

1  EXPEDITE  
2  No hearing set  
3  Hearing is set  
4 Date: \_\_\_\_\_  
5 Time: \_\_\_\_\_  
6 Judge: \_\_\_\_\_

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DEC 14 2015

7 **SUPERIOR COURT OF WASHINGTON**  
8 **FOR THURSTON COUNTY**

9 WASHINGTON COALITION FOR OPEN  
10 GOVERNMENT, a Washington nonprofit  
11 corporation,

Plaintiff,

vs.

12 PIERCE COUNTY,

Defendant.

No.

**COMPLAINT FOR VIOLATIONS OF  
THE PUBLIC RECORDS ACT**

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16 Plaintiff Washington Coalition for Open Government (“WCOG”), a Washington  
17 nonprofit corporation, by and through its attorney, William John Crittenden, brings this  
18 Complaint against Pierce County, and in support thereof avers the following:

19 **I. JURISDICTION**

20 1.1 This court has jurisdiction pursuant to RCW 42.56.550(5) and RCW 36.01.050.

21 **II. FACTS**

22 2.1 On April 1, 2015, WCOG, through its undersigned attorney, requested public  
23 records from the defendant pursuant to the Public Records Act, Chap. 42.56 RCW (“PRA”).  
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25 2.2 WCOG’s PRA request explicitly requested (i) that the County send all  
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**COMPLAINT FOR VIOLATIONS OF  
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Page 1 of 10

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1 correspondence and responsive records by email or internet transfer service, and (ii) that the  
2 County provide all responsive records in either native electronic format and/or by scanning  
3 responsive paper records to PDF files.

4 2.3 The County responded to the PRA request by letter dated April 8, 2015. The  
5 County failed to send the letter to WCOG's attorney by email as requested. Instead, the County  
6 sent the letter by regular mail, and WCOG's attorney did not receive that letter until  
7 approximately April 17, 2015.

8 2.4 On April 17, 2015 WCOG's attorney sent the County a letter (by email),  
9 objecting to the County's failure to respond by email, and warning the County that it was  
10 intentionally violating the PRA.

11 2.5 On April 19, 2015 WCOG's attorney sent the County a letter (by email)  
12 expanding the existing PRA request to include additional records. WCOG's attorney advised  
13 the County to see the prior letters regarding the County's obligation to respond by email and to  
14 produce electronic records.

15 2.6 The County responded to the letter dated April 19, 2015, by letter dated April  
16 24, 2015. The County failed to send the letter to WCOG's attorney by email as requested.  
17 Instead, the County sent the letter by regular mail, and WCOG's attorney did not receive that  
18 letter until approximately April 27, 2015.

19 2.7 On May 5, 2015, the County responded with another letter sent by regular mail  
20 but not by email. As a result WCOG's attorney did not receive the letter until approximately  
21 May 12, 2015. The County's letter asserted, *inter alia*, that the County's refusal to correspond  
22 by email did not violate the PRA or *ACLU v. Blaine School Dist.*, 95 Wn. App. 106, 975 P.2d  
23 536 (1999).  
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1           2.8     On May 11, 2015, the County responded with another letter sent by regular mail  
2 but not by email. As a result, WCOG’s attorney did not receive the letter until approximately  
3 May 14, 2015.

4           2.9     The May 11, 2015 letter stated that the County was prepared to provide a “first  
5 installment” of 533 paper pages of redacted records, many of which were “fully redacted  
6 leaving no text and fully blackened pages.” The letter requested payment of \$88.65 in order to  
7 receive these records by regular mail. The letter included an exemption log that asserted that  
8 various records were exempt under RCW 42.56.290 (work product), but the log did not  
9 adequately identify the records or explain why such records were exempt.  
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11           2.10    By email dated May 14, 2015, WCOG’s attorney notified the County that, *inter*  
12 *alia*, (i) the County was still refusing to correspond by email, (ii) the County had ignored  
13 WCOG’s request that responsive records be scanned to PDF files, and (iii) that the County’s  
14 exemption/redaction log contained meaningless descriptions of records and failed to explain  
15 why records were exempt, including why records authored by Lindquist’s personal attorney,  
16 Stewart Estes, would be “work product” in the possession of the County.

17           2.11    By email dated July 1, 2015, WCOG’s attorney objected to the County’s failure  
18 to respond to the objections in the earlier email on May 14, 2015. Also on July 1, 2015,  
19 WCOG’s attorney sent the County the requested check for \$88.65 and notified the County by  
20 email that WCOG was making that payment under protest as WCOG had specifically asked the  
21 County to scan paper records to PDF.  
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23           2.12    By letter dated July 9, 2015, the County informed WCOG’s attorney that the  
24 County had decided to send only those seventy-two (72) pages of the “first installment” that  
25 were not fully redacted, and that the check for \$88.65 was being returned.  
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1           2.13    The County again responded by regular mail but not by email. As a result,  
2 WCOG's attorney did not receive the letter until July 13, 2015.

3           2.14    The County's letter dated July 9, 2015, included seventy-two (72) pages of  
4 paper copies of extensively redacted records, all of which were allegedly exempt under RCW  
5 42.56.290 (work product). More than half of the pages produced (46 pages) were completely  
6 redacted copies of pleadings prepared by the law firm of Patterson Buchanan Fobes & Leitch,  
7 Inc., P.S. Due to the extensive redactions it is impossible to determine whether those records  
8 are actually responsive to WCOG's PRA request and/or to which part of WCOG's request the  
9 records are allegedly responsive.

10           2.15    On information and belief, the County selected the particular redacted records  
11 that it produced in the "first installment" with the intent to be as unhelpful to the requester as  
12 possible, to cause delay, and to force WCOG to pay for useless paper copies of completely  
13 redacted records.

14           2.16    The records produced on July 9, 2015, were first electronically redacted and  
15 then printed onto paper. Therefore, on information and belief, the County had (and probably  
16 still has) electronic copies of the redacted records but chose to print and mail paper copies of  
17 those records to WCOG with the intent to be as unhelpful to the requester as possible, to cause  
18 delay, and to force WCOG to pay for useless paper copies of completely redacted records.

19           2.17    By email dated July 15, 2015, WCOG's attorney objected to the County's  
20 ongoing refusal to communicate by email. WCOG's attorney stated that WCOG still wanted  
21 the other 461 pages of records and that a replacement check would be sent.

22           2.18    On or about August 10, 2015, the County produced 533 pages of redacted paper  
23 records. Those records were electronically redacted and then printed onto paper despite  
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1 WCOG's repeated request that the County send electronic documents in electronic form.

2 2.19 By letter dated August 10, 2015, the County produced a log for a "second  
3 installment" of records. This log did not comply with the PRA because it did not adequately  
4 identify the records or the part of the request to which those records were responsive, and did  
5 not explain why the records were exempt.

6 2.20 By email dated August 13, 2015, WCOG's attorney gave the County specific  
7 instructions about how to handle responsive records that the County asserts are exempt. That  
8 email stated:

9  
10 3. For any records that you claim are exempt as either privileged or work  
11 product I do NOT want you to make redacted copies of those records. Instead, I  
12 want you to (i) collect and preserve the records as required by RCW 42.56.100,  
and (ii) send me a log for such records that complies with RCW 42.56.210(3)  
and Lakewood v. Koenig.

13 4. After I receive your log for each production of records I will tell you whether  
14 or not I want copies of the records that you have claimed as exempt.

15 2.21 By letter dated August 20, 2015, the County responded to the email dated  
16 August 13, 2015. The County purported to require WCOG to either purchase or inspect the  
17 second installment. The letter stated:

18 If you have not purchased or inspected the records at that time, I will consider  
19 this request to be abandoned and will close the request and return the documents  
to their original locations.

20 2.22 By email dated August 31, 2015, WCOG's attorney reviewed the status of the  
21 pending PRA request and the County's response, and objected to the County's violations of the  
22 PRA.

23 2.23 The County never responded to the email dated August 31, 2015.

24 2.24 By letter dated October 19, 2015, WCOG's attorney (i) informed the County  
25 that it had not responded to the email dated August 31, 2015, (ii) summarized the status of the  
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1 PRA request and the County's response, and (iii) explained the County's violations of the PRA.

2 2.25 On October 19, 2015, the County informed WCOG's attorney that the PRA  
3 officer for the Prosecuting Attorney had retired and provided an email address for the new PRA  
4 officer. WCOG's attorney re-sent the email dated August 13, 2015, email dated August 31,  
5 2015, and letter dated October 19, 2015, to the new PRA officer.

6 2.26 By letter dated October 23, 2015, the County repeated its assertions that there is  
7 no conflict of interest between the County and Mr. Lindquist, that most of the requested records  
8 are exempt as "work product," that the County has no obligation to communicate by email or  
9 produce electronic records, and that the County's exemption logs were adequate.

10 2.27 By letter dated December 2, 2015, the County stated that the cost of paper  
11 copies of the "second installment" of 233 pages of records is \$38.60, and that if the requester  
12 would rather receive the documents on CD then "the cost to scan and copy these pages plus the  
13 cost of materials and postage is \$13.80."

14 2.28 On December 7, 2015, WCOG's attorney sent the County a check for \$13.80.

15 2.29 As of the date of this complaint, WCOG has not received any additional  
16 correspondence or records from the County.

17 2.30 In pending litigation the County has erroneously asserted that records in  
18 privately owned email or text message accounts and/or on privately owned computers or smart  
19 phones are not public records for purposes of RCW 42.56.010(3). *See Nissen v. Pierce County*,  
20 183 Wn.2d 863, 357 P.3d 45 (2015).

21 2.31 The County is capable of communicating with requesters by email and of  
22 transmitting large electronic documents electronically. In response to a PRA request to the  
23 Pierce County Human Resources Department on or about June 3, 2015, the PRA officer for that  
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1 County department communicated with WCOG’s attorney by email and transmitted requested  
2 records electronically using the “filelocker” utility on the County’s website  
3 (<https://filelocker.co.pierce.wa.us>).

4 **III. CLAIM FOR PUBLIC RECORDS**

5 3.1 Defendant Pierce County is an agency subject to the provisions of the PRA.

6 3.2 Records relating to the conduct of government or the performance of any  
7 governmental or proprietary function prepared, owned, used, or retained by any state or local  
8 agency, are “public records” regardless of physical form or characteristics.

9 3.3 Any records relating to the conduct of government or the performance of any  
10 governmental or proprietary function, prepared, owned, used, or retained by the County or any  
11 of its officers, employees, agents or attorneys, specifically including but not limited to Mark  
12 Lindquist, Dan Hamilton, Phil Talmadge, Scott Peters, Jared Ausserer, are “public records”  
13 subject to the PRA, including any emails or text messages on personally-owned electronic  
14 devices or in personally-owned email or text message accounts.

15 3.4 As set forth above, the County has violated the PRA’s duty of “fullest  
16 assistance” by refusing to correspond with WCOG’s attorney by email as he repeatedly  
17 requested.

18 3.5 As set forth above, the County has violated the PRA’s duty of “fullest  
19 assistance” by refusing to produce electronic records in electronic form as WCOG’s attorney  
20 specifically requested.

21 3.6 As set forth above, the County has violated the PRA’s duty of “fullest  
22 assistance” by refusing to scan paper records to PDF files as WCOG’s attorney specifically  
23 requested.

1           3.7     As set forth above, and on information and belief, the defendants have violated  
2 the PRA by failing to adequately identify records that were withheld and/or redacted, and by  
3 failing to adequately explain how claimed exemptions applied to specific records withheld  
4 and/or redacted.

5           3.8     As set forth above, and on information and belief, the defendants have violated  
6 the PRA by withholding records that are not exempt from public disclosure or which should  
7 have been disclosed in redacted form rather than withheld in their entirety.

8           3.9     As set forth above, and on information and belief, the defendants have violated  
9 the PRA by failing to protect public records from damage, disorganization, or destruction as  
10 required by RCW 42.56.100.

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12                                   **IV.     PRAYER FOR RELIEF**

13           4.1     Plaintiff asks this Court to order the County:

14           a.     to respond to public records requests by email;

15           b.     to produce public records in native electronic format, to scan existing paper  
16 records to PDF files, and to provide responsive records by email or other electronic  
17 transmission method;

18           c.     to properly identify records that were redacted or withheld, and to fully explain  
19 how any claimed exemptions apply to particular records;

20           d.     to provide all records to the Court for an *in camera* inspection to determine  
21 whether records have properly been redacted or withheld; and/or

22           e.     to provide the plaintiff with copies of any records or portions of records that the  
23 Court determines are not exempt from public disclosure.

24           4.2     Plaintiff asks this Court to order the County to retrieve and preserve all  
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1 requested records that may be in emails or text messages on personally-owned electronic  
2 devices or in personally-owned email or text message accounts.

3 4.3 Plaintiff asks this Court to order the County to adopt rules required by and  
4 consistent with RCW 42.56.100 to protect public records from damage or disorganization,  
5 specifically including rules governing the use of personally-owned electronic devices or  
6 personally-owned email or text message accounts.

7 4.4 Plaintiff asks the Court to award the plaintiff statutory penalties, in a per diem  
8 amount to be determined by the Court, for each day that requested records were improperly  
9 withheld by defendants pursuant to RCW 42.56.550(4).

10 4.5 Plaintiff asks the Court to award the plaintiff attorney fees and costs pursuant to  
11 RCW 42.56.550(4).

12 4.6 Plaintiff asks the Court to grant such other relief as the Court may find just and  
13 equitable.

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RESPECTFULLY SUBMITTED this 14th day of December, 2015.

By:   
William John Crittenden, WSBA No. 22033

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