

CAROL SLOMAN/Re-cross by Mr. Sells

1 the table?

2 A. No, I wasn't there.

3 MR. SELLS: Nothing further.

4 THE COURT: Anything further of this witness?

5 MS. HIGH: No. Thank you, Your Honor.

6 THE COURT: Thank you, Ms. Sloman. You can step
7 down. I'll take the ones that are marked, rather than you
8 running off with them. But I'd like you also to go around
9 here and the clerk has a witness roster if you'd sign that
10 please. -- Your next witness.

11 MR. O'HARE: Call Commissioner Christen, Your
12 Honor.

13 THE COURT: Approaching the witness stand if you
14 would please, Sir.

15 MR. SELLS: Excuse me, Your Honor, we object to
16 Mr. Christen being called. I have no CR 43 notice on him.

17 THE COURT: Counsel.

18 MR. O'HARE: I don't think there's been any
19 witness list exchanged between counsel about any of this
20 case, Your Honor.

21 MR. SELLS: Well, I'm not worried about a witness
22 list, Your Honor. I'm worried about a CR 43 notice. He's a
23 port commissioner, and the rule is pretty clear as to what
24 has to be done if he's gonna be called as a witness.

25 THE COURT: Everybody turn to CR 43.

JAMES CHRISTEN/Direct by Mr. O'Hare

1 MR. SELLS: (f)(1), Your Honor, please.

2 THE COURT: Thank you, counsel.

3 MR. O'HARE: Well, Your Honor, I think, you know,
4 we have an unusual circumstance here. I assume that counsel
5 is saying that this is a managing agent of his client. But
6 the fact of the matter is he's a public official. He has
7 views which are distinctly independent of the other port
8 commissioners, which is of course why he is - why he was
9 elected and why he has taken a number of the actions that
10 he's taken in this case. And so to require a procedure or
11 limit his testimony I think is to take away his independence
12 as a public official, which I think is different from a
13 circumstance where he might be the managing agent of a
14 private entity or corporation.

15 THE COURT: It would appear to me in reading
16 43(f)(1) that the right to object belongs to Commissioner
17 Christen and not necessarily the port as such. Your
18 objection is overruled.

19 JAMES CHRISTEN called as a witness on behalf of
20 the plaintiffs, is duly sworn on
oath and testifies as follows:

21 THE COURT: State your name please for the record.

22 MR. CHRISTEN: My name is James Lee Christen. My
23 last name is spelled C-H-R-I-S-T-E-N.

24 THE COURT: Counsel, your witness.

25 DIRECT EXAMINATION BY MR. O'HARE

JAMES CHRISTEN/Direct by Mr. O'Hare

1 Q. Mr. Christen, are you a commissioner of the Port of
2 Tahuya?

3 A. I am currently a commissioner in the Port of Tahuya,
4 yes.

5 Q. When were you elected?

6 A. I was elected November 4th and --

7 Q. Of 2003?

8 A. -- of 2003, and took office January 1.

9 Q. You've been here today while Ms. Sloman has testified
10 regarding a process of reviewing some documents at the
11 Port of Tahuya?

12 A. Yes, Sir.

13 Q. After you became a port commissioner, were you made the
14 secretary of the port commission?

15 A. At the very first meeting, yes, Sir.

16 Q. Now in your capacity as secretary, did you go and take
17 a look at what the port had by way of records?

18 A. Not at first, Sir. First I had to wait for a key. One
19 had to be surrendered by the previous commissioner.

20 Q. Okay. When you got a key, did you go look at the port
21 records?

22 A. Yes, Sir.

23 Q. Where are they, and tell us, you know, what they
24 consist of.

25 A. The port records at that time were contained within the

JAMES CHRISTEN/Direct by Mr. O'Hare

1 office of the fire station for Mason County Fire
2 Protection District No. 8. They were contained within
3 the office in a single four-drawer filing cabinet.
4 Sitting off to the side, along with - I found later on
5 and did not understand - were also an additional box or
6 two, just similar to the one you have there, sitting
7 there on the side, and that is the records that I was
8 made aware of.

9 Q. And Ms. Sloman testified about an occasion when she
10 went out to take a look at some documents at that
11 location, is that right?

12 A. Yes, Sir.

13 Q. And were you there on that occasion?

14 A. Yes, Sir.

15 Q. Tell me what you did by way of preparing the, the - for
16 instance, she said that there were when she got there
17 some documents out on tables.

18 A. Yes, Sir.

19 Q. Who put those documents on tables?

20 A. I personally put them there, Sir.

21 Q. And the documents that you put on the tables, where did
22 they come from?

23 A. They came out of the four drawers.

24 Q. Did they come from anywhere other than the four drawers
25 or perhaps the boxes that you made mention of?

JAMES CHRISTEN/Direct by Mr. O'Hare

1 A. No, Sir, just the four drawers.

2 Q. Nobody else besides you put documents on the table on
3 that occasion?

4 A. No, Sir. I made sure no one else came into the fire
5 hall and disturbed the records as they were out and
6 unsecured on the tables.

7 Q. Now you heard again Ms. Sloman testify as to kind of
8 the process she went through. Was she accurate in that
9 respect?

10 A. I believe so. I can't testify with accuracy with
11 regard to the dates, but, yes, the process was correct,
12 Sir.

13 Q. Now I think this was - was this your first occasion of,
14 of, of attempting to do a complete review of the Port
15 of Tahuya files since you became secretary?

16 A. Yes, Sir.

17 Q. And why did you take everything out and put it on table
18 as opposed to just leaving it in the file cabinet?

19 A. Quite simply, I considered it the easiest way to view
20 the files rather than pulling things apart one by one,
21 and that way it also gave me the opportunity at the
22 same time to put all the files in the order which I
23 considered would work best for me in the future as a
24 secretary.

25 Q. And did you do that on that occasion?

JAMES CHRISTEN/Direct by Mr. O'Hare

1 A. Yes, I did, Sir.

2 Q. So within the four-hour period . . . And let me back
3 up a step. How long did you and Ms. Sloman take to do
4 this process?

5 A. Approximately four hours with cross checking. What we
6 did is as we pulled documents, she came in with a
7 request, we pulled documents, cross checked them
8 because I had her - I asked her to, and she did bring
9 in the documents that had already been given to her.
10 And we made sure that we weren't making additional
11 copies.

12 Q. Were you familiar with the prior requests that had been
13 made for port documents? Were those made at a time
14 when you were not a port commissioner?

15 A. Yes, they were made at that time, yes.

16 Q. And were you familiar with those requests?

17 A. I had some knowledge of them, but not an accurate
18 knowledge of everything that was required at the time.

19 Q. And had you had a chance to review the documents that
20 had been produced and copied as a result of that, that
21 first set of inspections in August or September?

22 A. No, Sir.

23 Q. You hadn't seen those?

24 A. No, I hadn't seen those lists.

25 Q. Did Ms. Sloman bring with her a list or a compilation

1 of those documents?

2 A. Yes, she not only brought that, but she also brought
3 the documents themselves.

4 Q. The, the documents that she, that she described that
5 were produced in February or that you found in February
6 that had not been in the prior set of production, did -
7 how did, how did she appear to go about determining
8 that those were new and different?

9 A. As we went through the folders, we found things that
10 were marked differently. We actually had to go through
11 the individual folders. As we found something that we
12 - with the list sitting there, we went through, checked
13 to see if they directly related or closely related to
14 her request. What we would do is check the lists and
15 see if they were even close. In an effort to do full
16 compliance with her request, anything that was even
17 remotely close to her request was offered to her and
18 asked if it did in fact pertain to her request.

19 Q. Handing you what's been marked as Exhibit 14, are you
20 familiar with that document?

21 A. Yes, Sir, I am.

22 Q. Are those resolutions of the Port of Tahuya?

23 A. This is a resolution of the Port of Tahuya, yes, Sir.

24 Q. Well, take a look. It's a two-page document, Exhibit
25 14.

1 A. Yes, the, the back --

2 Q. Oh, I'm sorry.

3 A. -- part is a sign-in sheet, is the signature page, Sir.

4 Q. Okay.

5 Pause.

6 Q. We started with 14, but it's actually 15. I'm sorry,
7 Mr. Christen. Handing you what's been marked as
8 Exhibit 15, would you take a look at that and tell me
9 if you're familiar with that.

10 A. Yes, Sir.

11 Q. Tell me what that is.

12 A. This is a resolution that modifies and . . . No,
13 actually this is the one that was the original one.
14 The first page that you see is the resolution
15 established in 1986 where the port sets up a system for
16 rendering documents to the public or allowing them
17 access to them and establishing the hours from 9:00
18 'til 4:00 p.m. when the documents can be viewed Monday
19 through Friday by contacting the secretary and charging
20 a charge of 10 cents per page for every document
21 copied.

22 Q. And the second page of that?

23 A. The second page is a resolution dated February 21st,
24 1990, that amends the first resolution. Because there
25 was no longer a secretary for the port as an individual

1 secretary but it became part of a commissioner's job,
2 it was then decided that all three commissioners would
3 be in fact the secretary or acting in that facility or
4 that capacity.

5 Q. As a part of your review of the port documents, have
6 you made an attempt to go through as far as you're able
7 to all of the port resolutions and other documents?

8 A. I have made an attempt to go through as many as I can.
9 I find, I find that I have had some difficulty in
10 actually putting some of those things together because
11 I've noticed that recently I've had a problem with
12 files appearing and disappearing. But as to the best
13 of my ability, yes, Sir.

14 Q. So far as you know, is there any port resolution after
15 February 21, 1990, when resolution 90-0004 was adopted,
16 which amends, cancels or otherwise changes the content
17 of resolution 90-0004 as it relates to public record
18 and the Port of Tahuya?

19 A. As far as public, as far as public records access or as
20 far as the charge per page?

21 Q. Either.

22 A. Okay. There is a resolution that was adopted on August
23 20th, 2003, where the Port of Tahuya established, not
24 having one - a policy in place, established a policy of
25 20 cents a page for every page copied. It did not in

JAMES CHRISTEN/Direct by Mr. O'Hare

1 fact reference the earlier ones and claim to amend
2 them.

3 Q. Did it change any of the procedures established in 90-
4 0004?

5 A. No, Sir.

6 Q. Just the cost.

7 A. That's correct, Sir.

8 Q. And the cost was changed to what?

9 A. To 20 cents a page.

10 Q. The, the files of the Port of Tahuya I take it are kept
11 in this file cabinet.

12 A. Yes, Sir, except for where they're - the two boxes that
13 are sitting aside. Actually there's one box - as I
14 recall now, there's one box and then a large folder
15 which I believe has read-outs from the county as far as
16 budgets and so forth.

17 Q. Is the file cabinet locked?

18 A. Yes, Sir.

19 Q. Who has keys to the cabinet --

20 A. I believe . . .

21 Q. -- as far as you know?

22 A. As far as I know, Sir, all three commissioners. I know
23 of no one else.

24 Q. When you became port secretary, what did you do, if
25 anything, to familiarize yourself with what your duties

JAMES CHRISTEN/Direct by Mr. O'Hare

1 were as a port commission secretary?

2 A. Well, I had received a copy of *Knowing the Waters*. I

3

4 Q. What, what is that?

5 A. *Knowing the Waters* is actually - I have a copy as a
6 matter of fact. It's a manual that was put together
7 for port commissioners. It's a set of guidelines that
8 take you through the, the process of being a public
9 officer, giving you your responsibilities, your duties.
10 It has to do with how to conduct real estate deals, I
11 mean as far as how you would disclose things, running
12 executive sessions, everything. It covers a great many
13 things, and the . . .

14 Q. Is that a manual promulgated by the Washington Public
15 Ports Association?

16 A. Yes, Sir.

17 Q. Anything else that you did to try and familiarize
18 yourself with your duties?

19 A. With my duties, Sir? I have a complete copy of the
20 laws that pertain to the port with port laws. Other
21 than that, I simply went through the files. I called
22 the - I called our attorneys to find out whether or not
23 we had - what my duties exactly would be. Whenever I
24 had a question that arose so far as - such as in
25 responding to public requests for documents, that was

JAMES CHRISTEN/Cross by Mr. Sells

1 one of my first concerns, and I called our attorney,
2 Mr. Walgren, who said that you would comply with those
3 but that you should always get a copy of the request
4 and put a copy of what you gave in response to that
5 request in the files also.

6 MR. O'HARE: Nothing further for Mr. Christen,
7 Your Honor.

8 THE COURT: Cross examination.

9 CROSS EXAMINATION BY MR. SELLS

10 Q. Commissioner Christen, --

11 A. Yes, Sir.

12 Q. -- are you a member of the Residents for Preservation
13 of Quality of Life on Hood Canal?

14 A. I don't know anymore, Sir.

15 Q. Have you ever been a member?

16 A. Yes, Sir.

17 Q. When was that?

18 A. That would have been last year, Sir. I, I was told
19 that it was correct of me to step down when I became a
20 commissioner.

21 Q. What did you do to step down as a member of the
22 Residents for Preservation?

23 A. I don't believe I actually filed a formal letter.

24 Q. So you had, so you - so the answer to the question is
25 you are . . .

JAMES CHRISTEN/Cross by Mr. Sells

1 A. The answer to the is I could be if you wish to . . .

2 Q. Mr. Christen?

3 A. Yes.

4 Q. Wait until I finish --

5 A. Oh, I'm sorry, Sir.

6 Q. -- my question please. So you are in fact a member of
7 the Residents for the Preservation of Quality of Life
8 on Hood Canal, is that correct?

9 A. By that interpretation, yes, Sir.

10 Q. Are you employed?

11 A. At the present time, no, Sir.

12 Q. When was the last time you were employed?

13 A. That would have been November and December of 2003 when
14 I worked on a Christmas tree lot for Jay Allen.

15 Q. Are you doing any part-time work now, any carpentry
16 work, anything like that?

17 A. Yes, Sir.

18 Q. And who are you doing that for?

19 A. I did some, some part-time work doing repairs for a
20 gentleman named Kyle Hessey on a boathouse, and just
21 various things for the neighbors.

22 Q. Done any work for Brad Carey, the president of the
23 plaintiff?

24 A. Not that I'm aware of, Sir.

25 Q. Well, wouldn't you be aware of it if you were doing

JAMES CHRISTEN/Cross by Mr. Sells

1 work for him?

2 A. I believe so, Sir.

3 Q. So you have no - you've done no work for Brad Carey?

4 A. I'm trying to think. He's asked me over the years to
5 do things. I can't think of anything of any
6 significance that comes to mind, Sir.

7 Q. How about some of - that are insignificant?

8 THE COURT: State a question.

9 Q. You indicate that you can't think of anything that's of
10 any significance. Is there anything at all that you
11 can think of, any work at all you've done for Brad
12 Carey?

13 A. I can't think of anything at his home, at his property
14 back behind. No, Sir, I can't recall anything at the
15 present time.

16 Q. Now prior to the port being ejected from . . .

17 A. Oh, excuse me, can I --

18 Q. Go ahead.

19 A. -- can I put this in? There was one item. He hired me
20 at one time when he was moving a group of travelers
21 from Spokane, Washington, up to Seatac Airport to drive
22 a van.

23 Q. When was that?

24 A. Oh, that would have been - what, the middle of last
25 year, middle of 2003.

JAMES CHRISTEN/Cross by Mr. Sells

1 Q. Do you ever borrow Brad Carey's vehicles to drive?

2 A. Borrow his vehicle to drive. Mr. Carey had me use his
3 vehicle to drive to a meeting, and he - because he was
4 going to be riding with someone else.

5 Q. When was that?

6 A. This was - what, probably three or four days ago.

7 Q. This week.

8 A. Yes, Sir.

9 Q. Now as I understand it, the port's office used to have
10 a little corner of - in the fire district's office. Is
11 that correct?

12 A. That's correct, Sir.

13 Q. And when you, when you became commissioner, was that
14 the case?

15 A. When I became commissioner, yes, Sir.

16 Q. And subsequently, the port was asked to leave that
17 office, is that correct?

18 A. Yes, Sir.

19 Q. Do you know why?

20 A. Because someone gave misinformation to the fire
21 district, and then they took action upon me --

22 Q. What was the misinform --

23 Q. -- as an officer of the port district.

24 Q. -- excuse me, what was the misinformation that the fire
25 district got?

JAMES CHRISTEN/Cross by Mr. Sells

1 A. The fire district was told that on a request in the
2 middle of 2003, that I had asked for confidential
3 documents from - pertaining to the fire department
4 personnel, and they were concerned that I was a
5 security risk being within their office. And so they
6 asked that I be barred from the office, and at that
7 time I was then locked away from the port's records
8 until such time as they could be relocated outside the
9 office.

10 Q. When the port's records were inside the office, how
11 much time did you spend out there going through the
12 records?

13 A. I would have to say realistically between going through
14 records requests and attempting to familiarize myself,
15 I probably spent, boy off and on, that was only a brief
16 time. That would probably have been ten hours or so at
17 a total, making copies and so forth.

18 Q. So in addition to the four hours that you and Ms.
19 Sloman spent going through these records, you had
20 already put in about ten hours going through the
21 records?

22 A. I had put in approximately ten hours trying to find
23 specific documents.

24 Q. So you've gone through these records fourteen hours,
25 not four hours.

JAMES CHRISTEN/Cross by Mr. Sells

1 A. That would be about right. But as far as answering
2 this particular request, it took approximately four
3 hours to check and then cross check.

4 Q. When you and Ms. Sloman went through the documents, did
5 those documents you went through include the documents
6 that she had previously copied in my office?

7 A. I do not believe so. I believe that those were
8 delivered to me afterwards.

9 Q. So then the total time that you folks went through the
10 documents was your ten hours, your four hours, her four
11 hours, and then all the time that she spent in our
12 office copying those documents, is that not correct?

13 A. The total time that you folks went through, Sir?

14 Q. The total time that you and Ms. Sloman spent going
15 through these documents - let's see if I've got it
16 right - about ten hours before you got thrown out of
17 the fire station, correct?

18 A. Yes, Sir.

19 Q. About four hours for you, four hours for her when you
20 went through them together.

21 A. Uh-hum.

22 Q. And then whatever time she put in in our office going
23 through those documents. Is that fair to say?

24 A. Actually, Sir, my time spent on that specific request
25 was approximately four hours.

JAMES CHRISTEN/Re-direct by Mr. O'Hare

1 Q. What I asked was is it fair to say that that is the
2 time involved with you and/or Ms. Sloman going through
3 the documents?

4 A. You mean as in my having been in the documents, yes,
5 Sir, but that is not accurate to say that that was the
6 time spent on that specific request.

7 Q. That wasn't my question.

8 A. Okay.

9 MR. SELLS: I have no further questions.

10 THE COURT: Any re-direct?

11 RE-DIRECT EXAMINATION BY MR. O'HARE

12 Q. Mr. Christen.

13 A. Yes, Sir.

14 Q. You talk about spending ten hours with the documents in
15 addition to the four hours. Was the ten hours spent
16 before or after you did that four-hour stint with Ms.
17 Sloman?

18 A. The ten hours was spent before. I was investigating
19 basically a port histories and so forth. I was - I
20 spent time reading through the minutes and so forth
21 looking at the different situations that had occurred
22 in the past within the port district. I tried to
23 familiarize myself with the history of the port
24 district and search out any policies which would guide
25 me.

JAMES CHRISTEN/Re-direct by Mr. O'Hare

1 Q. But I take it the four hours was time spent
2 specifically while Ms. Sloman went through the
3 documents to determine what ones related to her
4 request.

5 A. Yes, Sir.

6 MR. O'HARE: Nothing further, Your Honor.

7 THE COURT: Anything further?

8 MR. SELLS: No, Your Honor.

9 THE COURT: If you'd step over and sign the
10 witness roster please which the clerk has right over here,
11 you're welcome to step down.

12 MR. O'HARE: Plaintiff rests, Your Honor.

13 THE COURT: Plaintiff has rested. -- Counsel.

14 MR. SELLS: Call Cynthia Olsen, Your Honor,
15 please.

16 CYNTHIA OLSEN called as a witness on behalf of
17 the defendants, is duly sworn on
oath and testifies as follows:

18 THE COURT: State your name and spell your last
19 name for the record please.

20 MS. OLSEN: My name is Cynthia Denise Olsen. The
21 last name is spelled O-L-S-E-N.

22 THE COURT: Counsel, your witness.

23 MR. SELLS: Thank you, Your Honor.

24 DIRECT EXAMINATION BY MR. SELLS

25 Q. Ms. Olsen, you are currently a Port of Tahuya

CYNTHIA OLSEN/Direct by Mr. Sells

1 Commissioner, is that correct?

2 A. That's correct.

3 Q. And how long have you been a commissioner?

4 A. I have been a commissioner for the Port of Tahuya since
5 1996.

6 Q. Prior to that, did you hold any public office?

7 A. Prior to that, no public office, no.

8 Q. Have you ever held any other public office?

9 A. Yes, I have. I was a Mason County Commissioner for
10 four years.

11 Q. When was that?

12 A. That was '97 through 2000.

13 Q. Representing the area of the Port of Tahuya?

14 A. Yes, as well as the entire county.

15 Q. Now can you briefly describe the geography and the
16 population of the Port of Tahuya?

17 A. The Port of Tahuya is approximately 30 square miles of
18 rural forested area, bordered on two sides by Hood
19 Canal. The population is about 3,500 people, and with
20 a larger influx in the summertime.

21 Q. Are there people that have, for example, summer homes
22 there?

23 A. Yes, quite a few.

24 Q. In August of last year, of 2003 when all this started,
25 were you secretary of the port commission?

CYNTHIA OLSEN/Direct by Mr. Sells

1 A. Yes, I was.

2 Q. And did you in fact receive what's been marked as
3 Exhibit 1 I believe? Let me double check. I'm sorry,
4 Exhibit 12. Well, let's do it this way. Did you
5 receive a request for public records from a Mary Kay
6 High?

7 A. Yes, I did.

8 Q. And where did you get that?

9 A. It was faxed to my home.

10 THE COURT: I have, I have a copy. Thank you.

11 Q. Did you receive it at your home then?

12 A. Yes, I did.

13 Q. And at that time, did the port have a fax machine?

14 A. No, the port did not.

15 Q. So when you say it was faxed to your home, it came - it
16 really did come to your home.

17 A. Yes, it did come to my home.

18 Q. And what did you do when you got it?

19 A. Well, I read it, and then I was overwhelmed. It was a
20 lot of documentation. So I called the attorney's
21 office and asked, my gosh, how do I, how do I deal with
22 complying with this in a timely manner.

23 Q. I'm looking at Exhibit 1, which is the August 8th
24 letter, and that had 28.

25 A. 28 multiple, yes.

CYNTHIA OLSEN/Direct by Mr. Sells

1 Q. What did the attorney tell you?

2 A. The attorney told me to make sure and write them back
3 within the five days and give them an approximate date
4 of when I thought I could have the information together
5 for them.

6 Q. Handing you Exhibit No. 2, or copy of Exhibit No. 2, is
7 that your response?

8 A. It is. It says I've received your fax public
9 disclosure request. We will be reviewing the files to
10 provide your office with the disclosable information.
11 Due to the size of your request and the age of some of
12 the documents, I am unable to provide you with an exact
13 date or cost of copying. We will try to locate all of
14 the documents by the end of September and give you a
15 date and cost then. Please send any other
16 correspondence to the port's P.O. Box 90, Tahuya. I
17 have not found my message or fax machine to be
18 dependable, and the copy I got from your office was
19 barely readable. And it's sincerely, Cynthia Olsen,
20 Commissioner Secretary.

21 Q. How did you come up with that estimate of the end of
22 September?

23 A. Well, being self-employed and at a very busy time of
24 the year for construction, I assumed that it was going
25 to take me a good many hours to go through the files to

CYNTHIA OLSEN/Direct by Mr. Sells

1 make sure that I would not miss anything that they were
2 looking for because what they were looking for was very
3 broad and general. And so I just estimated how many
4 weekends I thought it might take me or weeknights and
5 hoped that I could do it before that, you know, and get
6 it done before that.

7 Q. When you say that was a heavy construction period, are
8 you self-employed?

9 A. Yes, my husband and I own a construction company.

10 Q. In the Tahuya area?

11 A. In the Tahuya area, yes.

12 Q. And at that time, did the port have any staff?

13 A. None whatsoever.

14 Q. Not even a volunteer secretary?

15 A. No.

16 Q. What kind of equipment did the port have in the port
17 office?

18 A. Our equipment consists of the file cabinet and the copy
19 machine that we are allowed to share with the fire
20 department.

21 Q. Describe that copy machine if you would please.

22 A. It's not very fast, and you put one copy in and you
23 make one copy at a time.

24 Q. And at that time was that the only copy machine
25 available to the port?

CYNTHIA OLSEN/Direct by Mr. Sells

1 A. It was, yes.

2 Q. Did you anticipate that you'd have to be using that
3 copy machine to make these copies?

4 A. Oh, yes, I did.

5 Q. Make sure I finish, Cindy, before you answer. And the
6 file cabinet, I'm going to hand you Exhibit 17 and
7 Exhibit 18, which - is that a pretty, is that a pretty
8 good representation of what the inside of that file
9 cabinet looked like at the time?

10 A. Yes, full.

11 Q. And were all four drawers full?

12 A. Yes.

13 Q. To your knowledge, was there any - was there in fact
14 any organization to the records?

15 A. Yes, there was some organization to the records. The
16 current ones were in the top drawer.

17 Q. By current, what dates?

18 A. I couldn't give you the exact dates, but I know that we
19 basically worked out of just the first few files for
20 our minutes and our vouchers.

21 Q. What was in the bottom three drawers?

22 A. Files. I had never been through them prior to this.

23 Q. When and how did you start going through these files to
24 respond to this request?

25 A. One at a time.

CYNTHIA OLSEN/Direct by Mr. Sells

1 Q. What time, what time of the day or the week did you do
2 that?

3 A. I spent a couple of, I spent a couple of weekends, and
4 I spent some evenings. And then my daughter came out
5 and spent a full day helping me go through the files so
6 that I could pull and she could copy.

7 Q. Did you keep rough track any way of how much time you
8 spent on this project?

9 A. I did, yes. I didn't in the very beginning. That was
10 when I was just gathering the, the recent minutes and
11 things like that. But then when I did have to start
12 going actually physically through the files, I did
13 start writing it down in my calendar.

14 Q. How much time did you put in on trying to put this
15 request together, the first request?

16 A. The first request, my daughter's and my time was 25
17 full hours.

18 Q. Did you then get a second request?

19 A. Yes.

20 Q. And what did you do with that?

21 A. Called the attorney's office again, and we just went
22 from there and tried very hard to pull more files and
23 find what they were looking for and provide them to
24 them in a timely manner.

25 Q. Did you in fact - I think it's already been alluded to

CYNTHIA OLSEN/Direct by Mr. Sells

1 in the previous testimony - but apparently you loaded
2 up a bunch of files and brought them into my office, is
3 that correct?

4 A. Yes, I did.

5 Q. Why did we decide to do that?

6 A. We decided to do that because our copy machine is so
7 extremely slow.

8 Q. If someone had come out there from Citizens, the
9 plaintiffs here, or Ms. High's office to the port
10 office, which also was the fire office, as I understand
11 at that time, correct?

12 A. Correct.

13 Q. Fire district office. Would someone have had to have
14 been with them at all times?

15 A. Yes.

16 Q. Who would that someone have been?

17 A. I would assume it would have been my responsibility as
18 the secretary.

19 Q. And by having them copy them in your attorney's - the
20 port's attorney's office, you were relieved of that
21 sort of thing.

22 A. That's correct. It, it also relieved the fire district
23 office of the congestion in it. Our file cabinet was
24 behind the door, and when you opened the drawers, it
25 blocked the drawers so the fire personnel would not

CYNTHIA OLSEN/Direct by Mr. Sells

1 have been able to get in the office.

2 Q. When you brought the materials into our office, did you
3 believe that those were in response to the, to the two
4 August 8th and August 12th request for public
5 documents?

6 A. Yes, I did.

7 Q. Did you ever get a phone call, fax, e-mail or anything
8 like that directly from either anybody from the
9 plaintiffs' or from Ms. High's office saying I want to
10 come to the port's office within 24 hours?

11 A. Other than that August 12th letter, no, I did not.

12 Q. Did you ever get any complaints, anybody calling you
13 saying that it was unacceptable that the documents be
14 copied in the port attorney's office?

15 A. No, I did not.

16 Q. Now you've been sitting next to me here today, and
17 we've seen these exhibits. And there's currently 10
18 exhibits that appear to be or at least we're told
19 they're from the port files. Correct?

20 A. Correct.

21 Q. Do you have any reason to doubt that?

22 A. I have, I have no reason to doubt that. If they say
23 that's where they came from, I, I have to believe
24 that's where they came from.

25 Q. So it appears that you missed some.

CYNTHIA OLSEN/Direct by Mr. Sells

1 A. It appears that I missed some.

2 Q. Were any of these documents that you looked at and
3 said, boy, I don't want to give them those documents?

4 A. Absolutely not.

5 Q. Did you give them all of the documents that you felt
6 that you could find that were in compliance with the
7 August 8th and the August 12th request?

8 A. Yes, Sir, I did.

9 Q. Just to bring us up to date, what's the port office
10 like now?

11 A. We have our file cabinet in the foyer of the fire hall.

12 Q. That's it? You got a fax machine yet?

13 A. No.

14 Q. E-mail?

15 A. No.

16 Q. Your own copier?

17 A. We still share the copier with the fire district.

18 Q. They allow you to do that?

19 A. Uh-hum.

20 MR. SELLS: I have no further questions.

21 THE COURT: Cross examination.

22 MS. HIGH: Thank you, Your Honor.

23 CROSS EXAMINATION BY MS. HIGH

24 Q. Ms. Olsen, you said that you were elected to the port
25 commission in 1996. Is that correct?

CYNTHIA OLSEN/Cross by Ms. High

1 A. Not, not elected. I was appointed.

2 Q. Okay, appointed. When did you become secretary?

3 A. Immediately. I was the new kid on the block, so I got
4 to be the secretary.

5 Q. So from 1996 to 2003, you had never bothered to
6 organize or index the port files. Is that correct?

7 A. Not the old files, no.

8 Q. From 1993 to 2006, you had never bothered to
9 familiarize yourself with the port's policies regarding
10 public records request.

11 A. No.

12 Q. And is it your testimony that from 1996, 2003, you
13 never even read the 1990 resolution regarding access to
14 records?

15 A. No, I had not seen that.

16 Q. Now you indicate that the current records were kept
17 pretty much in one file drawer, and in fact reviewing
18 request number one - Exhibit No. 1, excuse me, most of
19 those requests related to public comments regarding the
20 recreation plan, the notices for the recreation plan,
21 the correspondence regarding the recreational plan,
22 minutes of meetings where that plan was discussed, the
23 minutes and meetings of the SEPA DNS. So those would
24 have all been current things within that top file
25 drawer, would you agree?

CYNTHIA OLSEN/Cross by Ms. High

1 A. They weren't all necessarily in the file drawer. Some
2 of them were in a box because they had not been filed
3 at that point.

4 Q. So those were items though that were fairly
5 identifiable for you.

6 A. Yes.

7 Q. And in fact one of the other major requests was just
8 the port enabling documents, is that right?

9 A. When you say port enabling documents, explain what you
10 mean.

11 Q. Well, the petition and the ordinance that establish the
12 port. That would have been a key document for the port
13 to have, is that correct?

14 A. I, I don't know. I'm sorry . . .

15 Q. So you, you never bothered to check the files to
16 determine the port enabling documents.

17 A. The port had been in existence long before I ever
18 became a port commissioner. I never - it never
19 occurred to me to even look for anything like that.

20 Q. So it's your testimony that as an elected official who
21 is the secretary of the port, it didn't occur to you to
22 review the files or any of the port policies or
23 enabling documents. Is that correct?

24 A. That's correct.

25 Q. Now you never responded, did you, to the August 12th

CYNTHIA OLSEN/Cross by Ms. High

1 letter where there was the offer to come and review and
2 mark documents?

3 A. All of that was then taken to the attorney's office and
4 was handled through the attorney after, after that
5 second response.

6 Q. Right, you never bothered to call or respond to take up
7 the offer of coming in and marking and reviewing the
8 documents?

9 A. No, I did not. I, I left it over to the attorneys.

10 Q. Is it fair to say that you never familiarized yourself
11 with the Public Disclosure Act requirement for public
12 agencies?

13 A. I, I already knew what the public disclosure rules and
14 such were. This was the first time that I had ever
15 received a public disclosure request for the port was
16 when this started, and I believe that Jim Christen was
17 the very first one that I ever received.

18 Q. But you said you were familiar generally with the
19 requirements.

20 A. Yes, yes.

21 Q. So then you were familiar with the requirement that an
22 agency prepare an index of its files.

23 A. No, that I was not.

24 Q. Or . . .

25 A. I understood the five-day you need to get back to them

CYNTHIA OLSEN/Cross by Ms. High

1 and you need to provide them in a timely manner and
2 provide everything they ask for that is disclosable.

3 Q. Well, then were you familiar with the provision where -
4 and the act would seem to acknowledge that there are
5 some kind of small entities that there needs to be
6 flexibility. You'd agree with me. Not every agency
7 has a secretary and a cast of thousands, is that true?

8 A. That's true.

9 Q. And in fact the Public Disclosure Act, perhaps you were
10 familiar with they had a requirement that if a small
11 place doesn't have customary office hours, it sets up
12 customary office hours. Were you aware of that?

13 A. No.

14 Q. Now one of the actions that the port took after
15 receiving the Public Disclosure Act request was to
16 increase the rate of copying. Is that correct?

17 A. That's correct.

18 Q. And so you were familiar that - with the fact that the
19 Public Disclosure Act provided for costs for copying,
20 is that right?

21 A. Yes.

22 Q. And you're also then familiar with the act's
23 requirement that there be a formal order or resolution
24 identifying how that cost is determined. Is that
25 right?

CYNTHIA OLSEN/Cross by Ms. High

1 A. Through a public hearing process.

2 Q. And in fact there was not in your resolution a
3 designation or determination of the actual costs that
4 were involved where you came up with the 20 cents per
5 page, was there?

6 A. We had a public hearing, and it was adopted at 20
7 cents.

8 Q. And what was said at that public hearing was we met and
9 decided it would be 20 cents. Is that correct?

10 A. No, I don't recall that.

11 Q. You don't recall telling individuals what went into the
12 determination of the 20 cents, did you? No.

13 A. No.

14 Q. And it's not reflected in your minutes how the 20 cents
15 was determined.

16 A. No, I don't believe it is.

17 Q. And in fact you're aware that if you don't specify how
18 you calculate it, the Public Disclosure Act limits the
19 cost to 15 cents per page?

20 A. I didn't realize that.

21 Q. You didn't realize that.

22 A. No.

23 Q. Now if I may, Exhibits - oh, it looks like 17, 18, do
24 you know who took these pictures?

25 A. I've been told it was Bob Gilbert.

CYNTHIA OLSEN/Cross by Ms. High

1 Q. Do you know when those pictures were taken?

2 A. No, I couldn't say for sure.

3 Pause.

4 Q. Let me show you Exhibit 20 if I may. Do you recognize
5 that?

6 A. Yeah.

7 Q. And Exhibit 20 is a picture of the filing cabinet, a
8 little lower filing cabinet and a box.

9 A. That's correct.

10 Q. And that lower filing cabinet that says port in-box,
11 that was provided by Commissioner Christen, wasn't it,
12 for port mail.

13 A. I'm, I'm assuming it was.

14 Q. It was not there before, was it?

15 A. No, it wasn't.

16 Q. It wasn't there in August.

17 A. Right, no.

18 Q. And it wasn't there in September.

19 A. No.

20 Pause.

21 Q. Now you indicated that if someone had offered to come
22 in and look at port records, that you believed you'd
23 have to stay there personally.

24 A. That's correct.

25 Q. Now there were two other commissioners, is that

CYNTHIA OLSEN/Cross by Ms. High

1 correct?

2 A. True.

3 Q. And one of those commissioners was retired?

4 A. Yes.

5 Q. So in fact there were other officers or commissioners
6 that were available to be present. Isn't that correct?

7 A. That's correct.

8 Q. And you would agree when you went through the documents
9 that you missed some important documents.

10 A. There, there are documents there - yeah, I, I would
11 suppose I missed them. I tried to be as absolutely
12 thorough as possible.

13 Pause.

14 Q. Handing you what's been admitted as Exhibit 15, you
15 would agree that was an important document in this
16 case, wouldn't you?

17 A. And I may, I may have looked at this when I was going
18 through the files and thought that it didn't pertain to
19 us because we no longer have a secretary. And then
20 each of these commissioners that it says to call and
21 contact are all - one of them is deceased and two of
22 them are no longer in the area at all.

23 Q. Now you've held positions other than the Port of Tahuya
24 commissioner position, is that correct?

25 A. That's correct.

CYNTHIA OLSEN/Cross by Ms. High

1 Q. And so I mean clearly it can't be your understanding
2 that resolutions in the past, whether it's by the
3 county commissioner or the port, only pertain to the
4 people and place when they're passed.

5 A. I, I will, I will never pretend to understand
6 everything that goes on with government. When I was
7 county commissioner, I did have a staff that handled
8 nearly all of that.

9 Q. But you wouldn't, you wouldn't expect that laws,
10 resolutions, policies passed only apply to the people
11 that passed them.

12 A. I could very well have looked at this and thought that
13 it pertains only to those commissioners being that it
14 states those commissioner's names, and --

15 Q. So you may have actually . . .

16 A. -- I, I may have actually, I may have actually passed
17 it up unknowingly.

18 Q. So you may have seen that document --

19 A. Yeah.

20 Q. -- and have made a call not to provide it.

21 A. I may have. I . . .

22 Q. Did you ever consider taking the file cabinet to, to
23 the law attorney, to the office of your law attorney to
24 facilitate the inspection?

25 A. That - it didn't occur to me, but that might have been

CYNTHIA OLSEN/Cross by Ms. High

1 a very good idea.

2 Q. And you indicated that it took you 25 hours to go
3 through the filing cabinet.

4 A. That's correct.

5 Q. And this though you had never bothered to do that from
6 1996 to 2003 before to organize your files.

7 A. There, there was no reason to do that that I had ever
8 found. I had never had a public disclosure request
9 before so . . .

10 Q. And in your mind in your duties as the port secretary,
11 there was no reason to become familiar with the port
12 files.

13 A. Most of it was ancient history.

14 Q. And so in your mind, there was no reason for you to
15 become familiar with the port files.

16 A. And I didn't have the time or the opportunity or the
17 need, yeah.

18 Q. I just need to get an answer to my question. So you
19 would feel that the secretary found no reason to go
20 through those files.

21 A. No.

22 MS. HIGH: No further questions at this time. If
23 you'll let, I'll get these back to your clerk before I get
24 them shuffled.

25 THE COURT: Please. -- Re-direct.

CYNTHIA OLSEN/Re-direct by Mr. Sells

1 MR. SELLS: Yes, Your Honor.

2 RE-DIRECT EXAMINATION BY MR. SELLS

3 Q. Ms. Olsen, do you still have Exhibit 15 up there?

4 A. No.

5 THE COURT: We can get it very quickly, however.

6 There you go.

7 A. Thank you.

8 Q. I think you started to explain why you may not have
9 felt this applied and didn't get to finish. Let me ask
10 you. The second page of that, the 1990 resolution.

11 A. Yes.

12 Q. It says, does it not, said records may be inspected
13 between the hours of 9:00 to 4:00, Monday through
14 Friday, by contacting one of the Port of Tahuya
15 commissioners as listed below.

16 A. That's correct.

17 Q. And the ones that are listed below are Neil Johnson,
18 Donald Geylon, Ghylin, and Bill Pregnall. Is that
19 correct?

20 A. That's correct.

21 Q. It doesn't say by contacting one of the port
22 commissioners period.

23 A. No, it doesn't.

24 Q. Would that have been why maybe you wouldn't have
25 thought this applied?

CYNTHIA OLSEN/Re-direct by Mr. Sells

1 A. That very well could be. If it had said any or any
2 port commissioner, I, I'm sure I would have included
3 it.

4 Q. And the first page of that involves - that exhibit,
5 involves the secretary.

6 A. Yeah, which we have none.

7 Q. And since you don't have a secretary, that wouldn't
8 apply now at all would it?

9 A. No.

10 MR. SELLS: No further questions.

11 THE COURT: Any other questions for this witness?

12 MS. HIGH: No. Thank you, Your Honor.

13 THE COURT: Thank you, you can step down if you'd
14 sign our witness roster. -- Your next witness please

15 MR. SELLS: That's our - we rest.

16 THE COURT: Rebuttal.

17 MR. O'HARE: No, no response or rebuttal material,
18 Your Honor, so it's a matter of going to argument.

19 THE COURT: You've got 20 minutes. Do you think
20 you can get your argument done in 20 minutes or would you
21 like to take a noon recess, come back and present argument
22 at 1:15?

23 MR. O'HARE: I think it's a little tight to do it
24 in 20 minutes. Come back, Your Honor.

25 THE COURT: 1:15. Actually since it's 20 to

1 12:00, let's go ahead and come back at 1:00 o'clock.

2 MR. O'HARE: Thank you, Your Honor.

3 MS. HIGH: That's excellent. Thank you, Your
4 Honor.

5 THE COURT: Okay, we'll be back here at 1:00
6 o'clock. Court is in recess.

7 RECESS/COURT RECONVENES

8 Court reconvenes on the same date,
9 and the following is heard in the
presence of the parties:

10 THE COURT: Thank you, please be seated. Court is
11 back in session. Counsel, argument.

12 PLAINTIFFS' CLOSING ARGUMENT

13 MR. O'HARE: Your Honor, the statute that we're
14 here about is one that you probably recall was actually
15 adopted through an initiative to people, Initiative 276.
16 And it was part of an effort to in effect make sure that the
17 confidence of the public in government was protected in all
18 respects by making sure they had access to all the
19 information about their government that one could possibly
20 have, and that was the philosophy of that particular
21 statute. The preamble to the statutes . . .

22 THE COURT: Carolyn, you can leave that on.
23 That's fine. Thank you.

24 MR. O'HARE: The preamble to that statute in
25 42.17.010 talks about the policy and specifically talks

1 12:00, let's go ahead and come back at 1:00 o'clock.

2 MR. O'HARE: Thank you, Your Honor.

3 MS. HIGH: That's excellent. Thank you, Your
4 Honor.

5 THE COURT: Okay, we'll be back here at 1:00
6 o'clock. Court is in recess.

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17 confidence of the public in government was protected in all
18 respects by making sure they had access to all the
19 information about their government that one could possibly
20 have, and that was the philosophy of that particular
21 statute. The preamble to the statutes . . .

22 THE COURT: Carolyn, you can leave that on.
23 That's fine. Thank you.

24 MR. O'HARE: The preamble to that statute in
25 42.17.010 talks about the policy and specifically talks

1 about that mindful - in sub 11, that mindful of the rights
2 of individuals to privacy and the desirability of the
3 efficient administration of government, full access to
4 information concerning the conduct of government on every
5 level must be assured as a fundamental and necessary
6 precondition to the sound governance of a free society.
7 That's the philosophy that underlies these public records
8 provisions.

9 And the notion of the statute is a little different
10 from what maybe we as lawyers and judges are used to when
11 there's a request for production in a lawsuit. The law
12 contemplates that there's gonna be a period of delay. You
13 have a 30-day notice. Somebody gives you a response. It
14 all works out in a measured way.

15 In the statute, it's contemplated that the public has
16 immediate access to public records, not, not as a result of
17 long periods of delay. The - if we take a look at
18 42.17.070, the statute talks about providing information
19 promptly. It doesn't say, you know, after a 30-day notice,
20 it says that it's supposed to be promptly. If we take a
21 look at 280, it says that you're supposed to make public
22 records available during your customary office hours, and if
23 you don't have customary office hours at least 30 hours a
24 week, then they'll be - the public records are supposed to
25 be available from 9:00 o'clock to noon and from 1:00 o'clock

1 to 4:00 o'clock Monday through Friday. All the time.
2 That's not following some long period of request. It's
3 supposed to be immediate.

4 In, in RCW 42.17.290, the statute talks about the fact
5 that the public is supposed to be provided the fullest
6 assistance in, in making sure that their access to public
7 records is, is, is permitted and, and, and granted in a full
8 way. And beyond that, it talks about the most timely
9 possible action to make sure that folks have access to the
10 records. So, so the basic concept is that somebody should
11 be able to walk in and look at public records immediately,
12 unless there's something very distinct that's keeping that
13 from happening.

14 Now that's not necessarily saying you have to make them
15 their copies that minute. But if somebody walks in and
16 wants to see a file or a document, they're supposed to get
17 it, and they're supposed to get it as part of a concept of
18 making sure that the public has full confidence in their
19 government.

20 Now the Port of Tahuya and the commissioners before
21 there was any contention about a particular issue out there,
22 considered . . . And the statute talks about developing
23 rules and regulations and in effect each public entity
24 having a plan for how they're gonna respond to public
25 requests for information. So the Port of Tahuya, first in

1 particular mystery what it is that's likely to be going on
2 on August 20. Pretty important to the public that they know
3 that which is to be known about, about the port and its
4 plans and that activity before August 20th.

5 The whole philosophy of the statute is that people will
6 have more confidence in their government if they know those
7 things, have those pieces of paper, than if they don't. And
8 I have to tell you that the fact that we're here, and the
9 subsequent events in the Port of Tahuya, may well directly
10 relate to the fact that people didn't get that kind of
11 cooperation and didn't get that kind of information and
12 didn't develop or keep any level of trust in their port
13 commission for those reasons. I think, I think this is a
14 pretty classic example of what happens if they don't get
15 complete information.

16 So what did happen? She gets, she gets a response, and
17 she says I'll give you the information at the end of
18 September, which is pretty obvious to the folks who are
19 requesting this information not serving their need to be
20 able to competently address the issues on August 20. And
21 the next thing she gets is a letter from Ms. High saying,
22 I'll do what it takes. I'll come in there and, and, and
23 look at documents. I'll do in effect whatever it takes to
24 accommodate getting this done, but, but wait until late
25 September just doesn't cut it. Pretty plain that that's the

1 nature of that letter.

2 Now maybe she didn't cite resolution 90-004, but
3 obviously she didn't know it. Ms. Olsen should have known
4 it. The statute says she's supposed to get the fullest
5 possible cooperation and assistance. I think that request,
6 and particularly with the follow-up of the August 12 letter,
7 has to be interpreted as a request to come in and start
8 reviewing documents in the way that the statute specifies
9 you're supposed to be able to do.

10 But they didn't do that. Instead she took time to cull
11 through the documents and only supplied the documents she
12 thought were specific to the request. She acknowledges that
13 she never responded in any way, shape or form to the, to the
14 letter of August 12 saying I'll come in and look, you know,
15 just give me access to come look because I'll come do that.
16 That letter was absolutely ignored and not responded to.

17 So then in September they, they get some documents.
18 They get quite a few documents. And, and I don't fault
19 counsel. He did the kind of things we do in a lawsuit and
20 was friendly and accommodating about that. But, but that
21 just isn't enough. And sort of the demonstration that it's
22 not enough is that in - you know, these folks who, who had
23 the problem and who were making these requests wound up
24 having to elect a port commissioner in order to get access
25 to the documents of the type and the nature that the statute

1 says they should have gotten. And when they finally did get
2 access through that port commissioner, there's at least that
3 much more stuff that fits in the category of their specific
4 request that they didn't get. Now that's how much there is.
5 I don't - we can count pages, you can count pages, anybody
6 can count the pages. The fact is there's a substantial body
7 of stuff that they didn't ever get until they elected a port
8 commissioner and got in there to see those things.

9 All of that would have been avoided if Ms. Olsen had
10 simply said, yeah, tomorrow, you know, we'll have somebody
11 sitting there in the port - you know, in the fire hall, and
12 you guys can come in and look and mark whatever you want to
13 copy. End of problem. She clearly had a daughter that
14 helped her sort through documents. Presumably the daughter
15 could have sat there while somebody else looked. They could
16 have hired a minimum wage temp to, to do that task if none
17 of the commissioners could do it. Not a very hard problem
18 if you truly want to solve the problem. One would have to
19 suspect that getting this kind of a request may be a little
20 annoying, and you may not be motivated to do the last thing
21 you might do. You might not really be motivated to load
22 your - if you couldn't think of any other way to do it, to
23 load your file cabinet on a truck and take it up to the
24 attorney's office and tell somebody they can look at it.

25 There were pretty simple ways to resolve it that they

1 didn't adopt. The statute says they've got a duty to use
2 the fullest possible cooperation, immediately access. They
3 didn't do it. I don't think there's any real doubt here
4 that they didn't do it. And it's important and I - you
5 know, you could look at any one particular piece of these
6 papers and say, well, that piece of paper isn't all that
7 important. But what's important is that these people know
8 that they have access to their government's public records
9 timely. And timely in this case means before what appears
10 to be the most important action that the port had taken in
11 some time, at least in, in the view of a substantial number
12 of people in the Port of Tahuya.

13 That all said, they now have gotten the documents.
14 We're not asking for more documents because having elected a
15 commissioner that was cooperative, they, they got the
16 documents ultimately. But they got them on February 23, and
17 that was 208 days after August 14th. Now the statute says
18 that you can assign in effect a civil penalty, a fine to the
19 Port of Tahuya ranging from \$5.00 a day to \$100.00 a day per
20 document if you choose to. And that 208 days is pretty much
21 the minimum for this batch of documents. Even the documents
22 that they did get, they didn't get until, until some time in
23 September. I can tell you that \$5.00 - that from August
24 14th to February 23rd is 208 days. At the minimum of \$5.00
25 a day, that's \$1,040.00. The statute over and above that

1 calls for an award of costs and attorney's fees. Ms. High
2 is prepared here today with an attorney's fee affidavit. I
3 assume Your Honor does not want that until after you've made
4 your decision, so we have not submitted it to this point.

5 But I think that's, that's the set of facts and the
6 conclusion that the law directs you to, Your Honor. And it
7 would be easy to say this is a little bit of a tempest in a
8 teapot, but frankly the folks who framed that statute
9 thought this was a pretty critical. And, and the kind of
10 language in the open public meetings act and the public
11 records act makes it clear that they want you to be
12 proactive. They want you to liberally construe this to make
13 sure the public gets their records and knows - know that
14 they're always gonna get their records. Thank you, Your
15 Honor.

16 THE COURT: Thank you, counsel. On behalf of the
17 defense.

18 DEFENSE CLOSING ARGUMENT

19 MR. SELLS: Thank you. Your Honor, please I can
20 assure you the Port of Bremerton doesn't think this is a
21 tempest in a teapot. What it does think this is . . .

22 THE COURT: Or the Port of Tahuya either.

23 MR. SELLS: Or Tahuya. Thank you, Your Honor.
24 What it does think this is is a pretty clear example of a
25 group of citizens who have bound themselves together to take

1 over a public entity such as the port, and they're doing a
2 pretty good job of it so far. They've managed to elect a
3 port commissioner who is a member of their group, who comes
4 in here and testifies against the port, who supplies the
5 Court with affidavits - with declarations in the summary
6 judgment motion, who personally escorts counsel's staff out
7 there to go through the, the documents. Now that's fine;
8 they've got every right to do that.

9 But if you're going to talk about the purpose of this
10 statute, the purpose of this statute, which was in fact an
11 initiative, is to provide openness in government, but it's
12 also to provide efficiency in government. And in a case
13 like the Yousoufarian case where some citizen, who managed
14 to have enough money to do it, had to chase King County for
15 over a year to find out what was going on with the building
16 of the stadium with public funds, it's a great statute, and
17 it can, it can be used very efficiently in that manner.
18 When it's used to drive a port out of business or to drive a
19 small port like this into bankruptcy, then we have to stop
20 and look at what's going on here very, very carefully.

21 And what's going on here is that by September 16th, the
22 vast majority of the documents requested on August the 8th
23 and August the 12th had been provided, 600 and some odd
24 pages of them. That's not disputed. Apparently - and I
25 have no way to dispute this so I'll, I'll take their word

1 for it - apparently Exhibits 7 through 16 were missed.

2 Okay. They should have been caught; they weren't.

3 Under the circumstances though, if Your Honor will look
4 at those photographs, Your Honor will consider the situation
5 here where they are sharing a corner behind a door with the
6 fire station and consider the situation where the fire
7 station has asked the port commissioner not . . . Well,
8 they didn't ask him, they told him not to come in anymore
9 because they thought he was going through their personal
10 personnel files. If you've got somebody who actually is
11 employed and trying to run a business . . . I'm not saying
12 this as an excuse. I'm explaining why some of these
13 documents, a minority of these documents may have been
14 missed.

15 And if this Court is going to find any responsibility
16 on the part of the port and levy any of a daily fine, then
17 that daily fine only should be related to Exhibits 9 through
18 16, not to the documents that were supplied by September
19 16th, 38 days from the date of the first request. That's
20 not unreasonable, especially when you have one, two, three,
21 four requests in a period of a less than a month, not from a
22 citizens group but from the citizens group's lawyer.

23 And then we have right in the middle of that, August
24 20th, a lawsuit filed. That changes everything because then
25 the rules of discovery come in, and we can't have defendants

1 in a lawsuit and have every Tom, Dick and Harry coming in
2 there and going through our files and handing out memoranda
3 from lawyers and personnel documents and that sort. It's
4 not just - if you don't that to happen, don't file a
5 lawsuit.

6 Your Honor also has discretion involving the attorney's
7 fees. If you'll look at - oh, there's several cases - the
8 City of Kalama case, 131 Wn.2d 25, I think Your Honor has to
9 award fees if it finds that there's one of these - if
10 there's a fine awarded. But the amount of the fees is
11 totally within Your Honor's discretion. And so we would
12 suggest that if in fact Your Honor feels it was unreasonable
13 that Exhibits 9 through 16 were not produced by September
14 16th or so, then that's the only - those are the only
15 documents that ought to be subject to the ruling, and to
16 consider the situation. The case law says you consider the
17 size of the port, you consider the staffing of the port, you
18 consider the resources of the port. Now if these folks want
19 to put the port into bankruptcy, that's fine. But we don't
20 think this Court should help them along, and we don't think
21 the port's gonna help them along with that. If there's any
22 award at all, it should be \$5.00 a day, the attorney's fees
23 should be minimal. Thank you, Your Honor.

24 THE COURT: Counsel.

25 PLAINTIFFS' FINAL CLOSING ARGUMENT

1 MR. O'HARE: Your Honor, very briefly, the, the
2 issue of whether bringing a lawsuit to forfeit your right to
3 prompt document production under the statute, under the
4 statute is kind of an amazing argument to make. These folks
5 were entitled to the stuff without a lawsuit. They brought
6 a lawsuit because they felt they needed to to get the
7 documents in any kind of timely manner, and that certainly
8 didn't reduce their rights to get these documents. The
9 financial status of the Port of Tahuya is not before you,
10 and the only document requests before you are the ones
11 contained in the August 8 and the August 12 letters. And
12 that's what's on the record here and before you and to be
13 considered by you. And so - by the way, I said Exhibit 7
14 through 16. It's actually Exhibit 7 through 16 and Exhibit
15 22 were the documents.

16 We haven't asked for, despite the fact that the statute
17 permits it, for \$5.00 per day per document or \$100.00 per
18 day per document. You'll note I didn't make that argument.
19 I'm not making it now. But I do think that a daily fine of
20 some amount between - for the 208 days between the request
21 and when things were ultimately presented in, in February is
22 appropriate. But I, but I think it probably would be
23 excessive to assess it or levy it on a per document basis.

24 THE COURT: Truly this initiative, which is now
25 law, was intended to provide for open government, open

1 accountable government. Part of that process is the timely
2 provision of documents upon reasonable requests made by the
3 citizens of the jurisdiction. In this case, a request was
4 made on the 8th of August, and it sounds like - I believe
5 it's a quote - the commissioner went into a panic mode when
6 she received that, that request.

7 The Court needs to look at the totality of the
8 circumstances when determining whether that panic mode and
9 its ultimate response was reasonable or unreasonable in the
10 circumstances. And everybody should recognize that
11 Commissioner Olsen was only one of three commissioners at
12 the time, and they had the resource - they had additional
13 resource there that perhaps could have been dealt with.

14 The totality of the circumstance is that apparently the
15 people in the community knew that there was a significant
16 port decision that was about to be addressed on the 20th of
17 August, and for that reason there was perhaps a greater need
18 for information on a more expedited basis than simply
19 somebody that had a curiosity or somebody that knew that it
20 was going to take a long time to build a stadium and get it
21 funded and had a lot of time to be able to work it through.
22 That's a circumstance that certainly wasn't unknown to any
23 of the parties before the - or during the process.

24 Significantly also was the limitation of the amount of
25 information that was available to be requested. Four, a

1 four-drawer filing cabinet, even though filled to the brim,
2 is not a particularly undaunting task when one considers
3 that the reality is that you could go through and eliminate
4 those documents that can't be produced because of the
5 exclusions and produce the balance. In this particular
6 instance, the discovery requested, the documents requested
7 were not produced until well after the crucial meeting date
8 and essentially denied access in a timely fashion to an
9 element of the community that is served by the commission.

10 There were a lot of decisions that could have been made
11 that weren't made. It doesn't appear that anybody ever
12 said, gee, I am only one of three, get your tails in here
13 and help me out. Although I am the secretary, we're all
14 commissioners and we all have to deal with this type of
15 thing. I think that you made the right response in getting
16 a hold of your lawyer. Obviously that's always helpful.
17 Most lawyers appreciate that their clients get a hold of
18 them early rather than late.

19 But under the circumstances, I can't find and do not
20 find that the response was timely and adequate given the
21 totality of the circumstances here. I am, therefore,
22 finding that the actions violated the right to access. I am
23 awarded \$5.00 per day for 208 days total. I will be
24 addressing attorney's fees. I do agree with Mr. Sells that
25 I have discretion in awarding attorney's fees. I believe

1 that some of this . . . Well, I'll deal with that when we
2 get to it. Counsel.

3 MR. O'HARE: Your Honor, I'll let Ms. High address
4 that topic because they're her fees.

5 THE COURT: Ms. High.

6 MS. HIGH: Thank you. I did prepare - and I was
7 way more organized at the beginning of the morning - a
8 declaration regarding my attorney's fees. [Portion
9 inaudible] copy as well.

10 THE COURT: Thank you. If you will please. I'll
11 give her the original.

12 MS. HIGH: Right. And I have put in 88.5 hours
13 strictly related to the Public Disclosure Act. That
14 involved the requests, that involved show cause hearings
15 that we've come here for, then ended up being canceled, a
16 summary judgment motion and this trial preparation at
17 \$150.00. And, you know, as the lodestar approach takes a
18 look at what is a reasonable rate in the relevant community,
19 \$150.00 is actually less than my standard billing rate,
20 however . . . Yeah, and also and Mr. O'Hare has not
21 included any of his fees. And you can see as a cost, we
22 didn't even include the cost of Dr. Sloman or our other
23 costs, but simply the bare minimum costs of some copying,
24 the service and the mileage.

25 And, and in effect - because I think the Court realizes

1 that this is not going to be retribution and that's why
2 we've asked for the most diminimus of damages, both in terms
3 of the daily penalty and in terms of the kind of fees that
4 could have been asked here, I would ask that you award
5 attorney's fees for 88 and a half hours at \$150.00 an hour
6 and the costs. I think they're about \$250.00 or \$260.00.

7 THE COURT: Mr. Sells, are you prepared to respond
8 to this or would you like some time to come back to respond
9 to it.

10 MR. SELLS: Well, I'm gonna - maybe if the Court
11 please maybe I can think out loud. As I understand it then,
12 Mr. O'Hare is not going to seek attorney's fees.

13 MR. O'HARE: No, Your Honor, that's, that's the
14 attorney fee requested. We elected to have two of us here
15 today, but we're not asking the Port of Tahuya to pay that.

16 MR. SELLS: Well, I'm not gonna question Ms.
17 High's affidavit, Your Honor. I mean if she says she put in
18 88 hours, she put in 88 hours. 150.00 is - I can tell you
19 that's our governmental rate that we charge, so I, I can't
20 address that.

21 THE COURT: Well, I can tell you that having sat
22 in this position as long as I have, it doesn't cease to
23 shock me when I look at attorney's fee requests. And this
24 one surprises me from the standpoint that the request I
25 think has been tempered with with reason. There does not

1 appear to be an exorbitant request for attorney's fees or
2 does not attempt to be any - or appear to be any attempt at
3 adding - costs are kept minimal. Although two attorneys
4 have been here today to represent the plaintiff, they're
5 only billing for one. The thirteen - the 13,275.00 is
6 reasonable, and the costs of 257.16 are assessable and
7 reasonable and will be awarded. I'll sign an order.

8 MR. O'HARE: Thank you, Your Honor. We'll prepare
9 and present one.

10 THE COURT: Any questions?

11 MR. SELLS: No, Your Honor.

12 THE COURT: Court's in recess.

13 Court is adjourned.

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