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SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN THE COUNTY OF KING

SEATTLE TIMES COMPANY,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

NO:

COMPLAINT FOR DISCLOSURE  
UNDER THE PUBLIC RECORDS ACT

INTRODUCTION

A recent ethics investigation found that the City of Seattle unlawfully handled a loss of Mayor Jenny Durkan’s text messages during an important historical period from August 28, 2019 to June 25, 2020. This alarming disclosure prompted The Seattle Times to review the City’s handling of its own text requests within the affected period, revealing numerous violations of the Public Records Act (PRA), Chapter 42.56 RCW. The Seattle Times brings this action to obtain the full and prompt disclosure required by the PRA, and to hold the City accountable for chronic non-compliance which has hampered the Times’ watchdog efforts at City Hall. The Times also seeks

1 reasonable attorney fees and, to deter future violations, an award of penalties as authorized by  
2 RCW 42.56.550.

3 I. JURISDICTION AND VENUE

4 1.1 The City of Seattle is in King County, Washington. The public records at issue are  
5 maintained in Seattle.

6 1.2 This Court has jurisdiction pursuant to RCW 42.56.550(1). Venue lies in this court  
7 pursuant to RCW 4.12.025(1) and RCW 42.56.550(1).

8 II. PARTIES

9 2.1 The Seattle Times is the state's largest newspaper. It is an independent family-owned  
10 company known for its commitment to investigative reporting. Reporters Daniel Beekman, Sydney  
11 Brownstone, David Gutman and Lewis Kamb made the records requests at issue on behalf of the  
12 Times.

13 2.2 The City of Seattle is the state's largest municipality with a total budget of \$6.5 billion and  
14 nearly 10,000 employees. It is an agency as defined by RCW 42.56.010(1), making it subject to  
15 the PRA.

16 III. BACKGROUND

17 3.1 City Hall coverage has always been a staple of news reporting by The Seattle Times.  
18 Prompt access to City records became especially important in the spring of 2020 when the COVID-  
19 pandemic hit, followed by widespread civil unrest. Seattle captured the world's attention in  
20 June 2020 when City police abandoned the East Precinct after 10 days of street protests in the  
21 aftermath of George Floyd's murder in Minneapolis. The retreat spawned a three-week occupation  
22 of a six-block zone known as CHAZ (Capitol Hill Autonomous Zone) and later the CHOP (Capitol  
23 Hill Organized Protest), where a 19-year-old man and 16-year-old boy were killed on June 20 and

1 June 29, 2020. Times reporters made numerous public records requests to the City in order to  
2 investigate and report on the City's handling of the health and safety crises.

3 3.2 In late August 2020, the mayor's legal counsel Michelle Chen and the mayor's public  
4 records officers Stacy Irwin and Kim Ferreiro learned that approximately ten months' worth of  
5 Mayor Durkan's text messages (from August 28, 2019 to June 25, 2020) had not been retained on  
6 her city-issued phone or in any cloud-based account associated with her phone.

7 3.3 On March 4, 2021, Ms. Irwin filed a whistleblower complaint with the City's Ethics and  
8 Elections Commission (EEC) regarding how Ms. Chen had directed her and Ms. Ferreiro to handle  
9 requests for the mayor's missing texts. Ms. Irwin alleged that the Mayor's Office engaged in  
10 "improper governmental action" after the loss was discovered. According to a May 6, 2021 EEC  
11 report:

12 The Complaint alleged that:

13 1. Irwin and Ferreiro were directed by Chen not to inform requesters that the  
14 Mayor's text messages had not been retained and the text messages the City was  
15 producing in response to their PRA requests were actually copies of the text  
16 messages obtained from persons who had sent text messages to or received text  
17 messages from the Mayor. These were referred to as "recreated" text messages.

18 2. Irwin and Ferreiro were directed by Chen to narrowly interpret 48 pending  
19 requests that Irwin and Ferreiro had identified as requesting the Mayor's text  
20 messages so that the Mayor's text messages were only responsive to 20 of those  
21 pending requests. Irwin and Ferreiro were also directed not to inform requestors  
22 that their requests were being interpreted to exclude the Mayor's text messages. As  
23 a result, at least three requests were closed without the requestors being informed  
24 regarding the Mayor's Office's narrowed interpretation.

25 3.4 The EEC launched a formal investigation, hiring an outside attorney to assist.

26 3.5 The EEC concluded that Ms. Chen's decision not to inform requesters of the mayor's lost  
texts and the City's incomplete production of recreated text messages violated "best practices."

The EEC also concluded:

Chen's decision to narrowly interpret the majority of the 48 pending PRA requests  
for communications from the Mayor's Office so those requests were not requesting

1 the Mayor's text messages violated the PRA's statutory mandate to provide  
2 "adequate responses" to PRA requests. See RCW 42.56.520. Moreover, the  
3 evidence demonstrates that the decision to narrowly interpret these requests was a  
4 change of the normal practice in the Mayor's Office that was specifically made  
because 10 months of the Mayor's text messages had been lost. This decision to  
narrowly interpret the requests was a violation of the PRA and qualifies as improper  
governmental action.

5 3.6 The Seattle Times obtained the City's spreadsheet of the 48 requests which Ms. Chen had  
6 directed records officers to interpret narrowly. Requests by Times reporters Daniel Beekman,  
7 Sydney Brownstone, David Gutman and Lewis Kamb were included in the spreadsheet. Notes  
8 indicated that the Mayor's Office interpreted Ms. Brownstone's request narrowly to exclude  
9 Mayor Durkan's texts, while planning to "recreate" texts requested by Mr. Beekman and Mr.  
10 Gutman from sources other than the mayor. As for Mr. Kamb's request, the spreadsheet said: "this  
11 will require looking at the transaction history for her phone and anything recovered by forensics."

12 3.7 After the May 6, 2021 release of the EEC report, the Times took a fresh look at the City's  
13 responses to its numerous requests for texts within the period of Mayor Durkan's lost texts. This  
14 action arises from review of the City's handling of such requests, including unlawful withholding  
15 and a pattern of unreasonable time estimates.

#### 16 IV. THE GUTMAN REQUEST

17 4.1 On June 9, 2020, Mr. Gutman asked the City for the following public records:

18 any and all communications, including emails and text messages, between the  
19 Seattle City Council and the Mayor Jenny Durkan's Office from Thursday, May  
20 28, 2020, through the present date. Specifically, I am requesting all emails and text  
21 messages between any member of the Seattle City Council and any of the following  
22 people: Mayor Jenny Durkan, Mike Fong, Shefali Ranganathan, Stephanie Formas,  
23 Casey Sixkiller and Anthony Auriemma.

24 4.2 That day, the City logged the request as "CO59114-060920 – Legislative Branch" and  
25 notified Mr. Gutman to expect an initial response within five business days.  
26

1 4.3 A records officer for the City Council, Matthew Jaeger, provided the City's initial response  
2 on June 15, 2020. He wrote: "I ran a search on the @seattle.gov email accounts belonging to nine  
3 councilmembers (CMs) using the date range that you specified." He told Mr. Gutman that 1,953  
4 internal emails were potentially responsive, and that he had reached out to the City Council's  
5 Office for texts and other communications within the scope of the June 9, 2020 request. His email  
6 concluded: "I expect to have records to you by July 10, 2020."

7 4.4 On July 10, the City produced three requested records (an email and two calendar items)  
8 to Mr. Gutman.

9 4.5 On July 15, 2020, Mr. Jaeger told the reporter he was "waiting on council offices for the  
10 rest" of the responsive records. He predicted a second installment by August 21, 2020.

11 4.6 On August 21, Mr. Jaeger wrote to Mr. Gutman: "we are still waiting on most of the council  
12 offices to provide records for our review." He changed the time estimate for a second installment  
13 to August 28, 2020.

14 4.7 On August 28, the City produced PNG files from Councilmember Lisa Herbold showing  
15 14 text exchanges with Mayor Durkan and 83 text exchanges with the mayor's staff. The  
16 production also included three PDF files from Councilmember Herbold showing emails with  
17 Councilmember Kshama Sawant. Mr. Jaeger predicted a third installment of records by October  
18 9, 2020.

19 4.8 On October 12, 2020, Mr. Jaeger wrote to Mr. Gutman that he was "still rounding up  
20 responses from the council offices."

21 4.9 A week later, Mr. Jaeger wrote that he was "still waiting on a couple council offices" and  
22 needed to "punt" the next installment to October 30, 2020.

1 4.10 On October 30, Mr. Jaeger reported there were “still a couple of stragglers” and revised the  
2 time estimate once again to November 6, 2020.

3 4.11 On November 6, Mr. Jaeger told Mr. Gutman: “The last two offices should be wrapping  
4 this up.”

5 4.12 On November 13, 2020, Mr. Jaeger wrote: “I am still waiting on a couple Council offices.”  
6 He said he was rescheduling the response to the “end of budget season” on December 4, 2020. Mr.  
7 Gutman responded: “This request was made in June. Why should it have to wait for budget  
8 season?” Mr. Jaeger did not reply.

9 4.13 On December 4, Mr. Jaeger wrote that some records were ready for disclosure, but he was  
10 still “waiting on two offices” and could not complete the response until December 11, 2020. The  
11 December 4 production consisted of a single text between Councilmember Lorena Gonzalez and  
12 Mr. Fong and 22 PNG files from Councilmember Andrew Lewis. The latter included one text  
13 message from Mayor Durkan (plus a duplicate of the same message) and 20 text exchanges with  
14 her staff.

15 4.14 On December 11, Mr. Jaeger produced a single email from Councilmember Alex Pedersen  
16 to the Times reporter. The records officer again reported that he was “still waiting on some council  
17 offices.” He said the councilmembers had been told “they are holding up the closure of requests.”  
18 He predicted another installment by December 18, 2020.

19 4.15 On December 18, the City produced to Mr. Gutman two strings of text messages between  
20 Councilmember Dan Strauss and two of Mayor Durkan’s staff members. That day, Mr. Jaeger told  
21 Mr. Gutman: “There is one more office and they are having some legitimate tech issues.” He  
22 predicted another response by January 8, 2021.

1 4.16 On January 8, the City made its final production and closed the June 9, 2020 request.<sup>1</sup> The  
2 production included two PDFs from Councilmember Strauss showing text exchanges with two  
3 members of Mayor Durkan’s staff. Also, records from Councilmember Tammy Morales were  
4 produced for the first time.

5 4.17 Specifically, the City produced to Mr. Gutman three Excel files from Councilmember  
6 Morales which described – but did not show – text messages with Mayor Durkan and her staff.  
7 The actual text messages were not produced.

8 4.18 One of the Excel sheets described a text from Mayor Durkan received by Councilmember  
9 Morales at noon on May 30, 2020. The Excel file indicated that the text stated: “Thank you. Please  
10 let me know if you want to discuss. Stay well.” There was no indication what Mayor Durkan was  
11 referring to, or what Councilmember Morales had texted to the mayor to elicit the mayor’s  
12 response. The described text was within the period that the EEC identified as missing from Mayor  
13 Durkan’s phone and cloud account.

14 4.19 Another Excel sheet described five texts from Mr. Auriemma, then the mayor’s legislative  
15 affairs director, received by Councilmember Morales on May 31, 2020. The texts were quoted as  
16 follows:

17		Hi Councilmember, I sent an update about an hour ago, just wanted to let you know
18	5/31/2020	it’s in your inbox and let me know if you have any questions on the latest situation
	13:47	downtown
19	5/31/2020	
	13:50	The mayor is headed there right now to assess the damage
20	5/31/2020	
	14:32	We are back at the EOC now, I’m sorry. It was a little shorter than expected
21	5/31/2020	I just tried calling with Bobby Lee. He has a full update he can give, he’s been
	14:32	talking with several business leaders there.
22	5/31/2020	
	14:33	He is available by phone too

23  
24 <sup>1</sup> At Mr. Gutman’s request, the City reloaded the January 8 production to its online portal on May 12, 2021.

1 4.20 A third Excel file described a text from Mr. Auriemma on June 1, 2020, stating:

2 Update from last night - city crews were able to board all windows in CID for any  
3 business that had requested it. I'm told there was still one restaurant that had a  
4 broken window in CID last night though. That's the only known property damage.  
5 I can get you a more extensive update

6 4.21 Upon information and belief, neither Mr. Jaeger nor any other records officer for the City  
7 asked Mayor Durkan or her staff to produce the actual text messages described in the Excel files.  
8 Mr. Jaeger handled all communications with Mr. Gutman and consistently said he was relying on  
9 City Council members to produce the requested records.

10 4.22 According to rules enacted in 2017 entitled "Citywide Policy on Public Disclosure," a  
11 Citywide Public Records Act (CPRA) Program Staff is responsible for coordinating responses to  
12 multi-departmental requests when necessary. Mr. Gutman asked for records from both the Mayor's  
13 Office and the City Council. He received no indication of a coordinated response.

14 4.23 The City never informed Mr. Gutman that Mayor Durkan's May 30, 2020 text to  
15 Councilmember Morales was destroyed and that the City merely described its content in lieu of  
16 producing it. As noted in the May 6 EEC report, the Washington Supreme Court's 2011 decision  
17 in *Neighborhood Alliance v. Spokane County* faulted the agency for failing to disclose that a record  
18 had been recreated from a new computer and was not the actual record requested.

19 4.24 The date range of Mr. Gutman's request – from May 28 to June 9, 2020 - fell entirely  
20 within the period of the mayor's missing texts identified by the EEC. This was never  
21 communicated to Mr. Gutman.

22 4.25 Upon information and belief, the May 30, 2020 text from Mayor Durkan to Councilmember  
23 Morales was destroyed *after* the City received Mr. Gutman's June 9, 2020 request for it.

24 4.26 The Mayor's Office has publicly acknowledged that:



- 1 - at least one of the mayor's phones used from August 2019 to June 2020 was set to automatically  
2 delete messages after 30 days, notwithstanding requirements to retain them longer and in conflict  
3 with the City Information Technology (IT) Department's retention settings;<sup>2</sup>  
4 - the City restored retrieval of the mayor's text messages as of June 26, 2020, which was 17 days  
5 after Mr. Gutman requested texts from her phone;  
6 - Mayor Durkan reportedly switched phones in July 2020 due to a screen crack and water damage;  
7 - efforts to retrieve texts from the phone used before July 2020 were unsuccessful.

8 4.27 Upon information and belief, the six text messages from Mr. Auremmia to Councilmember  
9 Morales on May 31 and June 1, 2020 also were destroyed after they were requested by Mr. Gutman  
10 on June 9, 2020.

11 4.28 The City violated the PRA by destroying, losing or otherwise failing to retain the actual  
12 text messages from Mayor Durkan and Mr. Auremmia while Mr. Gutman's request for them was  
13 pending.

14 4.29 Mr. Gutman's June 9, 2020 request was listed on the spreadsheet of 48 requests implicated  
15 by the mayor's loss of text messages. The Mayor's Office planned to "recreate" the responsive  
16 texts from other sources, according to the spreadsheet notes.

17 4.30 The City violated the PRA and *Neighborhood Alliance* by failing to explain to Mr. Gutman  
18 the places searched and that the actual messages described in Councilmember Morales's  
19 spreadsheets had been destroyed.

20 4.31 The City failed to conduct an adequate search for the records requested by Mr. Gutman.

21 4.32 The City failed to promptly disclose records to Mr. Gutman upon request, contrary to RCW  
22 42.56.080(2) and RCW 42.56.520.

23 \_\_\_\_\_  
24 <sup>2</sup> See [No one is taking responsibility for loss of Seattle Mayor Jenny Durkan's text messages | The Seattle Times](#).

1 4.33 The City unlawfully withheld records which are not exempt from disclosure, contrary to  
2 RCW 42.56.070(1), and continues to silently withhold requested records.

3 4.34 The City failed to provide the fullest assistance and most timely possible action on Mr.  
4 Gutman's June 9, 2020 request, contrary to RCW 42.56.100.

5 4.35 The City failed to provide reasonable time estimates for the production of records in  
6 response to Mr. Gutman's June 9, 2020 request, contrary to RCW 42.56.520.

7 4.36 The City failed to produce all non-exempt records responsive to Mr. Gutman's June 9,  
8 2020 request. The City did not produce any records of communication from Councilmember  
9 Debora Juarez in response to Mr. Gutman's request. The City did not produce any records of  
10 communication from Councilmember Teresa Mosqueda in response to Mr. Gutman's request. The  
11 City did not produce any text messages (recreated or otherwise) from councilmembers Sawant and  
12 Pedersen.

13 4.37 A 2019 settlement agreement between the City and The Seattle Times required the Mayor's  
14 Office to receive "refresher training" on the obligation to retain public records on City-owned and  
15 personal phones and other mobile devices. The training was required to state "that mobile device  
16 users will use apps approved by Seattle IT and consistent with city policy" and "substantive (non-  
17 transitory) City business should not be conducted on communication tools that automatically  
18 delete or are otherwise inaccessible."

19 4.38 The City violated, at a minimum, the spirit of the 2019 settlement agreement with the  
20 Times.

21 V. THE BROWNSTONE REQUEST

22 5.1 On January 16, 2020, Times reporter Sydney Brownstone submitted a public records  
23 request to the City seeking "all correspondence, including memos, emails and their attachments,

1 Slack messages, and text messages, concerning the manner in which city departments  
2 communicate with reporters between Jan. 1, 2019 and Jan. 16, 2020.”

3 5.2 That day, the City logged the request as CO53158-011620.

4 5.3 On January 24, 2020, Ms. Irwin, then one of the mayor’s records officers, wrote to the  
5 reporter: “we anticipate that we will be able to provide the requested records or a first installment  
6 of records on or about February 28, 2020.”

7 5.4 On January 27, 2020, Ms. Irwin asked Ms. Brownstone to be more specific about the  
8 desired records and to suggest terms for a records search. The next day, Ms. Brownstone suggested  
9 search terms and clarified that her request included “all communications, both broad and specific,  
10 about how the Mayor’s Office and departments should be communicating with reporters.”<sup>3</sup>

11 5.5 On January 29, 2020, Ms. Irwin replied that she would use the suggested search terms.

12 5.6 On March 17, 2020, the mayor’s other records officer, Ms. Ferreiro, sent an email  
13 estimating a delay in the first production of records until March 30, 2020.

14 5.7 On March 20, 2020, Ms. Ferreiro delayed the time estimate again to April 6, 2020.

15 5.8 On April 9, 2020, the City produced a 389-page PDF consisting of emails requested by Ms.  
16 Brownstone. Ms. Ferreiro predicted the next installment by June 11, 2020.

17 5.9 On June 15, 2020, Ms. Ferreiro delayed the estimated date of the next production until June  
18 22, 2020, citing the COVID emergency.

19 5.10 On June 23, 2020, the estimate was extended to June 30, 2020 based on the emergency and  
20 “current work load.”

21  
22  
23 <sup>3</sup> She elaborated: “This would include email chains on specific story requests (anything with ‘Seattle Times’ and  
24 ‘@seattletimes.com,’) but for this let’s also include KUOW (‘KUOW’ and ‘@kuow.org’), Crosscut (‘Crosscut’ and  
25 ‘@crosscut.com’), and Erica C. Barnett. I am additionally seeking any/all memos about communicating with Seattle  
26 media (‘media’ ‘protocol’ ‘reporters’ ‘journalists’) and the like.”

1 5.11 On July 2, 2020, Ms. Ferreiro extended the time estimate again to July 10, 2020.

2 5.12 On July 17, 2020, the City produced a 226-page PDF file of emails to Ms. Brownstone. At  
3 the same time, Ms. Ferreiro wrote: “We anticipate that the next installment of records will be  
4 available on or about December 9, 2020.”

5 5.13 On or about August 21, 2020, the Mayor’s Office discovered that the mayor’s text  
6 messages had not been retained from August 28, 2019 to June 25, 2020, a period that included five  
7 and a half months of the text messages requested by Ms. Brownstone.

8 5.14 The City destroyed, lost or otherwise failed to retain text messages requested by Ms.  
9 Brownstone *after* receiving her request on January 16, 2020.

10 5.15 The loss or destruction of text messages subject to Ms. Brownstone’s pending request was  
11 a violation of the PRA.

12 5.16 The City never told Ms. Brownstone about the loss of records responsive to her request.  
13 The mayor’s legal counsel, Ms. Chen, directed the records officers not to tell requesters about the  
14 problem despite their objections.

15 5.17 As of November 6, 2020, Ms. Brownstone’s request was the oldest of 48 requests which  
16 had been held up by the loss of texts. The EEC report said:

17 By November 6, 2020, the Mayor’s office had at least 48 pending PRA requests that  
18 Irwin and Ferreiro had determined were seeking the Mayor’s text messages and had  
19 therefore been kept open while the Mayor’s Office, IT and the City Attorney’s office  
20 investigated the missing text messages and sought to obtain recreated text messages  
from other sources. Most of these requests were considered “past due” based on the  
targeted response times that the Mayor’s Office had set for itself. The oldest request  
had been submitted in January 2020.

21 5.18 On or about November 6, 2020, Ms. Chen decided to re-interpret the pending requests  
22 narrowly so that only 20 of the 48 requests were deemed to be requesting the mayor’s text messages.  
23 The EEC report explained:

1 As memorialized in the “Notes” column in the November 6 spreadsheet, Chen  
2 determined that text messages were not responsive to the other 28 requests by  
3 determining (1) that request for the Mayor’s Office’s communication were not  
4 requests for the Mayor’s text messages unless the Mayor was specifically identified;  
5 and (2) that requests for “correspondence” (as opposed to communications) were  
6 only requests for letters or emails but not text messages.

7  
8 5.19 The spreadsheet shows that Ms. Brownstone’s January 16, 2020 request was interpreted to  
9 exclude Mayor Durkan’s lost texts even though the reporter had expressly requested “text  
10 messages” and clarified that this included “the Mayor’s Office.” The spreadsheet notes said: “No  
11 - this does not specifically ask for JAMD texts. Does not apply to her.”

12 5.20 The Mayor’s Office includes Mayor Durkan.

13 5.21 The EEC report said:

14 The decision to narrowly interpret these requests represented a change in how the  
15 Mayor’s Office had interpreted the scope of similarly worded request. Prior to Fall  
16 2020, when the Mayor’s Office received a PRA request for its communications, it  
17 interpreted “communications” to include the Mayor’s text messages and emails,  
18 even if the request did not specifically identify the Mayor herself. Under this  
19 practice, the Mayor’s text messages would have been responsive to all 48 pending  
20 requests.

21 5.22 The City’s narrow interpretation of Ms. Brownstone’s request violated the right to receive  
22 an adequate response under the PRA.

23 5.23 The City intentionally interpreted the January 16, 2020 request so as to exclude the mayor’s  
24 lost text messages, contrary to RCW 42.56.100 and RCW 42.56.210(3).

25 5.24 The City failed to respond to Ms. Brownstone’s request with reasonable thoroughness and  
26 diligence, contrary to the PRA.

5.25 On December 9, 2020, two months after the request was reinterpreted to exclude lost texts,  
the City extended the time estimate for the third production to December 22, 2020.

5.26 On December 23, 2020, the City produced a 279-page PDF of emails to Ms. Brownstone.  
At the same time, Ms. Ferreiro advised Ms. Brownstone that the next installment on her January

1 16, 2020 request was not expected until April 9, 2021 due to the COVID emergency and a large  
2 volume of requests.

3 5.27 On April 9, Ms. Brownstone received the following message:

4 The Mayor's Office needs additional time to complete your request. We apologize  
5 for the delay and any inconvenience this may cause, and we anticipate sending you  
6 a next installment on or about June 9.

7 Office of the Mayor,  
8 City of Seattle

9 The Mayor's Office used identical language when responding to other requests implicated by the  
10 mayor's lost texts, including a July 13, 2020 request by Mr. Kamb and a July 15, 2020 records  
11 request by Mr. Beekman.

12 5.28 The City has not communicated with Ms. Brownstone about her pending January 16, 2020  
13 request since the generic email on April 9, 2021.

14 5.29 The City has failed to provide reasonable time estimates to Ms. Brownstone, contrary to  
15 RCW 42.56.520.

16 5.30 The City failed to provide the fullest assistance and most timely possible action on the  
17 January 16, 2020 request, contrary to RCW 42.56.100.

18 VI. THE AUGUST 10, 2020 KAMB REQUEST

19 6.1 At 10:12 p.m. on August 10, 2020, less than an hour after Carmen Best announced her  
20 resignation as Seattle's police chief, Mr. Kamb submitted a request to the City for the following  
21 public records:

22 Any and all written communications sent or received by Police Chief Carmen Best  
23 regarding her intent to resign as Seattle Police Chief. Such communications should  
24 include any emails, text messages or any other communications exchanged with  
25 Mayor Jenny Durkan and/or the Mayor's Office, members of the City Council  
26 and/or members of SPD's command staff.

1 6.2 The City immediately sent an email stating: “Your request was received on August 10,  
2 2020.” The initial response included the following generic language which the Seattle Police  
3 Department’s records unit was using routinely at the time:

4 At this time, the Seattle Police Department’s Legal Unit is operating under an  
5 extreme backlog of requests, staffing shortages, the redeployment of supporting  
6 units to Seattle’s frontline COVID-19 response, and, pursuant to CDC  
7 recommendations and City direction, reassignment to remote access. For these  
8 reasons, our ability to process new requests is substantially limited; we are currently  
9 estimating minimum response timelines, depending on the volume and complexity  
10 of requests, in excess of 6-12 months. Current requests should likewise anticipate  
11 that it will take additional time to process records and respond. We apologize for  
12 any inconvenience, and deeply appreciate your understanding as we all pull  
13 together...

14 The request was logged as PO62212-081020.

15 6.3 On August 11, 2020, the request was designated as “assigned.” No time estimate for  
16 records production was given.

17 6.4 On August 18, 2020, the City sent an email repeating the August 10 generic language  
18 regarding an “extreme backlog” causing delays. The email also said: “At this time we anticipate  
19 having a response *or status update* to you on or about 10-28-20.” (Italics added). This statement  
20 did not inform Mr. Kamb when he could expect to receive records in response to his request.  
21 Rather, merely “a status update” or response of an unspecified nature was predicted by October  
22 28, 2020.

23 6.5 On November 5, 2020, nearly three months after receiving Mr. Kamb’s request, the City  
24 sent an email stating:

25 The purpose of this communication is to provide a status update as to your request.  
26 The Seattle Police Department needs additional time to respond to your request.  
Due to our current workload and backlog, we are still processing your request.

At this time, we anticipate having a response/installment to you on or about  
11/30/2020.

1 This was the first time the City informed Mr. Kamb when it expected to provide a first installment  
2 of records.

3 6.6 On December 17, 2020, the City produced one file (a 158-page PDF of emails) to Mr.  
4 Kamb.

5 6.7 On January 26, 2021, records officer Dianalynn Oreiro sent the following email:

6 This communication is in response to your public records request received on  
7 August 10, 2020. Please see the grouping message sent under PO60894-071520 on  
8 1/26/21. Per that message, this request has been pushed out until 12/30/21. We will  
update the due date once this is the request we are processing within your grouped  
requests.

9 The estimated date for a second installment was more than a year after the first installment and 16  
10 months after Ms. Best's resignation, the news event which precipitated Mr. Kamb's request.

11 6.8 The January 26 "grouping message" referenced by Ms. Oreiro stated as follows:

12 This is to update you regarding SPD's response to your multiple public records  
13 requests. You currently have 7 open requests for records, reference numbers:  
P060894-071520, P062212-081020, P063838-091120, P068938-011321,  
P068981-011421, P069185-011921 and P069321-012121.

14 The Washington Public Records Act (PRA) states that agencies shall adopt and  
15 enforce reasonable rules and regulations to provide full public access to public  
16 records, to protect public records from damage or disorganization, and to prevent  
17 excessive interference with other essential functions of the agency, the office of the  
18 secretary of the senate, or the office of the chief clerk of the house of  
19 representatives. Such rules and regulations shall provide for the fullest assistance  
20 to inquirers and the most timely possible action on requests for information. RCW  
42.56.100. Consistent with the PRA, the City of Seattle has adopted Multi-  
Departmental Administrative Rule MDAR 17-0002, Citywide Policy on Processing  
Public Disclosure Requests: <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=mdar&s3=&s2=&s4=&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=CFCF1&Sect6=HITOFF&d=CFCF&p=1&u=%2F~public%2Fcfcf1.htm&r=1&f=G>

21 In order to provide fullest assistance to all requesters, to prevent damage to or  
22 disorganization of City records or excessive interference with other essential City  
23 functions, or to assure that the appropriate amount of City time and resources will  
be fairly allocated among all requests and requesters, City rules give a Public  
Disclosure Officer (PDO) the discretion to group multiple requests received from



1 the same requester or similar requests from multiple requesters and to process the  
2 requests together as a group. In addition, City rules allow a PDO to allocate specific  
3 amounts of time and resources to responding to a request, whether individual or  
4 grouped, and/or to a particular requester. This may include but is not limited to  
allocating a specific number of hours per week or month to be spent by PDO staff  
and/or employees for whom responding to records requests is not among their  
primary assigned duties.

5 SPD will group and process your requests as follows:

- 6 1. P060894-071520
- 7 2. P062212-081020
- 8 3. P063838-091120
- 9 4. P068938-011321
- 10 5. P068981-011421
- 11 6. P069185-011921
- 12 7. P069321-012121

13 If you submit additional requests, we will group them with any remaining open  
14 requests and handle them as a single request as well. We will finish processing  
15 P060894-071520, then we will continue processing P062212-081020, and so on  
16 until all your requests are complete. **If you would like to re-prioritize your  
17 requests, please let me know within 7 calendar days.**

18 At this time, we estimate that we will provide the 3<sup>rd</sup> installment of records to  
19 P060894-071520 on or about **3/3/2021**. All other grouped PDRs will be pushed out  
20 until **12/30/2021**. We will update each grouped PDR due date as we begin  
21 processing it. The City may revise its estimate upon further review or changed  
22 circumstances. ...

23 (Bold in original).

24 6.9 That was the City's last communication in response to the August 10, 2020 records request  
25 regarding the Best resignation.

26 6.10 After receiving the January 26, 2021 emails, Mr. Kamb researched and reported a story for  
The Seattle Times about the Seattle Police Department's delays in processing records requests.<sup>4</sup>  
The Seattle Police Department's legal adviser Becca Boatright told Mr. Kamb: "what you're  
witnessing is frankly the city's failure to really provide the support we need to respond in a more

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<sup>4</sup> That story, published on February 9, 2021, can be found here: [Seattle's disclosure of police records lags as experts question legality of city's practices, funding | The Seattle Times](#).

1 timely fashion.” Police Department officials said they repeatedly had asked the City Council for  
2 more resources to handle an increasing number of requests. But the department’s budget devoted  
3 to public records slid from about \$3.6 million in 2016 to \$1.7 million in 2020, according to figures  
4 provided by Boatright. Staffing devoted to handling police requests fell from 11 full-time  
5 employees in 2016 to 7.5 in 2020, while the number of records requests grew by about 10% a year.

6 6.11 In late November 2020, all nine City Council members signed a letter of concern to Seattle  
7 Police Chief Adrian Diaz describing how the family of Herbert Hightower Jr., a man shot dead by  
8 Seattle police in 2004, had met “delay after delay” when trying to get public records about the  
9 shooting. Diaz responded that the City Council’s concern “highlights an issue that SPD has  
10 flagged, repeatedly, for years, but to little avail.” The chief’s letter described the department’s  
11 expanding volume and complexity of requests without increased resources.

12 6.12 The City violated RCW 42.56.520 in handling Mr. Kamb’s August 10, 2020 public records  
13 request.

14 6.13 The City failed to respond as required within five business days of the request by either  
15 producing or denying the requested records or providing a reasonable estimate of the time required  
16 to produce records.

17 6.14 The City’s responses on August 10, August 11 and August 18, 2020 failed to state when  
18 the first installment of records would be produced, contrary to RCW 42.56.520 and *Hikel v. City*  
19 *of Lynnwood*, a 2016 decision of the Division One Court of Appeals.

20 6.15 Even if the August 18, 2020 response had been sufficient, it was not timely. The City  
21 consistently characterized the request as having been received on August 10, 2020. Accordingly,  
22  
23

1 an initial response pursuant to RCW 42.56.520 was due on August 17, 2020. That deadline was  
2 not met.<sup>5</sup>

3 6.16 Under RCW 42.56.550(2) and *Health Pros Northwest v. State*, a 2019 decision of the  
4 Division Two Court of Appeals, a requester may challenge the reasonableness of each time  
5 estimate. The City's January 26, 2021 estimate for a second installment of records on December  
6 30, 2021 was not reasonable.

7 6.17 The City's request management policy, adopted in 2017 and relied upon in delaying six of  
8 Mr. Kamb's already-stalled records requests for eleven months until December 30, 2021, is  
9 unauthorized by law and violates the PRA.

10 6.18 Delays in responding to Mr. Kamb's August 10, 2020 request are due to an intentional  
11 backlog and staffing shortage which the City knowingly maintained, contrary to PRA requirements  
12 for prompt disclosure, reasonable time estimates and the fullest assistance to requesters.

13 6.19 The City failed to provide the fullest assistance and most timely possible action on Mr.  
14 Kamb's August 10, 2020 request, contrary to RCW 42.56.100.

15 6.20 The August 10, 2020 request included relevant text messages to or from Mayor Durkan  
16 during the period of lost texts. Upon information and belief, the City destroyed, lost or otherwise  
17 failed to retain text messages after Mr. Kamb requested them, violating the PRA.

## 18 VII. THE JULY 13, 2020 KAMB REQUEST

19 7.1 On July 13, 2020, Mr. Kamb made a public request to the Seattle Police Department for  
20 the following:

21 Any and all internal communications by Seattle police commanders regarding the  
22 fatal shootings within the so-called CHOP ("Capitol Hill Organized Protest") zone  
near the Police Department's East Precinct on June 20 and June 29, 2020. By way

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23 <sup>5</sup> By May 25, 2020, the Governor's proclamations on handing public records requests during the COVID-19  
24 emergency no longer waived the 5-day response deadline for requests received electronically.

1 of explanation, the communications should include those exchanged among Seattle  
2 police officers, including any and all members of the command staff and/or incident  
3 or on-scene commanders, as well as communications exchanged to or by Seattle  
4 police officers with employees in other City departments, including the Mayor's  
Office and/or Fire Department. Such communications should include radio  
communications, emails, text messages, instant messages and/or any other means  
used to communicate.

5 7.2 That day, the request was logged as PO60752-071320. The initial response on July 13  
6 included the same generic "extreme backlog" language quoted in Paragraph 6.2 above. The July  
7 13 response did not include a specific time estimate for producing the particular records requested  
8 by Mr. Kamb that day.

9 7.3 On July 14, 2020, the Seattle Police Department sent a "status update" stating the request  
10 was "assigned." That email also did not include a time estimate for producing requested records.

11 7.4 A July 20, 2020 email repeated the same "extreme backlog" language that was sent to Mr.  
12 Kamb on July 13. The email then said: "we anticipate having a *response or a status update* to you  
13 on or about 1/15/2021." (Italics added). The email failed to inform Mr. Kamb when he would  
14 actually receive records in response to his July 13 request.

15 7.5 On January 29, 2021, a police records officer wrote: "Due to our department's high volume  
16 of records requests, staffing shortages and remote reassignment due to COVID-19, requests may  
17 incur an unanticipated delay in response. Your next *response, update or installment* is estimated  
18 to be ready on or about 03/26/2021." (Italics added). Thus, the City distinguished an installment  
19 of records from a "response" or "update," and still did not tell Mr. Kamb when he would receive  
20 an installment.

21 7.6 More than two months later, on April 2, 2021, the records officer wrote: "The fatal shooting  
22 incidents from June 20 and June 29, 2020 are still under Open and Active Investigation and the  
23

1 requested records cannot be released.” Thus, the Seattle Police Department waited six months to  
2 deny records based on an exemption claim that (if valid) would have applied all along.

3 7.7 The exemption claim was not valid at least as to the June 20, 2020 CHOP shooting. Marcel  
4 Long was charged on August 5, 2020 with premeditated first-degree murder in the June 20, 2020  
5 death of Lorenzo Anderson. That case ceased to be open and active upon the filing of charges.

6 7.8 Other departments of the City did not claim that the June 20, 2020 murder was still active  
7 when responding to two similar requests made by Mr. Kamb on July 13, 2020. One of the requests,  
8 logged as CO60754-071320, was for “[a]ny and all internal communications by Seattle Fire  
9 Department employees regarding the fatal shootings within the so-called CHOP (‘Capitol Hill  
10 Organized Protest’) zone near the Police Department's East Precinct on June 20 and June 29,  
11 2020.” The Fire Department has produced six installments of records in response to that request  
12 without claiming an exemption for an open investigation. Similarly, the Mayor’s Office produced  
13 records in January 2021 in response to Mr. Kamb’s July 13, 2020 request logged as CO60753-  
14 071320, which sought “[a]ny and all internal communications exchanged with the Seattle Mayor's  
15 Office regarding the fatal shootings within the so-called CHOP...zone near the Seattle Police  
16 Department's East Precinct on June 20 and June 29, 2020.”

17 7.9 The productions by the Fire Department and Mayor’s Office demonstrated that the Seattle  
18 Police Department could have released similar records requested by Mr. Kamb. Instead, it falsely  
19 claimed an active investigation to justify non-disclosure.

20 7.10 Despite the exemption claim, the Seattle Police Department offered to keep Mr. Kamb’s  
21 request open “as a courtesy” and provide monthly updates.

22 7.11 On May 4, 2021, the Seattle Police Department again told Mr. Kamb the requested records  
23 could not be released because both the June 20 and June 29, 2020 shootings were still under active

1 investigation. Another “update or installment” was predicted by June 16, 2021. That was the last  
2 communication from police about Mr. Kamb’s July 13, 2020 request.

3 7.12 The May 4, 2021 exemption claim was not valid because a suspect was charged in the June  
4 20, 2020 shooting.

5 7.13 The City has unlawfully withheld police records related to the June 20, 2020 shooting.

6 7.14 The City violated RCW 42.56.520 and *Hikel* by failing to provide an estimated date of  
7 records production to Mr. Kamb within five business days of his July 13, 2020 request to the Police  
8 Department. The department initially gave only generic timeframes of “6-12 months,” then  
9 estimated the timing of a further “response” or “update” as opposed to an “installment” or  
10 “production” of actual records.

11 7.15 The City also failed to comply with RCW 42.56.520 by either producing or denying the  
12 police records or providing a reasonable estimate of the time required for response within five  
13 business days of the request.

14 7.16 Nondisclosure of the requested records regarding the June 20, 2020 shooting is not  
15 essential to effective law enforcement or to the protection of any person’s privacy.

16 7.17 The City failed to promptly disclose police records to Mr. Kamb upon request, contrary to  
17 RCW 42.56.080(2) and RCW 42.56.520.

18 7.18 The City unlawfully withheld police records despite the absence of an applicable  
19 exemption, contrary to RCW 42.56.070(1).

20 7.19 The City failed to provide the fullest assistance and most timely possible action on Mr.  
21 Kamb’s July 13, 2020 request to the Seattle Police Department, contrary to RCW 42.56.100.

22 VIII. THE BEEKMAN REQUEST

23 8.1 On July 15, 2020, Mr. Beekman asked the City for the following public records:

1 All communications, including emails and text messages, between the Mayor's  
2 Office and the Seattle Police Department from June 11, through the present date,  
3 related to chemical crowd control agents by the Police Department. Specifically, I  
4 am requesting all emails and text messages related to chemical crowd control agents  
5 between any member of the Seattle Police Department and any of the following  
6 people: Mayor Jenny Durkan, Mike Fong, Shefali Ranganathan, Stephanie Formas,  
7 Casey Sixkiller, Anthony Auriemma, Adrienne Thompson, Eric Chevront and  
8 Michelle Chen between June 11 and the present date.

9 8.2 That evening, the Mayor's Office logged the request as CO60951-071520.

10 8.3 On July 23, 2020, Ms. Ferreiro provided the initial response, acknowledging receipt of the  
11 request "on July 15" and predicting production of records on December 11, 2020.

12 8.4 The City failed to respond as required within five business days of the request by either  
13 producing or denying the requested records or providing a reasonable estimate of the time required  
14 to produce records.

15 8.5 It was not reasonable to estimate six months to produce the records requested by Mr.  
16 Beekman.

17 8.6 The City did not tell Mr. Beekman that the mayor's texts from June 11 to June 25, 2020,  
18 the first half of his requested records timeframe, had not been retained.

19 8.7 Upon information and belief, the City destroyed, lost or otherwise failed to retain text  
20 messages requested by Mr. Beekman *after* receiving his request on July 15, 2020.

21 8.8 Loss or destruction of text messages subject to Mr. Beekman's pending request was a  
22 violation of the PRA.

23 8.9 The November 6, 2020 spreadsheet identified Mr. Beekman's request as one of the 48  
24 pending requests implicated by the loss of the mayor's text messages. The Mayor's Office planned  
25 to "recreate" the requested texts from other sources, according to the spreadsheet notes.

26 8.10 Per Ms. Chen's directions, the mayor's records officers did not tell Mr. Beekman of the  
plan to recreate responsive texts lost from the mayor's phone.

1 8.11 On December 18, 2020, the City notified Mr. Beekman that some responsive records would  
2 be produced upon payment of fees. The required payment was made within two hours of the  
3 notification on December 18.

4 8.12 Despite immediately satisfying the City's payment requirement, Mr. Beekman had to wait  
5 five more days until December 23, 2020 to get the first installment of records.

6 8.13 The five-day delay of the first installment's production violated PRA requirements for  
7 prompt disclosure, fullest assistance and the most timely possible action on requests.

8 8.14 The nondisclosure of readily available records for five days was not justified by any  
9 exemption.

10 8.15 On March 19 and again on May 18, 2021, the Mayor's Office sent to Mr. Beekman the  
11 same generic language used in responding to other requests implicated by the mayor's loss of texts.  
12 The March 19 email predicted a second installment by May 18; the May 18 email pushed that  
13 estimate to June 1, 2021.

14 8.16 The City failed to estimate a reasonable time for the second installment of records, contrary  
15 to RCW 42.56.520.

16 8.17 At 8:22 p.m. on May 28, 2021, the Friday night before Memorial Day weekend, the City  
17 notified Mr. Beekman that records would be released upon payment. The payment was made on  
18 June 1, 2021. As of the morning of June 3 (the time of filing this action), the second installment  
19 had not been produced to Mr. Beekman.

20 CAUSE OF ACTION – PUBLIC RECORDS ACT

21 9.1 The allegations above are incorporated by reference herein.

22 9.2 The records at issue requested by The Seattle Times are "public records" as defined by  
23 RCW 42.56.010(3).

24 COMPLAINT - 24

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26



1 9.3 The records at issue requested by The Seattle Times are identifiable.

2 9.4 The City violated RCW 42.56.070(1) and RCW 42.56.080 by failing to promptly disclose  
3 records upon request.

4 9.5 The City unlawfully withheld public records, in whole or in part, in the absence of any  
5 applicable exemption.

6 9.6 The City failed to provide the fullest assistance and most timely possible action on the  
7 plaintiff's records requests in violation of RCW 42.56.100.

8 9.7 The City failed to justify the withholding of requested records as required by RCW  
9 42.56.210(3).

10 9.8 The City violated the right of The Seattle Times to receive adequate responses to its records  
11 requests.

12 9.9 The City violated RCW 42.56.520 by failing to provide reasonable time estimates for  
13 producing requested records to The Seattle Times.

14 9.10 The City failed to adequately search for records responsive to the plaintiff's requests.

15 9.11 The City unlawfully destroyed records that were subject to pending requests by The Seattle  
16 Times.

17 VII. REQUESTS FOR RELIEF

18 The Seattle Times Company respectfully requests the following:

19 1. An order for the defendant City of Seattle to show cause, pursuant to RCW 42.56.550(1),  
20 why it denied The Seattle Times an opportunity to inspect or copy all non-exempt records  
21 requested;

22 2. An order for the defendant to City of Seattle to show that its time estimates were reasonable;

23 3. An order declaring that the City of Seattle violated the Public Records Act;

1 4. An award of penalties of up to \$100 per day for each record unlawfully withheld from the  
2 Times, pursuant to RCW 42.56.550(4);

3 5. An award of all costs, including reasonable attorney fees, as required by RCW  
4 42.56.550(4);

5 6. Leave to amend this Complaint in response to discovery and PRA disclosures; and

6 7. Such other relief as the Court deems proper.

7  
8 Respectfully submitted this 3rd day of June 2021.

9  
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