

How to Use the Public Records Act - Part I

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PRA est omnis divisa in partes tres.

With apologies to Julius Caesar, my view is that there are three major categories of users of the Washington State Public Records Act. They are:

- Bona Fide Users - they ask for specific items and work with the agency to minimize the impact of their requests
- Vendetta Users - they respond to a decision they do not like by filing multiple requests and/or massive requests
- I Sue for Money - they look for errors of one sort or another in the responses and follow up with litigation.

Now a three bit description does not fully represent the continuum of human actions. Life is analog and some requests span all three descriptions at one time or another. This article will review the "I Sue for Money" side of the Washington State Public Records Act (Act). A later article will cover Vendetta Users and no article is needed for Bona Fide Users.

I Sue for Money.

This phrase comes from a noted Act lawyer, who at a Public Records Act conference discussing how to use the Act, ended his comments with:

"I could win, but there would be no money involved. So I sue for money."

The Act gives zero tolerance for errors, and the enforcement mechanism is by civil lawsuit action with a monetary penalty and attorney costs available to the successful litigant. Monetary penalties are on a per diem basis, so a lawsuit that takes years to resolve can create a good return for the plaintiff and his attorneys. The unsuccessful litigant generally has no monetary penalty, or maybe a few hundred dollars if he loses an appeal, plus his attorney costs.

Intent of the responder in running afoul of the law, unlike, say murder, is not a factor in the Act. Whether the error is bad faith, clerical or interpretive does not really matter. Although human error has been taken as mitigating circumstances at the US Supreme Court, the Act does not recognize human error as a possible occurrence.

So, with that in mind, let's look at how some people use the Act. This article owes its soul (and some data) to a King 5 Investigative piece from February 2012, link at the end of the article.

Jesse Lee Harkcom

Jesse Harkcom is currently a resident of Thurston County, i.e. the enclosed portion thereof. While there, he penned a letter to a friend describing how to profitably use the Act. The transcript of his letter follows at the end of this article and a copy of the letter is on the Library page.

A salient point made by Harkcom was:

"You don't even need negligence. if someone (we) make's a request for record's and they forget to disclose a "little portion" there f...d and have to pay 15.00 - 100.00 dollars per day - per record! So, this bring's us to current. Say someone requested 100 thousand or 1 million record's and were denied access to portion's of the request, then essentially, they'd have to pay per day/per record ... were talking Millions of dollars here."

So, here is the deal. Flood an agency with a massive records request(s). Look for an error of omission. Then sue for money. Monetary incentives move people to action.

The requestor essentially has no limits on his request.

Recognizing the Act for what it was, early adopters aided in government transparency by transferring public tax dollars into their private pockets.

Early Adopters of the Public Records Act



The Attorney General says inmates such as Derek McKee abuse the Public Records Act to make money by submitting frivolous requests.



The Department of Corrections has paid convicted kidnapper Derek Gronquist more than any other inmate for alleged violations of the Public Records Act: \$110,000.



The state has paid convicted murderer Shawn Greenhalgh \$ 75,000 for alleged violations of the Public Records Act.



Convicted bank robber Matthew Silva has submitted 125 requests for public records from behind bars.

The photos and captions are from the King 5 Investigative report.

Now you might notice that all of the requestors noted above have been convicted of one crime or another. There are other adopters of the Act who are not currently incarcerated, but who achieve similar results. This will be discussed in later articles.

The State Legislature has since enacted laws that prohibit incarcerated persons from receiving a monetary penalty from the Act.

RCW 42.56.565

Inspection or copying by persons serving criminal sentences — Injunction.

(1) A court shall not award penalties under RCW [42.56.550\(4\)](#) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

You would really think that the State Legislature would encourage convicted felons in their pursuit of legal activities. If felons had lobbyists, they would have called this a Class I Free Venture Industry inmate work program and argued for the retention of penalties.

Summation

So, Jesse will have to wait until his sentence is completed before making “millions”. Of course, Jesse could just have Sam and Nate work to bring transparency to government operations and maybe they would give him a cut for his management consultation.

Finally, the State Legislature reduced the minimum daily penalty to zero dollars in 2012. So, there is a possibility that you could generate a flood of requests, find an error, and not get any pocket change for it. However, there is way to beat this, it requires a lawyer and goes like this:

*This is a very important issue for my client.
That’s why we took you to court.
And we are willing to go to Appellate Court,
and to the Supreme Court if necessary.
Because this is a very important issue for my client.

But, you pay us \$ 90,000 and we’ll drop the lawsuit.*

This is an excellent solution to the crowding of the court docket.

King 5 Investigative Report
State paying record amounts for records lawsuits
by Susannah Frame
February 2, 2012

<http://www.king5.com/news/investigators/Public-records-lawsuits--138457009.html>

Transcript of Jess Harkcom's Analysis of the Washington State Public Records Act

Sept 29, 2013

Sam,

Hey, Sam, how are you doing? Hopefully all is well in your world. I'm sure Nate already let you know I might be writing. I was gonna send you a bunch of P.D.Rs to do, but after analysing things further, I don't think it's the best avenue.

Here's the deal ... You probably not aware of "public record's laws". So I'll break it down pretty quick. Any government (State, Federal, county, etc) office is accountable to the public. We (the public) have an absolute right to know whatever is happening or has happened within our government entities. And this information is gained through public record's requests. Back in the day, different agency's would intentionally withhold or deny certain requests without cause. But the Public Records Act (POA) has since set fine's for negligence in producing records. You don't even need negligence. if someone (we) make's a request for record's and they forget to disclose a "little portion" there f...d and have to pay 15.00 - 100.00 dollars per day - per record! So, this bring's us to current. Say someone requested 100 thousand or 1 million record's and were denied access to portion's of the request, then essentially, they'd have to pay per day/per record ... were talking Millions of dollars here.

I was gonna have Nate P.D.R the same s..t as me, but I think it may be determined harassment, and might backfire in the long run. But I'm still cutting Nate in, and I'm sending you my argument - if Nate agree's to it and, if not - no hard feelings, were all still cool ...

So, I'm PDRing multiple agency's, to find out specific information about employee's. Some of the agency's have 100,000 employee's. There gonna deny me some of the info, thus triggering a lawsuit and the daily accumulation of fines.

Here's my proposal. I'll do the P.D.R's (you and Nate) help pay for the P.D.R's and keep the record's someplace safe ... I got maybe 10-15 different request's. I'm asking for the record's to be placed on "CD's" (cause there's thousands) and copying cost's would be through the roof at 15 cent's pr record/page. By putting em on "CD" they can put thousand's of page's/records on

a CD. And the CD should only be like \$ 1.00... Granted some agency's may have 5 CD's (depending), either way, there cheep.

I'll cut you both in on 15 percent of the end settlement... (Hopefully a couple "Mill"..)

This is a once in a lifetime opportunity, and Nate already know's "what time it is"...

Either way, let me know? If not I'll still hook Nate up with some PDR's he can do solo, but I figured he'd prefer to kick back and collect on the back end...

Take care, Sam, hopefully your enjoying church,

Always, Jesse H

ADDENDUM TO FIRST LETTER

This contract is binding, only on to the extant, that you both get paid what we agreed too.

-15 percent of the overall Settlement acquired, after attorney cost's and fee's are deducted
The 15 percent to be applied to the records Requests - which you and Nate pay for ...

Meaning if I end up paying for all of em, but 1, I'm not gonna pay 15 percent kick down ...
Just keepin it real

But I give my word and agreement, if you help, you'll both get "chipped the f..k in" when it's all said and done if we hit "oil" !!!!

Give my love & Respect's to "Nate", tell him I got him on the 20.00 store sack as soon as my wife get's "back on", she should be working here pretty soon (I'm trying not to stress her out too much - we just had a death in the family.) but I got him as soon as I can.

Take Care Sam,
Jesse

FORMAL CONTRACT FOLLOWED, BUT WAS NOT TRANSCRIBED