

The Honorable Suzanne R. Parisien
Noted for hearing with oral argument:
Friday, December 10, 2021, 10:30 a.m.

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS,

Plaintiff/Petitioner,

v.

UNIVERSITY OF WASHINGTON,

Defendant/Respondent.

No. Case No.: 20-2-18442-0

IN PART
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND MOTIONS TO STRIKE ~~AND~~
~~DENYING DEFENDANT'S MOTION FOR~~
~~SUMMARY JUDGMENT~~

- DENYING

The Matter came before the Court on Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment.

The Court has reviewed the following:

1. Plaintiff's Motion for Summary Judgment (Dkt. 49);
2. Declaration of Asher Smith (Dkt. 48);
3. Declaration of Kathy Guillermo (Dkt. 46);
4. Defendant's Motion for Summary Judgment (Dkt. 39);
5. Declaration of Tisa Escobar (Dkt. 41);
6. Declaration of Jade McNallan (Dkt. 42);
7. Declaration of Jessica Kerr (Dkt. 40)

ORDER GRANTING PETA'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT-1

ALLIED
LAW GROUP
P.O. Box 33744
Seattle, WA 98133
(206) 443-0200

8. Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Plaintiff's Motion to Strike Improper Declaration Testimony and Exhibits Submitted by Defendant with Motion for Summary Judgment, filed 11/29/2021 (Dkt. 54);
9. Declaration of Caitlin Zittkowski, filed 11/29/2021 (Dkt. 55);
10. Defendant's Response to Plaintiff's Motion for Summary Judgment, filed 11/29/2021 (Dkt. 57);
11. Declaration of Sally Thompson-Iritani, filed 11/29/2021 (Dkt. 59);
12. Declaration of Eric Lansverk, filed 11/29/2021 (Dkt. 58);
13. Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment and Plaintiff's Motion to Strike Improper Declaration Testimony and Exhibits Submitted by Defendant with its Response to Plaintiff's Motion for Summary Judgment, filed 12/3/2021 (Dkt. 63);
14. Declaration of Michele Earl-Hubbard, filed 12/3/2021 (Dkt. 64);
15. Defendant's Reply re: Defendant's Motion (Dkt. 69);

16. _____; and
 17. _____

And the records and pleadings in the court file, and otherwise being fully apprised on the matter, the Court hereby rules and finds as follows:

The Court ~~GRANTS~~ ^{IN PART} Plaintiff's Motion for Summary Judgment ~~and DENIES~~ ^{as follows:}

~~Defendant's Motion for Summary Judgment.~~

The Court ~~GRANTS~~ ^{DENIES} Plaintiff's Motions to Strike contained within its Opposition to Defendant's Motion for Summary Judgment ~~and disregards the following paragraphs and exhibits filed by Defendant:~~ ^{but has not considered the exhibits attached to the Declaration of Eric Lansverk to the extent they are offered to prove the truth of the matter asserted.}

- 1 • Exhibits B, D, F, G, H, M, N, O, R, and S to the Declaration of Jessica Kerr (Dkt. 40),
- 2 to the extent such exhibits are offered to prove the truth of the matters stated therein;
- 3 • Paragraphs 6, 7, 9, 10, 11, 13, 20, 24, 45, 50, and 53 of the Declaration of Tisa Escobar
- 4 (Dkt. 41);
- 5 • Paragraphs 4, 7, 9, 18, 20, 24, 31, 38, 43, 45, and 49 of the Declaration of Jade
- 6 McNallan (Dkt. 42);
- 7 • Exhibits J, L, P, Q, S, and T to the Declaration of Eric Lansverk (Dkt. 58) to the extent
- 8 such exhibits are offered to prove the truth of the matters stated therein; and
- 9 • Exhibit B to the Declaration of Eric Lansverk, for lack of foundation regarding its
- 10 application to any record at issue in this case.
- 11

12 The Court hereby FINDS that the University of Washington has not met its burden of
13 proof under the Public Records Act, as follows:

14 1. First Request (Count I)

15 (a) Defendant failed to prove it performed an adequate search for responsive records
16 beyond a reasonable doubt,

17 (b) Defendant failed to prove its estimates for responding to the First Request were
18 "reasonable."

19 (c) Defendant failed to prove it provided PETA its fullest assistance and most timely
20 possible response;

21 (d) Defendant has failed to prove it had provided PETA all responsive records when it
22 first closed the request or to this day, and

23 (e) _____

1 ~~2. Second Request (Count II)~~

2 (a) Defendant failed to prove it performed an adequate search for responsive records
3 beyond a reasonable doubt,

4 (b) Defendant failed to prove its estimates for responding to the Second Request were
5 "reasonable."

6 (c) Defendant failed to prove it provided PETA its fullest assistance and most timely
7 possible response;

8 (d) Defendant has failed to prove it had provided PETA all responsive records when it
9 first closed the request or to this day, and

10 (e) _____

11 3. Third Request (Count III)

12 (a) Defendant failed to prove it performed an adequate search for responsive records
13 beyond a reasonable doubt,

14 (b) Defendant failed to prove its estimates for responding to the Third Request were
15 "reasonable."

16 (c) Defendant failed to prove it provided PETA its fullest assistance and most timely
17 possible response;

18 (d) Defendant has failed to prove it had provided PETA all responsive records when it
19 first closed the request or to this day, and

20 (e) *The lack of any policy/system which identifies*
21 *videos/photos which are being destroyed prevents*
22 *Defendant from complying with*
23 *the requirements of the PRA.*

24 4. Fourth Request (Count IV)

(a) Defendant failed to prove it performed an adequate search for responsive records
beyond a reasonable doubt,

1 ~~(b) Defendant failed to prove its estimates for responding to the Fourth Request were~~
2 ~~“reasonable.”~~

3 (c) Defendant failed to prove it provided PETA its fullest assistance and most timely
4 possible response;

5 (d) Defendant has failed to prove it had provided PETA all responsive records when it
6 first closed the request or to this day, and

7 (e) *The request was closed prematurely.*
8 ~~5. Fifth Request (Count V)~~ *and only after litigation was filed*
were additional records released.

9 ~~(a) Defendant failed to prove it performed an adequate search for responsive records~~
10 ~~beyond a reasonable doubt,~~

11 ~~(b) Defendant failed to prove its estimates for responding to the Fifth Request were~~
12 ~~“reasonable.”~~

13 ~~(c) Defendant failed to prove it provided PETA its fullest assistance and most timely~~
14 ~~possible response;~~

15 ~~(d) Defendant has failed to prove it had provided PETA all responsive records when it~~
16 ~~first closed the request or to this day, and~~

17 (e) _____

18 6. Sixth Request (Count 6)

19 (a) Defendant failed to prove it performed an adequate search for responsive records
20 beyond a reasonable doubt,

21 ~~(b) Defendant failed to prove its estimates for responding to the Sixth Request were~~
22 ~~“reasonable.”~~

1 (c) Defendant failed to prove it provided PETA its fullest assistance and most timely
2 possible response;

3 (d) Defendant has failed to prove it had provided PETA all responsive records when it
4 first closed the request or to this day, and

5 (e) _____; and

6 ~~7. Seventh Request (Count VII)~~

7 (a) Defendant failed to prove it performed an adequate search for responsive records
8 beyond a reasonable doubt,

9 (b) Defendant failed to prove its estimates for responding to the Seventh Request were
10 "reasonable."

11 (c) Defendant failed to prove it provided PETA its fullest assistance and most timely
12 possible response;

13 (d) Defendant has failed to prove it had provided PETA all responsive records when it
14 first closed the request or to this day, and

15 (e) _____.

16 ~~The Court FINDS that PETA is the prevailing party in this action.~~

17 The Court hereby ORDERS that PETA is entitled to ~~an~~ ^{a factual} award of fees and costs and
18 statutory penalty in this matter to be paid by Defendant, ^{consistent with the above rulings,} the amount of which will be determined
19 by the Court after further briefing and argument on a briefing schedule to be determined by the ^{fees, costs and any} ~~the~~ ^{penalties}

20 ~~Court after compliance by Defendant with the remainder of the terms of this Order.~~

21 *after counsel have discussed a timeline*
22 *for briefing that both parties agree*
23 *upon and submit to the Court.*

See below *

1 Within _____ days of this Order, UW shall perform a reasonable search for all
2 responsive records and provide all responsive records to PETA and to the Court and a report of
3 the following:

- 4 • all steps taken to search including the locations searched, search terms and
5 parameters of search, method of searching, and individuals involved in searching
6 and what each individual did and when;
- 7 • all records no longer in existence that would have been responsive to the request
8 and for each (a) a description of the record, (b) date and time of its destruction,
9 (c) efforts to recover the deleted data or record, (c) the person or persons
10 responsible for the destruction, and (d) the legal authority for the destruction.

11 After all responsive records have been produced and the reports mandated above, the
12 Court shall set a briefing or court schedule for determination of the amount of penalties, fees
13 and costs to be paid to PETA by Defendant.

14 DONE this 23rd day of December, 2021.



The Honorable Suzanne R. Parisien

17 Submitted by:

18 /s/Michele Earl-Hubbard

19 Michele Earl-Hubbard, WSBA #26454

20 Allied Law Group LLC

21 P.O. Box 33744

22 Seattle, WA 98133

(206) 443-0200

michele@alliedlawgroup.com

Attorney for Plaintiff

* To the extent there are
outstanding records that
need to be released
pursuant to this Order,
the parties will meet +
confer regarding same.

If agreement can't be
reached, further briefing can
be submitted with a briefing
schedule
agreed upon
by the
parties.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 20-2-18442-0 SEA

~~PROPOSED~~ ORDER GRANTING *IN PART*
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
~~DENYING PLAINTIFF'S MOTION~~
~~FOR SUMMARY JUDGMENT~~

[CLERK'S ACTION REQUIRED]

THIS MATTER came before the Court on Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment. The Court heard oral argument on December 10, 2021. The Court considered the following documents, and did not rely on any inadmissible evidence in reaching its decisions:

1. Defendant's Motion for Summary Judgment;
2. Declaration of Jessica C. Kerr in Support of Defendant's Motion for Summary Judgment;
3. Declaration of Tisa Escobar in Support of Defendant's Motion for Summary Judgment;
4. Declaration of Jade McNallan in Support of Defendant's Motion for Summary Judgment;

*ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
(No. 20-2-18442-0 SEA) - 1*

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- 1 5. Plaintiff's Opposition to Defendant's Motion for Summary Judgment and
2 Plaintiff's Motion to Strike Improper Declaration Testimony and Exhibits
3 Submitted by Defendant with Motion for Summary Judgment;
- 4 6. Declaration of Caitlin Zittkowski in Support of Plaintiff's Opposition to
5 Defendant's Motion for Summary Judgment;
- 6 7. Defendant's Reply in Support of Motion for Summary Judgment;
- 7 8. Plaintiff's Motion for Summary Judgment;
- 8 9. Declaration of Asher Smith in Support of Plaintiff's Motion for Summary
9 Judgment;
- 10 10. Declaration of Kathy Guillermo in Support of Plaintiff's Motion for Summary
11 Judgment;
- 12 11. Defendant's Opposition to Plaintiff's Motion for Summary Judgment;
- 13 12. Declaration of Eric D. Lansverk in Support of Defendant's Opposition to
14 Plaintiff's Motion for Summary Judgment;
- 15 13. Declaration of Sally Thompson-Iritani in Support of Defendant's Opposition
16 to Plaintiff's Motion for Summary Judgment;
- 17 14. Plaintiff's Reply in Support of Its Motion for Summary Judgment and
18 Plaintiff's Motion to Strike Improper Declaration Testimony and Exhibits
19 Submitted by Defendant with Its Response to Plaintiff's Motion for Summary
20 Judgment;
- 21 15. Declaration of Michele Earl-Hubbard in Support of Plaintiff's Reply in
22 Support of Plaintiff's Motion for Summary Judgment; and
- 23 16. all other documents filed in this proceeding.

1 Having heard oral argument and considered the foregoing and otherwise being fully
2 informed, the Court hereby ORDERS as follows:

3 Count 1: PR-2019-00970 ("First Request")

- 4 1. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion
5 for Summary Judgment is granted, for the following reasons:
- 6 a. Defendant provided reasonable estimates of time to respond to this public
7 records request; and
 - 8 b. Defendant conducted reasonable searches, applied appropriate exemptions,
9 released responsive records, and has not unlawfully denied an opportunity
10 to inspect or copy public records.

11 Count 2: PR-2020-00409 ("Second Request")

- 12 2. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion
13 for Summary Judgment is granted, for the following reasons:
- 14 a. Defendant provided reasonable estimates of time to respond to this public
15 records request; and
 - 16 b. Defendant conducted reasonable searches, released responsive records, and
17 has not unlawfully denied an opportunity to inspect or copy public records.

18 ~~Count 3: PR-2020-00558 ("Third Request")~~

- 19 ~~3. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion
20 for Summary Judgment is granted, for the following reasons:~~
- 21 ~~a. Defendant provided reasonable estimates of time to respond to this public
22 records request; and~~
 - 23 ~~b. Defendant conducted reasonable searches, released responsive records, and
24 has not unlawfully denied an opportunity to inspect or copy public records.~~

25 Count 4: PR-2020-00607 ("Fourth Request")

- 1 4. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion
2 for Summary Judgment is granted, for the following reasons:
3 a. Defendant provided reasonable estimates of time to respond to this public
4 records request; and
5 b. Defendant conducted reasonable searches, released responsive records, and
6 has not unlawfully denied an opportunity to inspect or copy public records.

7 Count 5: PR-2020-00621 ("Fifth Request")

- 8 5. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion
9 for Summary Judgment is granted, for the following reasons:
10 a. Defendant provided reasonable estimates of time to respond to this public
11 records request; and
12 b. Defendant conducted reasonable searches, released responsive records,
13 and has not unlawfully denied an opportunity to inspect or copy public
14 records.

15 ~~Count 6: PR-2020-00641 ("Sixth Request")~~

- 16 ~~6. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion~~
17 ~~for Summary Judgment is granted, for the following reasons:~~
18 ~~a. Defendant provided reasonable estimates of time to respond to this public~~
19 ~~records request; and~~
20 ~~b. Defendant conducted reasonable searches and has not unlawfully denied an~~
21 ~~opportunity to inspect or copy public records.~~
22 ~~7. [ALTERNATIVE GROUND] Plaintiff's Motion for Summary Judgment is~~
23 ~~denied, and Defendant's Motion for Summary Judgment is granted, for the~~
24 ~~following reasons:~~

1 a. ~~Plaintiff's claims are untimely because Defendant had not yet completed its~~
2 ~~response (and had not yet closed this public records request) when Plaintiff~~
3 ~~initiated this lawsuit.~~

4 Count 7: PR-2020-00660 ("Seventh Request")

5 8. Plaintiff's Motion for Summary Judgment is denied, and Defendant's Motion
6 for Summary Judgment is granted, for the following reasons:

7 a. Defendant provided reasonable estimates of time to respond to this public
8 records request; and

9 b. Defendant conducted reasonable searches, released responsive records, and
10 has not unlawfully denied an opportunity to inspect or copy public records.

11 9. ~~[ALTERNATIVE GROUND] Plaintiff's Motion for Summary Judgment is~~
12 ~~denied, and Defendant's Motion for Summary Judgment is granted, for the~~
13 ~~following reasons:~~

14 a. ~~Plaintiff's claims are untimely because Defendant had not yet completed its~~
15 ~~response (and had not yet closed this public records request) when Plaintiff~~
16 ~~initiated this lawsuit.~~

17 Taken together, it is hereby ORDERED:

18 10. Plaintiff's Motion for Summary Judgment is ^{partially} DENIED;

19 11. Plaintiff's Motions to Strike are DENIED (the Court did not rely on
20 inadmissible evidence in reaching its decisions); ^{partially}

21 12. Defendant's Motion for Summary Judgment is GRANTED; ~~and~~

22 Refer to language in the Order
23 partially granting P1's MSJ for
24 further instructions.
25 -SRV

13. ~~All of Plaintiff's claims are dismissed with prejudice and without costs to any party.~~

Dated this 23rd day of December, 2021.



HON. SUZANNE R. PARI SIEN
KING COUNTY SUPERIOR COURT JUDGE

Presented by:

HILLIS CLARK MARTIN & PETERSON P.S.

By

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Mary Crego Peterson, WSBA # 31593
Jake Ewart, WSBA # 38655
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Notice of Presentation Waived;
Approved as to Form:

By

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ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
(No. 20-2-18442-0 SEA) - 6

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