

69420-1

69420-1

NO. 69420-1 RECEIVED
COURT OF APPEALS
DIVISION ONE

FEB 22 2013

IN THE COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION ONE

CITY OF SEATTLE, *Appellant*,

JAMES C. EGAN, *Appellant*,

v.

JAMES C. EGAN, *Respondent*

CITY OF SEATTLE, *Respondent*.

CONSOLIDATED BRIEF, RESPONSE AND OPENING
JAMES C. EGAN

JAMES C. EGAN
Pro Se Appellant

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
FEB 22 2013
PM 4:53

The Law Offices of James Egan
605 First Ave Suite 400
Seattle, WA 98104
(206) 749-0333
(206) 749-5888
james@eganattorney.com

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	CONSOLIDATION OF BRIEFING	1
III.	ISSUES	2
IV.	COUNTER STATEMENT OF THE CASE	3
V.	STANDARD OF REVIEW	8
VI.	ARGUMENT	8
	A. Egan’s Response Brief Sections	8
	1. The City Clearly Violated CR 11	8
	2. The City Filed its Suit Against Egan for an Improper Purpose	19
	3. The City’s Reliance on RCW 9.73.090 is Not a Basis to Deny the Release of the Requested Videos.	20
	a. The Legislative Purpose Behind The “Made Available” Clause	31
	4. The City Still has Not Shown Any Evidence that it has Met the Requirements of RCW 42.56.540.	36
	B. Egan’s Opening Brief Sections	37
	1. The Trial Court Erred When it Reduced the Amount of the Award by Almost Half of What the City Conceded was a Reasonable Amount of Time.	37
	a. The Number of Hours Expended by Egan Were Reasonable. The Trial Court Erred in Determining that Only 49.75 Hours were Reasonable.	39
	b. There is No Basis to Discount Fees.	40
	c. Pro Se Attorney Fees Are Appropriate.	41
	2. The Trial Court Erred In Not Awarding Attorney Fees for the Associates in Egan’s Law Firm that Spent Time	

Defending the City's Completely Unnecessary Lawsuit. 43

VII. CONCLUSION 47

VIII. APPENDIX

A. Rule CR 11

B. Judge Lum June 26, 2012 Order

C. Judge Lum Findings of Fact and Conclusions of Law and Order

D. RCW 9.73.080

E. RCW9.73.090

TABLE OF AUTHORITIES

CASES

Biggs v. Vail, 124 Wn. 2d 193, 197, 876 P. 2d 448 (1994)...8, 10, 12, 14

Bowers v. Transamerica Title Ins. Co., 100 Wn. 2d 581, 597, 675 P.2d 193 (1983).....38, 39, 40

Christiansburg Garment Co., v. EEOC, 434 U.S. 412, 420, 54 L.Ed 2d 648, 93 S. Ct. 694 (1978).....42

Confederated Tribes v. Johnson, 135 Wn.2d 734, 745-46, 958 P.2d 260 (1998).....31

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 396, 110 L.Ed.2d 359, 110 S.Ct. 2447 (1990).....15

Department of Licensing v. Lewis, 157 Wn.2d 446, 139 P.3d 1078 (2006).....27

Fetzer v. Weeks, 122 Wn. 2d 141, 859 P.2d 1210 (1993).....8

Fisher Broadcasting (KOMO) v. City of Seattle, No. 12-2-00938-4 SEA..4

Hangartner v. Seattle, 151 Wn.2d 439, 450, 90 P.3d 26 (2004).....31

In re Cooke, 93 Wn. App. 526, 529, 969 P.2d 127 (1990).....10

Leen v. Demopolis, 62 Wn. App. 473, 815 P. 2d 269 (1991), review denied, 118 Wn. 2d 1022 (1992).....41

Livingston v. Cedeno, 164 Wn.2d 46, 50, 186 P.3d 1055 (2008).....31

Mahler v. Szucs, 135 Wn. 2d 398 434, 957 P. 2d 632 (1998).....38, 39

<i>Perry v. Costco Wholesale Inc.</i> , 123 Wn. App. 783, 808, 98 P. 3d 1264 (2004).....	38
<i>Progressive Animal Welfare Society v. University of Washington</i> , 125 Wn.2d 243, 884 P.2d 592 (1994).....	23, 25
<i>Rental House v. City of Des Moines</i> , 165 Wn.2d 525, 540, 199 P.3d 393 (2009).....	22
<i>Restaurant Development, Inc. v. Cananwill</i> , 150 Wn.2d 674, 680, 598 (2003).....	22
<i>Sheppard v. Maxwell</i> , 384 U.S. 333, 358 (1966).....	34
<i>Shrock v. Altru Nurses Registry</i> , 810 F.2d 658, 662 (7th Cir.1987).....	14
<i>Skimming v. Boxer</i> , 119 Wn. App. 748, 754, 82 P.3d 707 (2004).....	10
<i>State v. Caughlin</i> , 40 Wn.2d 729, 246 P.2. 485 (1952).....	5
<i>State v. Clark</i> , 129 Wn. 2d 211, 916 P.2d 384 (1996).....	26
<i>State v. Coe</i> , 101 Wn.2d 364, 384, 679 P.2ed 353 (1984).....	34
<i>Winer v. Jonal Corp.</i> , 169 Mont 247, 251, 545 P.2d 1095 (1975).....	45

STATUTES

RCW 9.73.030.....	26
RCW 9.73.080.....	13, 14, 26
RCW 9.73.090..4, 5, 7, 13, 14, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 34, 35	
RCW 42.17A.904.....	22
RCW 42.56.030.....	31

RCW 42.56.050.....	27
RCW 42.56.060.....	27
RCW 42.56.070(1).....	5, 7, 20, 21, 23, 28
RCW 42.56.530.....	20
RCW 42.56.540.....	3, 7, 11, 12, 13, 15, 21, 36, 37

OTHER AUTHORITIES

CR 11.....	1, 2, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 40, 42, 46, 47
20 Am. Jur. 2d, Costs §78.....	45

I. INTRODUCTION

The City's lawsuit was plainly filed without a reasonable inquiry into the facts or law, and/or it was filed for an improper purpose to obtain a litigation advantage. The lawsuit was completely unnecessary and in part frivolous. Judge Lum issued an Order on June 26 finding that the City violated CR 11. CP 831- 836. Judge Lum in his written Finding of Facts, Conclusions of Law and Order dated October 30, 2012 again reiterated that fact that the City's lawsuit against Egan was completely unnecessary, partially frivolous and violated CR 11. CP 1011-1015.

II. CONSOLIDATION OF BRIEFS

This Court has consolidated the appeal the City has filed regarding the Trial Court's finding that the City violated CR 11 and imposed sanctions with Egan's appeal regarding the amount of the fee award the Trial Court imposed. Egan is consolidating the Response brief to the City's opening brief with Egan's Opening Brief. The argument section will be

broken down into two sections; first, the Response Brief and second, Egan's Opening Brief. The Response section can be found on pages 3 through 37. Egan's Opening Brief section can be found on pages 37 through 48.

III. ISSUES

A. Did the Trial Court err in its finding that the City violated CR 11 by filing a completely unnecessary lawsuit and declaratory judgment action for the improper purpose of gaining a litigation advantage, and/or without conducting a reasonable inquiry into the facts or law before doing so?

B. Did the Trial Court err in not awarding fees conceded by the City as appropriate, but instead to *sua sponte* reduce by almost half the City's proposed hours award to Egan?

C. Did the Trial Court err in not awarding fees for Egan's associate attorneys, who clearly and openly appeared and participated in defending the lawsuit, and whose employment was part of the "reasonable expenses" incurred by

Egan, and but for whom the same hours and fees would have been ascribed to Egan?

IV. COUNTER STATEMENT OF THE CASE

On January 4, 2012, the City filed suit against Egan asking the Superior Court to issue a declaratory judgment that would prevent Egan from obtaining 36 specific in-car police videos that he believed were relevant to his clients' cases. CP 1-7. The original argument date was set for June 17, 2013. The City then filed a Motion for Declaratory Judgment and Preliminary Injunction under RCW 42.56.540. This accelerated the argument date to February 28, 2012, well ahead of any anticipated argument in a KOMO 4 lawsuit addressing the same issue. CP 56-76.

On January 24, 2012 Egan sent an email to all parties involved in the *City v. Egan* matter indicating that further correspondence regarding the matter should be directed to Jay Wilkinson (Wilkinson), his associate attorney. Egan notified in

that email that Attorney Wilkinson was assisting him in the matter. CP 1051.

On January 26, the City of Seattle recognized Wilkinson as being a participant when the Legal Assistant emailed Wilkinson regarding the Amended Notice for Hearing. CP 1053. (For years, the City has recognized the associates from Egan's firm in hundreds of criminal cases, to include Wilkinson and Bettinger; to wit, the City served one copy of the lawsuit at Egan's firm's address.)

The City had already been sued by Fisher Broadcasting ("KOMO") for the denial of KOMO's request of the release of in-car videos. *Fisher Broadcasting (KOMO) v. City of Seattle*, No. 12-2-00938-4 SEA, currently on petition for direct review to the Supreme Court. In the KOMO case, the City claimed that disclosure was barred by RCW 9.73.090(1)(c), the same argument made in the City's injunction action against Egan. This case was to be heard in front of Judge Rogers in April 2012.

The issues in each of those cases, Egan and KOMO, were practically identical. The City advised KOMO that it had sued Egan, seeking declaratory and injunctive relief on its interpretation of RCW 9.73.090(1)(c), because the City knew that the same issue was pending in the KOMO case. To protect KOMO's interests that were threatened by the City's new same-subject lawsuit against Egan, KOMO moved to intervene with the City's consent, and the trial court granted the motion¹. CP 86-89.

On February 28, 2012, in open court, Wilkinson introduced himself on the record as assisting Egan and aided Egan in presentation of the procedural nature of Anti-SLAPP and the injunction. After some argument and objection to the

¹ The City acknowledges that a ruling against Egan regarding RCW 9.73.090 could be binding against KOMO in its case, where they quote State v. Caughlin, 40 Wn.2d 729, 246 P.2. 485 (1952): "The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session." (Brief of Appellant, p29) A ruling from Judge Lum that 9.73.090(1)(c) is an "other statute" under RCW 42.56.070 clearly would have been presented to KOMO's Judge Rogers as an "equally effectual" binding decision, which highlights the improper purpose of the City in creating and accelerating parallel litigation against a lesser perceived opponent than KOMO.

lawsuit by the KOMO attorney, the Trial Court continued oral argument until after Judge James Rogers issued his ruling in the KOMO case. CP 287.

On April 6, 2012, Judge Rogers partially ruled against KOMO and now KOMO has sought direct review to the Washington Supreme Court.

On June 1, 2012, King County Superior Court, the Honorable Dean Lum, heard additional argument in the *City v. Egan* case. CP 525. During the hearing, the Court questioned the City about the necessity of the lawsuit, particularly because the same underlying issue was already being litigated by the City in the KOMO case.

On June 26, 2012, the Trial Court issued an Order dismissing the City's request for an injunction, awarded Egan attorney fees and costs finding the City violated CR 11, and dismissed Egan's Anti-SLAPP motion. CP 601-607.

On October 30, 2012 Judge Lum issued the Findings of Fact, Conclusions of Law and Order. CP 1011-1015. In that

Order, Judge Lum made very specific findings as to the June 26 order finding the City violated CR 11.

Judge Lum found that the City attempted to use the suit against Egan as a way to gain a litigation advantage against KOMO. The City was already in a lawsuit that would have resolved the central issue in the lawsuit brought on by the City against Egan, at no expense to Egan. There had been dispositive motion briefing and an oral argument date already scheduled in front of Judge Rogers. CP 1012 at lines 19-22.

Judge Lum found that the City had not articulated and was not prepared to argue how the release of police in-car videos would clearly not be in the public interest (RCW 42.56.540), thus the injunction lawsuit could be dismissed without reaching the question of whether 9.73.090 should be regarded as an “other statute” under 42.56.070.

Judge Lum issued an attorney fee award in the amount of \$14,676.25 and dismissed the City’s suit with prejudice. CP 1015. This award is less than half of what the City had

conceded was an appropriate amount of work in its view for Egan's time alone, without regard to his associates. CP 992 line 19.

Egan filed a Motion to Reconsider the amount of the award (CP 1039- 1046) as Judge Lum did not award any associate attorney time in the fee award nor the conceded amount of reasonable hours the City put forward. CP 1014 subsection 9. This motion was denied on November 21, 2012. CP 1055.

V. STANDARD OF REVIEW

The standard of review of an award of sanctions under CR 11 is the abuse of discretion standard. *Biggs v. Vail*, 124 Wn. 2d 193, 197, 876 P. 2d 448 (1994).

The standard of review in the amount of an attorney fee award is the abuse of discretion standard. *Fetzer v. Weeks*, 122 Wn. 2d 141, 859 P.2d 1210 (1993).

VI. ARGUMENT

A. Egan's Response to City's Opening Brief Section

1. The City clearly violated CR 11.

The Trial Court did not err when it found *sua sponte* that the City violated CR 11.

CR 11(a). The rule provides, in part:

The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(Emphasis added. For the full text see Appendix A)

If a filing is signed in violation of the rule, the court "may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee." CR 11(a).

The purpose of CR 11 is to deter baseless filings and curb abuses of the judicial system. *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004) (citing *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994) (*Biggs II*)). Because CR 11 sanctions may have a chilling effect, a trial court should impose them "only when it is patently clear that a claim has absolutely no chance of success." *Skimming*, 119 Wn. App. at 755 (citing, *In re Cooke*, 93 Wn. App. 526, 529, 969 P.2d 127 (1990)).

The City was put on notice of a potential CR 11 violation during oral argument on February 28, 2012 when Egan and KOMO 4 attorneys argued to the Trial Court that the City was simply and obviously forum shopping. Again the City was put on notice of the Trial Court's concerns on June 1, 2012 when

the Trial Court inquired of the City attorney what the real purpose of the lawsuit against Egan was.

Several times during argument, the City contended that the suit against Egan was simply to gain “judicial guidance” based on its perceived liability from Egan’s threat to sue in the public records requests.

Neither “judicial guidance” nor “potential liability” are factors in RCW 42.56.540; the City simply did not read nor even quote the plain language of the PRA injunction statute before filing a time-consuming lawsuit against this records requester.

Where 42.56.540 plainly requires a showing by plaintiff of (inherently) a specific exemption, no public interest in the requested records, and substantial and irreparable harm to an agency, the City never acknowledged this language nor offered good faith argument for extension of the clear requirements in its initial claim. Rather, the City merely filed a hasty lawsuit

which incorrectly asserted a “right” to seek “judicial guidance” whenever faced with potential liability from a records requester, where no such right exists.

A trial court imposing CR 11 sanctions must specify the sanctionable conduct in its order. *Biggs II*, 124 Wn.2d at 201. "The court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose." *Id.*

The Trial Court made very specific findings as to the CR 11 violation. CP 601-606 (See Appendix B for June 26, 2012 Order.) CP 1011-1015 (See Appendix C for October 30, 2012 Findings of Fact and Conclusions of Law.)

A reasonable inquiry into RCW 42.56.540 would have found that “the examination of any specific public record may be enjoined if, upon motion and affidavit by an agency... the superior court... finds that such examination would clearly not

be in the public interest and would substantially and irreparably damage any person, or...vital government functions.” In the plain language of the statute, agencies are not exempt from RCW 42.56.540. The City made no attempt to meet the burdens expressly set forth in RCW 42.56.540 for its action against Egan, especially that burden regarding proof of no public interest whatsoever in specific records requested by Egan, which by virtue of media attention in other SPD in-car videos, had to the contrary attracted substantial public interest.

In defensive hindsight, the City scrambled to merge the two statutory requirements under RCW 42.56.540 (actual substantial harm to agency upon release and no public interest in records) and implied the Trial Court must engage in a balancing test of public interests of release versus non-release, which is within no statute. The City invented a false panic over RCW 9.73.080 (only “wrongful disclosure” is a crime: See Appendix D for full text of the statute) where RCW 9.73.090 expressly exempts “police...personnel” from the criminal

liability they ostensibly feared for City records custodians under 9.73.080. See Appendix E for the full text of RCW 9.73.090. Throughout the City's case, the City has consistently misconstrued statutory and case law in a manner which never acknowledged the plain statutory language and core holdings in law. Instead, the City has ignored or glossed over legislative rules and cherry-picked quotes from cases completely out of context, forging ahead even when evident their injunction lawsuit was on thin ice.

CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. *See Biggs II*. Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by "inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted". *See Biggs II*.

A CR 11 motion is not a "cause of action." See *Shrock v. Altru Nurses Registry*, 810 F.2d 658, 662 (7th Cir.1987) (noting that judges can impose sanctions without a motion). (Emphasis added.) The imposition of a CR 11 sanction is not a judgment on the merits of an action. "Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396, 110 L.Ed.2d 359, 110 S.Ct. 2447 (1990). Emphasis added.

The Trial Court found that the City abused the legal process. The City's failure to articulate at the outset, much less prove the plain elements of RCW 42.56.540 in bringing this time-consuming lawsuit against Egan, and instead to misrepresent RCW 42.56.540 as authorizing a "right" to "judicial guidance" when faced with potential liability from a records requester, was not a reasonable reading of 42.56.540.

This blatant misrepresentation and abuse of the injunction statute by the City amounted to the use of the Courts for an

improper purpose. It was an unwarranted legal action in an attempt to forum shop to gain a litigation advantage against KOMO. It was also an attempt to retaliate against Egan's publicizing in-car videos showing police misconduct, by needlessly increasing his expenses and court costs where there were none, requiring CR 11 sanctions against the City.

The City contends that Egan was obligated to put the City on notice of a CR 11 sanction request. There are two aspects about the City's position which are completely incorrect.

First, Egan and the KOMO attorney in the February 28, 2012 oral argument date did argue that the suit against Egan was really an attempt to forum shop since the City had another suit of similar issues in front of a different judge to be argued around the same time. CP 602 lines 15-16. Also by February 24, 2012, Egan had filed an Anti-SLAPP motion which both articulated the baselessness of the City's injunction and asked for Anti-SLAPP attorney fee sanctions for failure to meet the same elements that ultimately led to CR 11 sanctions. Within

weeks of the lawsuit, Egan requested sanctions for the City's erroneous and onerous use of the injunction statute².

The Trial Court also questioned the City's attorney in the June 1, 2012 hearing about the City's real reason to bring the suit against Egan. It was after the questioning of the Trial Court about the City's basis for the suit that the City filed unsolicited supplemental briefing specifically defending against anticipated CR 11 sanctions. The proposition that the City was unaware of the potential for CR 11 sanctions is simply untrue and is not a candid representation of what transpired in the Trial Court. CP 526-533.

This unsolicited pleading required Egan and his known assisting associates to again expend an enormous amount of time objecting to and responding to this pleading. CP 600.

KOMO, as intervener, was also forced to object to and respond

² In a strange twist, the City claims that the filing of Egan's Anti-SLAPP motion prevented them from curing the problems that led to CR 11 sanctions because all rulings are on hold under Anti-SLAPP. The problem with this is that when faced with Anti-SLAPP motion, the City's posture did not change, and it did not assert that it would withdraw its declaratory judgment action but for the Anti-SLAPP motion. Rather, the City fought the anti-SLAPP motion as vociferously as their initial declaratory judgment action, increasing costs to all parties.

to the unsolicited pleadings. The Trial Court even issued an Order directing that no further pleadings were to be filed, in response to the City's unsolicited briefing after argument was completed. CP 600.

Second, even without notice, "the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee." CR 11(a).

The plain language of the Court Rule allows the Court to *sua sponte* issue sanctions. While notice was clearly evident to the City by its own briefing, no notice is required. Having said that, the City was well aware of the avenue the Trial Court was going down since the City filed unsolicited briefing regarding possible CR 11 sanctions. The City's argument on this point is disingenuous.

2. The City filed its Suit Against Egan for an Improper Purpose.

The City filed its suit because of the intense media attention Egan attracted by obtaining in-car videos that showed police misconduct and then exposing officers and the department to broad public scrutiny. The City filed suit within days of local and national media attention about the DOJ findings and Egan's release of two videos showing Seattle Police officers profanely disparaging and using excessive force against minorities. CP 126-127 Declaration of James Egan.

The City overtly states it sued Egan because of his "threat to sue" in his public records request. The City admits it sued Egan due to the potential liability the City may have faced should Egan sue the City and should a court rule in Egan's favor. This second theory holds little logic. If a record is deemed subject to disclosure it should be disclosed thus avoiding the penalties so feared by the City. On the other hand, if the record is truly exempt, the City need only ignore

litigation threats and wait for a baseless lawsuit to tamp down when filed. Where the City is uncertain of exemptions, as ostensibly here, guidance may be encouraged from the Attorney General pursuant to the PRA, or by contacting the subjects of the records for their opinion or participation, as Egan requested – neither of which happened (42.56.530, 42.56.540). Also, despite invitation by Egan, the City declined an in-camera review of the specific requested records by the Trial Court.

Despite the explanation put forward by the City in response to the Trial Court’s questioning about the true reason to sue Egan, the Trial Court still found that the City had “no reason to sue Egan” and the suit was “completely unnecessary.” CP 603 lines 8-9.

3. The City’s Reliance on RCW 9.73.090 is not a Basis to Deny the Release of the Requested Videos.

The existence of an “other statute” which exempts or prohibits records release under RCW 42.56.070 is only one of three necessary elements inherent in an injunction action of

42.56.540. While the City clearly did not explain how release of in-car videos showing police misconduct was clearly not in the public interest, and at best argued that “substantial and irreparable damage” could befall agencies or persons in the most imagined hypotheticals (where the statutory language requires a showing of “would”), the City also fails to clearly establish that RCW is an “other statute” which exempts or prohibits disclosure. (RCW 42.56.070).

The City continues to attempt to confuse issues and misrepresent the law when it states that the release of the videos is prohibited by RCW 9.73.090(1)(c).

RCW 9.73.090(1)(c) states that “[n]o sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded.” (emphasis added).

There are a series of reasons why RCW 9.73.090(1)(c) has been misinterpreted and misapplied by the City to affect the City's true objective of non-disclosure of damning police in-car videos to the detriment of the Seattle Police's public image:

First, the City misreads the "which arises" phrase as if it reads "which may arise." The word "may" is not in the statute. The City's interpretation violates basic canons of statutory construction such as the rule that a court cannot add words to a statute that are not there. *Restaurant Development, Inc. v. Cananwill*, 150 Wn.2d 674, 680, 598 (2003).

Second, the City's broad construction conflicts with the Legislature's command that courts must construe the PRA liberally so as to effectuate open government. *Rental House v. City of Des Moines*, 165 Wn.2d 525, 540, 199 P.3d 393 (2009).

Third, the City's construction ignores the language of RCW 42.17A.904³ that states: "In the event of conflict between

³ RCW 42.17A.904 is a re-codification of former RCW 42.17.920.

the provisions of this act and any other act, the provisions of this act shall govern.”

Fourth, in *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1994) the Court held that a statute only falls within the “other statute” exemption provided by RCW 42.56.070(1) when the “other statute” exempts or prohibits the disclosure of specific public records “in their entirety.” PAWS, at 262. Since Seattle’s construction of RCW 9.73.090(1)(c) only provides for a “temporary” exemption for a period of three years, the statute (RCW 9.73.090(1)(c)) cannot qualify for the “other statute” exemption because it flunks the “entirety” requirement of *PAWS II*. A “prohibition” is by definition permanent and not temporary.

Fifth, since the Seattle Police Department (“SPD”) also follows a record retention policy of destroying all dash cam-videos after a period of three years, there exist absurd

consequences of SPD's statutory construction policy when combined with this retention policy. First, SPD refuses to release the videos for a period of three years. Then, after three years, having complied with RCW 9.73.090(1)(c)'s supposed requirement of waiting until it is no longer possible for a personal injury or civil rights lawsuit against SPD to be filed, SPD destroys all its dash-cam videos. So the bottom line is, "You can't have them now, but if you wait three years you can get them then although by that time we will have destroyed them." This is just as good a "Catch-22" as the famous one described by the character in Joseph Heller's famous novel of the same name.⁴

As a collateral point to the City's three-year invented "prohibition" of release of videos, three years is not the statute

⁴ By applying for an exemption from highly dangerous bombing missions on the grounds of insanity, the applicant pilot proved himself to be sane. But any pilot who applied to fly these missions would be considered insane. Either way, sane or insane, they were sent on the missions. This has been described logically as a '*heads I win, tails you lose*' situation. When this catch was explained to Yossarian, the novel's protagonist, by Doc Daneeka, he remarked: "That's some catch." "It's the best there is," Doc Daneeka replied.

of limitations for all matters. The Statute of Limitations may be extended by a variety of reasons, including death, war and disability, and in some cases, like murder, there is no statute of limitations. The City's selection of three years is arbitrary and not in the statute, but presumably appears more reasonable to defend in the court than a forever prohibition. To be truly faithful to the language of the statute as they read it, the City would have to argue that police dash-cam videos are forever exempt from public disclosure given the mere possibility of litigation even after three years have elapsed. But, recognizing the Court would never buy that argument, the City has crafted a more "reasonable" argument that the exemption lasts only for three years.

The City is left arguing that the PRA's avowed statutory purpose of preserving "the accountability to the people of public officials and institutions" (*PAWS II*, 125 Wn.2d at 251) can be achieved if the people are informed about what public police officers are doing three years after they have done it.

Sixth, RCW 9.73.090 specifically exempts police personnel from potential misdemeanor liability. Indeed, the section is even entitled “Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080,” where 9.73.080 is the ostensibly concerning language that any person who “wrongfully discloses any recording in violation in violation of 9.73.090(1)(c) is guilty of a gross misdemeanor.” (Emphasis added.) Essentially, the very “other statute” that the City purports its concern about “shall not apply to police...personnel” in 911 calls, interrogations at police stations and “sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles.” RCW 9.73.090. The City has ignored the harmony of the 9.73 statute such that police personnel cannot be prosecuted for “wrongful disclosure” in the performance of their official powers and duties.

Seventh, per *State v. Clark*, 129 Wn. 2d 211, 916 P.2d 384 (1996) “the Privacy Act, RCW 9.73, is designed to protect

private conversations from governmental intrusion.” See also *Department of Licensing v. Lewis*, 157 Wn.2d 446, 139 P.3d 1078 (2006), in-car video recordings are “not private conversations” and thus there is no applicability of RCW 9.73.090(1)(c) to the Public Records Act as an issue of privacy. The City’s repeated reference to 9.73 as the “Privacy Act” is not supported by any statutory self-reference under that name, and the Public Records Act has its own “Invasion of privacy” section which has been ignored by the City’s argument.⁵

Eighth, RCW 42.56.060 holds that “no public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if [they] acted in good faith in attempting to comply with the provisions of this chapter.”

⁵ RCW 42.56.050: “A person’s ‘right to privacy,’ ‘right of privacy,’ ‘privacy’ or ‘personal privacy,’ as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person and (2) is not of legitimate concern to the public.” Given no attempt to apply the in-car videos to the PRA’s own expressly exclusive definition of “privacy” applicable to PRA requests, the City has no business suggesting that RCW 9.73.090 involves a different or broader issue of “privacy.” If RCW 9.73.090 truly is an act protecting “privacy,” RCW 42.56.050 prevents it from superseding the PRA’s own privacy definition.

Thus, any records custodian who believes the release of any requested record actually complies with the PRA is immune from all civil or criminal liability. A records custodian's interpretation of the PRA in favor of open records is a complete defense to any action against the government or its officials.

Ninth, RCW 42.56.070 holds that "each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of ...this chapter, or other statute..." (Emphasis added.) Instead of specific exemptions, the City has offered general exemptions to all in-car videos without regard to whether litigation has arisen or could arise, and not specific exemptions such as those addressed by the Soter court's analysis of work-product or attorney-client privilege to specific requested documents. The City's blanket exemption to an entire category of documents regardless of pending litigation is not specific and tailored to each requested document.

Finally, RCW 9.73.090(1)(c) states that no sound or video recording made by a dash-cam shall be “made available to the public by a law enforcement agency.” The City has assumed that the phrase “made available to the public” covers the action of complying with the Public Records Act by giving a copy of a dash-cam video to any single records requester. Particularly when one considers the preposition “by” in the phrase “by a law enforcement agency,” this assumption does not prove warranted.

When a person makes a PRA request for a record, and that record is provided by a government agency, the agency has made the record available *to the PRA requester*. But by making the record available to the requester the government agency has *not* made the record “available to the public.”⁶ It takes a second act “by” someone else – “by” the records requester – before the record is “available to the public.” Of course the records

⁶ In yet another circumstance of adding words and interpreting exemptions broadly, the City treats “the public” as if it means “any member of the public except the subject or his or her representative.” This interpretation is supported by no case or statute.

requester, once the record is obtained, may take action to make the record “available to the public.” The requester may post the video on the internet, thus making it available to the whole world. She or he may copy it and send a copy of it to the media, at which point the media may post it on the internet, thus making it “available to the public.” Only in the most indirect sense can it be said that it was made available “by” the police agency. It was only truly made available to the public “by” the media organization. And the media organization was only able to make it “available to the public” because it was made available to it “by” the records requester. Therefore, if one interprets the “made available to the public *by*” clause narrowly, the act of disclosing a dash-cam video to a requester in response to a PRA request is not covered at all by RCW 9.73.090(1)(c).

The City would label such an argument sheer sophistry. Why interpret the “made available . . . by” clause narrowly? Because the case law and the Public Records Act itself both

state that all exemptions are to be construed narrowly. The Legislature could not have been clearer about this: “This chapter shall be liberally construed *and its exemptions narrowly construed.*” RCW 42.56.030 (emphasis added). *Livingston v. Cedeno*, 164 Wn.2d 46, 50, 186 P.3d 1055 (2008); *Hangartner v. Seattle*, 151 Wn.2d 439, 450, 90 P.3d 26 (2004); *Confederated Tribes v. Johnson*, 135 Wn.2d 734, 745-46, 958 P.2d 260 (1998).

a. The Legislative Purpose Behind The “Made Available” Clause.

Construing the “made available” clause in this manner makes sense because it promotes the purpose of statute in a manner which does *not* bring it into conflict with the Public Records Act, and rather allows both statutes to achieve their purposes. Demonstrating this point requires us first to answer the question: What is the legislative purpose that underlies the key sentence in RCW 9.73.090(1)(c), and why would the Legislature want to single out the *police* and prohibit them from

been involved in the investigation or litigation of a case, and their associates.

Comment [3] (emphasis added).

RPC 3.8(f) provides that prosecutors have “special responsibilities.” One of those responsibilities is to prevent police from making similar extrajudicial statements:

The prosecutor in a criminal case shall: . . .

(f) refrain from making extrajudicial statements that have a substantial likelihood of heightening public condemnation of the accused and *exercise reasonable care to prevent* investigators, *law enforcement personnel*, employees or other persons associated with the prosecutor in a criminal case *from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.*

RPC 3.8(f) (emphasis added). *See also* Comment [6].⁷

⁷ “Ordinarily the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.”

Similarly, the courts have held that trial judges have the power to protect a criminal defendant from the effects of prejudicial pretrial publicity by “proscribing public statements by prosecutors, attorneys, witnesses, court staff, *police* and the defendant . . .” *State v. Coe*, 101 Wn.2d 364, 384, 679 P.2ed 353 (1984)(emphasis added), citing *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966).⁸

There is little legislative history available which sheds light on the reason why State Senator Hargrove moved to insert the sentence prohibiting law enforcement from making dash-cam videos available to the public.⁹ But in light of the principles that lawyers and police should not make extrajudicial statements which can be expected to inflame an imminent jury pool, it seems logical to conclude that these principles were

⁸ “[T]he court should have made some effort to control . . . gossip to the press **by police officers**, witness, and counsel for both sides.”

⁹ The House and Senate Reports on the bill to amend RCW 9.73.090 do not say anything about why this sentence was added to the statute. See House Bill Report, HB 2903 (undated); House Bill Analysis, HB 2903 (undated); House Bill Report, SHB 2903 (As Passed Legislature); Senate Bill Report, SHB 2903 (February 25, 2000); Final Bill Report, SHB 2903. But it was Senator Hargrove who moved the amendment which inserted this sentence into Substitute House Bill 2903, and his motion to amend was passed on March 2, 2000.

what motivated Senator Hargrove to insert this sentence into the law.

The legislative purpose to be served by prohibiting “law enforcement” from making the videos “available to the public” is to protect the impartiality of the jury pool from which jurors will be drawn to decide these criminal and civil cases.

The City interprets this statute broadly to mean that the videos shall not be released to an unrelated requester until after at least three years have passed and there is no longer a risk that the SPD may be sued for wrongdoing that may have occurred, which the video evidence may show. However, the statute actually states “until final disposition of any criminal or civil litigation which arises.” (RCW 9.73.090) (emphasis added).

If the legislature wanted to prevent the release of the video until the risk of all criminal and civil claims have extinguished, it would have phrased the statute to read: “which arises or which may arise.” The fact that the legislature chose

to use the active term, “which arises” shows that it intended the videos not be released if there is active, pending criminal or civil litigation.

Under the plain language of the statute, and coupled with the PRA’s broad mandate for disclosure, the mere possibility of litigation somewhere, someday is not enough to prevent the release of the video. The City has never pointed to any such pending litigation but has treated the inquiry as irrelevant, when it is quite central to the exemption.

4. The City Still has not Shown Any Evidence that it has Met the Requirements of RCW 42.56.540.

RCW 42.56.540 allows a court to issue an injunction prohibiting the release of public records if the court finds “that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.”

After close examination RCW 42.56.540, it becomes apparent the City attempted to use this statute as a way to prevent Egan from ever filing his own suit against the City. The City may have expected Egan to withdraw his request or to counter-claim, making the issue of sanctions moot. A failure to timely or fully respond to City's voluminous motions would have meant a loss by default, and potential precedent against other requesters, to include the news media.

This is not a proper use of the statute. The statute was intended to provide a very limited avenue for the courts to prevent specific and very sensitive, damaging, and personal information from being made available to public, where the information is of no public interest whatsoever and is clearly and specifically exempt from disclosure.

B. Egan's Opening Brief Section

- 1. The Trial Court erred when it Reduced the Amount of the Award by Almost Half of what the City Conceded was a Reasonable Amount of Time.**

The reasonableness of attorney's fees is guided by the "lodestar" determination, whereby the court multiplies the number of hours worked by the attorney's reasonable hourly rates. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 597, 675 P.2d 193 (1983); *See also Mahler v. Szucs*, 135 Wn. 2d 398 434, 957 P. 2d 632 (1998). The "lodestar" figure "is the market value for the attorneys' services calculated by the hours reasonably expended in the litigation by the reasonable rate of compensation." *Perry v. Costco Wholesale Inc.*, 123 Wn. App. 783, 808, 98 P. 3d 1264 (2004). The burden of justifying any deviation from this established attorney time rests on the party proposing the deviation, and not on the Court. *See Bowers*, 100 Wn. 2d at 598.

Under the lodestar analysis, the first task for the Court is to assess the reasonable hourly rate for the work of Egan. Egan has described the professional credentials and qualifications of all counsel in this case and their current rates. CP 961-964. There is a presumption that an established billing rate is a

reasonable rate. *See Bowers*, 100 Wn. 2d at 597. (“Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate.”).

a. The number of hours expended by Egan were reasonable. The Court erred in determining that only 49.75 hours were reasonable.

The next step in the lodestar analysis is to determine the “reasonable number of hours” counsel expended in “securing a successful recovery for the client.” *Mahler*, 135 Wn. 2d at 434. Egan has provided detailed billing records demonstrating every task performed in the case and its duration. CP 965-982.

All fee entries were a direct result of the actions taken by the City in its unnecessary lawsuit and forcing Egan to engage in the litigation activities undertaken. The City’s lawsuit took time and energies from Egan’s thriving four-attorney firm, which substantially exceed the award by the Trial Court. The City’s lawsuit cost Egan personally through expenses for his staff and attorneys.

The City essentially conceded that the reasonable amount of hours would be at a minimum 100 hours. CP 992 at line 19. At a minimum the Trial Court should have awarded Egan \$29,500 as conceded by the City.

The Trial Court made findings that the City's suit was brought to gain an improper litigation advantage and to increase cost to Egan. CP 603 lines 21-22. The lawsuit had that effect, and cutting in half the City's proposed self-penalty does not serve the purposes of CR 11, and rewards the City for its action against a records requester with a "slap on the wrist" that is both less than what they expected and less than the true cost of disruption to Egan's successful practice that the suit caused.

b. There is No Basis to Discount Fees.

The City must justify any deviation from the lodestar amount. *Bowers*, 100 Wn. 2d at 598. ("The party requesting a deviation from the lodestar bears the burden of justifying it."). The City cannot justify any deviation.

c. Pro Se Attorney Fees are Appropriate.

In *Leen v. Demopolis*, 62 Wn. App. 473, 815 P. 2d 269 (1991), review denied, 118 Wn. 2d 1022 (1992) Division One considered whether an attorney appearing pro se could recover attorney fees in responding to an appeal. The *Leen* Court held that pro se attorneys could recover attorney fees where fees are otherwise justified because they must take time from their practices to prepare and appear as any other lawyer would. *Id.* at 487. Although *Leen* concerned appellate attorney fees, its reasoning is sound and we must extend the analysis to the present case to explain why the Trial Court fees awarded are warranted. Egan was sued by the City. The Trial Court found the lawsuit brought by the City “completely unnecessary” and at increase cost to Egan.

Egan has spent an incredible amount of time defending himself in the completely unnecessary lawsuit. His practice had been put on hold during those hours he was working on this

case. Some courts have awarded attorney fees to lawyers who have represented themselves when the award would further the policy of discouraging frivolous or harassing litigation. See *Christiansburg Garment Co., v. EEOC*, 434 U.S. 412, 420, 54 L.Ed 2d 648, 93 S. Ct. 694 (1978).

The City appears to have justified its lawsuit by identifying Egan as a lawyer, as opposed to a public civilian requester, which he was. The City was aware of Egan's status as a lawyer, and cannot be surprised that his hourly rate is commensurate with other lawyers of his years of experience and field.

The Trial Court ordered attorney's fees to be paid by the City. The Trial Court also made the findings that the City had violated CR 11 by trying to obtain a litigation advantage by suing Egan even though a similar lawsuit on the issues was being heard by Judge Rogers. The City cannot now argue that Egan's capacities as a lawyer somehow diminish his value over

what a hired lawyer would charge for the same legal defense of its unnecessary claim. The City cannot claim that its surprise legal action against Egan should have resulted in Egan hiring more efficient or less expensive representation at a lesser cost to the City, but as costs borne then by Egan personally until its action was recognized as “completely unnecessary.” Ironically, the City chose Egan as a defendant, lost the claim pursuant to Egan’s law firm’s arguments, and yet they pretend Egan’s success is of diminished value to that of other lawyers.

2. The Trial Court erred in not awarding Egan’s expenses for his associates’ time in defending the City’s completely unnecessary lawsuit.

Because of the City’s completely unnecessary lawsuit, taking time from the management of the law firm the City knew Egan ran, Egan had to employ the efforts of his associates to address all the pleadings the City submitted, some without invitation from the Trial Court. Specifically, after the Trial Court heard oral argument and before the written order of the Trial Court, the City submitted supplemental briefing which

also included new legal argument. CP 600. The Trial Court correctly disregarded the additional briefing submitted but before notice by the Court, the additional briefing resulted in the efforts of Egan's firm to yet again address another unnecessary pleading brought on by the City, costing Egan more time and money needlessly.

The Trial Court should have awarded fees for the work of Wilkinson and Bettinger, who were present at court hearings, identified themselves to the Trial Court, communicated with the City and where, in the absence of their assistance, their same hours would have been borne wholly by Egan personally at a greater hourly rate than those associates and at greater injury to Egan's practice.

Case law in Washington is scarce on the issue of pro se attorney fee awards but what is insightful can be found in a case in Montana that addressed this issue. "The better rule is that a party who appears for himself, and is himself an attorney, is entitled to be awarded the same costs as he would be entitled to

had he employed another....It can make no difference to the defeated party, who is by law bound to pay the costs of the attorney of the prevailing party, whether that attorney is a prevailing party himself or another attorney employed by him. He, like any other professional man, is paid for his time and services, and if he renders them in the management and trial of his own cause it may amount to as much pecuniary loss or damage to him as if he had paid another attorney for doing it.”
See Winer v. Jonal Corp., 169 Mont 247, 251, 545 P.2d 1095 (1975) *citing* 20 *Am. Jur. 2d, Costs* §78.

The mere fact that Egan did not file a Notice of Appearance as the Law Offices of James C. Egan but simply a Pro Se notice as a records requester should have no effect on the award of fees from the associates in his office. To have had his law firm associates individually file separate Notices of Appearance would be a distinction without a difference; the work performed in substantial briefing by his lawyers, which was digested by the City and relied upon by the Trial Court in

its findings, was identical regardless of how a notice of appearance was filed.

The City has never articulated surprise that Egan employed his firm's associates, and the City both communicated with and responded to briefing by those associates without question whether they represented Egan's interests. To now grant zero compensation for their time is to cheat them and Egan of his necessary reliance on them in limiting the damage to his own practice, and is contrary to the spirit of CR 11 sanctions imposed against the City. After all, a CR 11 violation allows the court to impose "an order to pay to the other party or parties the amount of the reasonable expenses occurred because of the filing of the pleading, motion, or legal memorandum, including [but not limited to] a reasonable attorney fee." (Emphasis added.) A grant of no fees whatsoever to associates whose documented contributions were obvious to the City and Trial Court is not reasonable and does not satisfy the reasonable expenses incurred by Egan because of the filing of the motion,

because each hour of associates' time spent on the Egan matter was an hour the associate could not bill towards another client paying that associate's hourly rate. Thus, in this circumstance, the attorney fees of the associates should at least be regarded as expenses to Egan personally if not awarded as attorney fees on equitable principles.

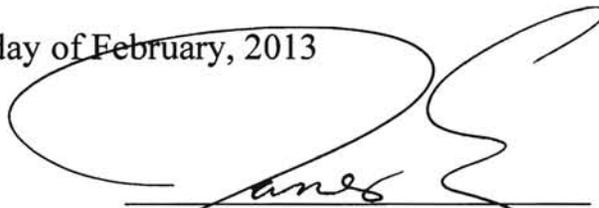
A denial of compensation for the reasonable expenses to Egan of his firm's obvious associates in this unnecessary action is arbitrary, capricious, and is an abuse of the Trial Court's discretion.

VII. CONCLUSION

The Trial Court's finding that the City violated CR 11 should be upheld. The case should be remanded with instructions to the Trial Court to enter an order recognizing that Egan has prevailed, that the amount to be awarded for the CR 11 violation be minimally \$29,500, and that associate attorney fees should be likewise compensated as they were clearly and

actively involved and were an undisputed part of Egan's expenses under CR 11. This Court should make an award of fees for Egan's successful appeal.

DATED this 22nd day of February, 2013

A handwritten signature in black ink, appearing to read "James C. Egan", is written over a horizontal line. The signature is stylized and somewhat cursive.

James C. Egan, Pro Se
The Law Offices of James C. Egan
605 First Ave. Suite 400
Seattle WA 98104
(206) 749-0333
(206) 749-5888 (fax)
james@eganattorney.com

APPENDIX A

RULE CR 11
SIGNING OF PLEADINGS, MOTIONS, AND LEGAL
MEMORANDA: SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially

insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

[Amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 15, 2002; September 1, 2005.]

APPENDIX B

JUN 28 2012

SUPERIOR COURT CLERK
SUNG KIM
DEPUTY

ORIGINAL

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

CITY OF SEATTLE, a Washington municipal
corporation,

Plaintiff,

v.

JAMES EGAN, an individual,

Defendant,

FISHER BROADCASTING-SEATTLE TV

LLC, dba KOMO 4,

Intervenor.

Case No. 12-2-00938-4 SEA

ORDER

Plaintiff City of Seattle ("City") brought this lawsuit for Declaratory Judgment and Preliminary Injunction against defendant James Egan, ostensibly to obtain a determination that RCW 9.73.090(1)(c) of the Washington Privacy Act is "an other" statute within the meaning of RCW 42.56.070(1) of the Public Records Act (PRA) and that the City properly denied Mr. Egan's public records request for copies of 36 in-car videos reviewed in connection with an SPD Office of Professional Accountability Investigation of four officers and requesting a preliminary injunction enjoining the City from duplicating and making in-car recordings available to the

Order 1

1 public any earlier than three years from the date of the events recorded. The parties agree that
2 Mr. Egan, an attorney who represents individuals who have sued police agencies for
3 misconduct, threatened to sue the City and seek PRA penalties if the City did not comply with
4 his public records requests.

5 Fisher Broadcasting-Seattle TV LLC d/b/a KOMO 4 ("KOMO") immediately intervened,
6 and pointed out that SPD in-car videos and "other statute" exemption under the PDA were
7 central issues in a pending lawsuit before King County Superior Court Judge Jim Rogers,
8 Fischer Broadcasting-Seattle TV dba KOMO 4 v. City of Seattle and the Seattle Police
9 Department, King County No. 11-2-31920-2 SEA. The parties there had conducted discovery
10 and were ready to file and argue CR 56 summary judgment motions. KOMO protested that this
11 lawsuit was an "end run" around the case in Judge Rogers' court, in an attempt to avoid facts
12 that might reflect poorly on the City on appeal (some of the videos were apparently not
13 preserved, although the parties vigorously disputed how and why that occurred). KOMO also
14 objected to what it perceived to be the City's attempt to get "two bites at the apple".

15 Mr. Egan and counsel for the City and KOMO appeared before this Court on February
16 28, 2012 for a preliminary injunction hearing. Both Mr. Egan and KOMO argued that the City
17 was forum shopping. By requesting a preliminary injunction, the City was able to obtain an
18 expedited hearing that would be heard in this Court prior to the summary judgment hearing
19 scheduled with Judge Rogers. KOMO and Mr. Egan moved to dismiss this lawsuit or continue it
20 until after Judge Rogers ruled in his case. Mr. Egan also moved to strike the City's claim
21 pursuant to RCW 4.24.525, the "Anti-SLAPP" statute.

22 This Court agreed to continue the preliminary injunction hearing and the motions to
23 dismiss until after Judge Rogers ruled, finding the current lawsuit to be procedurally improper
24 and potentially unnecessary.
25

1 On April 10, 2012, Judge Rogers issued an Order on Cross-Motions for Summary
2 Judgment, resolving his case at the trial level (order attached as Exhibit A). KOMO sought
3 discretionary review to the Washington State Supreme Court. The Supreme Court has not yet
4 accepted review. This Court received further briefing and supplemental briefing and heard oral
5 argument from Mr. Egan and all counsel on June 1, 2012. The Court now enters the following
6 order dismissing this action and awarding fees and costs to Mr. Egan in an amount to be
7 determined.

8 The biggest problem with this lawsuit is that it was completely unnecessary. The City
9 had no reason to sue Mr. Egan. The KOMO litigation was already filed, discovery had been
10 conducted and the City was going to get a judicial determination from Judge Rogers whether
11 the Washington Law on Privacy was "an other statute" under the PRA.

12 The present lawsuit was filed later, with later case scheduling deadlines and dispositive
13 motion cutoff dates. Normally, there would be no reason to think that a party could get a quicker
14 resolution in the later filed case. The only reason the City was able to obtain an expedited
15 hearing from this Court was because it requested a preliminary injunction, not because any
16 true emergency existed. And no matter what the decision at the trial level, it was obvious that
17 the losing party would seek appellate review. Even if this Court had been prepared to rule prior
18 to Judge Rogers, its decision would not have been final or binding any way. The City was no
19 closer to a final resolution of its potential liability than if it had not sued Mr. Egan and had just
20 litigated all issues in front of Judge Rogers. And Mr. Egan would have been spared substantial
21 time and money.

22 This Court cannot think of any reason to bring this lawsuit other than to obtain improper
23 litigation advantage and to increase cost to Mr. Egan in violation of CR 11, and the Court would
24 so find. There was simply no need to sue Mr. Egan. The City was going to have a judicial
25 determination of its policy from Judge Rogers. Whoever lost in front of Judge Rogers could
seek appellate review. That appellate review would have been orderly and logical, unlike our

Order 3

1 current procedural posture. This court cannot imagine any scenario where the Washington
2 Supreme Court would encourage the filing of multiple lawsuits with the parties picking and
3 choosing which to pursue depending on the judicial assignment.

4 The second problem with the City's current lawsuit is that fails to resolve the main legal
5 issue and it was foreseeable before it was filed that it would fail to do so. Here,
6 the City sought a preliminary injunction against Mr. Egan under RCW 42.56.540, which requires
7 a three part showing: (1) that a specific PRA exemption exists; (2) that non-disclosure would be
8 in the public interest; and (3) that disclosure would substantially and irreparably damage a
9 person or vital governmental interest. Since all three parts need to be established for the City to
10 prevail, the lawsuit might be dismissed as a procedural matter without ever reaching the real
11 dispute between Mr. Egan and the City: whether RCW 9.73.909(1) of the Washington Privacy
12 Act is "an other" statute within the meaning of the PRA. While the City has arguably satisfied
13 parts 1 and 3 given Judge Rogers' order, there has been no evidence presented here on part 2.
14 The City has presented no evidence that non-disclosure of these particular videos would be in
15 the public interest, yet it was the City's burden to do so. While the City outlines general and
16 non-specific concerns about disclosure, it has failed to address (much less prove) why non-
17 disclosure of the specific videos in question would be in the public interest. We thus have a
18 *situation where this Court must dismiss this lawsuit on procedural grounds without resolving the*
19 *"other statute" issue independent of Judge Rogers' order. All of this simply highlights why this*
20 *lawsuit was unnecessary.*

21 Mr. Egan's motion to strike the City's claim pursuant to RCW 4.24.525 is denied. The Court
22 declines to accept Mr Egan's expansive argument that any time a requestor threatens to sue for
23 failure to disclose documents that a preliminary injunction cannot be brought because of the
24 anti-SLAPP (Strategic Lawsuits Against Public Participation) statute. The preliminary injunction
25 section of RCW 42.56.520 is, after all, part of the Public Records Act itself, and it appears the
drafters of the PRA sought to balance important and competing public policy considerations, yet

Order 4

1 defendant's position is that once the records requestor threatens to sue, none of these policy
2 considerations matter, even if the records are clearly exempt. While Mr. Egan cites several
3 California cases construing California's anti-SLAPP statute, those cases are distinguishable, as
4 those cases did not involve a specific litigation procedure outlined in its public records act like
5 our PRA. More importantly, however, the City has persuasively argued that innocent 3rd party
6 citizens with individual privacy rights often intervene pursuant to RCW 42.56.520, and Mr.
7 Egan's argument, taken to its logical conclusion, would have significant unintended
8 consequences on these 3rd parties.

9 Lastly, the Court cannot find that Mr. Egan has carried his initial burden under RCW
10 4.24.5425(4)(b) by a preponderance of the evidence that the City's claim (which clearly pre-
11 existed Mr. Egan's records request and threat to sue) is based on an action involving public
12 participation and petition. All parties have insisted that the Court must decide this issue as a
13 matter of law, although this Court has some question about its ability to do so on this record.
14 Given these constraints, the Court concludes that the phrase "based on an action involving
15 public participation and petition" has to mean something more than based on the public records
16 request itself, otherwise RCW 42.56.520 would be rendered a nullity. Mr. Egan has not
17 provided any evidence supporting his position other than the text of the statute itself, and has
18 therefore failed to carry his initial burden. This lawsuit is improper not because it was a
19 SLAPP, but because it was unnecessary and was filed to obtain litigation advantage. This case
20 is dismissed not because it violated RCW 4.24.525, but because the City failed to carry its
21 burden under RCW 42.56.520

22 Mr. Egan is awarded his fees and costs consistent with Washington law in an amount to
23 be determined after submission of a detailed fee declaration attached to a motion to determine
24 the same. The City will have an opportunity to respond and Mr. Egan may file a reply pursuant
25 to LR 7. The parties may brief the issue of whether a pro se party who is also an attorney may
recover his full fees and rate in a case like this and may submit proposed Findings of Fact and

Order 5

1 Conclusions of Law. To the extent they are recoverable, the costs and fees are limited to the
2 issues and activity in this lawsuit, and Mr. Egan may not recover in this lawsuit for fees or costs
3 relating to the underlying request for the videos, his pre-lawsuit dispute and/or negotiation with
4 the City over his records request, any activity in the separate KOMO litigation and/or any PRA
5 penalties Nothing in this order shall preclude Mr. Egan from recovering PRA penalties or other
6 relief from the City should the Washington Supreme Court ultimately decide the underlying
7 records request issue in his favor
8
9
10

11 Dated this 26th day of June, 2012.
12
13



14 Judge Dean S. Lum
15 King County Superior Court
16
17
18
19
20
21
22
23
24
25

APPENDIX C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED
OCT 3 1 2012
SUPERIOR COURT CLERK
SEATTLE KING
DEPUTY

ORIGINAL

IT IS ORDERED that moving party is required to provide a copy of this order to all parties who have appeared in the case.

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

CITY OF SEATTLE,)
Plaintiff,) Case No. 12-2-00938-4 SEA
v.)
JAMES EGAN,) FINDINGS OF FACT, CONCLUSIONS OF
Defendant.) LAW AND ORDER

Following the Court's Orders dated June 20, June 26, July 20 and October 5, 2012, the Court hereby enters the following supplemental Findings of Fact, Conclusions of Law and Order.

I. FINDINGS OF FACT

1. The Court incorporates by reference its prior Orders, as well as its oral Findings of Fact and Conclusions of Law.
2. On July 6, 2012 Intervenor KOMO TV moved for reconsideration of the Court's June 26, 2012 order. Filed with that motion was an attorney fee declaration from members of the Graham & Dunn firm.

- 1 3. Defendant James Egan filed a fee declaration (with exhibits) in this case on October 12,
2 2012.
- 3 4. Plaintiff has represented in briefing on several occasions that the Court imposed CR 11
4 sanctions and attorney's fees "*sua sponte*". This is only partially correct. Both Mr. Egan
5 and KOMO TV requested attorney's fees and sanctions against the City from day one of
6 their respective cases, albeit under different theories. Each alleged misconduct by the
7 City, although neither asserted a CR 11 theory until that subject was discussed at oral
8 argument.

9
10 II. CONCLUSIONS OF LAW

- 11 1. The Court has jurisdiction to hear this matter and to issue this order.
- 12 2. The Court incorporates its earlier oral Findings of Fact, and Conclusions of Law and
13 written Orders by reference.
- 14 3. The Court has not and cannot award attorney's fees under RCW 4.84.185. This lawsuit
15 was not frivolous *in its entirety*, and plaintiff prevailed on some of its arguments. The
16 Court has never held that the City of Seattle can never file a declaratory judgment action
17 or move for preliminary injunction under the PDA: indeed, the statute and case law
18 specifically allow for such a procedure, and such a procedure is fine in the vast majority
19 of cases. The problem here is that plaintiff not only had a pending lawsuit against KOMO
20 TV (which would resolve the central issue in this case at no cost to Mr. Egan), but
21 dispositive motion briefing had been filed and oral argument had been scheduled before
22 another judge. (*Fischer Broadcasting-Seattle TV dba KOMO 4 v. City of Seattle and the*
23 *Seattle Police Department*, King County No. 11-2-31920-2 SEA)Mr. Egan and the City
24 had a PDA dispute over dash cam videos in question, but that dispute was long standing,
25 and was pending during the KOMO TV litigation. Mr. Egan and KOMO TV argued that

1 plaintiff improperly filed this lawsuit to avoid the "bad facts" developed during discovery
2 in that other case, to "get a second bite at the apple" from a different judge and/or to
3 forum shop. This Court agreed, finding that no true emergency existed, finding that the
4 City had created a procedural mess in filing the two lawsuits, and finding that this lawsuit
5 was filed for improper purpose and needlessly increased the cost of litigation. Thus, the
6 only basis for sanctions in this case is CR 11.

- 7 4. Defendant did not prevail on his anti-SLAPP arguments under RCW 4.24.525, and
8 attorney's fees and costs are not and cannot be awarded under that statute. While
9 defendant asserts that he redacted them from his fee declaration, several entries remain.
10 The Court notes that the majority of Mr. Egan's briefing (and presumably his legal
11 research) relates to this unsuccessful legal argument. Defendant asserts that he and his
12 associate attorneys spent 119 hours advancing his anti-SLAPP arguments, while spending
13 219.85 hours (i.e., twice as much time) on the Injunction portion of this lawsuit. The
14 amounts claimed are not consistent with the briefing and oral argument advanced by
15 defendant, as the vast majority of time was spent addressing the anti-SLAPP statute, and
16 are out of proportion to that claimed by Intervenor's attorneys.
- 17 5. This Court did not reach or resolve the underlying PDA dispute between the City and
18 Egan, and has specifically held in prior orders, that the attorneys fee provision in the
19 Public Disclosure Act (RCW 42.56.550(4)) is not the basis for the award in this case. To
20 the extent that any fees are awarded to Mr. Egan under the PDA, those must await a
21 separate case which resolves the underlying PDA issue.
- 22 6. Defendant's hourly rate of \$295 is reasonable in this legal community, and is indeed less
23 than the hourly rates stated by other attorneys filing fee declarations in this case.
- 24 7. Defendant's "block billing" has made it very difficult for the Court to determine the
25 reasonableness and necessity of the attorney's fees and costs requested in this case. To

1 the extent that the Court can discern the reasonableness of the bills at all, plaintiff's
2 objections specified on Exhibit A to the Declaration of Mary Perry (dated October 25,
3 2012) are well-taken. The Court attaches and incorporates by reference the objections
4 referenced on Exhibit A unless crossed out, and finds that certain billing entries should be
5 adjusted downwards for the reasons stated by Ms. Perry, or in the amount handwritten
6 and circled by the Court. The approved amount for each entry is circled. The Court finds
7 that defendant James Egan's reasonable and necessary fees were \$14,676.25 (49.75 hours
8 x \$295 per hour). The requested fees of \$64,855.75 or \$83,383.75 are unreasonable.

9 8. At oral argument and in briefing, Intervenor KOMO TV (represented by the Graham &
10 Dunn firm) took the lead role, and defendant benefited from those efforts. While the
11 Court could not award attorney's fees to an intervenor, it is important to note that the
12 Graham & Dunn attorneys requested a total of \$19,550. The Graham & Dunn request
13 included the services of Judith Endejan, a preeminent PDA attorney who had an hourly
14 rate of \$350-\$375, as well as several associate lawyers.

15 9. As a *pro se* litigant, defendant may not recover for work done by associate attorneys Jay
16 Wilkinson and Dawn Bettinger. They are not parties. Moreover, defendant may not
17 recover for time spent speaking to or conferring with counsel, including his associates,
18 *amicus* and the Graham & Dunn attorneys. These amounts must be subtracted from
19 defendant's request, but the "block billing" entries and redactions make this very
20 difficult. The Court has made adjustments on Exhibit A accordingly.

21 10. A substantial portion of the claimed work was unproductive and unreasonable, and the
22 Court has made appropriate adjustments on Exhibit A. For example, defendant spent
23 over 9 hours preparing and rehearsing a Power Point for a hearing that was limited by
24 court rule to 20 minutes per side. (of that 20 minutes, defendant was to allot a portion of
25

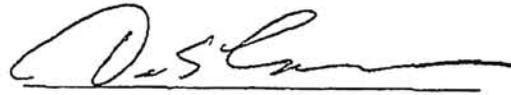
1 the time to KOMO 4, leaving even less time for a Power Point). This is in addition over
2 45 hours of legal research, file review and conferences billed prior to the first hearing.

3 11. Defendant may not recover in this proceeding for his underlying PDA dispute with
4 plaintiff.

5
6
7 III. ORDER

- 8 1. Plaintiff's lawsuit is dismissed with prejudice.
9 2. Defendant's motion under RCW 42.56.540 is denied.
10 3. Defendant is awarded his fees in the amount of \$14,676.25

11
12 Dated this 30th day of October, 2012.

13
14 

15 Judge Dean S. Lum
16 King County Superior Court

APPENDIX D

§ 9.73.080. Penalties.

Washington Statutes

Title 9. Crimes and punishments

Chapter 9.73. Privacy, violating right of

Current through 2012 Second Special Session

§ 9.73.080. Penalties

- (1) Except as otherwise provided in this chapter, any person who violates RCW 9.73.030 is guilty of a gross misdemeanor.

- (2) Any person who knowingly alters, erases, or wrongfully discloses any recording in violation of RCW 9.73.090(1)(c) is guilty of a gross misdemeanor.

Cite as RCW 9.73.080

History. 2000 c 195 § 3; 1989 c 271 § 209; 1967 ex.s. c 93 § 6.

Note:

Intent -- 2000 c 195: See note following RCW 9.73.090.

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Severability -- 1967 ex.s. c 93: See note following RCW 9.73.030.

APPENDIX E

§ 9.73.090. Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080 - Standards - Court authorizations - Admissibility.

Washington Statutes

Title 9. Crimes and punishments

Chapter 9.73. Privacy, violating right of

Current through 2012 Second Special Session

§ 9.73.090. Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080 - Standards - Court authorizations - Admissibility

- (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:
 - (a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;
 - (b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:
 - (i) The arrested person shall be informed that such recording is being made and the statement so informing him or her shall be included in the recording;
 - (ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;
 - (iii) At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording;
 - (iv) The recordings shall only be used for valid police or court activities;
 - (c) Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device that makes a recording pursuant to this subsection (1)(c) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device

may be intentionally turned off by the law enforcement officer during the recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode.

No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video.

- (2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter. Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

- (3) Communications or conversations authorized to be intercepted, recorded, or

disclosed by this section shall not be inadmissible under RCW 9.73.050.

- (4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.
- (5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization. Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days.

Cite as RCW 9.73.090

History. Amended by 2011 c 336, §325, eff. 7/22/2011.

2006 c 38 § 1; 2000 c 195 § 2; 1989 c 271 § 205; 1986 c 38 § 2; 1977 ex.s. c 363 § 3; 1970 ex.s. c 48 § 1.

Note:

Intent -- 2000 c 195: "The legislature intends, by the enactment of this act, to provide a very limited exception to the restrictions on disclosure of intercepted communications." [2000 c 195 § 1.]

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Severability -- 1970 ex.s. c 48: "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional." [1970 ex.s. c 48 § 3.]

NO. 69420-1-I

IN THE COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION ONE

JAMES C. EGAN, *Appellant*,

v.

CITY OF SEATTLE, *Respondent*.

CERTIFICATE OF SERVICE

JAMES C. EGAN
Pro Se Appellant

The Law Offices of James Egan
605 First Ave Suite 400
Seattle, WA 98104
(206) 749-0333
(206) 749-5888
james@eganattorney.com

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 FEB 22 PM 4: 53

Alyssa Nava states and declares as follows:

1. I am over the age of 18, am competent to testify in this matter, am a Legal Assistant at the Law Offices of James C. Egan, and make this declaration based on my personal knowledge and belief.

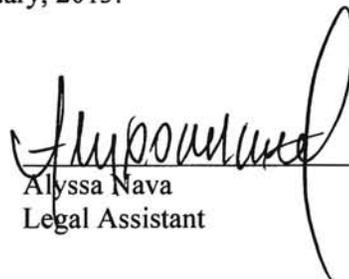
2. On February 22, 2013, I delivered a copy of Consolidated Brief, Response and Opening to:

Mary F. Perry
Assistant City Attorney
Seattle City Attorney's Office
600 Fourth Avenue, 4th Floor,
Seattle, WA 98124-4769

Washington State Court of Appeals Division 1
600 University St
One Union Square
Seattle, WA 98101-1176

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

SIGNED in Seattle, Washington, this 22nd day of February, 2013.


Alyssa Nava
Legal Assistant