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**SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY**

STEFAN SHARKANSKY, a Washington  
citizen,

Plaintiff,

v.

SAM REED, in his official capacity as  
SECRETARY OF STATE OF THE STATE  
OF WASHINGTON,

Defendant.

NO.

**MOTION AND MEMORANDUM TO  
SHOW CAUSE AND COMPLAINT  
FOR VIOLATION OF PUBLIC  
RECORDS ACT**

**RCW Ch. 42.17.340**

(CLERK’S ACTION REQUIRED)

COMES NOW PLAINTIFF, and for its motion for an order to show cause pursuant to RCW  
complaint against Defendant, states as follows:

**NATURE OF ACTION**

1. This is an enforcement action pursuant to the Public Disclosure Act, RCW Ch. 42.17,  
to compel disclosure of public records. Plaintiff Stefan Sharkansky (“Sharkansky”) is seeking  
public records for the purpose of identifying illegal votes in the 2004 gubernatorial general  
election (“election”). Defendant Sam Reed, Secretary of State of Washington (“Reed”)

1 currently possesses a database with registered voters containing the dates of births of each  
2 registered voter who voted in the election (“voter database”).

3 Reed has indicated that the dates of birth of registered voters are exempt from  
4 disclosure pursuant to RCW 29A.08.710(2). Reed admits that he has inadvertently disclosed  
5 this information to the Seattle Times, which used the information from the database for a  
6 recent article. Reed also admits that he purposefully disclosed this information to the WA  
7 State Republican Party (“WSRP”) pursuant to a confidentiality agreement. Further, Reed has  
8 indicated that he will disclose this database with the dates of birth pursuant to a stipulated  
9 confidentiality agreement to *any* registered voter that intervenes in the election contest in  
10 Chelan County, *Timothy Borders, et. al., v. King County, et. al.*, No. 05-2-00027-3.  
11 Sharkansky is not a party to that action and believes that the dates of birth should be disclosed.  
12 Alternatively, should the court deem the dates of birth exempt from disclosure, Sharkansky is  
13 willing to sign a confidentiality agreement in this action to ensure that the dates of birth of  
14 registered voters are not publicly disclosed while allowing Sharkansky to publish the year of  
15 birth.

16 There is a compelling public interest to determine how many illegal votes were cast and  
17 counted in the recent election as it may resolve the lingering question of whether Governor  
18 Gregoire was legitimately elected. Sharkansky has a website at [www.soundpolitics.com](http://www.soundpolitics.com) that  
19 has devoted considerable resources and posted articles documenting numerous flaws in the  
20 election. Sharkansky does not desire to be a party to the election contest, yet access to public  
21 records with dates of birth is vital to continue educating the public on the issue of illegal votes.

22 **JURISDICTION**

23 2. This Court has jurisdiction pursuant to RCW 42.17.340.

24 **VENUE**

1 3. Venue is proper in Thurston County Superior Court pursuant to RCW 42.17.340(1).  
2 Sharkansky has information and belief that the public records are maintained with defendant  
3 Sam Reed, Secretary of State of Washington in Thurston County, Washington.

#### 4 **PARTIES**

5 4. Plaintiff, Sharkansky requested the records at issue. Sharkansky is a blogger<sup>1</sup> who  
6 created and administers a web-log at [www.soundpolitics.com](http://www.soundpolitics.com) (“Sound Politics”), a website  
7 devoted to politics and other regional issues. Sound Politics has an average of over 12,000  
8 visits by web browsers to its website every day, and has garnered acclaim among regional and  
9 national newspapers, and radio and television outlets for its extensive coverage of Washington  
10 State’s election flaws.

11 Defendant, Sam Reed, Secretary of State of Washington, is a “state agency” as defined  
12 in the Public Records Act, RCW 42.17.020.

#### 13 **FACTS**

14 5. On January 3, 2005, Reed disclosed public records of registered voters *with dates of*  
15 *birth* to the Seattle Times pursuant to a public records request. On January 11, 2005, Reed  
16 sought the return of those records. (Letter of Spitzer dated January 11, 2005 – EXHIBIT A).

17 6. On January 14, 2005, Reed stipulated to provide the identical public records  
18 Sharkansky seeks to the Washington State Republican Party (“WSRP”) pursuant to a proposed  
19 confidentiality agreement. (Proposed Confidentiality Agreement – EXHIBIT B).

20 6. On January 27, 2005, Sharkansky sent via facsimile and hand-delivery a public records  
21 request to Reed’s office to request public records of registered voters with dates of birth  
22 identical to those disclosed to the Seattle Times. (Letter of Sharkansky dated January 27, 2005  
23 – EXHIBIT C).

24  
25 <sup>1</sup> The term “blogger” is traced to the contraction of term web-log. A blogger is a person that creates,  
26 administers, and posts comments and articles on a web-log.

1 7. On January 28, 2005, Reed responded by acknowledging the disclosure of public  
2 records to the Seattle Times, and claiming it was in error. Reed's response denied  
3 Sharkansky's request for public records on the basis that dates of birth must be redacted  
4 pursuant to RCW 29A.08.710(2). (Letter of Public Records Officer dated January 28, 2005 –  
5 EXHIBIT D).

6 Reed also acknowledged that the public records had been disclosed to the Republican  
7 Party in the context of litigation in the case of *Timothy Borders, et. al., v. King County, et. al.*,  
8 No. 05-2-00027-3, pursuant to a proposed confidentiality agreement. Upon information and  
9 belief Reed disclosed the CD of registered voters with dates of birth to the WSRP on January  
10 14, 2005.

11 Nowhere does the proposed confidentiality agreement state that the public records are  
12 exempt from disclosure under RCW 29A.08.710. The agreement was filed in Chelan County  
13 Superior Court on January 18, 2005, and allows the Republican Party to use the confidential  
14 information "for any purpose of its own documents" in this action and not be a violation of the  
15 agreement. Exceptions to Proposed Confidentiality Agreement page 3 (D)(6). The  
16 confidentiality obligations cease to apply should voter dates of births be derived from other  
17 documents. The agreement expires by January 20, 2005 if a judge does [not]<sup>2</sup> enter the  
18 agreement as a protective order.

19 Upon information and belief, presiding Judge Bridges in *Borders, et. al.*, did not see or  
20 sign the proposed protective order prior to the disclosure of the CD, and it is unknown whether  
21 the judge has signed any proposed protective order.

22 8. Upon information and belief, the Seattle Times has refused to return the public records  
23 and maintains that the dates of birth are not exempt from disclosure. Reed has not pursued any

24 \_\_\_\_\_  
25 <sup>2</sup> The proposed confidentiality agreement may have inadvertently left out the word "not." Without the  
26 insertion of the word "not" the agreement is rendered absurd in that it automatically expires upon court entry by  
January 20, 2005.

1 legal action against the Seattle Times to seek the return on the public records or to obtain a  
2 protective order limiting their use. The Seattle Times has used these public records to educate  
3 the public in news articles and continues to use the public records.

4 9. Reed has denied Sharkansky's public records request for the voter registration database  
5 with dates of birth, while disclosing these records to the Seattle Times and apparently to any  
6 person who is a litigant in *Borders, et. al.* and is willing to sign a confidentiality agreement.

### 7 CAUSES OF ACTION

8 10. Sharkansky re-alleges each preceding paragraph as if fully set forth herein.

9 11. The Public Disclosure Act requires a government agency to produce public records  
10 upon the request of a citizen. RCW 42.17.260(1). Sam Reed, in his official capacity as the  
11 Secretary of State of Washington is an "agency" within the meaning of RCW 42.17.020(1),  
12 and is subject to the requirements of the Public Disclosure Act.

13 12. The records requested by Sharkansky are "public records" within the meaning of RCW  
14 42.17.020(36). That law defines a public record as:

15 Any writing containing information relating to the conduct of  
16 government or the performance of any governmental or proprietary  
17 function prepared, owned, used, or retained by any state or local  
agency regardless of physical form or characteristics."

18 Reed has never denied that the documents sought by Sharkansky are public records.

19 13. FIRST CAUSE OF ACTION: Reed has violated RCW 42.17.310(1)(j).

20 Reed has conditioned the disclosure of the requested public records through the civil  
21 rules of discovery for parties, like the Republic Party, involved in litigation in Chelan County,  
22 *Borders, et. al.* Sharkansky does not desire to be a party to that action, and it is unclear  
23 whether a motion to intervene would be granted as the court has already conducted hearings,  
24 and intervention may not be timely. Conditioning disclosure of public records upon a request  
25 pursuant to the civil rules governing discovery was found to be in violation of the public  
26 disclosure act. *O'Connor v. DSHS*, 143 Wn.2d 895 (2001).

1 Reed's efforts to distinguish *O'Connor*, by claiming that disclosure of public records is  
2 pursuant to a confidentiality agreement, are irrelevant. Reed does not deny that the public  
3 records are discoverable pursuant to civil rules governing discovery, and therefore *O'Connor* is  
4 directly on point. Reed is essentially claiming that it will disclose public records to every  
5 registered voter that joins the case of *Borders, et. al.*, and signs a confidentiality agreement.  
6 The number of registered voters in Washington State is well in the millions. While Reed is  
7 prepared to share these public records with potentially any Washingtonian who may join the  
8 election contest lawsuit, Reed has denied the identical public records to Sharkansky. While  
9 Reed has disclosed these public records through a confidentiality agreement, nowhere does the  
10 agreement state that the public records are exempt from disclosure under RCW 29A.08.710.

11 14. SECOND CAUSE OF ACTION: Reed has violated RCW 42.17.270.

12 Agencies shall not distinguish among persons requesting records. RCW 42.17.270; *See*  
13 *also, King County v. Sheehan*, 114 Wn. App. 325 (2002). Reed has disclosed these public  
14 records to the Seattle Times through a public records request pursuant to RCW 42.17, but not  
15 to Sharkansky. Although Reed claims disclosure was an inadvertent error and has requested  
16 the records to be returned, the Seattle Times has refused Reed's request. Reed has not pursued  
17 any legal action against the Seattle Times to return the public records or seek a protective order  
18 limiting their use of this information.

19 15. THIRD CAUSE OF ACTION: Reed has violated RCW 42.17.260(1).

20 Under the Public Disclosure Act, even if records are not included in a specific  
21 exemption, they may still be exempt if they are included in another statute that exempts or  
22 prohibits disclosure of specific information or records. RCW 42.17.260(1). This derivative  
23 exemption "applies only to those exemptions explicitly identified in other statutes ... [and it]  
24 does not allow a court 'to imply exemptions but only allows specific exemptions to stand'."  
25 *ACLU of Washington v. City of Seattle*, 121 Wn. App. 544, 554 (2004) (quoting *Progressive*  
26

1 *Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wash.2d 243, 262 (1994); *Brouillet v. Cowles*  
2 *Pub. Co.*, 114 Wn.2d 788 (1990)).

3 Reed claims RCW 29A.08.710 as an “other statute” exemption. RCW 29A.08.710  
4 specifically identifies County Auditors and does not identify the Secretary of State. Reed has  
5 no explicit authority under RCW 29A.08.710 to redact dates of birth, and the courts may not  
6 imply an exemption for the Secretary of State. *PAWS*, 125 Wn. 2d at 262. The public  
7 disclosure act requires exemptions to be construed narrowly, and when exemptions are limited  
8 by express terms, they may not be expanded by implication. Reed improperly claims an  
9 explicit exemption on behalf of the County Auditors. Exemptions are to be narrowly construed  
10 to promote the public policy of open government as enacted by the people through the  
11 initiative process in 1972. RCW 42.17.251.

#### 12 **STANDARD OF REVIEW**

13 16. The public disclosure act is a strongly worded mandate for broad disclosure of public  
14 records. *Laborers Int'l Union, Local 374 v. Aberdeen*, 31 Wash.App. 445, 449, 642 P.2d 418  
15 (1982). “The provisions of this chapter shall be liberally construed to promote complete  
16 disclosure . . . and full access to public records so as to assure continuing public confidence of  
17 fairness of elections and governmental processes, and so as to assure that the public interest  
18 will be fully protected”. RCW 42.17.010. “The public records subdivision of this chapter  
19 shall be liberally construed and its exemptions narrowly construed to promote this public  
20 policy.” RCW 42.17.251.

21 17. The burden of proof is on the agency seeking to prevent disclosure to demonstrate the  
22 requested information falls within an applicable exemption. RCW 42.17.340(1).

#### 23 **AVAILABLE RELIEF**

24 18. Defendant Reed failed to produce public records requested by Sharkansky.

25 19. Defendant Reed violated the Public Disclosure Act, RCW Ch. 42.17.

1 20. RCW 42.17.340(1) provides that a court may compel disclosure of public records  
2 where an agency fails to show cause why those records are exempt from disclosure.

3 21. RCW 42.17.340 provides that a violation of the Public Disclosure Act subjects the  
4 agency to fines between \$5 and \$100 per day for each and every unlawfully withheld  
5 public record.

6 22. RCW 42.17.340 also provides for a mandatory award of costs and reasonable  
7 attorneys' fees.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays that this Court:

10 23. Enter judgment for Plaintiff and against Defendant finding that the Defendant  
11 Reed violated the Public Records Act;

12 24. Enter an order that compels Defendant Reed to immediately produce all  
13 responsive public records requested by Plaintiff;

14 25. Award Plaintiff the maximum fine of \$100 per day for each and every unlawfully  
15 withheld public record; each voter with date of birth is a separate public record compiled  
16 onto a single CD.

17 26. Award Plaintiff all its costs and reasonable attorneys' fees;

18 27. Grant such further relief as the Court deems just and proper.

19 DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

20 ATTORNEY FOR STEFAN SHARKANSKY

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