

1 EXPEDITE
2 Hearing is set:
3 Date:
4 Time: .
5 Judge/Calendar:
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8 SUPERIOR COURT OF THE STATE OF WASHINGTON
9 FOR THURSTON COUNTY

10 THE EVERGREEN FREEDOM
11 FOUNDATION, a Washington Non-Profit
12 Corporation,

13 Plaintiff,

14 v.

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

21 Defendants.

NO.

**COMPLAINT FOR VIOLATION
OF PUBLIC DISCLOSURE ACT,
RCW Ch. 42.17**

(CLERK'S ACTION REQUIRED)

22 COMES NOW PLAINTIFF, and for its complaint against Defendants, states as follows:

23 **NATURE OF ACTION**

24 1. This is an enforcement action pursuant to the Public Disclosure Act, RCW Ch. 42.17,
25 to compel disclosure of public records. Plaintiff Evergreen Freedom Foundation ("EFF") is
26 attempting to assess whether the Defendants Governor Gary Locke ("Locke"), and the
Department of Community, Trade, and Economic Development ("CTED") are accurately

1 reporting details relating to the Boeing 7E7 master site development and location agreement at
2 the Boeing Everett plant. “The agreement is among The Boeing Company, the state of
3 Washington and various public entities. It sets forth the terms and conditions under which
4 Boeing will locate the 7E7 final assembly facility in Everett.” (Press Release from the Office
5 of Governor Gary Locke dated December 19, 2003 – **Exhibit 1.**)

6 EFF has requested public records relating to the Boeing 7E7 master site development
7 and location agreement. The contents of the entire agreement have been in the possession of
8 the defendants since the signing of the agreement on December 19, 2003. There is an urgent
9 and compelling public interest to immediately obtain full disclosure of the entire agreement.
10 The agreement is contingent upon legislative action and the public and legislature needs to
11 know the terms of the entire agreement. This year’s legislative session is short and *even the*
12 *slightest delay of disclosure may prejudice the public’s interests* of open government and
13 democracy.

14 **JURISDICTION**

15 2. This Court has jurisdiction pursuant to RCW 42.17.340.

16 **VENUE**

17 3. Venue is proper in Thurston County Superior Court pursuant to RCW 42.17.340(1).

18 EFF has information and belief that the public records are maintained with both the Office of
19 the Governor, and the Department of Community, Trade and Economic Development in
20 Olympia, Washington.

21 **PARTIES**

22 4. Plaintiff, Evergreen Freedom Foundation, a Washington state non-profit association, is
23 a free market public policy research organization based in Olympia, Washington. EFF’s
24 efforts center on public policy research and alternatives in these core areas: state budget and
25
26

1 tax policy, welfare reform, health-care reform, education, citizenship and governance issues.

2 EFF's mission is to advance individual liberty, free enterprise, and responsible government.

3 Defendants, Governor Locke and CTED, are "state agencies" as defined in the Public
4 Records Act, RCW 42.17.020.

5 **FACTS**

6 5. On December 19, 2003 Governor Gary Locke and Senior Vice President of the Boeing
7 7E7 Dreamliner program, Mike Bair signed the 7E7 master site development and location
8 agreement at the Boeing Everett plant ("Agreement"). The agreement is among The Boeing
9 Company, the state of Washington and various public entities. It sets forth the terms and
10 conditions under which Boeing will locate the 7E7 final assembly facility in Everett. (Press
11 Release from the Office of Governor Gary Locke dated December 19, 2003 – **Exhibit 1.**)

12 6. On December 19, 2003, after the signing, EFF called the Governor's Office to obtain a
13 copy of the agreement. EFF followed this with an email making the same public records
14 request for the agreement on December 22, 2003. (Email from Jason Mercier dated December
15 22, 2003 – **Exhibit 2.**)

16 7. Dated December 23, 2003 CTED acknowledged, by letter, EFF's public records request
17 for the agreement. (CTED letter of December 23, 2003 – **Exhibit 3.**) CTED's letter
18 constituted a partial disclosure by attaching the agreement. (Agreement – **Exhibit 4.**)
19 However CTED's letter conceded the agreement was provided "without its supplemental
20 documents at this time." CTED assured EFF that the supplemental documents would be
21 available once CTED received them "from the Boeing Company and reviewed them for
22 redaction."

23 8. On January 9, 2004 EFF emailed a follow-up request to obtain the supplemental
24 documents explicitly referenced in CTED's initial response to EFF's request. On January 14,
25 2004 CTED responded to EFF's "follow-up public records request" by letter. (CTED letter
26

1 | dated January 14, 2004 – **Exhibit 5.**) CTED’s letter stated, “This Agreement is being provided
2 | with the following information redacted or withheld: portions of attached exhibits at C-10, D-
3 | 3, and E, and all of Exhibit D-1 (Relevant Exhibits.)” (Partial Disclosure of Redacted
4 | Supplemental Documents – **Exhibit – 6.**)

5 | 9. On January 26, 2004 EFF requested by letter that CTED fully disclose all
6 | remaining supplemental documents to the agreement by January 27, 2004. (EFF letter
7 | dated January 26, 2004 – **Exhibit 7.**) Specifically those public records withheld that are
8 | the supplemental documents referenced by and incorporated in the Agreement as follows:

- 9 | a) A copy of the “Governor’s Executive Order or clear directive,” which
10 | is required by Section 7.3 of the contract and details the duties of the
11 | Workforce Development Coordinator (WDC) and the responsibilities
12 | of state agencies in assisting the WDC.
13 | b) Exhibit F of the contract: Copies of whatever authorizing actions are required
14 | by the legislature or municipalities to satisfy the commitments to the contract.
15 | c) Exhibit G of the contract: Copies of the opinions of counsel related to
16 | whether or not the elements of the contract are legal.
17 | d) A copy of Schedule 1: Site application questionnaire for Project Olympus.
18 | e) A copy of Schedule 2: Project Olympus Legal Questionnaire – Washington
19 | State Response.
20 | f) A copy of Schedule 3: Restatement of commitments dated November 10,
21 | 2003.

22 | 10. On January 29, 2004 CTED’s responded by letter and facsimile that it would require
23 | additional 10 business days from the date of that letter to compile, review, and prepare any
24 | records that may be responsive. (CTED letter dated January 29, 2004 – **Exhibit 8.**)

25 | 11. On January 30, 2004 EFF stated by letter that it “will take legal action if necessary to
26 | receive these documents immediately.” (EFF letter dated January 30, 2004 – **Exhibit 9.**)

Neither the Governor’s Office nor CTED has responded to EFF’s letter of January 30,
2004.

13. On February 4, 2004 Martha Choe, Director of CTED, stated in an opinion piece that
“The appendices were released three weeks later following final review by Boeing and the

1 state Attorney General's office." (King County Journal opinion piece by Marth Choe dated
2 February 4, 2004 – **Exhibit 10.**)

3 14. On February 5, 2004 EFF stated by letter that a lawsuit is being prepared against the
4 Governor's Office and CTED for withholding public records in bad faith, and that EFF expects
5 full disclosure by noon of February 6, 2004. (EFF letter dated February 5, 2004 – **Exhibit 11.**)
6 Prior to the filing of this action, neither the Governor's Office nor CTED has responded to that
7 letter.

8 CAUSE OF ACTION

9 15. EFF re-alleges each preceding paragraph as if fully set forth herein.

10 16. The Public Disclosure Act requires a government agency to produce public records
11 upon the request of a citizen. RCW 42.17.260(1).

12 17. The Public Disclosure Act requires, "The provisions of this chapter shall be liberally
13 construed to promote complete disclosure . . . and full access to public records so as to assure
14 continuing public confidence of fairness of elections and governmental processes, and so as to
15 assure that the public interest will be fully protected". RCW 42.17.010. "The public records
16 subdivision of this chapter shall be liberally construed and its exemptions narrowly construed
17 to promote this public policy." RCW 42.17.251.

18 18. The governor, . . . shall severally keep the public records, books and papers relating to
19 their respective offices, at the seat of government, at which place also the governor, secretary
20 of state, treasurer and auditor shall reside. WA State Constitution, Article III, Section 24.

21 19. Governor Locke and CTED are "agencies" within the meaning of RCW 42.17.020(1),
22 and are therefore subject to the disclosure requirements of the Public Disclosure Act.

23 20. All the records requested by EFF are "public records" within the meaning of RCW
24 42.17.020(36). A public record is defined as:

25 Any writing containing information relating to the conduct of government
26 or the performance of any governmental or proprietary function prepared,

1 owned, used, or retained by any state or local agency regardless of
2 physical form or characteristics.

3 CTED has never denied that the missing exhibits are public records subject to disclosure.

4 21. CTED, without citing any statutory exemption, is delaying the release of the
5 public records requested by EFF on December 22, 2003. As of the date of this filing, 46
6 days have passed since EFF made a written request for public records that were
7 referenced and incorporated by the contract signed by Governor Locke on December 19,
8 2003.

9 22. CTED has not given a reason for the delay nor responded to EFF's letter of
10 January 30, 2004. Delaying disclosure of public records for undeclared purposes is not a
11 listed exemption under the Public Records Act. "Each agency, in accordance with
12 published rules, **shall make available for public inspection and copying all public**
13 **records**, unless the record falls within the specific exemptions of subsection (6) of this
14 section, RCW 42.17.310, 42.17.315, or other statute which exempts or prohibits
15 disclosure of specific information or records." (Emphasis added) RCW 42.17.260(1).

16 23. CTED failed its statutory duty to provide, within 5 days of receipt of a public
17 records request, a reasonable estimate of time necessary for full disclosure:

18 Within five business days of receiving a public record request, an
19 agency, the office of the secretary of the senate, or the office of the
20 chief clerk of the house of representatives must respond by either
21 (1) providing the record; (2) acknowledging that the agency, the
22 office of the secretary of the senate, or the office of the chief clerk
23 of the house of representatives has received the request and
24 **providing a reasonable estimate of the time** the agency, the
25 office of the secretary of the senate, or the office of the chief clerk
26 of the house of representatives will require to respond to the
request; or (3) denying the public record request.

(Emphasis added) RCW 42.17.320.

1 29. RCW 42.17.340 provides for a mandatory award of costs and reasonable
2 attorneys' fees.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays that this Court:

5 30. EFF requests this Court examine the redacted supplemental documents (**Exhibit –**
6 **6**) in camera to determine whether CTED improperly withheld the redacted portions of
7 public records.

8 31. Enter an order compelling Defendants to immediately disclose without redaction
9 all public records requested by Plaintiff, specifically the supplemental documents that are
10 referenced by and incorporated in the Agreement as follows:

- 11 a) A copy of the “Governor’s Executive Order or clear directive,” which
12 is required by Section 7.3 of the contract and details the duties of the
13 Workforce Development Coordinator (WDC) and the responsibilities
14 of state agencies in assisting the WDC.
15 b) Exhibit F of the contract: Copies of whatever authorizing actions are required
16 by the legislature or municipalities to satisfy the commitments to the contract.
17 c) Exhibit G of the contract: Copies of the opinions of counsel related to
18 whether or not the elements of the contract are legal.
19 d) A copy of Schedule 1: Site application questionnaire for Project Olympus.
20 e) A copy of Schedule 2: Project Olympus Legal Questionnaire – Washington
21 State Response.
22 f) A copy of Schedule 3: Restatement of commitments dated November 10,
23 2003.

24 32. Enter judgment for Plaintiff and against Defendant finding that the Defendant
25 violated the Public Records Act;

26 33. Award Plaintiff the maximum fine of \$100 per day for each and every unlawfully
withheld or redacted public record;

34. Award Plaintiff its costs and reasonable attorneys' fees;

35. Grant such further relief as the Court deems just and proper.

1 DATED this ____ day of _____, 2004.

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3 EVERGREEN FREEDOM FOUNDATION

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