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Expedite  
 No hearing set  
 Hearing is set  
Date: March 31, 2023  
Time: 1:30 pm  
Judge/Calendar:  
Honorable Mary Sue Wilson

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

CITIZEN ACTION DEFENSE FUND, a  
Washington nonprofit,

Plaintiff,

v.

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

Defendant.

No. 22-2-03426-34

**PLAINTIFF CITIZEN ACTION  
DEFENSE FUND’S OPENING BRIEF**



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1 **I. INTRODUCTION AND REQUESTED RELIEF**

2 Defendant Washington State Office of Financial Management (“OFM”), a public agency  
3 subject to the Public Records Act (“PRA”), denied Plaintiff Citizen Action Defense Fund’s  
4 (“CADF”) request for public records on the basis that the records were part of an ongoing  
5 negotiation and therefore exempt from disclosure, despite the fact that the records related to  
6 agreements that had already been signed by all parties. This denial is based on a misreading of  
7 the relevant exemption and has resulted in an ongoing failure to produce records. Therefore,  
8 CADF asks this Court to:

9 (a) declare that Defendant violated the PRA by failing to disclose responsive, non-exempt  
10 records to CADF;

11 (b) order Defendant to produce all records responsive to Plaintiff’s request;

12 (c) award Plaintiff all costs, including reasonable attorney’s fees, incurred in connection with  
13 this action and efforts to obtain the records, as provided in RCW 42.56.550(4), in an amount to  
14 be determined after subsequent briefing and argument;

15 (e) award Plaintiff monetary penalties under RCW 42.56.550(4) of \$6 per record per day  
16 from the date of the request, or in the alternative, the maximum penalty available, which as of the  
17 date of this filing, is estimated at \$71,555,400, until Defendant provides all the requested  
18 records; and

19 (f) award any other relief as the Court deems just.

20 **II. EVIDENCE RELIED UPON**

21 Parties agree that the facts in this case are straightforward. No testimonial evidence is  
22 required and the documentary evidence is all contained in four documents: the Complaint, the  
23

1 Answer, and Defendant’s responses to Plaintiff’s first set of interrogatories, and OFM Submittal,  
2 attached as Exhibit A-D to Appendix 1, Declaration of Jackson Maynard.

3  
4 **III. STATEMENT OF THE FACTS**

5 There are two groups of facts that define this case. The first and most simple set relates to the  
6 Plaintiff’s request for records and the Defendant’s denial. The second set relates to the  
7 procedural steps and timeline for approval of the state collective bargaining agreements. This set  
8 is relevant because the parties agree that OFM’s denial of the request was only appropriate if this  
9 Court finds that the records sought are covered by RCW 42.56.280, the “deliberative process”  
10 exemption, and relate to an ongoing deliberation. If the Court finds that §280 does not apply or  
11 that deliberation had in fact concluded at the time of the request, the withholding was  
12 inappropriate.

13 Turning first to the request from Plaintiff to Defendant, on October 20, 2022, CADF  
14 requested the opening offers for the state and the unions in negotiating the statewide 2023-2025  
15 collective bargaining agreements from OFM. *See* Complaint at ¶6 and ¶12, Answer at ¶6 and  
16 ¶12. The agency responded on October 26, 2022, refusing to disclose the records. Answer at ¶13.  
17 Although OFM admits that it is a state agency, Answer at ¶2, and impliedly admits, by claiming  
18 an exemption, that the records sought meet the statutory definition of “public record” found in  
19 RCW 42.56.010(3), Defendant refused to produce the requested records on the basis that they  
20 were exempt from disclosure under RCW 42.56.280, commonly referred to as the “deliberative  
21 process exemption.” This exemption only applies so long as negotiations are ongoing, *see*  
22 IV.A.a, *below*.

23 In explaining its reasoning to CADF, OFM claimed that:

24 [a]lthough the tentative agreements have been signed, and will be available on our website  
soon, underlying negotiation-related material continues to be exempt until final legislative

1 approval of funding (typically this means when the budgets are signed by the governor).  
2 Until that time, the agreements are not final and the records you have requested are exempt  
as part of a deliberative process under RCW 42.56.280.

3 See complaint at ¶8 and ¶13; Answer at ¶8 and ¶13. However, this misstates the facts. OFM  
4 represents the interests of the State of Washington, as the governor’s designee, in negotiations  
5 with unionized state employees. See RCW 41.80.010(1) (“For the purpose of negotiating  
6 collective bargaining agreements under this chapter, the [state] employer shall be represented by  
7 the governor or governor’s designee[.]”) As OFM states on its website, “OFM manages the  
8 collective bargaining process on behalf of the Governor with union-represented state employees.  
9 Every two years the State negotiates with unions to modify and reach new collective bargaining  
10 agreements.” *About the Collective Bargaining Process*. OFM.Wa.Gov, Office of Financial  
11 Management, [https://ofm.wa.gov/state-human-resources/labor-relations/collective-bargaining-](https://ofm.wa.gov/state-human-resources/labor-relations/collective-bargaining-agreements/about-collective-bargaining-process)  
12 [agreements/about-collective-bargaining-process](https://ofm.wa.gov/state-human-resources/labor-relations/collective-bargaining-agreements/about-collective-bargaining-process). Accessed 20 Feb. 2023. As of the date of  
13 Plaintiff’s request, OFM and representatives from each relevant union had signed the negotiated  
14 agreements. See Complaint at ¶16; Answer at ¶16. The Governor presents the negotiated  
15 agreements to the legislature as one budget proposal which must be approved or rejected as a  
16 whole. RCW 41.80.010(3). His proposed budget was introduced in the House and Senate in  
17 legislation identified as the 2023-25 Operating Appropriations Bill (HB 1140 / SB 5187) on  
18 January 5 and 6, 2023, respectively, and the Governor’s budget has been available to the public  
19 and Legislature since December 14, 2022. See *Budget and Policy Highlights*. Office of the  
20 Governor,  
21 [https://ofm.wa.gov/sites/default/files/public/budget/statebudget/highlights/budget23/202325Polic](https://ofm.wa.gov/sites/default/files/public/budget/statebudget/highlights/budget23/202325PolicyBudgetHighlights.pdf)  
22 [yBudgetHighlights.pdf](https://ofm.wa.gov/sites/default/files/public/budget/statebudget/highlights/budget23/202325PolicyBudgetHighlights.pdf) Accessed 20 Feb. 2023; *Governor Jay Inslee’s Proposed Operating*  
23 *Budget*. Office of Financial Management,

1 <https://app.leg.wa.gov/committeeschedules/Home/Document/247189#toolbar=0&navpanes=0>.

2 Accessed 20 Feb. 2023.

3 At the same time, OFM posted a letter from Michaela Doelman, the Chief Human  
4 Resources Officer for the State Human Resources Division, to the Director of OFM, David  
5 Schumacher, on its website along with the tentative agreements for each bargaining unit. *Official*  
6 *2023-2025 Collective Bargaining Submittal*. Michaela Doelman, September 30, 2022,  
7 [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)  
8 [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) Accessed 20 Feb. 2023. Also  
9 attached as Exhibit D to Declaration of Jackson Maynard. In the letter, Ms. Doelman makes  
10 direct mention of what was “offered” to employees. *Id*, page 1. Plaintiff filed its complaint,  
11 thereby renewing its request for records, on December 15, 2022.

12 No differences exist between the signed agreements and the Governor’s presentation to  
13 the Legislature. Defendant, the Governor’s designee, finished negotiating the agreements in  
14 October. As of the date of this filing, the Legislature has not acted upon the Governor’s request  
15 for funding.

#### 16 IV. ARGUMENT

17 Based on the undisputed facts, OFM cannot meet its burden to prove that the records sought  
18 are exempt under RCW 42.56.280.<sup>1</sup> As the Complaint and Answer show, there is no material  
19 fact at issue. The only question before this Court is the application of a statute. In interpreting  
20 that statute, the Court is constrained by the PRA’s “thrice-repeated” mandate to interpret the act  
21 in favor of disclosure. *See King County v. Sheehan*, 114 Wn.App. 325, 338, 57 P.3d 307 (2002).  
22

23 \_\_\_\_\_  
24 <sup>1</sup> Summary judgment is appropriate where the facts are undisputed and because the only issue before the Court is the application of law. *See* CR 56(c).

1 This preference for disclosure explains the unusual fact that, in this case, the Defendant bears the  
2 burden of proving it has not violated the PRA by failing to disclose documents. RCW  
3 42.56.550(1). *See also Rental Hous. Ass’n of Puget Sound v. City of Des Moines*, 165 Wn. 2d  
4 525, 535, 199 P.3d 393, 398 (2009). The PRA requires that records be disclosed unless an  
5 agency can prove that a specific exemption allows the agency to withhold the documents.  
6 *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn. 2d 243, 258, 884 P.2d 592, 601  
7 (1994) (“PAWS”). Defendant cannot overcome this presumption in favor of disclosure.

8 The deliberative process exemption, §280, contains both an exemption and an exception to  
9 that exemption. It reads “[p]reliminary drafts, notes, recommendations, and intra-agency  
10 memorandums in which opinions are expressed or policies formulated or recommended are  
11 exempt under this chapter, except that a specific record is not exempt when publicly cited by an  
12 agency in connection with any agency action.” RCW 41.56.280. The first part of the text, up to  
13 the word “except,” has been extensively litigated, making its application easy to define. The  
14 Supreme Court has outlined a four-part test for applying it. These records fail on all four criteria,  
15 though failure at any one is sufficient.

16 There is less jurisprudence on the second part of the statute, which reads “except that a  
17 specific record is not exempt when publicly cited by an agency in connection with any agency  
18 action.” Here, in what OFM’s website calls its “submittal letter,” OFM cited its offer, nullifying  
19 the exemption.

20 Taking the two parts of §280 in turn, the exemption outlined in part one does not apply, but  
21 even if it did, the exception outlined in part two would mandate disclosure. The test to determine  
22 whether the exemption applies was established in *Progressive Animal Welfare Soc’y v. Univ. of*  
23 *Wash.*, 125 Wn.2d 243, 884 P.2d 592 (1994) which held that:

1 In order to rely on this exemption, an agency must show that the records contain  
2 predecisional opinions or recommendations of subordinates expressed as part of a  
3 deliberative process; that disclosure would be injurious to the deliberative or consultative  
4 function of the process; that disclosure would inhibit the flow of recommendations,  
observations, and opinions; and finally, that the materials covered by the exemption  
reflect policy recommendations and opinions and not the raw factual data on which a  
decision is based.

5 *PAWS*, 125 Wn.2d at 256. (The statute was codified as RCW 42.17.310(1)(i) at the time of the  
6 decision, but recodification did not change any of the wording and *PAWS* is still regularly relied  
7 upon. *See, eg, Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn. 2d 525, 528,  
8 199 P.3d 393, 394 (2009)). Even if a record meets all four criteria, it must still be disclosed if the  
9 relevant deliberation is complete. *Brouillet v. Cowles Pub'g Co.*, 114 Wn.2d 788, 799, 791 P.2d  
10 526 (1990) (holding that, even if a record is part of a deliberative process, it is not exempt once  
11 an agency makes its final decision); *Paws*, 125 Wn.2d 257.

12 Applying the *PAWS* test here shows that the records CADF sought are not covered by the  
13 exemption. First, because the deliberation was complete at the time CADF made its request for  
14 records, *PAWS* dictates disclosure. Second, disclosure cannot be injurious to the deliberative  
15 process, either for the current negotiations or in the future, because no matter what, the records  
16 will become non-exempt before any further negotiation is possible. Finally, the offer is not open  
17 for further consideration or debate even within the deliberative process, showing that it is a fact  
18 to be relied upon, not a policy recommendation.

19 Additionally, the exception to the exemption applies because even if the records were relied  
20 upon in ongoing deliberations, they have been publicly cited by OFM, piercing the veil of  
21 secrecy that might have protected true deliberations.



1       **A. Applying the PAWS Factors, §280 Does Not Apply to The Records Sought.**

2               **a. The Deliberative Process Exemption Did Not Apply to the Offers at the Time**  
3               **of CADF’s Request Because The Relevant Deliberation Had Concluded.**

4       Unlike the records OFM is withholding here, records exempt under §280 must be  
5       “predecisional,” a requirement so important that *PAWS* states it two different ways. In the first  
6       factor above, the Supreme Court held that “an agency must show that the records contain  
7       *predecisional* opinions or recommendations of subordinates expressed as part of a deliberative  
8       process.” *PAWS*, 125 Wn.2d at 256 (emphasis added). The court again stressed this after it listed  
9       the factors, holding that “[o]nce the policies or recommendations are implemented, the records  
10       cease to be protected under this exemption.” *Id* at 257.

11       Plaintiff sought records that reflect Defendant’s adopted stance on appropriate compensation  
12       for union employees, not predecisional opinions or recommendations, because the relevant  
13       decision that the agency had to make was already complete at the time of the request. In all the  
14       cases discussing the application of §280, the threshold question is whether the records are  
15       “predecisional.” This raises an important question: What level of agency action or determination  
16       constitutes a decision for purposes of applying §280? No case has set a standard or definition.<sup>2</sup> In  
17       this case, the Court has three options for what decision is at issue. First, the Court could hold that  
18       OFM made a policy decision about what its initial offer should be and the requested records  
19       reflect a final decision. Second, the Court could find that the proposed agreements submitted to  
20       the Legislature represent the final agency decision. Finally, the Court could hold that only after  
21       the Legislature acts on the submitted agreement has a policy decision been reached. Either of the

22  
23       <sup>2</sup> In one, a Division I unpublished opinion did address a similar question, but its opinion begged more questions than  
24       it answered and it set no standard by which to evaluate future cases. *See ACLU v. City of Seattle*, No. 62561-6-I,  
2009 Wash. App. LEXIS 1758, at \*20 (Ct. App. July 20, 2009) (“*ACLU IP*”).

1 first two options lead to the conclusion that records should have been disclosed at Plaintiff's  
2 request. The third option counters existing law and policy.

3 **i. An Offer Presented to An Adverse Negotiator Records a Policy, It Does**  
4 **Not Deliberate It.**

5 This Court should hold that making an offer of employment to an adverse party is a policy  
6 decision, not a step in a deliberative process. The records sought are the initial offers by the  
7 state-employer's representative, OFM, and the collective bargaining representatives of the many  
8 unions which represent state employees. Although ongoing negotiation over what concessions  
9 each side will give are expected, the initial assessment reflected in an offer is itself composed of  
10 several evaluations. For the employer, this includes the number and types of employees needed,  
11 the structure and assignment of the organization's responsibilities, and the agency's budget  
12 restrictions. For the union, this includes addressing the represented population's healthcare  
13 needs, financial hardships, and expected duties. In presenting these offers to the party across the  
14 table, each side is taking a stance. Negotiations between state employees and the taxpayers'  
15 representative are meant to be adversarial, not deliberative. One party is tasked with representing  
16 the people of Washington in securing both the services to which they are entitled and protecting  
17 their hard-earned tax dollars. One party is tasked with representing the people who provide those  
18 services and want to be paid those tax dollars. That is not to say negotiations must be hostile, but  
19 they are certainly not the type of deliberation considered under §280. Black's Law Dictionary  
20 defines deliberation "as the act of carefully considering issues and options before making a  
21 decision or taking some action," especially "the process by which a jury reaches a verdict, as by  
22 analyzing, discussing, and weighing the evidence." Black's Law Dictionary 520 (10th ed. 2014).  
23 The analogy to a jury is particularly illustrative. In a jury, all the participants have a common  
24 goal: to reach the truth. They may disagree and debate, but their interests are aligned. That is

1 deliberation. In contrast, the parties here are engaged in “bargaining,” as the relevant State  
2 Collective Bargaining statute, RCW 41.80, makes clear. “Bargain” is defined in Black's Law  
3 Dictionary as “[an] agreement between parties for the exchange of promises or performances.”  
4 Black's Law Dictionary 169 (9th ed. 2009). The premise of a bargain is an exchange. There is a  
5 necessary lack of mutuality in bargaining, while for deliberation, mutuality is necessary. The  
6 offers represent the culmination of internal deliberation, leading to a stance taken in bargaining  
7 against the other party.

8 The adversity necessary to bargaining is especially clear for state employees when comparing  
9 the State Collective Bargaining statute, RCW 41.80, with the Public Employees’ Collective  
10 Bargaining statute, RCW 41.56, which applies to local and municipal employees. In RCW 41.56,  
11 the Legislature included a declaration of purpose which states that the goal of the chapter is to  
12 “promote the continued improvement of the relationship between public employers and their  
13 employees.” RCW 41.56.010. In contrast, RCW 41.80, which governs the relevant negotiations,  
14 contains no such mandate.

15 **ii. In the Alternative, Deliberations Were Certainly Concluded When the**  
16 **Agreements Were Executed and Submitted to the Legislature.**

17 Even if this Court is not persuaded that offers made in bargaining are categorically excluded  
18 from §280, disclosure at the time of CADF’s request was required by law because the next best  
19 candidate for the conclusion of deliberation is at the time the agreements were signed by the  
20 negotiating parties. RCW 41.80.030(1) dictates that “[t]he parties to a collective bargaining  
21 agreement shall reduce *the agreement* to writing and both shall execute it.” (emphasis added).  
22 The executed agreement is then presented to the Legislature for funding as part of the  
23 Governor’s budget proposal. RCW 41.80.010(3)(b). If the legislature rejects or fails to act on the  
24 submission, either party may reopen all or part of the agreement or the exclusive bargaining

1 representative may seek to implement the procedures provided for in RCW 41.80.090. *Id.* As the  
2 statute makes clear, agreement has been reached by the time the Governor submits a budget  
3 proposal. If there is agreement between the parties, they have ceased any deliberating,  
4 considering, recommending, or bargaining that may have been happening before that. This  
5 logical reason for concluding that the “decision” relevant to the predecisional documents had  
6 been made is also supported in jurisprudence. In *West v. Port of Olympia*, 146 Wn. App. 108,  
7 117, 192 P.3d 926, 931 (2008), Division I held that when a government agency had executed a  
8 lease prior to the records request at issue, documents related to the lease were not exempt under  
9 §280, despite the lower court’s finding that the agency had a continuing obligation to negotiate  
10 with the same party, which might be adversely affected by disclosure. In so holding, Division I  
11 also clarified *American Civil Liberties Union v. City of Seattle*, 121 Wn. App. 544, 89 P.3d 295  
12 (2004) (“*ACLU*”), the case on which Defendant relied when denying CADF’s request. In *West*,  
13 Division I explained that its prior ruling “impliedly held that the exemption applied only until the  
14 results of the policy-making process were presented to the city council for adoption.” *West*, 146  
15 Wn. App at 118. In *ACLU*, requester ACLU sought records related to collective bargaining with  
16 the City’s police officer’s union. Seattle City Council was the legislative body that had to  
17 approve the final agreement between the City and the union. *ACLU* 121 Wn. App. At 553-554.  
18 As explained in *West*, Division I held that the policy-making process was complete when the  
19 agreement was presented to the legislative body. Here, the policy making has also been  
20 completed and for the same reason. Now the agreements only wait for a yay or nay from the  
21 Legislature, as all deliberation and bargaining are complete.

22  
23  
24

1                   **iii.    Waiting Until the Legislature Decides on Whether to Fund the**  
2                   **Governor’s Request Contradicts Existing Law.**

3                   The Legislature plays no part in deliberation or bargaining under the State Collective  
4 Bargaining statute, and therefore the decision that was being considered is final, with or without  
5 Legislative action. The statute makes this clear. The Governor does not ask the Legislature to  
6 approve or disapprove the negotiated agreements, but rather asks the Legislature to *fund* the  
7 agreements. *See* RCW 41.80.010.(3)(b). As to their content, the agreements are not subject to  
8 anyone else’s approval. In fact, the statute refers to OFM and the bargaining representatives  
9 signing the agreements as “execution.” RCW 41.80.030. Performance, Black’s Law Dictionary  
10 (11<sup>th</sup> ed. 2019). It is also worth noting that, in the definition of “performance,” Black’s Law  
11 Dictionary also refers readers to the definition of “execution.” Surely an executed contract is the  
12 hallmark of completed deliberation.

13                   **b.    Disclosure Will Not Injure the Process, as PAWS and §280 Require, Because**  
14                   **These Records Will be Disclosable Before the Parties are Even Able to Re-**  
                      **enter Negotiations, Making Disclosure Now a Nullity.**

15                   No party disputes that these records will become disclosable under the PRA eventually. *See*  
16 Complaint at ¶ 13; Answer at ¶ 13. As explained above, §280 does not apply once the  
17 deliberative process ceases. Even if the Court were to accept OFM’s argument that the  
18 agreements are not final until funded, the records would still be disclosable once the Legislature  
19 acts. Therefore, the injury portions of the *PAWS* test cannot be satisfied here. The only way  
20 negotiation can be reopened under RCW 41.80 is if the Legislature does not fund the  
21 agreements. RCW 41.80.030(b)(3). Once the Legislature takes that step, the policy-making  
22 deliberations have ceased under all parties’ definitions and the Plaintiff will make another  
23 request for the records at that time. Appendix 1, Declaration of Jackson Maynard. Any potential  
24

1 injury that disclosure now could create is already baked into future negotiations because the  
2 records are going to be disclosed eventually.

3 **c. The Exemption Does Not Apply to Subjective Evaluations That are Treated**  
4 **as Raw Factual Data and Are Not Subject to Further Deliberation and**  
5 **Consideration.**

6 Even if the deliberations are not final until the Legislature acts, as Defendant contends, the  
7 records still do not reflect an opinion or recommendation, but rather evaluations that are relied  
8 upon as factual data in future deliberations and not subject to further debate. Information on  
9 which deliberation relies is not exempt from disclosure, even if it is an opinion. *See Hearst Corp.*  
10 *v. Hoppe*, 90 Wn. 2d 123, 134, 580 P.2d 246, 252 (1978) (“*Hearst*.”) In *Hearst*, the King County  
11 Assessor refused to disclose evaluations and notes related to certain parcels on the basis that they  
12 were part of its ongoing process for assessing parcel values. *Hearst*, 90 Wn.2d at 133-134. The  
13 court rejected this argument holding that, although the documents requested contained  
14 evaluations that are opinions, they were not the type of internal recommendations the exemption  
15 protected because they did not serve as recommendations for further deliberation, but rather  
16 underlying facts on which future deliberations relied. *Id.* The court emphasized that this was  
17 clear because the evaluations themselves were not subject to further debate. Here, the offers  
18 CADF seeks may represent conclusions that are opinion, but they are not recommendations for  
19 further action. The offers are not subject to final debate. They are complete actions, just like the  
20 evaluations in *Hearst*, and just like the evaluations, should have been disclosed upon request.

21 **d. OFM’s Reliance upon *ACLU v. City of Seattle* is Misplaced.**

22 When OFM refused to produce records, it attempted to justify its actions arguing that  
23 “[a]lthough the tentative agreements have been signed, and will be available on our website  
24 soon, underlying negotiation-related material continues to be exempt until final legislative

1 approval of funding (typically this means when the budgets are signed by the governor). Until  
2 that time, the agreements are not final and the records you have requested are exempt as part of a  
3 deliberative process under RCW 42.56.280. *See also ACLU v. City of Seattle*, 121 Wn. App. 544  
4 (2004).” Complaint at ¶8, Answer at ¶8. However, the Defendant’s reliance on *ACLU* is  
5 misplaced. First, as explained in IV.A.a.ii, *supra*, *ACLU* does not support the assertion that  
6 records related to a decision submitted to the legislature can be withheld pending legislative  
7 action. Rather, it explicitly stated that once the records in question in that case were presented to  
8 the relevant legislative body, the exemption ceased to apply. *ACLU* 121 Wn. App. At 553-554.

9 Furthermore, *ACLU* addressed different documents from those at issue here. In that case,  
10 Division I remanded for in camera review of the documents, and although the court did establish  
11 the criteria for evaluating whether documents were exempt under §280, it did not rule on how  
12 those criteria applied to the requested documents. *ACLU* 121 Wn.App. at 550-554. After remand,  
13 in *ACLU II*, the court gives more detail on the records sought. In the *ACLU* cases, the  
14 government employer and the bargaining representative were engaging in “interest-based  
15 bargaining,” (“IBB”). *ACLU II*, No. 62561-6-I, 2009 Wn. App. LEXIS 1758, at \*2-3 (Ct. App.  
16 July 20, 2009). The court explained that

17 In contrast to traditional position-based bargaining, where parties have concrete positions,  
18 IBB focuses on issues to encourage both sides to seek solutions jointly to meet each other’s  
19 needs and satisfy mutual interests. Rather than moving from position to counter-position to a  
20 compromise settlement, negotiators in an IBB process attempt to identify each party’s  
21 interests and needs before developing specific solutions. Thus, the first step in this process  
22 requires each party to identify and clarify issues lists, which include the items each party  
23 would like to be addressed during negotiations. The parties then exchange the lists, and they  
24 become the agenda for the rest of the negotiation process.

*Id.* The *ACLU* requested the issue lists created for those negotiations and *ACLU II* held that they  
were exempt from disclosure because they did not reflect final decisions, but recommendations  
that guided further deliberation. *Id.* at 21. These issue lists are not analogous to the offers made in

1 OFM’s negotiations with bargaining representatives because offers take stances on issues, rather  
2 than identifying issues that will need to be resolved. *ACLU* and *ACLU II* do not control here.

3 **B. Even If §280 Did Apply, the Exception to the Exemption Contained in the Statute**  
4 **Would Also Apply, Making Disclosure Mandatory.**

5 Once a publicly available agency document references a document which would have been  
6 otherwise exempt under §280, the exemption no longer applies. In her letter to Director  
7 Schumacher, Ms. Doelman describes OFM’s goals in negotiation in detail. *See* Maynard  
8 Declaration, Exhibit D. She talks about what the agency “prioritized,” “sought,” and most  
9 tellingly, “offered.” These references to the actions or positions OFM took in negotiation waive  
10 any privilege §280 might have provided for documentation of those actions or positions. In the  
11 only case applying this portion of §280, *Zink v. City of New Mesa*, Division III held that when  
12 the city issued a building permit denial which referenced complaints received from neighbors,  
13 §280 did not prevent disclosure because the complaints were “publicly cited by an agency in  
14 connection with an agency action.” *Zink v. City of Mesa*, 140 Wn. App. 328, 344, 166 P.3d 738,  
15 746 (2007) (citing RCW 42.56.280). Here, the letter describes itself as the “Official 2021  
16 Collective Bargaining Submittal” and purports to describe the “priorities and outcomes of  
17 collective bargaining.” This Court must decide if these references to what OFM offered and did  
18 in negotiation trigger the exception included in §280.

19 In resolving this question, the Court has only the guide posts of legislative intent and the  
20 plain meaning of the text. No jurisprudence has provided more specific interpretational tools.  
21 However, both of the canons of construction counsel in favor of disclosure here.

22 Turning first to legislative intent, numerous courts have made clear that the PRA’s purpose is  
23 to increase disclosure. *See, e.g., Sanders v. State*, 169 Wn.2d 827, 849, 240 P.3d 120 (2010);  
24 *Brouillet v. Cowles Pub’g Co.*, 114 Wn.2d 788, 793, 791 P.2d 526 (1990); *see also Prison Legal*



1 *News, Inc. v. De't of Corr*, 154 Wn.2d 628, 645, 115 P.3d 316 (2005) (holding that even if a  
2 record contains exempt information, the record must still be disclosed if redaction would serve  
3 the purpose of the exemption). In determining legislative intent for initiatives, the voters should  
4 be treated as the legislative body and voters' pamphlets explaining the initiative can be relied  
5 upon to understand their intent. *State ex rel. Evergreen Freedom Found, v. Wash. Educ. As'n*,  
6 140 Wn.2d 615, 637, 999 P.2d 602 (2000); *see also Hearst*, 90 Wn.2d at 128 (quoting 1-276  
7 voter pamphlet showing voters intended to "make [] all public records and documents in state  
8 and local agencies available for public inspection and copying except those exempted to protect  
9 individual privacy and to safeguard essential governmental functions".) This preference for  
10 disclosure "severely limits" the scope of the exemption. *Hearst*, 90 Wn.2d at 133. Applying this  
11 canon here, "publicly cited" must be interpreted broadly to increase disclosure.

12 Taking these words in turn, "publicly" means "in a manner observable by or in a place  
13 accessible to the public : openly." *Publicly*. Merriam-Webster.com Dictionary, Merriam-  
14 Webster, <https://www.merriam-webster.com/dictionary/publicly>. Accessed 20 Feb. 2023. "Cite"  
15 has a few potential meanings. Merriam-Webster's Dictionary offers five.

16 1. to call upon officially or authoritatively to appear (as before a court)

17 2. to quote by way of example, authority, or proof

18 3a. to refer to especially : to mention formally in commendation or praise, e.g., 'She was  
19 cited for bravery.'

20 3b. to name in a citation, e.g., 'cited by the trustees for his work in public health.'

21 4. to bring forward or call to another's attention especially as an example, proof, or

22 precedent, e.g., 'cited the weather as a reason for canceling the picnic;' 'cited several studies  
23 that support his theory.'

1 *Cite.* Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam->  
2 [webster.com/dictionary/publicly](https://www.merriam-webster.com/dictionary/publicly). Accessed 20 Feb. 2023. Applying the mandate for broad  
3 interpretation, *supra*, and giving weight to the plain meaning of the statute, the Court should  
4 choose to accept an agency communication that meets any one of the plain meaning definitions  
5 for “cite.” In this case, the final definition is the most fitting. In the letter, Ms. Doelman states,  
6 “Finally, based on Governor Inslee’s Directive 22-13.1, COVID-19 Vaccination Standards for  
7 State Employees, we prioritized the safety of our workforce by establishing a permanent  
8 COVID-19 vaccination as a condition of employment and *offered* incentives for employees who  
9 receive COVID-19 boosters.” Maynard Decl. Exhibit 1 at page 1 (emphasis added). Ms.  
10 Doelman is citing this act, this offering, as proof or evidence of the agency’s implementation of  
11 Governor Inslee’s directive. The exemption no longer applies because the offers have been cited  
12 in connection with the agency’s submission of the negotiated agreements.

13 To hold otherwise would contradict *Hearst’s* holding that the purpose of the exemption,  
14 protecting negotiations, severely limits the scope of its application. Practically, if an agency  
15 publicly cites a document in connection with its actions, the agency is showing that the need for  
16 protecting the underlying documentation is not sufficient to merit keeping it secret. This is the  
17 only reading of the second part of §280 that makes sense when viewed through the lens of the  
18 section’s overall goal. The voters were not simply setting up a “gotcha” moment for agencies,  
19 they were attempting to ensure maximum disclosure while still allowing the government to  
20 engage in necessary functions. The level of detail provided in the letter shows that the underlying  
21 goals and negotiations of the agency prior to signing the agreements do not need to be kept secret  
22 and accordingly, should be disclosed.

1           **C. The Court Should Assign a \$6 Penalty, Per Record, Per Day.**

2           The PRA is not a toothless request, outlining responsibilities without penalties. It is a  
3 powerful tool for accountability, one of the best in the country. *See, e.g., BGA-Alper Integrity*  
4 *Index, 2008 BGA-Alper*, <https://www.bettergov.org/2008/10/27/2008-bga-alper-integrity-index/>  
5 Accessed Feb. 27, 2023 (ranking Washington as fourth most responsive to its citizens through  
6 open meetings, transparency, and conflict of interest laws). Part of what makes the PRA so  
7 empowering to Washingtonians is the fact that it provides an enforcement mechanism for all  
8 requesters and ensures that litigants who do the people’s work in holding the state accountable  
9 are compensated for their efforts. It also allows for penalizing state actors who make such  
10 enforcement necessary.

11           The PRA mandates that a requester who successfully litigates for the right to receive  
12 records

13                   *shall* be awarded all costs, including reasonable attorney fees, incurred in connection with  
14 such legal action. In addition, it shall be within the discretion of the court to award such  
15 person an amount not to exceed one hundred dollars for each day that he or she was  
16 denied the right to inspect or copy said public record.

17 RCW 42.56.550(4) (emphasis added). If the Court is persuaded by any one of Plaintiff’s  
18 arguments in favor of disclosure, Defendant must pay CADF’s attorney’s fees and costs. *See,*  
19 *e.g., Amren v. City of Kalama*, 131 Wn.2d 25, 929 P.2d 389 (1997). Turning to penalties, the  
20 statutory language presents two questions to the Court: 1) when the Plaintiff was first “denied the  
21 right to inspect or copy” public records; and 2) what an appropriate per day penalty is. Here, the  
22 first question depends on at what point the Court finds the exemption ceased to apply. Plaintiff  
23 contends that the count begins on the date of OFM’s denial, October 26, 2022, as negotiations  
24 were completed and the Doelman submittal had already been published. However, if the Court

1 finds that the records were properly withheld before they were disclosed to the legislature, the  
2 count would run from the date of CADF’s complaint, thereby re-submitting its request for  
3 records to OFM. Either way, daily penalties run until the records are produced. As of the date of  
4 this filing, it is 126 days since OFM’s original denial and 76 days since the date of the complaint.

5 The daily penalty amount requires more analysis, directed by the Supreme Court’s  
6 decision in *Yousoufian v. Office of Ron Sims, King Cty. Exec.*, 168 Wn. 2d 444, 467-68, 229 P.3d  
7 735, 747-48 (2010) (*Yousoufian V*), which established 7 mitigating and 9 aggravating factors<sup>3</sup>  
8 for determining penalty amounts. Taking *Yousoufian V* as a whole, it created these lists of factors  
9 as tools to determine an agency’s level of culpability and to create a sufficient deterrent for  
10 future misconduct. *See Yousoufian V* 168 Wn.2d at 463. Applying those factors here, we need  
11 only examine a few because, “[b]eing nonexclusive, not all factors apply equally, and no single  
12 factor controls. Ultimately, overall agency culpability is the focus of the penalty determination  
13 due to an overarching concern for deterrence.” *Cantu v. Yakima Sch. Dist. No. 7*, 23 Wn. App. 2d  
14 57, 104, 514 P.3d 661, 686 (2022) (citing *Yousoufian V* at 460-468). Looking first to the  
15 culpability analysis, then turning to the amount necessary for effective deterrence, a \$6 per day,  
16 per record penalty is both proportionate to the agency’s culpability and the minimum sufficient  
17 to encourage such a large agency to err on the side of disclosure in the future.

18 \_\_\_\_\_  
19 <sup>3</sup> *Yousoufian V* held that “aggravating factors that may support increasing the penalty are (1) a delayed response by  
20 the agency, especially in circumstances making time of the essence; 13 (2) lack of strict compliance by the agency  
21 with all the PRA procedural requirements and exceptions; (3) lack of proper training and supervision of the agency’s  
22 [\*468] personnel; (4) unreasonableness of any explanation for noncompliance by the agency; (5) negligent,  
23 reckless, wanton, bad faith, or intentional noncompliance with the PRA by the agency; (6) agency dishonesty; (7)  
24 the public importance of the issue to which the request is related, where the importance was foreseeable to the  
agency; 14 (8) any actual personal economic loss to the requestor resulting from the agency’s misconduct, where the  
loss was foreseeable to the agency; and (9) a penalty amount necessary to deter future misconduct by the agency  
considering the size of the agency and the facts of the case” and that “Factors that may serve to decrease the penalty  
are (1) a lack of clarity in the PRA request; (2) the agency’s prompt response or legitimate follow-up inquiry for  
clarification; 10 (3) the agency’s good faith, honest, timely, and strict compliance with all PRA procedural  
requirements and exceptions; (4) proper training and supervision of the agency’s personnel; (5) the reasonableness of  
any explanation for noncompliance by the agency; (6) the helpfulness of the agency to the requestor; and (7) the  
existence of agency systems to track and retrieve public records.” *Id.*

1                   **a. Penalty of \$6 Per Record Per Day Is the Minimum This Court Could Assign**  
2                   **When Properly Applying Factors Established in *Yousoufian V.***

3                   In this case, not all factors are applicable, whether aggravating or mitigating, but a few  
4                   have special significance in a case about records documenting the relationship between the  
5                   Governor’s designee, OFM, and some of his biggest donors – public sector unions.

6                   <https://www.theolympian.com/news/politics-government/article137898513.html> (Union groups  
7                   that bargain with the state gave about \$40,000 directly to Inslee’s campaign in 2016, making the  
8                   maximum amount of union money that could be considered to have benefited the Governor —  
9                   either directly or indirectly — about \$750,000.) Three aggravating factors show OFM’s high  
10                  degree of culpability, while the mitigating factors are only helpful to OFM in that they highlight  
11                  procedural, if not substantive, compliance with the PRA.

12                  **i. Aggravating Factors**

13                  The aggravating factors from *Yousoufian V* are myriad, but three are most relevant here:  
14                  the agency’s unreasonable explanation for noncompliance; OFM’s negligent, reckless, wanton,  
15                  bad faith, or intentional noncompliance; and the public importance of the issue to which the  
16                  request is related where the importance was foreseeable to the agency.

17                  The first two relevant factors go together. Because OFM knew or should have known that  
18                  its refusal to disclose was not justified, the explanation it provided was unreasonable. In denying  
19                  the request, OFM stated:

20                  The records you have requested are related to the 2023-25 collective bargaining  
21                  agreements. Although the tentative agreements have been signed, and will be available on  
22                  our website soon, underlying negotiation-related material continues to be exempt until  
23                  final legislative approval of funding (typically this means when the budgets are signed by  
24                  the governor). Until that time, the agreements are not final and the records you have  
                    requested are exempt as part of a deliberative process under RCW 42.56.280. See also  
                    *ACLU v. City of Seattle*, 121 Wn. App. 544 (2004). This email serves as your exemption  
                    log.

1 Complaint at ¶8, 13 Answer at ¶8, 13. This proffered explanation was not justified by the statute  
2 or case that OFM cited.

3 OFM knew or should have known that at the latest, the negotiation records were not  
4 exempt once the negotiated agreements were made available to the Legislature in December  
5 2022. Both the text of the statute and the case that forms the primary basis of OFM’s argument  
6 make this obvious. First, as discussed in IV.B. *supra*, the Doelman letter, published almost a  
7 month before the agency denied CADF’s request, exposed the negotiations to public review.  
8 §280 does not allow negotiations to be both publicly cited and withheld. Once a document is  
9 cited publicly in connection with an action, or in this instance, a submittal, it is not protected.  
10 The agency knew or should have known that the exemption contained this language, as it  
11 claimed to have put a great deal of legal analysis and thought into its “longstanding  
12 interpretation” of the exemption. It also knew that the Doelman letter discussed the negotiations  
13 and offers and was the “Official Submittal” of the proposed agreements. Therefore, it knew or  
14 should have known that the exemption could not apply.

15 Similarly, the case on which OFM relies for its exemption claim, *ACLU*, states plainly  
16 that the policy-making process was complete once the agreements were presented to the relevant  
17 legislative body. *ACLU* 121 Wn.App. at 553-554. See IV(A)(a)(ii), *supra*, for full analysis of  
18 *ACLU*. OFM knew about this case and knew that it had made the agreements available to the  
19 Legislature at the time Plaintiff renewed its request by filing the complaint in this case. At the  
20 latest, by that point OFM knew the exemption did not apply.

21 Because both proffered justifications were obviously not supported by the law or the  
22 facts, OFM’s explanation for withholding was unreasonable. These two aggravating factors  
23 weigh in favor of an increased penalty.

1 Turning next to the foreseeable public importance of the issue, Plaintiff's request was  
2 made in the end of October in an election year. There is a widespread view in Washington that  
3 public sector unions have a strong connection to Democratic lawmakers. *See, e.g., Unions flex*  
4 *political muscle, secure wins under Democratic one-party rule in Olympia*, Austin Jenkins,  
5 Oregon Public Broadcasting, Aug. 2, 2021. Available at  
6 [https://www.opb.org/article/2021/08/03/unions-flex-political-muscle-secure-wins-under-](https://www.opb.org/article/2021/08/03/unions-flex-political-muscle-secure-wins-under-democratic-one-party-rule-in-olympia/)  
7 [democratic-one-party-rule-in-olympia/](https://www.opb.org/article/2021/08/03/unions-flex-political-muscle-secure-wins-under-democratic-one-party-rule-in-olympia/). Accessed February 27, 2023. There is also a fear that the  
8 relationship leads to negotiations that are not in the best interest of the taxpayer when it comes to  
9 state-funded union contracts. *See, e.g., Collective Bargaining and the Influence of Public-sector*  
10 *Unions in Washington State*, Paul Guppy, Washington Policy Center, February 25, 2011.  
11 Available at [https://www.washingtonpolicy.org/publications/detail/collective-bargaining-and-](https://www.washingtonpolicy.org/publications/detail/collective-bargaining-and-the-influence-of-public-sector-unions-in-washington-state)  
12 [the-influence-of-public-sector-unions-in-washington-state](https://www.washingtonpolicy.org/publications/detail/collective-bargaining-and-the-influence-of-public-sector-unions-in-washington-state). Accessed February 27, 2023. With  
13 two weeks to go before the 2022 election, OFM denied the public access to documents that could  
14 help evaluate the veracity of those views. Could this have affected the outcome of the elections?  
15 It is impossible to tell because OFM never gave the public the chance. This obvious impact  
16 should be included when considering the culpability and penalty amount for OFM's  
17 noncompliance.

## 18 ii. Mitigating Factors

19 Plaintiff is seeking a modest penalty amount because, though it was an impactful and at  
20 best reckless error, Defendant OFM violated the PRA in one way: applying an exemption it  
21 knew or should have known no longer applied. *Yousoufian V*'s mitigating factors are also  
22 broadly inapplicable here. For example, there was no lack of clarity in CADF's request for  
23  
24

1 records and no need for the agency to request clarification. However, two factors certainly do not  
2 help OFM and two may slightly mitigate.

3 First, OFM does not qualify for mitigation through “good faith, honest, timely, and strict  
4 compliance with all PRA procedural requirements and exceptions,” or through “the  
5 reasonableness of [its] explanation for noncompliance[.]” *Yousoufian V*, 168 Wn.2d at 467. As  
6 explained in the aggravating factors, *supra*, OFM’s reliance on §280 and *ACLU* was not honest  
7 or in good faith. It was directly contrary to the law on which it claimed to rely. However, the  
8 agency was reasonably “helpful [] to the requestor” in that responses were prompt and complied  
9 with procedural requirements such as an exemption log. Also, it appears that OFM has adequate  
10 “systems to track and retrieve public records,” based on its prompt interrogatory responses.  
11 Generally, the mitigating factors related to procedural correctness are favorable to OFM, but  
12 those related to proper understanding of public records are not.

13 As the WSBA PRA Deskbook notes, exemptions are not mandatory in most cases.  
14 Chapter §6.7 Reviewing Records for Exemptions (Public Records Act Deskbook: Washington's  
15 Public Disclosure and Open Public Meetings Laws (WSBA) (2d ed. 2014 and 2020  
16 Supplement). Erring on the side of disclosure is not only the right thing to do under the PRA’s  
17 broad policy goals and statements, but also the financially wise thing to do. Agencies are  
18 shielded from liability for disclosure, RCW 42.56.060, while in contrast, even “good faith  
19 reliance on an exemption will not exonerate an agency from imposition of a penalty where the  
20 agency has erroneously withheld a public record.” *Amren*, 131 Wn.2d at 36. This Court should  
21 take this opportunity to reinforce that incentive to disclose by penalizing withholding here.



1                   **b. Penalty of \$6 Per Record Per Day is the Minimum This Court Could Assign**  
2                   **to Adequately Serve the Policy Goal of Deterrence.**

3                   The final factor of the nine aggravating factors in *Yousoufian V* is unique in that the  
4 court’s analysis must look beyond the facts of the withholding and examine the relative effect a  
5 certain penalty amount would have on the agency in question. *Yousoufian V* 168 Wn.2d at 468.  
6 That factor instructs the Court to consider “a penalty amount necessary to deter future  
7 misconduct by the agency considering the size of the agency and the facts of the case.” *Id.* In this  
8 case, based on OFM’s budget, size, and tax base, Plaintiff believes its total request of \$838,530  
9 is the minimum required to have any deterring effect on Defendant.

10                   Although the maximum penalty this Court could award is over \$71 million dollars,  
11 Plaintiff recognizes that such a penalty would merely be passed on to the taxpayers. OFM has  
12 withheld 1,331 documents responsive to CADF’s request. These records are comprised of 5,679  
13 pages. The PRA and related case law allow for a \$100.00 per day, per page penalty. These  
14 records have been withheld for 126 days. Therefore, the maximum penalty amount equals 5,679  
15 pages times 126 days times \$100.00, or \$71,555,400. Instead, however, CADF requests a per  
16 record, per day penalty of \$6, which equates to \$838,530 at the date of this filing. As the  
17 language of this factor makes clear, deterring an agency with a large budget requires a greater  
18 penalty than an agency with a small budget. *See also, Cantu v. Yakima Sch. Dist. No. 7*, 23 Wn.  
19 App. 2d 57, 514 P.3d 661 (2022) (holding that a \$10 per day penalty was inadequate for such a  
20 large agency). OFM’s budget is enormous. For the previous biennium, 2021-2023, OFM  
21 requested \$367,736,000. Governor Inslee’s Proposed 2021-2023 Budgets, Agency Detail  
22 Budgets. Office of Financial Management. Available at [https://ofm.wa.gov/budget/state-](https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2021-23-budgets/agency-detail-budgets/105)  
23 [budgets/gov-inslees-proposed-2021-23-budgets/agency-detail-budgets/105](https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2021-23-budgets/agency-detail-budgets/105). Accessed February  
24 27, 2023. It estimates that it has spent \$339,152,000 this biennium with four months to go.

1 Governor Inslee’s Proposed 2023-2025 Budgets, Agency Detail Budgets. Office of Financial  
2 Management. Available at [https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2023-](https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2023-25-budgets/agency-detail-budgets/105)  
3 [25-budgets/agency-detail-budgets/105](https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2023-25-budgets/agency-detail-budgets/105). Accessed February 27, 2023; *See also* Biennium, OFM  
4 Glossary, (defining Biennium as “A two-year fiscal period. The Washington state biennium runs  
5 from July 1 of an odd-numbered year to June 30 of the next odd-numbered year.”)  
6 <https://ofm.wa.gov/budget/glossary-budget-terms#B> (Last viewed February 27, 2023). This time,  
7 the agency is requesting \$451,848,000. Governor Inslee’s Proposed 2023-2025 Budgets,  
8 Agency Detail Budgets. Office of Financial Management. At that number, assuming the budget  
9 is approved, Plaintiff’s requested penalties are less than 0.2% of the agency’s budget. Any less  
10 would simply make no impression on an agency of this size.


11           Secondly, as agencies are funded by taxpayers, courts have examined the relative burden  
12 on taxpayers when determining appropriate deterrent penalties. *See, e.g., Hoffman v. Kittitas*  
13 *Cty.*, 194 Wn. 2d 217, 232, 449 P.3d 277 (2019) (upholding two penalty amounts in part because  
14 the total penalty award amounted to \$0.34 and \$0.19 per taxed resident). The tax base supporting  
15 OFM is the entire state of Washington. According to the 2020 census, the population of  
16 Washington is 7,715,946. Accordingly, Plaintiff’s requested penalty of \$838,530 represents only  
17 \$0.10 per taxpayer burden. This is in line with other penalty evaluations done by Courts of  
18 Appeals.

19           The people of Washington are each footing a \$58.56 bill for OFM over the next two  
20 years. An agency that consumes that much public funding should be held to an incredibly high  
21 standard and should err on the side of disclosure.

1 **V. CONCLUSION**

2 §280 did not exempt the initial offers in the 2023-2025 collective bargaining negotiation  
3 under RCW 41.80 at the time Plaintiff requested them. The exemption only applies to  
4 predecisional recommendations and the initial offers were neither predecisional nor  
5 recommendations. And even if they were, disclosure now, as opposed to disclosure in a few  
6 months, threatens no injury to deliberations. Finally, the records were cited by the agency in a  
7 public statement about its submission to the Legislature, triggering the second part of §280 and  
8 showing that the need for secrecy if there was one, has passed. For these reasons, the Court  
9 should grant CADF’s petition and declare that OFM violated the PRA, ordering the release of all  
10 requested records. The Court should also award Plaintiff all costs and attorney’s fees, as well as  
11 assign a monetary penalty for OFM’s violation.

12 Respectfully submitted this 1<sup>st</sup> day of March, 2023.

13   
14 \_\_\_\_\_  
15 JACKSON WILDER MAYNARD, JR.  
16 EXECUTIVE DIRECTOR &  
17 COUNSEL  
18 WSBA No. 43481


17 CITIZEN ACTION DEFENSE FUND  
18 300 DESCHUTES WAY SW, SUITE 300  
19 TUMWATER, WA 98501  
20 (360) 878-9206

21 Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I certify that I caused a true and correct copy of Plaintiff’s Opening Brief to be served on  
3 all parties, listed below, in the manner outlined in the parties’ E-Service Agreement:

4 For Defendant Office of Financial Management: Shawn.Horlacher@atg.wa.gov  
5 Kate.Worthington@atg.wa.gov  
6 LPDArbitration@atg.wa.gov

7  
8   
9 JACKSON WILDER MAYNARD, JR.  
10 EXECUTIVE DIRECTOR &  
11 COUNSEL  
12 WSBA No. 43481

11 CITIZEN ACTION DEFENSE FUND  
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13 TUMWATER, WA 98501  
14 (360) 878-9206

15 Attorney for Plaintiff

# APPENDIX 1

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<input type="checkbox"/> Expedite <input type="checkbox"/> No hearing set <input checked="" type="checkbox"/> Hearing is set Date: March 31, 2023 Time: 1:30 pm Judge/Calendar: Honorable Mary Sue Wilson
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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

CITIZEN ACTION DEFENSE FUND, a  
Washington nonprofit,

Plaintiff,

v.

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

Defendant.

No. 22-2-03426-34

**APPENDIX 1 - DECLARATION OF  
JACKSON MAYNARD**

I, Jackson Maynard, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:


1. I am over the age of 18, have personal knowledge of the facts set forth herein, and am competent to testify.
2. I am the Executive Director for the Citizen Action Defense Fund (“CADF”), a nonprofit organization that supports and pursues strategic, high-impact litigation in cases to advance free markets, restrain government overreach, and defend

1 constitutional rights. In early October, I learned that the Office of Financial  
2 Management (“OFM”) was refusing to provide certain records regarding the  
3 collective bargaining agreements with public sector unions, and it appeared to me that  
4 this violation of the law was within CADF’s mission.

- 5 3. On October 20, 2022 I sent a public records request via email to OFM in which I  
6 requested the opening offers for the state and the unions in negotiating the statewide  
7 2023-2025 collective bargaining agreements.
- 8 4. On October 26, 2022 OFM responded by denying the request on the basis that it was  
9 exempt from disclosure under RCW 42.56.280, which is commonly referred to as the  
10 “deliberative process exemption.”
- 11 5. Regardless of whether the Legislature passes or declines to provide funding in the  
12 2023 biennial budget for the collective bargaining agreements that are the subject of  
13 this suit, I will submit a new request for the records in either circumstance.
- 14 6. A true, accurate, and complete copy of the Complaint in this case is attached as  
15 Exhibit A to this declaration.
- 16 7. A true, accurate, and complete copy of the Answer filed by the Defendant in this case  
17 is attached as Exhibit B to this declaration.
- 18 8. A true, accurate, and complete copy of the Defendant’s Responses to Plaintiff’s First  
19 Interrogatories is attached as Exhibit C to this declaration.
- 20 9. A true, accurate, and complete copy of a document entitled “Official 2023-2025  
21 Collective Bargaining Submittal” is attached as Exhibit D to this declaration.  
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Signed March 1, 2023 in Olympia, Washington.

  
\_\_\_\_\_  
Jackson Maynard, WSBA No. 43481  
jackson@citizenactiondefense.org  
300 Deschutes Way SW, Suite 300  
Tumwater, WA 98501  
(360) 878-9206



# EXHIBIT A

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<input type="checkbox"/> Expedite <input checked="" type="checkbox"/> No hearing set <input type="checkbox"/> Hearing is set Date: Time: Judge/Calendar:
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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

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21  
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23  
24 Attorney for Requestor


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   
15 JACKSON WILDER MAYNARD, JR.  
16 WSBA No. 43481  
17 CITIZEN ACTION DEFENSE FUND  
18 300 Deschutes Way SW  
19 Suite 300  
20 Tumwater, WA 98501  
21 (360) 878-9206

22 Attorney for Requestor

# EXHIBIT B

1 Hearing date: January 6, 2023  
2 Hearing time: 9:00 am  
3 Judge/Calendar: Judge Wilson

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7 **SUPERIOR COURT OF WASHINGTON**  
8 **FOR THURSTON COUNTY**

9 CITIZEN ACTION DEFENSE FUND,  
10 a Washington nonprofit organization,

11 Plaintiff,

12 v.

13 WASHINGTON STATE OFFICE OF  
14 FINANCIAL MANAGEMENT in the  
15 OFFICE OF THE GOVERNOR, an  
16 agency of the State of Washington,

17 Defendant.

NO. 22-2-03426-34

ANSWER TO COMPLAINT

18 Defendant, WASHINGTON STATE OFFICE OF FINANCIAL MANAGEMENT,  
19 (OFM), by and through its attorneys of record, ROBERT W. FERGUSON, Attorney General, and  
20 SHAWN HORLACHER and KATE S. WORTHINGTON, Assistant Attorneys General, submits  
21 its Answer in response to Plaintiff's Complaint (Complaint).

## 22 I. STATEMENT OF FACTS

23 1. Defendant is without knowledge or information sufficient to form a belief as to  
24 the truth of the allegations in Paragraph 1, and therefore denies the same.

25 2. Defendant admits OFM, an office created in the Office of the Governor, is a  
26 Washington State agency, and is subject to the Public Records Act (PRA).

3. Defendant admits the allegations as set forth in Paragraph 3.

4. Defendant admits the allegations as set forth in Paragraph 4.



- 1           5. Defendant admits the allegations as set forth in Paragraph 5.
- 2           6. Defendant admits the allegations as set forth in Paragraph 6.
- 3           7. Defendant admits the allegations as set forth in Paragraph 7.
- 4           8. Defendant admits the quoted paragraph, as set forth in Paragraph 6, was one of
- 5 three paragraphs contained in the noted email sent from Nathan Sherrard.
- 6           9. Defendant is without knowledge or information sufficient to form a belief as to
- 7 the truth of the allegations in Paragraph 9, and therefore denies the same.
- 8           10. Defendant admits the allegations as set forth in Paragraph 10.
- 9           11. Defendant admits the allegations as set forth in Paragraph 11.
- 10          12. Defendant admits the allegations as set forth in Paragraph 12.
- 11          13. Defendant admits the quoted paragraph, as set forth in Paragraph 13, was one of
- 12 three paragraphs contained in the noted email sent from Nathan Sherrard.
- 13          14. Defendant admits the allegations as set forth in Paragraph 14.
- 14          15. Defendant admits that OFM negotiates master agreements with union-
- 15 represented state employees, however, Defendant denies the remaining allegations contained in
- 16 Paragraph 15, as the Personnel System Reform Act of 2002 does not dictate that OFM must be
- 17 the negotiating party on behalf of the employer.
- 18          16. Defendant admits that tentative agreements have been signed by bargaining unit
- 19 representatives and an OFM representative, however, Defendant denies the remaining
- 20 allegations contained in Paragraph 16, as the tentative agreements have not yet been approved
- 21 and are only tentative agreements.
- 22          17. Defendant admits the allegations as set forth in Paragraph 17.
- 23          18. Defendant admits the agreements are marked as "tentative," however, Defendant
- 24 denies the remaining allegations contained in Paragraph 18, as the tentative agreements have not
- 25 yet been approved and are only tentative agreements.
- 26          19. Defendant admits the allegations as set forth in Paragraph 19.

1           20. Defendant denies the allegations as set forth in Paragraph 20, and is aware of  
2 partial legislative modification to home care and childcare agreements requiring reopening of  
3 negotiations.

4           21. Defendant denies the allegations as set forth in Paragraph 21, and is aware of  
5 partial legislative modification to home care and childcare agreements requiring reopening of  
6 negotiations.

7           22. Defendant denies the allegations as set forth in Paragraph 22, and is aware of  
8 partial legislative modification to home care and childcare agreements requiring reopening of  
9 negotiations.

10           23. Defendant admits the allegations as set forth in Paragraph 23.

11           24. Defendant is without knowledge or information sufficient to form a belief as to  
12 the truth of the allegations in Paragraph 24, and therefore denies the same.

13           25. Defendant admits the allegations as set forth in Paragraph 25.

14           26. Defendant is without knowledge or information sufficient to form a belief as to  
15 the truth of the allegations in Paragraph 26, and therefore denies the same.

16           27. Defendant asserts and incorporates by reference the responses to the above  
17 paragraphs.

18           28. Defendant denies the allegations as set forth in Paragraph 28.

19           29. Defendant denies the allegations as set forth in Paragraph 29, however, Defendant  
20 admits it has withheld the requested records in response to Plaintiff's request under an exemption  
21 of the PRA found in Revised Code of Washington (RCW) 42.56.280.

22           30. Defendant asserts and incorporates by reference the responses to the above  
23 paragraphs.

24           31. Defendant admits RCW 42.56.550 applies and allows judicial review of this  
25 matter.

26           32. Defendant only admits RCW 42.56.550 applies and allows judicial review of this

1 matter, however Defendant denies that Plaintiff is entitled to any daily penalty, as penalties are  
2 under the discretion of the Court.

3 33. Defendant admits RCW 42.56.550(4) applies, however, Defendant denies the  
4 remaining allegations as set forth in Paragraph 33, as the statute is clear on its face and it is  
5 within the "discretion of the court" to award costs, including reasonable attorney fees "not to  
6 exceed one hundred dollars for each day . . . ."

## 7 II. RESPONSE TO REQUESTED REMEDY

8 As it pertains to the specific remedies requested, Defendant denies any and all allegations  
9 asserting that it has withheld public records in violation of the PRA, Ch. 42.56 RCW.

## 10 III. GENERAL DENIAL

11 Pursuant to Washington Administrative Code (WAC) 391-45-210, any allegation in the  
12 Complaint not specifically admitted is denied. Furthermore, if not specifically addressed in the  
13 Answer above, Defendant hereby makes a general denial to the claim that OFM has withheld  
14 public records in violation of the PRA, Ch. 42.56 RCW.

## 15 IV. AFFIRMATIVE DEFENSES

16 1. By way of further answer and affirmative defense, Defendant asserts that the Plaintiff  
17 fails to state a claim upon which relief can be granted.

18 2. Any claims asserted against Defendant state officials in their individual capacity are  
19 barred by the doctrine of qualified immunity.

## 20 V. RESERVATION OF RIGHT TO AMEND

21 The answering Defendant believes development of the case may reveal factual basis for  
22 the assertion of additional affirmative defenses, and reserves the right to amend this Answer at  
23 such time as such facts are discovered.

## 24 VI. NO WAIVER

25 The answering Defendant, by the answers herein, waives no burden of proof,  
26 presumptions, nor other legal characterizations to which it may otherwise be entitled, and

1 expressly reserves the right to assert such.

2 **VII. PRAYER FOR RELIEF**

3 The Defendant has not violated the PRA. WHEREFORE, the Defendant prays that the  
4 Complaint be dismissed with prejudice and that the Plaintiff take nothing by its Complaint.

5 Defendant further requests that the Court grant such other relief as it may deem  
6 appropriate.

7 DATED this 29th day of December, 2022.

8 ROBERT W. FERGUSON  
9 Attorney General

10 s/ Shawn Horlacher  
11 SHAWN HORLACHER  
12 WSBA No. 45065  
Assistant Attorney General

13 s/ Kate S. Worthington  
14 KATE S. WORTHINGTON  
15 WSBA No. 47556  
16 Assistant Attorney General

1 **CERTIFICATE OF SERVICE**

2 I certify that I caused a copy of this document to be served on all parties or their counsel  
3 of record on the date below as follows:

4  US Mail Postage Prepaid via Consolidated Mail Service and/or Electronic Mail

5 Jackson W. Maynard  
6 Citizen Action Defense Fund  
7 300 Deschutes Way SW  
8 Suite 300  
9 Tumwater, WA 98501

10 I certify under penalty of perjury under the laws of the state of Washington that the  
11 foregoing is true and correct.

12 DATED this 29th day of December, 2022, at Olympia, WA.

13 s/ Shawn Horlacher  
14 SHAWN HORLACHER  
15 WSBA No. 45065  
16 Assistant Attorney General  
17 (360) 586-0210  
18 Shawn.Horlacher@atg.wa.gov  
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# EXHIBIT C

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## SUPERIOR COURT OF WASHINGTON 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. 22-2-03426-34

PLAINTIFF'S FIRST  
INTERROGATORIES TO  
DEFENDANT AND  
DEFENDANT'S RESPONSES  
THERE TO

**INTERROGATORY NO. 1:** Identify each and every person answering or supplying information used in answering these interrogatories.

**ANSWER:** Nathan Sherrard, Assistant Legal Affairs Counsel, Office of Financial Management, P.O. Box 43113, Olympia, WA 98504, (360) 902-0540. Mr. Sherrard's responsibilities as Assistant Legal Affairs Counsel includes responding to public records requests.

**INTERROGATORY NO. 2:** Identify with particularity each and every document withheld in response to Plaintiff's public records request as referenced in Paragraph 29 of Defendant's Answer to Complaint. Please include a general description of each document and number of pages.

1           **ANSWER:** The documents listed below include the initial offers for both the unions and  
 2 the Office of Financial Management, they include the following listed with the associated  
 3 agreement, the number of documents, and the number of pages in those documents:

<u>Bargaining Agreement</u>	<u>Number of Documents</u>	<u>Number of Pages</u>
Adult Family Homes Council	20	96
SEIU 1199NW	70	233
PEBB	4	11
SEBB	5	10
MEBA – Licensed	66	242
MEBA – Port Engineers	32	67
MEBA – Unlicensed	63	234
Childcare SEIU 925	29	73
DFW Enforcement – Teamsters 760	24	104
DFW Enforcement – FWOG	22	235
WSF OPEIU8	7	15
AWAAG	15	41
Coalition of Unions	48	446
WFSE – Higher Education	38	171
IBU	62	297
MM&P – Masters	42	278
MM&P – Mates	25	168
MM&P – Watch Supervisors	35	71
Pacific NW Regional Council of Carpenters	24	119
Puget Sound Metal Trades Council	35	106
WPEA – Higher Education	94	323
Teamsters 117 – DES	11	57
Teamsters 117 – DOC	32	182
WSP Lieutenants & Captains Association	13	81
WSP Troopers Association	28	107
WFSE DOC – Supplemental	29	137
WFSE – OAH – ALJ	34	112
WFSE – GG	121	564
PROTEC17	53	246
WSF SEIU 6	10	22
WAFWP	61	230
WPEA General Government	92	346
Language Access Providers	26	81
FASPAA	61	174

25 ///

26 ///

1 ANSWERS AND OBJECTIONS DATED this 13th day of February 2023, in  
2 conformance with CR 26(g).

3 ROBERT W. FERGUSON  
4 Attorney General

5 s/ Shawn Horlacher  
6 SHAWN HORLACHER  
7 WSBA No. 45065  
8 Assistant Attorney General

9 s/ Kate S. Worthington  
10 KATE S. WORTHINGTON  
11 WSBA No. 47556  
12 Assistant Attorney General



1 **CERTIFICATE OF SERVICE**

2 I certify that I caused a copy of this document to be served on all parties or their counsel  
3 of record on the date below as follows:

4  Electronic Mail

5 Jackson W. Maynard  
6 [jackson@citizenactiondefense.org](mailto:jackson@citizenactiondefense.org)

7 I certify under penalty of perjury under the laws of the state of Washington that the  
8 foregoing is true and correct.

9 DATED this 13th day of February, 2023, at Olympia, WA.

10  
11 s/ Shawn Horlacher  
12 SHAWN HORLACHER  
13 WSBA No. 45065  
14 Assistant Attorney General  
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# EXHIBIT D



STATE OF WASHINGTON

## OFFICE OF FINANCIAL MANAGEMENT

*Raad Building, PO Box 47500 □ Olympia, Washington 98504-7500 □ (360) 725-5100*

September 30, 2022

*Sent via email only*

**TO:** David Schumacher, Director  
Office of Financial Management

**FROM:** Michaela Doelman, Chief Human Resources Officer *MD*  
State Human Resources Division

**SUBJECT: OFFICIAL 2023-25 COLLECTIVE BARGAINING SUBMITTAL**

This memorandum serves as the official collective bargaining status report and submittal for the 2023–25 contract period, per chapters 41.56 and 41.80 RCW. Below is summary-level detail about the priorities and outcomes of collective bargaining, including negotiated memoranda of understanding, tentative agreements and interest arbitration awards.

Employer costs are provided by collective bargaining agreement in the attached financial submittal.

### **Guiding Principles**

The agreements summarized in this submittal represent our continued partnership with labor to invest in our state workforce as we emerge from a global pandemic. We prioritized the compensation needs of our employees through expansive targeted increases to assist agencies in their efforts to recruit and retain our valued workforce, as well as to address pent-up demands due to the lack of targeted increases in the 2021–2023 biennium. We also enhanced the general wage increase amount for all state employees, sought to improve pay for low wage workers where possible, and strengthened our efforts to address the staffing needs of 24/7 facilities that provide vital services to vulnerable individuals within our care. Finally, based on Governor Inslee’s Directive 22-13.1, COVID-19 Vaccination Standards for State Employees, we prioritized the safety of our workforce by establishing a permanent COVID-19 vaccination as a condition of employment and offered incentives for employees who receive COVID-19 boosters.

### **Health care**

The state reached a health care agreement with the coalition of unions to maintain the employer contribution of 85%. The contribution will be determined based on the monthly premium for the self-insured Uniform Medical Plan (UMP) Classic. Employees will continue to contribute 15% of the premium based on the Employer Medical Contribution (EMC) method.

Eligible enrolled subscribers who register for the SmartHealth Program will continue to have the option to earn an annual \$125 wellness incentive in the form of a reduction in the medical deductible or a deposit into the Health Savings Account upon successful completion of required SmartHealth Program activities.

Employees with a full-time equivalent base salary of \$60,000 or less will continue to receive an annual \$250 payment to a medical flexible spending arrangement. Employees must meet certain criteria to be eligible for the payment.

### **Negotiated tentative agreements and interest arbitration awards**

The contractual terms described below are a result of the parties' negotiations or interest arbitration and agreed upon terms in the form of a memorandum of understanding or tentative agreement. In some cases, the parties were not able to reach agreement on all issues and used interest arbitration as their impasse procedure. In those cases, the interest arbitration awards contain the remainder of the provisions. The costs of these agreements and arbitration awards are outlined by collective bargaining agreement in the attached financial submittal.

### ***General government and community college coalition agreements***

Agreements have been reached with the following labor unions (the terms are summarized below):

- The Coalition of Unions (with fewer than 500 employees in each union)
- Professional and Technical Employees Local 17
- Service Employees International Union Healthcare 1199NW
- Teamsters 117 – Department of Enterprise Services
- Washington Association of Fish and Wildlife Professionals
- Washington Federation of State Employees – Administrative Law Judges
- Washington Federation of State Employees – Association of Washington Assistant Attorney Generals
- Washington Federation of State Employees – General Government
- Washington Federation of State Employees – Higher Education Community College Coalition
- Washington Public Employees Association – General Government
- Washington Public Employees Association – Higher Education Community College Coalition

Unless specified differently below, negotiated agreements with general government and community college coalition unions include:

- A general wage increase of 4%, effective July 1, 2023, and 3%, effective July 1, 2024.
- Targeted job classification base range increases.
- Recognition and retention lump sum payment for employees employed on or before July 1, 2022 and continuously employed through July 1, 2023.
- Shift premium increase for eligible shifts from \$1 to \$2.50 per eligible hour.
- COVID-19 booster incentive of \$1,000 lump sum.
  - Does not apply to WFSE Community College Coalition, Association of Washington Assistant Attorneys General.

Additional economic provisions beyond those listed above are summarized below and detailed in the attached submittal:

- Washington Federation of State Employees – General Government

- Supplemental shift premium increases for nurse classifications. Provides expanded eligible hours and hourly rates.
- 5% premium pay for employees who are assigned to a facility that provides direct care to residents, patients and/or clients and whose duties are required to be performed on location.
- Increased \$500 annual lump sum payment for L&I risk codes 7200/7201
- Washington Federation of State Employees – Department of Corrections specific (interest arbitration award)
  - General wage increase of 4% on July 1, 2023, 2% on July 1, 2024, and 2% on January 1, 2025.
  - Shift premium increase for eligible shifts from \$1.00 to \$2.50 per eligible hour.
  - Certain assignment pays for Community Response Unit and Civil Commitment Unit and Essential Prison Backfill positions.
- Service Employees International Union Healthcare 1199NW
  - Supplemental shift premium increases for nurse classifications. Provides expanded eligible hours and hourly rates.
  - 5% premium pay for employees who are assigned to a facility that provides direct care to residents, patients and/or clients and whose duties are required to be performed on location.
  - ARNP ANCC Board certification incentive of \$2,500
  - Preceptor premium pay increase
  - Increase in training dollars
  - \$500 annual lump sum payment for L&I risk codes 7200/7201
  - Additional retention incentive of \$1,500
- The Coalition of Unions (with fewer than 500 employees in each union)
  - Supplemental shift premium increases for nurse classifications. Provides expanded eligible hours and hourly rates.
  - 5% premium pay for employees who are assigned to a facility that provides direct care to residents, patients and/or clients and whose duties are required to be performed on location.
  - \$500 annual lump sum payment for L&I risk codes 7200/7201
- Teamsters Local 117 - Department of Corrections (Interest Arbitration Award)
  - General wage increase of 6% on July 1, 2023 and 4% on July 1, 2024.
  - \$1,500 lump sum payment.
  - Certain targeted job classification increases.
  - Conversion of Step M to a regular step on the salary schedule.
  - Establish a mentorship incentive and an employee referral program.

- Association of Washington Assistant Attorneys General – WFSE
  - Retention premium for AAGs at 5 and 10 years of service with the agency. The retention premium of 5% starting at year 5 will be in effect for the 2023–25 biennium.
  - New step on the salary schedule, effective July 1, 2024
- Washington Federation of State Employees – Administrative Law Judges
  - Reimbursement of annual WA State Bar dues

### *Washington State Patrol*

Agreements were reached with the Washington State Patrol commissioned officers associations. The 2023–25 agreement includes a general wage increase of 4% effective July 1, 2023, and 3% effective July 1, 2024. Lump-sum payments for longevity premiums are also included. Additional economic provisions are summarized below and detailed in the attached submittal.

- Washington State Patrol Lieutenants and Captains Association
  - 5% premium pay for Rapid Deployment Force while deployed
  - \$3,500 lump sum for recruitment and retention, payable in July 2023 and July 2024
  - \$1,000 lump sum payment for COVID-19 booster incentive
  - Increase to annual clothing allowance for certain employees
- Washington State Patrol Troopers Association
  - Increase to 10% for premium pay for field training sergeants
  - 5% premium pay for Rapid Deployment Force while deployed
  - \$3,500 lump sum for recruitment and retention, payable in July 2023 and July 2024
  - \$1,000 lump sum payment for COVID-19 booster incentive
  - Increase to annual clothing allowance for certain employees

### *Department of Fish and Wildlife*

Agreements were reached with the Department of Fish and Wildlife commissioned officers associations. The 2023–25 agreement includes a general wage increase of 4%, effective July 1, 2023, and 3%, effective July 1, 2024. COVID lump sum payments and longevity premiums are also included. Additional economic provisions are summarized below and detailed in the attached submittal.

- Fish and Wildlife Officers Guild
  - Premiums for longevity as a DFW commissioned officer
  - \$2,000 lump sum for retention purposes payment in July 2023
  - Geographic premium for certain locations
- Teamsters Local 760
  - Premiums for longevity as a DFW commissioned officer

- \$2,000 lump sum for retention purposes payment in July 2023
- Geographic premium for certain locations

Attachment: Financial Submittal

cc: Emily Beck, Deputy Director, OFM  
Nona Snell, Assistant Director, OFM Budget  
Roselyn Marcus, Assistant Director, OFM Legal & Legislative Affairs  
Kelly Woodward, Deputy Assistant Director, OFM State HR  
Diane Lutz, Section Chief, Labor Relations, OFM State HR

2023-25 Cost of Interest Arbitration Awards and Tentative Agreements <sup>1, 2, 3</sup>

OFM, State Human Resources Division

	# of Positions	General Fund-State \$		Other Funds \$		Total \$		2023-25
		FY 2024	FY 2025	FY 2024	FY 2025	FY 2024	FY 2025	Biennial \$
<b>General Government RCW 41.80</b>	<b>46,494</b>	<b>\$207,386,928</b>	<b>\$230,195,067</b>	<b>\$252,699,966</b>	<b>\$287,005,255</b>	<b>\$460,086,899</b>	<b>\$517,200,323</b>	<b>\$977,287,214</b>
<b>Association of Washington Assistant Attorneys General - WFSE</b>	<b>686</b>	<b>\$1,125,032</b>	<b>\$1,852,284</b>	<b>\$7,331,925</b>	<b>\$11,493,539</b>	<b>\$8,456,957</b>	<b>\$13,345,823</b>	<b>\$21,802,779</b>
<i>Labor Relations Negotiations</i>								
Establish AAG retention premium of 5% starting at 5 year (2023 -25 CBA Only)		61,170	62,631	539,591	552,483	600,761	615,114	1,215,875
Establish AAG retention premium: 5 years (2.5%) and 10 years (5.0%)		189,591	193,435	1,940,852	1,964,061	2,130,443	2,157,496	4,287,938
Establish additional step on salary schedule; Effective July 2024		-	284,175	-	1,781,348	-	2,065,523	2,065,523
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		620,921	1,131,187	3,385,560	6,148,147	4,006,481	7,279,334	11,285,815
Health care 85% employer / 15% employee (EMC Method)		151,725	180,856	878,775	1,047,500	1,030,500	1,228,356	2,258,856
Provide lump sum payment; Recognition/retention (\$1,000)		101,625	-	587,147	-	688,772	-	688,772
<b>Coalition of Unions</b>	<b>963</b>	<b>\$7,415,955</b>	<b>\$8,777,378</b>	<b>\$7,036,191</b>	<b>\$7,914,535</b>	<b>\$14,452,146</b>	<b>\$16,691,914</b>	<b>\$31,144,061</b>
<i>Labor Relations Negotiations</i>								
Establish 24/7 facility premium pay (5%) (2023-25 CBA Only)		2,455,963	2,462,486	128,933	129,000	2,584,896	2,591,486	5,176,382
Establish extra duty pay for Communication Officer 4		2,270	2,270	18,162	18,162	20,432	20,432	40,864
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		2,407,923	4,304,274	2,313,694	4,133,617	4,721,617	8,437,891	13,159,508
Health care 85% employer / 15% employee (EMC Method)		556,196	662,986	901,054	1,074,056	1,457,250	1,737,042	3,194,292
Increase hourly shift premium (\$2.50)		90,979	90,979	38,923	38,923	129,902	129,902	259,805
Increase supplemental shift premium for nurse classifications		66,071	66,071	-	-	66,071	66,071	132,142
Provide annual lump sum payment; L&I risk class code 7200/7201 (\$500)		93,125	93,125	2,269	2,269	95,394	95,394	190,788
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		321,099	-	518,956	-	840,056	-	840,056
Provide lump sum payment; Recognition/retention (\$1,000)		363,053	-	601,473	-	964,526	-	964,526
Provide Marine Vessel Operator's job class differential over ferry operator job classification		45,298	70,212	-	-	45,298	70,212	115,510
Provide targeted job classification increases		1,013,978	1,024,975	2,512,727	2,518,508	3,526,704	3,543,484	7,070,188
<b>ProTec 17</b>	<b>2,304</b>	<b>\$20,459</b>	<b>\$23,241</b>	<b>\$23,756,784</b>	<b>\$26,900,642</b>	<b>\$23,777,244</b>	<b>\$26,923,883</b>	<b>\$50,701,124</b>
<i>Labor Relations Negotiations</i>								
Communication Officer job classification to different salary schedule (SP)		-	-	7,770	21,409	7,770	21,409	29,178
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		7,994	14,535	8,552,776	15,285,866	8,560,770	15,300,401	23,861,170
Health care 85% employer / 15% employee (EMC Method)		3,570	4,255	3,461,430	4,126,025	3,465,000	4,130,280	7,595,280
Increase hourly shift premium (\$2.50)		3,035	3,035	426,360	426,360	429,395	429,395	858,790
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		2,053	-	1,993,726	-	1,995,779	-	1,995,779
Provide lump sum payment; Recognition/retention (\$1,000)		2,391	-	2,311,399	-	2,313,790	-	2,313,790
Provide one-half times base rate pay for lack of travel notice		<i>Indeterminate</i>						
Provide targeted job classification increases		1,416	1,416	7,003,323	7,040,982	7,004,740	7,042,398	14,047,137

	# of Positions	General Fund-State \$		Other Funds \$		Total \$		2023-25
		FY 2024	FY 2025	FY 2024	FY 2025	FY 2024	FY 2025	Biennial \$
<b>Service Employees International Union Local 1199NW</b>	<b>1,359</b>	<b>\$27,114,183</b>	<b>\$29,697,841</b>	<b>\$8,078,452</b>	<b>\$8,904,384</b>	<b>\$35,192,634</b>	<b>\$38,602,223</b>	<b>\$73,794,859</b>
<i>Labor Relations Negotiations</i>								
Charge Nurse Premium; Expand from full shift to two hours		212,609	212,609	9,181	9,181	221,790	221,790	443,580
Establish 24/7 facility premium pay (5%) (2023-25 CBA Only)		5,873,125	5,898,268	870,753	877,662	6,743,879	6,775,930	13,519,809
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		5,920,134	10,617,336	1,823,903	3,267,585	7,744,037	13,884,920	21,628,957
Health care 85% employer / 15% employee (EMC Method)		1,565,882	1,868,319	461,368	549,951	2,027,250	2,418,270	4,445,520
Increase hourly shift premium (\$2.50)		269,051	269,051	82,283	82,283	351,334	351,334	702,668
Increase Preceptor Premium (\$1.50)		5,606	5,606	763	763	6,369	6,369	12,738
Increase supplemental shift premium for nurse classifications		1,072,963	1,072,963	113,908	113,908	1,186,870	1,186,870	2,373,741
Increase training dollars (\$1,000)		623,887	630,402	182,084	182,084	805,971	812,486	1,618,457
Provide annual lump sum payment; L&I risk class code 7200/7201 (\$500)		368,263	368,263	70,673	70,673	438,936	438,936	877,872
Provide DSHS BHA ARNP ANCC Board Certification Incentive (\$2,500)		13,379	-	1,396	-	14,775	-	14,775
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		909,849	-	265,712	-	1,175,560	-	1,175,560
Provide lump sum payment; Retention (\$1,500)		1,586,281	-	468,381	-	2,054,662	-	2,054,662
Provide targeted job classification increases		8,693,154	8,755,024	3,728,047	3,750,294	12,421,201	12,505,318	24,926,520
<b>Teamsters Local Union 117 DES</b>	<b>23</b>	<b>\$0</b>	<b>\$0</b>	<b>\$207,244</b>	<b>\$219,896</b>	<b>\$207,244</b>	<b>\$219,896</b>	<b>\$427,140</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		-	-	62,490	111,333	62,490	111,333	173,823
Health care 85% employer / 15% employee (EMC Method)		-	-	34,500	41,124	34,500	41,124	75,624
Increase hourly shift premium (\$2.50)		-	-	23,497	23,497	23,497	23,497	46,994
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		-	-	19,837	-	19,837	-	19,837
Provide lump sum payment; Recognition/retention (\$1,000)		-	-	23,108	-	23,108	-	23,108
Provide targeted job classification increases		-	-	43,812	43,942	43,812	43,942	87,754
<b>WA Federation of State Employees (WFSE) - ALJ</b>	<b>109</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,101,619</b>	<b>\$1,346,291</b>	<b>\$1,101,619</b>	<b>\$1,346,291</b>	<b>\$2,447,910</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		-	-	548,268	985,992	548,268	985,992	1,534,260
Health care 85% employer / 15% employee (EMC Method)		-	-	157,500	187,740	157,500	187,740	345,240
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		-	-	101,773	-	101,773	-	101,773
Provide lump sum payment; Recognition/retention (\$1,000)		-	-	108,821	-	108,821	-	108,821
Provide reimbursement of annual WA State Bar dues		-	-	71,525	58,760	71,525	58,760	130,285
Provide targeted job classification increases		-	-	113,732	113,799	113,732	113,799	227,531
<b>Washington Association of Fish and Wildlife Professionals</b>	<b>949</b>	<b>\$3,428,372</b>	<b>\$3,817,795</b>	<b>\$4,992,753</b>	<b>\$5,499,216</b>	<b>\$8,421,125</b>	<b>\$9,317,011</b>	<b>\$17,738,135</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		1,202,953	2,163,224	1,771,688	3,177,374	2,974,641	5,340,598	8,315,239
Health care 85% employer / 15% employee (EMC Method)		555,975	662,722	869,025	1,035,878	1,425,000	1,698,600	3,123,600
Increase hourly shift premium (\$2.50)		2,813	2,813	18,853	18,853	21,666	21,666	43,331
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		319,808	-	500,411	-	820,218	-	820,218
Provide lump sum payment; Recognition/retention (\$1,000)		371,650	-	580,890	-	952,541	-	952,541
Provide targeted job classification increases		975,173	989,036	1,251,886	1,267,111	2,227,059	2,256,147	4,483,206



	# of Positions	General Fund-State \$		Other Funds \$		Total \$		2023-25
		FY 2024	FY 2025	FY 2024	FY 2025	FY 2024	FY 2025	Biennial \$
<b>Washington Federation of State Employees</b>	<b>37,704</b>	<b>\$158,714,880</b>	<b>\$174,890,149</b>	<b>\$192,283,066</b>	<b>\$215,836,268</b>	<b>\$350,997,950</b>	<b>\$390,726,419</b>	<b>\$741,724,363</b>
<i>Labor Relations Negotiations</i>								
Additional equipment type added to WSDOT premium pay equipment list		-	-	790,770	790,770	790,770	790,770	1,581,540
Establish 24/7 facility premium pay (5%) (2023-25 CBA Only)		18,985,290	19,138,494	5,367,190	5,427,850	24,352,481	24,566,344	48,918,824
Establish annual tool allowance where tools are not provided (\$1,200)		-	-	125,487	125,487	125,487	125,487	250,973
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		49,956,759	89,818,484	73,477,783	131,822,116	123,434,543	221,640,601	345,075,143
Health care 85% employer / 15% employee (EMC Method)		25,747,712	30,736,466	33,029,347	39,373,021	58,777,059	70,109,488	128,886,547
Increase annual lump sum payment; L&I risk class code 7200/7201 (\$500)		764,411	764,412	315,830	315,830	1,080,241	1,080,241	2,160,482
Increase hourly shift premium (\$2.50)		5,846,576	5,874,168	3,123,805	3,123,805	8,970,381	8,997,973	17,968,354
Increase J range for lottery duties		-	-	2,317	2,317	2,317	2,317	4,633
Increase supplemental shift premium for nurse classifications		2,928	2,928	783	783	3,711	3,711	7,421
Provide CDL renewal fee reimbursement; positions where a CDL is required		1,265	1,291	39,871	39,871	41,136	41,162	82,297
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		13,642,643	-	19,354,117	-	32,996,760	-	32,996,760
Provide lump sum payment; Recognition/retention (\$1,000)		15,674,796	-	22,113,644	-	37,788,441	-	37,788,441
Provide safety shoes reimbursement Dept of Veteran Affairs (\$225)		59,848	59,848	2	2	59,850	59,850	119,700
Provide targeted job classification increases		27,559,255	27,849,235	34,509,578	34,774,089	62,068,834	62,623,325	124,692,158
Psychiatric Social Worker job classification series to different salary schedule (GS)		473,397	644,823	32,542	40,327	505,939	685,150	1,191,090
<b>Washington Public Employees Association</b>	<b>2,397</b>	<b>\$9,568,047</b>	<b>\$11,136,379</b>	<b>\$7,911,932</b>	<b>\$8,890,484</b>	<b>\$17,479,980</b>	<b>\$20,026,863</b>	<b>\$37,506,843</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		4,605,094	8,298,792	3,324,388	5,965,003	7,929,483	14,263,795	22,193,278
Health care 85% employer / 15% employee (EMC Method)		2,025,060	2,413,872	1,583,940	1,888,056	3,609,000	4,301,928	7,910,928
Increase hourly shift premium (\$2.50)		2,114	2,114	79,772	79,772	81,886	81,886	163,772
Provide annual lump sum payment; WPEA CDHR & WSSSB (\$2,000)		104,749	104,970	26,891	26,950	131,639	131,920	263,560
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		1,166,409	-	913,030	-	2,079,439	-	2,079,439
Provide lump sum payment; Recognition/retention (\$1,000)		1,351,073	-	1,058,364	-	2,409,437	-	2,409,437
Provide targeted job classification increases		272,269	275,264	916,050	921,185	1,188,320	1,196,449	2,384,768
WPEA CDHY & WSSB additional one (1) pre-service day		41,279	41,367	9,497	9,518	50,776	50,885	101,661

	# of Positions	General Fund-State \$		Other Funds \$		Total \$		2023-25
		FY 2024	FY 2025	FY 2024	FY 2025	FY 2024	FY 2025	Biennial \$
<b>General Government RCW 41.80 – Interest Arbitration</b>	<b>8,162</b>	<b>\$89,602,195</b>	<b>\$111,038,500</b>	<b>\$2,714,121</b>	<b>\$3,316,595</b>	<b>\$92,316,316</b>	<b>\$114,355,096</b>	<b>\$206,671,413</b>
<b>Teamsters Local 117</b>	<b>6,670</b>	<b>\$75,638,053</b>	<b>\$90,536,040</b>	<b>\$2,714,121</b>	<b>\$3,316,595</b>	<b>\$78,352,174</b>	<b>\$93,852,636</b>	<b>\$172,204,812</b>
<i>Labor Relations Negotiations</i>								
Health care 85% employer / 15% employee (EMC Method)		9,327,750	11,118,677	444,000	529,248	9,771,750	11,647,925	21,419,675
<i>Interest Arbitration Award</i>								
Convert step M as regular step; no longer longevity step		4,490,786	4,526,276	17,330	17,375	4,508,116	4,543,652	9,051,768
Establish Employee Referral Program (\$250)		220,005	220,005	-	-	220,005	220,005	440,010
Establish Mentorship Incentive (\$2.50/hour)		202,552	202,552	-	-	202,552	202,552	405,105
General wage increase; 7/1/23 (6.0%) & 7/1/24 (4.0%)		34,664,203	59,183,667	1,472,547	2,523,016	36,136,750	61,706,683	97,843,433
Provide lump payment (\$1,500)		11,454,304	-	533,673	-	11,987,977	-	11,987,977
Provide targeted job classification increases		15,276,960	15,283,370	246,571	246,956	15,523,531	15,530,326	31,053,858
Remove limit for reimbursement for initial costs related to transport bus positions		1,493	1,493	-	-	1,493	1,493	2,986
<b>Washington Federation of State Employees - Dept of Corrections</b>	<b>1,492</b>	<b>\$13,964,142</b>	<b>\$20,502,460</b>	<b>\$0</b>	<b>\$0</b>	<b>\$13,964,142</b>	<b>\$20,502,460</b>	<b>\$34,466,601</b>
<i>Interest Arbitration Award</i>								
All WFSE DOC job classifications moved to CC Salary Range		238,647	238,765	-	-	238,647	238,765	477,412
General wage increase; 7/1/23 (4.0%), 7/1/24 (2.0%) & 1/1/25 (2.0%)		4,992,668	8,919,028	-	-	4,992,668	8,919,028	13,911,696
Increase hourly shift premium (\$2.50)		158,062	158,062	-	-	158,062	158,062	316,123
Provide lump sum to employees who meet prison backfill eligibility (3% base salary)		2,205,629	2,205,629	-	-	2,205,629	2,205,629	4,411,258
Provide targeted job classification increases		6,369,136	8,980,976	-	-	6,369,136	8,980,976	15,350,112

1 Pension Assumptions Source: Office of the State Actuary, 2021-23 Expected Employer Contribution Rates, Adopted July 2022

PERS Plans 1, 2, & 3: 10.39%

PSERS: 10.63%

2 Social Security and Medicare Source: IRS Publication 15 (2018), Circular E, Employer's Tax Guide

The employer contribution in 2020 is 6.2% for Social Security and 1.45% for Medicare. We assume no change to these percentages in the 2023-25 biennium.

3 The employer contribution for Washington Family Medical Leave Program in 2022 is a combined 0.16%. We assume no change to this percentage in the 2023-25 biennium.

**2023-25 Cost of Interest Arbitration Awards and Tentative Agreements** <sup>1,2,3</sup> (October 1, 2022)

OFM, State Human Resources Division

	# of Positions	General Fund-State \$		Other Funds \$		Total \$		2023-25
		FY 2024	FY 2025	FY 2024	FY 2025	FY 2024	FY 2025	Biennial \$
<b>Higher Education RCW 41.80 (Bargained by OFM)</b>	<b>4,196</b>	<b>\$12,963,160</b>	<b>\$14,924,858</b>	<b>\$14,253,790</b>	<b>\$16,558,482</b>	<b>\$27,216,948</b>	<b>\$31,483,340</b>	<b>\$58,700,291</b>
<b>Washington Federation of State Employees – Community College Coalition</b>	<b>2,414</b>	<b>\$6,032,229</b>	<b>\$7,407,969</b>	<b>\$8,460,201</b>	<b>\$10,281,568</b>	<b>\$14,492,429</b>	<b>\$17,689,538</b>	<b>\$32,181,967</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		2,577,890	4,633,254	3,601,403	6,470,681	6,179,293	11,103,936	17,283,229
Health care 85% employer / 15% employee (EMC Method)		1,432,493	1,707,531	2,045,572	2,437,875	3,478,064	4,145,406	7,623,470
Increase hourly shift premium (\$2.50)		243,802	243,803	433,063	432,561	676,865	676,364	1,353,229
Provide lump sum payment; Recognition/retention (\$1,000)		964,901	-	1,447,305	-	2,412,206	-	2,412,206
Provide targeted job classification increases		813,143	823,381	932,858	940,451	1,746,001	1,763,832	3,509,833
<b>Washington Public Employees Association – Community College Coalition</b>	<b>1,782</b>	<b>\$6,930,931</b>	<b>\$7,516,889</b>	<b>\$5,793,589</b>	<b>\$6,276,914</b>	<b>\$12,724,519</b>	<b>\$13,793,802</b>	<b>\$26,518,324</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		2,638,049	4,745,867	2,240,628	4,026,063	4,878,677	8,771,930	13,650,607
Health care 85% employer / 15% employee (EMC Method)		1,452,935	1,731,899	1,239,800	1,477,841	2,692,735	3,209,740	5,902,476
Increase hourly shift premium (\$2.50)		281,482	281,482	263,839	263,839	545,320	545,320	1,090,641
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		839,805	-	720,421	-	1,560,226	-	1,560,226
Provide lump sum payment; Recognition/retention (\$1,000)		967,694	-	824,830	-	1,792,525	-	1,792,525
Provide targeted job classification increases		750,966	757,641	504,071	509,171	1,255,036	1,266,812	2,521,849

1 Pension Assumptions Source: Office of the State Actuary, 2021-23 Expected Employer Contribution Rates, Adopted July 2022  
 PERS Plans 1, 2, & 3: 10.39%  
 PSERS: 10.63%

2 Social Security and Medicare Source: IRS Publication 15 (2018), Circular E, Employer's Tax Guide  
 The employer contribution in 2020 is 6.2% for Social Security and 1.45% for Medicare. We assume no change to these percentages in the 2023-25 biennium.

3 The employer contribution for Washington Family Medical Leave Program in 2022 is a combined 0.16%. We assume no change to this percentage in the 2023-25 biennium.

2023-25 Cost of Interest Arbitration Awards and Tentative Agreements <sup>1,2,3</sup> (October 1, 2022)

OFM, State Human Resources Division

	# of Positions	General Fund-State \$		Other Funds \$		Total \$		2023-25
		FY 2024	FY 2025	FY 2024	FY 2025	FY 2024	FY 2025	Biennial \$
<b>Dept. of Fish and Wildlife and WA State Patrol RCW 41.56</b>	<b>1,357</b>	<b>\$1,787,831</b>	<b>\$2,120,804</b>	<b>\$13,317,489</b>	<b>\$17,293,145</b>	<b>\$15,105,323</b>	<b>\$19,413,949</b>	<b>\$34,519,269</b>
<b>Washington State Patrol Lieutenants and Captains Association</b>	<b>62</b>	<b>\$240,181</b>	<b>\$339,176</b>	<b>\$622,161</b>	<b>\$861,921</b>	<b>\$862,343</b>	<b>\$1,201,097</b>	<b>\$2,063,439</b>
<i>Labor Relations Negotiations</i>								
Establish premium pay for Rapid Deployment Force (5%)		6,349	6,349	41,267	41,267	47,616	47,616	95,231
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		144,060	256,972	352,461	628,703	496,521	885,674	1,382,195
Increase clothing allowance for members in to IAD, CID, GMR, OPS and Fusion Center (\$1,500)		4,281	4,281	4,319	4,319	8,600	8,600	17,201
Provide annual lump sum payment; Retention (\$3,500) (2023-25 CBA Only)		71,574	71,574	187,632	187,632	259,207	259,207	518,413
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		13,917	-	36,482	-	50,399	-	50,399
<b>Washington State Patrol Troopers Association</b>	<b>1,140</b>	<b>\$623,461</b>	<b>\$821,020</b>	<b>\$11,813,689</b>	<b>\$15,512,901</b>	<b>\$12,437,150</b>	<b>\$16,333,922</b>	<b>\$28,771,071</b>
<i>Labor Relations Negotiations</i>								
Establish premium pay for Rapid Deployment Force (5%)		65,447	65,447	1,488,263	1,488,263	1,553,710	1,553,710	3,107,420
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		308,892	550,688	5,761,473	10,344,757	6,070,364	10,895,445	16,965,809
Increase clothing allowance for detectives (\$1,000)		15,227	15,227	23,952	23,952	39,180	39,180	78,359
Increase clothing allowance for Exec Protection Unit (\$1,500)		7,645	7,645	-	-	7,645	7,645	15,290
Increase sergeant field training officer assignment pay (10%)		-	-	18,409	18,409	18,409	18,409	36,818
Provide annual lump sum payment; Retention (\$3,500) (2023-25 CBA Only)		182,013	182,013	3,637,520	3,637,520	3,819,533	3,819,533	7,639,066
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		44,237	-	884,072	-	928,309	-	928,309
<b>Fish and Wildlife Officers' Guild</b>	<b>131</b>	<b>\$735,517</b>	<b>\$757,078</b>	<b>\$686,119</b>	<b>\$707,305</b>	<b>\$1,421,637</b>	<b>\$1,464,383</b>	<b>\$2,886,019</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		287,207	520,202	269,075	488,075	556,282	1,008,277	1,564,559
Provide geographic premium; Snohomish county (3%) & Pierce county (2%)		22,278	22,485	18,477	18,661	40,755	41,145	81,900
Provide longevity premium based on DFW commissioned tenure		214,391	214,391	200,569	200,569	414,961	414,961	829,921
Provide lump sum payment (\$2,000)		153,268	-	143,386	-	296,654	-	296,654
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		58,373	-	54,612	-	112,985	-	112,985
<b>Teamsters 760 (DFW Sergeants)</b>	<b>24</b>	<b>\$188,672</b>	<b>\$203,530</b>	<b>\$195,520</b>	<b>\$211,018</b>	<b>\$384,193</b>	<b>\$414,547</b>	<b>\$798,740</b>
<i>Labor Relations Negotiations</i>								
General wage increase; 7/1/23 (4.0%) & 7/1/24 (3.0%)		66,224	117,878	68,968	122,764	135,192	240,641	375,833
Provide geographic premium; Snohomish county (3%) & Pierce county (2%)		6,021	6,021	5,372	5,372	11,393	11,393	22,786
Provide longevity premium based on DFW commissioned tenure		79,631	79,631	82,882	82,882	162,513	162,513	325,026
Provide lump sum payment (\$2,000)		26,653	-	27,741	-	54,395	-	54,395
Provide lump sum payment; COVID-19 Booster Incentive (\$1,000)		10,143	-	10,557	-	20,700	-	20,700

1 Pension Assumptions Source: Office of the State Actuary, 2021-23 Expected Employer Contribution Rates, Adopted July 2022  
LEOFF Plan 2: 5.31%  
WSPRS Plans 1 & 2: 17.84%

2 Social Security and Medicare Source: IRS Publication 15 (2018), Circular E, Employer's Tax Guide  
The employer contribution in 2020 is 6.2% for Social Security and 1.45% for Medicare. We assume no change to these percentages in the 2023-25 biennium.

3 The employer contribution for Washington Family Medical Leave Program in 2022 is a combined 0.16%. We assume no change to this percentage in the 2023-25 biennium.