner of public lands, insurance  
commissioner, superintendent of public instruction, state auditor, or state treasurer.

1 RCW 42.17A.005(44). “‘Legislative office’ means the office of a member of the state house of  
2 representatives or the office of a member of the state senate.” RCW 42.17A.005(29).

3 The Public Record Act defines “Agency” and “State Agency” as follows:

4 “Agency” includes all state agencies and all local agencies. “**State agency**” includes  
5 **every state office**, department, division, bureau, board, commission, or other  
6 state agency. “Local agency” includes every county, city, town, municipal corporation,  
7 quasi-municipal corporation, or special purpose district, or any office, department,  
8 division, bureau, board, commission, or agency thereof, or other local public agency.

9 RCW 42.56.010(1) (emphasis added). And a “public record” for all “State Agencies” and all  
10 local agencies is the broad definition written and demanded by the people when they wrote and  
11 passed it in 1972:

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

16 RCW 42.56.010(3)(in part). In 1995 – when adding the offices of the chief clerk and secretary,  
17 the Legislature created a narrower definition just for those offices as

18 For the office of the secretary of the senate and the office of the chief clerk of the house  
19 of representatives, public records means legislative records as defined in [RCW](#)  
20 [40.14.100](#) and also means the following: All budget and financial records; personnel  
21 leave, travel, and payroll records; records of legislative sessions; reports submitted to the  
22 legislature; and any other record designated a public record by any official action of the  
23 senate or the house of representatives....

24 RCW 42.56.010(3) (in part). That language **does not apply** to the State Offices and State  
Agencies to whom the Media’s PRA requests were made here.

**G. Legislative Intent.**

A court’s “fundamental objective” when interpreting a statute “is ‘to discern and implement  
the intent of the legislature.’” [Flight Options, LLC v. Dep’t of Revenue](#), 172 Wn.2d 487, 500,

1 259 P.3d 234 (2011) (quoting State v. J.P., 149 Wash.2d 444, 450, 69 P.3d 318 (2003)); Estate  
2 of Bunch v. McGraw Residential Center, 174 Wn.2d 425, 432, 275 P.3d 1119 (2012).

3 Legislative intent is implemented “by giving effect to the plain meaning of a statute,” and the  
4 plain meaning “may be gleaned ‘from all that the Legislature has said in the statute and related  
5 statutes which disclose legislative intent about the provision in question.’ ” Flight Options,  
6 LLC, 172 Wn.2d 487, 500 (quoting Dep’t of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1,  
7 11, 43 P.3d 4 (2002)); Estate of Bunch, 174 Wn.2d at 432. If a “statute is ‘susceptible to two or  
8 more reasonable interpretations,’ the statute is ambiguous.” Estate of Bunch, 174 Wn.2d at  
9 432 (quoting Burton v. Lehman, 153 Wash.2d 416, 423, 103 P.3d 1230 (2005)). “However, a  
10 statute is not ambiguous merely because two or more interpretations are conceivable.” Id. If a  
11 statute is ambiguous, the Court “may look to the legislative history of the statute and the  
12 circumstances surrounding its enactment to determine legislative intent.” Rest. Dev., Inc. v.  
13 Cananwill, Inc., 150 Wash.2d 674, 682, 80 P.3d 598 (2003).

14 Here, the Media’s requests were made to the State Legislative Offices of every Senator and  
15 Representative, including those of the Defendants, and to the Senate and House as State  
16 Agencies. Complaint Att. A-D. The Media’s requests were not made to the offices of the chief  
17 clerk or secretary. The clear language of the Statute indicates legislative intent that that narrower  
18 definition of public records **only** applied to the offices of the chief clerk and secretary. The  
19 inclusion in the 1995 amendment of the definition of State Office and State Legislative Office,  
20 and the omission of those terms from the sentence with offices of chief clerk and secretary  
21 shows the Legislature meant just the clerk and secretary to have the narrower scope. Further, the  
22 fact the Senate twice tried to explicitly add “state legislative offices” into that same limiting  
23 sentence years after the 1995 amendment is further evidence of legislative intent of the 1995  
24 amendment that the 1995 amendment had no already limited the scope for requests to state

1 legislative offices. The fact those 2003 and 2005 attempts failed illustrate a lack of legislative  
2 intent to exclude the legislators from the PRA. And the fact so many other statutes in Title 42  
3 which define Agency and State Agency also include state legislative offices and the Legislature  
4 itself is additional evidence establishing legislative intent that the legislators and the Legislature  
5 not be exempted from the PRA.

6 The Media made their requests to the Senate, House and State Legislative Offices of each  
7 Senator and Representative. The requests were not made to the offices of the chief clerk of the  
8 house or the secretary of the senate. The PRA applies to the Plaintiff Media's Requests, and  
9 Defendants were obliged to provide records and appropriately respond, which they did not do.

10 **G. Summary Judgment is Appropriate in this Case.**

11 Summary judgment is appropriate when there is no genuine issue as to any material fact and  
12 the moving party is entitled to a judgment as a matter of law. Ranger Ins. Co. v. Pierce County,  
13 164 Wn.2d 545, 552, 192 P.3d 886 (2008) (citation omitted). Further, summary judgment is  
14 "appropriate if reasonable minds could reach only one conclusion from the evidence presented."  
15 Ballard Square Condominium Owners Ass'n v. Dynasty Const. Co., 158 Wn.2d 603, 608-09, 146  
16 P.3d 914 (2006) (citations omitted). Summary judgment has been recognized as a "proper  
17 method to prosecute [PRA] claims." Spokane Research & Defense Fund v. City of Spokane, 155  
18 Wn.2d 89, 106, 117 P.3d 1117 (2005) ("Spokane Research IV") ("[W]e have heard many [PRA]  
19 cases that were decided in the trial court on summary judgment.") Furthermore, "judicial  
20 oversight is essential to ensure government agencies comply with the [PRA]." 155 Wn.2d at 100.

21 Here, there are no genuine issues of material fact as there are no facts which can be  
22 reasonably disputed pertaining to the issue of what the Media sought and the manner in which  
23 the Defendants responded. No exemptions have been cited, and it is acknowledged that records  
24 exist that were not produced. The sole issue in dispute is whether the PRA applies to these

1 Defendants, or not. The Media Plaintiffs contend the language from the Statutes, and the  
2 legislative history, make the answer to that question simple, and a resounding yes.

3 **H. The Records Requested are Public Records.**

4 A "public record" includes any writing containing information relating to the conduct of  
5 government or the performance of any governmental or proprietary function prepared, owned,  
6 used, or retained by any state or local agency regardless of physical form or characteristics.  
7 RCW 42.56.010(3). Text messages sent and received via a personal cell phone and emails to and  
8 from official as well as personal email addresses are public records when they are sent and  
9 received within the scope of the official's official role. See Nissen v. Pierce County, 183 Wn.2d  
10 863 (2015) and West v. Steve Vermillion City of Puyallup, 196 Wn. App. 627 (2016).

11 The records requested here pertain to the calendars and text messages of sitting Senators and  
12 Representatives during Legislative Session and related to their legislative duties and the  
13 complaint, investigation, and response to harassment claims at the Legislature. There can be no  
14 realistic dispute that the records fall within the definition of "public records" if – as the Media  
15 contends – the Media is correct and Defendants are wrong when they claim the Defendants have  
16 removed themselves from the PRA.

17 **I. Defendants Violated The PRA By Silently Withholding Records.**

18 The requested records are subject to production unless exempt from disclosure under a  
19 specific statute. RCW 42.56.070. RCW 42.56.080 provides: "agencies ... shall, upon request for  
20 identifiable public records, make them promptly available to any person."

21 RCW 42.56.520 provides:

22 Within five business days of receiving a public record request, an agency ... must  
23 respond by either (1) providing the record; (2) providing an internet address and link  
24 on the agency's web site to the specific records requested ...; (3) acknowledging that  
the agency ... has received the request and providing a reasonable estimate of the  
time the agency ... will require to respond to the request; or (4) denying the public

1 record request.

2 RCW 42.56.210(3) requires that “Agency responses refusing, in whole or in part,  
3 inspection of any public record shall include a statement of the specific exemption authorizing  
4 the withholding of the record (or part) and a brief explanation of how the exemption applies to  
5 the record withheld.”

6 The Defendants have withheld numerous records with no explanation other than to claim  
7 the records do not fall within the definition for records from the clerk and secretary, even when  
8 requests were explicitly not made to those two offices. In some cases the Defendants misquoted  
9 the provision on which they relied, and in all instances failed to explain how it applied to the  
10 records sought here.

11 The Defendants were required to explain each withholding in writing, to identify the statute  
12 allowing for such withholding, to explain how such statute applied to the record in question, and  
13 to provide a detailed withholding index showing what was being withheld and explain the bases  
14 for withholding as described by Sanders v. State, 169 Wn.2d 827, 240 P.3d 120, 130 (2010),  
15 Rental Housing Ass’n of Puget Sound, v. District of Des Moines, 165 Wn.2d 525, 199 P.3d 393  
16 (2009), and Progressive Animal Welfare Society v. University of Washington, 125 Wn.2d 243,  
17 884 P.2d 592 (1995). The Defendants further violated the PRA by withholding records that are  
18 not exempt from disclosure. And it violated the PRA by failing to state what records are  
19 responsive to the request even if those records are alleged to be exempt or not subject to release.  
20 It is a violation of the PRA to fail to provide responsive public records without claiming an  
21 exemption or basis for withholding the records (silently withholding records). See Progressive  
22 Animal Welfare Soc. v. University of Washington (“PAWS II”), 125 Wn.2d 243, 270, 884 P.2d  
23 592 (1994) (“The Public Records Act clearly and emphatically prohibits silent withholding by  
24 agencies of records relevant to a public records request.”); see also City of Lakewood v. Koenig.

1 182 Wn.2d 87, 97, 343 P.3d 335 (2014). Here, it cannot be reasonably disputed that Defendants  
2 have silently withheld records. The Media has not been told what records exist. Defendant'  
3 failures to provide responsive records—or even to acknowledge and identify the existence of  
4 responsive records— constitute violations of the PRA in the simplest form. Even if Defendants  
5 were to now identify and produce records, it must be held accountable for its earlier violations of  
6 the PRA in failing to identify and produce them earlier.

7 **J. Defendants Failed To Identify Exemptions And Provide A Withholding Log For**  
8 **Any Exempt Records Silently Withheld.**

9 As Defendants have not identified the existence of records which were responsive to the  
10 PRA request, and silently withheld them from the Media, the Defendants have violated the PRA  
11 by failing to identify any exemptions that it contends applied to the records, if any, and  
12 providing an adequate withholding index explaining the basis for the withholding.

13 The PRA requires an agency, when it withholds a requested public record to do two things:  
14 (1) cite an applicable exemption, and (2) provide a brief explanation of the withholding. See  
15 RCW 42.56.210(3) (“Agency responses refusing, in whole or in part, inspection of any public  
16 record shall include a statement of the specific exemption authorizing the withholding of the  
17 record (or part) and a brief explanation of how the exemption applies to the record withheld.”).  
18 See Rental Housing Ass’n of Puget Sound v. City of Des Moines (“RHA”), 165 Wn.2d 525, 539,  
19 199 P.3d 393 (2009) (discussing withholding index requirement); see also WAC 44-14-  
20 04004(4)(b) (discussing the two requirements of a proper withholding index (citing exemption  
21 and brief explanation)). An agency must provide a brief explanation of “each” withheld record—  
22 blanket explanations for entire categories of records are improper. See Sanders v. State, 169  
23 Wn.2d 827, 846, 240 P.3d 120 (2010).

1 An agency's failure to provide a proper withholding index is a per se violation of the PRA.  
2 See Citizens For Fair Share v. State Dept. of Corrections, 117 Wn. App. 411, 431, 72 P.3d 206  
3 (2003) (holding agency "violated the [PRA] by failing to name and recite to [requestor] its  
4 justification for withholding" portions of records and therefore finding requestor to be prevailing  
5 party). Because Defendants did not identify the responsive records still being withheld, they in  
6 turn failed to identify any applicable exemption from disclosure, or to explain how the  
7 exemption applied to the withheld records. This is a separate PRA violation for which  
8 Defendants must be held accountable.

9 **K. The Records are Not Exempt.**

10 No party formally objected to release or sought to block release. Anyone wishing to block  
11 release of records must show (1) that the records are exempt under a specific statute (Progressive  
12 Animal Welfare Society v. University of Washington, 125 Wn.2d 243, 257-58, 884 P.2d 592  
13 (1994)) and (2) that disclosure will "clearly not be in the public interest and would substantially  
14 and irreparably damage any person, or would substantially and irreparably damage vital  
15 governmental functions." RCW 42.56.540. It is clear Defendants cannot prove the records are  
16 exempt under a specific statute, as will be further explained below, and certainly not exempt in  
17 their entirety. It appears equally clear Defendants cannot meet the second test of RCW  
18 42.56.540. A party seeking to block release must prove both prongs and not merely show release  
19 will cause him or her reputational harm or embarrassment. Exemptions under the PRA are to be  
20 narrowly construed. RCW 42.56.030. RCW 42.56.550(3) states:

21 Courts shall take into account the policy of this chapter that free and open  
22 examination of public records is in the public interest, even though such  
23 examination may cause inconvenience or embarrassment to public officials or  
24 others.

1 Withholding of records based on reputational harm or embarrassment violates the PRA.  
2 Under the facts of the case, as we understand them, it does not appear any exemption  
3 could cover any records and certainly not in their entirety, even those dealing with  
4 protections based on “privacy.” This is because privacy under the PRA requires both that  
5 records be highly offensive to reasonable people and that the records be of no legitimate  
6 public concern. RCW 42.56.050. This latter prong has been the subject of many decisions  
7 by our appellate courts and two recent ones show why the records in this case cannot  
8 meet this test.

9 The first is Bellevue John Does v. Bellevue School District, 164 Wn.2d 199, 189 P.3d 139  
10 (2008), which dealt with requests for investigations of public school teachers for sexual  
11 misconduct with their students. The teachers’ names were not known and the Washington  
12 Supreme Court held the names of the teachers were exempt when the allegations were proven  
13 false or unsubstantiated but recognized that the public had a legitimate concern in how the  
14 school districts reached the determinations of unsubstantiated or false and so redacted records of  
15 the investigations were released with the teachers’ names and the names of their alleged victims  
16 redacted.

17 This case was followed by the case of Bainbridge Island Police Guild v. City of Puyallup  
18 where a woman accused a police officer of sexual assault during a traffic stop and then asked for  
19 the results of an investigation by two agencies that deemed the allegations unfounded. Trial  
20 courts had held that since the name was exempt and the requestor knew the name that nothing  
21 could be released. On direct review to the Washington State Supreme Court, the Supreme Court  
22 held that only the name was exempt, recognizing again the public’s legitimate interest in  
23 monitoring investigations of public employees and being able to see the basis for a determination  
24

1 that an accusation was unfounded or false. The Supreme Court ordered the records released with  
2 just the officer's name redacted:

3 In *Bellevue John Does*, we held that the public has no legitimate interest in finding out  
4 the identity of someone accused of an unsubstantiated allegation of sexual misconduct. *Id.*  
5 at 221. Because the public records request in this case was specific to the PCIR and the  
6 MIIR involving Officer Cain and Koenig, the trial courts found that any production of the  
7 PCIR or the MIIR in connection with this specific request would necessarily reveal  
8 Officer Cain's identity in connection with the unsubstantiated allegation. However, we  
9 have recognized "when allegations of sexual misconduct are unsubstantiated, the public  
10 may have a legitimate concern in the nature of the allegation and response of the school  
11 system to the allegation." *Id.* at 217 n. 19, 189 P.3d 139.<sup>FN11</sup>

12 FN11. Although recognizing the possibility of a legitimate public interest, in *Bellevue John*  
13 *Does*, we did not need to determine whether such a legitimate interest in fact existed,  
14 because the general nature of the public records request in that case allowed the court to  
15 protect the teachers' identities by producing the records with only the teachers' names  
16 redacted. *Id.* at 227, 189 P.3d 139.

17 Although lacking a legitimate interest in the name of a police officer who is the subject  
18 of an unsubstantiated allegation of sexual misconduct, the public does have a legitimate  
19 interest in how a police department responds to and investigates such an allegation against  
20 an officer. The reports in this case not only identify Officer Cain, they reveal the nature of  
21 the Mercer Island and Puyallup Police Departments' investigations of this allegation.  
22 Under RCW 42.56.050, **the trial court erred by exempting the entire PCIR and MIIR,  
23 rather than producing the report with only Officer Cain's identity redacted.**

24 *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 415-16, 259 P.3d 190, 198  
(2011) (emphasis added).

If any of the harassment complaints were found unsubstantiated, the most a Court would be  
authorized to do based on the above binding case law would be to order redaction of accused's  
names prior to production of the records. The case law cannot support a complete withholding of  
the investigations and certainly not a silent withholding.

**L. Defendants Violated the PRA by Failing to Perform an Adequate Search.**

If an agency's search fails to locate responsive records in its possession, the agency violates  
the PRA. See *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wn.2d 702  
(2011). The Defendants did not perform a reasonable search as they contended they were exempt

1 from complying with the PRA so relevant records were not gathered from obvious locations. The  
2 failure to perform an adequate search is itself a PRA violation.

3 **M. Right to Judicial Review.**

4 RCW 42.56.550 provides that any agency action denying access to public records for  
5 inspection and copying, denying an adequate response to such a request, or failing to provide a  
6 reasonable estimate of the time needed to respond to a record request is subject to judicial  
7 review.

8 **N. The Records Should be Ordered Disclosed.**

9 Defendants are silently withholding numerous responsive non-exempt public records from  
10 the Media and public. The Court should order the records promptly produced to the Media  
11 Defendants.

12 **O. The Media Should be Awarded All Attorneys' Fees, Costs, and Statutory Penalties.**

13 Under RCW 42.56.550(4), a public records requestor who prevails against an agency in a  
14 PRA claim is entitled to mandatory reasonable attorney's fees, all costs, and a daily penalty of  
15 up to \$100 per day which can be imposed per page. Wade's Eastside Gun Shop v. Labor and  
16 Industries, 185 Wn.2d 270 (2016). Because Defendants have failed to perform an adequate  
17 search for records in violation of the PRA, silently withheld numerous records in violation of the  
18 PRA, failed to timely cite exemptions and provide an adequate withholding log for these silently  
19 withheld records, this Court must deem the Media the prevailing party on the claims in this  
20 motion and rule that they are entitled to an award of reasonable attorney's fees, all costs, and  
21 statutory penalties in amounts to be determined after subsequent briefing and hearing.

1 DATED this 3rd day of November, 2017.

2 ALLIED LAW GROUP LLC

3 By *Michele Earl-Hubbard*

4 Michele Earl-Hubbard, WSBA No. 26454  
5 Attorneys for Plaintiffs The Associated Press,  
6 Northwest News Network, KING-TV, KIRO 7,  
7 Allied Daily Newspapers of Washington,  
8 The Spokesman-Review, Washington  
9 Newspaper Publishers Association,  
10 Sound Publishing, Inc., Tacoma News, Inc., and  
11 The Seattle Times  
12 P.O. Box 33744  
13 Seattle, WA 98133  
14 (206) 443-0200 phone  
15 (206) 428-7169 fax  
16 [michele@alliedlawgroup.com](mailto:michele@alliedlawgroup.com)

17 **CERTIFICATE OF SERVICE**

18 The undersigned certifies under the penalty of perjury under the laws of the State of  
19 Washington that on this date I filed with the Court and served by email per agreement a copy of  
20 this document and its attachments to:

21 Paul J. Lawrence, WSBA # 13557  
22 Nicholas W. Brown, WSBA # 33586  
23 Claire McNamara, WSBA # 50097  
24 PACIFICA LAW GROUP LLP  
[Paul.Lawrence@pacificalawgroup.com](mailto:Paul.Lawrence@pacificalawgroup.com)  
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Attorneys for Defendants

Gerry L. Alexander, WSBA # 775  
BEAN GENTRY WHEELER PETERNELL PLLC  
[galexander@bgwp.net](mailto:galexander@bgwp.net)  
Attorneys for Defendants

DATED this 3rd day of November, 2017.

*Michele Earl-Hubbard*  
Michele Earl-Hubbard

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Hearing date: 12/22/2017 Hearing time: 1:30 pm Judge: Hon. Chris Lanese
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

THE ASSOCIATED PRESS,  
NORTHWEST NEWS NETWORK,  
KING-TV ("KING 5"), KIRO 7, ALLIED  
DAILY NEWSPAPERS OF  
WASHINGTON, THE SPOKESMAN-  
REVIEW, WASHINGTON  
NEWSPAPER PUBLISHERS  
ASSOCIATION, SOUND PUBLISHING,  
INC., TACOMA NEWS, INC. ("THE  
NEWS TRIBUNE,") and THE SEATTLE  
TIMES,

Plaintiffs,

v.

THE WASHINGTON STATE  
LEGISLATURE; THE WASHINGTON  
STATE SENATE, THE WASHINGTON  
STATE HOUSE OF  
REPRESENTATIVES, Washington state  
agencies; and SENATE MAJORITY  
LEADER MARK SCHOESLER, HOUSE  
SPEAKER FRANK CHOPP, SENATE  
MINORITY LEADER SHARON  
NELSON, and HOUSE MINORITY  
LEADER DAN KRISTIENSEN each in  
their official capacity,

Defendants.

No. 17-2-04986-34

DECLARATION OF JEANNIE  
GORRELL IN SUPPORT OF  
DEFENDANTS' CROSS MOTION FOR  
SUMMARY JUDGMENT

DECLARATION OF JEANNIE GORRELL IN  
SUPPORT OF CROSS-MOTION FOR  
SUMMARY JUDGMENT  
20199 00001 gk13ck53ke.002

PACIFICA LAW GROUP LLP  
1191 SECOND AVENUE  
SUITE 2000  
SEATTLE, WASHINGTON 98101-3404  
TELEPHONE: (206) 245-1700  
FACSIMILE: (206) 245-1750

1 I, Jeannie Gorrell, hereby declare under penalty of perjury under the laws of the State of  
2 Washington that the foregoing is true and correct:

- 3
- 4 1. I am over the age of 18, have personal knowledge of the facts set forth here  
5 and am competent to testify.
- 6 2. I am Senate Counsel and serve under the Secretary of the Senate. Alison  
7 Hellberg is House Counsel and serves under the Chief Clerk of the House of  
8 Representatives.
- 9 3. The Secretary and the Chief Clerk are the full time chief administrative  
10 officers of a part time citizen legislature and routinely serve as the primary  
11 points of contact for each chamber for administrative matters.
- 12 4. All legislative entities report to or are overseen by the Chief Clerk and  
13 Secretary: reports from legislative groups are submitted to them, as are all  
14 amendments, vote records, committee reports, substitute bills, and the journals  
15 of business.
- 16 5. The understanding of the offices of the Secretary and Chief Clerk is that they  
17 serve as record custodians for the whole of the Legislature. These offices  
18 often work together to fulfill this mutual role.
- 19 6. Within that role, these offices are expressly designated to protect records,  
20 establish reasonable procedures for records inspection and costs for copying  
21 records, and are prohibited from providing lists of individuals for commercial  
22 purposes for the Legislature pursuant to RCW 42.56.100, .120, .070.  
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- 1           7.       It is also the understanding of these offices that a decision from either office to  
2           deny a request for a public record is subject to judicial review under RCW  
3           42.56.550.  
4  
5           8.       It is my belief that having centralized custodians for public records requests for  
6           each body of the Legislature makes operational sense because it promotes  
7           consistency and completeness.  
8           9.       The Legislature has 147 part-time citizen legislators, hundreds of employees,  
9           dozens of committees, and a myriad of internal systems.  
10          10.       As officers with a comprehensive knowledge of all of these aspects of the  
11          Legislature, the Chief Clerk and Secretary are uniquely equipped to act as  
12          liaisons between the Legislature and the public to ensure the right information  
13          is obtained from the right work unit, staffer, or legislator.  
14  
15          11.       Pursuant to its unique duties under the PRA, the Legislature has made many  
16          documents available on its public website. Our Legislative Service Center,  
17          “LegTech,” last reported to me that the Legislature has approximately 505,000  
18          documents available on its public website. In addition TVW, a public access  
19          television station, has about 40,000 hours of footage largely relating to the  
20          state legislative process on its site.  
21  
22          12.       Plaintiffs submitted approximately one-hundred and sixty-three PRA requests.  
23          Directing these requests to the Senate and House, to each legislator and their  
24          State Legislative Offices, as well as to the leadership of both bodies had the  
25          effect of directing these requests to the offices of the Secretary and the Chief  
26          Clerk.  
27

- 1           13.       The Secretary and the Chief Clerk reviewed each of the PRA requests from the  
2                    Plaintiffs, and Ms. Hellberg and I responded to the requests on behalf of the  
3                    Secretary and the Chief Clerk.  
4  
5           14.       Some of the Plaintiffs' PRA requests were made to each legislator's office,  
6                    seeking their calendars and schedules, text messages and emails, all from  
7                    various periods between 2015 and 2017.  
8  
9           15.       Of their own volition, a few House legislators specifically requested that our  
10                   office release their calendars, emails, and text messages which we did.  
11  
12          16.       One request sought all "legislative videos" one representative recorded during  
13                   a two-year period. At the request of this representative, links to the videos she  
14                   recorded for that time period were also released to the requestor.  
15  
16          17.       The other requests were made to the Senate and House, to each legislator and  
17                   their State Legislative Offices, as well as to the leadership of both bodies.  
18                   These requests sought documentation of staff complaints made against  
19                   lawmakers within varying time periods, and any reports documenting  
20                   investigations and/or actions taken as a result of those complaints. Certain  
21                   records responsive to this request that had already been made public were  
22                   released.  
23  
24          18.       The Secretary and the Chief Clerk considered each of these requests as they  
25                   routinely do in accordance with the distinct provisions created by the  
26                   Legislature that clarify what constitutes a public record for the purposes of the  
27                   Legislature, namely RCW 42.56.010(3) and RCW 40.14.100.

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19. RCW 40.14.100 in particular directs the Secretary and the Chief Clerk that the only documents possessed by the legislature that constitute public records are documents made by and filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions.

20. These documents can include correspondence, amendments, reports, and minutes of meetings but exclude records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and are otherwise available at the state library or in a public repository, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature.

21. Other documents which the Secretary and the Chief Clerk regularly produce because they are public records as defined by RCW 42.56.010(3) include all budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

22. The Secretary and the Chief Clerk did not produce documents—other than those that individual legislators requested they produce and those which were responsive records—in response to Plaintiffs’ requests because the documents requested did not comport with these definitions of public record set forth in RCW 42.56.010(3) and RCW 40.14.100.

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23. My belief is that this action was consistent with a long-standing practice since at least the 1995 enactment of Senate Bill 5684 after which, the then-Chief Clerk, Timothy A. Martin, distributed a guidance memorandum to all of the members and staff of the House on how to manage and respond to records request, titled "House Procedures for Inspecting and Copying Records." A true and accurate copy of the memorandum is attached as **Exhibit A**. This practice has not been changed recently.

24. For each of the Plaintiffs' requests, either I or Ms. Hellberg, on behalf of the Secretary and Chief Clerk provided a timely initial response to the request and where appropriate, an estimate of when a full response would be provided.

25. In one instance we sought clarification from the requester and worked with them to narrow the scope of the request.

26. Each requestor was provided an explanation for the reasons their request was denied.

DATED this 17<sup>th</sup> day of November, 2017.

  
\_\_\_\_\_  
Jeannie Gorrell

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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on this date I filed with the Court and served by email per agreement a copy of this document and its attachments to:

Michele Earl-Hubbard, WSBA No. 26454  
Attorneys for Plaintiffs  
P.O. Box 33744  
Seattle, WA 98133  
(206) 443-0200 phone  
(206) 428-7169 fax  
michele@alliedlawgroup.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via electronic court filing / email
- via hand delivery

DATED this 17th day of November, 2017.

*s/Tricia O'Konek*

Tricia O'Konek

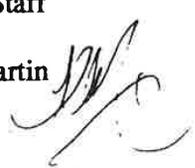
# EXHIBIT A

CHIEF CLERK  
TIMOTHY A. MARTIN

State of  
Washington  
House of  
Representatives



**MEMORANDUM**

**To:** Members and Staff  
**From:** Timothy A. Martin  
Chief Clerk   
**Date:** June 30, 1995  
**Subject:** House Procedures for Inspecting and Copying Records

---

Effective July 1, 1995, the Office of the Chief Clerk is **required** to make public records available for inspection and copying. See Chapter 397, Laws of 1995, which amends the open public records provisions of Chapter 42.17 RCW.

Prior to this time, records have been made available to the public at the discretion of the Chief Clerk. Now those records must be made available as a matter of law.

With respect to the Chief Clerk, "public records" are defined as legislative records; budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by official action of the House of Representatives. See Section 1(36), Chapter 397, Laws of 1995. This definition extends only to those records in the custody of Office of the Chief Clerk. It does not extend to records in the custody of individual members of the House of Representatives. It does not extend to records reflecting individual members' communications with constituents. SB 5684

The new law requires the Office of the Chief Clerk to adopt, by July 1, 1995, reasonable procedures (1) to provide full public access to public records, (2) to protect public records from damage, and (3) to prevent excessive interference with the essential functions of the Office of the Chief Clerk. A copy of the procedures I have adopted in accordance with this requirement is attached.

Please call if you have any questions regarding the new law. My number is (360)786-7750.

At this time, I would also like to share with you the "Access to Government Initiative" adopted by the House Executive Rules Committee on June 22, 1995. A copy is attached.

The "Access to Government Initiative" is an "initiative" in the sense of a new undertaking or a new method of operation, as opposed to an "initiative" in the sense of a legislative measure filed by a voter with the Secretary of State.

The House of Representatives "Access to Government Initiative" represents an undertaking pursuant to which the House, as an institution, will (1) work to improve public understanding of the state legislature and (2) explore means to enhance and encourage public participation in the legislative process. The components of the Initiative set an institutional direction pursuant to which we will review various aspects of House operations. Your comments, as always, are most welcome.



# WASHINGTON STATE HOUSE OF REPRESENTATIVES

## ACCESS TO GOVERNMENT INITIATIVE

### Purpose:

To enhance the ability of Washington state citizens to participate in the legislative process. Why? This sums it up:

*"Democracy needs the nourishment and nurturing of its citizens. Inattention kills it. An enlightened citizen is an indispensable ingredient of the infrastructure of democracy."*

— Barbara Jordan, University of Texas professor  
and former state senator and congresswoman

### Components:

1. Make it easier for the public to get information in a timely fashion about legislative activities such as committee and session schedules, bill status, bill summaries and voting records.
2. Provide clear guidelines and simplified access to records concerning legislative operations and activities.
3. Encourage use of technology such as teleconferencing and Internet to facilitate communications with citizens in all regions of the state.
4. Ensure that House employees have the skills and equipment to allow greater interaction with citizens using today's technology.
5. Encourage public service announcements concerning how to contact legislators.
6. Support and encourage the efforts of TVW to provide unedited coverage of state governmental deliberations.
7. Take the legislature to the people by holding interim committee meetings in locations outside of Olympia, in off-election years.
8. Develop model curricula on state government and the legislative process to be used by schools. Include with this an educational video on the legislature.
9. Communicate — in person and by Internet — with civics and government teachers to help them better understand the legislative process and issues pending before the legislature.
10. By more outreach to schools and parent organizations, foster awareness of the legislative page program throughout the state.
11. Continue efforts to "open" conference committee meetings.
12. Conduct bipartisan conferences with editorial boards and news managers regarding the legislature's activities and current issues.



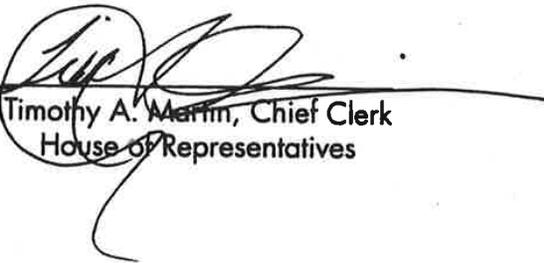
## WASHINGTON STATE HOUSE OF REPRESENTATIVES

13. Make information about the legislature, including summaries of bills and legislative operations, readily available to the media and presented in a format easy to understand and use.
14. Consistent with the recommendations of the Public Information Access Policy Task Force, provide information regarding the legislature in electronic form. Support further development and encourage use of LEGInfo and LEGLink.

Approved by  
House Executive Rules Committee

June 22, 1995



  
Timothy A. Martin, Chief Clerk  
House of Representatives



# WASHINGTON STATE HOUSE OF REPRESENTATIVES

## PROCEDURES FOR INSPECTING AND COPYING PUBLIC RECORDS

### 1. Purpose

The purpose of these procedures is to provide clear guidelines and a flexible process for public access to records concerning the activities and operations of the House of Representatives, while protecting the confidentiality of communications between constituents and their elected representatives. These procedures are adopted in accordance with Chapter 42.17 RCW as amended by Chapter 397, Laws of 1995.

### 2. Availability

All public records of the House of Representatives as defined in Section 3 are available for public inspection and copying, except as otherwise provided in Chapter 42.17 RCW.

### 3. Public Records

"Public records" means the following records that are under the custody of the Chief Clerk of the House of Representatives:

- Correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees in connection with the exercise of legislative or investigatory functions;
- budget and financial records;
- personnel leave, travel, and payroll records;
- records of legislative sessions;
- reports submitted to the House of Representatives or to the legislature; and
- any other record that is designated as a public record by official action of the House of Representatives.

### 4. Requests for Public Records

A request to inspect or copy a public record may be made orally or in writing to the Chief Clerk or a designee of the Chief Clerk. Written requests will be handled using a more formal procedure than oral requests.

A written request may be made on a form provided by the Chief Clerk. Such a form is attached. In lieu of using the form provided, a written request may be made by letter containing the following information:

- The name and address of the person making the request;
- the time of day and calendar date on which the person wishes to inspect the public records;



## WASHINGTON STATE HOUSE OF REPRESENTATIVES

- a description of the public records requested;
- a statement whether access to copying equipment is desired; and
- a phone number where the person can be reached in case additional information is needed in order to meet the request.

### 5. Responses to Requests

Public records requests shall be handled in a timely manner, recognizing the time constraints associated with legislative sessions.

The Chief Clerk shall respond to public records requests by either **(a)** providing the records; **(b)** acknowledging receipt of the request and providing a reasonable estimate of the time that will be required to respond to the request; or **(c)** denying the request and stating the reason for such denial.

An oral response may be given to an oral public records request. Responses to written requests shall be in writing.

The Chief Clerk shall respond to written public records requests within five business days of receipt of the request.

Additional time needed to respond to the request may be based on time, resources, and personnel constraints associated with legislative sessions, or on 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.

The Chief Clerk or a designee shall assist persons requesting records in identifying the appropriate public records. In acknowledging receipt of a public records request that is unclear, the Chief Clerk may ask the person making the request for clarification. The Chief Clerk need not further respond to the request if the person requesting the public record fails to clarify the request.

Any person who objects to the oral response given to an oral request may petition for review by tendering a written public records request. The Chief Clerk shall respond in writing, in accordance with this section.

### 6. Exemptions

Pursuant to Chapter 42.17 RCW, some public records are exempt from public inspection and copying. The House of Representatives reserves the right to determine that a public record requested in accordance with Section 4 is exempt under Chapter 42.17 RCW or another applicable provision of state law. The House of Representatives further reserves the right to delete identifying details when there is reason to believe that disclosure of such details would be an invasion of personal privacy interests protected by state law.



# WASHINGTON STATE HOUSE OF REPRESENTATIVES

## 7. Fees

No fee is charged for inspection of public records.

A fee of ten cents per page for providing copies and for use of House of Representatives equipment shall be charged, plus any mailing, shipping, or transmittal costs.

Any or all fees may be waived if a person requests twenty or fewer pages to be copied in any thirty day period.

A fee of \$10 per tape is charged for each tape recording of a hearing of a committee of the House of Representatives. A fee of \$15 for the first hour, \$5 for each additional hour, is charged for tape recordings of floor sessions of the House of Representatives.

The House of Representatives will provide the cassette for taping.

Additional fees may be charged for the actual cost of preparing a public record for inspection and copying, and restoring the public record, if a nonstandard public record is requested.

Fees are payable at the time a copy of a public record is furnished to the person requesting the copy.

Single copies of bills are available without charge at the legislative bill room located on the ground floor of the legislative building. The legislative bill room address is:

**Legislative Bill Room  
Legislative Building  
Olympia, WA 98504-0600.**

The legislative bill room telephone number is (360) 786-7573.

## 8. Protection of Public Records

To protect the public records of the House of Representatives, the following guidelines shall be adhered to by any person inspecting such public records:

No public record shall be removed from the premises of the House of Representatives.

Inspection of any public record shall be conducted in the presence of a designated employee of the House of Representatives.

No public record may be marked or altered in any manner.

Public records which are maintained in a file or jacket, or in chronological or other filing order, or those records, the loss or destruction of which would constitute excessive interference with the House of Representative's operations, may not be dismantled except for purposes of copying and then only by the Chief Clerk or a designee.

Access to file cabinets, shelves, vaults, or other storage areas is restricted to employees of the House of Representatives, unless other arrangements are made with the Chief Clerk or a designee.



## WASHINGTON STATE HOUSE OF REPRESENTATIVES

Public records shall be retained by the House of Representatives or State Archives until destroyed as provided under Chapter 40.14 RCW.

Records for which a formal written request for inspection has been made shall be retained by the House of Representatives or State Archives and shall not be erased or destroyed until the request is resolved.

### 9. Address and Telephone Number for Requests

Communications pertaining to public records should be addressed as follows:

**Office of the Chief Clerk  
Washington State House of Representatives  
Third Floor, Legislative Building  
Olympia, WA 98504-0600.**

The telephone number of the Chief Clerk is (360) 786-7750.

### 10. Office Hours

The Office of the Chief Clerk is open from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

Adopted June 30, 1995.



  
Timothy A. Martin, Chief Clerk  
House of Representatives



# WASHINGTON STATE HOUSE OF REPRESENTATIVES

## REQUEST FOR PUBLIC RECORDS

Date of Request \_\_\_\_\_

Time of Request \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Description of Records: \_\_\_\_\_

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I understand that, in accordance with RCW 42.17.260, if a list of individuals is provided me by the House of Representatives, the list or any names on the list may not be used for commercial purposes.

I understand that I will be charged fees for a copy of these public records.

Signature

\_\_\_\_\_

Number of pages to be copied \_\_\_\_\_

Number of copies per page \_\_\_\_\_

Charge per copy \$ \_\_\_\_\_

Special copy work charge \$ \_\_\_\_\_

Staff time charge \$ \_\_\_\_\_

Tape recordings \$ \_\_\_\_\_

Total charge \$ \_\_\_\_\_



# WASHINGTON STATE HOUSE OF REPRESENTATIVES

## RECORDS INDEX

The following is a generic records index of public records that are available for public inspection and copying if such records are under the custody of the Chief Clerk of the House of Representatives:

1. Budget and financial records.
2. Personnel leave, travel, and payroll records of members and staff of the House of Representatives, including full-time staff, part-time staff, and temporary staff.
3. Public records of legislative sessions, including: **(a)** electronic recordings of activity on the floor of the House of Representatives and formal meetings of standing committees; **(b)** bill versions or amendments that are adopted by the House of Representatives or a committee of the House of Representatives; **(c)** proposed bill drafts or proposed amendments that are approved by the requesting member of the House of Representatives for circulation prior to consideration by a committee or by the House of Representatives; **(d)** proposed floor amendments that are signed by a member and submitted for consideration by "placing the amendment on the bar of the House;" **(e)** bill reports; **(f)** bill analyses that are distributed to committee members at a public meeting; **(g)** member voting records; **(h)** written materials on proposed legislation that are presented by members of the public to a committee at a public meeting for its consideration; and **(i)** materials prepared by staff for members of a committee that are distributed to the committee members at a public meeting.
4. "Legislative records" as defined in RCW 40.14.100.
5. Final reports that are submitted to the House of Representatives or to the legislature.
6. Other records that are designated by official action of the House of Representatives.

*per JB: not all  
OPR records are in  
"Chief Clerk custody" -  
only if the document has  
finished processing thru  
CR (if member has  
released?)*

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EXPEDITE  
 No hearing set  
 Hearing is set  
Date: December 22, 2017  
Time: 1:30 pm  
Judge: Hon. Chris Lanese

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

THE ASSOCIATED PRESS,  
NORTHWEST NEWS NETWORK,  
KING-TV (“KING 5”), KIRO 7, ALLIED  
DAILY NEWSPAPERS OF  
WASHINGTON, THE SPOKESMAN-  
REVIEW, WASHINGTON  
NEWSPAPER PUBLISHERS  
ASSOCIATION, SOUND PUBLISHING,  
INC., TACOMA NEWS, INC. (“THE  
NEWS TRIBUNE,”) and THE SEATTLE  
TIMES,

Plaintiffs,

v.

THE WASHINGTON STATE  
LEGISLATURE; THE WASHINGTON  
STATE SENATE, THE WASHINGTON  
STATE HOUSE OF  
REPRESENTATIVES, Washington state  
agencies; and SENATE MAJORITY  
LEADER MARK SCHOESLER, HOUSE  
SPEAKER FRANK CHOPP, SENATE  
MINORITY LEADER SHARON  
NELSON, and HOUSE MINORITY  
LEADER DAN KRISTIANSEN each in  
their official capacity,

Defendants.

No. 17-2-04986-34

DEFENDANTS’ CROSS MOTION FOR  
SUMMARY JUDGMENT AND  
RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT

DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 1

PACIFICA LAW GROUP LLP  
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SEATTLE, WASHINGTON 98101-3404  
TELEPHONE: (206) 245-1700  
FACSIMILE: (206) 245-1750

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**I. INTRODUCTION**

With the passage of Initiative 276 (“I-276”) in 1972, Washington voters established systems of campaign finance disclosure, lobbying restrictions, records retention, and public disclosure. These systems were combined in a single law. Over the past 45 years, the Washington State Legislature has clarified and separated the original provisions of the initiative by amendment, creating three separate and distinct chapters, each with specific purposes and applicable definitions. The stand-alone Washington Public Records Act (“PRA”), now codified in chapter 42.56 RCW, treats the Washington State Legislature and its independently elected members uniquely from state agencies and other public officials and specifically defines the Legislature’s obligations under the PRA. Plaintiffs ignore these changes in the law and instead rely on I-276 and prior law. But the current version of the PRA controls the Court’s review here. And based on the plain meaning of the current PRA and the surrounding statutory framework, the Defendants were not obligated to provide the records now sought by Plaintiffs.

Because the Washington State Legislature, the Washington State Senate, the Washington State House of Representatives, Senate Majority Leader Mark Schoesler, House Speaker Frank Chopp, Senate Minority Leader Sharon Nelson, and House Minority Leader Dan Kristiansen, each in their official capacity (collectively the “Legislature” or “Defendants”) acted consistently with the plain language and legislative history of the PRA, as well as with the practical operational considerations that simultaneously ensure public access to many other records created by the Legislature, Defendants respectfully request that this Court deny Plaintiffs’ Motion for Summary Judgment and grant the Defendants’ Cross Motion for Summary Judgment.



1 declaration of policy stated that with respect to disclosure of public documents, the law was  
2 meant to ensure the disclosure of:

3 [a]ll information respecting the financing of political campaigns and lobbying,  
4 and the financial affairs of elected officials and candidates and full access to  
5 public records so as to assure continuing public confidence in fairness of elections  
6 and governmental processes, and so as to assure that the public interest will be  
7 fully protected.

8 *Id.* Within I-276, there were no specific provisions defining legislative documents as public  
9 records, nor any provisions defining the legislative branch of government as an agency which  
10 must disclose its documents. *Id.* (codified as former chapter 42.17 RCW, the Public Disclosure  
11 Act (“PDA”).) Rather, the initiative broadly defined “agencies” as “all state agencies and all  
12 local agencies.” *Id.* ‘State agency’ included “every state office, public official, department,  
13 division, bureau, board, commission or other state agency.” *Id.*

14 In 1977, however, with Senate Bill 2282 (“SB 2282”) the Legislature amended the  
15 definition of “agency” in the act specifically to remove the words “public official.” Laws of  
16 1977, ch.313, § 1.<sup>2</sup>

17 In 1995, the Legislature passed Senate Bill 5684 (“SB 5684”), titled “AN ACT Relating  
18 to public disclosure,” setting forth a definition to establish what classes of legislative documents  
19 constitute “public records” subject to public disclosure. Laws of 1995, ch.397, § 36 (now  
20 codified as RCW 42.56.010(3)). This definition remains in effect today and states in relevant  
21 part:  
22

23 **“Public record”** includes any writing containing information relating to the conduct of  
24 government or the performance of any governmental or proprietary function prepared,  
25 owned, used, or retained by any state or local agency regardless of physical form or  
characteristics. **For the office of the secretary of the senate and the office of the chief**

26 <sup>2</sup> Washington State Legislature, Code Reviser, *available at*  
27 [http://leg.wa.gov/CodeReviser/documents/sessionlaw/1977ex1c313.pdf?cite=1977 ex.s. c 313 § 1](http://leg.wa.gov/CodeReviser/documents/sessionlaw/1977ex1c313.pdf?cite=1977%20ex.s.%20c%20313%20%26%20%24); (last visited Nov.  
17, 2017).

1 **clerk of the house of representative, public records means legislative record as**  
2 **defined in RCW 40.14.100 and also means the following: All budget and financial**  
3 **records; personnel leave, travel, and payroll records; records of legislative sessions;**  
4 **reports submitted to the legislature; and any other record designated a public**  
5 **record by any official action of the senate or the house of representatives.**

6 *Id.* (emphasis added). Notably, this bill incorporated the original 1971 definition of legislative  
7 records found in RCW 40.14.100, which is a specific and different definition of records than the  
8 definition of public records in the general provisions of the PRA. In doing so, the Legislature  
9 elected to subject seven categories of its records to the PRA. RCW 42.56.010(3); RCW  
10 40.14.100.

11 This legislation also named the Secretary and Chief Clerk as those to whom the  
12 definitions applied. *Id.* The Secretary and the Chief Clerk are positions authorized by the  
13 Washington State Constitution. CONST. art. II, § 10. They are the chief operational officers for  
14 the Legislature and routinely serve as the primary points of contact for each chamber for  
15 administrative matters. Declaration of Jeannie Gorrell (“Gorrell Decl.”) ¶ 3. All legislative  
16 entities report to or are overseen by the Secretary and Chief Clerk: reports from legislative  
17 groups are submitted to them, as are all amendments, vote records, committee reports, substitute  
18 bills, and the journals of business. Gorrell Decl. ¶ 4. The Secretary and Chief Clerk are also the  
19 record custodians for the whole of the Legislature and often work together to fulfill this mutual  
20 responsibility. Gorrell Decl. ¶ 5. Having one custodian for public records requests for each body  
21 of the Legislature makes operational sense: it promotes consistency and completeness. Gorrell  
22 Decl. ¶ 8. The Legislature has 147 elected part-time citizen legislators, hundreds of employees,  
23 dozens of committees, and a myriad of internal systems. Gorrell Decl. ¶ 9. As officers with a  
24 comprehensive knowledge all of these aspects of the Legislature, the Secretary and Chief Clerk  
25 are uniquely equipped to act as liaisons between the Legislature and the public to ensure the right  
26  
27

1 information is obtained from the right work unit, staffer, or legislator. Gorrell Decl. ¶ 10.  
2 Formally acknowledging these positions as the records officers for the Legislature is consistent  
3 with their general administrative duties and the specific obligations imposed by the PRA. *Id.* see  
4 RCW 42.56.010(3) (stating that “[f]or the office of the secretary of the senate and the office of  
5 the chief clerk of the house of representatives, public records means legislative records as  
6 defined in...”); *see also* RCW 42.56.70(9), .100, .120, .560 (imposing specific duties related to  
7 public records on the Secretary and Chief Clerk). In short, the Secretary and Chief Clerk are the  
8 full time chief administrative officers of a part-time citizen legislature. Gorrell Decl. ¶ 3. The  
9 PRA also expressly specifies that either officer’s decision to deny a request for records is subject  
10 to judicial review under RCW 42.56.550. Gorrell Decl. ¶ 7.

12 The majority of SB 5684 addressed campaign finance compliance, establishing  
13 requirements related to campaign contributions and gift limits, as well as related disclosure  
14 filings. *See* Declaration of Michele Earl-Hubbard (“Earl-Hubbard Decl.”), Exhibit A. In relation  
15 to these campaign finance laws, SB 5684 created a definition of “state office” that included  
16 “legislative offices.” *Id.* at 10. SB 5684 did not, however, contain any provisions stating that this  
17 definition implicated public records disclosure requirements. *See* Earl-Hubbard Decl., Exhibit A.

19 Following the enactment of SB 5684, then Chief Clerk, Timothy A. Martin distributed a  
20 guidance memorandum to all of the members and staff of the House on how to manage and  
21 respond to records requests, titled “House Procedures for Inspecting and Copying Records.”

22 Gorrell Decl. ¶ 23, Exhibit A. The memorandum stated in relevant part:

24 Effective July 1, 1995, the Office of the Chief Clerk is **required** to make public records  
25 available for inspection and copying. See Chapter 397, Laws of 1995, which amends the  
26 open public records provisions of Chapter 42.17 RCW.



1 “legislative office” definitions were kept in chapter 42.17 RCW related to campaign finance and  
2 disclosure. Laws of 2007, ch. 445, § 6. Finally, in 2010, House Bill 2016 (“HB 2016”) created  
3 Chapter 42.17A RCW (“Campaign Disclosure and Contribution”), which superseded and  
4 replaced 42.17 RCW.

5  
6 In summary, legislative amendments to I-276 have separated I-276’s various elements  
7 into separate, complete statutory schemes in three distinct chapters of the RCW. Each chapter  
8 has its own language and applicable definitions. The language and definitions that apply to this  
9 case are found in the Public Records Act, chapter 42.56 RCW, not the Campaign Disclosure and  
10 Contribution Act, 42.17A RCW, or other statutory provisions that arose from I-276.

11 The PRA specifies what must be produced pursuant to a public records request and who  
12 is required to produce it. Chapter 42.56 RCW. The PRA has its own definition of “Agency” and  
13 “State Agency” that unlike the definitions in the Campaign Disclosure and Contribution Act,  
14 Chapter 42.17A RCW, does not include “legislative office.” The PRA also has its own definition  
15 of “public record” which both identifies the persons responsible for production of records of the  
16 Legislature (the Secretary and Chief Clerk) and the records that must be produced by the  
17 Legislature (“legislative records” and other specified categories of records). With respect to the  
18 definition of “legislative records,” the PRA incorporates the definition contained in RCW  
19 40.14.100, the original definition of “legislative records” from 1971, that excludes records in the  
20 personal control of individual legislators.  
21  
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23 **B. PRA Requests in This Case**

24 There were approximately one-hundred and sixty-three PRA requests at issue submitted  
25 by Plaintiffs between January 30 and July 26, 2017. Gorrell Decl. ¶ 12. On behalf of the  
26 recipients and consistent with past practices, each request was responded to by Senate Counsel  
27

1 Jeannie Gorrell on behalf of the Secretary and/or House Counsel Alison Hellberg on behalf of  
2 the Chief Clerk. Gorrell Decl. ¶13. Ms. Gorrell serves in the Senate Administration and Ms.  
3 Hellberg serves in the House Administration under the Secretary and Chief Clerk respectively.  
4 Gorrell Decl. ¶ 2.

5  
6 Some of Plaintiffs’ PRA requests were made directly to individual legislators’ offices,  
7 seeking their calendars and schedules, text messages, and emails, all from various periods  
8 between 2015 and 2017. Gorrell Decl. ¶13. Of their own volition, a few House members  
9 requested that the Secretary and the Chief Clerk voluntarily release their calendars, text  
10 messages, and emails, which they did. Gorrell Decl. ¶15. One records request sought all  
11 “legislative videos” that one representative recorded during a two-year period. Gorrell Decl. ¶  
12 16. Links to those videos were also released to the requestor. *Id.* The additional requests were  
13 made to the Senate and House, to each legislator and their State Legislative Offices, as well as to  
14 the leadership of both bodies. Gorrell Decl. ¶ 17. These requests sought documentation of staff  
15 complaints made against lawmakers within varying time periods, and any reports documenting  
16 investigations and/or actions taken as a result of those complaints. *Id.* Certain records that had  
17 already been made public were released. *Id.* Directing all of the requests at issue to the Senate  
18 and House, to each legislator and their State Legislative Offices, as well as to the leadership of  
19 both bodies, had the effect of directing these requests to the offices of the Secretary and the Chief  
20 Clerk. Gorrell Decl. ¶ 12.

21  
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23 The Secretary and the Chief Clerk considered and responded to each of these requests as  
24 they routinely do in accordance with the specific provisions created by the Legislature that define  
25 the public records of the legislative branch, namely RCW 42.56.010(3) and RCW 40.14.100.  
26 Gorrell Decl. ¶ 18. The process they adhered to here in managing Plaintiffs’ requests was

1 entirely consistent with the process utilized by the Legislature since at least 1995. Gorrell Decl.  
2 ¶23, Exhibit A. Plaintiffs suggestion that the practice has changed recently is not supported by  
3 any facts. Motion at 11.

4 Specifically, Ms. Gorrell and Ms. Hellberg considered whether any of the records  
5 requests fell within the statutorily designated legislative records subject to the PRA, i.e.  
6 documents filed with committees or subcommittees in connection with the exercise of legislative  
7 or investigatory functions including correspondence, amendments, reports, and minutes of  
8 meetings. Gorrell Decl. ¶¶ 19, 20. They also considered whether the records request at issue  
9 sought documents that the Secretary and the Chief Clerk regularly produce because they are  
10 public records as defined by RCW 42.56.010(3), which include all budget and financial records;  
11 personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to  
12 the legislature; and any other record designated a public record by any official action of the  
13 senate or the house of representatives. Gorrell Decl. ¶ 21.

14 For each request for records Ms. Gorrell and Ms. Hellberg, on behalf of the Secretary and  
15 the Chief Clerk, provided a timely initial response to the request and where appropriate, an  
16 estimate of when a full response would be provided. Gorrell Decl. ¶ 24. In one instance they  
17 sought clarification from the requester and worked with them to narrow the scope of the request.  
18 Gorrell Decl. ¶ 25. Ultimately, the Secretary and Chief Clerk produced the responsive records  
19 and the records voluntarily supplied by individual legislators in response to Plaintiffs' requests.  
20 Gorrell Decl. ¶ 22. They did not produce the remaining documents requested because those  
21 documents did not fall within the definitions of public record set forth in RCW 42.56.010(3) and  
22 RCW 40.14.100. Gorrell Decl. ¶ 22. Each requestor was provided an explanation for the reasons  
23 their request was denied. Gorrell Decl. ¶ 26. Plaintiffs then brought this lawsuit.

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DEFENDANTS' CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT - 10

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**III. STATEMENT OF ISSUES**

- 1. Are the Legislature and its individual members “agencies” as defined in RCW 42.56.010(1)?**
- 2. Are the records requested by Plaintiffs “public records” as defined in RCW 42.56.010(3) and 40.14.100?**

**IV. EVIDENCE RELIED UPON**

The Defendants rely on the Declaration of Jeannie Gorrell, the exhibit attached thereto, and the papers and pleadings filed with this Court.

**V. LEGAL ARGUMENT AND AUTHORITES**

**A. Summary Judgement for the Defendants is Proper as There are No Material Facts at Issue**

Summary Judgment is required where the moving party demonstrates that there is no material fact at issue and that they are entitled to judgment as a matter of law. Civil Rule 56(c); *Taggart v. State*, 118 Wn.2d 195, 198–99, 822 P.2d 243 (1992). “The moving party must meet this burden by setting out its version of the facts and alleging there is no genuine issue as to the facts offered.” *Ruffer v. St. Frances Cabrini Hosp.*, 56 Wn. App. 625, 627–28, 784 P.2d 1288 (1990). “Once there has been an initial showing of the absence of any genuine issue of material fact, the party opposing summary judgment must respond with more than conclusory allegations, speculative statements, or argumentative assertions of the existence of unresolved factual issues.” *Ruffer*, 56 Wn. App. at 627-28 (internal citation omitted).

The parties here agree that there are no material facts in dispute. Motion at 1. The decision before the Court, therefore, turns solely on whether as a matter of law (1) the legislative branch and its members are “agencies” for purposes of the PRA, and (2) the records sought by Plaintiffs were “public records” pursuant to the act. *See State v. Breazeale*, 144 Wn.2d 829, 837,

1 31 P.3d 1155 (2001) (holding that the meaning of a statute is a question of law). Because the  
2 answer to both of these questions is no, summary judgment should be granted to the Defendants.

3 **B. The Defendants Are Not “State Agencies” Pursuant to the Plain Language of the**  
4 **Public Records Act**

5 The plain language of the statute here compels summary judgment for the Defendants.  
6 “The goal of statutory interpretation is to discern and implement the legislature’s intent.” *State v.*  
7 *Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (citing *State v. J.P.*, 149 Wn.2d 444, 450,  
8 69 P.3d 318 (2003)). “In interpreting a statute, this court looks first to its plain language.” *Id.* “If  
9 the plain language of the statute is unambiguous, then this court’s inquiry is at an end.” *Id.*, see  
10 also *Burns v. City of Seattle*, 161 Wn.2d 129, 140, 164 P.3d 475 (2007) (stating that if a statute’s  
11 meaning is plain on its face, then the court must give “effect to that plain meaning as an  
12 expression of legislative intent.”)

14 In construing the PRA, the Court looks to the act in its entirety in order to enforce the  
15 law’s overall purpose. See *Ockerman v. King Cty. Dep’t of Developmental & Env’tl. Services*,  
16 102 Wn. App. 212, 217, 6 P.3d 1214 (2000). This plain meaning analysis is accomplished by  
17 considering the statute as a whole, giving effect to all that the Legislature has said, and by using  
18 related statutes to help identify the legislative intent embodied in the provisions in question. *State*  
19 *of Wash., Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).  
20 Examining related statutes is a helpful part of a plain meaning analysis ““because legislators  
21 enact legislation in light of existing statutes.”” *Id.* (quoting 2A NORMAN J. SINGER, STATUTES  
22 AND STATUTORY CONSTRUCTION § 48A:16, at 809–10 (6th ed. 2000)).

24 Importantly, the broadest public record disclosure requirements imposed by the PRA  
25 apply only to the public records of an “agency” as defined by the act. *Yakima v. Yakima Herald-*  
26 *Republic*, 170 Wn.2d 775, 246 P.3d 768 (2011). The PRA defines an “agency” to include:

27 DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 12

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1 all state agencies and all local agencies. “State agency” includes every state office,  
2 department, division, bureau, board, commission, or other state agency. “Local agency”  
3 includes every county, city, town, municipal corporation, quasi-municipal corporation, or  
4 special purpose district, or any office, department, division, bureau, board, commission,  
5 or agency thereof, or other local public agency.

6 RCW 42.56.010(1). These are the “state agencies” and “local agencies” required to “make  
7 available for public inspection and copying all public records.” RCW 42.56.070(1), 080(2).  
8 Contrary to Plaintiffs’ argument, the Legislature is not a “state agency.”

9 The constitution and case law have long recognized the difference between the legislative  
10 branch of government and agencies that are established and regulated by the Legislature. The  
11 Legislature is the constitutionally created branch of government with the full plenary power to  
12 enact laws on any matter except as limited by the constitution. CONST. art. II, § 1; *Cedar County*  
13 *Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (“Insofar as legislative power is  
14 not limited by the constitution it is unrestrained.” (quoting *Moses Lake Sch. Dist. No. 161 v. Big*  
15 *Bend Community College*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972)). In contrast, “Administrative  
16 agencies are creatures of the legislature.” *State v. Pierce*, 11 Wn. App. 577, 581, 523 P.2d 1201,  
17 1203 (1974). Only the Legislature has the constitutional authority to create and delegate powers  
18 to state and local agencies to carry out the laws it passes. *See* CONST. art. 2 § 1; *Barry & Barry,*  
19 *Inc. v. Dep’t of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P.2d 540 (1972) (stating the power that  
20 can be delegated to an agency by the Legislature is limited, and only available if the Legislature  
21 provides standards and guidelines of what can be done and what body is to accomplish it).  
22 Equally important, “[a]n agency cannot legislate.” *Anderson, Leech & Morse, Inc. v. Wash. State*  
23 *Liquor Control Bd.* 89 Wn.2d 688, 694, 575 P.2d 221 (1978). In light of the constitutional  
24 delegation of legislative power to the Legislature as a branch of government, the Legislature’s  
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27

DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 13

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1 authority to create state agencies, and the limited authority of state agencies compared to the  
2 state Legislature, the Legislature is not a state agency as that term is commonly used.

3 Nor do individual members of the Washington State Legislature fit within the definition  
4 of an agency under the statute. Senators and representatives are independently elected  
5 constitutional members of the legislative branch representing defined legislative districts. CONST.  
6 art. 2, §§ 4, 6. The Legislature is certainly capable of drafting definitions that include legislators,  
7 as it did in the Ethics in Public Service Act. RCW 42.52.010(1). But legislators are not included  
8 within the list of identified entities considered agencies in the PRA. The individual legislators are  
9 no more agencies for the purposes of the general provisions of the PRA than are individual  
10 judges. *Accord Nast v. Michels*, 107 Wn.2d 300, 307, 730 P.2d 54 (1984) (holding that the  
11 judicial branch was not subject to the prior version of the PRA because, in part, the act “does not  
12 specifically include courts”). The Court must give effect to the plain meanings of these terms.  
13

14  
15 In reviewing the statutory structure of the PRA as a whole, the conclusion that the  
16 legislative branch and its members are not “agencies” under the act takes on even greater clarity.  
17 As more fully summarized above, I-276 (codified as former chapter 42.17 RCW) originally  
18 included within the broad definition of “agency” the term “public official.” Had the statute  
19 remained unchanged, Plaintiffs’ arguments that individual legislators could be subject to the  
20 record disclosure requirements of the PRA might have some force, at least when divorced from  
21 its constitutional context. *See* CONST. art. II §§ 16-17; *State v. Conte*, 159 Wn.2d 797, 807, 154  
22 P.3d 194 (2007) (holding that “once an initiative is enacted into law, the same principles of  
23 statutory construction apply as apply when the legislature enacts a measure.”). But however it  
24 might have once been construed, as Plaintiffs rightly concede the Legislature has exercised its  
25 authority to revise the law on numerous occasions, thereby clarifying the treatment of the  
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DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 14

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1 Legislature under the PRA. *See Martin v. Triol*, 121 Wn.2d 135, 148, 847 P.2d 471 (1993)  
2 (holding that one principle of statutory construction is that the legislature is “presumed to have  
3 full knowledge of existing statutes affecting the matter upon which they are legislating.”  
4 (quotation marks omitted) (quoting *Bennett v. Hardy*, 113 Wn.2d 912, 926, 784 P.2d 1258  
5 (1990)).

6  
7 First, in 1977, the Legislature amended the scope of the definition of “agency” in former  
8 chapter 42.17 RCW to remove “public officials” from its reach. Laws of 1977, ch. 313, § 1.

9 Second, in 1995 the Legislature established a definition of “state office” that included  
10 “legislative offices,” but only in relation to ensuring compliance with campaign finance laws.  
11 Laws of 1995, ch. 397, § 36. Any argument about the Legislature’s intent in that regard is  
12 undermined by the Legislature’s determination in 2005 to formally reenact the PRA as a separate  
13 and distinct statute in RCW 42.56. In doing so, the Legislature deliberately chose a definition of  
14 “agency” that did not include “legislative offices.” Lastly, in 2007 the Legislature took a final  
15 step to formalize the separation of the subjects originally codified in chapter 42.17 RCW, and  
16 moved all remaining definitions relating to public records into RCW 42.56. Laws of 2007, ch.  
17 274, § 101. Thus, the definition of “agency” in the PRA evolved and was deliberately clarified  
18 by the Legislature to exclude the terms “public officials” or “legislative offices.” These changes  
19 to the law illustrate that the legislative branch and its members do not meet the definition of an  
20 agency under the PRA.  
21  
22

23 The unique definitions within chapters 40.14, 42.17A, and 42.56 RCW make sense on a  
24 practical level as well. Chapter 40.14 RCW, which governs the record retention obligations of all  
25 state entities, by necessity must include a definition of the “legislative records” that needs to be  
26 preserved and archived. Similarly, Chapter 42.17A RCW needs an applicable definition of  
27

1 “legislative offices,” as the campaign financing laws established there apply to all those seeking  
2 such an office. Finally, RCW 42.56’s vesting of the Legislature’s duty in the Secretary of the  
3 Senate and Chief Clerk of the House of Representatives makes operational sense because it  
4 allows for consistency and completeness in responses to PRA requests made to the Legislature.  
5 Gorrell Decl. ¶8. The distinctions drawn by the Legislature are rational and certainly within the  
6 Legislature’s authority.  
7

8 Plaintiffs’ suggestion that these changes have “no practical effect on the meaning of the  
9 laws of their interpretation” is plainly wrong. Motion at 2. Rather, the only reasonable  
10 conclusion the Court should infer from how the Legislature affected these changes is that the  
11 distinctions made were deliberate. *See Johnson v. Morris*, 87 Wn.2d 922, 926, 557 P.2d 1299  
12 (1976) (stating that the Legislature is presumed not to pass meaningless legislation, and in  
13 enacting an amending statute, a presumption exists that a change was intended). By dividing the  
14 original Public Disclosure Act into three separate laws, and in the course of those changes  
15 creating a different definition of “agency” for the purposes of the PRA, the Legislature exhibited  
16 its intent for the law to have a qualitatively different application to the Legislature itself. *State v.*  
17 *Flores*, 164 Wn.2d 1,14186 P.3d 1038 (2008) (A “fundamental principle of statutory  
18 interpretation is that when the legislature uses different words in statutes relating to a similar  
19 subject matter, it intends different meanings.”).

20  
21  
22 Indeed, the Plaintiffs’ reference to the definition of “agency” within the Ethics in Public  
23 Service Act (RCW 42.52), Motion at 11, only reinforces this point. There the Legislature  
24 demonstrated that it knew how to craft a definition of agency inclusive of the Legislature and  
25 individual members, by unambiguously stating that “‘Agency’ includes all elective offices, the  
26 state legislature” and other entities. RCW 42.52.010(1). Additionally, the Plaintiffs’ continued  
27

1 reliance on the language within I-276 (Motion at 10) is an anachronism. The law that applies to  
2 this case is the law that is in force today. The law must be interpreted as plainly written; the  
3 different treatment of the definitions of agency within the related statutes is dispositive.

4 This position is further supported by the distinctions made throughout the PRA which  
5 treat the Secretary and Chief Clerk separately from “agencies” as defined in the statute. RCW  
6 42.56.100, for example, sets forth the requirements regarding record protection and inspection.

7 In doing so the statute notes that:

8  
9 [n]othing in this section shall relieve **agencies, the office of the secretary of the senate,**  
10 **and the office of the chief clerk of the house of representatives** from honoring requests  
11 received by mail for copies of identifiable public records.

12 If a public record request is made at a time when such record exists but is scheduled for  
13 destruction in the near future, **the agency, the office of the secretary of the senate, or**  
14 **the office of the chief clerk of the house of representatives** shall retain possession of  
15 the record.

16 *Id.* (emphasis added). RCW 42.56.070 similarly distinguishes between agencies and the Chief  
17 Clerk and Secretary. “This chapter shall not be construed as giving authority to **any agency, the**  
18 **office of the secretary of the senate, or the office of the chief clerk of the house of**  
19 **representatives** to give . . . .” *Id.* (emphasis added). Contrary to Plaintiffs’ suggestions that these  
20 provisions did not impact individual legislators (Motion at 7), it would make little sense for the  
21 Legislature to have specifically designated the Chief Clerk and Secretary as having unique  
22 obligations in these sections of the PRA unless the intention was for them to be the records  
23 officers for the entire Legislature.

24 The recognition that the legislative branch is distinguishable from “agencies” as defined  
25 in the PRA has also been historically supported by other Washington authorities, including the  
26 Office of the Washington State Attorney General. Chapter 3 of the Public Records Act

1 Deskbook, originally written by the Special Assistant Attorney General for Government

2 Accountability, which states:

3       The House of Representatives and the Senate, while not executive branch “agencies,” are  
4       subject to the PRA, albeit in a slightly limited way. See RCW 42.17.341/RCW 42.56.560  
5       (specifying that judicial enforcement remedies of the PRA apply to the Chief Clerk of the  
6       House and the Secretary of the Senate). However, the House and Senate have slightly  
7       fewer obligations under the PRA than an “agency.” For example, the definition of  
8       “public record” is limited as applied to the House and Senate and individual members of  
9       the House and Senate arguably enjoy legislative immunity.

8 GREG OVERSTREET, WASHINGTON PUBLIC RECORDS ACT DESKBOOK: WASHINGTON’S PUBLIC  
9 DISCLOSURE AND OPEN PUBLIC MEETINGS LAWS 2-3 (Greg Overstreet et al. eds., 1st ed. 2006).

10 Similarly, the 2016 version of the Washington State Open Government Resource Manual,  
11 written by the Assistant Attorney General for Open Government and published by that office,  
12 recognized the independence of the Legislature with respect to the PRA. The manual is a  
13 resource relied upon by governmental entities for public records guidance, and provides in the  
14 introduction that the “Records of the Washington State Legislature are defined in RCW  
15 42.56.010(3) **and** RCW 40.14.100. Discussion of court and legislative records is outside the  
16 scope of this manual.” (emphasis added). Washington State Office of the Attorney General, Bob  
17 Ferguson, WASHINGTON STATE SUNSHINE LAWS 2016: AN OPEN GOVERNMENT RESOURCE  
18 MANUAL 5 (2016).<sup>4</sup> It also subsequently highlights that “The PRA applies in a more limited form  
19 to the Washington State Legislature. Information about accessing legislative documents is  
20 available here.” (links in the original). *Id* at 8.

21  
22  
23       Plaintiffs assert in their Motion that in “1995, 2003 and 2005, and all years in between  
24 and for many years since,” that all of the Legislature and its staff “understood the public records

25  
26 <sup>4</sup> Available at [http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About\\_the\\_Office/Open\\_Government/Open\\_Government\\_Internet\\_Manual/Open%20Government%20Resource%20Manual%202016%20-%20Oct.%2031%202016%20282%29.pdf](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Open_Government_Internet_Manual/Open%20Government%20Resource%20Manual%202016%20-%20Oct.%2031%202016%20282%29.pdf) (last visited Nov. 17, 2017).

1 law applied” to every member of that body. Motion at 10. These arguments are simply false and  
2 offered without any supporting evidence. To the contrary, as noted in the declaration submitted  
3 with this motion, the Legislature has never interpreted the PRA in the manner the Plaintiffs  
4 suggest. *See* Gorrell Decl. ¶¶5-8, 23.

5  
6 **C. The Records Requested are Not “Public Records” Under the PRA**

7 As with the definition of “agency” within the PRA, the Legislature defined the public  
8 records that are subject to the PRA as a specified set of legislative records. The definition of  
9 these legislative public records is plain such that that definition must be given effect. *See Bostain*  
10 *v. Food Exp., Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007) (“Plain meaning is determined  
11 from the ordinary meaning of the language used in the context of the entire statute in which the  
12 particular provision is found, related statutory provisions, and the statutory scheme as a whole.”)

13 The PRA defines public records as:

14  
15 any writing containing information relating to the conduct of government or the  
16 performance of any governmental or proprietary function prepared, owned, used,  
17 or retained by any state or local agency regardless of physical form or  
18 characteristics. **For the office of the secretary of the senate and the office of**  
19 **the chief clerk of the house of representatives, public records means**  
20 **legislative records as defined in RCW 40.14.100 and also means the**  
21 **following: All budget and financial records; personnel leave, travel, and**  
22 **payroll records; records of legislative sessions; reports submitted to the**  
23 **legislature; and any other record designated a public record by any official**  
24 **action of the senate or the house of representatives.**

25 RCW 42.56.010(3) (emphasis added). RCW 40.14.100 defines legislative records specifically:

26 unless the context requires otherwise, “legislative records” shall be defined as  
27 correspondence, amendments, reports, and minutes of meetings made by or  
submitted to legislative committees or subcommittees and transcripts or other  
records of hearings or supplementary written testimony or data thereof filed with  
committees or subcommittees in connection with the exercise of legislative or  
investigatory functions, but does not include the records of an official act of the  
legislature kept by the secretary of state, bills and their copies, published  
materials, digests, or multi-copied matter which are routinely retained and  
otherwise available at the state library or in a public repository, or reports or

1           correspondence made or received by or in any way under the personal control of  
2           the individual members of the legislature.

3           RCW 40.14.100.

4           First, the plain language of these provisions sets forth specific types of legislative  
5           documents that are, or are not, public records subject to disclosure under the PRA. This  
6           evidences legislative intent to affirmatively define the legislative documents subject to  
7           disclosure under the act. *See Flores*, 164 Wn.2d at 14 (stating the Legislature is deemed  
8           to intend a different meaning when it uses different terms). Notably, the definition  
9           specifically excludes documents widely available through other means, such as at the  
10          libraries and the Secretary of State’s office. RCW 40.14.100. The records generally  
11          available under the PRA are fiscal and administrative documents as well as public  
12          committee materials. RCW 42.56.010(3); RCW 40.14.100.

14          Pursuant to its unique PRA obligations, the Legislature has made approximately  
15          505,000 documents available on its public website. Gorrell Decl. ¶ 11. In addition TVW, a  
16          public access television station, has about 40,000 hours of footage largely relating to the  
17          state legislative process on its site. *Id.*

19          The records requested by Plaintiffs, however, are the personal schedules and  
20          calendars of individual legislators; legislators’ emails, text messages, and videos; and  
21          complaints and reports related to personnel and human resource investigations. Gorrell  
22          Decl. ¶¶ 14-17. Under a plain reading of the PRA definition of legislative record, these  
23          documents are among those not subject to public disclosure. *See* RCW 40.14.100  
24          (excluding “reports or correspondence made or received by or in any way under the  
25

1 personal control of the individual members of the legislature,” from the definition of  
2 legislative records).

3           Second, the inclusion of the offices of the Secretary and the Chief Clerk within  
4 these definitions shows that specific legislative records provisions cover the whole of the  
5 Legislature. No other government entity has such a specific office called out in this  
6 way—demonstrating that these two offices were meant to serve the full Legislature. *See*  
7 *supra* pp. 17-18; RCW 42.56.010(3). To conclude otherwise would render the absurd  
8 result wherein the Legislature would have excluded several categories of documents from  
9 production by the offices of the Secretary and the Chief Clerk, but the same documents  
10 could be procured by sending a PRA request to an individual legislator or some other  
11 official or employee in the Legislature. This Court should conclude this was not the intent  
12 of the Legislature, as courts are directed to avoid reading a statute in a way that would  
13 lead to such unlikely or strained consequences. *Fraternal Order of Eagles, Tenino Aerie*  
14 *No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655  
15 (2002)(citing *State v. McDougal*, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992)).

18           That the legislative documents subject to the PRA are only those defined in  
19 reference to the Secretary and Chief Clerk is further supported by the PRA’s statutory  
20 scheme. RCW 42.56.100 states that the offices of the Secretary and the Chief Clerk shall  
21 adopt procedures cognizant of time, resource and personnel constraints associated with  
22 legislative session, facilitate access to public records, and “protect public records from  
23 damage or disorganization.” RCW 42.56.100. The Secretary and Chief Clerk are charged  
24 with establishing reasonable copying costs to fulfill public records requests. RCW  
25 42.56.120. The Secretary and Chief Clerk are also referenced in the judicial review  
26

27  
DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 21

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1 process of a PRA request denial. RCW 42.56.560 (“The procedures in RCW 42.56.550  
2 govern denials of an opportunity to inspect or copy a public record by the office of the  
3 secretary of the senate or the office of the chief clerk of the house of representatives.”).  
4 Further, the PRA provision requiring documents and indexes to be made public expressly  
5 prohibits the Secretary and Chief Clerk from providing such lists for commercial  
6 purposes. RCW 42.56.070(9) (“This chapter shall not be construed as giving authority to  
7 any agency, the office of the secretary of the senate, or the office of the chief clerk of the  
8 house of representatives to give, sell, or provide access to lists of individuals requested  
9 for commercial purposes.”). Thus, all PRA record responsibilities for the Legislature fall  
10 to the Secretary and the Chief and not to individual legislators or their individual offices.  
11

12 Further, despite what Plaintiffs may assert, there is nothing inherently wrong or nefarious  
13 about the Legislature establishing specifications for how the PRA applies to its chambers. *See*  
14 CONST. art. II, § 9 (stating each house may determine the rules of its own proceedings);  
15 *Washington Fed’n of State Employees v. State*, 127 Wn.2d 544, 569, 901 P.2d 1028 (1995)  
16 (stating that the framers of the Washington State Constitution afforded substantial discretion to  
17 the Legislature as to how it was to conduct its business and simultaneously ensured that the  
18 public would be informed about the enactment of laws by providing for the maintenance of  
19 legislative journals, expressing a preference for open meetings, mandating recording of votes for  
20 final passage of legislation and recording elections of legislative officers). Consistent with the  
21 principles of separation of powers, the State constitution leaves internal operations of the  
22 Legislature to the Legislature. *Brown v. Owen*, 165 Wn.2d 706, 720, 206 P.3d 310 (2009); Wash.  
23 AGO 2001 NO. 9 (2001) (citing *State ex rel. Dunbar v. State Bd.*, 140 Wash. 433, 445, 446, 249  
24 P. 996 (1926)). The power to make and enforce its own rules is inherent in the very nature of a  
25  
26  
27

DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 22

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1 legislative body, even in the absence of an express constitutional grant. *Brown*, 165 Wn.2d at  
2 720; 1 SUTHERLAND STATUTORY CONSTRUCTION § 7:2 (7th ed.).<sup>5</sup> Further, as noted above, these  
3 provisions provide operational efficiency for a large, part-time Legislature.

4 In sum, the PRA specifies that the Legislature has a distinct public disclosure obligation  
5 under the PRA and specifies what should be disclosed by the Secretary and Chief Clerk, the  
6 Legislature’s records custodians. Such records include fiscal summaries and public documents  
7 evidencing the work of the legislative bodies. The documents requested by the Plaintiffs do not  
8 fall under the Legislature’s disclosure obligation. Thus, the Legislature did not err by not  
9 producing these requested documents.

11 **D. The Public Records Act is Subject to Constitutional Limitations**

12 Contrary to the Plaintiffs’ assertions, the PRA has never stood for the proposition that all  
13 of the records of all government entities are subject to the act. For example, consistent with  
14 separation of powers principles the PRA has consistently been interpreted to exclude the records  
15 held by the judicial branch. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172  
16 (2009) (“This court has already ruled on the issue of whether the judiciary is subject to the PRA,  
17 and Koenig has not demonstrated that the established rule is incorrect or harmful. Therefore, we  
18 affirm the trial court’s holding that the PRA does not require the City to release the requested  
19 judicial records because the PRA does not apply to the judiciary.”). In cases addressing whether  
20 the PRA applies to the judiciary, the courts have held the judiciary is not an agency under the  
21 PRA. *See, e.g., West v. Wash. State Ass’n of District and Municipal Court Judges*, 190 Wn. App.

24 \_\_\_\_\_  
25 <sup>5</sup> This power has also been applied beyond legislative activity in other states. *See e.g. Moulton v. Scully*, 111 Me.  
26 428, 89 A. 944 (1914) (impeachment proceedings); *Hiss v. Bartlett*, 69 Mass. 468, 3 Gray 468, 1855 WL 5710  
27 (1855) (expelling a member of the legislature); *Witherspoon v. State*, 138 Miss. 310, 103 So. 134 (1925)  
(appointment of a public officer); Opinion of the Justices, 252 Ala. 205, 40 So. 2d 623 (1949) (passage of  
constitutional amendments and to regulate the manner of exercising constitutional prerogatives of members).

1 931, 933, 361 P.3d 210 (2015) (Judges’ association was part of the judicial branch and therefore  
2 not an agency); *City of Federal Way*, 167 Wn.2d at 346 (holding that administrative records of  
3 the judiciary were “public records” but not required to be disclosed because the judicial branch  
4 was not a state or local agency). The Courts have also emphasized the authority of the judiciary  
5 to control its own proceedings. *Nast*, 107 Wn.2d at 304 (“Courts have the inherent authority to  
6 control their records and proceedings.” *Id.* (quoting *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584,  
7 588, 637 P.2d 966 (1981)); *Yakima*, 170 Wn.2d at 795 (“[I]t is without question that the court  
8 has inherent authority to control its own documents.”).

10 Just like the Legislature, the court has voluntarily submitted many categories of records  
11 to public disclosure. GR 31. Just like the Legislature, the court has not subjected every category  
12 of record to public disclosure. GR 31(c)(4) (defining “court records” to not include data  
13 maintained by a judge pertaining to a particular case such as drafts and memoranda). Finally, the  
14 Courts have emphasized a common law right of access to judicial records predating the PRA.  
15 *Nast*, 107 Wn.2d at 307 (“the PDA does not apply to court case files because the common law  
16 provides access to court case files. . .”). Like the judiciary, the Legislature is a branch of  
17 government, not simply a state agency. Also like the judiciary, the Legislature has explicit  
18 constitutional authority to adopt rules to govern its own proceeding. CONST. art. II, § 9. And  
19 much like there is a common law right of access to court files, there is a constitutional right of  
20 access to legislative floor deliberations and official acts. CONST. art. II, § 11, art. III §§ 17, 24.  
21 Similarly, the Washington Supreme Court has found that separation of powers principles  
22 produce a qualified gubernatorial privilege against forced disclosure of large sections of records  
23 held by the executive branch. *Freedom Found. v. Gregoire*, 178 Wn.2d 686, 696-97, 310 P.3d  
24 1252 (2013) (recognizing the governor’s authority to assert an executive privilege).

27 DEFENDANTS’ CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT - 24

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1           While the Legislature believes that Plaintiffs' claims are properly resolved on summary  
2 judgment as a matter of statutory interpretation, these important constitutional principles further  
3 support summary judgment for the Defendants. Washington courts have long described the  
4 separation of powers as one of the "cardinal and fundamental principles" of our state  
5 constitutional system. *Washington State Motorcycle Dealers Ass'n v. State*, 111 Wn.2d 667, 674,  
6 763 P.2d 442 (1988). "Our constitution does not contain a formal separation of powers clause."  
7 *Brown*, 165 Wn.2d at 718. "Nonetheless, the very division of our government into different  
8 branches has been presumed throughout our state's history to give rise to a vital separation of  
9 powers doctrine." *Id.* (quoting *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)).

11           Additionally, there are important constitutional protections specifically for legislative  
12 deliberations. Here, the disclosure obligations found in the PRA comport with the constitutional  
13 principles established in the federal and state Speech and Debate Clauses. U.S.C.A. Const. Art.  
14 1, § 6, cl. 1; CONST. art. II, § 17. This privilege of non-interference protects against judicially  
15 compelled disclosure of internal legislative deliberations. *See United States v. Brewster*, 40 U.S.  
16 501, 525, 92 S. Ct. 2531 (1972) ("[T]he Speech or Debate Clause protects against inquiry into  
17 acts that occur in the regular course of the legislative process and into the motivation for those  
18 acts."); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 502, 95 S. Ct. 1813 (1975)  
19 ("The purpose of the Clause is to insure that the legislative function the Constitution allocates to  
20 Congress may be performed independently.") If the legislative branch is subject to the general  
21 provisions of the PRA in the manner the Plaintiffs suggest, then either the constitution operates  
22 as an "other statute" exemption pursuant to RCW 42.56.070(1) and thereby eliminates a range of  
23 disclosure obligations, or the act is unconstitutional to the extent it purports to authorize  
24 judicially compelled disclosure of these types of legislative deliberations.

27  
DEFENDANTS' CROSS MOTION FOR SUMMARY  
JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT - 25

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1           **E.       Prior Unsuccessful Efforts to Amend the Public Records Act are Irrelevant**

2           Plaintiffs attempt to create support for their arguments by relying on prior failed efforts to  
3 amend the PRA. Motion at 7-8. These arguments are misplaced. This Court should not rely on  
4 unsuccessful pieces of legislation brought by an individual legislator to contradict the plain  
5 meaning of a statute. *Human Rights Commission v. Cheney Sch. Dist.* 30, 97 Wn.2d 118, 121,  
6 641 P.2d 163 (1982); *Conte*, 159 Wn.2d at 813 (“legislative intent cannot be gleaned from the  
7 failure to enact a measure”); *Spokane County Health Dist. v. Brockett*, 120 Wn.2d 140, 839 P.2d  
8 324 (1992) (court will not speculate as to why the legislature rejects a proposed amendment).  
9 Plaintiffs ignore these holdings when they argue that both Senate Bill 5638 (“SB 5638”) and  
10 Substitute Senate Bill 1758 (“SSB 1758”) represent the “understanding of the legislators at the  
11 time.” Motion at 8.  
12

13           All that can be gleaned from SB 5638 and SSB 1758 is speculation about what may have  
14 been the perspective of one sponsor of these amendments out of the 147 members of the  
15 legislative body. Reliance on such speculation is improper. *Wilmot v. Kaiser Aluminum & Chem.*  
16 *Corp.*, 118 Wn.2d 46, 64, 821 P.2d 18 (1991) (refusing to glean legislative intent behind an  
17 enacted statute from speculation about why the Legislature rejected a related proposed  
18 amendment); *see also Wash. State Legislature v. Lowry*, 131 Wn.2d 309, 326-27, 931 P.2d 885  
19 (1997) (concluding that a single legislator’s remarks, even from the sponsor, are noteworthy but  
20 are not controlling of a legislative history analysis or conclusive as to the interpretation of the  
21 plain language of a measure).  
22

23           Moreover, a decision not to enact a measure is particularly inappropriate for evaluating  
24 legislative intent where “there are several different components of [the measure], any one of  
25 which might be critical to the decision to reject.” *Conte*, 159 Wn.2d at 813 (citing *Leeper v.*  
26  
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1 *Dep't of Labor & Indus.*, 123 Wn.2d 803, 816, 872 P.2d 507 (1994)) (rejection of a bill with five  
2 sections, four of which had nothing to do with the subject matter at issue, was not evidence of  
3 legislative intent). Thus, Plaintiffs' reliance on SSB 1758 is especially unsuitable. Beyond the  
4 PRA's application to the Legislature, SSB 1758 addressed several other subjects including: PRA  
5 productions on an installment basis; agencies accepting deposits for providing copies resulting  
6 from PRA requests; limits on disclosures of records from agencies "with jurisdiction over the  
7 release of sex offenders;" and provisions specific to the treatment of enforcement bulletins. Earl-  
8 Hubbard Dec., Exhibit E at 2, 12, 22, 26. Any one of these elements of SSB 1758 may have been  
9 determinative of the House's decision to reject the bill, and thus it is not an appropriate resource  
10 to evaluate legislative intent with respect to the sole issue of the PRA's application to the  
11 Legislature. That SB 5638 and SSB 1758 failed to pass is not relevant and does not prove the  
12 Legislature's understanding of the PRA.  
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15 Further, if the Court *were* to credit unsuccessful attempts to amend the provisions of the  
16 PRA it should consider a separate, unsuccessful attempt that supports the Legislature's position.  
17 In 2009 the Public Records Exemption Committee, created in RCW 42.56.140 and including  
18 representatives of Plaintiffs in this case, voted to recommend that the PRA be amended to:

19 "[e]liminate the Legislative exemption, which excludes from public scrutiny personal  
20 records of the legislature, including e-mails, correspondence, except when designated as a  
21 public records by a 'official action of the Senate or House of Representatives.' Every  
22 other legislative body in the state of Washington is fully subject to the public records act.  
23 There is no principled reason why the state legislature is exempt. Implementing this  
24 recommendation would require amendment of [the definition of public record]."  
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1 THOMAS A. CARR, ANNUAL REPORT OF THE PUBLIC RECORDS EXCEPTIONS ACCOUNTABILITY  
2 COMMITTEE 7 (2009).<sup>6</sup> This effort to amend the provisions of the PRA expresses the  
3 Legislature’s understanding of its obligations under the act.

4 **F. The Legislature Fully Complied with its Responsive Obligations Under the PRA**

5 Because the legislative branch and its members are not agencies under PRA and the  
6 requested records do not fall within the definition of public records, Plaintiffs’ remaining  
7 arguments regarding the Legislature’s compliance obligations under the act are misplaced.  
8 Motion at 15-21. Plaintiffs correctly identify the requirements under the PRA for an agency to  
9 provide a “statement of the specific exemption authorizing the withholding” in response to a  
10 denial for a “public record.” RCW 42.56.210(3). As Plaintiffs also highlight, the “silent  
11 withholding” of public records by an agency is prohibited under the act. *Progressive Animal*  
12 *Welfare Society v. University of Washington*, 125 Wn.2d 243, 270, 884 P.2d 592 (1994) (the act  
13 “clearly and emphatically prohibits silent withholding **by agencies** of records relevant to a  
14 **public records** request”) (emphasis added). However, none of the cited authority relied upon by  
15 Plaintiffs addresses the unique circumstances presented here. The Legislature has not claimed  
16 that any exemptions under the statute apply. Instead, each response made clear that the Secretary  
17 and Chief Clerk released responsive records and that remaining documents were not public  
18 records under the act. Complaint at 11-29; Gorrell Decl. ¶¶ 22, 26. Once that determination was  
19 made and properly communicated to the requestors, no further actions were required. In other  
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25 <sup>6</sup> Available at [http://agportal-](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Sunshine_Committee/2009%20Report%20to%20the%20Legislature.pdf)  
26 [s3bucket.s3.amazonaws.com/uploadedfiles/Home/About\\_the\\_Office/Open\\_Government/Sunshine\\_Committee/2009](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Sunshine_Committee/2009%20Report%20to%20the%20Legislature.pdf)  
27 [%20Report%20to%20the%20Legislature.pdf](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Sunshine_Committee/2009%20Report%20to%20the%20Legislature.pdf) (last visited Nov. 17, 2017). We note that the Legislature agrees with the committee that it is not fully subject to the PRA, but it does not assert that it is exempt from the act. The Legislature has specific disclosure obligations, which it has met in this case.



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and authorities above, the Defendants respectfully request this Court deny Plaintiffs’ Motion for Summary Judgment and instead grant the Defendants’ Cross Motion for Summary Judgment.

DATED this 17<sup>th</sup> day of November, 2017.

PACIFICA LAW GROUP LLP

By: /s/Paul J. Lawrence  
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**CERTIFICATE OF SERVICE**

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years and not a party to this action. On the 17th day of November, 2017, I caused to be served a true copy of the foregoing document upon:

Michele Earl-Hubbard, WSBA No. 26454  
Attorneys for Plaintiffs  
P.O. Box 33744  
Seattle, WA 98133  
(206) 443-0200 phone  
(206) 428-7169 fax  
michele@alliedlawgroup.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via electronic court filing / email
- via hand delivery

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

DATED this 17th day of November, 2017.

*s/Tricia O'Konek*

\_\_\_\_\_  
Tricia O'Konek

**SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK, KING-TV (“KING 5”), KIRO 7, ALLIED DAILY NEWSPAPERS OF WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING, INC., TACOMA NEWS, INC. (“THE NEWS TRIBUNE,”) and THE SEATTLE TIMES,

Plaintiff/Petitioner,

vs.

THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON STATE SENATE, THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, Washington state agencies; and, SENATE MARJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON, and HOUSE MINORITY LEADER DAN KRISTIANSEN each in their official capacity,

Defendants.

No. 17-2-04986-34

ORDER ON CROSS-MOTIONS  
FOR SUMMARY JUDGMENT

This matter came before the Court on Plaintiffs’ Motion for Partial Summary Judgment and Defendants’ Cross Motion for Summary Judgment. The Court, being fully advised, GRANTS IN PART and DENIES IN PART Plaintiffs’ Motion for Partial Summary Judgment and GRANTS IN PART AND DENIES IN PART Defendants’ Cross Motion for Summary Judgment. Senate Majority Leader Mark Schloesler, House Speaker Frank Chopp, Senate

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
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Minority Leader Sharon Nelson, and House Minority Leader Dan Kristiansen (the “Individual Defendants”) are “agencies” under the Public Records Act. The Washington State Legislature, the Washington State Senate, and the Washington State House of Representatives are not “agencies” under the Public Records Act.

#### I. MATERIALS CONSIDERED

The following documents were called to the attention of the Court:

1. Plaintiffs’ Motion for Partial Summary Judgment;
2. Declaration of Michele Earl-Hubbard in Support of Plaintiffs’ Motion for Partial Summary Judgment, including Exhibits A through G;
3. Defendants’ Cross Motion for Summary Judgment and Response to Plaintiffs’ Motion for Summary Judgment;
4. Declaration of Jeannie Gorrell in Support of Defendants’ Cross Motion for Summary Judgment, including Exhibit A;
5. Plaintiffs’ Joint Response to Defendants’ Motion for Partial Summary Judgment and Plaintiffs’ Reply in Support of Plaintiffs’ Motion for Partial Summary Judgment;
6. Declaration of Rowland Thompson in Support of Plaintiffs’ Motion for Partial Summary Judgment and Response to Defendants’ Motion for Partial Summary Judgment;
7. Second Declaration of Michele Earl-Hubbard in Support of Plaintiffs’ Motion for Partial Summary Judgment and Response to Defendants’ Motion for Partial Summary Judgment, including Exhibits 1 through 10;
8. Defendants’ Reply in Support of Cross-Motion for Summary Judgment;
9. Brief of Amicus Curiae Attorney General of Washington;

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

10. Defendants' Supplemental Brief in Response to Brief of Amicus Curiae Attorney General of Washington;

11. Plaintiffs' Court-Requested Supplemental Brief and Response to Amicus Curiae Brief of Attorney General;

12. Third Declaration of Michele Earl-Hubbard in Support of Plaintiffs' Motion for Partial Summary Judgment and Response to Defendants' Motion for Partial Summary Judgment and in Response to Amicus Curiae Brief of Attorney General;

13. Declaration of Bernard Dean in Support of Defendants' Supplemental Brief in Response to Amicus Curiae by Washington State Attorney General; and

14. Answer to Objection by Amicus Curiae Attorney General of Washington.

## II. BACKGROUND

The facts are undisputed on these cross-motions for summary judgment. Between January 25, 2017 and July 26, 2017, the Plaintiffs made various public records requests of the Washington State Legislature, the Washington State Senate, the Washington State House of Representatives, and all 147 elected members of the Legislature. The requests sought records ranging from calendar entries and text messages related to legislative duties, to complaints and investigative reports regarding claims of improper interpersonal conduct within the Legislature. With limited exceptions, the recipients of these requests took the position that the requested records were not public records. According to the recipients, the Public Records Act's applicability to the Legislature is narrowly limited to those records described in RCW 42.56.010(3) with respect to the Secretary of the Senate and the Chief Clerk of the House. Specifically, the recipients relied on the following language:

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

RCW 42.56.010(3). As the requested records did not fall within this narrow definition, no records were provided in response to these requests, other than the limited exceptions referenced above. The Plaintiffs then filed this lawsuit on September 12, 2017, claiming that the Defendants had erred in asserting that the Public Records Act applies in only this limited fashion, and contending that public records subject to disclosure were improperly withheld as a result.

The Court held a hearing on the parties' cross-motions for summary judgment on December 22, 2017. At the hearing, the Court indicated that it understood that, should the Court find that at least a portion of the Legislature was subject to the general requirements of the Public Records Act rather than the more limited requirements detailed in RCW 42.56.010(3) with respect to the Secretary of the Senate and the Chief Clerk of the House, there was at least one document that had been wrongfully withheld from the Plaintiffs, and that the Court would be able to find a violation of the Public Records Act in those circumstances. The Court also stated that, if either party disagreed with this understanding, they should voice that disagreement during the hearing. No party voiced any such disagreement.

### III. ANALYSIS

#### A. Preliminary Matters

##### 1. Individual Defendants

The names of the Individual Defendants in the caption of the Complaint in this matter are preceded by their leadership titles rather than "Senator" or "Representative." For example, the

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

Complaint states that “Senate Majority Leader Mark Schloesler,” rather than “Senator Mark Schloesler,” is a defendant. The Individual Defendants argue that this means this case is brought against them in their leadership capacity rather than in their capacity as elected legislators, and that this case should be dismissed against them because no public records requests were made to the Individual Defendants in their leadership capacity. The Court disagrees. Each of the Individual Defendants received at least one of the public records requests at issue in this case. The Individual Defendants cite no authority that distinguishes between their leadership and elected legislator capacity. Further, even if there were such a distinction, the Court would permit an amendment to the Complaint to clarify the issue, as there would be no prejudice to any such amendment. In any event, it is clear to this Court that the Individual Defendants’ names are preceded by their leadership titles as a matter of custom that has no bearing on any substance in this case.<sup>1</sup>

2. Propriety of Amicus

Requesting no particular relief, the Defendants object in their Supplemental Brief to the Attorney General filing an amicus brief in this matter, arguing that it creates a conflict of interest under RPC 1.7. The claim is wholly without merit. The comments to the Rules of Professional Conduct indicate that conflict of interest rules apply differently in the context of government

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<sup>1</sup> The Plaintiffs also made it clear at the hearing and in their Supplemental Brief that they intended to sue the Individual Defendants as senators and representatives—i.e., as recipients of the public records requests at issue in this case. VRP 90:10-16 (Ms. Earl Hubbard: “The idea was . . . he or she was sued as a Senator or a Representative. We chose only to sue the four leaders because they were the four that we figured it would make the point that the legislative offices were subject to the Act as opposed to [suing] all 147 [members of the legislature.”); Plaintiffs’ Court Requested Supplemental Brief and Response to Amicus Curiae Brief of Attorney General at 2.

attorneys,<sup>2</sup> Washington courts has repeatedly held different rules apply in the context of government attorneys,<sup>3</sup> the Attorney General has special statutory responsibilities to advise regarding the interpretation of the Public Records Act,<sup>4</sup> and the Attorney General has the authority to act in any court (including filing amicus briefs) on a matter of public concern.<sup>5</sup> Further, RPC 1.7 states that a conflict of interest exists if “the representation of one client will be directly adverse to another client[.]” The Attorney General represents no “client” in filing an amicus brief in this matter. The Attorney General accepted the Court’s invitation to file an amicus brief. To do so here is no more a conflict of an interest than it is for the Attorney General to issue an Attorney General Opinion that is adverse to the interests of a state entity, which is no conflict of interest at all.

### 3. Incorporation of Amicus Brief

At the December 22, 2017 summary judgment hearing in this matter, the Court invited the Attorney General to file an amicus brief in this matter. The Attorney General filed the requested brief on January 10, 2018. The Court agrees with each and every argument and conclusion presented in the brief and incorporates it into this Order as if fully set forth herein. The Court’s preferred analysis concerning the Legislature, Senate, and House differs slightly

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<sup>2</sup> RPC 1.6, cmt. 41 (“Various legal provisions, including constitutional, statutory and common law, may define the duties of government lawyers in representing public officers, employees, and agencies and should be considered in evaluating the nature and propriety of common representation.”).

<sup>3</sup> *In the Matter of Johnston*, 99 Wn.2d 466, 480, 663 P.2d 457 (1983) (If “actual conflicts of interest” arise, different assistant attorneys general “can, and should, be assigned[.]”); *Sammamish Cmty. Mun. Corp. v. City of Bellevue*, 107 Wn. App. 686, 693, 27 P.3d 684 (2001) (holding that what might be deemed conflicts of interest in the private setting are permitted with screening mechanisms in the public setting).

<sup>4</sup> RCW 42.56.155, .530, .570.

<sup>5</sup> *City of Seattle v. McKenna*, 172 Wn.2d 551, 556, 259 P.2d 1087 (2001); *Young Ams. For Freedom v. Gorton*, 91 Wn.2d 204, 207, 588 P.2d 195 (1978).

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

from the Attorney General's, but the Court arrives at the same conclusion. The Attorney General's reasoning is an alternative means of arriving at that conclusion.

B. Principles of Statutory Interpretation

The fundamental principles of statutory interpretation that govern this case are well established:

Our fundamental goal in statutory interpretation is to discern and implement the legislature's intent. If a statute's meaning is plain on its face, we give effect to that plain meaning as an expression of legislative intent. We derive the plain meaning from the language of the statute and related statutes. When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise. However, when the statute is ambiguous or there are conflicting provisions, we may arrive at the legislature's intent by applying recognized principles of statutory construction.

*O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 696-97, 335 P.3d 416 (2014) (quotation marks and citations omitted). Simply put, “[i]f the language is unambiguous, [courts] give effect to that language and that language alone because we presume the legislature says what it means and means what it says.” *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). Courts “should not and do not construe an unambiguous statute. . . . It is not within our power to add words to a statute even if we believe the legislature intended something else but failed to express it adequately.” *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978).

The importance of only resorting to canons of statutory interpretation if the plain meaning of a statute is found to be ambiguous—generally referred to as the “plain meaning rule”—cannot be understated. It is the Legislature's role to balance different policies and determine what the law should be. It is the courts' role to then interpret the law as enacted by the Legislature. See *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn2d

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

542, 567, 958 P.2d 962 (1998) (“Our role is to interpret the statute as enacted by the Legislature, after the Legislature’s determination of what . . . best serves the public interest of this state; we will not rewrite the statute.”). Respecting the boundaries separating these roles by only wading into the waters of construing a statute when it is ambiguous serves the public, the Legislature, and the courts. The public is served by being able to rely upon the plain meaning of the law when it truly is plain to determine their rights, privileges, and responsibilities. The Legislature is served by being able draft laws by relying upon the courts to apply those laws as plainly written. The courts are served by maintaining the integrity of the judicial branch and avoiding separation of powers concerns and criticism that they are “legislating from the bench.” There is a symbiotic relationship between the Legislature and the courts where each relies upon the other to serve its proper role—the Legislature will “say what it means and means what it says” and the courts will adhere to the plain meaning of the law where there is a plain meaning.

Given that courts only resort to “recognized principles of statutory construction” if a statute is ambiguous, *O.S.T.*, 181 Wn.2d at 697, those principles are only discussed below where applicable.

C. Individual Defendants

The Court’s analysis in this case begins with whether the Individual Defendants—individual senators and representatives—are “agencies” subject to the Public Records Act. As indicated above, this analysis starts with the text of the statute at issue—the Public Records Act, RCW 42.56—and any related statutes. The Court only moves past that text if the meaning of the statute’s text is ambiguous.

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

The Public Records Act requires that “[e]ach agency . . . make available for public inspection and copying all public records” unless the record is exempt from disclosure. RCW 42.56.070(1). The Act defines “agency” as:

all state agencies and all local agencies. “State agency” includes every *state office*, department, division, bureau, board, commission, or other state agency. “Local agency” includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.56.010(1) (emphasis added).

The Public Records Act does not define “state office.” “State office” is, however, defined in RCW 42.17A.005(44):

“State office” means *state legislative office* or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

That same statute further defines “legislative office”:

“Legislative office” means the office of a member of the state house of representatives or the office of a member of the state senate.

RCW 42.17A.005(29).

RCW 42.17A is a “related statute” vis-à-vis the Public Records Act. The campaign disclosure and contribution laws now contained in RCW 42.17A were passed into law *with* the public record disclosure requirements now contained in RCW 42.56 by Initiative I-276 in 1972. They were located in the same chapter of the Revised Code of Washington until they were separated into separate chapters in 2005. Thus, these statutes epitomize “related statutes” for purposed of determining the plain meaning of a statute. Further, the offices of the Individual Defendants constitute “state offices” under RCW 42.17A.005(44).

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

As a result, the plain meaning of the Public Records Act defines the offices of all state senators and representatives to be “agencies” subject to the customary disclosure requirements of the Public Records Act. The Public Records Act applies to “agencies,” “agencies” include “state agencies,” “state agencies” include “state offices,” and “state offices” include “state legislative offices.” Therefore, “state legislative offices”—including the Individual Defendants—are “agencies” under the plain and unambiguous meaning of the Public Records Act.

The Defendants advance several arguments against this fundamental syllogism.

1. Alternative Definitions of “Agency”

The Defendants argue that alternative sources of law show that none of the Defendants are “agencies.” In short, the Defendants advocate for a definition of agency that is different than that provided in the Public Records Act. However, the Supreme Court has described such efforts to redefine terms that are defined in a statute as being “wholly without merit”:

Ecology contends, we should ignore the definition of a defined term of art (“mixed waste”) in favor of the common usage meaning of “waste” and read out of the CPA any and all materials that have not been discarded. *It is an axiom of statutory interpretation that where a term is defined we will use that definition.* Only where a term is undefined will it be given its plain and ordinary meaning. “Mixed waste” and “hazardous substance” are both defined terms within the CPA. Thus, Ecology’s contention that the word “waste” limits the application of otherwise clear and unequivocal statutory definitions to circumstances of “release or threatened release” is wholly without merit.

*United States v. Hoffman*, 154 Wn.2d 730, 115 P.3d 999 (2005) (citations omitted) (emphasis added). The Defendants’ efforts to use the same type of argument in this case are similarly without merit.

2. Responsibilities of the Secretary and Clerk

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

The Defendants also argue that the Public Records Act’s distinction between an “agency” and “the office of the secretary of the senate and the office of the chief clerk of the house of representatives” demonstrates that none of the Defendants are “agencies” under the Public Records Act. While this argument applies with different force as to the Legislature, Senate, and House as defendants, and is discussed further in that respect below, it is without merit as to the Individual Defendants. There is nothing inconsistent or ambiguous about the offices of individual legislators being subject to the full requirements of the Public Records Act as “agencies” and the Secretary of the Senate and the Chief Clerk of the House having more limited obligations under the Act. The Secretary of the Senate and the Chief Clerk of the House are separate entities from the offices of individual senators and representatives. While different policy arguments could be raised regarding why these entities should or should not be treated the same or differently, it is not the role of the Court to weigh such policies. Such arguments cannot render an otherwise unambiguous statute ambiguous.<sup>6</sup>

3. RCW 40.14.100

The Public Records Act defines “public records” in the context of the Secretary of the Senate and the Chief Clerk of the House as including “legislative records” as defined in RCW 40.14.100, which states:

As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context requires otherwise, “legislative records” shall be defined as correspondence,

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<sup>6</sup> Throughout the arguments of both the Plaintiffs and the Defendants, repeated references are made to what can be considered extrinsic evidence of legislative intent. This ranges from organizational charts and internal policies to deskbooks and Wikipedia entries. Given that the Court bases its conclusions on this case on the plain meaning of the statutory language (as to the Individual Defendants) and a mandatory principle of statutory construction (as to the remaining Defendants), it would be inappropriate for the Court to consider these other materials. They are not only outside the statutory text, they are also not even part of the relevant legislative history.

amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but *does not include* the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or *reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature.*

(emphasis added). The Defendants contend that the express exclusion of records in the possession of senators and representatives indicates that such records are intended to be exempted from disclosure.

There is no support for this argument. On its face, RCW 40.14.100 simply excludes such records from being “legislative records,” meaning that the Secretary of the Senate and the Chief Clerk of the House are not responsible for the unique collection, preservation, and production obligations that are associated with legislative records. *See, e.g.*, RCW 40.14.130 (detailing the process through which the Secretary of the Senate and the Chief Clerk of the House collect such records and coordinates with the state archivist regarding the preservation and disposition of such records). As noted above, the Secretary of the Senate and the Chief Clerk of the House are separate entities from the offices of senators and representatives. The disclosure responsibilities of one need not affect the responsibilities of the other. Further, this statutory scheme regarding “legislative records” predates the enactment of the Public Records Act. Laws of 1971 ex.s, ch. 102, § 5. In no manner can these provisions be considered to exempt any records from disclosure under the Public Records Act, enacted later. Accordingly, these provisions have no relevance to the responsibilities of the Individual Defendants under the Public Records Act.

#### 4. Amendments to the Public Records Act

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

a. Amendments Generally

The Defendants devote significant effort to arguing that amendments made to the Public Records Act over time demonstrate that the Defendants are not “agencies” under the Public Records Act.

As an initial matter, the Court questions whether such an analysis is appropriately considered at the plain meaning step of statutory interpretation before a statute has been deemed ambiguous. There is nothing “plain” about requiring citizens to access archived session laws to determine the “plain meaning” of a law that might govern their rights and responsibilities. Further, amendments to a statute over time is, quite literally, legislative *history*, and legislative history is only properly considered if and when the plain meaning of a statute has been deemed ambiguous.

While it is true that some recitations of what courts consider at the plain meaning stage of statutory interpretation includes references to “amendments,” in none of the cases Defendants cite does a court rely upon an amendment to contradict or otherwise alter what would be the plain and unambiguous meaning of the statute. To the contrary, these cases (1) cite the rule regarding amendments without applying it, (2) consider amendments that render an otherwise ambiguous statute unambiguous, or (3) consider amendments to determine that they are consistent with the otherwise plain meaning of the statute.<sup>7</sup> This Court does not need to decide,

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<sup>7</sup> See *Wright v. Lyft, Inc.*, --- Wn.2d ---, 406 P.3d 1149, 1151-53 (Wash. 2017) (using amendments as the “most effective way to navigate [the] complexity” of the statute at issue, described by United States District Court Judge as “rather labryinthe”); *Bloomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017) (citing the rule that amendments may be considered without applying that rule in its analysis); *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 440-41, 395 P.3d 1031 (2017) (considering amendments and concluding that they confirmed the otherwise plain meaning of the statute); *Lenander v. Washington State Dep't of*

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

however, whether it is appropriate to consider amendments to the Public Records Act at the plain meaning step of statutory interpretation. Even if the Court were to consider such amendments, they confirm the otherwise plain and unambiguous meaning of the Public Records Act that the offices of senators and representatives are subject to the Public Records Act as “agencies.”

b. 1995 Amendments

In 1995, when the laws concerning public records and campaign finance and disclosure were still located in the same chapter of the Revised Code of Washington, that chapter was revised in two ways relevant to this case. First, the Legislature added a definition for “state office.” That definition, currently codified at RCW 42.17A.005(44), remains unchanged to this day:

“State office” means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

At the time of that amendment, as now, public records were defined to be “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any *state or local agency*[.]” Laws of 1995, ch. 397, § 1(36) (emphasis added). Also, at the time of that amendment, as now, “agency” was defined to include “all state agencies,” including “every state office.” Laws of 1995, ch. 397, § 1(1).

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*Ret. Sys.*, 186 Wn.2d 393, 404-06, 377 P.3d 199 (2016) (using history of legislative amendments as a means of explaining a statute’s meaning in a manner that was consistent with the otherwise plain meaning of the statute). Notably, *State Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002), the case originally cited for the rule that amendments may be considered as part of the plain meaning step of statutory interpretation, does not actually state such a rule.

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

Second, the Legislature amended the definition of “public record” to have a unique meaning with respect to the Secretary of the Senate and the Chief Clerk of the House. The then-new language, currently codified at RCW 42.56.010(3), also remains unchanged to this day:

For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

Relatedly, the Legislature also amended other portions of the public records portions of the chapter that treated the Secretary of the Senate and the Chief Clerk of the House separately from “agencies” generally. *See, e.g.*, RCW 42.56.090 (“Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives for a minimum of thirty hours per week.”).

The Defendants argue that the new definition of “state office” should be limited to the campaign finance portions of the law, as those were the only portions of the statute where new references to “state office” were added through the 1995 amendments. But they cite no authority that supports this argument. Rather, “[t]he Legislature is presumed to know the law in the area in which it is legislating[.]” *Wynn v. Earin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008). At the time of the 1995 amendments, “agency” was defined to include “state office.” The Legislature is presumed to have known that. As a result, the two actions the Legislature took in 1995, described above, taken together, demonstrate that the offices of senators and representatives were intended to be considered “agencies” under the Public Records Act, while the Secretary of the Senate and Chief Clerk of the House were not.

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

c. 2005 and 2007 Amendments

In 2005, the Legislature amended the laws concerning public records and campaign finance and disclosure by splitting them into separate chapters in Title 42 of the Revised Code of Washington. The Public Records Act was moved to RCW 42.56, where it continues to reside today. Initially, RCW 42.56 did not have any definitions located within it. Instead, it stated that the “definitions contained in RCW 42.17.020 apply throughout this chapter.” Laws of 2005, ch. 274, § 101. RCW 42.17.020, in turn, continued to contain the relevant definitions that existed after the 1995 amendments, described above.

In 2007, the Legislature gave the Public Records Act its own definition section. It stated that the “definitions in this section apply throughout this chapter unless the context clearly requires otherwise.” Laws of 2007, ch. 197, § 1. The 2007 amendment included definitions for “agency,” “public record,” and “writing,” but nothing else. *Id.* These amendments did not alter the prior definition of “public record” or “agency” in any way relevant to this case. Agency continued to include “all state agencies,” including “every state office.” A definition for “state office” was not included in these amendments, but the already existing definition of “state office” contained in RCW 42.17.020 (now RCW 42.17A.005) remained unchanged.

The Defendants argue that “[t]hese amendments must be given weight as signaling purposeful changes.” Generally, this principal is only applied in circumstances where the retroactivity of a change in law is considered. But the Defendants have cited several cases from 1978 and before where this rule was considered outside that context. The origin of this line of cases appears to be *Graffell v. Honeysuckle*, 30 Wn.2d 390, 400, 191 P.2d 858 (1948), which stated:

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

The following statement, taken from 50 Am.Jur. 261, Statutes, § 275, expresses the general attitude of the various courts in construing amendatory statutes:

“In making material changes in the language of a statute, the legislature c[a]nnot be assumed to have regarded such changes as without significance, but must be assumed to have had a *reasonable motive*. Where a statute is amended, it will not be presumed that the difference between the two statutes was due to *oversight or inadvertence* on the part of the legislature. To the contrary, the presumption is that every amendment of a statute is made to effect some purpose, and effect must be given the amended law in a manner consistent with the amendment. The general rule is that a change in phraseology indicates persuasively, and raises a presumption, that a departure from the old law was intended, and amendments are accordingly generally construed to effect a change, particularly where the wording of the statute is radically different.”

(emphasis added). Assuming, without deciding, that this remains good law, the Defendants cite no law for the proposition that this rule is to be applied at the plain meaning stage of statutory interpretation. In other words, there is no authority for the proposition that the otherwise plain and unambiguous meaning of a statute can be altered or rendered ambiguous by presuming a material change in an amendment. Even if the Court were to consider this rule at this stage, however, no party is suggesting that the 2005 and 2007 amendments were due to “oversight or inadvertence,” and no party is advocating that the Legislature had anything other than a “reasonable motive” in making those amendments. The 2005 amendments expressly states what its motive was:

The legislature finds that chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of this act is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records.

Laws of 2005, ch. 274, § 1. Similarly, the title of the 2007 amendments state that it is “[r]elat[es] to making adjustments to the recodification of the public records act[.]” 2007 c 197. In short, the Legislature was reorganizing these laws to make them easier to understand.

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

It is unnecessary and improper to turn to legislative history where, as here, a statute is not ambiguous. Even if the Court were to consider the relevant legislative history, however, it would confirm the above conclusions. Courts “frequently look[] to final bill reports as part of an inquiry into legislative history.” *State v. Bash*, 130 Wn.2d 594, 601, 925 P.2d 879 (1996). The Final Bill Report for the 2005 amendments states:

The public records disclosure statutes are codified between the statutes on campaign finance reporting and campaign finance contribution limits, making responsibility for enforcement of the public records disclosure statutes unclear[.]

The public records disclosure statutes are recodified, amended, and reorganized as a new chapter to be cited as the Public Records Act. Exemptions from disclosure are reorganized into separate sections and, where possible, grouped by discrete subjects[.]

Statute cross-references are changed to reference the new chapter. No exemptions are modified, deleted, or added.

Final Bill Report on Substitute HB 1133 at 1-2 (Wash. 2005). The Final Bill Report for the 2007 amendments states:

Agency, public record, and writing are defined. Previous references to definitions in Chapter 42.17 RCW are referenced to Chapter 42.56 RCW.

Final Bill Report on Substitute HB 1445 at 1 (Wash. 2006). The 2005 amendments were a reorganization effort and the 2007 amendments were cleanup to that effort.

The Defendants further assign significance to the fact that RCW 42.56 no longer contains a definition of “state office” following the 2005 and 2007 amendments. But nothing about the reorganization of these statutes into separate chapters under Title 42 caused them to no longer be “related statutes.” “We derive the plain meaning from the language of the statute and related statutes.” *O.S.T.*, 181 Wn.2d at 696-97. As noted above, RCW 42.17A and RCW 42.56 were originally passed into law together as part of Initiative 276 and were located in the same chapter

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

until 2005. This is the epitome of being “related statutes” that courts consider when determining the plain meaning of a statute. These amendments do nothing to change that fact.

The Defendants also contend that the separation of the Public Records Act from the definition of “state office” has relevance for the canons of statutory interpretation of (1) *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of others) and (2) the use of different words is presumed to have different meanings. But the Court will not construe statutes using canons of statutory interpretation unless a statute is ambiguous, and the Public Records Act is not ambiguous in this regard. *Vita Food Prods., Inc.*, 91 Wn.2d at 134 (Courts “should not and do not construe an unambiguous statute.”); *see also O.S.T.*, 181 Wn.2d at 700-01 (“It would make sense to apply the maxim expression unius est exclusio alterius *if the statutory language was ambiguous*[.]” (emphasis added)). Further, even if the Court were to apply such canons, the Defendants’ arguments are without merit. There is no list that references one “state office” but omits the offices of senators or representatives. Nor are there different or inconsistent terms used in different portions of the relevant statutes. The Public Records Act applies to “agencies,” which includes “state offices,” which includes “state legislative offices.” At no point in that definitional chain is there an inconsistent use of terms or some list that expressly includes other state offices but omits the offices of senators and representatives.

In short, rather than furthering the Defendants’ arguments, the amendments to the Public Records Act over time confirm that it applies to the offices of senators and representatives as “agencies.”

5. Treatment of the Judiciary

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

“[T]he judiciary is not included in the PRA’s definition of ‘agency.’” *City of Federal Way v. Koenig*, 167 Wn.2d 341, 343, 217 P.3d 1172 (2009). The Defendants repeatedly refer to this fact and attempt to liken themselves to the judiciary to argue that they are also not an “agency” under the Public Records Act. As to the Individual Defendants, however, this argument may be disposed of in short order. As noted above, the “state offices” considered to be agencies under the Public Records Act are “state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.” RCW 42.17A.005(44). Unlike state legislative offices, the judiciary is not included in this definition. While there are other reasons why the judiciary is not subject to the Public Records Act, and other distinctions between the judiciary and the Legislature relevant to those issues, this distinction in the statutory text is sufficient to reject this argument in this case.

6. Absurd Results

The Defendants contend that the Public Records Act’s specific references to “the offices of the Secretary and the Chief Clerk . . . show[] that specific legislative records provisions cover the whole of the Legislature.” They argue that to “conclude otherwise would render the absurd result wherein the Legislature would have excluded several categories of documents from production by the offices of the Secretary and the Chief Clerk, but the same documents could be procured by sending a PRA request to an individual legislator or some other official or employee in the Legislature.” Regarding the need to avoid absurd results, the Supreme Court has said the following:

It is true that we “will avoid [a] literal reading of a statute which would result in unlikely, absurd, or strained consequences.” However, this canon of construction

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

must be applied sparingly. *See Duke v. Boyd*, 133 Wash.2d 80, 87, 942 P.2d 351 (1997) (“Although the court should not construe statutory language so as to result in absurd or strained consequences, neither should the court question the wisdom of a statute even though its results seem unduly harsh.” (citation omitted)). Application of the absurd results canon, by its terms, refuses to give effect to the words the legislature has written; it necessarily results in a court disregarding an otherwise plain meaning and inserting or removing statutory language, a task that is decidedly the province of the legislature. This raises separation of powers concerns. Thus, in *State v. Ervin*, 169 Wash.2d 815, 824, 239 P.3d 354 (2010), we held that if a result “is conceivable, the result is not absurd.”

*Five Corners Family Farmers v. State*, 173 Wn.2d 296, 310-11, 268 P.3d 892 (2011) (some citations omitted). It is “conceivable” that the Legislature to have determined that the Secretary of the Senate and the Chief Clerk of the House should be, by and large, insulated from public records requests so that they may focus on other responsibilities. In fact, the Public Records Act expressly recognizes the burdens even the more limited responsibilities placed upon the Secretary and Clerk given the unique environment in which they operate and the significant responsibilities they already have related to the collection and preservation of legislative records. RCW 42.56.100 (“the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions”); *see also* RCW 40.14 *et seq.* (detailing responsibilities regarding legislative records). The Legislature is in the best position to determine how different burdens are best allocated between its subordinate parts in its unique environment. The Court will not disturb that judgment. Such a result is not absurd.

The Defendants also claim that considering each legislator to be an “agency” under the Public Records Act would lead to absurd results given various responsibilities “agencies” have under the Public Records Act. *See, e.g.*, RCW 42.56.040(1) (“Each state agency shall separately state and currently publish in the Washington Administrative Code . . . [information regarding

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

their public records procedures].”); RCW 42.56.070 (requiring “each agency” to index certain records and information); RCW 42.56.080(2) (“Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.”); RCW 42.56.090 (“Public records shall be available for inspection and copying during the customary office hours of the agency . . . for a minimum of thirty hours per week[.]”). The interpretation of these requirements as applied to the Individual Defendants is not before the Court, but if they were, there is nothing *absurd* about these requirements being imposed upon the Individual Defendants, especially given that individual legislators could pool resources to help address these requirements as a group.

#### 7. Legislative History

Given that the Public Records Act is not ambiguous as to the Individual Defendants, there is no need to engage in any analysis of the relevant legislative history. The relevant legislative history, however, confirms the Court’s conclusion in one simple but important way: nowhere in the relevant legislative history did the Legislature indicate it was effectively exempting itself in whole from the Public Records Act. If the Legislature were taking such an action, the Court would certainly expect to see that referenced somewhere in the legislative history. But it is not. This is further support for the plain meaning of the law as to the Individual Defendants.

#### 8. Separation of Powers

Lastly, the Defendants cite separation of powers considerations in support of their position. Specifically, they cite *Rousso v. State*, 170 Wn.2d 70, 239 P.3d 1084 (2010), in support of this argument. *Rousso* states:

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

It is not the role of the judiciary to second-guess the wisdom of the legislature[.] . . . These purely public policy determinations demonstrate why the legislature, and not the judiciary, must make that call. . . . Indeed, the judiciary's making such public policy decisions would not only ignore the separation of powers, but would stretch the practical limits of the judiciary.

*Id.* at 75, 88 (citation omitted). This Court agrees that this case presents separation of powers issues. It is the separation of powers that mandates strict compliance with the plain meaning rule of statutory interpretation, which prohibits deviating from plain and unambiguous statutory language. It is out of respect for the Legislature's role in determining the law that courts adhere to this rule. Courts "presume the legislature says what it means and means what it says." *Costich*, 152 Wn.2d at 470. Here, the Legislature has said that the offices of senators and representatives are subject to the Public Records Act as agencies. If the Legislature disagrees, it can to say something different by amending the law.

In short, the plain and unambiguous language of the Public Records Act establishes that the Individual Defendants are subject to the Public Records Act as "agencies." The Defendants attempts to alter or render ambiguous that language are without merit. Accordingly, the Individual Defendants are subject to the Public Records Act as "agencies" under the plain and unambiguous meaning of the law and have violated the Public Records Act by failing to respond to the Plaintiffs' public records requests as such.

D. Legislature, Senate, and House

1. Ambiguity

The Court reaches the opposite conclusion regarding the Legislature, Senate, and House. While the plain meaning of the Public Records Act speaks to the inclusion of state legislative

offices as “agencies,” it does not speak to the Legislature, Senate, or House—either to include or exclude them. Again, the Public Records Act defines agencies as:

all state agencies and all local agencies. “State agency” includes every state office, department, division, bureau, board, commission, or other state agency. “Local agency” includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.56.010(1). This definition is simply silent as to the Legislature and its chambers. The Plaintiffs argue that the Legislature is included under the “division” portion of this definition. While such an interpretation would certainly be reasonable, the Court cannot say that a contrary interpretation would not also be reasonable.

The definition of “state office” provides no additional clarity:

“State office” means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

RCW 42.17A.005(44). It is not clear whether the reference to “state legislative office” means to include the Legislature and its chambers as well, or whether this definition means to exclude the Legislature by not mentioning it. Considering the plain language of the Public Records Act and related statutes does not provide any additional clarity.

The Court finds that the Public Records Act is ambiguous as to whether the Legislature and its chambers are “agencies.” As a result, the Court must turn to “recognized principles of statutory construction” to resolve the issue. *O.S.T.*, 181 Wn.2d at 697.

## 2. Principles of Construction

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

When the language of the Public Records Act is ambiguous, the Act has its own, express principle of construction:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW 42.56.030. This is a “strongly worded mandate for broad disclosure of public records.” *Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 694-95, 310 P.3d 1252 (2013).

This is not the only principle of statutory construction that applies here though, however. “[A] court *must not* interpret a statute in any way that renders any portion meaningless or superfluous.” *Broughton Lumber Co. v. BNSF Ry Co.*, 174 Wn.2d 619, 634, 278 P.3d 173 (2012) (emphasis added). It is this principle that determines the outcome of the applicability of the Public Records Act to the Legislature and its chambers as “agencies.” As noted above, the Public Records Act repeatedly differentiates between “agencies” and the Secretary of the Senate and the Chief Clerk of the House.<sup>8</sup> To interpret the Public Records Act as defining “agencies” to include the Secretary of the Senate and the Chief Clerk of the House would impermissibly render these repeated, separate references to the Secretary of the Senate and the Chief Clerk of the

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<sup>8</sup> See, e.g., RCW 42.56.070(8) (“This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to...”); RCW 42.56.080 (“Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives...”); RCW 42.56.520 (“Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives.”).

House superfluous. Accordingly, the Court “must” find that Secretary of the Senate and the Chief Clerk of the House are not agencies under the Public Records Act. A necessary corollary of this is that the Legislature and its chambers, of which the Secretary of the Senate and the Chief Clerk of the House are a part, are not “agencies” either. If they were, there would be no need to separately reference their subordinate components—Secretary of the Senate and the Chief Clerk of the House—throughout the Public Records Act.

This is not inconsistent with the Court’s prior conclusion that state legislative offices are “agencies” on the Public Records Act. As indicated above, the Secretary of the Senate and the Chief Clerk of the House are separate and distinct entities from the offices of senators and representatives. The Legislature is free to designate one part of itself to be an “agency” and not another part.

This is also not inconsistent with the mandate that the Public Records Act be liberally construed. While the Act must be liberally construed, courts cannot use that mandate as license to write into the law what is not there or do ignore other, mandatory principles of statutory construction.

Accordingly, the Court concludes that the Legislature, the Senate, and the House of Representatives—with the exception of the offices of senators and representatives—are not “agencies” under the Public Records Act. Their responsibilities under the Public Records Act are those detailed as to the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives.

### 3. Policy Concerns

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
(360) 786-5560  
Fax: (360) 754-4060

When the Court indicated at the summary judgment hearing in this case that it was likely to reach this conclusion—that state legislative offices are “agencies” under the Public Records Act but the Legislature, Senate, and House of Representatives were otherwise not “agencies”—counsel for the Plaintiffs articulated a concern that this would lead to a “black hole” of records. In short, the concern is that records legislators did not want to become public would be housed in some other part of the Legislature that is not subject to the same rigorous disclosure requirements as the offices of senators and representatives.

As an initial matter, it is not for the Court to address policy concerns such as this. Policy making is left to the Legislature and it would violate the separation of powers for the Court to second-guess those decisions and rewrite the Public Records Act to conform with some different policy.

Nonetheless, it is premature at this juncture to raise such concerns. Public records must be disclosed in response to public records requests even when they are in the possession of a third party. *See, e.g., Nissen v. Pierce Cty.*, 183 Wn.2d 863, 881-82, 357 P.3d 45 (2015); *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 722, 354 P.3d 249 (2015). The relevant inquiry is whether the record is “prepared, owned, used, or retained” by an agency, not simply where it is located. Simply put, the tactics the Plaintiffs express concern regarding would not work. Whether and how specific records are subject to disclosure will be the subject of the next stage of this case.

#### IV. CONCLUSION

The plain and unambiguous language of the Public Records Act applies to the offices of senators and representatives—including the Individual Defendants—as “agencies.” By failing to

ORDER ON CROSS-MOTIONS FOR S.J.

THURSTON COUNTY SUPERIOR COURT  
2000 Lakeridge Dr. S.W., Bldg 2  
Olympia, WA 98502  
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respond as such, the Individual Defendants have violated the Public Records Act. In contrast, the Public Records Act applies to the remaining portions of the Legislature, Senate, and House of Representatives as detailed in the Act regarding the offices of the Secretary of the Senate and the Chief Clerk of the House. Those defendants have not violated the Public Records Act.

Dated: January 19, 2018



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Judge Chris Lanese

ORDER ON CROSS-MOTIONS FOR S.J.

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Page 28 of 28

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.

2018 MAR -9 AM 9:19

Linda Myhre Enlow  
Thurston County Clerk

Date: March 9, 2018  
Time: 9:00am  
Judge: Hon. Chris Lanese

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

THE ASSOCIATED PRESS, *et al.*,  
  
Plaintiffs,  
  
v.  
  
THE WASHINGTON STATE  
LEGISLATURE; *et al.*,  
  
Defendants.

No. 17-2-04986-34

~~PROPOSED~~ ORDER GRANTING  
PARTIES' JOINT MOTION TO  
CERTIFY QUESTIONS OF LAW TO  
THE SUPREME COURT

This matter came before the Court on the Plaintiffs the Associated Press, Northwest News Network, KING-TV, KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., Tacoma News, Inc., and The Seattle Times' (collectively, the Media) and the Defendants the Washington State Legislature, the Washington State Senate, the Washington State House of Representatives, Senate Majority Leader Mark Schoesler, House Speaker Frank Chopp, Senate Minority Leader Sharon Nelson, and House Minority Leader Dan Kristiansen's, each in their official capacity (collectively, the Legislature) Joint Motion to Certify Questions of Law to the Supreme Court. The Court has considered the Motion and the papers and pleadings filed in this case. Based on the foregoing, the Court hereby concludes that the Court's Order on Cross-Motions for Summary

~~PROPOSED~~ ORDER GRANTING PARTIES' JOINT MOTION  
TO CERTIFY QUESTIONS OF LAW TO THE SUPREME COURT - 1

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TELEPHONE: (206) 245-1700  
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1 Judgment satisfies the requirements of RAP 2.3(b)(4).

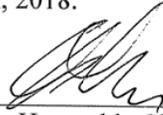
2 NOW THEREFORE, it is hereby ORDERED that:

3 1. The Parties Motion is hereby GRANTED;

4 2. The Court CERTIFIES, pursuant to RAP 2.3(b)(4), that the Court's Order

5  
6 involves controlling questions of law as to which there is substantial ground for a difference of  
7 opinion, namely: (1) that the Legislature, House of Representatives, and Senate are not  
8 "agencies" as defined in the Washington Public Records Act (PRA), RCW 42.56. and are only  
9 subject to the PRA in a limited capacity; and (2) that each individual state legislator and their  
10 offices are "agencies" as defined in the PRA and are thus broadly subject to the PRA, and that  
11 immediate review of these questions of law may materially advance the ultimate resolution of  
12 this litigation.

13  
14 IT IS SO ORDERED this 9<sup>th</sup> day of March, 2018.

15  
16   
17 \_\_\_\_\_  
18 The Honorable Christopher Lanese

19 Presented By:

20 PACIFICA LAW GROUP LLP

21 By /s/Paul Lawrence

22 Paul J. Lawrence, WSBA # 13557

23 Nicholas W. Brown, WSBA # 33586

24 Claire E. McNamara, WSBA # 50097

25 /s/Gerry Lee Alexander

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[PROPOSED] ORDER GRANTING PARTIES' JOINT MOTION  
TO CERTIFY QUESTIONS OF LAW TO THE SUPREME COURT - 2

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Attorneys for Defendants

ALLIED LAW GROUP

By /s/Michele Earl-Hubbard  
Michele Earl-Hubbard, WSBA # 26454

michele@alliedlawgroup.com  
Attorney for Plaintiffs

[PROPOSED] ORDER GRANTING PARTIES' JOINT MOTION  
TO CERTIFY QUESTIONS OF LAW TO THE SUPREME COURT - 3

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**PACIFICA LAW GROUP**

**March 26, 2018 - 11:59 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95441-1  
**Appellate Court Case Title:** The Associated Press, et al v. The Washington State Legislature, et al  
**Superior Court Case Number:** 17-2-04986-4

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