

I Sue for Money

“I sue for money” was my introduction to the Washington Coalition for Open Government (WCOG) and how they suggested using the Washington State’s Public Records Act (PRA). I attended the January 2010 conference at the University of Washington to see what open government people were all about. The conference keynote speaker was Heather Brooke (UW 99) who spoke about her adventures with open records in England. Heather’s work resulted in misused public money being returned to the public till (1). A great start to the conference.

I then went into a break out session on how to use the PRA. A speaker from the Seattle Times told how they ask for a file on a subject, go into City Hall and bring their own scanner so that they do not unduly interfere with the city’s normal work load.

Then an attorney spoke on how individuals can use the PRA. In describing how to resolve disputes, he stated:

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

His statement certainly describes one use of the PRA, a popular one it seems.

Heather’s work resulted in a measurable benefit to the general public. Today, how well does Washington’s PRA benefit the general public as opposed to benefitting individuals at the expense of local taxpayers. Let’s look at some Snohomish County examples.

O'Neill v City of Shoreline

The issue that started the request was an exchange of words between Beth O'Neill and Deputy Mayor Maggie Fimia over who called who what over a zoning violation claim. From there, it expanded into a Public Record Attack.

This concerns the City's attempt to recover from a single email where a sender's name had been removed. The email was on a private email service and after the City required the unchanged email, the City official forwarded it with the name of the sender not removed. There was no City business content lost, only the original metadata which showed the travel path from the sender to the receiver. This is equivalent to the tracking notice you get with a UPS Priority Mail letter. The letter leaves here, goes to there, and thence to where ever, and then to the recipient. This is what the missing metadata would have shown. After forwarding the full email, the user deleted the email, thus losing the original path traveled.

There were multiple arguments put forth, but what was ruled upon was whether or not the metadata was provided. The metadata issue was the first for the Washington Supreme Court who based their decision on an Arizona Supreme Court decision as interpreted in light of the Washington State PRA. Before, common practice had been to print out emails that had conduct of government content and then delete the email as the PRA made no mention of metadata either in RCW 42.56 or WAC 44-14, Model Rules.

The net result was 600,000 Shoreline tax payer dollars moved to private bank accounts. As you might expect, the Plaintiff Attorney's view on things (2) and the City's view on things (3) differ. The zoning violation was promptly and thoroughly investigated by City staff and no violation of City code was found. So, except for Beth O'Neill depositing 100,000 of her neighbors' tax dollars into her private bank account, and even more into her attorney's private bank account, nothing changed.

The point here is not to argue the case in print, but rather to ask:

What kind of law is it that causes a single email with no governmental information lost to create a \$ 600,000 hit to the local tax payers?

Rekhi v City of Lynnwood

In January 2007, Surinder Rekhi applied for permits to create a mixed use development on property he owned in Lynnwood. This took the normal permitting process with the application process being completed in January 2009 and the building permit issued in November 2010. Thus Rekhi could then start his development once financing was in hand. Oops. While the Great Recession was officially over, nobody told the banks and private investment money for real estate was nowhere to be found. After several extensions, the permit expired in November 2011, requiring the process to start all over.

Rekhi had two choices then. He could rework his application in light of the then current regulations and resubmit or just not pursue the development. However, he spent time from November 2011 to April 2012 trying to get the permit extended. The International Building Code and the Lynnwood ordinances were quite clear on the number of extensions allowed as was explained to him multiple times.

So, in May 2012, Rekhi filed a series of public records requests, consisting of thousands of pages of documents directly and not directly related to his development application. After initially providing documents, there was a giant dry spell. Rekhi pushed on the Lynnwood person handling the request, sending this email in January 2013:

----- Forwarded message -----

From: SURINDER REKHI <rekhi007@gmail.com>

Date: Fri, Jan 11, 2013 at 10:09 PM

Subject: Re: Request for information under Public Records Act: State of Washington : My e mail of May 3, 2012

To: Lorenzo Hines <lhines@ci.lynnwood.wa.us>

Cc: Don Gough <dgough@ci.lynnwood.wa.us>, Debbie Karber <dkarber@ci.lynnwood.wa.us>

Dear Mr Hines,

Thanks a lot for your late response.

You have stated to provide entire information requested by me over eight months ago by February 15, 2013

The period mentioned by you seems very unreasonable, since you have already taken around eight months in the case

In the interest of the urgency of the need of requested information, I would ask you :

1. Please let me know the name of any Snohomish County / State of Washington officials who are in a position to persuade you to provide the requested information in a timely manner

2. Please provide the names of Federal agency / officials who are in a position to persuade you to comply with my request made under public disclosure in a timely manner

3. Can the Lynnwood City Council persuade you to comply with the Public Disclosure Law ?

4. I agree on my inability to make you meet my request. I sent you e mails, reminders, requested in person as well with no success. May I request you to kindly let me know your style of operation which may lead me to obtain the requested information?

A quick response will be appreciated

With deep regards,
Surinder S Rekhi, PE, CEM

And what was Rekhi's options? Was there a governmental enforcement mechanism he could call upon to address this? No. So what option did Rekhi have? Hire a lawyer, expose himself to additional costs, and sue (4). Slow and expensive.

Isn't there a better way?

The end result was that the taxpayers of Lynnwood were out \$ 63,575 for this event, not counting staff costs. Rekhi finally got all the documents he requested, but it did not revitalize his project. Last we talked, he was putting the property up for sale.

Citizens v Snohomish County

A more recent example is the recent Citizens for Sustainable Development v Snohomish County. Originally, the objective of Lewis Roane was to stop a 19 acre Sewage Lagoon for cattle offage from being placed in a flood plain area next to a salmon waterway. Seems reasonable. He also objected to buying development rights for agricultural preservation that Snohomish County provided. That is maybe not so reasonable, there is a lot of public support for keeping agriculture viable in the county.

He and his associates placed multiple public records requests.

Eventually, they found a weakness in the response, both from volunteers on the Agricultural Advisory Board and a retired Contractor. The County failed to resolve all issues quickly enough and ended up settling for about \$ 545,000 (5). The complaint claimed untimely responses on 4 public records requests out of approximately 270 submitted over several years.

Roane expressed interest in limiting agricultural support, stopping the sewage lagoon, and getting appointed to the Sustainable Lands Strategy Executive Committee. The sewage lagoon stopped as market prices did not support the proposed business and it closed up shop. Otherwise, Snohomish County Focus on Farming is still going strong and Roane is a public visitor only to SLS Executive Committee meetings.

So, Roane's net accomplishment was to deposit 545,000 of his neighbor's tax dollars into his and his attorney's private bank account.

***Keep filing requests and someone will eventually screw up
and then ... kaching kaching.***

Summary of Results

Requestor	Goals	Goal Results	Other Results
Beth O'Neill	stop a rental in her residential area	not done	\$ 600,000 of local tax dollars went into her and her Seattle lawyer's personal bank accounts
Surinder Rekhi	extend his building permit time	not done	\$ 63,575 of local tax dollars went into his and his Seattle lawyer's personal bank accounts
Lewis Roane	stop a sewage lagoon deter agricultural support get appointed to a county executive board	done* not done not done	\$ 545,000 of local tax dollars went into his and his Seattle lawyer's personal bank accounts

* accomplished by actions outside of Roane's activities.

So, despite the lauding of newsprint media, the only metrics out of these cases is the transfer of large sums of local taxpayer dollars into private pockets. Sort of the exact opposite of what Heather accomplished.

This looks to be another result of privatization of a governmental enforcement responsibility where there is a monetary gain from the enforcement. This seems no different from other issues arising from such privatization (6) where the line between serving the public and serving the bottom line blur.

Sometimes, requestors simply state the obvious (7), but often the results are advertised as a benefit for "the future".

Where does benefiting the community end and looting of the public till begin?

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