

Olympia Address:

106 Irv Newhouse Building PO Box 40404 Olympia, WA 98504-0404 Phone: (360) 786-7606 FAX: (360) 786-7173

Toll-Free: 1-800-562-6000 E-mail: Mike.Padden@leg.wa.gov

Washington State Senate

Senator Mike Padden4th Legislative District

Committees:

Law & Justice, Chair Human Services & Corrections Ways & Means

District Office:

11707 E. Sprague Ave., Suite 305 Spokane Valley, WA 99206 Phone: (509) 921-2460

April 26, 2017 NEW COPY WITH CORRECTED DATE

Attorney General Bob Ferguson 1125 Washington Street SE Olympia, WA 98504-0100

Re: Public Records Request Response

Dear Attorney General Ferguson,

I am in receipt of the letter your office sent in response to my public records request. The letter stated: "I estimate that it will take twenty (20) business days to determine the location, nature, and amount of records that may be responsive to your request. If records are ready prior to that time, I will notify you. If this time assessment requires adjustment, I will also advise you of that." For the reasons outlined below, I do not believe your office's response is legally sufficient.

RCW 42.56.520 requires that responses to requests for public records shall be made promptly by agencies. Under that provision, within five business days of receiving a public record request and excluding other options that are not pertinent, an agency must respond by acknowledging that the agency has received the request and by "providing a reasonable estimate of the time the agency . . . will require to respond to the request." In this context, the reasonable estimate is the time necessary "for the records to be provided." Public Records Desk Book, Washington State Bar Association, 2006, s. 6.4(2)

Similarly, the guide and model rules for agencies on the Public Records Act provided on your office's website indicate that the estimate must be to "fully respond" to the request. See e.g. (Agency should "[a]cknowledge your request and give you a reasonable estimate of how long it will take to <u>fully respond</u>;") http://www.atg.wa.gov/obtaining-records [emphasis added]; (Agency rules should "[p]rovide a reasonable estimate of the time to <u>fully respond</u>. Unless it is providing

the records or claiming an exemption from disclosure within the five-business day period, an agency must provide a reasonable estimate of the time it will take to <u>fully respond to the request</u>. RCW 42.17.320/42.56.520. <u>Fully responding</u> can mean processing the request (assembling records, redacting, preparing a withholding index, or notifying third parties named in the records who might seek an injunction against disclosure) or determining if the records are exempt from disclosure.") http://agportals3bucket.s3.amazonaws.com/uploadedfiles/Another/About the Office/Open Government/Model%20Rules%20Electronic%20Records.pdf [emphasis added].

Rather than identifying a reasonable estimate for the records to be provided to fully respond to the request, your letter indicates that in 20 days your office may be able to provide a determination only of "the location, nature, and amount" of responsive records. This is not legally sufficient. Put another way, your response would be a "reasonable estimate" of when you might be able to provide a "reasonable estimate." This is not consistent with the plain language of the statute or the interpretation and rules that your office currently promulgates on agency obligations.

I do not need to remind you of the consequences for the failure of a state agency to meet its obligation under the Public Records Act. Yousoufian v. Office of Ron Sims, 165 Wn.2d 439, 200 P.3d 232 (2009). Wade's Eastside Gun Shop, Inc. v. Dep't of Labor & Indus., 185 Wn.2d 270, 372 P.3d 97, (Wash. 2016). You might also recall that the Department of Corrections last year failed to respond to a public records request that necessitated alternative means of obtaining the records. I am hopeful you can provide clarification that will facilitate the speedy resolution of my request. I look forward to hearing from you soon.

Sincerely,

Senator Mike Padden