





1           16.     In 2013, James Evans was endorsed by the 45<sup>th</sup> District Democrats for  
2 Woodinville City Council Position #3.

3           17.     In November 2013, James Evans was elected un-opposed to become Woodinville  
4 City Council Position #3.

5           18.     In January 2016, Mr. James Evans was elected as Deputy Mayor by the members  
6 of the Woodinville City Council.

7           19.     In March 2017, Mr. Nicolas Duchastel de Montrouge was a member of the 45<sup>th</sup>  
8 District Democrat Endorsement Committee. He was tasked with reaching out to candidates for  
9 the City of Woodinville.

10          20.     On March 11, 2017, Mr. Duchastel de Montrouge sent an email asking if Mr.  
11 James Evans wanted to seek the 45<sup>th</sup> District Democrats' endorsement. Mr. Evans replied that  
12 he would know within 2 weeks.

13          21.     On August 24, 2017, Mr. James Evans was interviewed by the 45<sup>th</sup> District  
14 Democrats Endorsement Committee. The Endorsement Committee did not recommend his  
15 endorsement to the body of the 45<sup>th</sup> District Democrats.

16          22.     Mr. James Evans was not endorsed by the 45<sup>th</sup> District Democrats.

17          23.     In November 2017, Mr. James Evans was re-elected, un-opposed to position # 3  
18 of the Woodinville City Council.

19          24.     James Evans was named Deputy Mayor.

20          25.     In December 2017, Councilmember Susan Boundy-Sanders met with Deputy  
21 Mayor James Evans at a bar in Woodinville. During their meeting, Mr. Evans expressed his  
22 anger at the 45<sup>th</sup> District Democrats for not endorsing him.

1           26.     At that December 2017 meeting, Mr. Evans made five assertions:

- 2                   a.     It was unreasonable for the 45<sup>th</sup> District Democrats to deny him their  
3                   endorsement, especially after endorsing him in 2013.  
4                   b.     This non-endorsement followed a long email conversation in which the  
5                   endorsement committee "demanded," among other things, that he declare  
6                   himself to be a Democrat and pledge to never support a Republican  
7                   candidate in the future (a claim that was not true)  
8                   c.     That Nicolas Duchastel de Montrouge, as part of the endorsement  
9                   committee, is a terrible person.  
10                  d.     He expected that Woodinville's next mayor should devote themselves to  
11                  eradicating both the 45th Democratic and Republican organizations.  
12                  e.     That [State Senator] Manka Dhingra is a "carpet-bagger" and "does not  
13                  represent Eastside values."

14           27.     In January 2018 Councilmember Ms. Elaine Cook was elected as Deputy Mayor  
15     by the members of the Woodinville City Council.

16           28.     In June 2018, Woodinville Mayor Mr. Bernie Talmas resigned as mayor.

17           29.     In June 2018, Mr. Evans was elected as Mayor by the members of the  
18     Woodinville City Council.

19           30.     On June 12<sup>th</sup>, 2018, Mr. Talmas resigned as Councilmember.

20           31.     Mr. Nicolas Duchastel de Montrouge submitted his candidacy to be appointed as  
21     a replacement for Mr. Talmas's seat on the City Council.

22           32.     Councilmember Elaine Cook expressed concern that Mr. Nicolas Duchastel de  
23     Montrouge was not successful professionally because he had held multiple jobs with top  
24     software companies.

          33.     Councilmember Elaine Cook also indicated that Mr. Duchastel de Montrouge was  
          claiming to already have "four votes" on council to be appointed to council. Mr. Duchastel de  
          Montrouge was making no such claim.

          34.     On August 7, 2018, Garry Harris was appointed to fill Mr. Talmas's seat.

1           35.     In 2019 Mr. Duchastel de Montrouge ran against Al Taylor for his seat on the  
2 Council. Mr. Duchastel de Montrouge lost by only 23 votes.

3           36.     In August 2019 during the campaign season, Mr. Duchastel was running in a 5K  
4 race as part of a “Celebrate Woodinville” event. During the run, Oliver Campbell the teenage  
5 son of Councilmember Best-Campbell came up to Mr. Duchastel de Montrouge on the trail and  
6 flipped up his middle finger at Mr. Duchastel de Montrouge and said it was for or from his  
7 mother Best-Campbell whom Mr. Duchastel de Montrouge understood viewed him as a political  
8 opponent.

9           37.     In December 2019 Mr. Duchastel was running again in a 5K race as part of a  
10 “Celebrate Woodinville” event and this time was filming himself running along the race.  
11 Councilmember Best-Campbell’s teenage son Oliver Campbell yelled at Mr. Duchastel de  
12 Montrouge as he passed by Mr. Duchastel de Montrouge. The teen realized after accosting Mr.  
13 Duchastel de Montrouge that Mr. Duchastel de Montrouge had been filming his run and had  
14 captured the teen’s actions.

15           **B.     Plaintiff’s Requests for Public Records**

16           38.     Between Thursday, January 2, 2020 and the morning of Friday, January 3, 2020  
17 Woodinville Deputy Mayor Gary Harris and Woodinville Councilmember Rachel Best-  
18 Campbell communicated via their official City of Woodinville emails with Mr. Duchastel de  
19 Montrouge to set up a meeting at a local Starbucks to “talk about Planning Commission.”  
20  
21  
22  
23  
24

1           39.     On Friday, January 3, 2020 at 11:02 a.m. Mr. Duchastel de Montrouge made a  
2 Public Records Act (“PRA”) request to the City of Woodinville for the following:

3           “All email threads by city council member and staff with reference to me. Only on city  
4 servers. Please look for various spelling of my names as it is often mis-spelled. Please  
5 forward all emails sent in 2019 and few days of 2020.”

6 This request was designated by the City as PRR 4088.

7           40.     On Saturday, January 4, 2020, Deputy Mayor Harris, Councilmember Best-  
8 Campbell and Planning Commissioners Jorge Meza and Mr. Duchastel de Montrouge met at a  
9 Starbucks in Woodinville for the meeting Harris and Best-Campbell had requested to discuss the  
10 Planning Commission.

11           41.     At that meeting, Councilmember Best-Campbell recorded a portion of the  
12 meeting on her cell phone during which recording she read a prepared statement.

13           42.     Neither Commissioners Meza or Duchastel de Montrouge were given a copy of  
14 the statement.

15           43.     Mr. Duchastel de Montrouge stated after the recording that he did not consent to  
16 being recorded and that it was probably illegal.

17           44.     Deputy Mayor Harris stated that Mr. Duchastel de Montrouge had not protested  
18 in time.

19           45.     During the January 4, 2020 meeting, Councilmember Best-Campbell made a  
20 general statement about Mr. Duchastel de Montrouge being a bad person and not acting with the  
21 appropriate decorum but gave no specifics. After she read her statement, she turned off the  
22 recording and refused to continue any discussion and left.

23           46.     On January 6, 2020, the City Clerk acknowledged Mr. Duchastel de Montrouge’s  
24 PRR 4088 and provided an estimate of February 28, 2020 for production.

1           47.     On Tuesday, January 7, 2020, Mr. Duchastel de Montrouge met in person with  
2 Woodinville City Clerk Kathie Hanke and Deputy Clerk Brenda Ericksen.

3           48.     The meeting occurred in the small conference room next to the Council Chambers  
4 at Woodinville City Hall.

5           49.     The meeting occurred shortly before the start of the 7 pm City Council meeting  
6 that evening.

7           50.     At this meeting, Mr. Duchastel de Montrouge highlighted two specific concerns  
8 he held: retaliation against himself for making Public Record Act requests and a danger of public  
9 records being destroyed.

10          51.     At this meeting, Mr. Duchastel de Montrouge was told that his PRA request  
11 which was assigned the name PRR 4088 would be treated as one solely for records found on the  
12 City's servers.

13          52.     At this meeting, Mr. Duchastel de Montrouge then presented a second PRA  
14 request to Ms. Hanke and Ms. Ericksen, asking for the following:

15                 "All records of conversation or discussion referring to Nicolas Duchastel de  
16 Montrouge in relation to the Planning Commission or in relation to any allegation  
17 of lack of decorum, mistreatment or disrespect of City staff or volunteer to the  
18 City. All records involving one or many City Council members, the City  
19 Manager (Brandon Buchanan), the Planning Director (Robert Grumbach, or his  
20 predecessor), the chairman and vice-chairman of the Planning Commission,  
21 Police Chief Larson or deputies working with the City of Woodinville. All  
22 records since May 2017 until the present are requested. This should include all  
23 conversation or discussion regardless of media or platform. It should include, but  
24 not be limited to: files, images, recordings, emails, papers, notes, faces, text  
messages, mobile phone metadata, social media posts (including Facebook,  
Twitter or any other platform), messages on any other communication  
applications such as WhatsApp. This should also include past City Council  
members, staff members or volunteers who held the role listed above during any  
of the days listed above."

Mr. Duchastel made clear this new PRA request was for records on the City servers as well as

1 those located off the City servers including but not limited to those held on personal devices,  
2 personal accounts, and personal storage locations and servers. This second PRA request was  
3 assigned the number PRR 4089 by the City.

4 53. On January 8, 2020, the City confirmed its understanding of PRR 4089 as  
5 follows:

6 “[A]ll records, from May 1, 2017 through the date of your request, documenting  
7 conversations or discussions between any combination of past or present City Council  
8 member(s), City Manager, Development Services Director, Chair and/or Vice-Chair of  
9 the Planning Commission, Chief of Police, and/or any King County Sheriff Department  
10 deputy working on behalf of the City, in which you are referred to in relation to the City  
11 of Woodinville Planning Commission, or in relation any allegation made against you or  
12 lack of decorum towards or disrespect of any City staff or volunteer.”

13 54. On January 10, 2020, Mr. Duchastel de Montrouge emailed the City Clerk,  
14 Deputy City Clerk and City Manager Brian Buchanan reiterating his two concerns expressed on  
15 January 7, 2020: that he would be subject to retaliation for making public record requests and  
16 that public records would be destroyed. He stated in relevant part: “I am concerned that City  
17 Council members might try to use the fact that I am submitting a public records request as a  
18 reason to retaliate against me; either as a private citizen or as a Planning Commissioner; ...  
19 destruction of records: ... I am mainly concerned that City Councilors might want to destroy  
20 some records. I hope that I am wrong and just being overly cautious and that my fears are just  
21 that: fears. That said, I would appreciate any action you can take to alleviate these fears.”

22 55. On January 13, 2020, Mr. Duchastel de Montrouge emailed the City Clerk,  
23 Deputy City Clerk and City Manager reiterating his concerns stating as follows in relevant part  
24 as follows:

“As I stated before, I am quite concerned that a few elected officials could decide [sic]  
the remove or destroy some communication. Please take any steps reasonable to ensure  
the safeguard of public record. For example, I would recommend that you inform all  
parties listed in my request that a formal request for public record has been submitted and



1 that no document should be removed or deleted. I hope that this can be done ASAP.”

2 56. On January 13, 2020, Mr. Duchastel de Montrouge submitted a formal complaint  
3 to the City Manager alleging intimidation, bullying, defamation and harassment by many current  
4 and past city officials; including but not limited to James Evans, Elaine Cook, Rachel Best-  
5 Campbell and Gary Harris.

6 57. On January 14, 2020, the City Clerk emailed Mr. Duchastel de Montrouge re: his  
7 concerns regarding document destruction stating as follows: “Also, please be assured the City  
8 complies with the PRA, including its prohibition on destruction of records that would be  
9 responsive to a pending request. All current Council and Commission members have had Open  
10 Government training, which specifically includes instructions on this prohibition.”

11 58. On January 16, 2020, City Manager Buchanan forwarded the formal complaint to  
12 the entire City Council, including the individuals accused and from whom Mr. Duchastel de  
13 Montrouge had expressed concerns about retaliation.

14 59. Later in the day on January 16, 2020, Mayor Elaine Cook replied by email stating  
15 she would study the complaint and respond.

16 60. The communications circulating his formal complaint and discussing it, while  
17 responsive to a PRA request discussed herein, was not provided to Mr. Duchastel de Montrouge  
18 by the City in response.

19 61. On January 19, 2020, Mr. Duchastel further clarified to the City Clerk the  
20 parameters of PRR 4089 as follows:

21 “This Public Documents Request asks for all records matching any of the following  
22 parameters:

23 1. Referring to Nicolas Duchastel de Montrouge in relation to the Planning Commission  
24 or in relation to any allegation of lack of decorum, mistreatment, aggressiveness,  
aggression, disrespect, stalking, etc. of City Council members, City staff or City

1 Volunteers;

2 2. Referring to the City Council, Mayor, or city policy in relation to political  
endorsements or political parties;

3 3. Referring to James Evans or Elaine Cook in the context of selecting a mayor;

4 4. Referring to James Evans, Elaine Cooke, Gary Harris, or Al Taylor endorsements.

5 This Public Documents Request should include all conversation or discussion where any  
6 of the participants is one of the following: City Council member(s), City Manager,  
7 Development Services Director, Chair and/or Vice-Chair of the Planning Commission,  
8 Chief of Police, and/or any King County Sheriff Department deputy working on behalf of  
the City or City Attorney. This should include past and present holder of these positions  
during the requested timeline.

9 All records from May 2017 until the present are requested.

10 Various spelling for Nicolas Duchastel de Montrouge should be considered: Nicolas  
11 Duchastel de Montrouge, Nicolas Duchastel, Nicolas, Nicholas, Duchastel, Duchatel,  
Duschatel, or any other typical mis-spelling of his name.

12 This Public Documents Request includes all records, conversation or discussion  
13 regardless of media or platform. It should include, but not be limited to: files, images,  
14 recordings, emails, papers, notes, faxes, text messages, mobile phone metadata, social  
media posts (including Facebook, Twitter or any other platform), messages on any other  
communication applications such as WhatsApp....

15 I now believe that my request 4088 should result in a subset of the data requested by  
16 Request 4089. Feel free to merge the two requests if that makes your job easier.”

17 62. On January 21, 2020, after a Woodinville City Council meeting, the father of  
18 Councilmember Best-Campbell approached Councilmember Susan Boundy-Sanders and made  
19 disparaging comments about Mr. Duchastel de Montrouge and a threat against Mr. Duchastel de  
20 Montrouge’s life stating he would go after Mr. Duchastel de Montrouge with a gun.

21 63. Councilmember Boundy-Sanders reported the incident to City Manager  
22 Buchanan and called Mr. Duchastel de Montrouge and told him of the death threat.

23 64. That same evening Mr. Duchastel de Montrouge also left a voicemail message  
24 with City Manager Buchanan about the incident.

1           65.     On January 22, 2020, both Councilmember Boundy-Sanders and Mr. Duchastel  
2 de Montrouge spoke with King County Sheriff Deputy Mitchell Countryman about the incident.  
3 The incident was assigned King County Sheriff Police Report Number C20002778.

4           66.     On February 28, 2020, the City Clerk emailed Mr. Duchastel de Montrouge  
5 providing an estimate of March 31, 2020 for a first installment on PRR 4089. She stated in  
6 relevant part “while I have received responses from many individuals on this extensive request,  
7 there are some I have yet to hear from and will be following up with to confirm if they have any  
8 responsive records.”

9           67.     On March 9, 2020, the City Clerk send Mr. Duchastel de Montrouge an email  
10 regarding PRR 4088 stating “Your records request is considered fulfilled and is now closed.  
11 This is the agency’s final response to your request.”

12           68.     On March 9, 2020, the City Clerk sent Mr. Duchastel de Montrouge an email with  
13 a link to records for PRR 4088 that provided 111 files consisting of 207 pages of records. The  
14 City Clerk confirmed she would continue working on PRR 4089, which included records from  
15 PRR 4088 but was broader in scope.

16           69.     On March 31, 2020, the City Clerk emailed Mr. Duchastel de Montrouge  
17 informing him that she had still received no response from one Councilmember, one current  
18 Planning Commissioner, one past Councilmember and two past Commissioners.

19           70.     On March 31, 2020 and April 17, 2020, Mr. Duchastel de Montrouge emailed the  
20 City Clerk asking when he would begin receiving responsive records.

21           71.     On April 17, 2020, the City Clerk responded that one Councilmember and one  
22 Planning Commissioner had never replied to her requests for records from them, and that she  
23 had received a response from the Councilmember that day. No estimate for production of an  
24 installment was provided.

1           72.     On April 30, 2020, the City Clerk sent the first installment for PRR 4089  
2 producing 24 files consisting of 42 individual pages of records consisting primarily of emails  
3 with Plaintiff's name on them.

4           73.     On May 28, 2020, the City Clerk sent Mr. Duchastel de Montrouge an email  
5 stating in relevant part the following:

6                     "The City of Woodinville has completed its search for records responsive to your  
7 Public Records Request Number 4089.

8                     The Agency is providing responsive records in a series of installments due to the  
9 size and scope of your request. The second, and final, installment, of responsive records  
10 is now available for your review....

11                    This is the Agency's final response to your request."

12           74.     On March 29, 2020, the City Clerk provided a link to Mr. Duchastel de  
13 Montrouge with a link to download records allegedly responsive to PRR 4089. The link  
14 produced 382 files consisting of 7,301 individual pages of records.

15           75.     On June 1, 2020, the City Clerk sent an email to be forwarded to Planning  
16 Commissioners asking them to complete a PRA Declaration re: their search for records  
17 responsive to PRR 4089. No similar messages was produced by the City showing a request for  
18 such declarations from Councilmembers or from past Councilmembers or Commissioners. No  
19 declarations, of any kind, were produced to Mr. Duchastel de Montrouge.

20           76.     In June 2020, the City acknowledged that PRR 4088 contained a subset of records  
21 responsive to PRR 4089 as PRR 4088 was for records solely on the City's servers but PRR 4089  
22 was for records also on individual devices and in the possession of current and former staff,  
23 Councilmembers and Commissioners.

24           77.     On June 2, 2020, the City Clerk provided Mr. Duchastel de Montrouge a link to  
download 111 files allegedly responsive to PRR 4088. On June 15, 2020, the City Clerk emailed

1 Mr. Duchastel de Montrouge a link to more records allegedly responsive to PRR 4089. The link  
2 produced 2 files consisting of 3 individual pages of records.

3 78. In all, the City produced 420 files consisting of 7,370 individual pages as  
4 allegedly responsive to PRR 4089 and 111 files consisting of 207 individual pages as allegedly  
5 responsive to PRR 4088.

6 79. On June 16, 2020, during a City Council meeting, Councilmembers Chuck Price,  
7 Al Taylor, Gary Harris and Rachel Best-Campbell made disparaging statements against Mr.  
8 Duchastel de Montrouge and vague unsupported accusations about him. Councilmembers Price,  
9 Harris and Best-Campbell and Mayor Cook voted to remove him as a Planning Commissioner  
10 without due process. Councilmembers Boundy-Sanders and Taylor voted against removal. The  
11 matter had not been on the agenda, and Mr. Duchastel de Montrouge was not aware any such  
12 motion would be made and was not in attendance.

13 80. Planning Commissioners may only be removed during their term “by a majority  
14 vote of the entire City Council for neglect of duty, conflict of interest, malfeasance in office or  
15 other just cause, or for unexcused absence for more than three consecutive regular meetings.”  
16 Woodinville Municipal Code 2.12.020(3).

17 81. Mr. Duchastel de Montrouge met none of the criteria for removal from office, and  
18 the motion to remove him was added with no notice to him or opportunity to respond, and  
19 insufficient information was provided to the public justifying the decision.

20 82. The removal of Mr. Duchastel de Montrouge was in retaliation for his submission  
21 of PRA requests and challenging improper behavior by the City.

22 83. Councilmember Best-Campbell, to hide her son’s inappropriate behavior  
23 accosting Mr. Duchastel de Montrouge during two 5K races, sought to label Mr. Duchastel de  
24 Montrouge as a pedophile accusing him of filming a young boy in shorts, instead of

1 acknowledging Mr. Duchastel de Montrouge was filming his own run and captured Best-  
2 Campbell's son giving Mr. Duchastel de Montrouge the middle finger and shouting profanities  
3 at Mr. Duchastel de Montrouge when he accosted Mr. Duchastel de Montrouge during the run.

4 84. Several residents submitted written public comment to be read at the Council  
5 meeting following Mr. Duchastel de Montrouge's removal from the Planning Commission.  
6 Mayor Cook chose not to read any of the comments aloud, as had been the prior practice as all  
7 City Council meetings are being held via ZOOM due to COVID 19.

8 85. The City now selects the public comments to be read during council meetings  
9 censoring speech based on the viewpoint of the communication.

10 86. On August 13, 2020, Mr. Duchastel de Montrouge made a new Public Record Act  
11 request to the City of Woodinville for the following:

12 "All communications, records and documents related to processing, discussion and  
13 fulfillment of PRR #4088 and PRR #4089; including, but not limited to internal and  
14 external communications, records and documents, in any format."

15 This request was assigned number PRR 4159 by the City.

16 87. On August 19, 2020, the City Clerk gave an estimated delivery date of October  
17 31, 2020, for responsive records to PRR 4159.

18 88. On September 29, 2020, the City emailed current and former officials and staff  
19 informing them of the request and their duty to provide responsive records. The email stated in  
20 relevant part as follows:

21 "The requestor has been provided with a response date of on or before 10/31/2020, but  
22 please reply and let me know when you can have the records ready for release.  
23 Otherwise, please reply to me that you have completed an exhaustive search and have no  
24 responsive records. ... Finally, please note that you may be asked to sign a declaration  
under oath describing your efforts to locate records responsive to this request."

1           89.     Mr. Duchastel de Montrouge received the September 29, 2020 email as he was a  
2 former official.

3           90.     The City waited one month and ten days after PRR 4159 to ask current and  
4 former officials and staff to search for responsive records, and the email makes clear the  
5 deadline of October 31, 2020 was not a firm deadline and expresses no urgency for the  
6 individuals to comply.

7           91.     October 31, 2020 passed with no communication by the City to Mr. Duchastel de  
8 Montrouge as the requestor about the status of PRR 4159.

9           92.     On November 2, 2020 Mr. Duchastel de Montrouge emailed the City Clerk  
10 asking for the status of production.

11          93.     On November 4, 2020, the City responded giving an extension of the estimated  
12 delivery date to November 27, 2020.

13          94.     November 27, 2020 passed with no communication by the City about PRR 4159.

14          95.     On December 7, 2020 Mr. Duchastel de Montrouge again emailed the City Clerk  
15 asking for the status of production.

16          96.     On December 8, 2020, the City responded giving a second extension of the  
17 estimated delivery date to December 18, 2020.

18          97.     December 18, 2020 passed with no communication by the City about PRR 4159.

19          98.     On December 18, 2020 Mr. Duchastel de Montrouge again emailed the City  
20 Clerk asking for the status of production.

21          99.     On December 21, 2020, the City indicated a third extension of the estimated  
22 delivery date stating only that she would check back in with him “early next week” but with no  
23 firm extended date.

24

1           100.    On December 21, 2020, Mr. Duchastel de Montrouge emailed back asking for an  
2 estimated delivery date. He received no response.

3           101.    On December 29, 2020 having heard nothing further from the City, Mr. Duchastel  
4 de Montrouge again emailed the City Clerk asking for the status of production.

5           102.    He again received no response.

6           103.    On January 7, 2021, Mr. Duchastel de Montrouge emailed the City Clerk and also  
7 the Deputy City Clerk and City Manager asking for a status of production.

8           104.    On January 11, 2021, the City Clerk responded but did not provide a new  
9 estimate.

10          105.    On January 11, 2021, Mr. Duchastel de Montrouge responds asking for a new  
11 estimate.

12          106.    On January 11, 2021, the City Clerk responded stating there would be  
13 approximately 310 emails but not providing an estimated date for production.

14          107.    On January 22, 2021, the City Clerk sent Mr. Duchastel a link to download  
15 records and indicated this was the sole and final production for PRR 4159 and that no further  
16 communication should be expected. The email stated in relevant part as follows:

17                 “The City of Woodinville has completed its search for records responsive to your  
18 Public Records Request Number 41549.

19                 Please use this link to access the responsive records for this request and be sure to  
20 view and/or download the files as the link will expire.

21                 Mostly all of the redactions are attorney-client privileged communications,  
22 otherwise a description of the content of the information withheld is included the  
23 redacted text.

24                 Your records request is considered fulfilled and is now closed. This is the  
agency’s final response to your request.”



1           108.    The link provided in the January 22, 2021 email produced 153 pages of records,  
2 106 pages of which were redacted in significant part. No privilege or withholding log was  
3 provided.

4           109.    Mr. Duchastel de Montrouge has never received the written statement from which  
5 Councilmember Best-Campbell read during the January 4, 2020 meeting she and Deputy Mayor  
6 Harris called with Planning Commissioners Jorge Meza and Mr. Duchastel de Montrouge to  
7 discuss “the Planning Commission.” He has never been provided, despite specific request, the  
8 recording of that meeting that Councilmember Best-Campbell made on her cell phone, even  
9 though it was requested just days later through PRR 4089.

10          110.    He has never been provided Declarations of any person confirming an adequate  
11 search for responsive records and explaining no further responsive records exist.

12          111.    He has never been provided an adequate explanation by the City of its searches to  
13 locate responsive records.

14          112.    He has never been provided an adequate statement of records that exist but are  
15 not being produced as either exempt or as deemed by the City not to be “public records.”

16          113.    As of the date of this complaint, Mr. Duchastel de Montrouge has not received all  
17 records responsive to his requests.

18          114.    The City did not produce records by the date it told Mr. Duchastel de Montrouge  
19 he would receive documents and extended its deadlines multiple times.

20          115.    The City is withholding nonexempt public records in violation of the Public  
21 Records Act.

22          116.    As of the date of this complaint, Mr. Duchastel de Montrouge has not received an  
23 adequate withholding index or privilege log identifying responsive records that are being  
24 withheld.

1 117. As of the date of this complaint, Mr. Duchastel de Montrouge has not received an  
2 adequate explanation as to why any records he has requested are exempt from disclosure.

3 **IV. CAUSES OF ACTION**

4 **A. Failure to Provide a Reasonable Estimate and Provide Fullest Assistance and**  
5 **Most Timely Possible Action on Request and to Make Records Promptly**  
6 **Available**

7 118. Mr. Duchastel de Montrouge realleges the preceding paragraphs and incorporates  
8 them by reference in this cause of action.

9 119. RCW 42.56.520 requires an agency to provide a “reasonable estimate” of the time  
10 of production.

11 120. RCW 42.56.080 requires an agency to provide requested records “on a partial or  
12 installment basis as records that are part of a larger set of requested records are assembled or  
13 made ready for inspection or disclosure.”

14 121. RCW 42.56.100 requires an agency to have rules in place to provide the “most  
15 timely possible action on requests.”

16 122. RCW 42.56.080 requires an agency to make records “promptly available.”

17 123. RCW 42.56.550(2) provides:

18 Upon the motion of any person who believes that an agency has not made a  
19 reasonable estimate of the time that the agency requires to respond to a  
20 public record request or a reasonable estimate of the charges to produce  
21 copies of public records, the superior court in the county in which a record  
22 is maintained may require the responsible agency to show that the estimate  
23 it provided is reasonable. The burden of proof shall be on the agency to  
24 show that the estimate it provided is reasonable.

124. RCW 42.56.550(3) provides: “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.”

125. RCW 42.56.550(4) provides:

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

8 126. The City's responses did not provide Mr. Duchastel de Montrouge with "a  
9 reasonable estimate of the time that the agency requires to respond to a public records request[.]"  
10 (RCW 42.56.550(2)).

11 127. The City violated the Public Records Act by not providing Mr. Duchastel de  
12 Montrouge "a reasonable estimate of the time that the agency requires to respond to a public  
13 records request[.]" (RCW 42.56.550(2)).

14 128. The City has violated the PRA by not providing the requested records "on a  
15 partial or installment basis as records that are part of a larger set of requested records are  
16 assembled or made ready for inspection or disclosure."

17 129. The City has violated the PRA by not providing the "most timely possible action  
18 on requests."

19 130. The City has violated the PRA by not making records "promptly available."

20 131. The City failed to meet even its own unreasonable estimate—repeatedly failing to  
21 produce a single record to Mr. Duchastel de Montrouge but its own estimated dates for  
22 production.

### 23 **B. Failure to Produce Public Records**

24 132. Plaintiff realleges the preceding paragraphs and incorporates them by reference in  
this cause of action.

1 133. The Washington State Supreme Court held in *Nissen v. Pierce County*, 183  
2 Wn.2d 863, 874, 876, 357 P.3d 45 (2015) as follows:

3 The definitions of “agency” and “public record” are each comprehensive on their  
4 own and, when taken together, mean the PRA subjects “virtually any record  
5 related to the conduct of government” to public disclosure. *O’Neill [v. Shoreline]*,  
6 170 Wn.2d at 147. This broad construction is deliberate and meant to give the  
7 public access to information about every aspect of state and local government.  
8 See Laws Of 1973, ch. 1, § 1 (11). As we so often summarize, the PRA “is a  
9 strongly worded mandate for broad disclosure of public records.” *Yakima County*  
10 *v. Yakima Herald-Republic*, 170 Wn.2d 775,791,246 P.3d 768 (2011) (quoting  
11 *Soter v. Cowles Publ’g Co.*, 162 Wn.2d 716, 731, 174 P.3d 60 (2007) (quoting  
12 *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)).

13 ...

14 One characteristic of a public record is that it is “prepared, owned, used, or  
15 retained by any state or local agency.” RCW 42.56.010(3)... But those bodies  
16 lack an innate ability to prepare, own, use, or retain any record. They instead act  
17 exclusively through their employees and other agents, and when an employee acts  
18 within the scope of his or her employment, the employee’s actions are tantamount  
19 to “the actions of the [body] itself.” *Houser v. City of Redmond*, 91 Wn.2d 36, 40,  
20 586 P.2d 482 (1978) (as to cities); *Hailey v. King County*, 21 Wn.2d 53, 58, 149  
21 P.2d 823 (1944) (as to counties). Integrating this basic common law concept into  
22 the PRA, a record that an agency employee prepares, owns, uses, or retains in the  
23 scope of employment is necessarily a record “prepared, owned, used, or retained  
24 by [a] state or local agency.” RCW 42.56.010(3).

...

If the PRA did not capture records individual employees prepare, own, use, or  
retain in the course of their jobs, the public would be without information about  
much of the daily operation of government. Such a result would be an affront to  
the core policy underpinning the PRA—the public’s right to a transparent  
government. That policy, itself embodied in the statutory text, guides our  
interpretation of the PRA. RCW 42.56.030; LAWS OF 1973, ch. 1, § 1(11);  
*Hearst Corp.*, 90 Wn.2d at 128.

134. The requested records are public records as defined by RCW 42.56.010(3).

135. RCW 42.56.010(3) defines “public record” as follows:

“Public record” includes any writing containing information relating to the  
conduct of government or the performance of any governmental or proprietary  
function prepared, owned, used, or retained by any state or local agency  
regardless of physical form or characteristics.

1 136. RCW 42.56.010(1) defines “agency as follows:

2 "Agency" includes all state agencies and all local agencies. "State agency"  
3 includes every state office, department, division, bureau, board, commission, or  
4 other state agency. "Local agency" includes every county, city, town, municipal  
5 corporation, quasi-municipal corporation, or special purpose district, or any  
6 office, department, division, bureau, board, commission, or agency thereof, or  
7 other local public agency.

8 137. All of the records requested by Plaintiff are “writings containing information  
9 relating to the conduct of government or the performance of any governmental or proprietary  
10 function”.

11 138. All of the records requested by Plaintiff are “writings ...prepared, owned, used, or  
12 retained by” the City and its agents acting within the scope of their employment/role as agents of  
13 the City.

14 139. The City is a local agency under the PRA.

15 140. Councilmembers, Planning Commissioners, the Mayor, Deputy Mayor, City  
16 Manager, City Staff and City Volunteers are all agents of the City.

17 141. The meeting called by Councilmember Best-Campbell and Deputy Mayor Harris  
18 with Planning Commissioners Meza and Duchastel de Montrouge to discuss “the Planning  
19 Commission” was an act conducted within the scope of the Councilmember and Deputy Mayor’s  
20 role, and all records created during the course of such meeting, including the recording of it, or  
21 the written statement prepared to be read at it, are public records pursuant to *Nissen*.

22 142. All of the requested records were “prepared, owned, used, or retained” by the  
23 individuals “in the course of their jobs” as Councilmembers, Commissioners, Mayor, Deputy  
24 Mayor, City Manager, City Staff or City Volunteer and thus are “prepared, owned, used or  
retained” by the City itself.

1 143. The requested records are subject to disclosure unless exempt from disclosure  
2 under a specific statute. *See* RCW 42.56.070.

3 144. If the City withheld or redacted any information from the requested records, it  
4 was required to explain each withholding or redaction in writing, to identify the statute allowing  
5 for such redaction or deletion, to explain how such statute applied to the record in question, and  
6 to provide a detailed withholding index as described by *Progressive Animal Welfare Society v.*  
7 *University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1995) and *Rental Housing Ass'n of*  
8 *Puget Sound, v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009).

9 145. The City has not adequately identified each record redacted or withheld or the  
10 statute authorizing such redaction or withholding or explained how each such statute applies to  
11 the record withheld or portion redacted.

12 146. The City has failed to produce all records in response to the Plaintiff's PRA  
13 requests.

14 147. There are records responsive to Plaintiff's PRA requests.

15 148. Many of these records have thus far been withheld by the City.

16 149. Responsive records being withheld by the City are not exempt from disclosure  
17 under the PRA.

18 **C. Failure to Provide Exemption Log or Justify Withholding**

19 150. Plaintiff realleges the preceding paragraphs and incorporates them by reference in  
20 this cause of action.

21 151. The City was required to provide Plaintiff with a detailed exemption log or  
22 withholding index identifying all records or content being denied or redacted, the exemption  
23 authorizing the document or content's denial, and sufficient detail about the document or content  
24 to establish the exemption applied.

1           152. The City did not provide Plaintiff sufficiently detailed withholding indexes or  
2 logs for documents that it withheld or redacted. This is a violation of the PRA.

3           153. The City is withholding records responsive to Plaintiff's requests without  
4 adequately claiming exemptions. This is a violation of the PRA

5           154. The City bears the burden of identifying and proving any exemption applies to the  
6 responsive public records sought by Plaintiff.

7           155. The City has not met and cannot meet its burden of identifying or providing an  
8 applicable exemption justifying the withholding of these responsive records.

9           156. The records should have been released to Plaintiff when requested and must be  
10 released now.

11           **D. Records Improperly Withheld in Their Entirety**

12           157. Plaintiff realleges the preceding paragraphs and incorporates them by reference in  
13 this cause of action.

14           158. The City has denied Plaintiff access to records in their entirety and has violated  
15 the PRA as a result.

16           159. The City has failed to provide access to records responsive to Plaintiff's public  
17 records requests described above.

18           160. The City never provided Plaintiff with records responsive to most of the above  
19 requests.

20           161. The City is further withholding records on the claim they are not "public  
21 records".

22           162. The City has violated the PRA by failing to produce these records.  
23  
24

1           **E. Defendant is Silently Withholding Records**

2           163. Plaintiff realleges the preceding paragraphs and incorporates them by reference in  
3 this cause of action.

4           164. It is a violation of the PRA to fail to provide responsive public records without  
5 claiming an exemption or basis for withholding the records (silently withholding records).

6           165. Responsive public records have been silently withheld by the City as they have  
7 not been produced, made available for inspection, or had their existence made known by the  
8 Defendant coupled with an explanation for withholding.

9           **F. Failure to Perform an Adequate Search and to Provide *Nissen* Declarations.**

10          166. The City was required to perform a reasonable search prior to claiming all  
11 responsive records had been produced.

12          167. The State Supreme Court has held that agencies must do “more than a perfunctory  
13 search and follow obvious leads as they are uncovered.” *Neighborhood Alliance of Spokane*  
14 *County v. County of Spokane*, 172 Wn.2d 702, 720, 261 P.3d 119 (2011). An agency must  
15 search for a record in “those places where it is reasonably likely to be found.” *Id.*

16           “Agencies must make a sincere and adequate search for records. When an agency  
17 denies a public records request on the grounds that no responsive records exist, its  
18 response should show at least some evidence that it sincerely attempted to be  
19 helpful.”

19 *Fisher Broadcasting-Seattle TV LLC v. City of Seattle*, 180 Wn.2d 515, 522, 326 P.3d 688, 692  
20 (2014).

21          168. The City was required to provide a detailed statement to Plaintiff showing an  
22 adequate search had been performed.

23          169. When, like here, the PRA requests at issue seek records held outside of the City’s  
24 servers and include records created, received or retained on personal devices and at personal



1 email addresses and by agents of the agency, the Washington State Supreme Court has held that  
2 the agency must obtain a sworn declaration of such agents confirming the adequacy of the  
3 agent's search and any records not provided. See *Nissen v. Pierce County*, 183 Wn.2d 863, 357  
4 P.3d 45 (2015). In *Nissen*, the State Supreme Court required the agency to provide these *Nissen*  
5 Declarations to the requestor.

6 170. The City was required to obtain such declarations from all current and former  
7 officials and agents and to produce such declarations to Plaintiff.

8 171. The City produced no such declarations, and does not appear to have asked for  
9 them from the majority of required agents.

10 172. The City has failed to conduct an adequate search and to obtain and provide  
11 required *Nissen* Declarations, and has violated the PRA.

## 12 **G. Right to Judicial Review**

13 173. RCW 42.56.550 provides that any agency action denying access to public records  
14 for inspection and copying, denying an adequate response to such a request, or failing to provide  
15 a reasonable estimate of the time needed to respond to a record request is subject to judicial  
16 review:

17 (1) Upon the motion of any person having been denied an opportunity to  
18 inspect or copy a public record by an agency, the superior court in the county  
19 in which a record is maintained may require the responsible agency to show  
20 cause why it has refused to allow inspection or copying of a specific public  
21 record or class of records. The burden of proof shall be on the agency to  
22 establish that refusal to permit public inspection and copying is in accordance  
23 with a statute that exempts or prohibits disclosure in whole or in part of  
24 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.

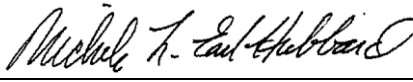


1 E. Award Mr. Duchastel de Montrouge monetary penalties pursuant to RCW  
2 42.56.550(4) of \$100 per record per day from the date of each request until the date the City  
3 conducts a reasonable search, provides all *Nissen* Declarations, and provides all the requested  
4 records in unredacted form or with redactions as approved by the Court after evaluating claimed  
5 exemptions and in camera review.

6 F. For such other relief as the Court deems just.

7 DATED this 4th day of May, 2021.

8 ALLIED LAW GROUP LLC

9 By 

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