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HONORABLE RICHARD EADIE

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

SEATTLE CITIZENS AGAINST THE)	NO. 09-2-36276-9SEA
TUNNEL and ELIZABETH A. CAMPBELL,)	(CONSOLIDATED WITH
Plaintiffs,)	NO. 09-2-40939-1SEA)
vs.)	
WASHINGTON STATE DEPARTMENT OF)	PLAINTIFF'S MOTION FOR
TRANSPORTATION; PAULA HAMMOND,)	ORDER TO SHOW CAUSE
IN HER OFFICIAL CAPACITY AS)	SUPPORTING DECLARATION OF
SECRETARY OF THE WASHINGTON)	ELIZABETH A. CAMPBELL AND
STATE DEPARTMENT OF)	DECLARATION OF SERVICE
TRANSPORTATION,)	
Defendants.)	

ELIZABETH A. CAMPBELL,)
Plaintiff,)
vs.)
CITY OF SEATTLE, a municipal corporation,)
Defendant.)

Plaintiff's Motion for Order to Show Cause
I. Introduction

1 COMES NOW Elizabeth Campbell, Plaintiff herein, pursuant to RCW 42.56.550, and
2 respectfully requests that the Court issue an order compelling Defendant City of Seattle (“the
3 City”) to appear before the Court and show cause why the Court should not order Defendant to
4 immediately produce public records requested by Plaintiff and award to Plaintiff statutory
5 penalties, attorney fees and costs for untimely disclosure.

6 For over five months Plaintiff has sought from Defendant the production of public
7 records subject to disclosure under RCW42.56 et seq., under RCW 47.01 et seq., and under the
8 Seattle City Charter Article XXII, § 3, relating to Defendant’s Alaskan Way Viaduct and Seawall
9 Replacement Program (“AWVSR Program”) and to Defendant’s Central Waterfront Program.

10 Defendant has provided a modicum of explanation about why it cannot, and moreover
11 has failed to disclose the specific records requested by Plaintiff in a timely manner. Defendant
12 has further failed to respond to Plaintiff’s supplemental requests for public records and to
13 provide reasonable explanations, estimates of the *actual* time when the specific records will be
14 disclosed, and required indexes of records.

15 This court should order Defendant to show cause why it has been unable to comply with
16 the significant obligations of the Public Disclosure Act/RCW 42.56 et seq., with those of RCW
17 47.01.402(5), and with those of the Seattle City Charter Article XXII, § 3.

18 **II. Facts**

19 For over a ___ month period Defendant has repeatedly engaged in a pattern of incomplete
20 production of records/public disclosure and delays in response to reasonable public records
21 requests made by the Plaintiff.

22 Between June, 2009 and February, 2010, pursuant to the Public Records Act, RCW 42.56
23 et seq. and pursuant to RCW 47.01(5) Plaintiff has submitted ___ public disclosure requests to
24 the City seeking detailed or current information about the AWVSR Program. The City has
25 acknowledged the requests and supplied an estimated time for responding to them that has varied
26 from between 30 to 180 days. *Campbell Declaration*.

1 The City's response times however are not the same as its disclosure times, most of the
2 time at the expiration of the 30 to 180 day period, the City extends the response time for
3 disclosure out even further. *Campbell Declaration*.

4 Of the ___ requests for disclosure made by Plaintiff between May, 2009 and February,
5 2010, only ___ have been completed, ___ have had some portion of the documents requested
6 disclosed, and the remaining ___ have had no information disclosures made pursuant to them.
7 *Campbell Declaration*.

8 **III. Issue**

9 Whether under RCW 42.56.550, the court should issue an order compelling
10 Defendant to show cause why, after five plus months, the court should not order the public
11 records requested by Plaintiff produced immediately and award to Plaintiff penalties, attorney
12 fees and costs?

13 Whether under RCW 47.01(5), the court should issue an order compelling Defendant to
14 show cause why, after five plus months, the court should not order the public records requested
15 by Plaintiff produced immediately?

16 **IV. Evidence**

17 This motion is supported by the declaration of Elizabeth Campbell with exhibits
18 submitted hereto.

19 **V. Argument**

20 Defendant repeatedly and unreasonably has delayed for up to almost ___ months the
21 production of public records subject to disclosure under the Public Records Act (PRA) RCW
22 42.56 et seq., under RCW 47.01.402(5), and under the Seattle City Charter Article XXII, § 3.
23 Defendant has produced only incomplete records, withholding many records that are critical to
24 Plaintiff's and the public's understanding of the permitting, environmental reviews, budgeting,
25 and other administrative acts that are being taken related to the Alaskan Way Viaduct and
26 Seawall Program and under the Central Waterfront Program.

27 In order to be fully informed about this large, critical public project, and in order to be
28 able to meaningfully participate in their government, the Plaintiff and the people of Washington

1 have a right to obtain public records about it under the Public Records Act, under RCW
2 47.01.402(5), and under the Seattle City Charter Article XXII, § 3. The provisions of the PRA
3 must be “liberally construed and its exemptions narrowly drawn to promote this policy.” RCW
4 42.56.030. Penalties under the PRA (formerly PDA) are essential to “discourage improper
5 denial of access to public records and [to encourage] adherence to the goals and procedures
6 dictated by the statute.” *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 140, 580 P.2d 246. This court
7 should order that Defendant to appear and explain its failure to produce the complete set of
8 public records that Plaintiff has requested.

9 RCW 42.56.550 provides:

10 (1) Upon the motion of any person having been denied an
11 opportunity to inspect or copy a public record by an agency, the
12 superior court in the county in which a record is maintained may
13 require the responsible agency to show cause why it has refused
14 to allow inspection or copying of a specific public record or class
15 of records. The burden of proof shall be on the agency to establish
16 that refusal to permit public inspection and copying is in
accordance with a statute that exempts or prohibits disclosure in
whole or in part of specific information or records.

17 (2) Upon the motion of any person who believes that an agency
18 has not made a reasonable estimate of the time that the agency
19 requires to respond to a public record request, the superior court in
20 the county in which a record is maintained may require the
21 responsible agency to show that the estimate it provided is reasonable.
The burden of proof shall be on the agency to show that the estimate it
provided is reasonable.

22 Defendant the City has failed for over ___ months to produce the records requested by
23 Plaintiff; Defendant has repeatedly also failed to produce records according to its own estimated
24 timelines, and has provided no reasonable explanation(s) for its delay. Accordingly, this court
25 should order Defendant to appear and show cause why the Plaintiff should not be awarded
26 penalties, attorney fees and costs resulting from Defendant’s failure to comply with the PRA,
27 with RCW 47.01.402(5), and with the Seattle City Charter Article XXII, § 3.

28 RCW 42.56.550(4) provides that:

1 3. That judgment be granted awarding Elizabeth Campbell statutory penalties, attorney
2 fees and costs, including but not limited to RCW 42.56.550(4), in an amount to be determined at
3 hearing;

4 4. That judgment be granted to Elizabeth Campbell awarding such other and further relief
5 as is equitable and just.

6
7 Respectfully Submitted this ____ day of April, 2010.

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Elizabeth A. Campbell
Pro Se
3826 24th Avenue W.
Seattle, WA 98199
206-769-8459

15 SUPPORTING DECLARATION OF ELIZABETH A. CAMPBELL

16 Elizabeth Campbell hereby subscribes, swears and declares:

17 **1. Identity.** I am plaintiff in the above-matter, over eighteen years of age and I have
18 personal knowledge of the following:

19 **2. Campbell Involvement with Alaskan Way Viaduct Project/Public Disclosure**
20 **History.** Over the last several years I have been involved as a community organizer and activist
21 for citizens' rights and interests related to the Alaskan Way Viaduct and Seawall Replacement
22 Project (now Program) ("AWVSR Program" or interchangeably, "Project", "Program"), that is
23 being managed by the Washington State Department of Transportation ("the City").

24 Throughout my years of involvement I have often been needed to research in greater
25 detail various aspects of this Project, needed to acquire more detailed information about the
26 Project than what is released publicly by the City.

27 Based on long association with the City's public processing of this Project and a history
28 of working with the City's public disclosure operations, I have learned that the City's internally

1 motivated, voluntary releases of information to the public provide general information that has
2 been previously subjected to the scrutiny of its public relations contractors and the assorted the
3 City and Washington's executive branch officials that are concerned with the public's perception
4 of the AWVSR Program. The information that the City releases at public meetings and briefings
5 is "crafted", such that depending upon the project agenda or public perception that the City is
6 hoping to facilitate, the materials to be released are composed or embellished so that when they
7 are presented they will provide the maximum advantage for whatever agenda the City wants to
8 advance, or so that they achieve the most favorable public perception of the City or the Project
9 that the City is hoping for.

10 Having this understanding of the political and governmental influences that are
11 associated with this Project then, by making a public disclosure requests I can acquire
12 information from the City that has not been subjected to this process of rendering the City's
13 records so that they are in conformity with some politically or institutionally motivated public
14 message. I can gain "raw" the City data and records that are unembellished, relatively unbiased,
15 and that are of greater utility and informational value than the majority of the documents the City
16 releases to the public of its own initiative.

17 **2. Disclosure Requests Made, the City Acknowledgements of Requests Received.**

18 Between June, 2009 and February, 2010, pursuant to the Public Records Act, RCW 42.56 et seq.,
19 pursuant to RCW 47.01(5), and pursuant the Seattle City Charter Article XXII, § 3, I have
20 submitted ____ public disclosure requests to the City (see attached Exhibit A), seeking detailed
21 or current information about the AWVSR Program. For each of those requests the City sent me
22 within the statutorily mandated timeframe a letter acknowledging my requests (see attached
23 Exhibit B).

24 **3. Content of the City Acknowledgement Letter/Timeframes for Response.** The

25 City's public disclosure request acknowledgement letters have a standard format. Their letter
26 first acknowledges receipt of my public disclosure request and the date it was made, a City case
27 number is assigned to the request, the City restates what it is that I have requested, and then at
28 the end of their letter the following statement is inserted: "Our procedure is to locate, review for

1 exemptions, and prepare the records for your inspection and/or copies. We will respond to your
2 request within [x] days.”

3 For the last several years the City has consistently inserted into the timeframe slot that it
4 would respond to the disclosure request in 30 days, *regardless* of how many documents, or
5 whatever type of document I have requested. This practice continued through most of 2009.

6 Between May, 2009 and November, 2009 the City acknowledgement letters referenced
7 ____ days as the response time; however after that the response timeframe increased
8 considerably. Starting in the first week of February, 2010, the City’s acknowledgement letters
9 stated that the City would respond to my requests anywhere from ____ to ____ days later (between
10 ____ and ____ months), and then from February 5, 2010 thereon, their acknowledgement letters to
11 me stated that it would be at least ____ days before the City would respond to my requests for
12 information.

13 **4. the City’s *Response Time* Not the Same As the City’s *Disclosure Time*.** I have
14 verbally and in writing questioned the City about _____. That is not the only
15 problem however, the stated response time does not equate to the time for fulfilling the request -
16 in other words the 30 days for example, only means that at 30 days the City will get back to me,
17 either to tell me it is 1) going to take longer to fill my disclosure request, or 2) that it is fulfilling
18 my request at that time, *or* 3) that it is only fulfilling my request in part, and that the rest of it will
19 be fulfilled sometime in the future.

20 **5. Current Status of Campbell Public Disclosure Requests.** Of the ____ requests for
21 disclosure that I have made between May, 2009 and February, 2010 (see attached Exhibit C),
22 only seven have been completed, four have had some portion of the documents requested
23 disclosed, and the remaining seven have had no information disclosures made pursuant to them.

24 My public disclosure requests of November 8, 2009, and November 16, 2009 have been
25 partially answered by the City (documents released), and the rest of them – submitted to the City
26 on September 26, 2009, November 20, 2009, January 25th, 26th, 27th, 28th (two 1/28 requests)
27 and February 19th (two 02/19 requests), 2010 - all remain outstanding, the City has made no
28 disclosures pursuant to them. The table below summarizes the foregoing information:

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6. Repeated Requests to the City to Comply and Disclose. For the past year plus I have written the City numerous times requesting that it both comply with the statutory provisions which govern my requests for documents, the Public Records Act and accelerate the pace of its disclosures to me (see attached Exhibit D). The majority of the time nothing changes as a result. On occasion after receiving my letter the City for a short time might issue a small number of documents, but after that weeks go by with no disclosures.

8. Bad Faith Acts of the City Towards Public and in Fulfilling Public Disclosure Requests. Example 1: My experience with the City in fulfilling my public disclosure requests, and my perception of their operation from what information they have disclosed, has led me to believe that they are operating in bad faith in terms of their discharging their duties to the public in general, and in terms of abiding by their statutory obligations to disclose information to the me in particular.

A good example of that bad faith is related to a public disclosure request that I made on September 23, 2009, for a video the City had made about the Viaduct collapsing. I had found out about accidentally, it was shown by the City’s consultant, Parsons Brinckerhoff, at a tunneling industry conference in Canada – I requested from the City, “A video simulation of an earthquake’s effects on the Alaskan Way Viaduct that was presented by Gordon Clark who was working on the AWVSR Project for the engineers Parsons Brinckerhoff; they presented it during a Rapid Excavation & Tunneling Conference session in Toronto on or about June, 2007.” *the City 09-1079 Campbell Public Disclosure Request.*

Instead of promptly releasing the video to me first in fulfillment of my public disclosure request, the City instead crafted a communications plan for the release of the video (see attached

1 Exhibit E), then released the video to public officials (see attached Exhibit F), then went on to
2 release it to KING 5 TV station and other media outlets on October 25, 2009 (see attached
3 Exhibit G), and then released it to selected individuals and the the City staff working on the
4 Viaduct (see attached Exhibit H). It was only after everyone else got a hold of the video that the
5 City sent a copy to me.

6 It is not only the bad faith of the City in how they treated my public disclosure request,
7 but it is also the bad faith related to the City's origination of the video and in their treatment of it
8 when they finally released it that demonstrates the overall attitude of the City related to the
9 AWVSR Project and how they think the public should be treated.

10 At the time of the video's release the City crafted a *public* story about why they had not
11 released the video in 2007, claiming that "We chose not to release the video because the final
12 product sensationalized a serious safety issue." and that "it was obvious to us that it was too
13 sensational." However, internal the City emails about the video show that one, the City had the
14 video made in the first place because the City officials thought the progress of the public process
15 for the AWVSR Project in 2007 was too slow. According to Ron Paananen, the City's AWV
16 project manager, "there was little agreement about how the Alaskan Way Viaduct was to be
17 replaced. To ensure that we fully understood the risks of not reaching a decision, we created a
18 visual simulation of how the viaduct would respond in the event of an earthquake more intense
19 than the 2001 Nisqually earthquake. Progress was being made in late 2007. Agreement had been
20 reached on how the south mile of the viaduct was to be replaced. And there was a collaborative
21 process underway, including a 29-member stakeholder advisory committee, to determine the best
22 solution for the mile of the viaduct along the central waterfront... We felt that it may
23 unnecessarily...distract from the progress underway." (see attached Exhibit H).

24 Secondly, the "too sensational" Viaduct disaster film was made to the City's order; it was
25 hardly as the City has tried to characterize it, something that was beyond their control. All the
26 things that happened in it, the magnitude of destruction, the way structures collapsed, the way
27 roadways, light standards and the like fell, the sea rushing in, how things fell, burned up, or were
28 otherwise destroyed, it was all according to the script and storyboard for the video that the City

1 had written (see attached Exhibit I). the City’s storylines, that videos make themselves, and that
2 they are complying with the public disclosure laws, they’re just that, stories.

3 Example 2: While I have had to wait months for information that I have formally
4 requested from the City, pro-tunnel supporters are able to get information promptly from the
5 City, even specifically crafted to their needs. One example of this type of occurrence are the
6 information requests to the City by Bob Donegan, a long time champion of the bored tunnel
7 project. He is able to call up either the Deputy Secretary of the City, David Dye, or the City’s
8 PR firm, EnviroIssues, and virtually immediately get either information he needs from the City,
9 or even custom made information packets that the City prepares for him (see attached Exhibit I).

10 This is not the kind of compliant or “transparent” agency behavior that was envisioned
11 either under the Public Records Act, or under the legislature’s 2009 public disclosure mandate
12 regarding the AWVSR Program in RCW 47.01.402(5) - instead these are the acts of an agency
13 that is acting in bad faith.

14 **7. Importance and Timeliness of Records.** The records that I have requested are
15 critical to my analysis of the AWVSR Program in general, and are important in that they will
16 enable me to participate in a meaningful and informed way in ongoing elements and matters
17 related to the AWVSR Program, in those areas that the public has an interest and/or right to
18 participate in – such as environmental review and permitting.

19 Receiving documents that are greatly after the fact, that are months beyond the time when
20 some project element such as permitting or environmental review could be responded to is
21 unacceptable. It impedes my ability to be informed when I am rightfully participating in public
22 forums about this Project.

23 I have significant questions that need to be answered. My public disclosure activity also
24 because it is shared with the public at large through various venues also provides in its own right
25 a public service.

26 I am therefore requesting that the Court grant my request and compel the City to
27 immediately produce the documents I have requested, to levy a penalty against the City, as well
28 as award me my attorney fees and costs.

1 Under penalty of perjury of the laws of the state of Washington the foregoing is true and
2 correct to the best of my knowledge.

3
4 Signed in Seattle this ____ day of April, 2010.

5
6 _____
7 Elizabeth A. Campbell
8 Pro Se
9 3826 24th Avenue W.
10 Seattle, WA 98199
11 206-769-8459

12 DECLARATION OF SERVICE

13 I declare that a true and correct copy of the following documents:

- 14 1. NOTE FOR MOTION TO SHOW CAUSE
15 2. PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE
16 SUPPORTING DECLARATION OF ELIZABETH A. CAMPBELL
17 AND DECLARATION OF SERVICE
18 3. PROPOSED ORDER

19 were served on the following as indicated below:

20 Amanda Phily, Attorney General's Office
21 Deborah Cade, Attorney General's Office
22 State of Washington
23 7141 Clearwater Drive SW
24 Tumwater WA 98501

25 Via Email Delivery *and* First Class Mail Postage Paid

26 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
27 true and correct.

28 DATED this ____ Day of April, 2010 in Seattle, Washington.

Elizabeth A. Campbell, Plaintiff

Pro Se
3826 24th Avenue W.
Seattle, WA 98199
206-769-8459

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