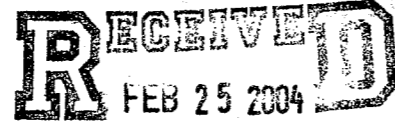


1  EXPEDITE  
2  Hearing is Set: Friday, February 27, 2004  
3 Hearing Time: 9:00 a.m.  
4 The Honorable Christine Pomeroy



Building Industry  
Association of Washington

7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

8 **IN AND FOR THE COUNTY OF THURSTON**

9 STATE OF WASHINGTON ex rel.  
10 EVERGREEN FREEDOM  
11 FOUNDATION, a Washington nonprofit  
12 corporation,

Plaintiff,

v.

13 GOVERNOR LOCKE, in his official  
14 capacity as Governor of the State of  
15 Washington, and the WASHINGTON  
16 STATE DEPARTMENT OF TRADE  
17 AND ECONOMIC DEVELOPMENT,  
18 a state agency,

Defendants.

NO. 04-2-00246-7

DEFENDANTS'  
MEMORANDUM IN RESPONSE  
TO ORDER TO SHOW CAUSE,  
AND MOTION TO COMPEL  
PRODUCTION OF RECORDS

19 The Defendants, by and through their attorneys, CHRISTINE O. GREGOIRE,  
20 Attorney General, and NANCY J. KRIER, Senior Counsel, hereby respond to the Order to  
21 Show Cause and Plaintiff Evergreen Freedom Foundation's Motion to Compel Production of  
22 Public Records for Examination In Camera Pursuant to RCW 42.17.340. A show cause  
23 hearing is set for February 27, 2004. The Defendants ask the court to deny the motion, and to  
24 dismiss this action.

1 The court should reject EFF's arguments that "missing" records related to its requests  
2 for records in Exhibits F and G, and Section 7.3 of the Master Agreement, provide EFF a  
3 cause of action under the Public Records Act. These records are not "missing." There is no  
4 writing or public record that responds to those requests, as EFF has been informed several  
5 times. Choe Decl.; Joly Decl. The court should deny the motion to require Defendants to  
6 produce records they do not have, and dismiss those EFF claims.

7 **B. The Legislature Has Repeatedly Recognized that Proprietary, Financial and**  
8 **Trade Secret Information Provided By Private Entities to Public Agencies Is**  
9 **Exempt From Public Disclosure. Defendants Correctly Cited To and Relied**  
10 **Upon Those Statutes As A Lawful Basis for the Redactions and Withholding of**  
11 **Limited Information. Defendants Have Met Their Burden Under RCW**  
12 **42.17.340.**

13 In Washington, records of public agencies are available to the public, either through  
14 copies or inspection, unless there is a basis in law for withholding the record or portion of  
15 record. RCW 42.17.251. The Public Records Act itself contains many exemptions from  
16 disclosure. RCW 42.17.310 – 42.17.31918. The Act also recognizes that other exemptions or  
17 obligations to withhold information can arise out of an "other statute which exempts or  
18 prohibits disclosure of specific information or records." RCW 42.17.260(1).

19 **Proprietary, Financial and Trade Secret Information - Overview**

20 The Legislature has repeatedly recognized, both in the Act and elsewhere in the code,  
21 that public agencies may come into possession of or their records may contain information  
22 that is designated by private entities as proprietary, confidential, financial, and/or protected as  
23 a trade secret. The Legislature has also recognized that a private entity or business that  
24 provides such information to a public agency does not therefore waive the necessary  
25 protections for the information. For this reason, more than 28 times the Legislature has  
26 specifically exempted and protected such information and records in statutes codified in  
provisions of the Act and other statutes. See Attachment B to this memorandum for a list of  
statutes. The information that can be withheld includes, but is not limited to, information