



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

February 12, 2015

Tim Clemans
Sent via email to: policevideorequests@gmail.com

Re: Your Email Dated February 5, 2015

Dear Mr. Clemans:

This letter is in response to your email dated February 5, 2015, sent at 12:09 p.m. We understand that email was directed to approximately 65 executive branch state agencies and entities, other state-wide agencies, and to the Legislature and the Code Reviser. The Attorney General's Office is legal counsel to these state entities, and in that capacity we are providing this response to your email on behalf of all agencies and entities that received the email.

You ask that "all emails with meta-data in the .MSG file format be provided to me via FTP server or cloud storage service or state website at no charge," excluding emails that require redaction. You state that you want "an all inclusive date range and all subjects." You state that if the agencies do not provide these emails to you via the internet at no charge, you seek as an alternative the opportunity to "inspect/photograph the records" and state you then will expand your demand to include "all major classes of records."

We have concluded that your email is (1) not a request under the Public Records Act (PRA), RCW 42.56, and (2) does not satisfy the PRA's "identifiable record" requirement. Consequently, on behalf of our clients, we are writing to inform you that the state is under no obligation to respond to your email.

Your email identifies no contents or topics of information on which you seek to be informed that relate to the conduct of government or the performance of any governmental or proprietary function. *See* RCW 42.56.010 (definition of "public record"). Rather, your email demands that every email ever sent to or from these agencies - our initial estimate is some 600 million emails - be reviewed to determine whether redaction is required. For those that do not require redaction, you request that they be provided and made public via the internet, including being placed on state agency websites.

In essence, you are seeking a change in the state's business operations and information technology systems with respect to posting information online. Your statements to the media

ATTORNEY GENERAL OF WASHINGTON

February 12, 2015

Page 2

confirm you are asking that the state change how it manages and maintains its email system and that its email be made publicly available online as it is created. Thus, your email is not a PRA request but a demand for a substantial change in how the state conducts business.

The Washington State Legislature encourages agencies to publicly provide certain types of records online. The Legislature, however, has not mandated that, as a business practice, state employees' email must be posted online. Specifically, in the Laws of 2010, Chapter 69, the Legislature explained:

The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online.

You are seeking changes in the law and the allocation of state funding with regard to the state's email archiving practices, email storage capabilities, and the manner in which state agencies use their websites and post records. Whether there should be online public access to state email, how such a system could operate, and the cost of funding the technological resources necessary are policy questions to be resolved by the Legislature. Thus, your email is not a request under the PRA.

Additionally, your email does not satisfy the PRA's requirement that any request be for an "identifiable public record." RCW 42.56.080. *See, e.g., Bonamy v. City of Seattle*, 92 Wn. App. 403, 411, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012 (1999); *Beal v. City of Seattle*, 150 Wn. App. 865, 872, 209 P.3d 872 (2009); *Limstrom v. Ladenburg*, 136 Wn.2d 595, 604 n.3, 963 P.2d 869 (1998).

First, your email does not seek "identifiable public records" because state agency emails are not organized, identified, or searchable by classes of "records that need redacting" and "records that do not need redacting." Every email in state government would have to be copied, retained, and reviewed to determine if redaction is needed. This process would require duplication of the entire state email system and suspension of record retention schedules for years.

Additionally, because your email seeks "all emails" stored as of February 5, 2015, it is not a request for an "identifiable public record." Of course, state agencies may not deny a request solely because it is overbroad and routinely respond to requests for voluminous identifiable records. But the "identifiable record" criterion - while not a high bar - must have some meaning if the PRA is to operate for the benefit of all requesters and serve the purposes of the initiative passed by the people.

ATTORNEY GENERAL OF WASHINGTON

February 12, 2015

Page 3

For these reasons, your email does not comply with the statutory requirement in RCW 42.56.080. When there is no valid public records request, an agency has no obligation to respond to it. *Bonamy*, 92 Wn. App. at 412.

We understand that you are seeking major changes in state business operations. However, what you are seeking is not a request under the PRA and does not meet the PRA's requirements. While we understand this may not be the answer you prefer, we suggest that you bring forth your ideas on access to records online to policymakers and the Legislature.

Again, we are providing this response to you on behalf of all the agencies to which you sent your email, and we are doing so within five business days of your inquiry.

Sincerely,

THE ATTORNEY GENERAL'S OFFICE
on behalf of Washington State Agency Clients