

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED

MAY 22 2014

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

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

CITY OF EVERETT, a municipal
corporation,

Petitioner,

vs.

JESSE HARKCOM

Respondent.

NO: 14-2-02847-2

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING RCW
42.56.565 PERMANENT INJUNCTION

[Noted for Presentment May 22, 2014]

This matter is before the Court on the City of Everett's Motion for Permanent Injunction. The Court has heard the argument of the City's counsel and Jesse Harkcom (appearing via telephone) and considered the following pleadings and evidence filed in support of and opposition to this motion:

1. City of Everett's Motion for Preliminary Injunction; and
2. Declaration of Ramsey Ramerman, including exhibits
3. Second Declaration of Ramsey Ramerman, including Exhibits;
4. Defendants Response to Plaintiffs Complaint and Declaration in Support of; and
5. Third Declaration of Ramsey Ramerman, including exhibit.

**Findings of Fact, Conclusions of Law,
and Order Granting Injunction**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1. FINDINGS OF FACT

The Court has considered the evidence submitted and makes the following findings of fact:

1.1. The Parties

1.1.1. Jesse Harkcom recently pleaded guilty to Residential Burglary and Theft charges and is currently housed at the Thurston County Jail pending the setting of the length of his sentence.

1.1.2. Harkcom will receive credit on his sentence for his time served pursuant to RCW 9.94A.505(6) and is therefore serving his sentence as required by RCW 42.56.565.

1.1.3. Harkcom committed his most recent crime in exchange for a promise of payment.

1.1.4. Harkcom committed his most recent crime after being released from prison.

1.1.5. The City is an agency under Chapter 42.56 RCW.

1.2. The Requests

1.2.1. Through letters dated October 20, 2013 (received on October 30, 2013), and December 24, 2013 (received December 31, 2013), Harkcom made two separate public records requests to the City of Everett (the "City").

1.2.2. First he asked for the names, positions, salary, employee I.D. number, and driver's license number, for "each and every" employee in the Everett Police Department (EPD).

1 1.2.3. Then he sent the City a second request for records, which included a request for
2 the "Complete records from January 1, 2012 to December 24, 2012 of internet usage" including
3 "metadata" for all EPD employees.

4 1.2.4. At least 46 other agencies have received substantially similar requests.

5 1.2.5. Samantha Tabor and Nate Vandergriff have also made several public records
6 requests to other jurisdictions, although not to Everett.

7 **1.3. Harkcom's Plan to Harass**

8 1.3.1. Harkcom's intent is accurately summarized in his September 29 letter to
9 Samantha Tabor, and was to make requests to the City is to induce the City to deny at least a
10 portion of the request.
11

12 1.3.2. Once denied, Harkcom's intent was to harass the city and its employees by
13 threatening to sue and if necessary sue under the PRA to compel the City to pay penalties under
14 the PRA.

15 1.3.3. Harkcom's plan is explained in a letter to Samantha Tabor dated September 29,
16 2013, where he laid out a plan to use the Public Records Act (the "PRA") for his own personal
17 financial gain, rather than government transparency and accountability.
18

19 1.3.4. In this letter he solicits others to help him make "millions" of dollars by inducing
20 agencies subject to the PRA to mistakenly withhold nonexempt information subjecting the
21 agency to penalties under the PRA.

22 1.3.5. In this letter, Harkcom states:

23 Here's the deal... Your [sic] probably not aware of "public
24 records laws", so I'll break it down pritty [sic] quick.

25 ***

**Findings of Fact, Conclusions of Law,
and Order Granting Injunction**

1 But the Public Records Act (POA) [sic] has since, set fines for
2 negligence in producing records. You don't even need negligence,
3 if someone (we) makes a request for records and they forget to
4 disclose a "little portion" there [sic] fucked, and have to pay 15.00
5 – 100.00 dollars per day – per record! Say someone requested 100
6 thousand or 1 million records, and were denied access to portions
7 of the request, then essentially, they'd have to pay per day/per
8 record... We're talking millions of dollars here.

9 I was gonna have Nate P.D.R. the same shit as me, but I
10 think it may be determined harrassment [sic], and might backfire in
11 the long run.

12 ***

13 So, I'm PDR'ing multiple agency's [sic], to find out
14 specific information about employees. Some of the agency's [sic]
15 have 100,000 employees. There [sic] gonna deny me some of the
16 info, thus triggering a lawsuit and the daily accumulation of fines.

17 Here's my proposal. I'll do the P.D.R's (you and Nate)
18 help pay for the P.D.R.'s and keep the records someplace safe ... I
19 got maybe 10-15 different requests.

20 ***

21 I'll cut you both in on 15 percent of the end settlement...
22 (hopefully, a couple of "Mil"...)

23 This is a once in a lifetime opportunity, and Nate already
24 knows "what time it is"...

25
1.3.6. Although Harkcom has not formed a formal legal entity to carry out his plan, he
has shown his intent to associate with other individuals to maximize his own financial gain at
the expense of public agencies.

1.3.7. Shortly before making his second request Harkcom completed a tort claim form
(dated December 22, 2013) that was received by the City on December 30, 2013. Harkcom
demanded \$26,400 to prevent him from suing the City for withholding EPD employee driver's
license numbers requested through his first public records request.

**Findings of Fact, Conclusions of Law,
and Order Granting Injunction**

1 1.3.8. In his tort claim, Harkcom never requests records containing EPD employee
2 driver's license numbers; rather he is only concerned with recovering money for the City's
3 alleged mistaken withholding.

4 **1.4. Harkcom's Requests Are Intended to Harass the City**

5 1.4.1. Harkcom's requests were made to harass and intimidate the City and its
6 employees, as shown by the following factors.

7 **1.4.2. *Statements Regarding the Purpose of the Request***

8 1.4.2.1 First and foremost, Harkcom has made his requests to the City with the
9 hope that the City will mistakenly withhold nonexempt information which he may then
10 capitalize on through the agency's exposure to daily penalties under the PRA.
11

12 1.4.2.2 Harkcom requested information about employees because he believes it
13 is more likely that the City will withhold such sensitive information.

14 1.4.2.3 Harkcom has formulated 10-15 other requests that he hopes will also
15 induce the City to deny records.

16 1.4.2.4 Harkcom did not request records for any good faith reason other than to
17 induce the City to deny part of his requests so that he can demand a settlement or file a
18 lawsuit.
19

20 1.4.2.5 In Harkcom's tort claim to the City, Harkcom falsely claimed his intent
21 was not to harass. Harkcom has made similar ~~false~~ claims in a declaration submitted in
22 another lawsuit, where he ~~falsely~~ asserted his intent in requesting driver's license
23 numbers was related to government accountability.
24
25

**Findings of Fact, Conclusions of Law,
and Order Granting Injunction**

1 1.4.2.6 Harkcom's requests to the City are part of his plain summarized in his
2 September 29 letter to Samantha Tabor. In that letter, Harkcom:

3 1.4.2.6.1 Explained that he intended to make 10-15 different requests to
4 several agencies;

5 1.4.2.6.2 Stated that he intended to send the requests to multiple agencies
6 and focused on employees;

7 1.4.2.6.3 Explained that he was trying to get agencies to deny his request
8 rather than obtain records;

9 1.4.2.6.4 Explained he hoped the denials would allow him to earn "millions
10 of dollars" in penalties;

11 1.4.2.6.5 Sought to induce others to assist him in his efforts;

12 1.4.2.6.6 Stated that he had crafted his plan so it does not appear harassing;
13 and
14

15 1.4.2.6.7 Included a proposed contract to formalize his extortion plan.
16

17 ***1.4.3. Other Requests Made By Harkcom***

18 1.4.3.1. In accordance with Harkcom's plan he has made at least 46 other
19 similar requests to agencies across the state. The vast majority of the requests are for
20 sensitive employee information, including driver's license numbers.

21 1.4.3.2. This is exactly what Harkcom said he would request in his
22 September 29 letter. Harkcom's conformance to his plan only underscores his
23 motivation: that these requests are not for government accountability but to harass
24 agencies in order to make money.
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1.4.4. Type of Records Requested

1.4.4.1. Pursuant to his plan of harassment, Harkcom has sought records about employees that in no way relate to him.

1.4.4.2. Harkcom has not had any direct contact with the City and thus he cannot claim he is making this request for the purposes of vindicating his rights. Additionally (and also in conformance with his plan),

1.4.4.3. Harkcom has requested records related to employees because he believes some of these records will be withheld or redacted.

1.4.4.4. Harkcom sought driver's license numbers, at least in part, because he was familiar with a recent case, *City of Lakewood v. Koenig*, where the issue of driver's licenses was addressed.

1.4.5. Burdensome Nature of the Requests

1.4.5.1. Harkcom had no need and did not want any of the records he requested.

1.4.5.2. Harkcom's second request included 2 years of internet history, including metadata of all EPD employees. This request would encompass approximately 2.5 million pages of records.

1 2.1.4.3 Harkcom's intent to harass and intimidate is established by the fact that
2 he has requested records Harkcom considers sensitive and therefore that he hoped the
3 City would likely withhold, at least in part.

4 2.1.4.4 Harkcom's intent to harass and intimidate is established by his demand to
5 the City for monetary penalties in lieu of actual records.

6 2.1.4.5 Harkcom's intent to harass and intimidate is established by the
7 burdensome nature of his requests.

8 2.1.4.5.1 Harkcom's request was unduly burdensome because he
9 did not in fact want any of the requested records.

10 2.1.4.5.2 Harkcom's request was also unduly burdensome because
11 his request for internet history required the production of a huge volume of
12 records.
13

14 **2.2 Harkcom is Likely to Make Future Harassing Requests Unless he is**
15 **Enjoined from Making Requests for at Least 10 Years, Absent Court Approval**

16 2.2.1 Harkcom has developed an ongoing plan to "make millions" through harassing
17 PRA requests.

18 2.2.2 Harkcom's willingness to commit criminal acts for pay after being released from
19 prison shows that he is likely to pursue his plan even after being released from prison.
20

21 2.2.3 Therefore a 10-year prohibition is necessary to stop future harassment.

22 **2.3 Harkcom is Likely to Associate with Others to Make Future Harassing**
23 **Requests Unless the Injunction is Applied to Cover Any Entity in Which Harkcom is a**
24 **principal**
25

**Findings of Fact, Conclusions of Law,
and Order Granting Injunction**

