

**COPY
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JUL 28 2020

**MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK**

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

Jason Erickson

Plaintiff/ Petitioner,

V.

Franklin County, a Washington

Governmental Entity,

Defendant/Respondent,

No.

20 250460 11

**Complaint for Disclosure of
Public Records**

**TO: CLERK OF THE ABOVE ENTITLED COURT and to the Defendant/Respondent
COMES NOW the Plaintiff, by and through his counsel Alan E. Harvey and alleges
against the Defendant/ Respondent as follows:**

I. Parties

**A. Jason Erickson is an individual who at all time resides in Benton
County, Washington.**

1. Complaint

**ALAN E. HARVEY
ATTORNEY AT LAW
Northwest Legal Advocates L.L.C.
P.O. Box 61912
VANCOUVER, WASHINGTON 98686
(360) 524-2009**

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B. Franklin County (hereinafter referred to as the County) is a Washington public corporation as defined by RCW 4.08, and is an agency required to comply with Public Record requests pursuant to RCW 42.56.

II. Jurisdiction and Venue

All relevant acts and the entity that maintains the records surrounding the complaint and giving rise to this litigation occurred in Franklin County, Washington and subject matter jurisdiction, personal jurisdiction, and venue are properly before this Court.

III. Nature of the Case

A. This case is being brought by the Plaintiff/ petitioner, Jason Erickson, to enforce his rights and remedies available under Washington’s Public Records Act (PRA) RCW Chapter 42.56, as a citizen of this state.

B. On the 17th of April, 2020, Petitioner/ Plaintiff served a public records request, through his attorney, upon the County through an email sent to Jennifer Johnson, Franklin County Chief Civil Deputy. On the 17th of April 2020, Ms. Johnson forwarded on the public records request by email to Ronelle Nelson, an employee of the County. Petitioner/Plaintiff’s public records request is set out in relevant part below A-F:

The following is a request for a copy of the following records with respect to BCSO IA#20-001 pursuant to RCW 42.56, the public records act. I am an attorney and I represent Jason Erickson and this request is made on his behalf.

Please provide the records associated with BCSO IA#20-001. **Time is of the essence with respect to this request.**

A. This is a request that all documents be provided in their electronic format, in the possession of Franklin County.

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- B. All reports associated with BCSO IA#20-001 in the possession of Franklin County including, but not limited to, records, (i.e. documents and/or reports) prepared by Captain Diaz, Captain Monty Huber, and/or any other person.

- C. All digital audio or video recordings associated with BCSO IA#20-001 in the possession of Franklin County.

- D. All transcripts associated with BCSO IA#20-001 in the possession of Franklin County.

- E. **Emails:**
 - i. For the entire request relating to any records that are emails where the above term "BCSO IA#20-001" was included in an attachment and/or referenced in the subject line or the content of the email and any associated metadata, in the possession of Franklin County and any other attachments associated with the emails.

 - ii. This request relates to any emails sent by Franklin County Sheriff's Captain Adam Diaz between February 14, 2020 to April 17, 2020 to anyone with a Benton County Washington email, and any associated metadata, in the possession of Franklin County and any other attachments associated with the emails.

 - iii. This request relates to any emails received by Franklin County Sheriff's Captain Adam Diaz from anyone with a Benton County Washington email, between February 14 2020 to April 17, 2020, and any associated metadata, in the possession of Franklin County and any other attachments associated with the emails.

 - iv. This request relates to any emails sent by Franklin County Sheriff's Captain Monty Huber between February 14, 2020 to April 17, 2020 to anyone with a Benton County Washington email, and any associated metadata, in the possession of Franklin

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1 County and any other attachments associated with
2 the emails.

3 v. This request relates to any emails any emails
4 received by Franklin County Sheriff's Captain Monty
5 Huber from anyone with a Benton County
6 Washington email, between February 14 2020 to
7 April 17, 2020, and any associated metadata, in the
8 possession of Franklin County and any other
9 attachments associated with the emails.

10 vi. This request relates to any emails sent by Franklin
11 County Sheriff J. Raymond between February 14,
12 2020 to April 17, 2020 to anyone with a Benton
13 County Washington email, and any associated
14 metadata, in the possession of Franklin County
15 and any other attachments associated with the
16 emails.

17 vii. This request relates to any emails received by
18 County Sheriff J. Raymond from anyone with a
19 Benton County Washington email, between
20 February 14, 2020 to April 17, 2020, and any
21 associated metadata, in the possession of Franklin
22 County and any other attachments associated with
23 the emails.

24 viii. The above requests for any emails sent, received,
25 in items # B i-vii above including any email or in
26 any "draft" file, "deleted" file , or any file in any
27 outlook or email storage area in existence
between February 14, 2020 to April 17, 2020 and
all associated metadata for all in items # B i-vii, in
the possession of Franklin County.

F. Phone records and Texts:

i. All phone records and/or call records for any
phone used by Franklin County Sheriff Raymond
for conducting work on behalf of Franklin County
from February 1, 2019 to April 17, 2020, including

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any contacts with the phone number (509) 440-2771.

- ii. All texts for any phone used by Franklin County Sheriff Raymond for conducting work on behalf of Franklin County from February 1, 2019 to April 17, 2020, including any contacts with the phone number (509) 440-2771.
- iii. All messages or chats from any format, including but not limited to Facebook, Instagram, etc. used by Franklin County Sheriff Raymond for conducting work on behalf of Franklin County from February 1, 2019 to April 17, 2020, including any attachments and all associated metadata for all in items, in the possession of Benton County.

For ease of communications it is my understanding that "Metadata" is a public record. *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 150 (Wash. 2010)(Embedded metadata is a public record that must be disclosed under the PRA). "Metadata is "data about data," or hidden information about electronic documents created by software programs, including information describing the history, tracking, or management of an electronic document. Metadata from electronic files can include information about a particular data set that describes how, when, and by whom it was collected, created, accessed, or modified, and how it is formatted (including data demographics such as size, location, storage requirements, and media information). Most metadata generally is not visible when an electronic document is printed or when the document is converted to an image file." *Id.* at 145-146.

C. On the 24th of April 2020, Petitioner/ Plaintiff was provided confirmation of the receipt of the 17th of April 2020 public records request from the County in the following communication:

RE: 5 DAY RESPONSE TO RCW 42.56.520
 REQUEST NO. R003599-042420
 Dear Mr. Harvey,

1. Complaint

ALAN E. HARVEY ATTORNEY AT LAW Northwest Legal Advocates L.L.C. P.O. Box 61912 VANCOUVER, WASHINGTON 98686 (360) 524-2009
--

1 Franklin County is in receipt of your Public Records Request
2 dated and received on
3 04/17/2020 for all records associated with BCSO IA#20-001.
4 Additional time is needed to respond to your request based
5 upon the need to locate, assemble and evaluate responsive
6 records for exemption from disclosure. Responsive records
7 are being collected and processed. It is estimated that
8 responsive records will be provided on about 05/26/2020. This
9 is a good faith estimate of the time it will take to fill your
10 request. If more time is needed we will let you know.
11 Thank you for contacting Franklin County.

8 D. However, four days prior to the County's confirmation letter,
9 (referenced at III.C above), Franklin County Sheriff Raymond, on the 20th
10 of April 2020, wrote to Benton County Sheriff Hatcher, Shawn Sant, the
11 Franklin County Prosecuting Attorney, Jennifer Johnson, the Chief Civil
12 Deputy for the Franklin County Prosecuting Attorney's office, and Ronnell
13 Nelson about Jason Erickson's 17th of April 2020 public records request. ,
14 On the 20th of April 2020, Sheriff Raymond wrote to them in relevant part
15 the following about the County's future response to Jason Erickson's
16 public records request (bold and italics for emphasis):

17 In February 2020, I accepted a request by Sheriff Hatcher to
18 conduct an Internal Review for him within the Benton County
19 Sheriff's Office. As you are aware it has been quite
20 controversial in which the FOP (Alan Harvey) and members of
21 the Benton County Sheriff Office don't like that this is occurring.
22 News flash, it is not uncommon for an outside agency to conduct an
23 administrative investigation on behalf at the request of another . The
24 FOP/Alan Harvey doesn't get to decide what agency heads do with
25 these requests.

26 Today I was notified that Mr. Harvey/FOP is up to his usual antics and
27 is requesting by way of PDR's the reports and meda data. **Whatever,**
his usual crap is to get a copy of the IA is not coming from this
office.

I'm currently in possession of the IA and completing it to deliver to
Sheriff Hatcher. I will also provide Hatcher with Harvey's PDR request
at that time.

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We (FCSO) *are not going to fulfill Mr. Harvey request* as this matter belongs first completed and placed in the hands of Sheriff Hatcher.
.....

E. On the 4th of May 2020, Sheriff Raymond provided a two page summary to Sheriff Hatcher regarding BCSO IA 20-001. No responsive records were provided by the County this date to Jason Erickson as to his 17th of April 2020.

F. On the 24th of May 2020 a small distribution of 40 pages of phone records were released from Franklin County Public Records Center from franklincountywa@mycusthelp.net. to Jason Erickson.

G. On the 24th of May 2020 Franklin County Sheriff's Office sent an "updated" installment letter. The letter in pertinent part indicated as follows:

It is estimated that installment 2 will be provided on about 06/30/2020. This is a good faith estimate of the time it will take to fill your request. If more time is needed we will let you know. If you have any questions, please contact our office.

The county has not provided any responsive records since that date, i.e. the 24th of May 2020. The 30th of June 2020 passed and the County provided nothing. No other documents or recordings have been provided by the County. No meta-data has been provided.

H. In the 3rd week of July 2020, a 2 page document, authored by Franklin County Sheriff Raymond, was posted on a Facebook page. This document had a subject line of "BCSO IA# 20-001" and is dated the 4th of May 2020. The document references the documents requested, in the

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1 17th of April 2020 public records request by Jason Erickson, being
2 delivered to Sheriff Hatcher on or about the 4th of May 2020. Specifically,
3 the all the email, recordings, reports, etc., possessed and prepared by
4 Franklin County Sheriff's Office Captain Diaz and Franklin County Sheriff's
5 Office Captain Huber.

6 Since, the 24th of May 2020, there has been no known written
7 communication from the County to Jason Erickson, with respect to his
8 public records request, nor is there any record there were any efforts to
9 comply with the request. Specifically, Sheriff Raymond ordered that
10 there be no reply responsive to records associated with BCSO IA 20-001.
11 It is clear that Sheriff Raymond's order has been followed as no records
12 relating to BCSO IA 20-001 have been provided.

13 **IV. Cause of Action-**

14 **A. Public Records Request:**

15
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17 1. On the 17th of April 2020, the petitioner, pursuant to RCW
18 42.56, made a public records request set out above in section III. B
19 and the content are incorporated here by reference.

20 **B. Requested documents and recordings are public records:**

21 The requested documents are public records to be made available
22 for inspection and copying under RCW 42.56.070(1) as follows:

23
24 (1) Each agency, in accordance with published rules, shall make available
25 for public inspection and copying all public records, unless the record
26 falls within the specific exemptions of *subsection (6) of this section,
27 this chapter, or other statute which exempts or prohibits disclosure of
specific information or records. To the extent required to prevent an

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1 unreasonable invasion of personal privacy interests protected by this
2 chapter, an agency shall delete identifying details in a manner
3 consistent with this chapter when it makes available or publishes any
4 public record; however, in each case, the justification for the deletion
5 shall be explained fully in writing.

6 RCW 42.56.010(3) defines a public record in pertinent part as follows:

7 (3) "Public record" includes any writing containing information relating to
8 the conduct of government or the performance of any governmental or
9 proprietary function prepared, owned, used, or retained by any state or
10 local agency regardless of physical form or characteristics.

11 **C. Public Records Must be Made Available Promptly.**

12 Petitioner is entitled to, and the Respondent is required to provide,
13 prompt responses to requests for public records. RCW 42.56.080 and
14 RCW 42.56.520. The PRA also requires the Respondent to provide the
15 "fullest assistance" to requesters and afford the timeliest possible action"
16 on requests. RCW 42.56.100. The agency must respond no later than
17 five business days from receiving and within those five days the agency
18 must either 1) provide the record, 2) deny the request, or 3) provide a
19 *reasonable* estimate of the time needed to respond to the request based
20 on "the need to notify third persons or agencies affected by the
21 request." RCW 42.56.520. If the agency chooses to deny the request,
22 "denials of requests must be accompanied by a written statement of the
23 specific reasons therefore" *Id.*

24 **D. The Public Corporation and/or the Agency, Franklin County,
25 failed to Timely Provide Records.**

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1 Defendant/Respondent, Franklin County has failed to provide,
2 refused to provide records by the facts, and therefore legally refused to
3 provide records. Further, the respondent failed to engage in any
4 reasonable effort to comply with the petitioner's requests in a reasonable
5 time period. It is clear that the time period originally set was not the
6 product of any consultation with any person assigned to the task of
7 securing the requested information. It appears that the Sheriff of Franklin
8 County actually ordered that no records be provided, and this was not in
9 reliance of any known exceptions to the public records act. The
10 respondent's actions or lack of action were the cause of the unreasonable
11 delay and amounted to a failure to provide the requested documents
12 pursuant to the Public Records Act.
13
14

15
16 **E. Petitioner Efforts at clarity in the communications**

17 The petitioner has waited for patiently for the Respondent to comply as
18 stated. It became apparent based upon information obtained recently
19 that the respondent had made no efforts to secure or locate some of the
20 information requested. The petitioner made a good faith effort in the
21 original request to clearly communicate the need for the requested
22 materials. The need for the timely production materials was apparent
23 given the context of the communication and the concerns and the basis for
24 the needs relating to the materials. The respondent was not responsive to
25 these efforts. To the contrary the Franklin County Sheriff issued an order
26 to block distribution of the records requested.
27

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F. Right to Judicial Review

RCW 42.56.550 (1) (2) and (3) provide as follows as to the right of a citizen to judicial review of agency actions.

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a *reasonable estimate of the time that the agency requires to respond to a public record request*, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. *The burden of proof shall be on the agency to show that the estimate it provided is reasonable.*

(3) **Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo.** Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

Finally, RCW 42.56.030 provides in whole that:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people

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1 insist on remaining informed so that they may maintain control over the
2 instruments that they have created. This chapter shall be liberally
3 construed, and its exemptions narrowly construed to promote this public
4 policy and to assure that the public interest will be fully protected. In the
event of conflict between the provisions of this chapter and any other act,
the provisions of this chapter shall govern.

5 **G. Right to Attorneys' Fees and Statutory Penalties**

6
7 RCW 42.56.550(4) Provides in whole as follows:

8 Any person who prevails against an agency in any action in the
9 courts seeking the right to inspect or copy any public record or the right to
10 receive a response to a public record request within a reasonable amount
11 of time *shall* be awarded all costs, including reasonable attorney fees,
12 incurred in connection with such legal action. In addition, it shall be within
13 the discretion of the court to award such person an amount not to exceed
one hundred dollars for each day that he or she was denied the right to
inspect or copy said public record.

14 **V. Prayer for Relief**

15 Plaintiff/Petitioner prays for judgement against the defendant/respondent,
16 Franklin County, as follows:

- 17 1. Order that all records request be made immediately available
18 for inspection and copying to the Petitioner with respect the 17th of
19 April 2020 public records request and/or the County Public Records
20 Request # R003599-042420; and
21
22 2. An award for Plaintiff/Petitioner of all costs, reasonable
23 attorneys' fees, incurred in connection with its actions and efforts to
24 obtain the records, as provided in RCW 42.56.550(4); and
25
26 3. An award to Petitioner of monetary penalties pursuant to
27 RCW 42.56.550(4) of between \$5.00 and \$100.00 per day per

1. **Complaint**

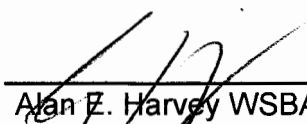
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record for each day since the request until the date the records are provided to the Petitioner.

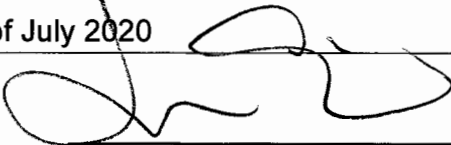
Specifically, a "record" can be interpreted as each slide or frame of a video or digital video recording withheld in this matter. Further, a "record" can be interpreted as single page.

If any record withheld are documents then the request for a reward to be assessed may be an assessment by page as to the document being a "record" and for an assessment of \$5.00 and \$100.00 per day per record for each day since the request until the date the records are provided to the Petitioner.

DATED this 28th day of July 2020

 Alan E. Harvey WSBA 25785
Attorney for Plaintiff /Petitioner
ALAN E. HARVEY ATTORNEY AT LAW Northwest Legal Advocates L.L.C. P.O. Box 61912 VANCOUVER, WASHINGTON 98686 (360) 524-2009

DATED this 28th day of July 2020

 Jason Erickson
Petitioner/ Plaintiff

1. Complaint

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