

WASHINGTON PUBLIC RECORDS ACT REQUEST

September 8, 2020

Samuel Assefa, Director
Office of Planning & Community Development
Seattle City Hall
600 4th Ave, 5th Floor
Seattle, WA 98124-4729
By Electronic Mail: OPCD@Seattle.gov

Re: Request for Public Records

Dear Mr. Assefa:

On behalf of Energy Policy Advocates, a non-profit public policy institute incorporated in Washington, and pursuant to Washington State's Public Records Act, RCW Chapter 42.56, I hereby request within 5 business days, pursuant to RCW Chapter 42.56.070(3)(e), copies of **any email correspondence** that meets the following description(s):

- 1) Correspondence to or from any of the following individuals: Samuel Assefa, Ubax Gardheere, David Goldberg, Katie Sheehy, Michael Blumson, Boting "Bo" Zhang, and/or Patrice Thomas, dated at any time from September 1, 2018 through the date you processes this request, inclusive;
- 2) which correspondence was also sent to or from any email address that does not contain "@seattle.gov"; and
- 3) which correspondence includes, anywhere, including in the "to:", "from:", "cc:" or "bcc:" lines, subject line, or body of an email, any of the following words/phrases: i) "O'Brien" ii) "Berkeley", iii) "350 Seattle", iv) "Spatz", v) "Heeringa", vi) "Vespa", and/or vii) "@ecy.wa.gov".

We request entire “threads” of which any responsive electronic 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 news items, newsletters or press summaries or ‘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 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”).

Additionally, please consider all published or docketed materials, including pleadings, regulatory comments, ECF notices, news articles, and/or newsletters, as non-responsive, unless forwarded to or from the named persons with substantive commentary added by the sender.

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 City 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 “When 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.

We request records on your system, e.g., its backend logs, and do *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.¹ The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

¹ <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

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.

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.

In the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan *electronic* mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email at MatthewDHardin@gmail.com. We look forward to your timely response.

Respectfully submitted,

Matthew D. Hardin