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TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

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

LE'TAXIONE, NFN,

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL,
the STATE OF WASHINGTON,

Defendant.

No.

24203625-32

COMPLAINT FOR VIOLATIONS OF
THE PUBLIC RECORDS ACT

I. INTRODUCTION

1. This lawsuit relates to the Office of the Attorney General ("Defendant AG's Office") unlawful withholding of documents in response to a public records request. The documents requested sought contracts and communications regarding the Defendant AG's Office retention of three private law firms to defend the State in *Le'taxione v. State of Washington, DCYF et. al.*, Spokane County Superior Court, Cause No. 24-2-01432-32.

A. The Office of the Attorney General is legally obligated to represent State agencies.

2. Defendant AG's Office is the State's largest law firm, and has a responsibility to represent State agencies and State employees.

3. Under RCW 4.92.030, "the attorney general or an assistant attorney general shall appear and act as counsel for the state."

4. Under RCW 4.92.070, where an employee is acting within the scope of their official duties, "the attorney general shall appear and defend such officer, employee."

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17 Office") unlawful withholding of documents in response to a public records request. The
18 documents requested sought contracts and communications regarding the Defendant AG's Office
19 retention of three private law firms to defend the State in *Le'taxione v. State of Washington, DCYF*
20 *et. al.*, Spokane County Superior Court, Cause No. 24-2-01432-32.

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25 appear and act as counsel for the state."

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27 duties, "the attorney general shall appear and defend such officer, employee."
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1 5. Each year, Washington citizens pay hundreds of millions of dollars (more than \$444
2 million per year) to Defendant AG's Office for this representation. This taxpayer money is used
3 to employ about 800 attorneys to represent the State and to provide an additional 1,000 employees
4 to support Defendant AG's Office.

5 6. Rather than utilize the vast resources and taxpayer money allocated for the defense
6 of the State, Bob Ferguson — the Washington State Attorney General since 2012 — hires private
7 attorneys (referred to as "Special" Assistant Attorneys General or SAAGs). These SAAGs charge
8 Washington taxpayers several hundred dollars per hour to provide the same services our Attorney
9 General is obligated to provide (which the taxpayers are already paying for).

10 7. Because the AG's Office is a public entity funded by Washington taxpayers, its
11 retention of private law firms is a matter of public record subject to disclosure under the
12 Washington State Public Records Act¹ ("PRA").

13 **B. Defendant AG's Office has an obligation to promptly provide records.**

14 8. The AGO, as a state agency, is charged with the responsibility to disclose public
15 records in compliance with PRA.

16 9. The Supreme Court of Washington calls the PRA "a strongly worded mandate for
17 broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246
18 (1978).

19 10. The PRA requires State agencies to produce all public records upon request unless
20 a specific PRA exception or other statutory exception applies.

21 11. Under RCW 42.56.080(b)(2), upon request, public records shall be made "promptly
22 available" by agencies.

23 12. The Court of Appeals has determined that contracts with the State must be produced
24 in response to a public record request. *See West v. Port of Olympia*, 146 Wn. App. 108, 113, 192
25 P.3d 926, 929 (2008) (holding that the Port of Olympia's contracts with Weyerhaeuser, including
26 all correspondence related to contracts entered with Weyerhaeuser, must be produced in response
27 to a public records request).

28 ¹ RCW 42.56 *et seq.*

1 **C. Under Bob Ferguson, Defendant AG's Office has stifled transparency, resulting in**
2 **cover ups and large monetary fines.**

3 13. Despite its statutory duties, Defendant AG's Office has engaged in a pattern and
4 practice of concealing documents.

5 14. This has been especially true under the leadership of the current Attorney General,
6 Bob Ferguson.

7 15. Even those who endorse Bob Ferguson in his current bid for Governor, have raised
8 concerns over the lack of transparency in Defendant AG's Office. The Seattle Times, in its
9 endorsement of Bob Ferguson, recently noted that the Defendant AG's Office under Ferguson "has
10 been indolent² on several issues of government transparency."

11 16. The Washington Coalition for Open Government also "faults the [AG's Office] for
12 closing requests without adequate notice, and for public records advice that skews more toward
13 government protection than transparency."

14 17. For over a decade, Superior Courts in Pierce, King and Snohomish Counties have
15 repeatedly imposed large monetary fines against Defendant AG's Office for its lack of
16 transparency and its withholding of critical evidence. Here are a few examples:

17 A. In 2014, in *Hamrick v. State of Washington*, Pierce County Superior Court
18 Judge Katherine Stolz imposed discovery sanctions in the amount of \$107,833.84 against
19 the State of Washington (which was represented by Defendant AG's Office) for
20 withholding documents, stating that the discovery violations occurred because "*the State's*
21 *lawyers did not, apparently, understand their discovery obligations under the rules by*
22 *which they agreed to abide.*"

23 B. In 2016, in *Pszonka v. Snohomish County*, King County Superior Court
24 Judge Roger Rogoff imposed discovery sanctions in the amount of \$1,182,966.00 against
25 Snohomish County (represented by Defendant AG's Office) for failing to preserve emails
26 related to the 2014 OSO landslide that killed 43 people, stating "*a significant monetary*
27 *sanction, will deter further similar behavior, encourage training in Defendant AG's*
28

² Indolent: Averse to activity, effort, or movement; lazy.

1 *Office on the various discovery rules, punish the violations here, and compensate*
2 *Plaintiffs for their extra work.”*³

3 C. In 2017, in *Gilligan v. State of Washington*, Snohomish County Superior
4 Court Judge Michael T. Downes imposed discovery sanctions totaling \$137,281.01 against
5 Defendant DSHS (represented by Defendant AG’s Office) for withholding documents.
6 The judge also appointed a Special Discovery Master to determine what was going on.⁴

7 D. In 2023, in *Tobin v. State of Washington*, King County Superior Court Judge
8 Michael Ryan imposed discovery sanctions against Defendant AG’s Office (jointly with
9 DSHS) totaling \$322,550.00 for withholding over 11,000 documents from a
10 developmentally disabled woman who filed a claim against the State of Washington.

11 18. In 2023, Judge Ryan expressed his shock at the State’s failures to promptly provide
12 responsive documents: *“the Court is at a complete loss to understand how a large State agency,*
13 *and the largest law firm in the State, could be so cavalier with respect to their discovery*
14 *obligations and how such a large amount of responsive material could be overlooked and simply*
15 *ignored for six months.”*⁵

16 19. These Court orders, from a variety of judges throughout the State of Washington,
17 provide context. Now, **it is happening again.**

18 20. The Defendant AG’s Office’s actions in this case follow a pattern where the
19 Defendant AG’s Office cavalierly ignores its obligations to provide responsive documents. Put
20 simply, the Defendant AG’s Office refuses to be transparent.

21 II. PARTIES

22 21. Plaintiff Le’taxione, NFN⁶, is a resident of Spokane County, Washington.

23 22. Defendant Office of the Attorney General (“Defendant AG’s Office”) is the
24 primary legal representative for the citizens of the State of Washington and was, at all times
25

26 ³ Attorneys for the landslide victims referred to it as a “shocking cover-up to hide evidence that showed the experts
27 changed their opinions to protect the state’s interest.”

⁴ Despite more than \$100,000.00 in sanctions, the Office of the Attorney General continued to engage in discovery
28 abuses, which necessitated the appointment of a Special Discovery Master and an additional \$20,000.00 in sanctions.

⁵ It was found later that an additional 100,000 documents had been withheld by the Office of the Attorney General in
that case.

⁶ NFN stands for: “No first name.”

1 material to this action, charged with the duty to comply with the provisions of RCW 42.56 *et seq.*,
2 which governs the disclosure of public information.

3 III. JURISDICTION & VENUE

4 23. This Court has jurisdiction over the subject matter of this dispute pursuant to RCW
5 2.08.010 and RCW 42.56.550.

6 24. Venue is proper pursuant to RCW 42.56.550 and RCW 4.92.010(1).

7 IV. STATEMENT OF FACTS

8 25. On March 21, 2024, plaintiffs Le'taxione and Ma'at Smith filed a Complaint in
9 Spokane County Superior Court against the Washington State Department of Children, Youth and
10 Families ("DCYF") for negligence and outrage, and against two of DCYF's social workers, Alix
11 Sieg and Margaretia Taylor for violations of Plaintiffs' civil rights under 42 U.S.C. § 1983
12 (*Le'taxione v. State of Washington, DCYF et. al.*, Cause No. 24-2-01432-32).

13 26. In *Le'taxione v. State of Washington, DCYF*, Le'taxione alleges that, for almost two
14 years, DCYF and its caseworkers illegally prevented visitation or any relationship between
15 Le'taxione and his young daughter Ma'at. To prevent visits, DCYF failed to follow its own
16 policies and procedures and failed to comply with Court orders establishing a relationship between
17 Le'taxione and Ma'at.

18 27. DCYF colluded with, and used, the Office of the Attorney General to submit false
19 documents to the Court, prevent visits and cover up for DCYF's illegal, racist treatment of
20 Le'taxione. This alarmed the Spokane County Superior Court, which questioned **"whether or not**
21 **virtually any of the information [provided by the AG's Office] can be trusted."** Defendant
22 AG's Office submitted many misleading and false representations with the Court.

23 28. Le'taxione further alleges that DCYF's caseworkers acted purposefully, and with
24 racial animus, to separate Ma'at from her Black father in favor of her white relatives. In doing so,
25 DCYF's caseworkers acted with deliberate indifference and gross negligence to violate
26 Le'taxione's constitutionally protected rights to the care and custody of Ma'at, and his equal rights
27 under the law.
28

1 29. Despite a statutory duty to represent the State and its employees in civil lawsuits,
2 The AG's Office retained three separate private practice law firms to represent each of the named
3 defendants in *Le'taxione v. State of Washington, DCYF et. al.*

4 30. On April 19, 2024, a private law firm, Simmons Sweeney Freimund Smith Tardif,
5 PLLC appeared on behalf of DCYF in *Le'taxione v. State of Washington, DCYF et. al.*

6 31. On April 29, 2024, a second private law firm, KND Law, appeared on behalf of
7 Alix Sieg in *Le'taxione v. State of Washington, DCYF et. al.*

8 32. On April 29, 2024, a third private law firm, Evans, Craven & Lackie, P.S., appeared
9 on behalf of Margaretia Taylor in *Le'taxione v. State of Washington, DCYF et. al.*

10 33. On May 23, 2024, Le'taxione submitted a detailed written request for public
11 records in the possession of Defendant AG's Office.⁷

12 34. Specifically, Le'taxione requested public records pertaining to the retention and
13 relationship between the Office of the Attorney General and the three private law firms that it hired
14 to defend in *Le'taxione v. State of Washington, DCYF et. al.* The request was simple, clear and
15 straightforward.

16 35. On May 24, 2024, the Department of Enterprise Services ("DES") acknowledged
17 receipt of Le'taxione's request and indicated that it would begin the process of compiling and
18 reviewing responsive records. An estimated response date of July 1, 2024 was provided.

19 36. In a second email on May 24, 2024, DES requested clarification on the scope of
20 Le'taxione's request.

21 37. On May 28, 2024, Le'taxione clarified the requested scope of records, which was
22 acknowledged by DES.

23 38. July 1, 2024 came and went with no responsive records provided.

24 39. On July 3, 2024, Le'taxione requested prompt disclosure of the records, which were
25 now past DES's self-imposed response date.

26 _____
27 ⁷ The May 23, 2024 letter was sent to: 1. The Public Disclosure Manager for the Department of Children, Youth, and
28 Families; 2. The Public Records Officer for the Department of Enterprise Services; and 3. The Public Records Unit
for the Office of the Attorney General. To date, Plaintiff has only received (scattered and incomplete) records from
the Department of Enterprise Services. Plaintiff has received zero records from DCYF or The Office of the Attorney
General.

40. On July 4, 2024, 41 days after DES had originally acknowledge receipt of Le'taxione's request, DES provided a mere seven pages of documents. DES also told Le'taxione that it would require additional time—until July 20, 2024—to provide further responsive records.

41. On July 9, 2024, (47 days after the original request), Le'taxione sent a follow-up letter to request a prompt response to his public records request. Specifically, Le'taxione highlighted the existence of, and need for immediate production of all contracts, invoices, and communications regarding Defendant AG's Office retention of the three private law firms in *Le'taxione v. State of Washington, DCYF et. al.*

42. Based on the invoice provided by private law firm Simmons Sweeney Freimund Smith Tardiff, its representation was subject to a specific contract number and an initial "contract limit" of \$150,000 (the contract itself was not produced). That is just one of the three private law firms hired by Defendant AG's Office to do the job that the taxpayers already pay the Office of the Attorney General to do.

SAAG INVOICE

SAAG Firm:	Simmons Sweeney Freimund Smith Tardif (SSFST)
SWV #:	SWV0265661 00
Contract #:	10891981

Contract limit: \$150,000.00

43. Over the next week, on July 11, 2024 and July 16, 2024, DES provided a few additional documents. These additional documents did not fully respond to Le'taxione's May 23, 2024 public records request.

44. In fact, while Le'taxione's July 9, 2024 letter stressed the importance of documents related to his case, DES only provided contracts and invoices related to a few past, unrelated cases.

45. To date, Defendant AG's Office has failed to provide any contracts or communications regarding the retention of the three private law firms defending the State and its employees in *Le'taxione v. State of Washington, DCYF et. al.*

1 46. On July 19, 2024, Le'taxione sent another letter requesting relevant documents –
2 specifically all contracts showing the hiring of the three private law firms and the correspondence
3 discussing each private law firm's appearance as Special Assistant Attorney General's in
4 *Le'taxione v. State of Washington, DCYF*.

5 47. On July 24, 2024, DES turned over a few more documents. However, the
6 documents provided remained woefully incomplete and, again, failed to include the contracts that
7 were necessary to hire the three private law firms in Le'taxione's lawsuit.

8 48. On July 24, 2024, DES sent another excuse, this time with an "estimated" response
9 date of July 29, 2024. At this point, it became clear that the Office of the Attorney General was
10 trying to stall, delay and/or run out the clock.

11 49. On July 24, 2024, Le'taxione wrote to DES. DES and Defendant AG's Office were
12 continuing to withhold responsive records. **For the third time**, Le'taxione requested all contracts
13 retaining the three private law firms in *Le'taxione v. State of Washington, DCYF* and all any related
14 correspondence.

15 50. Due to the excessive delay, Le'taxione warned that he would be forced to take legal
16 action against Defendant AG's Office unless he received a complete production of the contracts
17 and records of payments by July 26, 2024.

18 51. On July 26, 2024, DES produced an incomplete random smattering of documents
19 on behalf of Defendant AG's Office. This is neither a complete response, nor remotely acceptable.
20 Basic, key records remain missing and are long overdue.

21 52. Le'taxione has yet to receive a copy of the contracts with Evans Craven & Lackie,
22 P.S., Simmons Sweeney Freimund Smith Tardif, PLLC, or KND Law, or any other
23 correspondence discussing the private law firms' representation as Special Assistant Attorneys
24 General in *Le'taxione v. State of Washington, DCYF*.

25 53. Because Le'taxione failed to receive complete responsive records related to the
26 contracts entered between Defendant AG's Office and the three private law firms, this Complaint
27 is necessary. Defendant AG's Office has violated the Public Records Act.

1 54. To date, DES and Defendant AG's Office have failed to produce complete
2 responsive documents.

3 55. Defendant AG's Office has not produced or raised any exemptions that would
4 prevent public disclosure.

5 56. All records requested by Le'taxione are public documents and must promptly be
6 made available to him in compliance with the Public Records Act.

7 57. DES and Defendant AG's Office have interfered with Le'taxione's right to utilize
8 RCW 42.56 *et seq.*

9 58. There is no legitimate justification for the failure to produce complete responses to
10 Le'taxione's request.

11 59. Defendant AG's Office has failed to fully respond to Le'taxione's request in a
12 timely manner, failed to render full assistance to Le'taxione in fulfilling his request, and/or has
13 failed to adequately search for responsive records.

14 60. All documents requested by Le'taxione have been in the possession, custody, and
15 control of Defendant AG's Office since Le'taxione first requested records related to Defendant
16 AG's Office use of taxpayer money to hire three, separate sets of private law firms.

17 V. CAUSE OF ACTION

18 VIOLATIONS OF PUBLIC RECORDS ACT

19 61. Defendant AG's Office is statutorily required to comply with the disclosure
20 requirements of the Public Records Act.

21 62. Defendant AG's Office violated the Public Records Act in each of the following
22 ways:

- 23 a) By failing to respond in a reasonable amount of time;
- 24 b) By improperly withholding responsive records;
- 25 c) By failing to provide an adequate exemption log; and
- 26 e) By failing to conduct a reasonably diligent search to locate all responsive
27 records.

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PRAYER FOR RELIEF

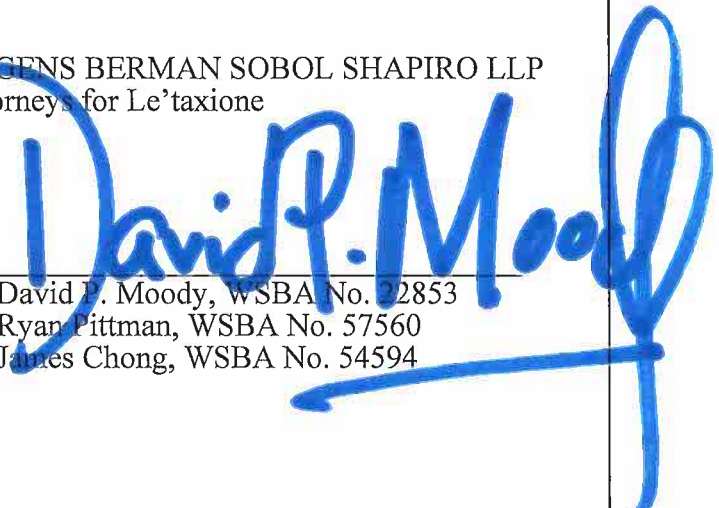
WHEREFORE, Plaintiff prays for the following relief:

- A. An Order requiring Defendant AG's Office to produce all records requested by Plaintiff's public records request;
- B. Judgment against Defendant AG's Office for statutory penalties;
- C. Judgment against Defendant AG's Office for Le'taxione's attorneys' fees and costs;
- D. Further relief as the Court deems equitable, including but not limited to all remedies and sanctions available under RCW 42.56 *et seq.*

DATED this 29th day of July 2024.

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By:


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