

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTON
CIVIL DIVISION

Norm Maleng
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TO: C. Chip Goss **Fax#** 206-937-0460

FROM: Janine Joly

DOCUMENT: Notice of Appearance, Defendant's Response to Plaintiff's Motion; Declaration of Dean Logan; [P]roposed Order; Certificate of Service

TIME: 9:29 AM **NUMBER OF PAGES** (incl. this one) 33

DATE: 31 October 2005

COMMENTS:

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Stefan Sharkansky, an individual,)
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 Plaintiff,)
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 vs.)
)
 King County; Ron Sims, King County Executive;)
 King County Records, Elections and Licensing)
 Services Division and Dean Logan, an individual.)
)
 Defendant.)

No. 05-2-12494-4

NOTICE OF APPEARANCE

14 TO: Stefan Sharkansky, an individual,
 15 AND TO: C. Chip Goss
 Tacey Lamb LLP
 16 22833 Bothell-Everett Hwy., Suite 218
 Bothell, WA 98021

18 YOU AND EACH OF YOU, will please take notice that King County, Ron Sims, King
 19 County Executive; King County Records, Elections and Licensing Services Division; and Dean
 20 Logan, hereby appears on behalf of King County in the above-entitled action, without waiving the
 21 question of:

- 22 1. Lack of jurisdiction over the subject matter;
- 23 2. Lack of jurisdiction over the person;
- 3. Improper venue;

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- 4. Insufficiency of process;
- 5. Insufficiency of service of process;
- 6. Failure to state a claim upon which relief may be granted; and
- 7. Failure to join a party under Rule 19.

You are hereby further notified that all further papers and pleadings herein, except for original process, shall be served upon the undersigned attorneys at the address below stated.

Delivery by Mail:

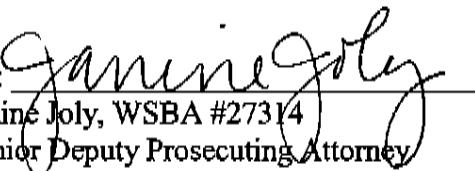
Norm Maleng, Prosecuting Attorney
 CIVIL DIVISION
 E550 King County Courthouse
 516 Third Avenue
 Seattle, Washington 98104

Delivery in Person:

Norm Maleng, Prosecuting Attorney
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 W400 King County Courthouse
 516 Third Avenue
 Seattle, Washington 98104

DATED this 31st day of October, 2005.

NORM MALENG
 King County Prosecuting Attorney

By: 
 Janine Joly, WSBA #27314
 Senior Deputy Prosecuting Attorney
 Attorneys for Defendants

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Stefan Sharkansky, an individual,)
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Plaintiff,)
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King County; Ron Sims, King County Executive;)
King County Records, Elections and Licensing)
Services Division; and Dean Logan, an individual,)
)
Defendants.)

No. 05-2-12494-4

DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR ORDER
TO SHOW CAUSE

I. RELIEF REQUESTED

Defendants ("King County") by and through their attorneys, submit this response to Plaintiff's Motion for Order to Show Cause. King County requests that Plaintiff's motion be denied. In the alternative, if the Court determines a show case hearing should be held, King County requests that the hearing not be held this week as requested by Plaintiff, and that it instead be held on or after Monday, November 21 to allow King County sufficient time to respond to Plaintiff's allegations without interfering with the conduct of the upcoming November 8, 2005 General and Special Elections.

DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR ORDER TO SHOW CAUSE - 1

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II. INTRODUCTION

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2 Plaintiff brings this action under the Washington Public Disclosure Act. He has directed
3 numerous public disclosure requests to King County over the past ten months and in response to
4 the requests he has received access to hundreds of thousands of public records maintained by
5 King County. *See* Logan Dec. at 1-2. To accommodate Plaintiff's voluminous requests, King
6 County allowed Plaintiff exclusive access to the research room at King County Archives on a
7 nearly daily basis for the past two months for his review of requested records. *See* Logan Dec. at
8 2, Ex. B. King County has also been required to provide a King County employee to sit with
9 Plaintiff at all times during his review since he is physically handling original records submitted
10 by voters in the 2004 General Election that are subject to state and federal retention
11 requirements. *See* Logan Dec. at 2. Plaintiff's review of requested records is ongoing, as he is
12 still not finished with all the records that King County has made available to him. *Id.* Despite
13 this, Plaintiff now brings this action and demands a hearing less than ten days after filing the
14 lawsuit and just prior to a countywide election that employees of the King County Records,
15 Elections and Licensing Services Division ("Elections Division") are currently working full time
16 to conduct.

III. RELEVANT FACTS

1. Plaintiff's Requests for Records

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19 This action concerns four discrete sets of records requested by Plaintiff: (1) 91 absentee
20 ballot envelopes from individuals whom Plaintiff alleges voted both an absentee and a
21 provisional ballots in the 2004 General Election; (2) 4 provisional ballot envelopes from
22 individuals whom Plaintiff alleges voted both an absentee and a provisional ballot in the 2004
23 General Election; (3) 140 records related to non-registered overseas voters in the 2004 General

1 Election; and (4) an unidentified number of provisional ballot envelopes from the 2004 General
2 Election. *See* Complaint at 5. King County does not dispute that Plaintiff requested these four
3 sets of records. In fact, Plaintiff has requested access to every absentee ballot envelope and
4 provisional ballot envelope submitted to King County for the 2004 General Election, which
5 would include each of the four sets of records listed above.

6 To fulfill Plaintiff's request for access to the over 600,000 ballot envelopes received by
7 King County for the 2004 General Election, the Elections Division and King County Archives
8 made the Archives research room available for Plaintiff's exclusive use four days per week for a
9 period of six weeks. *See* Logan Dec. at 2. Pallets of documents were transferred from a storage
10 facility to King County Archives and individual boxes of documents from the pallets were made
11 available for Plaintiff's review and at his pace. *Id.* Despite having the opportunity to review
12 records four full days per week, Plaintiff did not complete his review in the six weeks that the
13 research room had been reserved. *Id.* A new procedure was begun that allowed Plaintiff to
14 reserve the research room the afternoon before he wished to use it if no other member of the
15 public had already reserved it. *Id.* This is the procedure currently in place and pursuant to it,
16 Plaintiff was scheduled to review records at King County Archives as recently as last Friday,
17 October 28. *Id.* It is Defendants' understanding that Plaintiff still has boxes of documents that
18 were made available to him, but which he has yet to review. *Id.*

19 2. The November 8, 2005 General Election

20 The countywide 2005 General Election is just over one week away. Elections Division
21 staff is currently working full time to complete the necessary tasks to conduct the election. *See*
22 Logan Dec. at 2-3. In addition to numerous duties related to preparation of the over 500 polling
23 places in King County, voters in King County have already returned more than 46,000 of the

1 over 600,000 absentee ballots issued. *See* Logan Dec. at 3. Hundreds of thousands of more
2 absentee ballots are expected. Pursuant to RCW 29A.40.110 and WAC 434-250-020, the
3 Elections Division is processing the ballots in preparation for tabulation on election day. *Id.*
4 Pursuant to state law, this processing include verifying signatures, removing the security
5 envelope from the outer envelope, removing the ballot from the security envelope, manually
6 inspecting each ballot for damage, write-in votes, incorrect or incomplete marks, and duplicating
7 ballots that will be unreadable by the tabulating machines. WAC 434-250-020. These activities
8 are taking place at King County's Temporary Elections Annex located a few miles from the
9 Elections Division's administrative office. *See* Logan Dec. at 3.

10 Several members of the Elections Division staff have worked on responses to Plaintiff's
11 numerous public disclosure requests. *Id.* These staff members are currently engaged full time in
12 duties related to the conduct of the election. *Id.* In particular, the Assistant Superintendent for
13 Ballot Processing and Delivery and his staff assisted in the responses to Plaintiff's requests and
14 are familiar with the records that have been provided. *Id.* These staff members can provide the
15 Court with the technical explanations of the types of ballots, the computer coding of those
16 ballots, how and where the ballots are stored, and how they can be accessed. *Id.* As a practical
17 matter, these staff members are currently unavailable to provide assistance in responding to this
18 lawsuit as they are working at the Temporary Elections Annex and the Mail Ballot Operations
19 Satellite on a full time basis to process the thousands of absentee ballots that are being returned
20 by voters. *Id.* Pulling these staff members from their General Election duties in the next three
21 weeks to assist in the response to this lawsuit would interfere with election duties. *Id.* However,
22 these staff members should be available beginning the week of November 21, when the majority
23 of absentee ballots will have been returned, processed and tabulated. *Id.*

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IV. ARGUMENT

1. The Motion for an Order to Show Cause should be denied.

Plaintiff's Motion for an Order to Show Cause is based on his assertion that he has been denied access to public records. See Complaint at 5; RCW 42.17.340(1)(party denied access to public records may move for a show cause order). All four sets of records to which Plaintiff argues he has been denied access are absentee and provisional ballot envelopes. Pursuant to Plaintiff's requests, the Elections Division has made all absentee ballot and provisional ballot envelopes available to Plaintiff. See Logan Dec, Ex. B, D. At this time, it is King County's understanding that Plaintiff has not finished reviewing all of the records made available to him. In short, Plaintiff is not being denied access to these documents and as long as he wishes to go through them, King County will continue to accommodate his request.

Moreover, the Elections Division has told Plaintiff that it has no additional absentee and provisional ballot envelopes specifically responsive to his first and second requests. See Logan Dec., Ex. B. Though Plaintiff asserts that the 91 voters submitted both a provisional and an absentee ballot, the records do not support that assertion. The Elections Division has searched its records and found no absentee ballot envelopes from the voters on Plaintiff's list. *Id.* As to the second request for 4 provisional ballot envelopes, the Elections Division has similarly searched its records and is unable to locate provisional ballot envelopes from these four voters. *Id.*

As to the third set of records, the 140 records relating to non-registered overseas voters, the Elections Division has told Plaintiff that it has no additional documents responsive to his request. See Logan Dec., Ex. B, C. The Elections Division searched its records and was unable to locate any records beyond the 114 that were already provided to Plaintiff. *Id.*

1 Plaintiff acknowledges that he has been given access to the fourth set of records at issue
2 in this case, his request for an unidentified number of provisional ballot envelopes. At page 5 of
3 his Complaint, Plaintiff states that he was told by the Elections Division prior to commencing
4 this action that he would receive access to the provisional ballot envelopes on October 28, 2005.
5 See Complaint at 5; Logan Dec., Ex. D. Those envelopes were provided to Plaintiff on that
6 date. See Logan Dec. at 3.

7 Defendants have responded to Plaintiff's requests for the four sets of records at issue in
8 this case as required by law. Defendants searched for records responsive to Plaintiff's requests
9 and provided him with access to all responsive records. Plaintiff has not been denied access to
10 public records and is not entitled to a show cause hearing under RCW 42.17.340. Accordingly,
11 the Court should deny the motion.

12 2. If the Court orders a show cause hearing, it should be set on a date that does not
13 interfere with the November 8, 2005 General Election.

14 Notwithstanding the fact that Plaintiff has failed to meet his burden for a show cause
15 order, to the extent the Court does order a show cause hearing, it should not be held this week as
16 requested by Plaintiff. Instead the Court should allow Defendants a reasonable time to respond
17 to the allegations raised by Plaintiff so that their response does not interfere with their
18 obligations to conduct the General Election.

19 Plaintiff asks this Court to order a hearing on the ultimate issues in this case less than ten
20 days from the date the case was filed. Defendants have had a minimal opportunity to review the
21 Complaint and under the Civil Rules, their Answer to the Complaint is not due for another week.
22 Though Plaintiff asserts that the records he has allegedly been denied must be produced before
23

1 the election, he either already has the records or he has been told by the Elections Division that
2 they do not have responsive records.

3 To the extent the Court requires additional information as to the location, retention and
4 accessing of records, the meaning of computer codes on which Plaintiff is apparently relying,
5 and the details of the searches that the Elections Division undertook to respond to Plaintiff's
6 requests, Defendants need additional time. As explained above, the Elections Division is
7 conducting a countywide General Election that includes 6 state ballot measures, 16 local
8 measures, 342 contests, and 942 different ballot styles for the different precincts in King County.
9 Elections Division staff are processing ballots, preparing the polling places, and in just one week
10 will be tabulating hundreds of thousands of absentee, provisional and poll site ballots. The
11 Elections Division staff members that assisted in the responses to Plaintiff's public disclosure
12 requests cannot be removed from their current duties to respond to this lawsuit without
13 interfering with the conduct of the election.

14 The Public Disclosure Act recognizes that a public agency's essential functions are
15 paramount even when a request for public records is at issue. The Act states:

16 Agencies shall adopt reasonable rules and regulations . . . to provide full public access to
17 public records, to protect public records from damage or disorganization, and to prevent
excessive interference with other essential functions of the agency . . .

18 RCW 42.17.290 (emphasis added).

19 Defendants are entitled to an opportunity to respond to the allegations in this case without
20 having to compromise their essential function of conducting elections in King County. If the
21 Court orders a show cause hearing, Defendants request that it be set no sooner than the week of
22 November 21, when the majority of absentee ballots will have been returned and tabulated.
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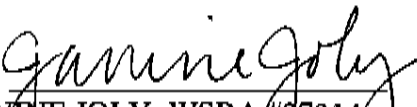
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V. CONCLUSION

This Court has the information it needs to determine that Plaintiff has failed to meet his burden under RCW 42.17.340 for a show cause hearing. Plaintiff is not a person who has been denied an opportunity to inspect public records. However, if the Court determines that additional information is needed and that a show cause hearing should be held, Defendants respectfully request that the hearing be held no sooner than the week of November 21 to ensure that Defendants' efforts to respond to this lawsuit do not interfere with their essential function of conducting the countywide General Election.

DATED this 31st day of October, 2005.

NORM MALENG
King County Prosecuting Attorney

By: 
JANINE JOLY, WSBA #27314
Senior Deputy Prosecuting Attorney
Attorneys for Defendants

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

Stefan Sharkansky, an individual,)	
)	
)	No. 05-2-12494-4
)	
vs.)	
)	DECLARATION OF DEAN LOGAN
King County; Ron Sims, King County Executive;)	IN SUPPORT OF DEFENDANTS'
King County Records, Elections and Licensing)	RESPONSE TO PLAINTIFF'S
Services Division; and Dean Logan, an individual,)	MOTION FOR ORDER TO SHOW
)	CAUSE
Defendants.)	
)	

I, DEAN C. LOGAN, declare under penalty of perjury of the laws of the State of Washington that the following is true and correct to the best of my knowledge and that I am competent to testify hereto.

1. I am the Director of the King County Records, Elections and Licensing Services Division ("Elections Division"). As the Director, I am the *ex officio* supervisor of elections and I am responsible for the conduct of all general and special elections in King County.

2. Stefan Sharkansky has directed numerous public disclosure requests to the Elections Division over the past ten months. In response to these requests, the Elections Division has provided Mr. Sharkansky with access to hundreds of thousands of public records maintained by the King County.

DECLARATION OF DEAN LOGAN IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE - 1

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1 3. In two of his requests, Mr. Sharkansky requested access to all original absentee
2 and provisional ballot envelopes submitted by voters in the 2004 General Election. There are
3 over 600,000 documents responsive to these requests and to accommodate the requests, King
4 County allowed Plaintiff exclusive access to the research room at King County Archives four
5 days per week for a period of six weeks as explained in my July 25, 2005, letter to Mr.
6 Sharkansky which is attached to this declaration as Exhibit A. Pallets of documents were
7 transferred from a storage facility to King County Archives and individual boxes of documents
8 from the pallets were made available for Mr. Sharkansky's review at his pace. The Elections
9 Division has also been required to provide a King County employee to sit with Mr. Sharkansky
10 at all times during his review since he is physically handling original records submitted by voters
11 in the 2004 General Election that are subject to state and federal retention requirements.

12 4. Mr. Sharkansky did not finish his review of all the records that were provided to
13 him in the six weeks that the research room was reserved for him. King County Archives
14 determined that it needed to give other members of the public an opportunity to use the room and
15 so a new procedure for Mr. Sharkansky's review of documents was started. Under this new
16 procedure, Mr. Sharkansky is allowed to reserve the research room the afternoon before he
17 wishes to use it if no other member of the public has already reserved the room. This is the
18 procedure that is currently in place. It is my understanding that Mr. Sharkansky's review of
19 records is ongoing, as he has not yet finished reviewing all the records that have been provided to
20 him. Mr. Sharkansky was scheduled to review records at King County Archives as recently as
21 last Friday, October 28.

22 5. Elections Division staff is currently working full time to complete tasks necessary
23 to conduct the countywide November 8, 2005 General and Special Elections. The election

DECLARATION OF DEAN LOGAN IN SUPPORT
OF DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR ORDER TO SHOW CAUSE - 2

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1 includes 6 state ballot measures, 16 local measures, and 342 contests. There are 942 different
2 ballot styles for this election representing the different precincts in King County. Elections
3 Division staff are preparing the over 500 polling places in King County and they are processing
4 the more than 46,000 absentee ballots that voters have already returned from the more than
5 600,000 that were issued. The processing of absentee ballots is taking place at King County's
6 Temporary Elections Annex which is located a few miles from the Elections Division's main
7 administrative office. Elections Division staff is verifying signatures, removing the security
8 envelopes from the outer envelopes, removing the ballots from the security envelopes, manually
9 inspecting the ballots for damage, write-in votes, incorrect or incomplete marks, and duplicating
10 any ballots that may not be readable by the tabulating machines. State law allows these
11 procedures to take place prior to election day.

12 6. Members of the Elections Division staff who worked on responses to Mr.
13 Sharkansky's numerous public disclosure requests are currently engaged full time in duties
14 related to the conduct of the upcoming General Election. In particular, the Assistant
15 Superintendent of Elections for Ballot Processing and Delivery and his staff are familiar with the
16 records that have been provided to Mr. Sharkansky, the technical explanations of the types of
17 ballots, the computer coding of those ballots, how and where the ballots are stored, and how they
18 can be accessed. These staff members are currently unavailable to assist with the response to
19 this lawsuit because they are working at the Temporary Elections Annex and the Mail Ballot
20 Operations Satellite full time to process the thousands of absentee ballots that are being returned.
21 Pulling staff members from their duties at this time would interfere with the conduct of duties
22 related to the 2005 General Election. However, I believe that these staff members will be
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DECLARATION OF DEAN LOGAN IN SUPPORT
OF DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR ORDER TO SHOW CAUSE - 3

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1 available beginning the week of November 21, when the majority of absentee ballots will have
2 been returned, processed, and tabulated.

3 7. Attached to this declaration as Exhibit B is a true and correct copy of a letter I
4 sent to Mr. Sharkansky dated August 26, 2005. The letter responds to a number of Mr.
5 Sharkansky's public disclosure requests.

6 8. Attached to this declaration as Exhibit C is a true and correct copy of a letter I
7 sent to Mr. Sharkansky dated September 9, 2005. The letter responds to a number of Mr.
8 Sharkansky's public disclosure requests.

9 9. Attached to this declaration as Exhibit D is a true and correct copy of a letter I
10 sent to Mr. Sharkansky dated October 21, 2005. In my letter I informed Mr. Sharkansky that
11 additional provisional ballot envelopes responsive to his request would be made available to him
12 on Friday, October 28. The Elections Division delivered the envelopes, along with other
13 documents he requested, to King County Archives on October 28 and it is my understanding that
14 Mr. Sharkansky was planning to review the documents at King County Archives that afternoon.

15 Dated this 31 day of October, 2005, at Seattle, Washington.

16 

17 DEAN C. LOGAN, Director
18 King County Records, Elections and
19 Licensing Services Division