

1 EXPEDITE
2 Hearing is set:

3 Date: February 27, 2004
4 Time: 9:00
5 Judge Pomeroy

6 SUPERIOR COURT OF THE STATE OF WASHINGTON
7 FOR THURSTON COUNTY

8 THE EVERGREEN FREEDOM
9 FOUNDATION, a Washington Non-Profit
10 Corporation,

11 Plaintiff,

12 v.

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

19 Defendants.

NO. 04-2-00240-7

**DECLARATION OF BOB
WILLIAMS**

20 I, Bob Williams, declare and state as follows:

- 21 1) I am over the age of eighteen, competent to testify, and familiar with the matters herein.
- 22 2) I am the President of the Evergreen Freedom Foundation. EFF's mission is to advance
23 individual liberty, free enterprise, and responsible government.
- 24 3) EFF first made a public records request to the Governor's office on December 19, 2004
25 via phone. The request was for a copy of the agreement Boeing 7E7 master site
26 development and location agreement ("Agreement").

- 1 4) Article I, section 1.2 of the Agreement states, “the Agreement includes this document,
2 the Project Olympus Submittal and any exhibits, attachments, schedules or appendices
3 attached hereto or referenced herein all of which are incorporated by reference.”
- 4 5) Four declarations of Legislators and one declaration of a former WA Supreme Court
5 Justice were submitted in support of a motion to set a show cause hearing.
- 6 6) The declarations are relevant because a purpose of this public records request is to
7 allow legislators and the public to review the Agreement and assess the commitment of
8 public funds and resources prior to a vote on legislation required by the Agreement. In
9 addition to previously submitted declarations, Rep. Helen Sommers, Chair of the House
10 Appropriations Committee has requested that I keep her informed of any new
11 information I uncover.
- 12 7) Legislation required by the Agreement is as follows:
- 13 - HB 2459; \$5.25 million as of Governor’s 12/18 budget submittal.
 - 14 - HB 2573; \$6 million
- 15 8) It is my belief that the following redacted public records contain information pertinent
16 to legislation currently under consideration as required by the Agreement:

17 **Legal Questionnaire (Schedule 2 of the Agreement)**

- 18 • Pg. 10
- 19 • Pg. 13

20 **Nov. 10 restatement of commitments (Schedule 3 of the Agreement)**

- 21 • Pg. 3
- 22 • Pg. 4
- 23 • Pg. 6
- 24 • Pg. 11
- 25 • Pg. 12

26 **Exhibit C of the Agreement**

- C-10-1

Exhibit D of the Agreement

- D-1-1
- D-1-2
- D-1-3
- D-1-4
- D-3-1
- D-3-2

Exhibit E of the Agreement

- E-1-1

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9) CONFIDENTIALITY PROVISION OF THE AGREEMENT

The confidentiality provision of the Agreement is in Article XII, section 12.11. The confidentiality provision explicitly specifies “Exhibits C-1 through C-14, D-1 through D-4, and E” as confidential due to purported trade secrets and other proprietary information of the Boeing Company that is exempt from public disclosure.

Contrary to the confidentiality provision, Boeing and CTED disclosed Exhibits C-1 through C-9, C-11 through C-14, and part of Exhibit E.

The confidentiality provision does not specify Schedule 2 or 3 of the Agreement as containing confidential information, yet both schedules were redacted in part.

Apparently the confidentiality provision is not binding on the parties nor should it be deemed conclusive of purported trade secrets or proprietary information. All assertions of confidentiality should be construed narrowly.

10) LEGAL QUESTIONNAIRE (Schedule 2 of the Agreement.)

This appendix is not specified by the Agreement as confidential in any manner.

It is a document prepared by Washington State relating to state and local resources needed for the Agreement and submitted to McCallam Sweeny on October 3, 2004.

11) RESTATEMENT OF COMMITMENTS (Schedule 3 of the Agreement.)

This appendix is not specified by the Agreement as confidential in any manner.

This document represents the Governor’s proposed commitments of state and local resources. Pages 11 and 12 have certain cost and the total costs redacted even though the total costs are shown on pages 6 and 9. In addition, the section redacted on page 6 appears to be the section related to site assembly and leaseback.

12) EXHIBIT C of the Agreement

All of Exhibit C is specified as confidential by the Agreement but almost all of it has been disclosed. The redacted portion of Exhibit C relates to the construction of a public rail facility.

-Section 6.12.1 of the Agreement requires “The Port of Everett shall pay all costs, fees and expenses in connection with or arising out of all obligations and Commitments set forth in this Section 6.12.” Further, “ The Port of Everett shall undertake the design and construction of all rail and rail-related improvements as described in Exhibit C-10 pursuant to the terms, conditions and schedule set forth therein.”

Key parts of Exhibit C-10 are redacted and thus the public is denied the opportunity to see what the Port commitments really are.

1 13) EXHIBIT D of the Agreement

2 Exhibit D is specified as confidential by the Agreement. It relates to the development
3 of an Employment Resource Center (ERC).

4 *Section 7.2.1* of the Agreement requires, "consistent with the funding commitments and
5 program descriptions set forth in Exhibits D-1, D-2 and D-3, the State agrees to fund an
6 end-to-end recruitments, screening, assessment and training program to meet the initial
7 staffing and workforce development needs to Boeing and its Suppliers and other parties
8 designated by Boeing for Project Olympus."

9 *Section 7.5.1* also requires, "the State hereby agrees to either acquire an existing facility
10 or construct a new facility, and in either case, design, engineer, modify and equip such
11 facility to serve as the ERC. The ERC shall be designed and modified in accordance
12 with the plans and specifications reasonably acceptable to and after consultation with
13 Boeing prior to the State seeking of bids or proposals for construction thereof. The
14 ERC shall be equipped with the Training Equipment. The ERC and the Training
15 Equipment shall include and incorporate such matters as are required by Boeing, which
16 may include, without limitation, those items identified in Exhibit D-3 attached hereto."

17 *-Section 7.5.2* states, "The Parties agree that the State shall pay all costs, fees, and
18 expenses in connection with or arising out of operation, maintenance, repair and
19 replacement of the ERC and all obligations and Commitments set forth in this Section
20 7.5.2."

21 Exhibit D is heavily redacted. However, D-3-2 discloses "at a minimum, the State will
22 appropriate \$10,000,000 for the design and construction of the ERC." D-3-3 states,
23 "Training Equipment costs will be covered through the 2005-07 State capital budget
24 appropriation."

25 In a February 23, 2004 *Seattle Times* editorial, the assistant attorney general that
26 certified the Boeing deal, David Walsh, is referenced by the Times regarding the ERC,
27 "*the \$10 million is not for Boeing, but for education of the people, and of course the
28 state may do that.*"

29 If the ERC is not for Boeing but for the education of people then the details are not
30 trade secrets and should be available for public inspection. The public and legislators
31 need the un-redacted Exhibit D in order to determine the financial impact of this
32 commitment.

33 14) I believe that none of the redacted public records contain trade secrets or proprietary
34 information exempt from disclosure.

35 15) I notified CTED on January 30, 2004, that EFF would file a lawsuit if necessary so that
36 legislators and the public will have the public records relating to the Boeing Agreement
37 before legislative action is taken.

38 16) I declare under penalty of perjury, under the laws of the State of Washington that the
39 foregoing is true and correct.

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17) Executed in Lakebay, Washington, this _____ day of February 2004.

Bob Williams _____