

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

WHITCOM 911, a Washington agency,

Plaintiff,

NO. 23-2-00042-38

v.

WP COMPANY LLC d/b/a THE WASHINGTON POST, a Delaware limited liability company, THE NEW YORK TIMES COMPANY d/b/a THE NEW YORK TIMES, a corporation incorporated under the laws of the state of New York, SPOKANE TELEVISION, INC. d/b/a KXLY, a Washington Profit Corporation,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, WHITCOM 911, by and through its attorneys, Jeffrey R. Galloway and Brian M. Werst of Witherspoon Brajcich McPhee, PLLC, claims for relief against the above-named Defendants, complains, and alleges as follows:

I. PARTIES

1.1 Plaintiff WHITCOM 911 is a Washington agency established pursuant to interlocal agreement under RCW 39.34 *et seq.*, through the cooperation of Washington State

1 political/municipal entities consisting of the County of Whitman, Washington; City of
2 Pullman, Washington; and Washington State University. WHITCOM 911 is a “person” as
3 defined under the Washington Uniform Declaratory Judgments Act.
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5 1.2 Upon information and belief, Defendant WP COMPANY, LLC d/b/a THE
6 WASHINGTON POST is a Delaware limited liability company and news organization
7 operating in the District of Columbia. Defendant WP COMPANY, LLC d/b/a THE
8 WASHINGTON POST (“The Washington Post”) is a “person” as defined under the
9 Washington Uniform Declaratory Judgments Act.
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12 1.3 Upon information and belief, Defendant THE NEW YORK TIMES COMPANY d/b/a
13 THE NEW YORK TIMES is a corporation incorporated under the laws of the state of New
14 York and a news organization located and operating in New York County, State of New
15 York. Defendant THE NEW YORK TIMES COMPANY d/b/a THE NEW YORK TIMES
16 (“The New York Times”) is a “person” as defined under the Washington Uniform
17 Declaratory Judgments Act.
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20 1.4 Upon information and belief, Defendant SPOKANE TELEVISION, INC. d/b/a KXLY, a
21 Washington Profit Corporation, is a news organization located and operating in Spokane
22 County, State of Washington. Defendant SPOKANE TELEVISION, INC. d/b/a KXLY
23 (“KXLY”) is a “person” as defined under the Washington Uniform Declaratory Judgments
24 Act.
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27 **II. JURISDICTION AND VENUE**

28 2.1 This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 7.24 *et seq.*

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30 2.2 Venue and jurisdiction are proper in Whitman County, State of Washington.
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III. FACTUAL ALLEGATIONS

3.1 WHITCOM 911 re-alleges the foregoing paragraphs as though fully set forth herein.

WHITCOM 911

3.2 WHITCOM 911 provides Emergency 911 (“911”) services for various public agencies, including the City of Moscow, Idaho (“City of Moscow”).

3.3 Providing 911 services requires, inter alia, that WHITCOM 911 receives the call, gathers information, and then based upon the information provided by the caller, dispatches the proper agency to the caller’s location to assist.

3.4 WHITCOM 911 is an agency subject to the Washington Public Records Act, codified at RCW 42.56 *et seq.*

3.5 WHITCOM 911 and the City of Moscow have entered into an agreement regarding services to be performed by WHITCOM 911 (“Agreement”). Pursuant to the Agreement, 911 calls made by callers in the City of Moscow are received by WHITCOM 911.

3.6 Pursuant to the Agreement between WHITCOM 911 and the City of Moscow, WHITCOM 911 provides 911 services for the Moscow Fire Department, Moscow Police Department, and EMS emergency services for the City of Moscow.

3.7 Pursuant to the Agreement, WHITCOM 911 is affiliated with the Moscow Police Department.

NOVEMBER 13, 2022, 911 CALL

3.8 On November 13, 2022, WHITCOM 911 received a 911 call from a caller located in Moscow, Idaho, requesting assistance to 1122 King Road located in Moscow, Idaho (“1122 King Road”).

1 3.9 WHITCOM 911 recorded the 911 call. Based upon the information provided in the 911
2 call, WHITCOM 911 dispatched the Moscow Police Department to 1122 King Road.

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4 **ARREST OF BRYAN C. KOHBERGER**

5 3.10 Based upon the investigation of the Moscow Police Department, on December 29, 2022,
6 a Criminal Complaint and Probable Cause Order was issued for the arrest of Bryan C.
7 Kohberger.
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9 3.11 Mr. Kohberger was arrested, and criminal charges are currently pending in Latah County
10 District Court in Moscow, Idaho.
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12 **NONDISSEMINATION ORDERS**

13 3.12 On January 3, 2023, Mr. Kohberger’s counsel and the Latah County Prosecuting Attorney
14 stipulated to a Nondissemination Order.
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16 3.13 On January 3, 2022, the Latah County District Court issued a Nondissemination Order
17 (attached hereto as “Exhibit 1” and hereinafter referred to as “Nondissemination Order”)
18 that specifically prohibits:
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20 ...any statement, which a reasonable person would expect to be
21 disseminated by means of public communication that relates to the
22 following:

- 23 1. Evidence regarding the occurrences or
24 transactions involved in this case;
- 25 2. The character, credibility, or criminal record of a
26 party;
- 27 3. The performance or results of any examinations
28 or tests or the refusal or failure of a party to
29 submit to such tests or exmninations [sic];
- 30 4. Any opinion as to the merits of the case or the
31 claims or defense of a party;

5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement give [sic] by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

3.14 On January 18, 2023, the Latah County District Court amended its January 3, 2023 Nondissemination Order. The Amended Nondissemination Order (attached hereto as "Exhibit 2" and hereinafter referred to as "Amended Order") provides:

1. The attorneys for any interested party in this case, including the prosecuting attorney, defense attorney, and any attorney representing a witness, victim, or victim's family, as well as the parties [to the case], including but not limited to investigators, law enforcement personal [sic], and agents for the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements (written or oral) concerning this case, except, without additional comment, a quotation from or reference to the official public record of the case.
2. This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the following:
 - a. Evidence regarding the occurrences or transactions involved in the case ...

PUBLIC RECORDS REQUESTS

3.15 On January 10, 2023, The Washington Post, submitted a public records request to WHITCOM 911. The Washington Post requested a "copy of the 911 call placed from 1122 King Road, Moscow, Idaho on Nov. 13 at 11:58 a.m."

3.16 On January 16, 2023, The New York Times, submitted a public records request to WHITCOM 911. The New York Times requested "[c]opies of any 911 calls regarding

1 incidents at King Road or Queen Road in Moscow on November 12 or 13” as well as
2 “[a]ny 911 calls from 1122 King Road since January.”

3 3.17 On January 20, 2023, KXLY, submitted a public records request to WHITCOM 911.
4 KXLY requested “...a copy of the audio and a transcript of the 911 call made from 1122
5 King Road on 11/13/2022 at 11:56 am.”

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7 3.18 WHITCOM 911 reasonably anticipates that there will be additional public records requests
8 for the 911 call made from 1122 King Road on November 13, 2022.

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10 **WASHINGTON PUBLIC RECORDS ACT**

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12 3.19 WHITCOM 911 is an agency, as defined by RCW 42.56.010(1), subject to the Washington
13 Public Records Act, RCW 42.56 *et al.*

14 3.20 The Washington Public Records Act requires disclosure of public records. However, there
15 are many exemptions that may exempt disclosure of said public records.

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17 3.21 WHITCOM 911 has not released the 911 call made from 1122 King Road on November
18 13, 2022, as requested by The Washington Post on January 10, 2023.

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20 3.22 WHITCOM 911 has not released the 911 call made from 1122 King Road on November
21 13, 2022, as requested by The New York Times on January 16, 2023.

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23 3.23 WHITCOM 911 has not released the 911 call made from 1122 King Road on November
24 13, 2022, as requested by KXLY on January 20, 2023.

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26 3.24 The 911 call requested by the Defendants is reasonably believed to be a public record
27 under the Washington Public Records Act, RCW 42.56 *et al.*

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29 3.25 The rights, status, and/or legal relations of WHITCOM 911 in responding to the
30 Defendants’ public records requests, in light of the Nondissemination Order, Amended

1 Order, and the exemptions applicable to WHITCOM 911 under the Washington Public
2 Records Act, are directly affected.

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4 **IV. CAUSE OF ACTION**

5 4.1 WHITCOM 911 re-alleges the foregoing paragraphs as though fully set forth herein.

6 **DECLARATORY JUDGMENT**

7 4.2 WHITCOM 911 is an agency subject to the Washington Public Records Act, RCW 42.56
8 *et al.*

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10 4.3 Defendants have requested the 911 call made from 1122 King Road on November 13,
11 2022, under the Washington Public Records Act.

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13 4.4 The Latah County District Court issued a Nondissemination Order and Amended Order.

14 4.5 To date, WHITCOM 911 has not disclosed the 911 call made from 1122 King Road on
15 November 13, 2022, as requested by Defendants.

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17 4.6 A controversy exists between WHITCOM 911 and Defendants as to whether WHITCOM
18 911 is required to disclose the requested 911 call made from 1122 King Road on November
19 13, 2022, in light of the Nondissemination Order, the Amended Order, and the exemptions
20 applicable under the Washington Public Records Act.

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23 4.7 Pursuant to the Uniform Declaratory Judgment Act, Chapter 7.24 Revised Code of
24 Washington, WHITCOM 911 seeks to have this Court declare the rights, responsibilities,
25 and duties of the parties, including whether WHITCOM 911 must disclose the 911 call
26 made from 1122 King Road on November 13, 2022, as requested by the Defendants.
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V. WHITCOM 911'S PRAYER FOR JUDGMENT

WHEREFORE, WHITCOM 911 prays for judgment as follows:

1. For judgment declaring the rights, responsibilities, and duties of the parties, including whether WHITCOM 911 must disclose the 911 call made from 1122 King Road on November 13, 2022, as requested by the Defendants; and
2. For such other and further relief as may be just, equitable and permitted by law.

DATED this 9th day of February, 2023.

WITHERSPOON BRAJCICH MCPHEE, PLLC

By: 
Jeffrey K. Galloway, WSBA #44059
Brian M. Werst, WSBA #28457
Attorneys for WHITCOM 911