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Sent Via Email: Podszus, Rebecca (ATG) [RebeccaP3@ATG.WA.GOV]

Sunshine Committee Members
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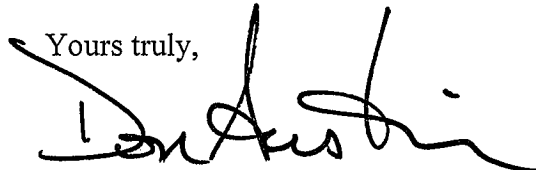
Re: Attorney Work Product and Attorney-Client Privilege Exceptions to the Public Records Act

Dear Members of the Sunshine Committee:

This letter reiterates in summary fashion the points that I have been raising for several years with your Committee on behalf of the Washington Schools Risk Management Pool and the Southwest Washington Risk Management Insurance Cooperative. Together these pools represent roughly 140 school districts in the state, which in turn serve about half of the students in Washington. On their behalf, I have been present at nearly all of the Sunshine Committee meetings since 2008 which have addressed attorney work-product and attorney client privilege exceptions ("these exceptions") and have urged keeping the exceptions intact with the PRA. In summary, the reasons for supporting these exceptions are as follows:

1. **No Evidence of Abuse:** There is no evidence that these privileges have been systematically abused in any fashion to keep information from the public. In fact, there has never been any evidence that either exception has ever been abused. The only evidence presented to the Sunshine Committee is that these exceptions have been used. That is insufficient to deduce that these exceptions have been abused. If use of an exception is to be considered abuse, then all exceptions to the PRA which are used should be eliminated on the same grounds.

2. ***Strong Enforcement Mechanism Exists:*** Even if abuse existed, the stringent enforcement mechanism within the PRA solves the problem with daily penalties for non-disclosure of records, as well as paying the attorneys' fees of the person successfully bringing suit to show that the privileges have been abused. As an attorney representing public entities, I guarantee that these harsh penalties are something that public entities keep in mind when responding to PRA requests.
3. ***Negative Impact on the Public Purse:*** Eliminating these exceptions does not benefit the public purse. It would put public entities at a decided disadvantage in any lawsuit. All a plaintiff suing a public entity would need to do would be to make a PRA request to obtain anything it wanted relating to attorney involvement in a matter. This kind of unintended consequence of eliminating these privileges far outweighs any perceived benefit elimination that these privileges would have.
4. ***Violation of Due Process:*** Due process and fairness require an even playing field in litigation. One side should not be forced to turn over attorney work product and attorney-client privileged advice during litigation while the other side maintains those privileges. Elimination of these exceptions would eliminate that even playing field for public entities.
5. ***Ancient Privileges:*** Attorney work product and attorney client privilege are ancient privileges which have worked well for centuries and should not need to be eliminated for public entities.

Yours truly,

Donald F. Austin

cc:

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