

## **REQUEST UNDER THE WASHINGTON PUBLIC RECORDS ACT**

September 3, 2019

Public Disclosure Officer  
Office of the Governor  
P.O. Box 40002  
Olympia, WA 98504-0002

**By Electronic Mail:** [publicdisclosure@gov.wa.gov](mailto:publicdisclosure@gov.wa.gov)  
**Re:** Certain Correspondence

Dear Sir or Madam:

On behalf of the public policy group Energy Policy Advocates (EPA), recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) the Internal Revenue Code, and pursuant to the Public Record Act, RCW Chapter 42.56, *et seq.*, please provide copies of the following records: all correspondence, and any accompanying information<sup>1</sup>, including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) Reed Schuler and/or Chris Davis, that b) includes, anywhere, either i) “fellows program” or ii) both “fellow” and “USCA”, and is c) dated from May 10, 2019 through the date you process this request, inclusive. The preceding search terms are not case sensitive.

We request entire threads of which any responsive correspondence is a part, regardless whether any portion falls outside of the above time parameter. To narrow this request, please consider as non-responsive electronic correspondence that merely receives or forwards press clippings, such as news services or stories or opinion pieces, if that correspondence has no comment or no substantive comment added by a party other than the original sender in the thread (an electronic mail message that includes any expression of opinion or viewpoint would be

---

<sup>1</sup> See discussion of SEC Data Delivery Standards, *infra*.

considered as including substantive comment; examples of non-responsive emails would be those forwarding a news report or opinion piece with no comment or only “fyi”, or “interesting”).

The Washington Public Records Act is “a strongly-worded mandate for broad disclosure of public records.” *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 535 (Wash. 2009). Exemptions are to be “narrowly construed” under RCW Chapter 42.56.030.

None of the exemptions under RCW Chapter 42.56 are likely to apply to the documents requested. However, should the Office of the Governor believe that an exemption applies that allows withholding or redaction of any documents, we ask that you provide a detailed exemption log, listing which documents are withheld or redacted, pursuant to any exemption(s) claimed, and briefly describe the content of the document in general terms. We note a recent Washington State Appellate Court decision which held “[w]hen an agency claims an exemption under the PRA, it must provide identifying information that includes a brief explanation of how the statutory exemption applies to each specific record.” *Zink v. City of Mesa*, 162 Wn. App. 688, 723 (Wash. Ct. App. 2011).

Pursuant to RCW Chapter 42.56.120, there is no charge for locating these documents, and we request all documents be released to us in electronic form, either via an email attachment or a CD. Given that, and that the statute clearly states that “charges shall not exceed the amount necessary to reimburse the agency...for its actual costs directly incident to such copying,” we expect the costs to be minimal. Nonetheless, we are prepared to reimburse up to \$150 for these records if necessary and justified. Should you anticipate the costs will exceed this limit, please contact us as soon as possible to explain and discuss additional steps.

We request a rolling production, if/as you see necessary and appropriate within what the PRA permits, with responsive records being processed and produced independent of any others, as no such production is dependent upon other records being released. However, given the narrow population of potentially responsive records, the need for rolling productions is unlikely.

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does not seek only those records which survive on an employee's own machine or account. We do not demand your office produce requested information in any particular form, instead **we request records in their native form**, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards.<sup>2</sup> The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, “Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. (***Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.***)” (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

---

<sup>2</sup> <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

We look forward to your response. If you have any questions, do not hesitate to contact me by email at [MatthewDHardin@protonmail.com](mailto:MatthewDHardin@protonmail.com).

Sincerely,

Matthew D. Hardin  
Executive Director  
Energy Policy Advocates