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September 6, 2017

Bob Ferguson  
Attorney General  
PO Box 40100  
Olympia, Washington 98504-0100

Re: Formal Request for Attorney General Opinion  
– Continuing Validity of 1980 AGO No. 1

Dear Attorney General Ferguson:

The Franklin County Prosecutor's Office would like to request a formal Attorney General's Opinion on the following questions: "Should 1980 AGO No. 1 be withdrawn/revised in light of changes in technology and practice, the legislative intent of RCW 42.56.070(9), and the recent decision in *SEIU Healthcare 775NW v. Department of Social & Health Services*, 193 Wash.App. 377, 377 P.3d 214, *review denied*, 186 Wash.2d 1016, 380 P.3d 502 (2016)?" "Is it proper to redact names of individuals from a list or data compilation which is requested under the Public Records Act and for a commercial purpose?"

County assessors and treasurers have data regarding the local taxpayers' property assessment and tax debt history. Data compilations are public records. RCW 42.56.010(4).

Under RCW 84.40.020, all real property shall be listed and assessed each year with the listings and supporting documents open to public inspection "during the regular office hours of the assessor's office." [Under the same statute, confidential income data is exempted from public inspection.] Many counties provide even greater public access – publishing much of this information on their websites. Anyone may access the information at all hours by parcel number, situs (street address), map number, and owner name.

County assessors and treasurers may choose to contract with outside agencies to store their collected data. A county agency may request the contracting software agencies prepare reports from the data.

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As a result, counties frequently receive out-of-state requests under the PRA (Public Records Act):

- Requesting a copy of an existing report,
- Requesting the County generate a specific report from this data, and
- Requesting access to the data in order to search or sift using the contracted agency's software.

Counties learned that taxpayers were being solicited, sometimes with predatory purposes, after their debt vulnerability had been disseminated as a result of our disclosures.

The PRA is liberally construed so that the people may maintain control over the instruments they have created and to assure the public interest will be fully protected. RCW 42.56.030. That same PRA specifically and unambiguously precludes the exploitation of the law for individual commercial gain at the expense of the greater public. The law provides that if "lists of individuals" are "requested for commercial purposes," the records must be withheld.

This chapter shall not be construed as giving authority to any agency [...] to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: ...

RCW 42.56.070(9). The protection of individuals from predatory lenders is squarely within the intent of this passage.

However, in the past, there was no explicit authority which permitted the public agency to inquire into the motive or purpose of a request for public records.

Last year, a published opinion clarified that public agencies are both authorized and mandated to investigate whether the request is for a commercial purpose.

We hold that the agency must investigate when it has some indication that the list might be used for commercial purposes. Whether an agency must investigate will depend on a case-by-case determination based on the identity of the requester, the nature of the records requested, and any other information available to the agency.

....

When under the specific case facts an agency has an obligation to investigate, it must at least require a party requesting a list of individuals to state the purpose of the request. Such a requirement is permissible under RCW 42.56.080, and it would allow the agency to independently evaluate whether the requesting party's purpose is a commercial one.

*SEIU Healthcare 775NW v. Department of Social & Health Services*, 193 Wash.App. 377, 405–06, 377 P.3d 214, *review denied*, 186 Wash.2d 1016, 380 P.3d 502 (2016).

As a result of this new authority, our County created an investigative inquiry form for use when there was reason to suspect a commercial purpose. If it could be determined that the records request had a commercial purpose, the records or access would still be

provided and in the list form requested, but only after individuals' names and addresses had been redacted.

Recently, requesters have readily acknowledged a commercial purpose, but insist that the data they are requesting may not be redacted for the names of individuals. The explanation provided is that the list requested is not a list of individuals. The commercial records requesters rely upon 1980 AGO No. 1, which concluded that the tax assessment roll is a list of taxable property, not a list of individuals.

While the language of the statute has not changed, technology has. New software products simplify an agency's ability to redact records and to create reports. The data can be readily sifted by any criteria, including individual name or unpaid tax debt. If the owners' names are not redacted, this becomes a list of individuals owning property in the county.

In 2006, a superior court found that providing the information via a website was sufficient, and the agency could not be required to create a list from its data or provide access to the software in order to allow a requester to sift the data for commercial purposes. The court considered the 1980 AGO No. 1 and found it to be outdated and irrelevant. Memorandum Decision, *Radius Management LLC v. David Cook/Yakima*, No. 05-2-00282-7 (Superior Court of Kittitas) (attached). That court observed the new manner of data management.

The Yakima County Assessor has not maintained the traditional "plat and description book" for over 25 years. Rather, the assessor's office has entered all information required by law into a computer data base. From that computer data base all information required by law to be kept can be accessed. The assessor does not maintain a list of property, valuations, property owner's names and property owner's mailing addresses; the office, however, with approximately 20 minutes of staff time can generate such a list.

....

... the listing of property by the Yakima Assessor's Office is not in the same format as was the Island County Assessor's assessment roll of 1980. As such, the public record contemplated by the plaintiff does not exist and the Yakima County Assessor is under no obligation to create it.

Memorandum at 4, 6-7. The superior court ultimately held that the agency is not required "to create records to suit a particular need of a requester, only to make the records they currently have available to the public." Memorandum at 5 (citing *Smith v. Okanogan County*, 100 Wn. App. 7, 994 P.2d 857 (2000)). "Requiring the assessor to create a list designed by the plaintiff would [...] place the assessor in conflict with the Public Disclosure Act prohibitions against releasing lists of names and addresses for commercial purposes in violation of RCW 42.17.260(9) [now RCW 42.56.070(9)]." Memorandum at 6.

This 2006 Memorandum Decision, of course, has no precedential value. But the 1980 AGO does have persuasive value.

I would appreciate your careful, but prompt response. When confronted with requester challenges and the risk of the treble damages of a public records lawsuit, smaller counties may be more litigation-averse. The unfortunate result can be that the taxpayers of smaller counties do not receive the protections the Legislature intended.

Please feel free to contact me should you have any other questions concerning this matter. I look forward to your response.

Sincerely,



Shawn P. Sant  
Prosecuting Attorney

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