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THE HONORABLE J. KATHLEEN LEARNED

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

ARMEN YOUSOUFIAN,)	
)	
Plaintiff)	NO. 00-2-09581-3 SEA
)	
vs.)	PLAINTIFF’S TRIAL
)	MEMORANDUM
THE OFFICE OF RON SIMS, KING)	
COUNTY EXECUTIVE; a subdivision of)	
KING COUNTY, a municipal corporation;)	
the KING COUNTY DEPARTMENT OF)	
FINANCE, a subdivision of KING COUNTY,)	
a municipal corporation; and the KING)	
COUNTY DEPARTMENT OF STADIUM)	
ADMINISTRATION, a subdivision of)	
KING COUNTY, a municipal corporation,)	
)	
Defendants.)	
)	

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FACTS

This case began with a concerned citizen’s request to King County for access to public records. On May 30, 1997, Mr. Armen Yousoufian faxed and mailed a records request to the Office of the Executive of King County. Specifically Mr. Yousoufian wanted to review all public records under the county’s control having to do sports stadiums, including those records pertaining to “how and why and by whom” sports stadium studies were ordered. (“Declaration of Plaintiff Armen Yousoufian: Dates on which Documents Were Finally Produced,” See also plaintiff’s ER 904 notebook at tab 171 (hereinafter ER-171). Instead of producing the requested non-exempt documents within five days, as required by statutory and decisional law, (e.g. RCW 42.17.260(1)), the defendants instead delayed, procrastinated, stonewalled, temporized and otherwise evaded Mr. Yousoufian’s requests. Indeed, over four years has passed and the defendants still have not disgorged all of the requested records. (“Declaration of Plaintiff Armen Yousoufian: Documents Not Yet Produced”)

The timing of Mr. Yousoufian’s request was important: On June 17, 1997, the public was to vote on Referendum 48, which would provide for construction and financing of new stadium facilities for the Seattle Seahawks, a professional football team now owned by Paul Allen’s Football Northwest. (See July 10, 1996 memo attached to Joly’s affidavit, ER

1 280) In the days and weeks leading to the election, there was much heated debate on the
2 issue of public funding of sports stadiums. Indeed:

3 On May 2, 1997, prior to the June 17 date set for the special election,
4 [Jordan] Brower filed a complaint in Thurston County Superior Court
5 against the State seeking an injunction to prevent the election . . . on
6 numerous grounds. On May 21, 1997, Football Northwest moved to
7 intervene. All parties stipulated to an order permitting intervention, which
8 was entered May 27, 1997. On June 9, 1997, the superior court entered an
9 order staying all proceedings until after the June 17, 1997 special election.
10 Referendum 48 was passed by a margin of 51.1% with a voter turnout of
11 51%.

12 *Brower v. State*, 137 Wn.2d 44, 51-52, (1998). As the court went on to write:

13 There is no question that this case is unusual because a private entity funded
14 a vote on a matter from which, if the voters approved, the private entity
15 stood to benefit.

16 *Id.* at 63. The degree to which private gain would overcome public trust potentially was
17 locked up in the records Mr. Yousoufian sought. The unanswerable question now is
18 whether the records Mr. Yousoufian finally dislodged from the county – if made public –
19 would have tipped the scales against passage of the Referendum, or would have created
20 embarrassment for public officials if disclosed after the election while the issues were still
21 very much in the public’s mind.

22 I. LIBERAL PURPOSE OF PUBLIC DISCLOSURE LAW

23 There are numerous cases, some involving King County, in which the court has
24 reaffirmed the language of the statute mandating a liberal construction of the law in order
25 to promote broad public disclosure. The people of this state, the state legislature and our
26 appellate courts have emphatically told all public agencies, including King County, that a
Public Disclosure Act (PDA) request is not to be taken lightly. The purposes of the Act

1 are deemed fundamental to our democracy. Case after case, and the language of the
2 statute itself, imposes a clear warning to King County to comply with these requests so
3 that litigation is not necessary so that the Courts do not have to be burdened with these
4 types of cases.

5
6 The Public Disclosure Act itself contains strongly worded mandates to all public
7 agencies, and to the courts interpreting case, to utilize liberal construction in the
8 implementation and enforcement of the PDA. The law repeats this injunction to the
9 courts and all public agencies five separate times. RCW 42.17.010 is entitled
10 “Declaration of Policy.” It states, in relevant part,

11
12 It is hereby declared by the sovereign people to be the public policy of the
13 State of Washington:

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

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

21 The provisions of this chapter shall be liberally construed to promote...full
22 access to public records so as to assure continuing public confidence of
23 fairness of elections and governmental processes, and so as to assure that
24 the public interest will be fully protected.

25 RCW 42.17.340 is entitled “Judicial Review of Agency Actions.” It repeats the
26 directive to the courts to keep in mind the purposes of the public disclosure law and states in
subparagraph three:

1 Judicial review of all agency actions taken or challenged under RCW
2 42.17.250 through 42.17.320 shall be de novo. Courts shall take into
3 account the policy of this chapter that free and open examination of public
4 records is in the public interest, even though such examination may cause
5 inconvenience or embarrassment to public officials or others...

6 If any stronger language can be found then that contained in RCW 42.17.251, the
7 undersigned counsel could not find it. In a section labeled "Construction" the law
8 provides:

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

16 The above language contained in RCW 42.17.251, it is more than interesting to note,
17 was added by the legislature in 1992 and was obviously meant to be an exclamation mark to
18 every public agency that the PDA was meant to be taken seriously.

19 It should not be forgotten that the law was originally enacted in 1972 over the
20 objections of reluctant government agencies and had to be passed by an Initiative from
21 the people themselves and was approved on November 7, 1972. See notes following
22 RCW 42.17.900, et. seq.

23 The Initiative itself went so far as to include a provision saying that if the Public
24 Disclosure Act was in conflict with any other laws, the liberal purpose of the Act will
25 govern. RCW 42.17.920 provides:

26 The provisions of this act are to be liberally construed to effectuate the
policies and purposes of this act. In the event of conflict between the

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

3 The importance of the “superceding” statute above was judicially reaffirmed in
4 *PAWS v. U.W.* 125 Wn.2d 243, 262 (1994).

5 When limiting flaws became apparent various amendments were passed in 1976.
6 Again the legislature saw fit to clarify the purposes of the amendments in language
7 contained in RCW 42.17.945:

8 The provisions of this 1976 amendatory act are intended to be remedial
9 and shall be liberally construed, and nothing in this 1976 amendatory act
10 shall be construed to limit the power of the commission under any other
11 provision of chapter 42.17 RCW.

12 For example, in *Spokane Research v. City of Spokane*, 99 Wn.App. 452 (2000) the
13 mandate was once again reaffirmed as follows:

14 RCW 42.17 requires state and local governments to disclose any public
15 record upon request, unless the record falls within specified exemptions.
16 This law “is a strongly-worded mandate for broad disclosure of public
17 records.” *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246
18 (1978). Its disclosure provisions are liberally construed, and its
19 exemptions are narrowly construed. RCW 42.17-.010(11), .251, .920. By
20 statute, courts interpreting RCW 42.17 are directed “that free and open
21 examination of public records is in the public interest, even though such
22 examination may cause inconvenience or embarrassment to public
23 officials or others.” RCW 42.17.340(3). Consequently, government bears
24 the burden of proving that refusing to disclose “is in accordance with a
25 statute that exempts or prohibits disclosure[.]” RCW 42.17.340(1). See
26 also *Cowles Publishing Company v. Spokane Police* 139 Wn.2d 472
(1999).

See also *O’Connor v. DSHS*, 143 Wn.2d 895 (June 21, 2001).

1 One of the more significant cases is *Amren v. City of Kalama*, 131 Wn.2d 25
2 (1997). In discussing the public policy behind the liberal interpretation rule the Court
3 held (at 30-31):

4 Initiative 276 was passed by Washington State voters in 1972. The act,
5 which is known as the public disclosure act (the Act) became effective
6 January 1, 1973. See Laws of 1973, ch.1; RCW 42.17. The Act was
7 designed to provide open access to governmental activities. RCW
8 42.17.010. The Act reflects the belief that the sound governance of a free
9 society demands that the public have full access to information concerning
10 the workings of the government. The purpose of the Act is to ensure the
11 sovereignty of the people and the accountability of the governmental
12 agencies that serve them. RCW 42.17.251.

13 This court has found that the Act is a “strongly worded mandate
14 for broad disclosure of public records.” *Progressive Animal Welfare
15 Soc’y v. University of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994)
16 (PAWS) (quoting *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d
17 246 (1978)); *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30,
18 33, 769 P.2d 283 (1989). Thus, it is to be liberally construed to promote
19 full access to public records, and its exemptions are to be narrowly
20 construed. PAWS, 125 Wn.2d at 251; RCW 42.17.251

21 The Act requires all state and local agencies to disclose any public
22 record upon request, unless the record falls into the specific exemptions
23 listed in [the statute]...

24 The case law is replete with public agencies attempting to thwart (or not take
25 seriously) the clear mandate of the statute and the above language which is quoted in nearly
26 every one of the PDA cases. An argument made by the resisting public agencies, such as
King County in this case, is that the “liberal construction” rule only applies to the
substantive portions of the Act, i.e., requiring the actual production of documents.
However, this evasion has been soundly repudiated. In *Telford v. Board of Commisioners*,
95 Wn.App. 149, rev.den., 138 Wn.2d 1015 (1999) the issue was whether a quasi
government agency was an “agency” and therefore subject to the PDA. The Court went

1 imminent on the football stadium following soon after the voters of the state had turned
2 down a baseball stadium. To allow the County these substantial delays after the issue
3 died down and forced the necessity of taking up court time by filing a lawsuit to get
4 documents legitimately within a request, allows the purpose of the statute to at least be
5 partially thwarted by municipal delays in producing documents. Documents are not only
6 required to be produced but are required to be produced promptly.

8 The statute and case authority explicitly mandates that, except in the rarest of
9 circumstances, no citizen can be asked the purpose for his request for public records. The
10 public interest requirement is satisfied by the very fact that a citizen is requesting the
11 documents. It is forbidden, in most circumstances, to ask the purpose. See RCW
12 42.17.270. Even this fundamental aspect of the law was not understood by the public
13 employees involved in this case. The testimony of Susan Clawson on this point is
14 instructive. See her deposition pages 82-84.

16 III. KING COUNTY'S FAILURE TO EFFECTIVELY IMPLEMENT REQUIREMENT TO
17 ADOPT AND ENFORCE REASONABLE RULES AND REGULATIONS FOR PDA
18 REQUESTS.

19 The evidence in this case is that at every level King County effectively failed to
20 implement any reasonable rules and regulations to make sure that the public did in fact
21 have access to public records. There are various parts of the PDA which apply, none of
22 which did King County implement successfully. For example, Mr. Steve Woo, the
23 person primarily responsible for originally responding to Mr. Yousoufian's request, was
24 in the dark almost completely about his responsibilities to search for and locate and
25 produce all of the records responsive to Mr. Yousoufian's request. He testified
26

1 repeatedly that he did not have any training and knew only vaguest details about the
2 requirements of the Act and was not aware of any handbook or manual or any
3 implementation by King County of the requirements of the PDA.

4
5 Even though he was assigned to handle PDA requests for his division of county
6 government, he had no formal training and he did not know of manuals, there was no
7 coordination, there was no real understanding of his duties and knew nothing of the law
8 or county policy. See his deposition pages 13, 15, 24-29, 36, 42, 56, 74, 76-77, 88-89
9 and 165. Susan Clawson, Mr. Woo's boss at the relevant times, had similar lack of
10 knowledge and training about handling of PDA requests. See her deposition pages 8, 11,
11 13, 20, 77, 104 and 112-118. Pam Cole is no better position. See her deposition pages 8-
12 10, 14, 20-23, 35-37, 96-97, 107-111 and 151. Pat Steel who was the budget director at
13 the time of plaintiff's PDA request and is now deputy chief of staff, did not have much
14 better understanding at the time of her deposition. See her deposition pages 31-32, 53
15 and 98.

16
17 Mr. Woo was not aware that King County had adopted, by ordinance, all of the
18 provisions of the PDA. See King County Ordinance § 2.98.010 et seq. (copy attached as
19 appendix 1). He thought that all he had to produce was one particular study and ignore the
20 contents of Mr. Yousoufian's original request and substantially ignored all of the
21 subsequent pleas from Mr. Yousoufian and his attorney, Paul Fenton, for particular
22 documents. Without adopting and enforcing reasonable rules and training, the PDA
23 request act is essentially rendered meaningless for all but the simplest of requests. The
24 statute, RCW 42.17.290 requires King County to do what they did not do:
25
26

1 Agencies shall adopt and enforce reasonable rules and regulations, and the
2 office of the secretary of the senate and the office of the chief clerk of the
3 house of representatives shall adopt reasonable procedures allowing for
4 the time, resource, and personnel constraints associated with legislative
5 sessions, consonant with the intent of this chapter to provide full public
6 access to public records, to protect public records from damages or
7 disorganization...Such rules and regulations shall provide for the fullest
8 assistance to inquirers and the most timely possible action on requests for
9 information.

10 Where in the record did King County “enforce reasonable rules and regulations?”

11 King County enacted its ordinance to implement the Public Disclosure Act in
12 1974. It became codified in the King County code section 2.98.010 et seq. The
13 executive’s department has not demonstrated any compliance whatsoever even with its
14 own ordinances. Subsection .010 states the intent of the ordinance as follows:

15 Within King County government, the rule making process shall consist of
16 the establishment of formal procedures through which ordinances adopted
17 by the King County council and enacted by the county executive are
18 translated into sets of specific requirements to be carried out and enforced
19 by county agencies. It is the intent of the King County council to adopt a
20 policy with regard to rulemaking by agencies of county government which
21 will be consistent with the spirit and law of the “Public Disclosure Act”
22 (RCW 42.17) specifically those sections pertaining to public records. It is
23 the further intent of the council that rules adopted by county government
24 shall be consistent with the “Open Public Meetings Act” (RCW 42.30).
25 Finally, it is the intent of the council that rules shall be adopted by county
26 government in such a manner as to promote efficiency of government and
also afford citizens fair notice and due process. (Ord. 6531 § 1, 1983;
Ord. 2165 § 1, 1974).

There is no compliance with subsection .030 of the King County code which
required in subsection A that each agency adopt rules to promote PDA requests and that
they file the rules with the clerk of the King County council. There is no compliance
with subsection B which mandates that each agency file with the clerk of the King

1 County council and prominently display and make available for inspection at each
2 agency's office guidelines for the public making public PDA requests and setting forth
3 the rules of procedure.

4 There is no demonstration from the County that the Executive's office or any of
5 its sub-agencies complied with subsection .040 of its own ordinance requiring the
6 maintenance of an index of important county records including factual reports and studies
7 and consultant reports. Had the County complied with this simple requirement they
8 could have produced almost instantly all of the studies themselves which Mr. Yousoufian
9 wanted from the beginning.
10

11 The Act as well requires agencies (unless they partially exempt themselves, which
12 King County did not do) to maintain indexes of certain important documents so that they
13 can be found easily when requested. This statute is RCW 42.17.260. Subsection 3
14 mandates an index of:
15

- 16 (e) Factual staff reports and studies, factual consultant's reports and studies,
17 scientific reports and studies, and any other factual information derived
18 from tests, studies, reports, or surveys, whether conducted by public
19 employees or others; and
20 (f) Correspondence, and materials referred to therein, by and with the
21 agency relating to any regulatory, supervisory, or enforcement
22 responsibilities of the agency, whereby the agency determines, or opines
23 upon, or is asked to determine or opine upon, the rights of the state, the
24 public, a subdivision of state government, or of any private party.
25

26 Why is it that we are in 2001, almost four years after Mr. Yousoufian made his
request that we are still having problems identifying consultant reports and staff reports
relating to the Kingdome and the two stadiums more recently constructed? See the
declaration of plaintiff regarding documents not yet produced.

1 King County has now in essence, for the purposes of this trial, admitted that they
2 had no effective methodology to respond to broad PDA requests nor did they train their
3 employees properly, nor did they keep proper lists as required by statute and their own
4 (ignored) ordinance. King County now says that they are going to address these concerns
5 in response to this litigation. In the Second Affidavit of Pat Steel signed August 3, 2001
6 she states:
7

8 13. In light of the present case, King County is making changes to its
9 public disclosure practices to insure thorough searches for records
10 responsive to every public disclosure request. A contact list is being
11 created which will list contact information for each division employee
12 responsible for that division's public disclosure requests. The list will be
13 widely distributed throughout the county and available if requested by any
14 member of the public. The list will be utilized by each division to
15 facilitate communication between divisions to insure that all records
16 responsive to a request are produced, regardless of the executive branch
17 division in which they are held.

18 The Prosecuting Attorney's Office is beginning a new training
19 program for division public disclosure officers focused on public
20 disclosure law and responsibilities. Training sessions will be held on a
21 regular basis for all division employees who are responsible for public
22 disclosure requests. The sessions will be held approximately every six
23 months to update each division's public disclosure officers on new public
24 disclosure issues, including changes to the statute and applicable case law.
25 In addition, division managers will be updated on changes to public
26 disclosure laws and policies during executive cabinet meetings as
necessary.

20 There is no indication from Ms. Steel or anyone else why effective procedures
21 were not in place from the initiation of the Public Disclosure Act in 1972 until the present
22 time. Is it not proof of bad faith that it has taken 29 years before King County has
23 recognized that it has failed to obey the dictates of the PDA? She is basically admitting,
24 by the above language, that such effective implementation of the Act was at all times
25
26

1 feasible but no one in the County bothered. What is worst in this case is that King
2 County repeatedly represented to Mr. Yousoufian, his representative Paul Fenton, the
3 undersigned attorneys for plaintiff in this trial and to this Court that all documents have
4 already been produced when they had absolutely no basis to make this false and
5 misleading representation in an effort to make Mr. Yousoufian's PDA request go away.
6 (See below).
7

8 At the time of their deposition none of the County employees asserted that any
9 substantial changes had been made as a result of this lawsuit in handling PDA requests,
10 especially broad requests such as Mr. Yousoufian's. (See, e.g., Cole deposition pgs. 19,
11 42, 46-47, 96 and 144). The Court should remember that at the time of Mr. Yousoufian's
12 original request and again by the time the lawsuit was filed, Ms. Cole was King County
13 Executive Office's PDA Officer! A promise of possible future compliance in an effort to
14 avoid the penalty provisions of the PDA cannot be taken seriously.
15

16 IV. THE "NEGLIGENCE EXEMPTION" ARGUMENT

17

18 King County comes to court admitting that they had failed to "promptly" provide
19 the documents responsive to Mr. Yousoufian's request. King County alleges that they
20 were merely negligent and did not intentionally refuse to provide the documents. They
21 therefore argue that this Court should not follow the mandate of the statute and case
22 authority and should not award fines for each document for each day of delay (now
23 amounting to more than four years).
24
25
26

1 They almost seem to be asserting a defense based on failure to read what was
2 there to be read and understood. There are numerous cases on the legal consequences
3 which flow from the failure of someone to read what is there to be read.

4 It is not, nor cannot, be the policy of the law of this state to allow people to escape
5 their obligations by failing to read what is there to be read. The law of this jurisdiction will
6 not allow any legal advantage to flow from failing to read a document which has legal
7 consequences, such as Mr. Yousoufian's PDA request. No conclusion of law favorable to
8 the negligent person can be based on such a fact. In *Lake Air, Inc. v. Duffy*, 42 Wn.2d 478
9 (1953), the Supreme Court of this state was presented with a similar contention and
10 responded:

11 We are satisfied, from an examination of the record, that the trial court's
12 finding of fact is amply supported by the evidence. Appellant was obviously
13 in a hurry to take off, and respondent questioned him to secure the
14 information necessary to fill out the blanks in the contract form, which was
15 submitted to appellant for his signature without any representations of any
16 kind. Appellant had ample opportunity to examine the contract in as great a
17 detail as he cared, and he failed to do so for his own personal reasons. Under
18 these circumstances, he cannot be heard to deny that he executed the
19 contract, and he is bound by it. [citing cases]

20 Had Mr. Woo, Ms. Clawson and Ms. Cole read Mr. Yousoufian's and Mr. Fenton's
21 letters even cursorily, they could not raise the issues that they now raise concerning
22 confusion or vagueness.

23 In the contract situation, even illiterate persons, which respondents certainly are not,
24 are bound by the terms of a signed written contract. It is part of the obligation of "good
25 faith" to understand documents that are presented, especially in the PDA context in light of
26 the public policy declaration of the statute and case authority. Quoting from Am. Jur.,
Contract, concerning this issue, the court in *Maltby v. Sumner*, 169 Kan. 417, 219 P.2d 395
(403-404), stated as follows:

1 In 12 Am. Jur., Contracts, § 137, the rule is stated thus: "It is the duty of
2 every contracting party to learn and know its contents before he signs and
3 delivers it. He owes this duty to the other party to the contract, because the
4 latter may, and probably will, pay his money and shape his action in reliance
5 upon the agreement. To permit a party, when sued on a written contract, to
6 admit that he signed it but to deny that it expresses the agreement he made
7 or to allow him to admit that he signed it but did not read it or know its
8 stipulations would absolutely destroy the value of all contract." and that: "If a
9 person cannot read the instrument, it is as much his duty to procure some
10 reliable person to read and explain it to him, before he signs it, as it would be
11 to read it before he signed it if he were able to do so, and his failure to obtain
12 a reading and explanation of it is such gross negligence as will estop him
13 from avoiding it on the ground that he was ignorant of its contents."

9 The persons handling Mr. Yousoufian's PDA request are not by any means illiterate
10 or inexperienced. Ms. Steel has an MSW and postmasters fellowship in community
11 psychiatry and has worked 28 years in county government (Steel dep. pg. 5 -6). Susan
12 Clawson has a BA and is just short of a thesis from a masters degree at Seattle University
13 and has been with the County since 1977 (Clawson dep. pg.5). Steve Woo has a masters in
14 Public Administration with over 17 years experience in county government (Woo dep. pg 6-
15 7). Pam Cole has two years of technical college and has been with the County since 1985
16 Cole dep pg. 5). Oma LaMothe was the recipient of the most important operative
17 documents and the author of several. How could a person trained in the law fail to
18 understand Mr. Fenton's letters and the earlier letter of Mr. Yousoufian?
19
20

21 Finally, the Court should review the case of *Skagit State Bank v. Rasmussen*, 109
22 Wn.2d 377 (1987). That case, in the most forceful terms possible, discards any supposed
23 "defense" based on failure to read. In that case, a defendant, Hayton, signed a document
24 releasing rights in real estate after being told by one of his partners and the bank employee
25 that his signature was simply as an accommodation and would not affect his rights in the
26

1 property. The documents he signed, however, contradicted such statements. The court first
2 summarized historical law relating to this field by quoting (at 381) from the case of *National*
3 *Bank v. Equity Investors*, 81 Wn.2d 886 (1973). The court adopted the following language:

4 It is a general rule that a party to a contract which he has voluntarily signed
5 will not be heard to declare that he did not read it, or was ignorant of its
6 contents. *Perry v. Continental Ins. Co.*, 178 Wash. 24, 33 P.2d 661 (1934).
7 One cannot, in the absence of fraud, deceit or coercion be heard to repudiate
8 his own signature voluntarily and knowingly fixed to an instrument whose
9 contents he was in law bound to understand. [The plaintiff], being not only a
10 person of ordinary understanding but one with more than ordinary
11 experience in land transactions and instruments of conveyance and security,
12 and with time and opportunity both to consult with an attorney and to inspect
13 the instruments before signing, cannot now be heard in law to repudiate his
14 signature. The whole panoply of contract law rests on the principle that one
15 is bound by the contract which he voluntarily and knowingly signs. As we
16 said in *Lake Air, Inc. v. Duffy*, 42 Wn.2d 478, 480, 256 P.2d 301 (1953):

17 Appellant had ample opportunity to examine the contract in
18 as great a detail as he cared, and he failed to do so for his
19 own personal reasons. Under these circumstances, he cannot
20 be heard to deny that he executed the contract, and he is
21 bound by it.

22 and we would adhere to the principle stated in *Johnston v. Spokane &*
23 *I.E.R.R.*, 104 Wash. 562, 569, 177 P. 810 (1919), that it would be impossible
24 for a person of ordinary intelligence, much less a person of the intelligence
25 and ability of appellant, to have misunderstood the contents of this
26 instrument upon a casual reading thereof ...

We have always held that a party whose rights rest upon a
written instrument which is plain and unambiguous, and who
has read or had the opportunity to read the instrument, cannot
claim to have been misled concerning its contents or to be
ignorant of what is provided therein.

The principles enunciated in *National Bank* are sound.

The court went on to basically hold that failure to read is a breach of a person's duty
to the other contracting party of the duty of good faith. The court held (at 385):

1 It requires little in the way of diligence to ascertain the truth of a
2 representation made as to the legal effect of plain and unambiguous
3 documents which a party has the opportunity to read. A party generally
4 cannot escape the duty of reading the documents (the duty to "investigate"
5 by simply reading the documents in order to know their contents) in the
6 absence of a showing that he or she was unable to read or understand the
7 language used, that there was a special relation of trust and confidence in the
8 representing party, that some artifice was employed to obtain his or her
9 signature, or that something was done to prevent his or her reading the
10 document. See *Perry v. Continental Ins. Co.*, 178 Wash. 24, 28, 33 P.2d 661
11 (1934).

12 Hayton has made no such showing. Although the evidence shows that
13 Flint had been a long-time close friend and business partner of Hayton's,
14 this relationship alone does not justify Hayton's reliance. There is no
15 evidence of a fiduciary relationship and no evidence establishing a special
16 relationship of trust and confidence. Hayton and Flint's friendship and
17 former business relationship alone do not justify Hayton's reliance. If they
18 did, one could escape the legal consequences of signing under the
19 circumstances hereby later asserting "I read nothing, but I am excused
20 because I relied on the opinion of my friend, fellow farmer and former
21 partner as to the legal effect of my five signatures." This result would
22 create an intolerable degree of uncertainty in contract of all kinds.

23 However, even if individually or taken in their totality the plaintiff's PDA request
24 was too vague for the County to effectively handle, at no time did the County meet its
25 statutory requirement that if they did not understand a request they needed to specifically
26 ask the requestor for clarification. See the language of RCW 42.17.320 below. Mr.
Woo, the initial responder assigned by King County "assumed" that he knew what Mr.
Yousoufian wanted and what he should get despite the clear language of the request and
the clarification correspondence. At no time did he ask for formal clarification.

As can be seen in the declaration of Mr. Yousoufian, Mr. Woo asked Mr.
Yousoufian on July 15, 1997 what he was really after. Mr. Yousoufian explained that he

1 did not know what was available and therefore could not answer the question except that
2 he wanted everything relating to stadium studies and their financing.

3 In fact, there is no proof that anyone asked Mr. Yousoufian or Mr. Fenton to
4 narrow the request or to clarify the request for public records. See Cole deposition pages
5 57-58, 83, 146, 160. See also the Clawson deposition pages 16-19, 45-46, 77, 110.
6

7 The drafters of Initiative 276, adopted in 1972, must have been aware that
8 agencies would try to claim that they did not understand a request as a defense to
9 producing records. They answered by providing specifically for this evasive technique.
10 RCW 42.17.320 is entitled "Prompt Responses Required." It mandates production of
11 records within five days or a responsive letter from the agency setting forth in detail how
12 much time would be required to produce the records. The statute goes on to say:
13

14 Additional time required to respond to a request may be based upon the
15 need to clarify the intent of the request, to locate and assemble the
16 information requested, to notify third persons or agencies affected by the
17 request, or to determine whether any of the information requested is
18 exempt and that a denial should be made as to all or part of the request. In
19 acknowledging receipt of a public record request that is unclear, an
20 agency...may ask the requestor to clarify what information the requestor is
21 seeking. If the requestor fails to clarify the request, the agency...need not
22 respond to it.

23 If King County, by the time of trial, continues to rely on some sort of defense that
24 they did not understand Mr. Yousoufian's request, it only means that their bad faith is
25 continuing even to this court.
26

VI. THE "AVAILABLE ELSEWHERE DEFENSE"

1 King County seems to ask to be excused from the PDA's mandate to produce
2 records by alleging that a copy of some of the documents requested by Mr. Yousoufian
3 might have been available with another source (The Washington State Restaurant
4 Association) or from their website, the newspapers or other sources. Therefore, the
5 County seems to urge, they were under no duty to provide a copy that was expressly used
6 and referred to by the County as long as it might have been available elsewhere. There is
7 no such exception in the Public Disclosure Act. A similar argument was made in
8 *Concerned Ratepayers v. PUD NO. 1*, 138 Wn.2d 950 (1999). In that case the
9 municipality defended on the basis that a certain document had not entered into their final
10 determination of a public action. Therefore, they alleged, since they had not "used" the
11 document, it was not one of the documents they fairly should have produced. Our
12 Supreme Court disagreed strongly. Citing the statutory language as contained in RCW
13 42.17.020 (36) the Court in *Concerned Ratepayers* disavowed the defense now being
14 raised by King County in regard to some documents that may also have been (at least this
15 is their allegation) available elsewhere. The Court cited the statute in this context:

16
17
18
19 At issue in this case is whether the requested document relating to the
20 engineering and technical specification of the IPS 10380 was "used" by
21 the PUD, and thus a public record subject to disclosure. RCW
22 42.17.020(36) provides that a "public record":

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

RCW 42.17.020(36). The Act further provides that each agency has a
positive duty to disclose public records upon request, and that the agency

1 has the burden of establishing either that the disclosure of the requested
2 document is not required or is exempt in whole or in part. RCW
3 42.17.340(1); *Amren v. City of Kalama*, 131 Wn.2d 25, 929 P.2d 389
(1997); *PAWS*, 125 Wn.2d 243.

4 The following language from the case is determinative of this “defense”:

5 However, the record indicates that although the District may not have
6 possessed the document, it did review the technical specifications of the
7 IPS 10380. Moreover, this Court has found numerous types of
8 information to be a public record even where portions of the requested
9 information may be exempt. In determining whether the PUD “used” the
10 requested document, the Court of Appeals noted that no Washington case
11 has defined or discussed the parameters of the word “use” for purposes of
12 the Act and that possession of information is not determinative of the
13 issue. *Concerned Ratepayers Ass’n v. Public Util. Dist. No. 1*, 93 Wn.
14 App. 219, 231, 968 P.2d 6 (1998)...

15 Whether information has been “used,” however, should not turn on
16 whether the information is applied to an agency’s final work product.
17 Rather, the critical inquiry is whether the requested information bears a
18 nexus with the agency’s decision-making process...That is, certain data
19 may still be relevant and an important consideration in an agency’s
20 decision-making process even if it is not a part of the agency’s final work
21 product. Thus, mere reference to a document that has no relevance to an
22 agency’s conduct or performance may not constitute “use,” but
23 information that is reviewed, evaluated, or referred to and has an impact
24 on an agency’s decision-making process would be within the parameters
25 of the Act. *See, e.g., Yacobellis*, 55 Wn.App. 706.

26 In the latest batch of trial affidavits, for example, Pat Steel (in paragraph 12)
alleges that documents requested by Mr. Yousoufian are available in alternative places
such as the County’s website. This “available elsewhere defense” has never been
approved by our courts. It has clearly been held that the availability of records from
another source does not affect analysis under the Public Disclosure Act. Furthermore, the
Public Disclosure Act does not exempt records that the requestor has already received
from another source. *See Tacoma Public Library v. Woessner*, 91 Wn.App. 205,

1 remanded on other grounds at 136 Wn.2d. 1030 (1998). The “available elsewhere”
2 defense was expressly repudiated in *Olsen v. King County*, _____ Wn.App. _____
3 (June 2001).

4 VII. ATTORNEY’S FEES FOR NONDISCLOSURE

5
6 The Court in *Concerned Ratepayers v. PUD NO. 1*, 138 Wn.2d 950 (1999)
7 reaffirmed the principles of the legislature as set forth in RCW 42.17.340(4) that once
8 documents fairly within a public disclosure request are identifiable attorney’s fees must
9 be awarded and an appropriate penalty in an amount of not less than five dollars a day
10 nor more than one hundred dollars a day for each document untimely produced should be
11 assessed. The Court first quoted the statute as follows:

12
13 Any person who prevails against an agency in any action in the courts
14 seeking the right to inspect or copy any public record or the right to
15 receive a response to a public record request within a reasonable amount
16 of time shall be awarded all costs, including reasonable attorney fees,
17 incurred in connection with such legal action. In addition, it shall be
within the discretion of the court to award such person an amount not less
than five dollars and not to exceed one hundred dollars for each day that
he was denied the right to inspect or copy said public record.

18 The Court went on citing *Limstrom v. Ladenburg*, 136 Wn.2d 595 (1998) and *Dawson v.*
19 *Daly* 120 Wn.2d 782 (1993) for the proposition that once these documents are
20 identifiable the appropriate statutory penalties and attorney’s fees clock begins to run.

21 In this instance the Declaration of Armen Yousoufian sets forth the documents,
22 describes the date in which each and every document that King County has produced was
23 in fact produced and the number of days that passed since the request for those records
24 were made. His declaration proves that he was consistently misled that all documents
25
26

1 responsive to his request have already been provided. This assertion was repeated even
2 after the lawsuit was begun. It was only in response to a threatened motion to compel
3 production that public records have been dribbling in since that time.

4 The Court's attention is also directed to the fact that numerous documents have
5 not yet been produced despite the fact that they have been identified in other documents
6 which have now been produced. See Mr. Yousoufian's declaration regarding documents
7 not yet produced.
8

9 In order for the Courts to send a clear message to King County that this kind of
10 misconduct should not be tolerated and that there is no "negligence" exception, especially
11 when the negligence is really just a failure to look rather than true negligence because
12 these documents were available at all times. As the Court can see, the failure of agencies
13 to in good faith comply with the PDA has clogged the courts here in King County, other
14 superior courts as well as our higher courts. The very purpose of the statute was to avoid
15 forcing parties to file litigation in order to get documents which are "public."
16

17 In this case plaintiff is requesting reimbursement for his actual attorney's fees and
18 costs. The statute provides at RCW 42.17.340 (4) in relevant part as follows:
19

20 Any person who prevails against an agency in any action in the courts
21 seeking the right to inspect or copy any public record or the right to
22 receive a response to a public record request within a reasonable amount
23 of time shall be awarded all costs, including reasonable attorney fees,
24 incurred in connection with such legal action....

25 If there are any doubts about the attorney's fees issue the case authority again
26 guides the trial judges determination. Again we find language that the "liberal
construction rule" of the statute applies to how the Court deals with attorney's fees.

1 *Animal Welfare Society v. U.W.* 114 Wn.2d 677 (1990) was a case that dealt almost
2 exclusively with the attorney's fees under the Act and it will be referred to frequently
3 within this section of the trial brief. However, the following guidance is provided on
4 page 683 of the opinion:
5

6 A statute's mandate for liberal construction includes a liberal contraction
7 of the statute's provision for award of reasonable attorney's fees. [citing
8 *Holland v. Boeing*, 90 Wn.2d 384, 392 (1978)]

9 In this case, the evidence will show that by the end of 1997 King County
10 considered that they had fully complied with Mr. Yousoufian's request and they
11 proceeded to close their file putting it on an inactive status. They did not reopen it even
12 when the lawsuit was filed nor, obviously, did they try to find additional documents
13 responsive to Mr. Yousoufian's request. The lawsuit was served on King County on June
14 1, 2000. Still, nothing was produced nor was there any action from any agency of King
15 County to comply with Mr. Yousoufian's request. Interrogatories were served on King
16 County on December 22, 2000. Still, no documents were produced. It was not until
17 plaintiffs' counsel was on the verge of filing a motion to compel that the County did any
18 reasonable searching and came up with approximately 225 new documents including 58
19 new documents on July 28, 2001. It took two more motions to compel production of
20 some of these additional public records.
21

22 The statute on attorney's fees for Public Disclosure Act cases is mandatory in
23 nature. The court in *Doe I v. Washington State Patrol*, 80 Wn.App. 296, 302-303 (1996)
24 reaffirmed that it is the rule that "the existence of the lawsuit [must had] a causative
25
26

1 effect on the release of information.” *Coalition v. Department of Public Safety* 59
2 Wn.App. 856 (1990) (Citing *Miller v. United States Department of State*, 779 F.2d 1378,
3 1389 (8th cir. 1985).

4 VIII. PENALTIES AS MANDATORY

5
6 King County has acknowledged its understanding of the PDA that penalties from
7 \$5 to \$100 per day are mandatory. For example, in the Brief of Appellant authored by
8 Oma Lamothe, the King County Prosecuting Attorney primarily responsible for Public
9 Disclosure Act cases, in their brief in *King County Department of Development and*
10 *Environmental Services v. Fred Ockerman*, case number 44889-7-1 decided under 102
11 Wn.App. 212 (2000), King County took the following position with the court of appeals.
12 (ER 904 -221).

13
14 Additionally, the Public Disclosure Act imposes more severe penalties
15 than the discovery rules. If interpreted simultaneously with the court
16 rules, a party opposing a governmental entity has every incentive to seek
17 discovery through the Public Disclosure Act where any misstep under the
18 Act can potentially reward the litigant with mandatory penalties that range
19 from five to one hundred dollars per day plus costs and attorneys fees,
RCW 42.17.340(2), without regard to any bad faith on the part of the
government agency. Moreover, the Act shifts the burden to the agency to
prove that it did not violate the Act. RCW 42.17.340(2).

20 In *Doe I v. Washington State Patrol*, 80 Wn.App. 296 (1996) the court repeated
21 the citations above that the award of the penalties is intended to encourage broad
22 disclosure and deter withholding of public records. Among other errors the Washington
23 State Patrol committed in *Doe I* was that it failed to respond within five days to the initial
24 request as required by RCW 42.17.320. The five-business day deadline expired on
25 December 27, 1992 but they did not reply until March 19, 1993. The court held:
26

1 The Superior Court therefore abused its discretion in failing to award
2 statutory penalties for the period from December 27, 1992 to March 19,
1993, when John Doe filed this action.

3 The *Doe I. v. Washington State Patrol* case is interesting as well from another
4 perspective. That case is somewhat unique because the statute gives the right of an
5 interested person to enjoin the disclosure of public records. In that case Jane Doe asked
6 for a report of a sexual assault on her by John Doe. The written request for the record
7 was made by Jane Doe on December 16, 1992. John Doe filed an action for declaratory
8 relief to enjoin the production of the record on March 19, 1993. After that point the State
9 Patrol could not produce the document because the court held the status quo until it could
10 have a final hearing. It was for this reason that the penalty period ran until the filing of
11 the lawsuit.
12
13

14 In our case, King County seems to argue that no penalty should be assessed
15 between approximately June 22, 1998 and the filing of the lawsuit on March 30, 2000.
16 Their argument seems to be that the delay between the last assurance by Oma Lamothe of
17 the prosecutor's office that documents had already been produced and the filing of the
18 lawsuit was a delay for which they should not be penalized (see the section on latches, §
19 XI below). This turns the *Doe I. v. State Patrol* case on its head. Virtually every case in
20 which penalties were assessed, they were assessed between the time the document should
21 have been produced and the time it actually was produced officially by the agency. In
22 fact, in the recent case of *Olsen v. King County* _____ Wn.App. _____ (June 2001) even
23 though the Olsens in that case got the requested document through another source fairly
24 early, the court assessed penalties for every day that the County did not produce the
25
26

1 documents. It is interesting to note that all of the worn out arguments that King County is
2 making in this case were made in the Olsen case (see their appellate brief attached as a
3 document to ER 904 -221). For example, in the Olsen brief they nitpicked on the exact
4 wording of the Public Disclosure Request, they claimed that they could not read the mind
5 of the requestor, they claimed many of the same defenses they assert against Mr.
6 Yousoufian.
7

8 A seminal case discussing the meaning of the penalty clause of RCW
9 42.17.340(4) is *Amren v. City of Kalama*, 131 Wn.2d 25 (1997). The language of the
10 Court should resolve the issue of Mr. Yousoufian's entitlement to penalties and should
11 give guidance to the Court in assessing that penalty at something far greater than the
12 minimum of \$5 per day. The Court held (at 35-37):
13

14 The City of Kalama asserts that a reasonable basis in law for withholding
15 disputed records is a valid basis for the court to deny attorney fees citing
16 federal cases decided under the Freedom of Information Act (FOIA). The
17 City's reliance on these cases is misplaced. First, the statute is very clear
18 that the court "shall" award attorney's fees to a person who prevails
19 against an agency in an action seeking the disclosure of public records.
20 RCW 42.17.340(4)...

21 Amren also asks this court for an award of \$25 a day for each day
22 the City has withheld disclosure of the State Police report on Police Chief
23 Pennington. RCW 42.17.340(4) provides:

24 In addition, it shall be within the discretion of the court to
25 award such person an amount not less than five dollars and
26 not to exceed one hundred dollars for each day that he was
denied the right to inspect or copy said public record.

This provision has been treated by this court as a penalty to enforce
the strong public policies underlying the public disclosure act. *PAWS*, 125
Wn.2d at 271; *see also In re Rosier*, 105 Wn.2d 606, 617, 717 P.2d 1353
(1986) (this court referred to the award as a "penalty"); *Hearst*, 90 Wn.2d
at 139-40 9 (this court characterized the award as a "fine" which, along

1 with costs and attorney's fees, comprised the public disclosure act's
2 "punitive provisions"). This court has emphasized that "strict
3 enforcement" of this provision "will discourage improper denial of access
4 to public records." PAWS, 125 Wn.2d at 271 (quoting *Hearst*, 90 Wn.2d
5 at 140). Since the award has been treated as a penalty it is not necessary
6 for a party to show actual damages to receive the statutory award. See
7 *Yacobellis v. City of Bellingham*, 64 Wn.App. 295, 301, 825 P.2d 324
8 (1992).

9 The award provision does not require a showing of bad faith for
10 the imposition of a penalty. Likewise, a good faith reliance on an
11 exemption will not exonerate an agency from the imposition of a penalty
12 where the agency has erroneously withheld a public record. In *Yacobellis*,
13 the Court of Appeals emphasized that bad faith on the part of the agency
14 in denying disclosure was not required for the imposition of a penalty. *Id.*
15 Likewise, the Court of Appeals in *Columbian Publ'g Co. v. City of*
16 *Vancouver*, 36 Wn.App. 25, 33, 671 P.2d 280 (1983), found that the city's
17 good faith in claiming exemptions from the Act's disclosure requirement
18 was not dispositive on the issue of whether the statutory award was
19 warranted.

20 The award is not necessarily a punishment of the City, but
21 simply a reflection of the fact that where the act affords
22 access with only narrow exceptions, the court may impose
23 sanctions in favor of the party whose claim of access has
24 been vindicated. The City's claim of exemptions is not
25 frivolous, but that is not the test.

26 *Id.* To the extent that the parties indicate that a showing of
"unreasonableness" on the part of the agency is required for an imposition
of an award, such a standard is not required by the language of the statute
and is not supported by decisions of this court. As we have stated, this
provision is treated as a penalty which is not dependent upon a showing of
an agency's good or bad faith in its claim of exemptions under the Act.
Requiring that an agency act unreasonably before imposing a penalty
would be similar to a requirement of bad faith, which is not required under
the Act.

We conclude that when an agency erroneously denies a public
record and a party has prevailed against the agency in obtaining a copy of
the public record an award is warranted. See *Yacobellis*, 64 Wn.App. at
302 (an award is warranted whenever an agency has erroneously denied
access to the public a copy of a public record). This is consistent with the
Act's strong policy favoring "strict enforcement" of the award provision to
discourage improper denial of public records. Since this court has found

1 that the City of Kalama erroneously withheld the State Police report,
2 Amren is entitled to an award not less than \$5 and not more than \$100 for
3 each day the report has been withheld.

4 Penalties are required by the same portion of the PDA which requires attorney's
5 fees. See the quote in the section immediately above from RCW 42.17.340(4) the last
6 phrase of that says:

7 In addition, it shall be within the discretion of the court to award such
8 person an amount not less than \$5 and not to exceed \$100 for each day
9 that he was denied the right to inspect or copy said public record.

10 In regard to these penalties, and the purposes of them, the Court should keep in
11 mind the legislative history of the penalty's provision. Apparently there were no
12 provisions for penalties in the original initiative. However, soon thereafter, penalties
13 were imposed from \$1 to \$25 maximum. However, in 1992, in light of the continued
14 failure by agencies throughout the state to effectively implement and obey the Act, the
15 legislature on its own increased the minimum to \$5 per day and the maximum to \$100 per
16 day. Effectively, the legislature is telling each agency and each court interpreting
17 difficulties which arise under the Act, comply or you will receive more than a slap on the
18 wrist. Unless agencies implement the Act effectively and assist citizens in obtaining
19 documents, the foot dragging by agencies will continue forever. There are scores of
20 appellate decisions which have arisen since 1972 under the PDA. It is unknown how
21 many superior court actions were brought which did not result in appellate decisions.
22 What is more frightening, however, is the probability that very few persons such as
23 Armen Yousoufian exist that have the intelligence and business experience (see is CV,
24
25
26

1 ER 904 -1), his persistence, his motivation as a hotel manager in this case and the
2 resources to overcome agency resistance. King County has not fully disclosed in this
3 case the number of PDA requests it receives nor has it even given an accounting of the
4 lawsuits which have been filed against (only a partial list has been provided with a claim
5 that they do not have records which identify PDA cases). King County has not, over the
6 28 years since the PDA became effective, “gotten the message.”
7

8
9 IX. BAD FAITH: A FACTOR IN THE AMOUNT OF PENALTIES

10 The Court in *Doe I v. Washington State Patrol*, 80 Wn.App. 296 (1996) held that
11 attorney’s fees and penalties were mandatory. Among other reasons it gave is the
12 wording of the statute, RCW 42.17.290 which mandated the adoption and enforcement of
13 reasonable rules and regulations by each agency to make sure that PDA requests were
14 fully and fairly dealt with. The section of the statute commented upon by the Court states
15 as follows:
16

17 Such rules and regulations shall provide for the fullest assistance to
18 inquirers and the most timely possible action on request for information.

19 In the *Doe* case it was obvious to the Court of Appeals that the state patrol was slow in
20 responding because it was sympathetic to the views of a person who objected to the
21 disclosure because the disclosure contained embarrassing information. Where there is no
22 demonstration by the agency of due diligence in order to assist fully the requester,
23 penalties should be mandatory. In the words of the case (at 304): “the state patrol did not
24 give Jane Doe the “fullest assistance” required by the statute.
25
26

1 We can substitute “King County” for “State Patrol” and “Armen Yousoufian” for
2 “Jane Doe,” which fit can be made seamlessly. This is especially the case when our
3 public servants at King County started referring to Mr. Yousoufian’s requests for
4 compliance as “missives” or referred to communication from him as an invitation for
5 other public employees to join the “Armen Yousoufian fan club” or when a request for
6 follow up is met with the notation “prepare for litigation.” It is evident when Mr. Woo e-
7 mailed another King County employee that he is “peeved” about the plaintiff’s PDA
8 request. King County cannot demonstrate the fullest assistance. There is no reason why
9 the materials delivered in February and March of 2001 and even more recently could not
10 have been produced promptly in May and June of 1997. None of the County’s witnesses
11 have given any explanation for their failure to render full assistance.
12
13

14 None of the County employees responsible for responding to plaintiffs Public
15 Disclosure Act request could give any reason why the documents which have been
16 produced in an untimely fashion (including the latest of which was 59 records on July 27,
17 2001) could not have been produced in a timely fashion or even within five days of the
18 date of Mr. Yousoufian’s original request. Almost uniformly the deponents have testified
19 that they can now see from Mr. Yousoufian’s original request and his numerous follow
20 up letters (including those of Paul Fenton) clearly what was being requested. No one can
21 give an explanation as to why they could not understand this request at the time it was
22 made other than intentional actions or gross negligence or complete inattention. The
23 Court’s attention is called to the deposition testimony.
24
25
26

1 Pam Cole testified explicitly that she saw no reason why responsive documents
2 were not provided more promptly, certainly after reviewing the follow up letters from
3 Mr. Yousoufian and Mr. Fenton. Pam Cole's testimony on these points can be found at:
4 58-60, 75-81, 86-88, 111, 115, 146, 148, 153-156, 164-167. Similarly, the testimony of
5 Susan Clawson can be found in her deposition on pages 81-84. See also Pat Steel's
6 deposition pages 81-84, 89-92 and 96. .

8 The testimony of Mr. Woo is most instructive on this and it is urged that the Court
9 review the excerpts of his deposition provided. The Court will see that Mr. Woo felt that
10 the Public Disclosure Act request from Mr. Yousoufian was directed to the Executive's
11 Office and that they would be handling the bulk of it. He viewed his job as being limited
12 only to producing documents in his own office that were available and at no time felt that
13 his responsibility was to go beyond those immediate documents into the broader requests
14 made by Mr. Yousoufian. Steve Woo's testimony on these points can be found at: 59-
15 60, 62, 71, 84-86, 91, 95, 104-105, 143, 149-151, 167.

17 Although bad faith is not required for the imposition of penalties, it is a relevant
18 factor in determining the amount of penalties in the range between \$5 to \$100 per day.

20 In *Amren v. City of Kalama, supra* at 37-38 the existence of bad faith and
21 economic loss are important factors in deciding the amount of the penalty:

22 Although a showing of bad faith or economic loss is not required in the
23 determination of whether an award for delay in disclosure should be
24 granted, they are factors for the trial court to consider in determining the
25 amount to be awarded. When determining the amount of the penalty to be
26 imposed "the existence or absence of [an] agency's bad faith is the
principal factor which the trial court must consider." *Yacobellis*, 64
Wn.App. at 303 (the court determined that the trial court erred in its award

1 determination of one dollar per day because it did not consider evidence of
2 the city's bad faith when determining the amount of the award).
3 Economic loss is also a factor to be taken into account in determining the
amount to be awarded...

4 ...A determination of the amount of the award necessitates a fact
5 finding concerning the allegations made by the Appellant that the City has
6 acted in bad faith and any potential evidence of economic loss incurred by
the Appellant as a result of the delay. No findings of fact were made
regarding these issues for this court to review on appeal.

7 What does "bad faith" mean? Often the meaning in the cases depends on the
8 context of the cases. Although there was probably actual deliberate intent by King
9 County to frustrate, thwart and delay Mr. Yousoufian's PDA request, such deliberate
10 intent to harm has never been deemed to be a requirement for bad faith. For example, see
11 section V above regarding the failure to read. Where a person fails in his duty to another,
12 the courts will deem that misconduct as "bad faith" regardless of mens rea of the actor.

13
14 The Court should review *Swanson v. Solomon*, 50 Wn.2d 825 (1957). If a person
15 makes a representation to another without bothering to check if the representation is true,
16 that misrepresentation is bad faith. Here, the County made dozens of misrepresentations
17 to Mr. Yousoufian from all levels of county government from the low man on the totem
18 pole, Steve Woo, to the very top, Ron Sims and Oma LaMothe. In the discovery context,
19 it has been held that suppression of a material fact by a party found in good faith is
20 equivalent to "false representation." *Oates v. Taylor*, 31 Wn.2d 898 (1948).

21
22 In *Wilson v. Henkle*, 45 Wn.App. 162, 175 (1986), it was held that:

23 The trial court's finding of fact 3 that McCormick's conduct was
24 "inappropriate and improper," which is tantamount to a finding of bad
25 faith, is supported by the record evidence.

26 In *Tyler v. Grange Ins. Ass'n*, 3 Wn.App. 167, 173 (1970) the court held:

1 When courts speak of liability for bad faith or the duty to use good faith,
2 they are usually referring to the same obligation. Generally speaking in
3 the context of these cases, good faith means being faithful to one's duty or
4 obligation; bad faith means being recreant thereto. Cernocky v. Indemnity
5 Ins. Co. of North America, 69 Ill.App.2d 196, 216 N.E.2d 198 (1966).
6 The court, in Murray, uses the terms interchangeably and so do we.

7 In this case the bad faith of King County is exhibited by their failure to have any
8 effective procedures for adopting or implementing the Public Disclosure Act
9 requirements, especially when it was confronted with a broad request such as Mr.
10 Yousoufian's. It is manifested in the passing of the buck between the executive's office,
11 the stadium administrations office and the prosecuting attorney's office. It is evident in
12 the merry go round that they put Mr. Yousoufian, through his attorney Paul Fenton,
13 through trying to get financial information and cancelled checks. (See the trial
14 declaration of Paul Fenton). It is evident in the bad humor that the County's employees
15 displayed in dealing with Mr. Yousoufian's request as some kind of a game or nuisance.
16 Bad faith is manifest by the failure even to this time to produce documents which are
17 known to be in existence but have not yet been produced. Bad faith is manifest in the
18 absolute misleading factual statements made by the executive department and others
19 responding to Mr. Yousoufian's request. For example, the assertion that they had to
20 search archives even though this was never done until 2001 and the fact that all but a very
21 few of the documents were not archived at the time anyway.

22 In fact, the original "dodge" given to Mr. Yousoufian was the June 4, 1997 reply
23 by the King County Executive's Office (Desiree Leigh) telling Mr. Yousoufian that it
24 would take three weeks to retrieve records from archives. This three week period was a
25

1 fiction because there is no proof whatsoever that anyone ever requested documents from
2 archives. In fact, the evidence is clear that nearly all of the documents were active
3 documents because documents were not archived for at least two years. Everyone who
4 was asked the question about whether they had personal knowledge whether any request
5 had been made to archives answered that they had no such information. The County has
6 produced no written request to archives or any other proofs that archives were queried in
7 June of 1997. This was simply a three-week delaying tactic. This three week period
8 actually turned into a five month period because the first documents were not made
9 available until October 1997, except for eight partial document produced before October.
10 (Cole dep., pg. 146). The person assigned to answer Mr. Yousoufian's request, Mr. Woo,
11 admitted that he did not make any requests from archives. See his deposition pages 67-
12 72, 139. See also Susan Clawson's deposition pages 106-109. See also Pam Cole's
13 deposition page 81, 146, 160.

14
15
16 The picture painted is one of a governmental body which simply did not care from
17 top to bottom about a serious Public Disclosure Act request.

18
19 At every level of county government from Mr. Woo to the prosecutor's office up
20 through and including representations made in the context of these court proceedings,
21 King County has consistently demonstrated its bad faith by repeatedly representing that
22 they had fully complied with Mr. Yousoufian's PDA requests. These representations are
23 contained in the following ER -187 (Meachum), 190 (LaMothe), 197 (Wilson), 199
24 (LaMothe), 201 (LaMothe), 202 (LaMothe), 205 (LaMothe), (Defendants' Motion for
25 Ruling, pg. 6, line 17 and pg. 12, line 21), Joly (Defendants' Response to Plaintiff's
26

1 Second Motion to Compel Discovery, pg. 5, line 19), Joly-Declaration of David J. Balint
2 Regarding Motion to Compel, pg. 2, Pam Cole deposition pgs. 133-134 and Steel
3 deposition pgs. 5, 81

4 In this case as well Mr. Yousoufian's business in hotel management was and is
5 deeply affected by the construction of the sport stadiums and the way in which they are
6 financed. By its interminable delays the very purpose of the Act to provide documents
7 "promptly" created harm to Mr. Yousoufian's business which, although it cannot be
8 quantified, is substantial (see Affidavit of Armen Yousoufian Regarding Damages
9 Suffered).

10 X. DEFINITION OF PUBLIC RECORD

11
12
13 The defendant King County takes the untenable position that penalties can be
14 assessed only for each individual Public Disclosure Act request, regardless of how many
15 individual public records are encompassed within that request. In essence, the County is
16 trying to write new law by stating that if a citizen requests multiple documents from the
17 County, in order to have the Act enforced they should be making a separate request for
18 each and every separate record they wish to see. This is not a "liberal interpretation" of
19 the Act but is rather reading a burdensome requirement into the Act for each citizen who
20 makes requests for multiple records.
21

22 Furthermore, the argument falls flat because a citizen making a broad request
23 such as Mr. Yousoufian's has no idea what records are available. To adopt the County's
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1 position would mean this Court would have to agree that the citizen must identify each
2 document he wishes by name, rank and serial number rather than a general request.

3 The definition of public record is contained in the Act itself at RCW 42.17.020
4 (36) as follows:

5 “Public record” includes any writing containing information relating to the
6 conduct of government or the performance of any governmental or
7 propriety function prepared, owned, used, or retained by any state or local
8 agency regardless of physical form or characteristics.

9 This definition is further clarified in subparagraph 42 defining a “writing”:

10 “Writing” means handwriting, typewriting, printing, photostating,
11 photographing, and every other means of recording any form of
12 communication or representation, including, but not limited to, letters,
13 words, pictures, sounds, or symbols, or combination thereof, and all
14 papers, maps, magnetic or paper tapes, photographic films and prints,
15 motion picture, film and video recordings, magnetic or punched cards,
16 discs, drums, diskettes, sound recordings, and other documents including
17 existing data compilations from which information may be obtained or
18 translated.

19 This was further clarified in *Smith v. Okanogan County* 100 Wn.App. 7, 12
20 (2000) as follows:

21 The Act applies only to public records. *Bonamy v. City of Seattle*, 92
22 Wn.App. 403, 409, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012
23 (1999). Thus, disclosure is not necessary unless and until there has been a
24 specific request for records. An important distinction must be drawn
25 between a request for information about public records and a request for
26 the records themselves. The Act does not require agencies to research or
explain public records, but only to make those records accessible to the
public. *Id.*

A public record subject to disclosure under the Act includes (1) any
writing, (2) containing information relating to the conduct of government
or the performance of any governmental or propriety function, (3)
prepared, owned, used, or retained by any state or local agency regardless
of physical form or characteristics. RCW 42.17.020 (36); *see also*
Confederated Tribes v. Johnson, 135 Wn.2d 734, 746, 958 P.2d 260

1 (1998); *Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 565, 618 P.2d 76,
2 26 A.L.R. 4th 692 (1980); *Yacobellis v. City of Bellingham*, 55 WnApp.
3 706, 711, 780 P.2d 272 (1989), *review denied*, 114 Wn.2d 1002 (1990).

4 In the vast majority of Public Disclosure Act cases only one or a very few number of
5 records have been requested. Very few of the cases involve a broad request such as that
6 presented to the County by Mr. Yousoufian on May 30, 1997. Despite the fact that the
7 County now admits it withheld some 227 documents which it has now produced (see
8 Plaintiff's ER -1-169 and 222-280) which should have been originally disclosed, a total of
9 227. Regardless of the number of documents the County seeks to avoid any meaningful
10 penalty by interpreting the Act to mean the penalty of \$5 to \$100 a day applies to each
11 request not each document wrongfully withheld. Since the purpose of the penalties is
12 intended to encourage broad disclosure and to deter agencies from improperly denying
13 access to public records. See section VIII above and the central case of *Amren v. City of*
14 *Kalama*, 131 Wn.2d 25 (1997).

15
16 There is no clear authority in Washington. However, to interpret the statute in any
17 other way renders the statutory penalties section meaningless. A penalty of a few thousand
18 dollars, as suggested by defendants, is rather an encouragement for them to do exactly as
19 they did, i.e., not take seriously the rather powerful language of the Public Disclosure Act.
20

21 The case of *Lindberg v. Kitsap County* is appropriately discussed in this context.
22 The facts are adequately described in the Court of Appeals opinion to be found at 82
23 Wn.App. 566 (1996). The Lindbergs asked for three documents which were copyrighted
24 architectural site and drainage plans for three proposed residential developments. The
25 County used those plans in its permitting process. The Lindbergs, acting pro se throughout,
26

1 asked for those records. Kitsap County, acting under advice of counsel, said they could not
2 produce those records because of the exemption claiming the material was copyrighted and
3 infringed on the rights of the copyright holders. Both the Court of Appeals and Supreme
4 Court disagreed and ordered the records produced. The trial judge found good faith in the
5 acts of Kitsap County because of its reliance on its attorney's opinion that the documents
6 could not be produced. However, the trial Court failed to articulate clearly its basis for
7 penalties and attorney's fees. The Court of Appeals, based on the language of the statute
8 that RCW 42.17.340(4) defined public record in the singular mandate to the trial court with
9 the direction to award penalties from \$5 to \$100 per day per document. The language of the
10 Court is (at 574-575):
11

12
13 The Lindbergs argue that claims should not be treated together or as
14 overlapping. The statute specifies that "it shall be within the discretion of
15 the court to award...[any person who prevails against an agency] an amount
16 not less than [\$5] and not to exceed [\$100] for each day that he was denied
17 the right to inspect or copy *said public record*." RCW 42.17.340(4)
18 (emphasis added); "Public record" is defined as "*any writing* containing
19 information relating to the conduct of government or the performance of any
20 governmental or propriety function prepared, owned, used, or retained by
21 any state or local agency regardless of physical form or characteristics."
22 RCW 42.17.020 (27) (1994) (emphasis added). The statutory use of
23 singular phrasing is significant. See *In re Guardianship of Way*, 79 Wn.App.
24 184, 189, 901 P.2d 349 (1995), review denied, 128 Wn.2d 1014 (1996);
25 *Washington Mut. Savings Bank v. Department of Revenue*, 77 Wn.App. 669,
26 679, 893 P.2d 654 (1995).

...

22 In addition to their mandatory award for costs and attorney fees, Ms.
23 Lindberg and her father are each entitled to statutory penalty award for each
24 record they requested, from the date he or she first requested it until
25 the December 23, 1993 judgment in their favor. Costs and attorney fees are
26 also available to them on appeal. See *PAWS I*, 114 Wn.2d at 690-91; RCW
42.17.340(4); RAP 18.1(i).

1 The Supreme Court, at 133 Wn.2d 729 (1997) by a five to three majority held that in
2 the absence of bad faith they could not find an abuse of discretion in the way the Court
3 awarded its attorney's fees and costs (at least at the trial court level). The language of the
4 opinion is less than precise but they did not remand to the trial judge for reassessment of
5 penalties and attorney's fees. The three judges dissented from this part of the ruling because
6 it seemed to contradict much precedent to that time.

8 It is unfortunate that the courts on all three levels were not given more assistance by
9 what appears to be a non-lawyer pro se litigant but the very purpose of penalties would be
10 thwarted as well as the repeated public policy stated by the statute in the cases, unless this
11 Court tells King County by a penalty based on a per document per day calculation.

13 It is important to keep in mind that as of this date there are still an unknown but
14 significant number of documents that have not been produced pursuant to the PDA request
15 of Mr. Yousoufian and of orders of this Court. Please see Mr. Yousoufian's declaration in
16 regard to documents not yet produced but which are known to probably exist.

17 XI. LACHES

19 In previous submittals to this Court, King County has argued that the penalties
20 provided for in the Public Disclosure Act should not accrue between the time of the last
21 correspondence from Mr. Yousoufian complaining of non-compliance by the County and
22 the commencement of the lawsuit. In essence, they are arguing laches. In regard to the facts
23 of this claim see "Declaration of Plaintiff Armen Yousoufian: Time Spent In Attempting to
24 Obtain Public Records." The last communication from King County is Oma LaMothe's
25 letter to Paul Fenton (Plaintiff's ER 904 - 205) dated April 29, 1998 stating categorically
26

1 that no further documents responsive to Mr. Yousoufian's PDA request existed. The
2 lawsuit was filed on March 30, 2000 after efforts were made by the plaintiff to find an
3 attorney, which problem was created by the obviously false representation of the
4 prosecutor's office that no further documents would be produced because they did not exist.

5 In essence, King County is claiming laches as a partial defense to the requirement to
6 impose penalties for each day in which public records are not produced under the PDA.

7 King County is saying that the burden was on Mr. Yousoufian as the requestor to
8 further prod King County into producing documents. Putting the burden on a claimant,
9 especially in the fact of repeated representation that all documents have already been
10 produced, turns the PDA upside down.

11 It is hard to understand King County's argument in this regard because it is obvious
12 that the filing of the lawsuit in March 2000 generated absolutely no further activity on the
13 part of the King County's Executive Office nor the King County's Prosecutor's Office. In
14 any event, if litigation was the needed spur to produced a more complete set of public
15 records from King County, then Pam Cole's e-mail to Steve Woo dated December 12, 1997
16 (Plaintiff's ER 904 - 196) demonstrates King County's awareness of the pendency of
17 litigation. According to the e-mail Pam Cole had just met with Oma LaMothe of the King
18 County Prosecutor's Office. Her e-mail says: "Oma says keep documenting what we are
19 giving him, i.e., prepare for litigation."

20 In reality, therefore, there is no indication that the filing or pendency of the litigation
21 itself was anything other than a useless act until this Court threatened to intervene because
22 of the pendency of a motion to compel production of documents in January and February of
23 2001.

24 King County's repeated representations, continuing into 2001, were that all
25 documents responsive to Mr. Yousoufian's request had already been produced. It states
26

1 categorically that no further documents will be produced. In this regard please see
2 plaintiff's ER document no. 199 which is a letter from the King County Prosecutor's Office
3 to Mr. Paul Fenton dated January 14, 1998. It states in the last paragraph:

4 In light of repeated assurances that no other documents relevant to Mr.
5 Yousoufian's records requests are located in these two offices, the tone of
6 your letter can only be intended to malign and harass those who have worked
7 to locate and gather documents on your client's behalf. Your rude sarcasm is
8 completely lost on the executive's office because the threat of litigation or
9 even actual litigation, will not alter the fact that the documents do not exist in
10 that office. A court will not order county agencies to produce documents
11 that they do not have.

12 If one party categorically refuses to comply with its obligations, the law does not
13 shift the burden to the other party to do any further actions to prod compliance.

14 In the contractual context, for example, an injured party, as a result of a voluntary
15 manifestation by one party of inability or lack of intent to perform, is discharged from his
16 duty to perform his part of the promise. Restatement of Contracts, Ch. 10, § 280(1).
17 When King County refused to perform, no further tender of performance by Mr.
18 Yousoufian was necessary to his right to have public records produced. *Jensen v.*
19 *Richens*, 74 Wn.2d 41 (1968) held:

20 ...One contracting party is not required by law to do a useless act or tender
21 performance where the other contracting party cannot or will not perform
22 his part of the agreement. *White and Bollard, Inc. v. Goodenow*, 58
23 Wn.2d 180, 361 P.2d 571 (1961); *Ziebarth v. Manion*, 161 Wash. 201, 296
24 Pac. 561 (1931); *Park v. McCoy*, 121 Wash. 189, 208 Pac.1098 (1922).

25 See also *Loveric v. Dunatov*, 18 Wn.App.274 (1977) at 282 and *Hemisphere*
26 *Loggers & Contractors, Inc. v. Everett Plywood Corp.* 7 Wn.App. 232,234, (1972).

The County's argument that Mr. Yousoufian should have filed his lawsuit earlier
flies in the face of the language and intent of the Public Disclosure Act. The burden is on

1 the government agency to produce documents when requested and not on the requestor.

2 The penalties are designed to encourage prompt and thorough production of documents
3 and to discourage the necessity of court intervention or for a person to hire attorneys just
4 to get what the legislature has already mandated he should get.
5

6 The argument also makes no sense logically. When the lawsuit was filed on
7 March 30, 2000 and served on the County on June 1, 2000, the County continued to
8 maintain what it had always maintained in all of the later correspondence to Mr.
9 Yousoufian: Mr. Yousoufian, you already have all of the documents you requested –
10 there is nothing more. Amazingly, not one shred of additional documents were provided
11 between the time they were served with the lawsuit and until the very eve of a motion to
12 compel production of documents pursuant to interrogatories in February of 2001. It is
13 obvious that it is not the filing of the lawsuit which is the operative factor here, it is the
14 County's failure to comply with its requirements under the PDA. Since the County did
15 not demonstrate due diligence even after the lawsuit was filed, they should not blame Mr.
16 Yousoufian for delays.
17

18 Furthermore, the County does not plead laches in this case. This is a violation of
19 CR 8 (c) which is the rule relating to affirmative defenses. It states, in relevant part:
20

21 In pleading to a proceeding pleading, a party shall set forth
22 affirmatively...laches...and any other matter constituting an avoidance or
affirmative defense.

23 Laches has been viewed by the Washington courts as an equitable doctrine
24 grounded in the principle of equitable estoppel. As discussed above, the doctrine of
25
26

1 equitable estoppel does not appear to apply to the facts of this case, even in a remote
2 fashion. The Washington courts have held:

3 “The doctrine of laches is a creature of equity and is grounded upon the
4 principles of equitable estoppel. It does not bar an action short of the
5 statute of limitations applicable thereto, unless it is made to appear that, by
6 reason of the delay in asserting a claim, the other party has altered his
7 position or has been otherwise injured by the delay. *Conaway v.*
8 *Coopertive Home Builders*, 65 Wn. 39, 117 Pac. 715; *State ex rel. Kubel*
9 *Plummer*, 130 Wn. 135, 226 Pac. 273; *Auve v. Wenzlaff*, 162 Wn. 368, 298
10 Pac. 686; *State ex rel. Hearty v. Mullin*, 198 Wn. 99, 87 P.ed 280;
11 *McKnight v. Basilides*, 19 Wn.2d 391, 143 P.2d 307.” *Luellen v.*
12 *Aberdeen*, 20 Wn.2d 594, 602, 148 P.2d 849 (1944).

13 The doctrine of laches was designed by the courts of equity to be used against a
14 party with unclean hands. The court in *Robinson v. Linfield College*, 42 F. Supp. 147,
15 *aff’d* 136 F.2d 805, *cert. denied* 64 S. Ct. 262, 320 U.S. 708 (1942), held that the doctrine
16 of laches is based on grounds of public policy which required the discouragement of stale
17 demands where there is difficulty in doing entire justice in a case by reason of
18 extraordinary circumstances, such as the death of a principal witness. It is applied in a
19 case where there is gross negligence or deliberate delay and is applied against a party
20 held destitute of conscience, good faith, and reasonable diligence.

21 XII. BURDEN OF PROOF

22 King County seems to argue that it wishes the burden of proof to be shifted to Mr.
23 Yousoufian. Nothing in the PDA that justifies the shifting of the burden of proof to the
24 citizen in any of these public disclosure requests.

25 This cannot be permitted under the case authority and under the public policy
26 statements contained in the Act. It has universally been held, for example, that if an

1 agency tries to claim an exemption the agency must meet its burden of proof. *State v.*
2 *Jones*, 96 Wn.App 369 (1999), reconsideration denied, *Servais v. Port of Bellingham*, 127
3 Wn.2d 820 (1995), *Ames v. City of Fircrest*, 71 Wn.App. 284 (1993), *Dawson v. Daly*
4 120 Wn.2d 782 (1993).

5
6 Even if a third party, who has an interest in keeping public records from
7 disclosure intervenes, the burden of proof remains on the party asserting non-disclosure.
8 In fact, the liberal interpretation requirements of the Act itself (discussed above) was
9 utilized in *Confederated Tribes v. Johnson*, 135 Wn.2d 734 (1998) to keep the burden of
10 proof on the agency and on the third party seeking to prevent disclosure.

11 XIII. CONCLUSION

12
13 On May 30, 1997, plaintiff presented the defendant King County Executive's
14 Office with a Public Disclosure Act request, broadly worded to encompass all aspects of
15 studies relating to the construction of stadiums in King County and all associated
16 documents including all of the financial arrangements, correspondence and any other
17 supporting documents which would explain "how and why and by whom" sport stadium
18 studies were ordered. These should have been provided within five days of the request.
19 However the County replied giving the apparently false excuse that they needed three
20 weeks to get materials from archives. There is no evidence that anyone ever queried
21 archives or obtained records from them until 2001. In fact, most of the documents
22 requested were not in archives. This was the start of a campaign of delay,
23 misrepresentations, passing the buck.
24
25
26

1 As can be seen in the "Declaration of Plaintiff Armen Yousoufian: Dates on
2 Which Documents Were Finally Produced," one partial document was provided on May
3 29, 1997 and two further documents were provided on June 10, 1997. Thereafter the
4 following documents were provided:
5

Date Provided	Number of Docs.	Days Late	Min. Fine	Max. Fine
7/25/97	1	51	\$255	\$5,100
8/21/97	4	79	\$1,580	\$31,600
10/10/97	2	128	\$1,280	\$25,600
10/28/97	1	125	\$625	\$12,500
3/7/01	108	1350	\$729,000	\$14,580,000
3/19/01	48	1362	\$326,880	\$6,537,600
4/20/01	4	1394	\$27,880	\$557,600
6/8/01	1	1443	\$7,215	\$144,300
7/27/01	59	1492	<u>\$440,140</u>	<u>\$8,802,800</u>
		Total	\$1,534,855	\$30,697,100

13
14 And there are documents not yet produced!

15 At every stage King County has failed to demonstrate a serious commitment to
16 the PDA. For over 28 years of the existence of the life of the PDA there has been no
17 effective implementation by King County of its numerous requirements under the Act to
18 assist citizens and to create a transparent government where every citizen can get access
19 to review all public records.
20

21 Because of the sensitivity of the issues involved, it may very well have been, in
22 part, a deliberate effort to conceal or delay publicity of the facts. If the internal
23 "Kingdome's Future" report had been available to Mr. Yousoufian, the result of the
24 election in June of 1997 may have been different. Had he had access to the document
25 wherein HOK was chosen to do another study because of the absolute insistence of Paul
26

1 Allen in selecting HOK and in partially paying for them, the result of the election may
2 have been different. Certainly even after the election these and many of the other
3 documents produced would have created public interest and awareness at a time when the
4 issue was timely.

5
6 The Public Disclosure Act, including its provisions for penalties is to be liberally
7 construed to effectuate its purposes, which purposes have been deemed fundamental to a
8 free society by the statute itself. In view of the difficulties being experienced, the statute
9 has been changed to increase the fines over the course of the years.

10 The two sport stadiums built at mostly taxpayer expense has cost nearly a billion
11 dollars. Probably the cost of construction at Safeco field for even one day was in excess
12 of a million dollars. With this magnitude of public funds, it is ludicrous for the County to
13 take the position that nominal fines should be imposed on them for their misconduct
14 although bad faith is not necessary, it is present in virtually every nook and cranny of this
15 case.

16
17 A fine of \$5 per day per document would yield a minimum penalty of \$1,534,855.
18 The maximum of \$100 per day would result in a penalty of \$30,690,100. In view of the
19 bad faith, which is more evident in this case than in the PAWS cases in which a \$25 per
20 day penalty was assessed, it is urged that this Court award penalties based in the upper
21 end of the discretionary range together with all of plaintiff's reasonable attorney's fees
22 and costs.

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25 DATED this _____ day of August, 2001.

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DAVID J. BALINT, PLLC

By: _____
DAVID J. BALINT (WSBA #5881)
Of Attorney for Plaintiff