

January 26, 2005

VIA FACSIMILE [360-586-4311]: ORIGINAL TO BE MAILED

Mr. Steve Lyle
Contracts/Public Disclosure Officer
Office of the Secretary of State
P.O. Box 40224
Olympia, WA 98554-0224

Re: Seattle P-I Public Records Request Dated January 10, 2005

Dear Mr. Lyle:

This firm represents the Seattle Post-Intelligencer, which has asked us to follow up on your office's denial of the above-referenced request, including the furnishing of information on voter dates of birth in the requested database.

These same records have been produced to the Seattle Times, and despite claims by your office that this release was "premature," those records have not been retrieved. Accordingly, your office has waived any exemption for those particular records. Moreover, by furnishing these records to our client's competitor, your office has violated RCW 42.17.270, which forbids any agency to "distinguish among persons requesting records."

As you know, the public records act requires any exemption to be construed narrowly, imposing penalties and the award of legal fees upon a failure to produce non-exempt records. For the reasons set forth above and the following additional reasons we believe that the denial of these records is improper:

- The purported exemption in RCW 29A.08.710 applies expressly to county auditors only, and not the Secretary of State. When exemptions are limited by express terms, they may not be expanded by implication. ACLU v. City of Seattle, 121 Wn.App. 544, 554 (2004).
- Because the records at issue have already been made "available to another party under superior court rules of pretrial discovery" in the pending Chelan County litigation, they are public records which must be produced under O'Connor v. DSHS, 143 Wn.2d 895, 906 (2001).
- Finally, by making an open-ended reference of these legal issues to the Attorney General's office, we believe that both the letter and the intent of the time limitations in RCW 32.17.320 have been violated.

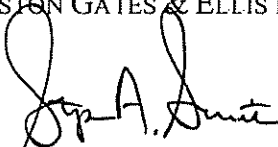
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Please be advised that if the requested records are not produced promptly, we intend to hold your office responsible for these violations, including penalties and legal fees. Please advise us if you have any question regarding our position on this matter.

Very truly yours,

PRESTON GATES & ELLIS LLP

A handwritten signature in black ink, appearing to read "Stephen A. Smith". The signature is written in a cursive style with a large initial "S".

By

Stephen A. Smith

cc: Client
Greg Overstreet (via facsimile)

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