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

CITIZEN ACTION DEFENSE FUND, a
Washington nonprofit organization,

Plaintiff,

v.

WASHINGTON STATE OFFICE OF
FINANCIAL MANAGEMENT in the OFFICE
OF THE GOVERNOR, an agency of the State of
Washington.

Defendant.

No.

**CITIZEN ACTION DEFENSE FUND'S
ACTION AGAINST OFFICE OF
FINANCIAL MANAGEMENT FOR
PUBLIC RECORDS ACT VIOLATIONS**

I. INTRODUCTION

This is a complaint for production of public records, fees, and penalties, brought by Plaintiff Citizen Action Defense Fund (“CADF” or “Requester”) against the Washington State Office of Financial Management (“OFM” or “Defendant”) which is created in the Office of the Governor, a state agency. CADF is a nonprofit, dedicated to advancing the interest of all Washingtonians.



1 CADF does this through litigation focused on making sure state and local government plays by
2 the rules set in the constitution and in statute. This is such a case.

3 In October, a third party made CADF aware that OFM had refused to disclose records related
4 to the master collective bargaining agreements for 2023-2025. CADF's made the same request to
5 give the agency another chance to comply, but was also refused. OFM claimed the records were
6 exempt from disclosure because they were considered "deliberative" until the legislature funded
7 the agreements, even though the parties to the contract had already signed.

8 This broad, novel interpretation of the deliberative process exemption would mean that the
9 records would remain exempt for months after negotiations were complete. This interpretation is
10 incorrect and cannot stand. Defendant has, therefore, withheld public records in violation of the
11 Public Records Act ("PRA"), Ch. 42.56 RCW.

12 **II. PARTIES**

13 1. Plaintiff Citizen Action Defense Fund ("CADF") is a not-for-profit association, organized
14 in the State of Washington

15 2. Defendant Office of Financial Management pursuant to RCW 43.41.050 is an office
16 created in the Office of the Governor which is an agency of the State of Washington. As an agency
17 or part of an agency, OFM is subject to the PRA.

18 **III. JURISDICTION AND VENUE**

19 3. The Superior Court of Thurston County has jurisdiction under RCW 42.56.550(1), and
20 RCW 42.56.550(2).

21 4. Venue in Thurston County is appropriate under RCW 42.56.550(1) and RCW
22 42.56.550(2).

1 IV. STATEMENT OF FACTS

2 A. First Response– March, 2019

3 5. On October 3, 2022 Jason Mercier, an unrelated party submitted a request for records to
4 Defendant, OFM.

5 6. Mercier’s request read “Hi Ralph, Now that the unions have ratified the 2023-25 contract
6 agreement is it possible to get a copy of the state’s and union’s original offers?”

7 7. The email was sent to Ralph Thomas, the communications director for OFM.

8 8. The next day, assistant counsel for OFM, Nathan Sherrard, responded to Mercier stating,
9 in relevant part, that “The records you have requested are related to the 2023-25 collective
10 bargaining agreements. Although the tentative agreements have been signed, and will be
11 available on our website soon, underlying negotiation-related material continues to be
12 exempt until final legislative approval of funding (typically this means when the budgets
13 are signed by the governor). Until that time, the agreements are not final and the records
14 you have requested are exempt as part of a deliberative process under RCW 42.56.280.
15 See also *ACLU v. City of Seattle*, 121 Wn. App. 544 (2004). This email serves as your
16 exemption log.”

17 9. Mercier forwarded Sherrard’s response to CADF.

18 10. On October 20, 2022, Jackson Maynard submitted a public records request to OFM. This
19 request was submitted on behalf of CADF, in his capacity as executive director.

20 11. His request included a detailed evaluation of Sherrard’s response and the previous email
21 chain between Sherrard and Mercier.

22 12. In relevant part, CADF’s request read “please consider this email to be a new request for
23 "a copy of the state’s and union’s original offer."
24

1 13. On October 26, 2022, Sherrard replied saying “My response to your request is the same as
2 to Mr. Mercier. It is our longstanding interpretation that the exemption in RCW 42.56.280,
3 for records that are part of a deliberative process, does apply to negotiation-related material
4 created as part of the collective bargaining process, *until those negotiations are complete*
5 *and the agreements are final*. We do not consider that process to be complete until the
6 final approval of the contracts by the legislature and the signing of that approval into law
7 by the governor. Therefore, the records you have requested (the state’s and union’s original
8 offers) are exempt from disclosure until that time.” (emphasis in original).

9 14. RCW 42.56.280 reads “Preliminary drafts, notes, recommendations, and intra-agency
10 memorandums in which opinions are expressed or policies formulated or recommended
11 are exempt under this chapter, except that a specific record is not exempt when publicly
12 cited by an agency in connection with any agency action.”

13 15. OFM negotiates master agreements with union-represented state employees, as dictated by
14 the Personnel System Reform Act of 2002.

15 16. The contract negotiations for 2023-2025 were completed and signed by bargaining unit
16 representatives and an OFM representative before September 30, 2022.

17 17. Summaries of the agreements are available at
18 [https://ofm.wa.gov/sites/default/files/public/legacy/agencycommunications/FY2023/2023](https://ofm.wa.gov/sites/default/files/public/legacy/agencycommunications/FY2023/2023-25_October12022_OfficialSubmittal_EE_FINAL_Updated.pdf)
19 [-25_October12022_OfficialSubmittal_EE_FINAL_Updated.pdf](https://ofm.wa.gov/sites/default/files/public/legacy/agencycommunications/FY2023/2023-25_October12022_OfficialSubmittal_EE_FINAL_Updated.pdf)

20 18. On the OFM website, these agreements are marked as “tentative.” However, as noted
21 above, the parties to the agreement have signed them and negotiations are concluded.

22 19. Under the Personnel System Reform Act, the governor presents entire master bargaining
23 agreement funding request to the legislature.

1 20. The legislature has no right to review the funding request submissions piecemeal, but must
2 accept or reject the submission as a whole. Section 303(3).

3 21. Only if the legislature rejects the full agreement is negotiation reopened. *Id.*

4 22. On information and belief, the legislature has never rejected a negotiated bargaining
5 agreemet since the current structure of approval was implemented in 2002.

6 23. The governor must submit the 2023-2025 master agreements at the next legislative session
7 in January, 2023. Because this is an odd numbered year, the legislative session will be 105
8 days.

9 24. Many members of Washington’s legislature were up for election on November 8, 2022.

10 25. The Washington Senate approved David Schumacher, executive director of OFM, and the
11 person ultimately representing the taxpayer in negotiations with public employees.

12 26. Because of OFM’s interpretation of RCW 42.56.280, the voters could not review the
13 negotiation process prior to the November 8 election.

14 V. CLAIMS

15 a. Records Improperly Withheld in Their Entirety

16 27. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
17 cause of action.

18 28. Defendant has denied Plaintiff access to records in their entirety and have violated the
19 PRA as a result.

20 29. Defendant has failed to provide access to records responsive to Plaintiff’s request,
21 described above.

1 **b. Right to Judicial Review**

2 30. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
3 cause of action.

4 31. RCW 42.56.550 provides that any agency action denying access to public records for
5 inspection and copying is subject to judicial review.

6 32. Plaintiff has the right to judicial review against Defendant in Thurston County under RCW
7 42.56.550(1), 42.56.550(2) and RCW 4.12.020(1).

8 **c. Plaintiff is Entitled to Attorney’s Fees and a Daily Penalty**

9 33. RCW 42.56.550(4) provides that any person who prevails against an agency in any action
10 seeking the right to inspect or copy any public record or the right to receive a response
11 within a reasonable amount of time *shall* be awarded all costs, including reasonable
12 attorney fees. The prevailing requestor must also be awarded an amount imposed as a
13 statutory penalty against the agency in an amount up to \$100 for each day per record that
14 the requestor has been denied the right to inspect and copy a public record or been denied
15 an adequate response.

16 **VI. REQUESTED RELIEF**

17 Plaintiff respectfully requests that the Court:

- 18 A) Order Defendant to promptly provide Plaintiff with the records in
19 response to its October 20 request;
- 20 B) Declare that Defendant violated RCW 42.56 by adopting an unreasonable
21 interpretation of RCW 42.56.280;

- 1 C) Award Plaintiff all costs, including reasonable attorney’s fees, incurred in
2 connection with this action and efforts to obtain the records, as provided
3 in RCW 42.56.550(4);
- 4 D) Award Plaintiff monetary penalties under RCW 42.56.550(4) of \$100
5 per page per day from the date of the request, until the date Defendant
6 provides all the requested records.
- 7 E) Award any other relief as it deems just.

8
9 DATED this 15th day of December, 2022

10
11
12 
13 JACKSON WILDER MAYNARD, JR.
14 WSBA No. 43481
15 CITIZEN ACTION DEFENSE FUND
16 300 Deschutes Way SW
17 Suite 300
18 Tumwater, WA 98501
19 (360) 878-9206
20
21 Attorney for Requestor
22
23
24

1 **CERTIFICATE OF SERVICE**

2 I, Jackson Maynard, hereby declare under penalty of perjury under the laws of the State
3 of Washington that I am causing a true and correct copy of the foregoing Complaint to be served
4 via legal messenger on this date to Defendant at:

5 ROBERT FERGUSON
6 Office of Attorney General
7 1125 Washington Street SE
8 Olympia, WA 98501
*Legal Designee and Counsel
for State Defendants*

9 DAVID SCHUMACHER, Director
10 Office of Financial Management
11 P.O. Box 43113
12 Olympia, WA 98504-3113

13 DATED this 15th day of December, 2022

14 
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