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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK, KING-TV (“KING 5”), KIRO 7, ALLIED DAILY NEWSPAPERS OF WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING, INC., TACOMA NEWS, INC. (“THE NEWS TRIBUNE,”) and THE SEATTLE TIMES,

Plaintiffs,

vs.

THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON STATE SENATE, THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, Washington state agencies; and SENATE MAJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON, and HOUSE MINORITY LEADER DAN KRISTIANSEN each in their official capacity,

Defendants.

No.

COMPLAINT FOR
PUBLIC RECORD ACT
VIOLATIONS

Comes now Plaintiffs The Associated Press, Northwest News Network, KING-TV (“KING 5”), KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington Newspaper Publishers Association, Sound Publishing, Inc., Tacoma News, Inc.

1 (“The News Tribune,”) and The Seattle Times, and for their cause of action against Defendants
2 allege as follows:

3 **I. PARTIES**

4 **A. Plaintiffs**

5 1. Plaintiff The Associated Press (“AP”) is an independent, not-for-profit news
6 cooperative headquartered in New York City and with journalists located in every state,
7 including Washington, and in over 100 countries. AP is one of the oldest newsgathering
8 organizations in the world, with more than one billion readers, listeners, and viewers.

9 2. Plaintiff Northwest News Network (“NWN”) is a collaboration of public radio
10 stations that broadcast in Washington, Oregon and Idaho.

11 3. Plaintiff KING-TV (“KING 5”) is a broadcast media company and NBC affiliate
12 based in Seattle, Washington.

13 4. Plaintiff KIRO 7 is a broadcast media company and CBS affiliate based in
14 Seattle, Washington.

15 5. Plaintiff Allied Daily Newspapers of Washington (“ADNW”) is a trade
16 association representing 25 daily newspapers in Washington State.

17 6. Plaintiff The Spokesman-Review is a daily newspaper located in Spokane,
18 Washington.

19 7. Plaintiff Washington Newspaper Publishers Association (“WNPA”) is a
20 newspaper association representing more than 100 community newspapers in Washington State.

21 8. Plaintiff Sound Publishing is a media organization and publisher of 49
22 newspapers within Washington State.

23 9. Plaintiff The Seattle Times is a daily newspaper located in Seattle, Washington
24 published by The Seattle Times Company in King County, Washington.

1 10. Plaintiff Tacoma News, Inc., is the publisher of The News Tribune, which is a
2 daily newspaper located in Tacoma, Washington.

3 11. The Plaintiffs above made public record act requests at issue in this case.

4 **B. Defendants**

5 12. Defendant The Washington State Legislature is an agency of the State of
6 Washington.

7 13. Defendant The Washington State Senate is an agency of the State of Washington.

8 14. Defendant The Washington State House of Representatives is an agency of the
9 State of Washington.

10 15. Defendant Mark Schoesler in the Senate Majority Leader of the Washington State
11 Senate.

12 16. Defendant Frank Chopp is the House Speaker for the Washington State House of
13 Representatives.

14 17. Defendant Sharon Nelson is the Senate Minority Leader of the Washington State
15 Senate.

16 18. Defendant Dan Kristiansen is the House Minority Leader of the Washington State
17 House of Representatives.

18 19. Defendants Schoesler, Chopp, Nelson, and Kristiansen are the respective leaders
19 of the four caucuses at the Washington State Legislature.

20 20. Defendants Washington State Legislature, Washington State Senate, and
21 Washington State House of Representatives are headquartered in Olympia, WA, in Thurston
22 County.

23 21. Defendants Schoesler, Chopp, Nelson, and Kristiansen maintain official offices in
24 Olympia, Washington on the State Capitol Campus.

1 33. Initiative I-276 contained the following declaration of policy:

2 SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people
3 to be the public policy of the State of Washington:

4 (1) That political campaign and lobbying contributions and expenditures
5 be fully disclosed to the public and that secrecy is to be avoided.

6 (2) That the people have the right to expect from their elected
7 representatives at all levels of government the utmost of integrity, honesty and
8 fairness in their dealings.

9 (3) That the people shall be assured that the private financial dealings of
10 their public officials, and of candidates for those offices, present no conflict of
11 interest between the public trust and private interests.

12 (4) That our representative form of government is founded on a belief that
13 those entrusted with the offices of government have nothing to fear from full
14 public disclosure of their financial and business holdings, provided those officials
15 deal honestly and fairly with the people.

16 (5) That public confidence in government at all levels is essential and must
17 be promoted by all possible means.

18 (6) That public confidence in government at all levels can best be
19 sustained by assuring the people of the impartiality and honesty of the officials in
20 all public transactions and decisions.

21 (7) That the concept of attempting to increase financial participation of
22 individual contributors in political campaigns is encouraged by the passage of the
23 Revenue Act of 1971 by the Congress of the United States, and in consequence
24 thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign
financing are established by the passage of the Federal Election Campaign Act of
1971 by the Congress of the United States, and in consequence thereof it is
desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be
encouraged, and that not requiring the reporting of small contributions may tend
to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns
and lobbying and the financial affairs of elected officials and candidates far
outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the
desirability of the efficient administration of government, full access to
information concerning the conduct of government on every level must be assured
as a fundamental and necessary precondition to the sound governance of a free
society.

The provisions of this act shall be liberally construed to promote complete
disclosure of all information respecting the financing of political campaigns and
lobbying, and the financial affairs of elected officials and candidates, and full
access to public records so as to assure continuing public confidence in fairness of
elections and governmental processes, and so as to assure that the public interest
will be fully protected.

1 34. Initiative I-276 mandated that “Each agency, in accordance with published rules,
2 shall make available for public inspection and copying all public records.”

3 35. Initiative I-276 defined public record as follows: “‘Public record’ includes any
4 writing containing information relating to the conduct of government or the performance of any
5 governmental or proprietary function prepared, owned, used or retained by any state or local
6 agency regardless of physical form or characteristics.”

7 36. Initiative I-276 defined “agency” as follows: “‘Agency’ includes all state
8 agencies and all local agencies. ‘State agency’ includes **every state office, public official,**
9 **department, division, bureau, board, commission or other state agency.** ‘Local agency’
10 includes every county, city, city and county, school district, municipal corporation, district,
11 political subdivision, or any board, commission or agency thereof, or other local public ‘agency.’”
12 (emphasis added)

13 37. Initiative I-276, by its definition of “agency” to include “every state office, public
14 official, department, division, bureau, board, commission or other state agency” showed its
15 intention that it apply to the Washington State Legislature, Washington State Senate,
16 Washington State House of Representatives and the individual Washington State Senators and
17 Washington State Representatives.

18 38. In 1977, the Legislature amended the definition of “agency” in the Act to remove
19 the words “public official” but kept the remaining parts of the definition. The bill summary
20 made clear the edit was “to be more specific in encompassing all governmental units at each
21 level of state and local government.”
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1 39. In 1995, the Legislature amended the Act again, creating a definition for the
2 words “State Office” in the Act. The amendment, passed into law and signed by the Governor,
3 defined “State Office” for purposes of the definition of “agency” as follows: “‘State office’
4 means state legislative office or the office of governor, lieutenant governor, secretary of state,
5 attorney general, commissioner of public lands, insurance commissioner, superintendent of
6 public instruction, state auditor, or state treasurer.”

7 40. The 1995 amendment, signed by the Governor and enacted into law, defined
8 “State Legislative Office” – a term contained within the definition “State Office” – as follows:
9 “‘State legislative office’ means the office of a member of the state house of representatives or
10 the office of a member of the state senate.”

11 41. This same 1995 amendment contained an edit to the section defining “public
12 record”. The 1995 amendment, signed and enacted into law by the Governor, kept the definition
13 of public record as “‘Public record’ includes any writing containing information relating to the
14 conduct of government or the performance of any governmental or proprietary function
15 prepared, owned, used, or retained by any state or local agency regardless of physical form or
16 characteristics.” It then added a specific definition for public records possessed by the Office of
17 the Secretary of the Senate and the Office of the Chief Clerk of the House, which the same 1995
18 amendment assigned collection and archival duties for transfer of certain materials to the
19 Secretary of State or State Archives regarding the creation of State Laws and other specific
20 documents. The sentences added to the definition of “public record” read as follows: “For the
21 office of the secretary of the senate and the office of the chief clerk of the house of
22 representatives, public records means legislative records as defined in RCW 40.14.100 and also
23 means the following: All budget and financial records; personnel leave, travel, and payroll
24 records; records of legislative sessions; reports submitted to the legislature; and any other record

1 designated a public record by any official action of the senate or the house of representatives.”
2 This provision did not change the definition of “Agency”, and “agency” was defined in this same
3 Amendment to still include “State Office,” and “State Office” was defined to include “State
4 Legislative Office,” and “State Legislative Office” was defined as “the office of a member of the
5 state house of representatives or the office of a member of the state senate.”

6 42. In 2003, lawmakers in the Senate introduced a bill that would have clearly
7 exempted lawmakers from the public records portion of the Act. The bill did not pass.

8 43. In 2005, an amendment to a bill had the same language exempting lawmakers
9 from the public records portion of the Act was adopted by the Senate but rejected by the House.

10 44. Although the legislative history and language of the provisions clearly show that
11 The Legislature and State Legislative Offices of the individual members of the state house of
12 representatives and state senate are “agencies” under the law and subject individually to the law
13 – and in 2003 and 2005 lawmakers understood they were subject to the public records portion of
14 the law as they tried to pass bills to exempt themselves, the State Legislature and individual
15 legislators have recently begun claiming themselves, their legislative offices, and their records
16 not subject to the law based on the 1995 amendment language.

17 45. The State Legislature, its staff, and the individual legislators taking this position
18 are wrong, and this lawsuit is necessary to establish the Legislature did not reverse the will of the
19 people in Initiative I-276 and remove or narrow its reach to the very elected individuals with
20 which that initiative was so deeply concerned.

21 46. Hundreds of highly-important records of the Washington Legislature and elected
22 legislators are being withheld from the public, depriving the media and public of information to
23 which it is entitled and which is essential to informed governance.

1 47. In 1992, the Legislature amended the Act to add the following mandate:

2 The people of this state do not yield their sovereignty to the agencies that serve
3 them. The people, in delegating authority, do not give their public servants the
4 right to decide what is good for the people to know and what is not good for them
5 to know. The people insist on remaining informed so that they may maintain
6 control over the instruments that they have created. The public records
7 subdivision of this chapter shall be liberally construed and its exemptions
8 narrowly construed to promote this public policy.

6 48. It is time for the Legislature to re-read these words and to follow them.

7 **B. January 25, 2017 PRA Request of Walker Orenstein, The News Tribune**

8 49. On January 25, 2017, Walker Orenstein of The News Tribune in Tacoma made a
9 PRA request to Senator Doug Ericksen for his personal schedule or calendar from January 8,
10 2016 through January 25, 2016.

11 50. On February 1, 2017, Senate Counsel Jeannie Gorrell responded to the PRA
12 request. Ms. Gorrell purported to quote RCW 42.56.010(2) but quoted the then-version of RCW
13 42.56.010(3) instead:

14 "Public record" includes any writing containing information relating to the
15 conduct of government or the performance of any governmental or proprietary
16 function prepared, owned, used, or retained by any state or local agency
17 regardless of physical form or characteristics. For the office of the secretary of the
18 senate and the office of the chief clerk of the house of representatives, public
19 records means legislative records as defined in RCW 40.14.100 and also means
20 the following: All budget and financial records; personnel leave, travel, and
21 payroll records; records of legislative sessions; reports submitted to the
22 legislature; and any other record designated a public record by any official action
23 of the senate or the house of representatives.

20 She then quoted a portion of RCW 40.14.100. She then stated "Based on these definitions, what
21 you have requested does not fall under the definitions of a public record as that term is applied to
22 the Senate, and therefore, the Senate does not have any public records responsive to your
23 request."

24 51. No documents were produced.

1 52. No further explanation was provided.

2 53. Ms. Gorrell did not identify records being withheld.

3 54. Ms. Gorrell did not identify any exemption authorizing the withholding or explain
4 how any statute applied to the records being withheld.

5 **C. First January 30, 2017 PRA Request of Austin Jenkins of Northwest News
6 Network and Joseph O’Sullivan of the Seattle Times.**

7 55. On January 30, 2017, Austin Jenkins of the Northwest News Network (“NWN”)
8 and Joseph O’Sullivan of the Seattle Times made a Public Record Act request to Defendants the
9 Washington State Legislature, Washington State Senate, Washington State House of
10 Representatives, Speaker Chopp, Representative Kristiansen, Senator Schoesler and Senator
11 Nelson.

12 56. The January 30, 2017 PRA request sought copies of office calendars or schedules
13 of Kristiansen, Chopp, Schoesler, and Nelson from December 1, 2016 through January 30, 2017,
14 any emails to or from these four leaders pertaining to the state budget or education funding
15 matters from December 1, 2016 through January 30, 2017 and communications or documents,
16 including emails from December 1, 2016 through January 30, 2017 between any of these four
17 leaders and education lobbyists.

18 57. On February 6, 2017, Senate Counsel Jeannie Gorrell emailed Mr. Jenkins
19 responding to his request on behalf of the Defendants. Ms. Gorrell stated she “expect[ed] to be
20 ready with a full response to you by the end of next week (February 17).” Ms. Gorrell did not
21 cite any exemptions for the records nor did she identify the responsive records.

22 58. On February 16, 2017, Mr. Gorrell again emailed Mr. Jenkins stating she was
23 responding to the January 30, 2017 PRA request. Ms. Gorrell purported to quote the definition
24 of “public record” in the PRA but incorrectly attributed it as RCW 42.56.010(2) rather than

1 RCW 42.56.010(3), which at the time read as follows:

2 "Public record" includes any writing containing information relating to the
3 conduct of government or the performance of any governmental or proprietary
4 function prepared, owned, used, or retained by any state or local agency
5 regardless of physical form or characteristics. For the office of the secretary of the
6 senate and the office of the chief clerk of the house of representatives, public
7 records means legislative records as defined in RCW 40.14.100 and also means
8 the following: All budget and financial records; personnel leave, travel, and
9 payroll records; records of legislative sessions; reports submitted to the
10 legislature; and any other record designated a public record by any official action
11 of the senate or the house of representatives.

12 59. Ms. Gorrell then quoted a portion of RCW 40.14.100, omitting a relevant part.

13 RCW 40.14.100 reads in full as follows:

14 As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context
15 requires otherwise, "legislative records" shall be defined as correspondence,
16 amendments, reports, and minutes of meetings made by or submitted to
17 legislative committees or subcommittees and transcripts or other records of
18 hearings or supplementary written testimony or data thereof filed with
19 committees or subcommittees in connection with the exercise of legislative or
20 investigatory functions, but does not include the records of an official act of the
21 legislature kept by the secretary of state, bills and their copies, published
22 materials, digests, or multi-copied matter which are routinely retained and
23 otherwise available at the state library or in a public repository, or reports or
24 correspondence made or received by or in any way under the personal control of
the individual members of the legislature.

25 60. Ms. Gorrell then stated "Given these definitions, the Legislature does not have
26 any public records that are responsive to your request."

27 61. No documents were produced.

28 62. No further explanation was provided.

29 63. Ms. Gorrell did not identify records being withheld.

30 64. Ms. Gorrell did not identify any exemption authorizing the withholding or explain
31 how any statute applied to the records being withheld.

1 **D. Second January 30, 2017 PRA Request of Austin Jenkins, Northwest News**
2 **Network, and Joseph O’Sullivan, Seattle Times**

3 65. On January 30, 2017, Austin Jenkins of Northwest News Network and Joseph
4 O’Sullivan of the Seattle Times made a joint request to Representative Melanie Stambaugh’s
5 office for copies and transcripts of all legislative videos Representative Stambaugh has recorded
6 between January 12, 2015 and January 30, 2017, copies of Representative Stambaugh’s office
7 calendar for the same time period, and copies of Representative Stambaugh’s legislative emails
8 between December 1, 2015 and January 30, 2017.

9 66. On March 1, 2017, House Counsel Alison Hellberg responded to the request
10 seeking clarification. It stated “The Chief Clerk is the records custodian for the House of
11 Representatives and my office routinely responds to public records on his behalf.” She then
12 purported to state the definition of “public record” from the PRA, but claimed to be quoting
13 RCW 42.56.010(2), the wrong section, and then quoted only a portion of the actual definition, at
14 RCW 42.56.010(3) omitting the definition of public record entirely. Instead she started with the
15 clause “public records means legislative records as defined in RCW 40.14.100” omitting the
16 precursor to that clause that that definition only applied to requests to the Office of the Chief
17 Clerk of the House and the Office of the Secretary of the Senate in their capacity as the collector
18 of certain materials related to the creation of legislation. The response further stated “The strict
19 terms of these definitions may limit what is available under your request, but Representative
20 Stambaugh wishes to be transparent and provide as many documents as possible.” The response
21 purported to provide links to the videos Representative Stambaugh recorded since January 12,
22 2015 through January 30, 2017. It stated the House Republican Caucus does not create
23 transcripts of videos “so those documents do not exist.” It sought a narrowing of the date range
24 for the calendars and emails but indicated a willingness to produce the records.

1 67. On February 7, 2017, Mr. Jenkins and Mr. O’Sullivan narrowed their request for
2 calendars and emails to one month, the last month, January 7, 2017 to February 7, 2017.

3 68. On March 1, 2017, Ms. Hellberg emailed Mr. Jenkins and Mr. O’Sullivan what
4 she said were copies of Representative Stambaugh’s calendar from January 7 to February 7,
5 2017.

6 69. On March 10, 2017, Ms. Hellberg emailed Mr. Jenkins and Mr. O’Sullivan what
7 she claimed were Representative Stambaugh’s emails. She stated:

8 While the emails you requested do not meet the strict terms of the definition of
9 “public records” that applied to the Legislature, Representative Stambaugh wishes
10 to be transparent and provide you with redacted emails from January 7 to
11 February 7, 2017. She is not providing legislatively privileged communications
12 or communications with constituents regarding sensitive casework. With this
13 response, I believe the House has fully complied with your request.

14 70. No further documents were produced.

15 71. No further explanation was provided.

16 72. Ms. Hellberg did not identify the records being withheld.

17 73. Ms. Hellberg did not identify any exemption authorizing the withholding or
18 explain how any statute applied to the records being withheld.

19 **E. January 30, 2017, PRA Request of Rachel La Corte, Associated Press**

20 74. On January 30, 2017, Rachel La Corte of the Associated Press made three
21 separate PRA requests to the Washington State Legislature, Washington State Senate, and
22 Washington House of Representatives. The requests sought all investigative records related to
23 the investigation of Representative Young’s behavior related to staffers, reports on staff
24 complaints against lawmakers made over the past three years, reports on all Senate and House
investigations made within that same timeframe of inappropriate or abusive behavior by

1 lawmakers toward staff, and actions taken by the Senate and House against lawmakers because
2 of interactions with staff.

3 75. On February 6, 2017, Washington State House of Representatives Counsel Alison
4 Hellberg and Washington State Senate Counsel Jeannie Gorrell jointly responded to the requests.
5 They claimed to quote RCW 42.56.010(2) but quoted a portion of RCW 42.56.010(3) instead.
6 They omitted the definition of “public record” in that statute and instead began with the language
7 “public records means legislative records as defined in RCW 40.14.100...” They also quoted a
8 portion of RCW 40.14.100. They then stated “Given these definitions, there are no responsive
9 public records.”

10 76. No documents were produced.

11 77. No further explanation was provided.

12 78. They did not identify records being withheld.

13 79. They did not identify any exemption authorizing the withholding or explain how
14 any statute applied to the records being withheld.

15 80. The response failed to disclose or identify a record disciplining Representative
16 Young and informing him that he no longer would have supervisory oversight of legislative staff
17 after reports he mistreated staffers.

18 **F. January 30, 2017, PRA Request of Melissa Santos, The News Tribune**

19 81. On January 30, 2017, Melissa Santos of The News Tribune in Tacoma made a
20 PRA request to the Chief Clerk of the House for “a copy of the letter disciplining Jesse Young.”
21 Mr. Young was disciplined by being barred from dealing with legislative assistants for at least a
22 year after allegations of mistreatment. The information on the sanction was only learned after a
23 copy of a letter sent to Rep. Young was leaked to the Associated Press. In that December 13,
24

1 2016 letter sent from a House attorney, Rep. Young was notified that the chamber was taking
2 actions to address a “pattern of hostile and intimidating behavior.”

3 82. House Counsel Alison Hellberg responded to the request on February 2, 2017.
4 She purported to quote a portion of RCW 42.56.010(2) but actually quoted an excerpt of RCW
5 42.56.010(3) instead. She omitted the definition of “public records” in that section and began
6 instead with the words “public records means legislative records as defined in RCW
7 40.14.100...”. She also quoted an excerpt of RCW 40.14.100. She then stated “Given these
8 definitions, there are no responsive public records.”

9 83. No documents were produced.

10 84. No further explanation was provided.

11 85. She did not identify records being withheld.

12 86. She did not identify any exemption authorizing the withholding or explain how
13 any statute applied to the records being withheld.

14 **G. February 16, 2017 PRA Request of Rachel La Corte, Associated Press**

15 87. On February 16, 2017, Rachel La Corte of the Associated Press made a PRA
16 request to the Washington State Legislature and Washington State Senate for a copy of Senator
17 Ericksen’s calendar from January 9, 2017 through February 16, 2017. Senator Ericksen had
18 indicated during a press conference an openness to release of his calendars.

19 88. Senator Ericksen had accepted a temporary position in the Trump Administration
20 at the Environmental Protection Agency and was splitting his time between Olympia and
21 Washington D.C. during the most recent legislative session when the State Legislature was
22 trying to agree on a budget and address educational funding to stop the daily judicial fines being
23 levied against the State due to the Washington State Supreme Court ruling.

1 89. Senate Counsel Jeannie Gorrell responded to the request by email on February 22,
2 2017.

3 90. In her response, Ms. Gorrell claimed to be quoting RCW 42.56.010(2) but quoted
4 the then-version of RCW 42.56.010(3) instead. She also quoted RCW 40.14.100. She then
5 stated “Based on these definitions, what you have requested does not fall under the definition of
6 a public record as that term is applied to the Senate, and therefore, the Senate does not have any
7 public records responsive to your request.”

8 91. No documents were produced.

9 92. No further explanation was provided.

10 93. She did not identify records being withheld.

11 94. She did not identify any exemption authorizing the withholding or explain how
12 any statute applied to the records being withheld.

13 **H. February 16, 2017 PRA Request of Austin Jenkins, Northwest News
14 Network**

15 95. On February 16, 2017, Austin Jenkins of Northwest News Network made a PRA
16 request. It was emailed to Senate Secretary Hunter Goodman and Chief Clerk of the House
17 Bernard Dean. It sought the following:

18 ...all records related to substantiated and unsubstantiated allegations of sexual
19 harassment and or sexual misconduct against elected members of the Washington
20 Legislature.... for the period Jan. 1, 2004 to the present. These records should
21 include, but not be limited to, investigative reports and documents, statements or
22 summaries of allegations, responses from the member, witness interviews and
23 formal or informal letters of sanctions/warning to members.

24 96. On March 10, 2017, Senate Counsel Alison Hellberg responded to the request.
She stated in relevant part “The Secretary of the Senate is the records custodian for the Senate
and the Chief Clerk is the records custodian for the House of Representatives. Our offices

1 routinely respond to public records requests on their behalf.” She then purported to quote RCW
2 42.56.010(2) but actually quoted a portion of RCW42.56.010(3) instead. She omitted the
3 definition of public records from that provision and instead began with the words “public records
4 means legislative records as defined in RCW 40.14.100...” She then quoted an excerpt of RCW
5 40.14.100. She then stated “Given these definition, the records you have requested are not
6 subject to disclosure. With this response the Legislature has fully complied with your request.”

7 97. No documents were produced.

8 98. No further explanation was provided.

9 99. Ms. Hellberg did not identify records being withheld.

10 100. Ms. Hellberg did not identify any exemption authorizing the withholding or
11 explain how any statute applied to the records being withheld.

12 **I. April 4, 2017 PRA Request of Melissa Santos, The News Tribune**

13 101. On April 4, 2017, Melissa Santos of The News Tribune in Tacoma made two
14 identical PRA requests – one sent to Senate Counsel Jeannie Gorrell and cc’d to Hunter
15 Goodman, Secretary of the Senate, and one sent to House Counsel Alison Hellberg and cc’d to
16 House Clerk Bernard Dean. In both Ms. Santos sought copies of complaints against state
17 lawmakers from legislative staff, lobbyists, members of the public or colleagues regarding
18 lawmakers’ conduct filed or submitted between April 1, 2012 and April 1, 2017, investigations
19 into lawmakers’ conduct and the results of investigations during that same time period, and all
20 disciplinary actions, letters of reprimand or sanctions issued to lawmakers between April 1, 2012
21 and April 1, 2017.

22 102. On April 11, 2017, Ms. Gorrell acknowledged both requests stating she would
23 respond by April 26, 2017.

1 103. On April 26, 2017, Ms. Gorrell responded to the requests. She quoted the
2 definition of public record found at RCW 42.56.010(3) incorrectly citing it as RCW
3 42.56.010(2). She then quoted an excerpt of RCW 40.14.100. Ms. Gorrell produced a handful
4 of records she claimed were the “public records responsive to your request.” They were 11 pdf
5 documents totaling 154 pages along with an Excel spreadsheet containing four worksheets. The
6 documents contained records that had already been made public. The records produced
7 contained redactions, and Ms. Gorrell did not identify an exemption for those redactions or
8 explain how the exemptions applied to the redacted material.

9 104. Ms. Gorrell did not include a record that Ms. Santos knew to exist that also fell
10 within the scope of her request. It was a letter from House counsel informing State
11 Representative Jesse Young that he no longer would have supervisory oversight of legislative
12 staff after reports he mistreated staffers. The Associated Press had reported on this letter in
13 January 2017, three months earlier. The document was not produced in response to Ms. Santos’s
14 requests although it fell within the scope of her requests.

15 105. No further explanation was provided.

16 106. Ms. Gorrell did not identify any records as being withheld.

17 107. Ms. Gorrell did not identify any exemption authorizing the withholding or explain
18 how any statute applied to the records being withheld.

19 **J. April 12, 2017 PRA Request of Rachel La Corte, Associated Press**

20 108. On April 12, 2017, Rachel La Corte of the Associated Press made a PRA request
21 to the Washington State Legislature, Washington State Senate and Washington State House or
22 Representatives. She emailed her PRA request to Senate Counsel Jeannie Gorrell and House of
23 Representative’s Counsel Alison Hellberg. The PRA request sought reports on staff complaints
24 against lawmakers made over the past five years, reports on all legislative investigations made

1 within that same time frame of inappropriate or abusive behavior by lawmakers toward staff, and
2 actions taken by each chamber against lawmakers because of interactions with staff.

3 109. On April 14, 2017, Ms. Hellberg responded saying they required until April 26,
4 2017 to provide a response.

5 110. On April 26, 2017, Ms. Hellberg responded to the PRA request. Ms. Hellberg
6 purported to quote RCW 42.56.010(2) but actually quoted an excerpt of RCW 42.56.010(3). She
7 omitted the definition of “public record” in that section and begin with the words “public records
8 mean legislative records as defined in RCW 40.14.100...” She also quoted a portion of RCW
9 40.14.100. She then stated simply “Attached are the public records responsive to your request.”
10 Produced were a handful of documents with some information redacted. No exemption was
11 cited for the redactions, nor was any explanation provided for how such an exemption applied to
12 the redactions made. Ms. Hellberg did not disclose what other records existed that were not
13 being produced, and the statutory basis for any such withholding.

14 **K. June 2, 2017, PRA Request of The Associated Press, Northwest News**
15 **Network, The Spokesman-Review, Sound Publishing, The News Tribune,**
16 **The Seattle Times, KING 5, KIRO 7, Allied Daily Newspapers of**
Washington and Washington Newspaper Publishers Association.

17 111. On June 2, 2017, Rachel La Corte, Joe O’Sullivan, Jerry Cornfield, and Jim
18 Camden collectively submitted 147 individual PRA requests on behalf of The Associated Press,
19 Northwest News Network, The Spokesman-Review, Sound Publishing, The News Tribune, and
20 The Seattle Times. The PRA requests were sent to every member of the Washington State
21 Senate and every member of the Washington State House of Representatives. The senders
22 carbon copied their fellow requestors on the communications, made clear the request was on
23 behalf of all those news organizations and that responses should be sent to all those news
24 organizations. In addition to the above named organization, the requests made to leaders of the

1 four caucuses – Senate Majority Leader Mark Schoesler, House Speaker Frank Chopp, House
2 Minority Leader Dan Kristiansen, and Senate Minority Leader Sharon Nelson – were also made
3 on behalf of and copied in representatives of KING 5, KIRO 7, Allied Daily Newspapers of
4 Washington, and the Washington Newspaper Publishers Association. The PRA requests sought
5 copies of the Senators’ and Representatives’ calendars/schedules from January 9, 2017 through
6 June 1, 2017, and copies of any text messages received or sent by them related to their legislative
7 duties between January 9, 2017 and June 1, 2017.

8 112. On June 2, 2017, Senator Jamie Pedersen of the 43rd Legislative District
9 responded that “The Office of Senate Counsel will be responding to this request on my behalf.”

10 113. On June 2, 2017, Senator Jan Angel responded “I will forward this on to our
11 attorney so it gets to the appropriate person.”

12 114. On June 2, 2015, Representative Mike Sells responded saying:

13 This is really a sad comment on the state of our press. 5 months down the road
14 and you are asking for this stuff for 5 months back when you (the press overall)
15 should have been on top of it in the first place. It was almost tempting to say, “I
16 will, if Donald Trump will,” as a response. I have no problem with access to
17 those communications that bear on my legislative duties and calendar, and staff
18 are currently working on it for the appropriate response beyond my snarky
19 remarks.

20 115. Representative Sells did not ultimately produce any records, nor were his records
21 provided by anyone else.

22 116. On June 4, 2017, Washington State Representative Gerry Pollet responded by
23 releasing his calendars to the requestors unredacted. His cover email stated in relevant part
24 “Because I believe that openness and disclosure regarding any public duties are vital for media
and public accountability, I have downloaded my calendar for you without delay. ... I believe
that a case can be argued that calendars may be open to inspection, with appropriate redaction of

1 personal/privacy and internal decisionmaking related material per the normally applicable
2 exemptions to the Public Records Act, to the extent your request is reasonably related to
3 legislative “budget,” “financial,” and/or “travel” records which are within the definition of
4 public records pursuant to RCW 42.56.010(3).” He produced 48 pages of calendars. He stated
5 that he was referring the request for text message to the House of Representatives for an official
6 reply.

7 117. On June 5, 2017, Representative Zack Hudgins responded “Thanks for your
8 request. I am forwarding your request to House counsel to help with compliance.”

9 118. Records for Representative Hudgins were not ultimately produced by him or
10 anyone else.

11 119. No other individual Senator or Representative responded directly to the
12 requestors.

13 120. On June 7, 2017, Senate Counsel Jeannie Gorrell emailed the requestors
14 acknowledging the requests to all the legislators. She stated “The Secretary of the Senate is the
15 records custodian for the Senate and the Chief Clerk is the records custodian for the House of
16 Representatives. Our offices routinely respond to public records requests on their behalf.” She
17 stated “we anticipate that we will have a response for you by June 23.” The request was sent on
18 behalf of herself and House of Representatives Counsel Alison Hellberg.

19 121. On June 8, 2017, Ms. La Corte responded stating:

20 Due to the lack of legislative activity right now, we believe a delay is unnecessary
21 and hope that our request can received a response earlier than the anticipated June
22 23 date (especially since the likelihood of yet another special session is highly
23 possible at that time). Because our requests were made directly to the individual
24 lawmakers--who maintain their own calendars and have sole control over their
phones--it seems unnecessary for the secretary of the Senate and House counsel to
respond on their behalf. One lawmaker gave us his calendar without delay,
unredacted, so it’s clear that a quicker response is possible.

1 For those lawmakers that need additional time, we note that all potentially
2 responsive documents must be maintained and can't be destroyed, deleted or
3 modified during the period of our pending requests.

4 122. On June 12, 2017, Ms. Gorrell responded to Ms. La Corte's June 8, 2017
5 email. She stated:

6 We understand that you would like to receive our response earlier and we are
7 working to complete the process. If we are able to provide it before June 23 we
8 certainly will do so. At this point we have asked all members to search for any
9 responsive text messages, and we need to give them time to complete that search.

10 The official response to your requests will come from or on behalf of the
11 Secretary of the Senate and the Chief Clerk of the House, as they are the records
12 custodians for the Legislature. We recognize that you sent the requests through
13 individual members, but no matter who receives a public records request in the
14 Legislature, the process is to run the request through the administration. To
15 implement RCW 42.56.100 (access to public records) and RCW 42.56.520
16 (prompt response), any legislator or legislative staff who receives a request should
17 route the response through the Chief Clerk or the Secretary to ensure that the
18 requester receives a timely and appropriate response no matter to whom he or she
19 submits the request.

20 Again, we will do our best to provide you with a response as soon as we are able.

21 123. On June 21, 2017, Ms. Gorrell responded to the June 2, 2017, PRA requests. She
22 purported to quote the then-version of RCW 42.56.010(2) but quoted RCW 42.56.010(3) instead.
23 She also quoted an excerpt of RCW 40.14.100. She then stated as follows:

24 Given these definitions, the calendars you have requested are not public records.
We understand that one member has provided you with his calendar. We will let
other members know that the public records act does not require them to release
their calendars, but if they would like to provide them voluntarily, they may do
so.

Text messages may be public records if the text would otherwise fit within the
Legislature's definition of public records. We asked the members to search their
text messages, but based upon the applicable definitions, it would be rare for
someone to have a public record in a text message. The only responsive public
record found in text format is attached.

1 124. A single text message – a cell phone picture of a per diem report from Rep. Larry
2 Springer – was attached.

3 125. On June 23, 2017, Mike Pellicciotti, State Representative for the 30th Legislative
4 District, provided Ms. Hellberg with the legislative schedule/calendar and text messages between
5 himself and his legislative assistant from January 9, to June 1, 2017. His cover letter to Ms.
6 Hellberg with these materials stated:

7 Enclosed please find my legislative schedule/calendar and text messages between me and
8 my legislative assistant, from January 9th to June 1st.

9 While I know the law does not require that I disclose those records, I believe these
10 legislative records are in the public interest, and so I am voluntarily providing them as
11 requested.

12 I hope my colleagues join me in this voluntary disclosure.

13 The production was 144 pages of calendar and 30 pages of text messages. It was provided to the
14 requestors on June 27, 2017.

15 **L. Four July 26, 2017, PRA Requests**

16 126. On July 26, 2017, the Plaintiffs issued four separate additional PRA Requests
17 through counsel at Allied Law Group. These requests are attached hereto as **Appendixes A-D**.

18 127. One of the four requests was sent to the State Legislative Offices of each
19 Washington State Senator. It stated the following:

20 To: The State Legislative Office of each of the Senators identified on Attachment A.

21 Re: Public Records Act Request to Your State Legislative Office

22 Dear Senators:

23 This is a Public Record Act (“PRA”) request to your individual State Legislative
24 Offices. This request is being made on behalf of my clients the Associated Press,
Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily Newspapers
of Washington, The Spokesman-Review, Washington Newspaper Publishers
Association, Sound Publishing, Inc., The News Tribune and The Seattle Times.

1 The State Senate and your State Legislative Office are “agencies” pursuant to RCW
2 42.56.010(3). The State Senate and your State Legislative Office are separate from
3 the Office of the Chief Clerk of the House or the Office of the Secretary of the
4 Senate. The State Senate and your individual State Legislative Offices are obligated
5 to respond to PRA requests based on the broader definition of “public records”
6 contained in RCW 42.56.010(3), and not based on the narrower definition of records
7 subject to disclosure by the Office of the Chief Clerk of the House or the Office of
8 the Secretary of the Senate.

9 My clients earlier made a PRA request to your State Legislative Office, and you
10 failed to adequately respond.

11 With this new PRA request we are giving you the opportunity to comply with the
12 PRA and fully respond to this request. If you fail to adequately respond within 21
13 days from today we will be forced to file a lawsuit addressing the PRA violations.

14 This request seeks the following documents:

- 15 -- Copies of your calendars/schedules from Jan. 9, 2017 through July 24, 2017;
- 16 -- Copies of any text messages received or sent by you related to your legislative
17 duties between Jan. 9, 2017 and July 24, 2017.

18 Please provide the records electronically. Because the requestors are news
19 organizations and these records are of legitimate public concern, we are asking that
20 you waive any fees associated with production. Please advise us in advance of any
21 costs.

22 We look forward to your prompt response. Time is of the essence with this request.
23 My clients and the public have been waiting far too long for these public records.

24 128. One of the four requests was sent to the State Legislative Offices of each
Representative of the House of Representatives. It stated the following:

To: The State Legislative Office of each of the Representatives identified on
Attachment A

Re: Public Records Act Request to Your State Legislative Office

This is a Public Record Act (“PRA”) request to your individual State Legislative
Offices. This request is being made on behalf of my clients the Associated Press,
Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily
Newspapers of Washington, The Spokesman-Review, Washington Newspaper
Publishers Association, Sound Publishing, Inc., The News Tribune and The
Seattle Times.

The State House of Representatives and your State Legislative Office are
“agencies” pursuant to RCW 42.56.010(3). The State House of Representatives

1 and your State Legislative Office are separate from the Office of the Chief Clerk
2 of the House or the Office of the Secretary of the Senate. The State House of
3 Representatives and your individual State Legislative Offices are obligated to
4 respond to PRA requests based on the broader definition of “public records”
5 contained in RCW 42.56.010(3), and not based on the narrower definition of
6 records subject to disclosure by the Office of the Chief Clerk of the House or the
7 Office of the Secretary of the Senate.

8 My clients earlier made a PRA request to your State Legislative Office, and you
9 failed to adequately respond.

10 With this new PRA request we are giving you the opportunity to comply with the
11 PRA and fully respond to this request. If you fail to adequately respond within 21
12 days from today we will be forced to file a lawsuit addressing the PRA violations.

13 This request seeks the following documents:

- 14 -- Copies of your calendars/schedules from Jan. 9, 2017 through July 24, 2017;
- 15 -- Copies of any text messages received or sent by you related to your legislative
16 duties between Jan. 9, 2017 and July 24, 2017.

17 Please provide the records electronically. Because the requestors are news
18 organizations and these records are of legitimate public concern, we are asking
19 that you waive any fees associated with production. Please advise us in advance
20 of any costs.

21 We look forward to your prompt response. Time is of the essence with this
22 request. My clients and the public have been waiting far too long for these public
23 records.

24 129. One of the four requests was sent to the Washington State Senate. It stated the
following:

This is a Public Record Act (“PRA”) request to the Washington State Senate.
This request is being made on behalf of my clients the Associated Press,
Northwest News Network, KING-TV, KIRO 7, KHQ-TV, Allied Daily
Newspapers of Washington, The Spokesman-Review, Washington Newspaper
Publishers Association, Sound Publishing, Inc., The News Tribune and The
Seattle Times.

The State Senate is an “agency” pursuant to RCW 42.56.010(3). The State Senate
is separate from the Office of the Chief Clerk of the House or the Office of the
Secretary of the Senate. The State Senate is obligated to respond to PRA requests
based on the broader definition of “public records” contained in RCW
42.56.010(3), and not based on the narrower definition of records subject to

1 disclosure by the Office of the Chief Clerk of the House or the Office of the
2 Secretary of the Senate.

3 My clients earlier made a PRA request to the Washington State Senate, and it
4 failed to adequately respond.

5 With this new PRA request we are giving you the opportunity to comply with the
6 PRA and fully respond to this request. If you fail to adequately respond within 21
7 days from today we will be forced to file a lawsuit addressing the PRA violations.

8 This request seeks the following documents:

- 9 -- Any documentation of staff complaints made against lawmakers made over the
10 past five years;
- 11 -- Reports on all legislative investigations made within that same timeframe of
12 inappropriate or abusive behavior by lawmakers toward staff or each other;
- 13 -- Actions taken by each chamber against lawmakers because of interactions with
14 staff.

15 Please provide the records electronically. Because the requestors are news
16 organizations and these records are of legitimate public concern, we are asking
17 that you waive any fees associated with production. Please advise us in advance
18 of any costs.

19 We look forward to your prompt response. Time is of the essence with this
20 request. My clients and the public have been waiting far too long for these public
21 records.

22 130. One of the four requests was sent to the Washington State House of
23 Representatives. It stated the following:

24 This is a Public Record Act (“PRA”) request to the Washington State House of
Representatives. This request is being made on behalf of my clients the
Associated Press, Northwest News Network, KING-TV, KIRO 7, KHQ-TV,
Allied Daily Newspapers of Washington, The Spokesman-Review, Washington
Newspaper Publishers Association, Sound Publishing, Inc., The News Tribune
and The Seattle Times.

The State House of Representatives is an “agency” pursuant to RCW
42.56.010(3). The State House of Representatives is separate from the Office of
the Chief Clerk of the House or the Office of the Secretary of the Senate. The
State House of Representatives is obligated to respond to PRA requests based on
the broader definition of “public records” contained in RCW 42.56.010(3), and

1 not based on the narrower definition of records subject to disclosure by the Office
2 of the Chief Clerk of the House or the Office of the Secretary of the Senate.

3 My clients earlier made a PRA request to the Washington State House of
4 Representatives, and it failed to adequately respond.

5 With this new PRA request we are giving you the opportunity to comply with the
6 PRA and fully respond to this request. If you fail to adequately respond within 21
7 days from today we will be forced to file a lawsuit addressing the PRA violations.

8 This request seeks the following documents:

- 9 -- Any documentation of staff complaints made against lawmakers made over the
10 past five years;
- 11 -- Reports on all legislative investigations made within that same timeframe of
12 inappropriate or abusive behavior by lawmakers toward staff or each other;
- 13 -- Actions taken by each chamber against lawmakers because of interactions with
14 staff.

15 Please provide the records electronically. Because the requestors are news
16 organizations and these records are of legitimate public concern, we are asking
17 that you waive any fees associated with production. Please advise us in advance
18 of any costs.

19 We look forward to your prompt response. Time is of the essence with this
20 request. My clients and the public have been waiting far too long for these public
21 records.

22 131. On August 15, 2017, House Counsel Alison Hellberg responded by email to all
23 four of the July 26, 2017 PRA Requests. Her response stated as follows:

24 This letter serves as the response to the two public records requests that you
emailed to each member of the Legislature dated July 26, 2017. The Secretary of
the Senate is the records custodian for the Senate and the Chief Clerk is the
records custodian for the House of Representatives. Our offices routinely respond
to public records requests on their behalf.

Your two requests seek:

1. Copies of each legislator's calendars/ schedules from January 9 through July
24, 2017;
2. Copies of any text messages received or sent by each legislator related to their
legislative duties between January 9 and July 24, 2017;

- 1 3. Any documentation of staff complaints made against lawmakers over the past
2 five years;
- 3 4. Reports on all legislative investigations made over the past five years of
4 inappropriate or abusive behavior by lawmakers toward staff or each other;
5 and
- 6 5. Actions taken by each chamber against lawmakers because of interactions
7 with staff.

8 Please note that a specific definition of “public records” applies to the Legislature.
9 RCW 42.56.010(2) provides (in relevant part):

10 ...public records means legislative records as defined in RCW 40.14.100 and also
11 means the following: All budget and financial records; personnel leave, travel,
12 and payroll records; records of legislative sessions; reports submitted to the
13 legislature; and any other record designated a public record by any official action
14 of the senate or the house of representatives.

15 RCW 40.14.100 further refines the scope of public records for the Legislature,
16 defining “legislative records” as:

17 ..."[L]egislative records" shall be defined as correspondence, amendments,
18 reports, and minutes of meetings made by or submitted to legislative committees
19 or subcommittees and transcripts or other records of hearings or supplementary
20 written testimony or data thereof filed with committees or subcommittees in
21 connection with the exercise of legislative or investigatory functions, but does not
22 include the records of an official act of the legislature kept by the secretary of
23 state, bills and their copies, published materials, digests, or multi-copied matter
24 which are routinely retained and otherwise available at the state library or in a
public repository, or reports or correspondence made or received by or in any way
under the personal control of the individual members of the legislature.

In regards to items 1 and 2, the only responsive record we have identified after a
new search is what we provided your clients in response to a previous records
request. We are including a text message from Representative Larry Springer to
his legislative assistant that contains a photo of a financial form.

Strictly speaking, the records you are requesting in the items designated as 3-5 are
not legislative public records under the applicable statutory definition. Even so,
we are providing several documents in response to your request. These are
documentation of final dispositions, many of which are already in the public
domain. The following documents are included:

- A 2012 complaint regarding Senator Pam Roach, the resolution of that claim,
and other documents arising from that claim that resulted in an additional
investigation (also attached).
- The investigation of a complaint by Senator Don Benton against Senator Ann
Rivers. The document titled “Complaint” consists of the initial decision of the



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1 Senate Facilities and Operations Committee, together with the underlying
2 report of the Senate investigative committee and the original complaints. The
3 document titled "Appeal" contains the final decision of the Senate Facilities
4 and Operations Committee on the matter.

- 5 • The complaint from the Chief Clerk of the House and the Legislative Ethics
6 Board opinion regarding former Representative Susan Fagan's use of public
7 resources for private and campaign purposes.
- 8 • A letter from the House Counsel to Representative Jesse Young regarding the
9 House's respectful workplace policy.

10 Two legislators have offered to voluntarily provide copies of their calendars or
11 text messages related to their legislative duties. This response includes:

- 12 • Representative Pellicciotti's calendar and text messages related to legislative
13 business from January 9 through July 24, 2017.
- 14 • Representative Reeves's calendar from January 9 through July 24, 2017.
15 Please note that legislators are permitted to keep one calendar with both
16 legislative and non-legislative appointments so the calendar she is providing
17 is not limited to legislative business.

18 Because of the size of the files, I am sending the attachments in four separate
19 emails that will follow this one. With this response, the Legislature has fully
20 complied with your request. Please do not hesitate to contact us if you have
21 questions.

22 132. Four emails were provided with the above-described attachments.

23 133. None of the remaining State Legislative Offices of the Senators or
24 Representatives responded or provided responsive records.

134. The response disputes that any of the requested records were public records, and
does not confirm if any other such documents exist that were not being produced based on this
view that the records are not subject to the PRA.

M. No Further Records of Responses Provided

135. As of the date of this complaint Plaintiffs have received no further records or
explanations or responses to their PRA requests discussed above.

1 **IV. CAUSES OF ACTION**

2 **A. Failure to Provide a Reasonable Estimate and Provide Fullest Assistance and**
3 **Most Timely Possible Action on Request and to Make Records Promptly**
4 **Available**

5 136. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in
6 this cause of action.

7 137. RCW 42.56.520 requires an agency to provide a “reasonable estimate” of the time
8 of production.

9 138. RCW 42.56.080 requires an agency to provide requested records “on a partial or
10 installment basis as records that are part of a larger set of requested records are assembled or
11 made ready for inspection or disclosure.”

12 139. RCW 42.56.100 requires an agency to have rules in place to provide the “most
13 timely possible action on requests.”

14 140. RCW 42.56.080 requires an agency to make records “promptly available.”

15 141. RCW 42.56.550(2) provides:

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

22 142. RCW 42.56.550(3) provides: “Courts shall take into account the policy of this
23 chapter that free and open examination of public records is in the public interest, even though
24 such examination may cause inconvenience or embarrassment to public officials or others.”

1 143. RCW 42.56.550(4) provides:

2 Any person who prevails against an agency in any action in the courts
3 seeking the right to inspect or copy any public record or the right to receive
4 a response to a public record request within a reasonable amount of time
5 shall be awarded all costs, including reasonable attorney fees, incurred in

1 connection with such legal action. In addition, it shall be within the
2 discretion of the court to award such person an amount not less than five
3 dollars and not to exceed one hundred dollars for each day that he or she
4 was denied the right to inspect or copy said public record.

5 144. Defendants did not provide Plaintiffs with “a reasonable estimate of the time that
6 the agency requires to respond to a public records request[.]” (RCW 42.56.550(2)).

7 145. Defendants violated the Public Records Act by not providing Plaintiffs “a
8 reasonable estimate of the time that the agency requires to respond to a public records request[.]”
9 (RCW 42.56.550(2)).

10 146. Defendants violated the PRA by not providing the requested records “on a partial
11 or installment basis as records that are part of a larger set of requested records are assembled or
12 made ready for inspection or disclosure.”

13 147. Defendants violated the PRA by not providing the “most timely possible action
14 on requests.”

15 148. Defendants violated the PRA by not making records “promptly available.”

16 **B. Failure to Produce Public Records**

17 149. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in
18 this cause of action.

19 150. The Washington State Supreme Court held in *Nissen v. Pierce County*, 183
20 Wn.2d 863, 874, 876, 357 P.3d 45 (2015) as follows:

21 The definitions of “agency” and “public record” are each comprehensive on their
22 own and, when taken together, mean the PRA subjects “virtually any record
23 related to the conduct of government” to public disclosure. *O'Neill [v. Shoreline]*,
24 170 Wn.2d at 147. This broad construction is deliberate and meant to give the
public access to information about every aspect of state and local government.
See Laws Of 1973, ch. 1, § 1 (11). As we so often summarize, the PRA “is a
strongly worded mandate for broad disclosure of public records.” *Yakima County*
v. Yakima Herald-Republic, 170 Wn.2d 775,791,246 P.3d 768 (2011) (quoting
Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 731, 174 P.3d 60 (2007) (quoting
Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)).

1 ...
2 One characteristic of a public record is that it is "prepared, owned, used, or
3 retained by any state or local agency." RCW 42.56.010(3)... But those bodies
4 lack an innate ability to prepare, own, use, or retain any record. They instead act
5 exclusively through their employees and other agents, and when an employee acts
6 within the scope of his or her employment, the employee's actions are tantamount
7 to "the actions of the [body] itself." *Houser v. City of Redmond*, 91 Wn.2d 36, 40,
8 586 P.2d 482 (1978) (as to cities); *Hailey v. King County*, 21 Wn.2d 53, 58, 149
9 P.2d 823 (1944) (as to counties). Integrating this basic common law concept into
10 the PRA, a record that an agency employee prepares, owns, uses, or retains in the
11 scope of employment is necessarily a record "prepared, owned, used, or retained
12 by [a] state or local agency." RCW 42.56.010(3).

13 ...
14 If the PRA did not capture records individual employees prepare, own, use, or
15 retain in the course of their jobs, the public would be without information about
16 much of the daily operation of government. Such a result would be an affront to
17 the core policy underpinning the PRA-the public's right to a transparent
18 government. That policy, itself embodied in the statutory text, guides our
19 interpretation of the PRA. RCW 42.56.030; LAWS OF 1973, ch. 1, § 1(11);
20 *Hearst Corp.*, 90 Wn.2d at 128.

21 151. The requested records are public records as defined by RCW 42.56.010(3).

22 152. RCW 42.56.010(3) defines "public record" as follows:

23 "Public record" includes any writing containing information relating to the
24 conduct of government or the performance of any governmental or proprietary
function prepared, owned, used, or retained by any state or local agency
regardless of physical form or characteristics.

153. RCW 42.56.010(1) defines "agency as follows:

"Agency" includes all state agencies and all local agencies. "State agency"
includes every state office, department, division, bureau, board, commission, or
other state agency. "Local agency" includes every county, city, town, municipal
corporation, quasi-municipal corporation, or special purpose district, or any
office, department, division, bureau, board, commission, or agency thereof, or
other local public agency.

154. The 1995 Amendment on which Defendants rely in withholding records defined
"State office" as "state legislative office or the office of governor, lieutenant governor, secretary
of state, attorney general, commissioner of public lands, insurance commissioner, superintendent

1 of public instruction, state auditor, or state treasurer.”

2 155. The 1995 Amendment on which Defendants rely in withholding records defined
3 “State Legislative Office” – a term contained within the definition “State Office” – as “the office
4 of a member of the state house of representatives or the office of a member of the state senate.”

5 156. All of the records requested by Plaintiffs were “writings containing information
6 relating to the conduct of government or the performance of any governmental or proprietary
7 function”.

8 157. All of the records requested by Plaintiffs were “writings ...prepared, owned,
9 used, or retained by” the Washington State Legislature, Washington State Senate, Washington
10 State House of Representatives, State Senators or State Representatives.

11 158. The Washington State Legislature, Washington State Senate, and Washington
12 State House of Representatives are state agencies.

13 159. State Senators are agents of the State Legislature and State Senate.

14 160. State Representatives are agents of the State Legislature and State House of
15 Representatives.

16 161. The State Legislative Office of every State Senator and State Representative is a
17 “State Office” and thus a “State Agency” under the PRA.

18 162. The requested records were “prepared, owned, used, or retained” by the Senators
19 and Representatives “in the course of their jobs” as Senators and Representatives and thus are
20 “prepared, owned, used or retained” by the Legislature or Senate or House of Representatives
21 themselves.

22 163. The July 26, 2017, PRA requests were not directed to the office of the secretary
23 of the senate or the office of the chief clerk of the house in any way, as the requests made clear.
24

1 164. RCW 40.14.100 does not remove the Legislature, State Senate, State House of
2 Representatives or the individual legislators or their offices from the reach of the PRA or the
3 definition of “agency” in the PRA.

4 165. The requested records are subject to disclosure unless exempt from disclosure
5 under a specific statute. *See* RCW 42.56.070.

6 166. If Defendants withheld or redacted any information from the requested records,
7 they were required to explain each withholding or redaction in writing, to identify the statute
8 allowing for such redaction or deletion, to explain how such statute applied to the record in
9 question, and to provide a detailed withholding index as described by *Progressive Animal*
10 *Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1995) and *Rental*
11 *Housing Ass’n of Puget Sound, v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009).

12 167. Defendants have not adequately identified each record redacted or withheld or the
13 statute authorizing such redaction or withholding or explained how each such statute applies to
14 the record withheld or portion redacted.

15 168. Defendants have failed to produce all records in response to the July 26, 2017
16 PRA requests.

17 169. There are records responsive to Plaintiffs’ July 26, 2017, PRA requests.

18 170. Many of these records have thus far been withheld by Defendants.

19 171. Responsive records being withheld by Defendants are not exempt from disclosure
20 under the PRA.

21 **C. Failure to Provide Exemption Log or Justify Withholding**

22 172. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in
23 this cause of action.

24

1 173. Defendants were required to provide Plaintiffs with a detailed exemption log or
2 withholding index identifying all records or content being denied or redacted, the exemption
3 authorizing the document or content's denial, and sufficient detail about the document or content
4 to establish the exemption applied.

5 174. Defendants did not provide Plaintiffs sufficiently detailed withholding indexes or
6 logs for documents that they withheld or redacted. This is a violation of the PRA.

7 175. Defendants are withholding records responsive to Plaintiffs' requests without
8 adequately claiming exemptions. This is a violation of the PRA

9 176. Defendants bear the burden of identifying and proving any exemption applies to
10 the responsive public records sought by Plaintiffs.

11 177. Defendants have not met and cannot meet its burden of identifying or providing
12 an applicable exemption justifying the withholding of these responsive records.

13 178. The records should have been released to Plaintiffs when requested and must be
14 released now.

15 **D. Records Improperly Withheld in Their Entirety**

16 179. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in
17 this cause of action.

18 180. Defendants have denied Plaintiffs access to records in their entirety and have
19 violated the PRA as a result.

20 181. Defendants have failed to provide access to records responsive to Plaintiffs'
21 public records requests described above.

22 182. Defendants never provided Plaintiffs with any records responsive to most of the
23 above requests.

24 183. Defendants have violated the PRA by failing to produce these records.

1 **E. Defendants are Silently Withholding Records**

2 184. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in
3 this cause of action.

4 185. It is a violation of the PRA to fail to provide responsive public records without
5 claiming an exemption or basis for withholding the records (silently withholding records).

6 186. Responsive public records have been silently withheld by Defendants as they
7 have not been produced, made available for inspection, or had their existence made known by
8 the Defendants coupled with an explanation for withholding.

9 **F. Right to Judicial Review**

10 187. Plaintiffs reallege the preceding paragraphs and incorporates them by reference in
11 this cause of action.

12 188. RCW 42.56.550 provides that any agency action denying access to public records
13 for inspection and copying, denying an adequate response to such a request, or failing to provide
14 a reasonable estimate of the time needed to respond to a record request is subject to judicial
15 review:

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

24 (2) Upon the motion of any person who believes that an agency has not made a
reasonable estimate of the time that the agency requires to respond to a public
record request, the superior court in the county in which a record is maintained
may require the 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.

1 189. This right to judicial review against Defendants may be sought in Thurston
2 County pursuant to 42.56.550(1).

3 **G. Right to Attorney Fees, Costs, and Penalties**

4 190. RCW 42.56.550(4) provides that any person who prevails against an agency in
5 any action seeking the right to inspect or copy any public record or the right to receive a
6 response within a reasonable amount of time *shall* be awarded all costs, including reasonable
7 attorney's fees. The prevailing requester must also be awarded an amount imposed as a statutory
8 penalty against the agency in an amount between \$0 and \$100 for each day that the requester has
9 been denied the right to inspect and copy a public record or been denied an adequate response.
10 Such penalties may be imposed per page.

11 **C. PRAYER FOR RELIEF**

12 WHEREFORE, the Plaintiffs The Associated Press, Northwest News Network, KING-
13 TV, KIRO 7, Allied Daily Newspapers of Washington, The Spokesman-Review, Washington
14 Newspaper Publishers Association, Sound Publishing, Inc., Tacoma News, Inc., and The Seattle
15 Times pray for judgment against Defendants as follows:

16 A. Order the Defendants to promptly provide Plaintiffs the records requested in their
17 PRA requests discussed herein.

18 B. Issue an injunction prohibiting Defendants from failing to provide Plaintiffs with
19 requested records based on RCW 40.14.100 or the definition of public records for the Chief
20 Clerk of the House or Secretary of the Senate contained in RCW 42.56.010(3).

21 C. Award Plaintiffs all costs, including reasonable attorney's fees, incurred in
22 connection with this action and efforts to obtain the records, as provided in RCW 42.56.550(4).

1 D. Award Plaintiffs monetary penalties pursuant to RCW 42.56.550(4) of \$100 per
2 page per day from the date of the request until the date Defendants provide all the requested
3 records in unredacted form or with redactions as approved by the Court after evaluating claimed
4 exemptions and in camera review.

5 E. For such other relief as the Court deems just.

6 DATED this 12th day of September, 2017.

7 ALLIED LAW GROUP LLC

8 By *Michele Earl-Hubbard*

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