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IN THE WASHINGTON STATE SUPERIOR COURT
FOR THE COUNTY OF SPOKANE

BRIAN BREEN,)	
)	Case No.:
Plaintiff,)	COMPLAINT FOR PUBLIC
)	RECORDS ACT VIOLATION
vs.)	
)	
CITY OF SPOKANE,)	
Defendant.)	
)	
)	

I. INTRODUCTION

1.1 This is an action to enforce the Public Records Act (“the Act”), RCW 42.56.001 et seq. As used in this Complaint, the term “public record” is defined by RCW 42.56.010(3). The City of Spokane (“City”) has violated the Act by unlawfully delaying the release of public records from Plaintiff Brian Breen.

II. PARTIES

2.1 Plaintiff Breen is and at all relevant times was a resident of Spokane County, Washington.

1 2.2 Defendant City of Spokane is and at all relevant times was a
2 public entity whose administrative offices are located in Spokane County,
3 Washington.

4 2.3 The City of Spokane is an agency as defined by the Public
5 Records Act, RCW 42.56.010(1).
6

7 2.4 The City of Spokane is a municipal government in the State of
8 Washington.
9

10 **III. JURISDICTION AND VENUE**

11 3.1 This Court has jurisdiction over this matter pursuant to RCW
12 2.08.010, 42.56.550.

13 3.2 The City of Spokane is an "agency" as defined in RCW
14 42.56.010(1).
15

16 3.3 Venue is proper in this Court pursuant to RCW 42.56.550(1),
17 4.12.020, 4.12.025.
18

19 **IV. FACTS**

20 4.1 On September 5, 2015, Plaintiff Breen submitted a public records
21 request on the City's public records request form to the Defendant City of
22 Spokane requesting:

23 Any and all documents to include emails and text
24 messages sent or received on any and all public or
25 private cell phones computers utilized in any way to
conduct any public business of the City of Spokane

Center For Justice
35 W. Main, Suite 300
Spokane, WA 99201
Telephone: (509) 835-5211

1 relating to any and all complaints or allegations,
2 sustain, not sustain, or categorized [sic] as inquires
made against Frank G. Straub, or Monique Cotton.

3 As well as any and all documents from third parties
4 relating to the transfer of Monique Cotton from the
5 Spokane Police Department to the City of Spokane
6 Parks Department and or concerning formal or informal
7 complaints made by or against Frank G. Straub or
8 Monique Cotton. I further request any and all formal or
9 informal public records request documents made by the
10 Spokesman Review Newspaper regarding complaints
11 or allegations against any and all employees of the City
of Spokane including any and all elected officials, such
documents to included email or text messages received
by or sent from computers or cell phones public or
private used to transact public business.

12 The specific time frame of my request is from January
13 1, 2015 through September 5, 2015.

14 I further request that the Public Records Officer of the
15 City of Spokane pursuant to their responsibilities
16 documented in RCW 42.56.580 immediately take the
17 necessary steps to protect and maintain any and all
18 public documents transmitted or contained on public or
19 private computers or cell phones used at any time or by
20 any method for conducting public business with special
21 attention given to but not limited to the following City
of Spokane Employees or Elected Officials; David
Condon, Theresa Sanders, Nancy Isserlis, Brian
Coddington, Heather Lowe, Frank G Straub, Monique
Cotton, and Leroy Eadie.

22 A copy of this request is attached hereto as Exhibit 1.

23 4.2 On September 15, 2015, City Clerk Terri Pfister by email
24 acknowledged receipt of the request and indicated, "We anticipate following
25

1 up with you in two weeks, or on or about September 29, to advise as to what if
2 any additional records have been located.”

3 4.3 By email, City Clerk Pfister provided Plaintiff an installment of
4 responsive documents on September 29, 2015 and requested clarity as to
5 search criteria by October 9, 2015.
6

7 4.4 On October 1, 2015 and October 6, 2015, Plaintiff emailed City
8 Clerk Pfister providing additional clarification as to the scope of the request
9 and providing the requested clarification to the search criteria.
10

11 4.5 On October 9, 2015, City Clerk Pfister emailed Plaintiff
12 acknowledging receipt of additional clarification and indicating that additional
13 documents would be provided on October 30, 2015.
14

15 4.6 On October 26, 2015, Plaintiff emailed City Clerk Pfister
16 requesting a status of the records requested.

17 4.7 On October 30, 2015, City Clerk Pfister emailed Plaintiff
18 indicating that records would be provided “on or before next Friday,
19 November 6.”
20

21 4.8 The October 30, 2015 email from City Clerk Pfister further
22 indicates, “[T]o the best of my knowledge and understanding, no further text
23 messages have been located in response to your request.”
24
25

1 4.9 On November 13, 2015 and on November 24, 2015, City Clerk
2 Pfister provided separate installments of responsive document.

3 4.10 The November 24, 2015 disclosure of documents included: (1)
4 copies of notes dated April 15, 2015 from Spokane Police Captain Eric Olsen;
5
6 (2) June 8, 2015 letter from attorney Bob Dunn to Mayor David Condon and
7 City Administrator Teresa Sanders; (3) copies of notes dated March 3, 2015
8 from Spokane Police Captain Eric Olsen; (4) email communication between
9 former City Attorney Nancy Isserlis and attorney Bob Dunn; (5) notes
10 regarding a March 3, 2015 meeting from Spokane Police Lieutenant Mark
11 Griffiths; and (6) notes and cell phone records from City Administrator
12 Sanders.
13

14 4.11 On November 27, 2015, Plaintiff sent City Clerk Pfister an email
15 responding to the November 24, 2015 email from City Clerk Pfister objecting
16 to redactions and exemptions made to the previously produced document and
17 indicating, "I understand that the media attention given to this issue has placed
18 you in a position where you are very likely receiving input and pressure on
19 what to release and what not to release, which I understand however I think it
20 is important that you fulfill your independent responsibilities under RCW
21 42.56.580."
22
23
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1 4.12 The City released other documents after November 24, 2015 to
2 Plaintiff; however, the November 24, 2015 records are the subject of this
3 action.

4 **The Circumstances of the Release of the November 24, 2015**
5 **Records**

6 4.13 During the period from September 5, 2015 to October 20, 2015,
7 the City received at least six additional public records requests seeking similar
8 documents, including an October 20, 2016 request from former Chief Straub's
9 attorney specifically requesting communications between the City and counsel
10 for former city employee Monique Cotton.
11

12 4.14 Consistent with well-established and longstanding practices, City
13 Clerk Pfister distributed the requests, all seven, to the relevant city employees
14 directing them to search for and produce responsive documents.
15

16 4.15 Notices of these requests were sent to members of the City
17 Attorney's Office, including former City Attorney Isserlis, Assistant City
18 Attorney Pat Dalton, Assistant City Attorney Mary Muramatsu, former Deputy
19 City Attorney Erin Jacobson, and the Mayor's office, including
20 Communications Director Brian Coddington and City Administrator Teresa
21 Sanders, among many others.
22
23
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1 4.16 On Friday, September 18, 2015, Assistant City Attorney Dalton
2 directed the City Clerk to forward all Straub/Cotton documents to the City
3 Attorney's Office for review in connection with "pending litigation."

4 4.17 Assistant City Attorney Dalton told the City Clerk Pfister he was
5 acting at the direction of former City Attorney Isserlis.
6

7 4.18 There was no "pending litigation" involving Chief Straub or Ms.
8 Cotton at the time of this directive.
9

10 4.19 The directive was a deviation from the Clerk's standard practices.

11 4.20 As of September 18, 2015, the City Attorney's office, not the
12 City Clerk's office, controlled what documents were released to requestors and
13 when.
14

15 4.21 Former City Attorney Isserlis was closely monitoring
16 Straub/Cotton public records requests and release dates, and was involved in
17 the review process.
18

19 4.22 Former City Attorney Isserlis was also in communication with
20 City Administrator Sanders about Straub/Cotton record requests.

21 4.23 Former City Attorney Isserlis specifically requested to speak with
22 City Administrator Sanders on September 14, 2015 regarding the Plaintiff
23 Breen's records request.
24
25

1 4.24 Communications Director Coddington was also closely
2 monitoring the Straub/Cotton public records requests and was included in
3 many of the communications between the City Clerk and the City Attorney's
4 office.

5
6 4.25 Communications Director Coddington was alerted to what was
7 going to be released and when.

8 4.26 The documents that were released on November 24, 2015,
9 included Ms. Sanders' handwritten notes and text messages with Ms. Cotton
10 regarding sexual harassment and other complaints against former Chief Straub
11 and the discussions regarding her transfer of employment.

12
13 4.27 In May 2015, Ms. Isserlis was the only one who had copies of
14 City Administrator Sanders' texts and notes, as Sanders had given all known
15 copies of the documents to Isserlis.

16
17 4.28 The documents released on November 24, 2015 included
18 correspondence and emails to and from Ms. Cotton's attorney, Mayor Condon,
19 City Administrator Sanders, and former City Attorney Isserlis regarding Ms.
20 Cotton's attempts to be reimbursed for her legal fees associated with her
21 complaints about Straub and efforts to be transferred to another position in the
22 City.
23
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1 4.29 On November 10, 2015, Deputy City Attorney Jacobson, who
2 was filling in for Deputy City Attorney Dalton, produced the Sanders notes
3 and texts and some of the correspondence with Cotton's attorney to City Clerk
4 Pfister.
5

6 4.30 Jacobson informed City Clerk Pfister that the documents were
7 responsive to seven record requests, including Plaintiff's request.
8

9 4.31 November 10, 2015 was the first time that City Clerk Pfister was
10 informed of the existence of these records.
11

12 4.32 Upon reviewing them, City Clerk Pfister contacted the Mayor's
13 office and the City Attorney's office to request that they search further for
14 responsive records.
15

16 4.33 That effort resulted in the discovery of another letter between the
17 Administration and Cotton's attorney dated June 8, 2015, which was produced
18 by the Mayor's office, as well as emails between Ms. Isserlis and Cotton's
19 attorney, which were produced by Ms. Isserlis' executive assistant.
20

21 4.34 Those records were also determined to be responsive to the
22 requests, including Plaintiff's request.
23

24 4.35 Former City Attorney Isserlis was in control and/or possession of
25 all of the records released on November 24, 2015 as early as June 2015.

1 4.36 Despite knowing she had the only copies of certain records that
2 were responsive to outstanding record requests, City Attorney Isserlis
3 undertook no effort to search for emails or to inform IT that emails existed that
4 were responsive to public records requests until her assistant was specifically
5 requested to do so by City Clerk Pfister on November 11, 2015.
6

7 4.37 City Administrator Sanders was aware that the November 24,
8 2015 records existed and was aware of the pending record requests, but never
9 informed the City Clerk.
10

11 4.38 City Administrator Sanders never requested her staff to search for
12 the relevant correspondences, which were stored -- both electronically and in
13 hard copy -- in the Mayor's office.
14

15 4.39 In January 2016, the City of Spokane entered into a contract with
16 the Seabold Group to conduct an internal investigation that would review,
17 among other issues, the facts and circumstances surrounding the response to
18 public records requests related to former Chief Straub and Ms. Cotton.
19

20 4.40 The July 26, 2016 Seabold Group internal investigation report
21 (“Seabold report”) affirmed the facts in ¶¶ 4.14-4.39

22 4.41 The Seabold report also concluded:

23 Based on all of the evidence we considered, we conclude that Ms.
24 Sanders and Ms. Isserlis intentionally withheld information from the
25 City Clerk about the existence of the documents at issue with the intent
and purpose of delaying the production of those records until after the

1 Mayor's election. We also conclude that Pat Dalton, the senior assistant
2 city attorney, deliberately delayed the release of the Torok text
messages without justification until after Mayor Condon's re-election.

3 **I. CAUSE OF ACTION – VIOLATION OF PUBLIC**
4 **RECORDS ACT**

5 5.1 Paragraphs 4.1 through 4.41 are re-alleged as if set forth fully here.

6 5.2 State law provides that the PRA "shall be liberally construed and its
7 exemptions narrowly construed to promote this public policy and to assure
8 that the public interest will be fully protected." RCW 42.56.030.

9 5.3 The PRA also provides that "[c]ourts shall take into account the policy
10 of this chapter that free and open examination of public records is in the
11 public interest, even though such examination may cause inconvenience or
12 embarrassment to public officials or others." RCW 42.56.550(3).

13 5.4 The PRA mandates that agencies disclose any public record upon
14 request, unless it falls within a specific, enumerated exemption.

15 *Neighborhood Alliance of Spokane County v. County of Spokane*, 172
16 Wash.2d 702, 715, 261 P.3d 119 (2011).

17 5.5 Under the PRA, agencies must respond "promptly" to record requests.
18 RCW 42.56.520.

19 5.6 The November 24, 2015 documents are "public records" as defined by
20 RCW 42.56.010(2).
21
22
23
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1 5.7 The City of Spokane is an "agency" within the meaning of RCW
2 42.56.010(1).

3 5.8 By delaying the release of documents that were responsive to Plaintiff's
4 request, the City of Spokane violated the requirement of the PRA that every
5 "agency ... shall make available for public inspection and copying all public
6 records," RCW 42.56.070(1), and that responses shall be prompt. RCW
7 42.56.520.
8

9 II. RELIEF

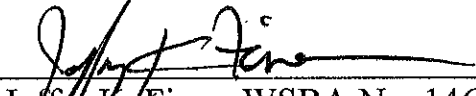
10 WHEREFORE, Plaintiff requests that this Court enter judgment against
11 Defendant:
12

- 13 a. Declaring that the City of Spokane violated the PRA by
14 unreasonably delaying the production of public records.
- 15 b. Awarding Plaintiff all costs, including reasonable
16 attorney fees, incurred in connection with this action,
17 pursuant to RCW 42.56.550(4).
18
- 19 c. Imposing a penalty on the City in an amount of up to
20 one hundred dollars per day per page of unlawfully
21 delayed documents, pursuant to RCW 42.56.550(4).
22
- 23 d. Grant such additional and further relief as the Court
24 may deem just.
25

1 DATED this ___ day of August, 2016.

2 CENTER FOR JUSTICE

3
4 By 
5 Rick Eichstaedt, WSBA No. 36487
6 Attorney for Plaintiff

7 By 
8 Jeffrey K. Finer, WSBA No. 14610
9 Attorney for Plaintiff

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EXHIBIT 1

Rick Eichstaedt

From: Brian Breen <emb4949@msn.com>
Sent: Saturday, September 05, 2015 1:15 PM
To: cityclerk
Subject: Public Records Request
Attachments: PRR Request Cotton and Straub.pdf; PRR Word Attachment.docx

Please find Attached the Public Records Request of Brian R Breen dated September 5, 2015.

The Official City of Spokane PRR form is attached in PDF format, and as the form did not contain enough room further specifics of the request are attached in Word Format.

Attachment: City of Spokane Public Records Request of Brian R. Breen dated September 5, 2015 regarding Frank G Straub and Monique Cotton.

CONTINUED from page 1 of City of Spokane Public Records Request form.

As well as any and all documents from third parties relating to the transfer of Monique Cotton from the Spokane Police Department to the City of Spokane Parks Department and or concerning formal or informal complaints made by or against Frank G. Straub or Monique Cotton. I further request any and all formal or informal public records request documents made by the Spokesman Review Newspaper regarding complaints or allegations against any and all employees of the City of Spokane including any and all elected officials, such documents to included email or text messages received by or sent from computers or cell phones public or private used to transact public business.

The specific time frame of my request is from January 1, 2015 through September 5, 2015.

I further request that the Public Records Officer of the City of Spokane pursuant to their responsibilities documented in RCW 42.56.580 immediately take the necessary steps to protect and maintain any and all public documents transmitted or contained on public or private computers or cell phones used at any time or by any method for conducting public business with special attention given to but not limited to the following City of Spokane Employees or Elected Officials; David Condon, Theresa Sanders, Nancy Isserlis, Brian Coddington, Heather Lowe, Frank G Straub, Monique Cotton, and Leroy Eadie.

Public records officers.

(1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications.



PUBLIC RECORDS REQUEST
(RCW 42.56)

DEPARTMENT: Office of Mayor/Spokane Police/Human Resources

NAME: Brian R. Breen DATE: September 5, 2015

TELEPHONE: 509-701-2382 E-MAIL: emb4949@msn.com

ADDRESS: 723 E 40th Ave.

CITY: Spokane STATE: WA ZIP: 99203

IDENTIFICATION/DESCRIPTION OF RECORDS(S) SOUGHT: Please be as specific as possible when completing your public records request. We will be better able to process your request if you clearly identify the record(s) you are seeking. Your description of the record(s) must be reasonably and sufficiently identifiable to enable us to locate the record(s) you seek. If you can identify specific dates, locations, buildings, premises, topics, departments, or people involved, it will better assist us in the search for your requested record(s).

The City has no duty to create a record, nor is the City obligated to compile information from various records so that the information is in a form that is more useful to the requestor.

Any and all documents to include emails and text messages sent or received on any and all public or private cell phones
computers utilized in any way to conduct any public business of the City of Spokane relating to any and all complaints
or allegations, sustained, not sustained, or categorized as inquiries made against Frank G. Straub, or Monique Cotton

(See attached document in Word format)
I understand that the City may not legally provide a list of individuals pursuant to this public records request if the request is for commercial purposes. Therefore, I certify that any list of individuals obtained through this request will not be used for commercial purposes. (RCW 42.56.070(9))

Signature: Brian R. Breen

DEPARTMENTAL NOTES/COMMENTS:

SUBMIT COMPLETED FORM TO: City Clerk's Office
5th Floor City Hall
808 W. Spokane Falls Blvd.
Spokane, WA 99201
(509) 625-6350
FAX: (509) 625-6217

Attachment: City of Spokane Public Records Request of Brian R. Breen dated September 5, 2015 regarding Frank G Straub and Monique Cotton.

CONTINUED from page 1 of City of Spokane Public Records Request form.

As well as any and all documents from third parties relating to the transfer of Monique Cotton from the Spokane Police Department to the City of Spokane Parks Department and or concerning formal or informal complaints made by or against Frank G. Straub or Monique Cotton. I further request any and all formal or informal public records request documents made by the Spokesman Review Newspaper regarding complaints or allegations against any and all employees of the City of Spokane including any and all elected officials, such documents to included email or text messages received by or sent from computers or cell phones public or private used to transact public business.

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RCW 42.56.580

Public records officers.

(1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications.