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2023 NOV 27 PM 2:02

WALLA WALLA COUNTY
WASHINGTON

By *[Signature]*

**THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA**

THERESA EIER, a single woman,

Plaintiff,

vs.

LAURA AUKERMAN, both individually and in
her official capacity as a City Council Member
of the City of Dayton, Washington, and THE
CITY OF DAYTON, WASHINGTON, a
political subdivision of the State of Washington,

Defendants.

No. **23 2 00790 36**

SUMMONS – CIVIL

(20 Days)

23-2-00790-36
SMCMP 1
Summons and Complaint
15654087



TO THE DEFENDANTS: A lawsuit has been started against you in the above entitled court by Theresa Eier, Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what she or he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

Summons	1	CARMAN LAW OFFICE. INC. 6 E. Alder Street, Ste. 418 Walla Walla, WA 99362 (509) 529-1018
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You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.

Respectfully filed this 21 day of November, 2023.

CARMAN LAW OFFICE, INC.

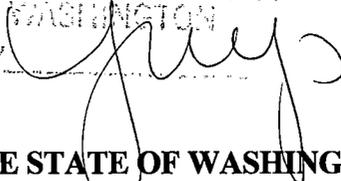
By: 
Janelle M. Carman-Wagner, WSBA #31537
Attorney for Plaintiff

Summons	2	CARMAN LAW OFFICE, INC. 6 E. Alder Street, Ste. 418 Walla Walla, WA 99362 (509) 529-1018
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FILED
KATHY ELLIOTT
COUNTY CLERK

2023 NOV 27 PM 2:02

WALLA WALLA COUNTY
WASHINGTON

BY 

**THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA**

7 THERESA EIER, a single woman,

8 Plaintiff,

9 vs.

10 LAURA AUKERMAN, both individually and in
11 her official capacity as a City Council Member
12 of the City of Dayton, Washington, and THE
13 CITY OF DAYTON, WASHINGTON, a
14 political subdivision of the State of Washington,

15 Defendants.

No. 23 2 00790 36

**COMPLAINT FOR RELIEF
AND FOR DAMAGES**

16 Plaintiff Theresa Eier, by and through her attorney of record, Janelle M. Carman-Wagner,
17 brings this action against the above-named defendants before this Court with this Complaint for
18 Relief and Damages, and alleges against the Plaintiffs and each of them as follows:

I. STATEMENT OF THE CASE

19 This claim arises from the deliberate misconduct of a public servant against a constituent
20 with whom she had political disagreements. Rather than handling the conflict openly and
21 effectively, the public servant resorted to petty and unlawful conduct against the constituent.
22 This case also involves the willful failure of an elected government body to do even the bare
23 minimum required to address its citizens' legal and constitutional entitlements.

The Washington State Public Records act is a mandate that recognizes that the citizens
have not given up their sovereignty to elected officials, but rather entrust its protection to them.
The Public Records Act requires that public servants conduct themselves transparently when

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2 exercising that public trust. It must provide records to those who request them. Such conduct is
3 not only the law; it is also a vital part of the necessary checks and balances between citizens and
4 their elected government.

5 In this case, Laura Aukerman, an elected City Council Member of Dayton, Washington,
6 not only failed to live up to the trust of her constituents by identifying and handing over the
7 records from her City Council Facebook account; she went further by destroying those records
8 in an effort to avoid giving them to a vocal critic of her official acts. Inso doing, she broke the
9 law. Councilmember Aukerman's illegal and unlawful acts were not only countenanced by the
10 City of Dayton as a whole, but swept under the rug and adopted by the city's refusal to make any
11 efforts to obtain those records.

12 In conjunction with the Public Records Act, Plaintiff relies upon 42 U.S.C. § 1983, which
13 provides that no public servant may deprive one of the citizens they serve of a fundamental civil
14 right enshrined in the United States Constitution. The right to free speech, especially in matters
15 of public policy and governance, is sacrosanct. Councilmember Aukerman routinely blocked
16 dissenting voices who questioned or disagreed with her from her City Council Facebook account,
17 chiding them for being uncooperative and rude, and denying their further ability to use a public
18 forum to make their dissent heard. This violated the First Amendment.

19 The conduct of Councilmember Aukerman and the city should be strongly denounced.
20 Remedy is sought by this Plaintiff through this suit.

21 II. PARTIES

22 **2.1.** Plaintiff Theresa Eier is a single person and resident of the City of Dayton,
23 Washington.

2.2. At all times relevant herein, Defendant Laura Aukerman is an elected member of
the City Council of Dayton, Washington, and a person residing in Dayton, Washington,
and was at all times relevant to this action subject as an elected official to the Public
Records Act.

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2 **2.3.** Defendant City of Dayton is a code city located within Columbia County, State
3 of Washington, and was at all times relevant to this action subject as a political
4 subdivision of the State of Washington subject to the Public Records Act.

5 **III. JURISDICTION AND VENUE**

- 6 **3.1.** Plaintiff reasserts all previous allegations as if fully set forth herein.
- 7 **3.2.** This Court has jurisdiction over the person of the Defendants, and venue is
8 proper in this Court, as Defendants are citizens of, reside in, or are located entirely within
9 the County of Columbia, State of Washington, and the unlawful acts and omissions
10 complained of occurred within Columbia County, Washington.
- 11 **3.3.** Venue is proper in this Court because the unlawful acts and omissions
12 complained of and giving rise to this case occurred in Columbia County, Washington,
13 and where Walla Walla County is an adjoining county thereto.
- 14 **3.4.** This Court has jurisdiction over the subject matter of the Plaintiff's Public
15 Records Act cause of action, and venue is proper, under RCW 42.56.550.
- 16 **3.5.** This Court has concurrent jurisdiction with the Courts of the United States of
17 America over the Plaintiff's cause of action arising under 42 U.S.C. § 1983.

18 **IV. FACTUAL ALLEGATIONS**

- 19 **4.1.** Plaintiff reasserts all previous allegations as if fully set forth herein.
- 20 **4.2.** Defendant Laura Aukerman is an elected member of the City Council of
21 Defendant City of Dayton, Washington.
- 22 **4.3.** Defendant Aukerman, as part of her work as a city council member, kept and
23 maintained a social media presence through a public Facebook account named "Laura
Aukerman For Dayton City Council," later changed to "Laura Aukerman Dayton City
Council."
- 4.4.** Defendant Aukerman also had personal, private Facebook account not accessible
to the general public or all of her constituents.

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2 **4.5.** Defendant Aukerman created the *Laura Aukerman Dayton City Council* account
3 with the same email address used by her for city business, which is listed on the City's
4 website. Through that account, citizens can interact with her posts by making comments.
5 They can also send electronic messages.

6 **4.6.** On the *Laura Aukerman Dayton City Council* Facebook account, Defendant
7 frequently posted news and information from Dayton City Council meetings, discussed
8 positions on a number of issues in front of the city council, and solicited feedback from
9 constituents on those issues.

10 **4.7.** Defendant Aukerman would also engage with constituents and fellow
11 councilmembers on the Facebook account regarding issues of public import and the
12 business of the City.

13 **4.8.** Defendant Aukerman used the Facebook account as a method of keeping in touch
14 with constituents and relaying information on her positions and work on the Dayton City
15 Council. Defendant Aukerman used the Facebook account as method of touting her
16 accomplishments and seeking support and input from citizens for the City Council and its
17 work.

18 **4.9.** Defendant Aukerman bristled when there were disagreements. Citizens would
19 sometimes post comments on Defendant Aukerman's City Council Facebook asking
20 difficult questions about City business, criticizing her stances and votes on certain issues,
21 or making personal statements.

22 **4.10.** Defendant Aukerman often reacted with hostility to negative comments and
23 criticism. She would email some individuals who posted negative comments to berate
them about those comments, or to address other things they had said in public to her. On
at least three occasions, and likely more, she blocked individuals from commenting on
her City Council Facebook account.

4.11. "Blocking" an individual on Facebook means that they are unable to access or
view the account's Facebook posts, nor to comment on them. When the accountholder
blocks an individual from the accountholder's account, the individuals are unable to see
the information posted by the accountholder, or to comment on those posts.

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4.12. Plaintiff Theresa Eier is a vocal citizen. On numerous occasions during the election of 2020, Plaintiff appeared at political debates and fora, and asked questions and made comments meant to elicit honest and forthright answers of the candidates, including Ms. Auckerman.

4.13. Plaintiff Eier’s proclivity for free speech did not end after the election. Instead, she set to work holding the individuals elected in 2020 to account for their actions and stances impacting public issues.

4.14. Plaintiff Eier’s plain-spokenness and honesty were not usually welcomed by those in the political arena, or those with strong views opposing her own, and her inability to mince words often resulted in anger or frustration in political opponents. Plaintiff Eier’s previous employer received numerous complaints from those she disagreed with—loudly—over her political activity in the community.

4.15. Plaintiff frequently commented on Defendant Aukerman’s City Council Facebook account - never in a congratulatory or complimentary tone. Plaintiff’s disagreement with nearly every decision made by Defendant Aukerman were not subtle positions. However, the comments never used lewd or obscene language, nor suggested violence.

4.16. Defendant Aukerman made no secret of her ability and desire to block those whose comments were negative or did not celebrate her—in fact, she proudly and gleefully stated that her actions would not change, and that she would continue to block her critics. In a post dated October 11, 2022, Defendant Aukerman celebrated the blocking of “three individuals” whose comments did not “promote working together,” meaning they disagreed with her. She also posted the dates for the next city council meeting for the information of those handful of constituents who survived her purge of opponents. Plaintiff took issue with this post, and pointed out that Defendant Aukerman’s City Council Facebook account met the very definition of a government account in numerous recent federal civil rights cases. Of course, this meant the blocking of vocal opponents constituted a constitutional violation.

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2 **4.17.** Following this final, apparently “unforgivable” questioning of her authority,
3 Defendant Aukerman blocked Plaintiff from the City Council facebook account on or
4 about October 11, 2022.S

5 **4.18.** Plaintiff was now unable to access the Laura Aukerman Dayton City Council
6 account, and could not see the posts by Defendant Aukerman discussing city
7 business, votes, issues, and information from the city. She could not see Defendant
8 Aukerman’s opinions nor was she permitted to discuss them with her. more
9 importantly, she was not able to post comments to the councilmember’s posts, or
10 discuss those posts with other commenters. Plaintiff posted her complaint on another
11 public Facebook account and a letter to the editor of both local newspapers;

12 **4.19.** Curious as to who the other blocked individuals might be, and what other secret
13 actions Defendant Aukerman may have been engaged in, Plaintiff, through a private
14 investigator, made an email request under the Washington State Public Records Act
15 to the City of Dayton on or about November 10, 2022. Plaintiff requested Defendant
16 Aukerman’s records of the Laura Aukerman Dayton City Council Facebook account.

17 **4.20.** The request issued through Shane Morlan, a licensed private investigator working on
18 behalf of Plaintiff. The request read:

19 I would like all Facebook Data from the “Laura Aukerman Dayton City Council”
20 Facebook page located at <https://www.facebook.com/profile.php?id=100071552363741>
21 utilizing the download my data tool. Instructions can be found at
22 https://www.facebook.com/help/212802592074644?helpref=faq_content

23 I would specifically like the records pertaining to previous posts, chat logs, friend lists
and lists of people who are *blocked* on the Facebook page as of 11/10/2022.
I request these records as per (RCW 40.14) and (RCW 42.56.010).

The statement has been made these are not public records, however as per (RCW
42.56.010) public records" includes any writing containing information relating to the
conduct of government or the performance of any governmental or proprietary function
prepared, owned, used, or retained by any state or local agency regardless of physical
form or characteristics. For the office of the secretary of the senate and the office of the
chief clerk of the house of representatives, public records means legislative records as
defined in RCW 40.14.100 and also means the following: All budget and financial
records; personnel leave, travel, and payroll records; records of legislative sessions;
reports submitted to the legislature; and any other record designated a public record by

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2 any official action of the senate or the house of representatives. This definition does not
3 include records that are not otherwise required to be retained by the agency and are held
4 by volunteers who:

(a) Do not serve in an administrative capacity;

(b) Have not been appointed by the agency to an agency board,
5 commission, or internship; and

(c) Do not have a supervisory role or delegated agency authority.

6 The page is labeled as “Laura Aukerman Dayton City Council” and is
7 used as a public forum to discuss City Council Business.

8 **4.21.** A copy of this request is attached hereto.

9 **4.22.** Immediately, other city actors began shifting responsibility, emailing Defendant
10 Aukerman to request that she provide the records, and being very careful to disclaim
11 any city involvement in the Facebook account—despite the fact that Defendant
12 Aukerman was a city council member. Despite this shifting, they took no positive
13 action to actually gather responsive documents as required.

14 **4.23.** Defendant Aukerman took the obviously illogical position to deny that the *Laura*
15 *Aukerman Dayton City Council* Facebook page was in any way connected to her
16 work as a Dayton City Council member, and refused to hand over any records to
17 Mayor Zac Weatherford by email on or about November 10, 2022. It does not appear
18 from this email exchange that any attempt to retrieve and review the records with
19 counsel was made, and no discussion was had between the mayor and Defendant
20 Aukerman about the potential issues with this stance.

21 **4.24.** On November 22, 2022, (twelve days after the request was made) City
22 Clerk/Treasurer/Public Records Officer Deb Hays “responded” to the Plaintiff’s PRA
23 request by indicating that the City had no involvement in one of its elected officials’
Facebook accounts, and also that Defendant Aukerman would not provide the
documents to the City.

4.25. In response the same day to this email, Plaintiff’s private investigator renewed the
request and cited to authorities supporting an inference that the Laura Aukerman
Dayton City Council Facebook account may actually be a public record of the City,
and asking for reconsideration of the denial.

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4.26. The City sent its terse “final” response on November 28, 2022, again disclaiming any involvement in one of its elected officials’ Facebook accounts, refusing to aid in the disclosure of the records, and making it clear that no further discussion of the issue would be entertained.

4.27. Plaintiff attempted to file a tort claim with the city for her complaints under 42 USC § 1983. She looked on the City’s website for a tort claim form, and finding none obtained a blank standard form from the County. She then contacted the Columbia County Auditor to determine who the appropriate agent under RCW 4.96.020(2) was. At this point, she learned that no agent has been recorded with the Auditor as of the date of this Complaint, thereby constituting a waiver of the protections of RCW 4.96.020.

4.28. Defendant Auckerman never removed the ‘block’ against Plaintiff on the *Laura Aukerman Dayton City Council* Facebook account.

4.29. On information and belief Defendant Auckerman deleted the *Laura Aukerman Dayton City Council* Facebook account without saving or archiving the materials.

V. FIRST CAUSE OF ACTION: VIOLATION OF THE WASHINGTON STATE PUBLIC RECORDS ACT, CHAPTER 42.56 RCW

- 5.1. Plaintiff reasserts all previous allegations as if written here.
- 5.2. The City of Dayton is subject to the Public Records Act.
- 5.3. Laura Aukerman, as an elected official of the City of Dayton, Washington, is subject to the Public Records Act.
- 5.4. Plaintiff’s request for public records described above is a request for identifiable classes of public records, made pursuant to the Public Records Act.
- 5.5. Defendants, and each of them, have a statutory duty to “honor requests received... for identifiable public records unless exempted by provisions of [the Public Records Act].” RCW 42.56.080(2).
- 5.6. Defendants and each of them have a statutory duty to respond within five business days of receiving a public records request by

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- (a) Providing the record;
- (b) Providing an internet address and link on the agency's website to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;
- (c) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request;
- (d) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request if it is not clarified; or (e) Denying the public record request.

RCW 42.56.520(1).

5.7. For any records withheld, the Defendants and each of them have a statutory duty to provide “a statement of the specific exemption authorizing the withholding of the record... and a brief explanation of how the exemption applies to the record withheld.”
RCW 42.56.210(3).

5.8. The Defendants and each of them have a duty to conduct an adequate search for responsive records. This includes searches on private devices or accounts when public duties are carried out on those devices.

5.9. The City has a statutory duty to adequately train its employees and officers pursuant to RCW 42.56.150.

5.10. The Defendants and each of them, at a minimum, breached their duties referenced herein.

5.11. Upon information and belief, Defendant Aukerman intentionally and maliciously breached her duties referenced herein.

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5.12. Upon information and belief, Defendant Aukerman intentionally destroyed the public records described herein to avoid embarrassment, detection or evidence of unlawful activity, and/or litigation based on same. Such destruction of public records is unlawful.

VI. SECOND CAUSE OF ACTION: VIOLATION OF FIRST AMENDMENT CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1983

- 6.1.** Plaintiff reasserts all previous allegations as if written here.
- 6.2.** Defendants and each of them were at all times relevant to this action acting under color of law as a City and city council member.
- 6.3.** Defendant Aukerman, acting as a city council member, deprived Plaintiff of her rights to free speech in violation of the First and Fourteenth Amendments of the Constitution of the United States.
- 6.4.** Defendant City of Dayton had a policy or custom of violating free speech rights of citizens on social media;
- 6.5.** Defendant City of Dayton failed to act to correct or prevent the harm done by its employee or official, Defendant Aukerman, and failed to supervise.
- 6.6.** At all times relevant to this action, Defendant City of Dayton failed to adopt clear policies and to properly train its employees and officers as to free speech issues on social media.
- 6.7.** Defendant City of Dayton's policy or custom, its failure to act to correct or prevent harm, and its failure to adopt clear policies or properly train its employees and officials were a direct and proximate cause of the constitutional deprivation suffered by Plaintiff.
- 6.8.** Defendant Aukerman's intentional and malicious unlawful acts were a direct and proximate cause of the constitutional deprivation suffered by Plaintiff.

COMPLAINT	10	CARMAN LAW OFFICE, INC. 6 E. Alder Street, Ste. 418 Walla Walla, WA 99362 (509) 529-1018
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VII. PRAYER FOR RELIEF

Based upon the allegations and causes of action above, Plaintiff respectfully asks this Court to grant the following relief:

1. For Plaintiff's first cause of action, all documents requested by the Plaintiff in her Public Records Act request;
2. For Plaintiff's first cause of action, statutory penalties of up to \$100 per day, per page of documents wrongfully withheld, to be proved in this matter;
3. For Plaintiff's second cause of action, a judgment for compensatory damages to be proved in this matter;
4. On all claims, for attorney fees and costs of suit to be taxed against Defendants; and for
5. Any and all other relief this Court may deem appropriate and just.

Respectfully filed this 27 day of November, 2023.

CARMAN LAW OFFICE, INC.

By: 
Janelle M. Carman-Wagner, WSBA #31537
Attorney for Plaintiff

COMPLAINT	11	CARMAN LAW OFFICE, INC. 6 E. Alder Street, Ste. 418 Walla Walla, WA 99362 (509) 529-1018
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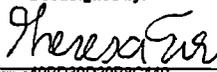
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CERTIFICATION

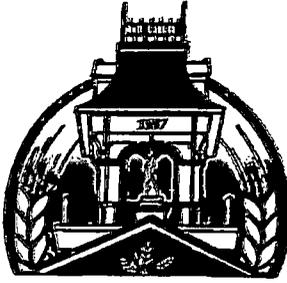
I hereby declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am the Plaintiff in the above-entitled proceeding. I am over 18 and am competent to testify. I have read the foregoing Complaint, know the contents thereof, and believe the same to be true.

SIGNED in Walla Walla, Washington, on this 11/27/2023 day of November, 2023 by

DocuSigned by:

49BD30D2098C440...
Theresa Eier

COMPLAINT	12	CARMAN LAW OFFICE, INC. 6 E. Alder Street, Ste. 418 Walla Walla, WA 99362 (509) 529-1018
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CITY OF DAYTON
111 South 1ST Street
Dayton, Washington 99328
(T) 509.382.2361 (F) 509.382.2539
(W) www.daytonwa.com

REQUEST FOR PUBLIC RECORDS

Date: 11/10/2022

Name: Shane Morlan

Mailing Address: 6 E Alder St Suite 418 Walla Walla Washington

Telephone: 509.855.8271

E-mail (if applicable): shane@exainvestigations.com

An accurate description of the record(s) being requested:

Please see attached form.

The City of Dayton has five (5) business days in which to respond to your request by:

- 1.) Providing an inspection and/or copy(s) of the information requested;
- 2.) Written response acknowledging the receipt of the request and a reasonable estimate of the time in which a record will be made available, or;
- 3.) Denial of the request. If said request is denied, a written statement will accompany the denial setting out specific reasons for the denial as prescribed by RCW 42.17.310(1).

Shane Morlan

11/10/2022

Requestor's Signature

Date

I would like all Facebook Data from the "Laura Aukerman Dayton City Council" Facebook page located at <https://www.facebook.com/profile.php?id=100071552363741>

utilizing the download my data tool. Instructions can be found at

https://www.facebook.com/help/212802592074644?helpref=faq_content

I would specifically like the records pertaining to previous posts, chat logs, friend lists and lists of people who are *blocked* on the Facebook page as of 11/10/2022.

I request these records as per (RCW 40.14) and (RCW 42.56.010). The statement has been made these are not public records, however as per (RCW 42.56.010) public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, **used**, or retained by any state or local agency **regardless of physical form or characteristics**. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

- (a) Do not serve in an administrative capacity;
- (b) Have not been appointed by the agency to an agency board, commission, or internship; and
- (c) Do not have a supervisory role or delegated agency authority.

The page is labeled as "Laura Aukerman Dayton City Council" and is used as a public forum to discuss City Council Business.