

NOVEMBER 15, 2020

**RE: AUBURN SCHOOL DISTRICT IMPROPER CALCULATION AND APPLICATION
OF PUBLIC RECORDS STATUTORY DEFAULT COSTS WAC 44-14-070**

ACTION REQUIRED

Mr. Aarstad,

The 10-15-2020 demand for \$8,887.31 in fees for "710,985 electronic file attachments" has been received, reviewed, and rejected as an intentional miscalculation and gross inflation of fees not permissible under the Public Records Act (RCW 42.56). Your letter is presented in bad faith and designed not to provide the "fullest assistance" (WAC 44-14-04003) (3) as required of the District under the PRA but rather to discourage the public and this requestor from seeking transparency in local government and of public employees such as yourself.

On 07-21-2020 I originally requested:

Pursuant to the Washington Public Records Act, I hereby request the following records:

COMMUNICATIONS AND WRITINGS - ALL ELECTRONIC MAIL (E-MAIL), ELECTRONIC TEXTS, TELEPHONE COMMUNICATIONS, TELEPHONE MESSAGES, AND TELEPHONE LOGS of the following individuals for the period of time between January 1, 2018 - July, 21 2020 or the date this Public Records Request is completed whichever is more current:

Lynda Stoddard
Jon Aarstad
Daman Hunter
Debbie Strand
Vicki Bates
Jennifer Clouser
Debbie Leighton
Curtis Leonard

With respect to requests for records that include "communications," I am requesting all emails, text messages, and telephone records, regardless the type of device or account from which the communication was generated or where the device or data is stored (including personal devices such as personal cell phones, laptops, tablets, and/or computers etc. used from home to conduct public business during the COVID-19 Pandemic). Nissen v. Pierce County, 183 Wa.2d 863 (2015).

With respect to requests for records that include "Writings" per 42.56.010(4) this means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

I also request a detailed contemporaneous log to be provided for any document withheld or redacted.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, in MICROSOFT .pst format if possible and by public (no password) e-mail attachment or link if available or USB DRIVE or CD-ROM if not.

Note, I requested the records to be provided electronically, in MICROSOFT .pst format which is the NATIVE format in which the District maintains these email files. This is important because the Public Records Act compels agencies whenever possible to provide electronic documents to requestors in their NATIVE format.

Some agencies claim that redactions to electronic records cannot be made to .pst format files and this necessitates a conversion of email records to an Adobe .pdf format for redaction purposes. This practice is common, permitted, and acceptable. The Auburn School District has employed this practice for over a decade now in its regular operations as you well know.

On a regular basis, during routine and normal business operations, the Auburn School District identifies thousands of emails and attachments in response to Public Records Requests, converts these emails from .pst formats to .pdf formats, redacts the emails and attachments, compiles the redacted files by the thousands and bundles them all into single .pdf documents. The District then sends those .pdf documents with multiple other files as bundled .zip file links, or individually as single .pdf files via the internet or by email to citizen records requestors.

You are well aware of this Mr. Aarstad because you do this in the regular daily course of public business. You just did this last month on 10-12-2020. On behalf of the District you produced (28,187) District emails in (14) .pdf files, via public internet link, all for no cost, and for no fees whatsoever, let alone for an outrageous demand of \$8,887.31.

EVIDENCE:

**From: Auburn School District
10/12/2020**

Subject: Re: Washington Public Records Act Request: Auburn School District - Police and Law Enforcement Investigations - 2010-2020

October 12, 2020

Dear ESSA Advocate,

This email is to provide you with the documents responsive to your public records request dated, January 23, 2020.

You requested the following documents:

I request an electronic copy of all RECORDS and WRITING (including emails, texts, telephone call logs, faxes, etc.) in the possession of Auburn School District regarding any police or law enforcement agency reports, complaints, or investigations for the years 2014 - 2020.

Below is a link to the response file:

<https://drive.google.com/drive/folders/10RPymLHqpv0s87uTGwBe0YVfO5q-IEDD?usp=sharing>

Attached is an exemption log for the response documents.

With this email, the district closes its response to your public records request dated, January 23, 2020.

If you have any questions or concerns, please contact me.

Sincerely,

Jon Aarstad
Director of Human Resources
253-931-4900

https://cdn.muckrock.com/foia_files/2020/10/13/Link20to20Response20Documents-20201013T122759Z-001.zip

**THE FILES CONTAINED IN YOUR 10-12-20 RESPONSE
FILE (28,187 PAGES IN 14 .PDF FILES)
ALL PRODUCED FOR NO FEE OR COST**

Luke Emails_Part1_Redacted.pdf	271,636 KB	(3200 PAGES)
Luke Emails_Part2_Redacted.pdf	253,746 KB	(3200 PAGES)
Luke Emails_Part3_Redacted.pdf	213,300 KB	(3200 PAGES)
Luke Emails_Part5_Redacted.pdf	202,838 KB	(3200 PAGES)
JSMith 3_Redacted.pdf	198,945 KB	(2373 PAGES)
JSMith 4 Emails_Redacted.pdf	196,144 KB	(2426 PAGES)
JSmith 2 Emails_Redacted.pdf	194,006 KB	(2574 PAGES)
JSmith 1 Emails_Redacted.pdf	169,351 KB	(2356 PAGES)
Bush Emails_Redacted.pdf	136,102 KB	(1252 PAGES)
Luke Emails_Part4_Redacted.pdf	116,213 KB	(3200 PAGES)
Luke Emails_Part6_Redacted.pdf	46,680 KB	(696 PAGES)
Bear Emails_Redacted.pdf	37,822 KB	(407 PAGES)
Police_and_School_MOU.Atch.pdf	14,714 KB	(75 PAGES)
SRO SeaTac Highline.pdf	667 KB	(15 PAGES)
Auburn School District Resource Officer.pdf	275 KB	(6 PAGES)
CityOfPuyallupResourceOfficersSep2006.pdf	6,606 KB	(7 PAGES)
CALL1 JAMEY KIRKES 10 31 2014.wav	116 KB	(Audio:1:12)
Kelli Hamilton 911 CALL 2 09 26 2014.mp3	2,213 KB	(Audio:2:22)
Kelli Hamilton 911 CALL 1 09 26 2014.mp3	1,310 KB	(Audio:2:24)
CALL3 BOB HAMILTON 10 31 2014.wav	860 KB	(Audio:9:01)
CALL2 LURA WALLEN 10 31 2014.wav	257 KB	(Audio:2:41)
CALL4 KELLI HAMILTON 10 31 2014.wav	432 KB	(Audio:4:31)

Security Staffing Survey 09.10.2017.docx 90 KB (1 PAGE)
MOA School Resource Officers (5-1-18).docx 45 KB (8 PAGES)
Security staffing proposal 11.8.17.xlsx 15 KB (1 PAGE)
Security staffing proposal 4.11.17 (1).xlsx 15 KB (1 PAGE)
Security staffing proposal 4.11.17.xlsx 15 KB (1 PAGE)
SRO comparison 1.9.18.xlsx 14 KB (1 PAGE)
SRO comparison 12.15.17.xlsx 13 KB (1 PAGE)
4439 - 2015-2018 School Resource Officer(SRO) Cost Sharing Highline sd.pdf 967 KB (6 PAGES)

SUBTOTAL: 28,207 PAGES
30 FILES TOTAL
6 AUDIO FILES (22 min 20 seconds audio)

Mr. Aarstad, you produced all these public records for NO FEE and for NO COST.

In fact, in the entire HISTORY OF THE AUBURN SCHOOL DISTRICT, the District has NEVER charged for public records, because the District NEVER had any public policy in place to permit fees or costs for public records to be charged.

In order for the District to charge “actual costs” for public records according to RCW and WAC 44-14-070 the District would be required to provide public notice and hold a public hearing. The District has not done this. In order for the District to charge “statutory default costs” the District would be required to have a rule or regulation declaring the reasons that determining “actual costs” would be “unduly burdensome.” The District has not done this either.

The Auburn School District School Board is required to hold a public meeting and take a public vote adopting PUBLIC POLICY open to public review to adopt fees for public records requests. I am sure any such policy proposal would pass, should the school board choose to put a public records fee policy proposal to a vote via the public process.

In the meantime, in a spirit of good faith I am willing to meet you half way and accept the State of Washington statutory default costs you have outlined in your email of 10-15-2020, but only if properly calculated to multiple redacted email files economically bundled in the .pdf format to which you are well accustomed.

As another example: in response to a 01-15-2020 MUCKROCK.com public records request regarding Auburn School District use and distribution of a document titled FEDERAL SURVEY FedForm:092916 on 05-26-2020 you produced a single ADOBE ACROBAT .pdf document containing **9218 PAGES of email files AT NO COST:**

“Dear Public Citizen,

The purpose of this email is to notify you that an installment of the records you request on January 22, 2020 are available via the link bellow

Federal Survey Response Document
05262020<https://drive.google.com/file/d/1ziynBSF0ogNXqYSsRt8hhHirE-CT02y2/view?usp=sharing>”

Sincerely, Jon Aarstad
Director of Human Resources
253-931-4900”

https://cdn.muckrock.com/foia_files/2020/05/27/Federal20Survey20Response20Documents2005262020.pdf

Then again, on 06-22-2020 in the same PRR you produced a single ADOBE ACROBAT .pdf document containing **7621 PAGES of email files AT NO COST:**

“Dear Public Citizen,

The purpose of the email is to provide you with the final installment of your public records request date January 22, 2020.

Below is a link to the remaining emails requested.

Final Installment Remaining
Emails<https://drive.google.com/file/d/10AmgJBwlXD7_RFzTcpnmbPnFdSaDMbp0/view?usp=sharing>

Sincerely, Jon Aarstad
Director of Human Resources
253-931-4900”

https://cdn.muckrock.com/foia_files/2020/06/23/15-172019-2020emails_Redacted.pdf

Mr. Aarstad, there are many more instances of both you and the District publicly producing thousands of emails bundled in to single .pdf files at no cost whatsoever to the public, however I believe these examples will serve as enough clear exhibits for now.

The District is clearly capable of producing email records electronically in .pdf format at a minimum of 1 page per .pdf file up to a demonstrated 3200 pages per .pdf file, 7600 pages per .pdf file, and even 9600+ pages per .pdf file. The maximum page volume per .pdf file the District is capable of economically producing is currently unknown, however for now it publicly stands at 9218 pages produced on 05-26-2020.

CORRECTED STATUTORY DEFALUT CALCULATIONS FOR THIS PUBLIC RECORDS REQUEST

The District has calculated this request will generate 710,985 electronic file attachments. Based on a cost statutory default cost of five cents per every 4 electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery, the estimated fees are $(710,985 \text{ files} / 9218 \text{ per .pdf} = 78 \text{ .pdfs files} * [.05] = \$3.90)$ this equals \$3.90 plus delivery charges depending the method of delivery which was clearly specified as cloud-based internet link.

The total statutory default costs calculated for this public records request including any shipping should shipping be required are easily less than \$20.00.

Some important considerations. Each public employee email box would be searched individually by name. The most economical procedure to gather and properly redact and provide required explanations for any exemptions and redactions to responsive records would be to organize each named employee's records in an electronic folder. This would assist in describing locations searched for responsive records and in providing required explanations for redactions in exemption logs. However, it will add to the statutory default fee calculation, but only by a few dollars at most.

STATUTORY DEFAULT CALCULATIONS BY EMPLOYEE FOLDER .PDF

Description # of Files Cost per 4 electronic files or attachments @ .05 per 4 electronic files:

Lynda Stoddard 53,573 $(53,573 / 9218 = 5.8)$ rounding up equals 6 .pdf files
Jon Aarstad 63,654 $(63,654 / 9218 = 6.9)$ rounding up equals 7 .pdf files
Daman Hunter 62,297 $(62,297 / 9218 = 6.7)$ rounding up equals 7 .pdf files
Debbie Strand 44,382 $(44,382 / 9218 = 4.8)$ rounding up equals 5 .pdf files
Vicki Bates 130,317 $(130,317 / 9218 = 14.1)$ rounding up equals 15 .pdf files
Jennifer Clouser 321,709 $(321,709 / 9218 = 34.9)$ rounding up equals 35 .pdf files
Debbie Leighton 29,799 $(29,799 / 9218 = 3.2)$ rounding up equals 4 .pdf files
Curtis Leonard 5,254 $(5,254 / 9218 = .56)$ rounding up equals 1 .pdf files

SUBTOTAL: 80 .pdf files

TOTAL: 80 .pdfs with a maximum of 9218 pages @ a cost of .05 x 80 = \$4.00

Please bear in mind the original request included all “communications” and “writings” as defined by statute including but not limited to emails, text messages, and telephone records, regardless the type of device or account from which the communication was generated or where the device or data is stored (including personal devices such as personal cell phones, laptops, tablets, and/or computers etc. used from home to conduct public business during the COVID-19 Pandemic). *Nissen v. Pierce County*, 183 Wa.2d 863 (2015).

Based on the COVID-19 pandemic and 90% of these public employees are performing public employment and public work functions from their home residences and other remote locations known and unknown. The District bears the burden of searching for and retaining requested electronic and physical communications and records stored on personal devices in the homes, cars, offices, schools, administration buildings, and internet accounts both public and private, of the identified public employees, as well as wherever else both physical and virtual responsive records may reasonably be calculated to be located. To quote WAC 44-14-04003(10) Searching for records:

” If agency employees or officials are using home computers, personal devices, or personal accounts to conduct agency business, those devices and accounts also need to be searched by the employees or officials who are using them when those devices and accounts may have responsive records.”

Mr. Aarstad, it might be helpful for you to review WAC 44-14-04003(3) Provide "fullest assistance" and "most timely possible action.":

“The act requires agencies to adopt and enforce reasonable rules to provide for the "fullest assistance" to a requestor. RCW 42.56.100. The "fullest assistance" principle should guide agencies when processing requests. In general, an agency should devote sufficient staff time to processing records requests, consistent with the act's requirement that fulfilling requests should not be an "excessive interference" with the agency's "other essential functions." RCW 42.56.100. The agency should recognize that fulfilling public records requests is one of the agency's duties, along with its others.”

Mr. Aarstad, the internet defines bad faith as the following:

“Bad faith is not the same as prior judgment or Negligence. One can make an honest mistake about one's own rights and duties, but when the rights of someone else are intentionally or maliciously infringed upon, such conduct demonstrates bad faith.

A government official who selectively enforces a nondiscriminatory law against the members of a particular group or race, thereby violating the Civil Rights of those individuals, is acting in bad faith”

Mr. Aarstad, I don't owe you or the district a dime for this public records request. However, in the spirit of good faith I will send you four bucks.

Please calculate default statutory fees correctly as soon as possible and please tally all locations required to be searched. Please provide a corrected fee estimate. I request these records to be produced via internet link or CD-ROM as per the original PRR request. I will send a certified check to:

AUBURN SCHOOL DISTRICT
915 4th Street
Auburn, Washington 98002

Thank you.