

1 EXPEDITE
2 Hearing is set:
3 Date:
4 Time: .
5 Judge/Calendar:

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 JASON
MERCIER RE: TIMELINE OF
PUBLIC RECORDS REQUEST.**

20 I, Jason Mercier, 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) The dates below are a true and accurate timeline that represent communications relevant
23 to the complaint for violations of the Public Disclosure Act.

24 **December 19, 2003** - Governor Locke signs Boeing agreement. EFF makes public
25 records request via phone call request to Governor's office for copies of the agreement
26 but are told that all the copies are with the Governor at the signing ceremony.

December 22, 2003 - EFF sends follow-up email request to Governor's office for
copies of the Boeing agreement. Governor's office indicates that the copies are at

1 CTED and will ask them to provide to us. EFF calls CTED to confirm that they have
2 copies and requests that they be sent.

3 **December 23, 2003** - CTED sends email to EFF indicating that copies will be sent
4 once they receive them back from the printer.

5 **Week of December 29, 2003** - EFF receives copy of the contract. However, in a cover
6 letter dated December 23, 2003, CTED states, *"This Agreement is being provided
7 without its supplemental documents at this time. The supplemental documents will
8 become available once CTED has received them from The Boeing Company and
9 reviewed them for redaction. At this time, The Boeing Company has not yet informed us
10 when we can expect to receive the supplemental documents."*

11 The Boeing contract clearly indicates which documents are responsive to EFF's request
12 for a copy of the agreement. Article 1 Section 1.2 clearly states that the agreement EFF
13 requested on December 19, 2003 consists of the contract, *"the Project Olympus
14 Submittal and any exhibits, attachments, schedules or appendices attached hereto or
15 referenced herein all of which are incorporated by reference."*

16 **January 7, 2004** - EFF leaves follow-up voice mail with CTED asking when
17 supplemental documents will be available; no return call from CTED.

18 **January 9, 2004** - EFF sends follow-up email to CTED asking for copies of the
19 supplemental documents; no return email from CTED.

20 **January 12, 2004** - EFF makes follow-up phone call to CTED asking for copies of
21 supplemental documents; CTED states they will contact us when the documents are
22 available.

23 **January 14, 2004** - CTED sends EFF copies of some of the supplemental documents
24 but withholds other supplemental documents from disclosure stating, *"This Agreement
25 is being provided with the following information redacted or withheld: portions of
26 attached exhibits at C-10, D-3 and E, and all of Exhibit D-1 ("Relevant Exhibits".)*
CTED claimed these public records were exempt from disclosure as a trade secret.

Not included however are Exhibit F, Exhibit G, Schedules 1-3, and a copy of a required
executive order cited in the contract. Despite not including these documents, CTED
concludes their cover letter stating, *"This letter represents the agency's final response
to your public records request."*

January 21, 2004 – Governor Locke holds press conference. In response to press
questions the governor states, *"We actually put out a press release and gave to all of
you all of the actions and all of the agreements that were contained in that proposal."*

1 **January 22, 2004** - EFF sends follow-up email to CTED and follow-up phone call
2 asking in part for the documents mentioned in section B of the contract page entitled
3 "*Master Site Development and Location Agreement.*" These documents represent the
4 information contained in Schedules 1-3 of the contract that should have been provided
by CTED with the original documents in December and also were not provided on
January 14, 2004.

5 **January 23, 2004** - CTED sends EFF a letter stating in part, "*We have not located any*
6 *records that are responsive to your request for 'documents mentioned in section B of*
7 *the contract page entitled 'Master Site Development and Location Agreement.'* Section
8 *B, officially referred to as Exhibit B, does not refer to additional documents.*" EFF calls
CTED regarding above response, CTED indicates that they thought we were requesting
Exhibit B and that it was their oversight.

9 **January 26, 2004** - EFF sends follow-up letter and facsimile to CTED identifying by
10 name the remaining supplemental documents that have yet to be provided. These were
11 documents that are part of the original contract and were not provided by CTED in the
12 December or January responses. CTED calls and states the soonest they will have a
response available is January 29, 2004.

13 **January 29, 2004** - CTED faxes and sends letter to EFF stating that, "*it will require up*
14 *to an additional 10 business days from the date of this letter to compile, review, and*
prepare any records that may be responsive [to our January 26, 2004 letter]."

15 **January 30, 2004** - EFF hand delivers to CTED the first ultimatum letter indicating
16 that if the remaining supplemental documents requested on December 19, 2003 are not
17 provided immediately we will pursue legal action to make the documents available. In
18 this letter we explained that CTED was not providing a copy of the entire Boeing
19 contract as we had originally requested in December and whenever we found a missing
page or Exhibit and asked for it, CTED treated it as a new request. This letter should
have cleared up any confusion CTED may have had with our original (December) PRA
request and the failure of CTED to comply.

20 **February 4, 2004** – Martha Choe authors an opinion editorial for the King County
21 Journal. In part, the article reads, "*The appendices were released three weeks later*
22 *following final review by Boeing and the state Attorney General's office . . . All parties*
23 *have had the opportunity to seek additional information --- just as the Evergreen*
Freedom Foundation did."

24 **February 5, 2004** - As CTED did not acknowledge our January 30, 2004 letter, EFF
25 hand delivered a second and final ultimatum letter indicating that if CTED did not
26 provide the remaining supplemental documents by 12 p.m. on February 6, 2004, we
would file a public records lawsuit to make the records available.

1 **February 6, 2004** - EFF files public records lawsuit against CTED. Hearing is
2 scheduled for February 20, 2004 with Judge Hicks. At 1:30 p.m. CTED hand delivers
3 letter to EFF indicating that they have 10 business days from January 26, 2004 to
provide the remaining supplemental documents.

4 **February 9, 2004** - On behalf of CTED and the governor, the attorney general's office
5 files an affidavit of protest against Judge Hicks removing him from the case.

6 **February 12, 2004** - CTED hand delivers more than 250 pages of additional
7 information to EFF at 5:21 p.m. These pages encompass Schedules 1-3. Some redaction
of schedules is present.

8 **February 17, 2004** - In hopes of avoiding litigation, EFF requests and holds settlement
9 discussions with CTED to obtain missing documents and to fully disclose the redacted
10 documents. EFF's request is refused and CTED does not offer any counter-settlement
proposal. EFF notifies defendants that it will file a motion to set a show cause hearing
on February 18, 2004. Defendants do not object.

11 **February 18, 2004** - EFF files a show cause hearing with the court to determine if the
12 redacted documents are wrongfully being withheld in conjunction with a request for an
in camera inspection and has hearing scheduled for 9 a.m. on February 27, 2004.

13 **February 24, 2004** - At 5:30 p.m. CTED faxes over Exhibits D-1 and D-3 in their
14 entirety just days before court hearing claiming that although since December 19, 2003
15 Boeing and the state claimed the documents contained trade secrets, as of February 24,
2004, the documents no longer contained "protected information." These exhibits detail
16 the Employment Resource Center that legislators were set to appropriate money for and
served as the primary basis for our disclosure lawsuit.

17 **February 27, 2004** - Judge Pomeroy agrees to do in-camera review of redacted
18 documents.

- 19 3) I declare under penalty of perjury, under the laws of the State of Washington that the
20 foregoing is true and correct.
- 21 4) Executed in Olympia, Washington, this 23 day of March 2004.

22
23 _____
24 Jason Mercier