

From: Chris Leman [mailto:cleman@oo.net]
Sent: Monday, July 16, 2012 5:54 PM
To: Mayor Mike McGinn (mike.mcginn@seattle.gov)
Cc: Beth Goldberg (beth.goldberg@seattle.gov); 'Hillyard, Naomi'; Susanna Swanson (susanna.swanson@seattle.gov)
Subject: URGENT-- Don't assert deliberative exemption regarding PRA Request #5906 (on Library budget)

Mayor McGinn, Beth Goldberg, and Naomi Hilyard--

Thanks for whatever documents you are sending me based on my June 8 public records request (which I hereby update to include any documents created, sent, or received since that date). With the August 7 levy election and the mailing of ballots impending, time is truly of the essence, so if you can provide me some documents even prior to July 19, that would be highly preferable.

And you must reconsider the wholesale denial of records. I have been advised by an attorney that your withholding of these documents violates the Public Records Act, so please help me reach the proper authority to appeal or re-appeal your remaining withholding of documents that my appeal argues are not exempt, as follows:

(1) The Washington Supreme Court has only very narrowly approved use of the deliberative exemption for over 30 years. Note two things: (a) a specific record publicly cited by the agency "in connection with any agency action" falls outside this exemption. (b) Raw factual data do not fall within this exemption. As the Court has noted:

"The purpose of the exemption severely limits its scope. ... [O]nly those portions of documents actually reflecting policy recommendations and opinions may be withheld under the exemption. Factual data, even when contained within otherwise exempt memoranda, must therefore be produced because the rationale for the exemption, protection of the decision-making process, is wholly inapplicable to factual material." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 133, 580 P.2d 246 (1978)(emphases added).

"We have specifically rejected the contention that this exemption applies to all documents in which opinions are expressed regardless of whether the opinions pertain to the formulation of policy. Moreover, unless disclosure would reveal and expose the deliberative process, as distinct from the facts upon which a decision is based, the exemption does not apply." *Progressive Animal Welfare Soc. v. University of Washington*, 125 Wn.2d 243, 256, 884 P.2d 592 (1994)("PAWS II")(citations omitted); *id.* at 257, n.5 ("Of course, merely raw factual data contained in the [requested records] and not covered by any other exemption ... is disclosable.")

(2) The City is ignoring the legal fact that "raw factual data" are not covered by the deliberative process exemption. And the City must comply with the redaction requirement (which it also seems to be ignoring by withholding documents wholesale). CBO must provide me with the raw factual data contained in the records they have identified in your exemption record but have refused to provide in their entirety. Thus CBO must at the very least provide me with the two documents totaling 24 pages with "opinions" redacted but "raw factual data" disclosed (and given the reasoning in #3 and #4 below, I suggest that the entire documents should be provided.)

- May 29, 2012 - 2013 CIP Budget Issue Paper (5 pages) - exempt, RCW42.56.280
- May 29, 2012 – 2013 Library Budget Issue Paper Submittal (19 pages) - exempt, RCW 42.56.280

(3) RCW 42.56.280 exempts from disclosure "Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action." It seems clear that both the City Council and the Library have widely

cited the CBO estimates and thus the documents they are based on, both in the lead up to passage of the levy ordinance, and in the months since that ordinance placed the levy on the ballot. Therefore, the documents cannot be withheld.

(4) Finally, regardless of the above arguments, there is an "ethics and good government" reason for releasing these documents. The fact that you believe a document CAN be withheld does not mean that you MUST withhold it. Given the importance of the August 7 levy election, please recognize the terrible implications for democracy and open government for you to be withholding these documents just prior to the only election in seven years about a library levy.

Mike and Beth-- Please reconsider and release all of these documents. You will serve the voters and give greater substance to public debate. There is no threat to the deliberative process if you release the documents voluntarily. By withholding them, you are committing a disservice to democracy and degrading the quality of public debate. Please show some respect to the voters! This withholding sounds too much like Mitt Romney, withholding his income tax returns just because he can, despite the fact that his own father generously released many years' worth! Is the McGinn administration committed to open government only when it serves the administration's interests, or is it willing to disclose document even when it would prefer not to?

Chris Leman (206) 322-5463

-----Original Message-----

From: Hillyard, Naomi [<mailto:Naomi.Hillyard@seattle.gov>]
Sent: Monday, July 16, 2012 4:29 PM
To: Hillyard, Naomi
Cc: Leman, Chris
Subject: Re: PRA Request #5906

I will attach in a separate email.

Sent from my mobile device

On Jul 16, 2012, at 3:23 PM, "Hillyard, Naomi"
<Naomi.Hillyard@seattle.gov<<mailto:Naomi.Hillyard@seattle.gov>>> wrote:

Mr. Leman,

Thank you for your voicemail response late last week. You did not indicate in your voicemail that you wanted me to prioritize my responses to your requests any differently so I am providing to you today a detailed exemption log for the records that are being withheld in their entirety. The records that are not being withheld and are responsive regarding the lead up to the \$5 million cited in the fiscal note in the levy ordinance from September 1, 2011, will be provided to you sooner than the original estimate of the end of July. In fact, I estimate that I can provide them to you by close of business on Thursday, July, 19th. If this changes, I will let you know as soon as possible.

Naomi Hillyard
Office of Mayor Mike McGinn
City of Seattle
PO Box 94749
Seattle, WA 98124-4749
(206) 669-4916

Please note that I am in the office on Mondays and Thursdays.

From: Hillyard, Naomi
Sent: Thursday, July 12, 2012 8:53 AM

To: Leman, Chris
Subject: PRA Request #5906

Dear Mr. Leman,

I am writing to you in follow up to a phone call I made to you yesterday. I have recently taken over public disclosure responsibilities in the City Budget Office and have been reviewing your file. I see there are two requests into the City Budget Office for library budget related materials. Regarding the first request, one installment consisting only of an exemption log detailing the records subject to the deliberative process exemption has been provided to you. Another installment that will consist only of another exemption log detailing the additional records that are subject to the deliberative process exemption is due to you on July 16th.

The second request, which is classified as an appeal to the first request, is for records regarding the lead up to the \$5 million cited in the fiscal note in the levy ordinance from September 1, 2011, and are currently being gathered and are due to you at the end of July. I can most likely get these records to you much faster, as they are probably not subject to any exemptions, if I can prioritize my responses differently. I propose that instead of working on an extensive exemption log for records that are all subject to the deliberative process exemption, I concentrate my efforts on gathering the records that respond to your appeal. Upon the completion of the second request, I can revert back to drafting the detailed exemption log, or at your request, we can hold off and provide the withheld records for your review in September after the Mayor's presentation of his budget to the City Council. Please feel free to call me at any time to discuss.

Naomi Hillyard
Office of Mayor Mike McGinn
City of Seattle
PO Box 94749
Seattle, WA 98124-4749
(206) 669-4916

Please note that I am in the office on Mondays and Thursdays.

From: Chris Leman [<mailto:cleman@oo.net>]
Sent: Wednesday, June 20, 2012 5:02 PM
To: 'Swanson, Susanna'
Cc: Barnett, Wayne
Subject: RE: June 8th public disclosure request - Seattle Public Library 2013 Budget

Susanna (and Beth)—

I appeal CBO's decision to withhold these documents. The reason is that, during debate on passage the library levy ordinance and now that the ordinance has passed and the voters are considering whether or not to vote for it on August 7, the Seattle Public Library has been publicizing information prepared for it by the City Budget Office regarding projected cuts. Thus, some of this information is already in the public domain, and apparently before other agencies have received or publicized similar information—agencies that do not have levies on the ballot. In order for the public to evaluate whether this CBO information was generated and publicized in part by CBO and the Library to influence voters about the ballot measure, it is essential to see its basis in the documents that have been requested. Delaying these documents' release until late September will effectively thwart timely efforts to ensure that nothing inappropriate is being done before the August 7 election. This consideration must override concerns about deliberative privacy.

Chris Leman

From: Swanson, Susanna [<mailto:Susanna.Swanson@seattle.gov>]
Sent: Wednesday, June 20, 2012 4:34 PM
To: Leman, Chris
Subject: RE: June 8th public disclosure request - Seattle Public Library 2013 Budget

Dear Mr. Leman,

Thank you for your patience while the City Budget Office researched your request for records since January 1, 2012 regarding directions, estimates, or projections for the expected Library budget for 2013. Although the Mayor's process of preparing a proposed budget is deliberative, and at this point records are not subject to public disclosure, a first installment of documents responsive to your request have been gathered and an exemption log of those records is attached per the Public Records Act.

Note that the deliberative process exemption for these records does not extend beyond the Mayor's presentation of his budget to the City Council in September. The city will be happy to provide the withheld records for your review upon request at that time.

There is another installment that will consist of any responsive email. Although I anticipate that much of that will be exempt as well, I estimate that response will be available by July 16th.

Susanna Swanson
Public Disclosure Officer
City Budget Office

From: Chris Leman [<mailto:cleman@oo.net>]
Sent: Friday, June 08, 2012 2:13 PM
To: Susanna Swanson (susanna.swanson@seattle.gov)
Subject: Public Records request regarding CBO discussions or communications regarding the SPL budget for 2013

To the CBO Public Records Officer—

Under the Public Records Act I urgently request the following: All e-mails, notes (including of meetings or telephone conversations), and other documents created, sent, or received by any City Budget office employee (including any public documents that are on a private computer), since January 1, 2012 regarding directions, estimates, or projections for the expected Library budget for 2013. As time is of the essence, please provide first anything regarding the widely quoted City Budget Office estimate of a \$5 million cut to the 2013 Library budget.

Please provide the requested materials in electronic form as attachments to e-mails, with the original metadata. Thanks!

Chris Leman (206) 322-5463