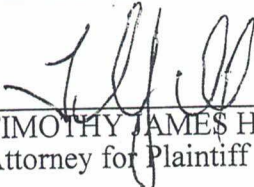


plaintiff must file this lawsuit with the court, or the service on you of this Summons and Complaint will be void.

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.

DATED this 20 day of SEPTEMBER, 2018.


TIMOTHY JAMES HALL, WSBA# 36372
Attorney for Plaintiff

7

FILED
JANUARY 21 2018
CLERK

18 SEP 21 09:05

SUPERIOR COURT
YAKIMA CO. WA.

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

DAVE SIMMONS,	Case No. 1820326339
	COMPLAINT FOR PUBLIC RECORDS ACT VIOLATIONS & PENALTIES REGARDING FAILURE TO DISCLOSURE RECORDS UNDER RCW 42.56. ET. SEQ.
Plaintiff,	
v.	
CITY OF WAPATO, a Public Agency,	
Defendant.	

I. PARTIES

A. Plaintiff.

1. Plaintiff, Dave Simmons, an individual, is a resident of Yakima County, Washington.

B. Defendant.

2. Defendant, CITY of WAPATO, is a public "agency" within the meaning of RCW 42.56.010(1). Defendant is located within the State of Washington, is a municipal corporation, and has its physical existence and operation within Yakima County, State of Washington.

3. Records; the records sought that are subject to the Public Records Act (hereinafter "PRA") litigation are located at and within the City of Wapato, County of Yakima, State of Washington. In addition, the records are within the custody of Defendant.

II. VENUE & JURISDICTION

- 1 4. This Court has jurisdiction pursuant to RCW 42.56.550.
- 2 5. The records, events and actions of Defendant that are the subject of this case all occurred
- 3 within Yakima County, State of Washington.
- 4
- 5 6. Venue is appropriate in Yakima County pursuant to RCW 42.56.550.
- 6

7 III. GENERAL ALLEGATIONS

8 A. General Factual Allegations

- 9
- 10 7. This is PRA violation litigation filed by Plaintiff DAVE SIMMSONS as a valid requestor
- 11 against Defendant Agency City of Wapato. As the following will show, Defendant,
- 12 through bad faith, gross incompetence, recklessness, inadequate searches, and/or
- 13 insufficient trainings and procedures has completely failed to comply with the provisions
- 14 of the PRA and material violations of the intent and application of the PRA have occurred
- 15 by Defendant.
- 16
- 17
- 18
- 19 8. Defendant has a page on their website detailing how to make public records requests to
- 20 Defendant.
- 21
- 22 9. Robin Cordova is Defendant's City Clerk/Treasurer and operates as their Public Records
- 23 Officer.
- 24
- 25 10. Juan Orozco is the Mayor of Wapato.
- 26
- 27 11. Bob Noe is the City Attorney for Defendant.
- 28
- 29 12. Plaintiff sent an email to Juan Orozco on March 22nd, 2018 at 10:07 AM, making a valid
- 30 request for various public records.
- 31
- 32 13. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 4th, 2018 at
- 33 4:37 PM, making a valid request for various public records.
- 34
- 35
- 36

- 1 14. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 4th, 2018 at
2 4:49 PM, making a valid request for various public records.
3
- 4 15. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 4th, 2018 at
5 4:54 PM, making a valid request for various public records.
6
- 7 16. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 4th, 2018 at
8 4:37 PM, making a valid request for various public records.
9
- 10 17. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 6th, 2018 at
11 8:42 AM, making a valid request for various public records.
12
- 13 18. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 6th, 2018 at
14 8:49 AM, making a valid request for various public records.
15
- 16 19. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 10th, 2018
17 at 11:08 PM, making a valid request for various public records.
18
- 19 20. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 10th, 2018
20 at 11:23 PM, making a valid request for various public records.
21
- 22 21. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 10th, 2018
23 at 11:33 PM, making a valid request for various public records.
24
- 25 22. On April 11, 2018 at 9:48 AM, Plaintiff received an email from Robin Cordova
26 acknowledging receipt of all of Plaintiff's public records requests from April 4th, 2018
27 through April 10th, 2018. Robin Cordova stated that "Wapato City Staff is currently
28 working on retrieving the information that you have requested. This will take
29 approximately 20 days."
30
- 31 23. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 12th, 2018
32 at 2:29 PM, making a valid request for various public records.
33
34
35
36

1 24. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 12th, 2018
2 at 2:35 PM, making a valid request for various public records.
3

4 25. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 16th, 2018
5 at 2:58 PM, making a valid request for various public records.
6

7 26. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 16th, 2018
8 at 3:09 PM, making a valid request for various public records.
9

10 27. Plaintiff sent an email to Robin Cordova, Juan Orozco, and Bob Noe on April 16th, 2018
11 at 3:16 PM, making a valid request for various public records.
12

13 28. On April 17, 2018 at 12:48 PM, Plaintiff received an email from Robin Cordova
14 acknowledging receipt of all of Plaintiff's public records requests from April 12th, 2018
15 through April 16th, 2018. Robin Cordova stated that "Wapato City Staff is currently
16 working on retrieving the information that you have requested. This will take
17 approximately 30 days."
18

19 29. To date, Defendant has not acknowledged or responded to the request emailed to Juan
20 Orozco on March 22nd, 2018 at 10:07 AM.
21

22 30. To date, Defendant has not responded to Plaintiff's many requests and has not provided
23 Plaintiff with any of the requested documents, far exceeding the date of estimated response
24 given in the emails from Robin Cordova.
25
26
27

28 IV. CAUSES OF ACTION

29 A. Plaintiff's First Cause of Action: Violation of Washington State's Public Records Act-- 30 RCW 42.56. 31

32 31. Plaintiff re-alleges paragraphs 1-30 and incorporates them as if fully set forth herein. In
33 addition, Plaintiff incorporates all subsequent allegations herein as well.
34
35
36

1 32. Washington's PRA requires agencies such as Defendant to adopt reasonable rules to
2 provide the fullest assistance to requestors and the timeliest possible action on requests.
3
4 RCW 42.56.100. Defendant has inadequate rules to comply with this requirement and
5 those rules failed in this case.
6

7 33. Washington's PRA requires agencies to respond no later than five business days from
8 receiving the request. RCW 42.56.520. Within those five days the agency must either (1)
9 provide the record, (2) ask for clarification, (3) deny the request, or (4) provide a reasonable
10 estimate of the time needed to respond to the request based on "the need ... to notify third
11 persons or agencies affected by the request." Id. Defendant failed to comply with these
12 requirements by not provided the requested records in the reasonable estimate of time given
13 by Robin Cordova.
14
15
16

17 34. Washington's PRA mandates that every "agency... shall make available for public
18 inspection and copying all public records." RCW 42.56.070(1). Defendant violated this
19 mandate by not providing Plaintiff with the requested records within the reasonable
20 timeframe.
21
22
23

24 35. No exemption to the PRA requirements apply in this case and public policy favors timely
25 disclosure, and in no way hinders disclosure, of the records requested by Plaintiff.
26

27 36. Defendant violated the PRA by not providing the records, in bad faith, because they believe
28 it would be detrimental to the reputation of Mayor Juan Orozco and the Wapato City
29 Government.
30

31 37. Defendant's refusal to supply Plaintiff's requested records was intentional bad faith
32 misconduct on the part of Defendant employees who willfully and wantonly refuse to
33 provide the requested.
34
35
36

1 38. Viewing the facts in a light most favorable to Defendant, the refusal to comply with
2 Plaintiff's records request by Defendant agency was not reasonable and not reasonably
3 calculated to uncover all relevant documents.

4
5 39. Defendant's actions as discussed herein, were not reasonable nor in compliance with the
6 spirit or intent of the PRA and, at a minimum, demonstrated gross negligence..

7
8 40. Based on these violations, Plaintiff requests the court award statutory costs of \$100 per
9 day, per document Defendant has to date failed to provide, along with costs and attorney's
10 fees as discussed herein.
11
12

13
14 **B. Plaintiff's Right To Costs, Statutory Fees, and Attorney's Fees:**

15 41. Plaintiff re-alleges paragraphs 1-40 and incorporates them as if fully set forth herein. In
16 addition, Plaintiff incorporates all subsequent allegations herein as well.

17
18 42. RCW 42.56.550(4) provides that any person who prevails against an agency in any action
19 seeking the right to inspect or copy any public record or the right to receive a response
20 within a reasonable amount of time shall be awarded all costs, including reasonable
21 attorney's fees. The prevailing requestor must be awarded an amount imposed as a
22 statutory penalty against the agency in an amount up to \$100 dollars per record for each
23 day that the requestor has been denied the right to inspect or copy a public record or been
24 denied an adequate response. Plaintiff requests the court award all statutory fees and costs,
25 including reasonable attorney's fees in compliance with this statute.
26
27

28
29 43. Considering the deliberate, inexcusable lack of compliance by Defendant, the per-
30 document per day penalty in this case should be significantly higher than the \$45 per day
31 per document penalty proscribed by the Washington State Supreme Court in *Yousoufian v.*
32 *Office of Ron Sims*, 168 Wn.2d 444 (2013).
33
34
35
36


1 44. No mitigating factors exist to necessitate a deviation by this Court from the maximum
2 penalties that should be imposed by the *Yousoufian* aggravating factors.
3

4 **V. PRAYER FOR RELIEF:**

5 WHEREFORE, Plaintiff Dave Simmons pray for judgment against Defendant City of Wapato
6 as follows:
7

- 8 A. Order that every record identified by Defendant be supplied to Plaintiff as quickly as is
9 reasonably possible.
10
11 B. Award Plaintiff of all costs associated with this litigation to obtain the records requested
12 by Plaintiff, as provided in RCW 42.56.550(4).
13
14 C. Award Plaintiff reasonable attorney fees associated with this litigation to obtain the records
15 requested by Plaintiff, as provided in RCW 42.56.550(4).
16
17 D. Award Plaintiff a monetary penalties pursuant to RCW 42.56.550(4) of \$100 per day, per
18 document, for each day since the date of Plaintiff's individual emails, PRA request until
19 the date all records are actually provided to Plaintiff, in the requested form, by Defendant.
20
21 E. Order Defendant provide its staff with training to attempt to protect the citizens of the State
22 of Washington from such misconduct from Defendant's staff in the spirit of the intent of
23 RCW 42.56. et. seq.
24
25 F. Such other relief as the court deems just and equitable.
26

27 DATED this 20 of September, 2018.
28

29
30 
31 _____
32 Timothy J. Hall, WSBA #36372
33 Counsel for Plaintiff
34
35
36