

1 FILED The Honorable Suzanne R. Parisien
2 2022 OCT 12 Noted for hearing without oral argument:
3 KING COUNTY Friday, August 26, 2022.
4 SUPERIOR COURT CLERK

5 CASE #: 20-2-18442-0 SEA

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

8 PEOPLE FOR THE ETHICAL
9 TREATMENT OF ANIMALS,

10 Plaintiff/Petitioner,

11 v.

12 UNIVERSITY OF WASHINGTON,

13 Defendant/Respondent.

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

ORDER AWARDING ATTORNEY'S FEES,
COSTS AND STATUTORY PENALTY TO
PETA

14 On December 23, 2021, this Court entered an Order Granting Summary Judgment to
15 PETA on its Third, Fourth and Sixth Public Record Act requests. Dkt. 80. The Court held that
16 the University of Washington failed to prove it performed an adequate search for responsive
17 records beyond a reasonable doubt, failed to provide its fullest assistance and most timely
18 possible response, and failed to prove it provided all of its responsive records when it first
19 closed the request, or to this day, for PETA's Third, Fourth and Sixth PRA requests. In addition,
20 this Court held regarding the Third Request and as equally applicable to the Sixth Request, that
21 "[t]he lack of any policy/system which identified videos/photos which are being destroyed
22 prevents the Defendant from complying with the requirements of the PRA." Id. at 4. The Court
23 also held that the Fourth Request "was closed prematurely and only after litigation was filed

24 ORDER DETERMINING AMOUNT OF FEE, COST
AND STATUTORY PENALTY AWARD
TO PETA-1

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1 were additional records released.” Id. at 5. The Court then ordered that PETA is entitled to
2 “fees and costs and [a] statutory penalty in this matter to be paid by Defendant, consistent with
3 the above rulings.” Id. at 6.

4 The parties jointly moved for permission to present the fee, cost and penalty
5 determination motion upon an agreed schedule with a 28-day noting period and overlength
6 motion and response, and the Court agreed. Dkt. 99. The parties agreed to a note date of
7 August 26, 2022. The Court determined oral argument was not necessary for the motion.

8 The Court has reviewed the following:

- 9 1. Plaintiff’s Motion for Determination of Amount of Fee, Cost and Statutory Penalty
10 Award, filed 7/29/2022, Dkt. 104;
- 11 2. Declaration of Martina Bernstein, filed 7/29/2022, Dkt. 105;
- 12 3. Declaration of Asher Smith, filed 7/29/2022, Dkt. 108;
- 13 4. Declaration of Michele Earl-Hubbard, filed 7/29/2022, Dkt. 106;
- 14 5. Dkt. 48 (11/12/2021 Decl. of Asher Smith and Exs. 3, 6-8, 11- 13, 17. 52, 78);
- 15 6. Defendant’s Opposition, Dkt. 110;
- 16 7. Declaration of Mary Crego Peterson, Dkt. 111;
- 17 8. Declaration of Eliza Saunders, Dkt. 112;
- 18 9. PETA’s Reply, filed 8/22/2022;
- 19 10. Reply Declaration of Asher Smith, filed 8/22/2022;
- 20 11. Reply Declaration of Michele Earl-Hubbard, filed 8/22/2022; and, the records and
21 pleadings in the court file, and otherwise being fully apprised on the matter, the

22 Court hereby rules and finds as follows:

1
2 **A. Fees and Cost Award to PETA**

3 THE COURT HEREBY FINDS that the rate of \$360 per hour requested by PETA’s
4 local counsel Michele Earl-Hubbard is reasonable and commensurate with local attorneys with
5 similar experience. After reducing the overall requested amount by 20% to account for
6 unsuccessful claims, the Court finds that the amount of hours she expended on this litigation
7 was reasonable and necessary to obtain the favorable outcome on some of the claims.

8 THE COURT FURTHER FINDS that the rate of \$475 per hour for attorney Martina
9 Bernstein, a lawyer with 31 years’ experience, is reasonable. After reducing the overall
10 requested amount by 20% to account for unsuccessful claims, the Court finds that the amount of
11 hours she expended on this litigation was reasonable and necessary to obtain the favorable
12 outcome on some of the claims.

13 THE COURT ALSO FINDS that the rate of \$250 per hour sought by attorney Asher
14 Smith, a lawyer with 8 years’ experience, is reasonable. After reducing the overall requested
15 amount by 20% to account for unsuccessful claims, the Court finds that the amount of hours he
16 expended on this litigation was reasonable and necessary to obtain the favorable outcome on
17 some of the claims.

18 In reducing the request of \$346,981 by 20%, the Court carefully reviewed the submitted
19 Declarations of counsel, particularly the detailed time entries attached to Ms. Earl-Hubbard’s
20 Declaration and Ex F to the Peterson Declaration. The Court finds it is appropriate to reduce
21 the amount to account for the 4 claims which were dismissed on summary judgment. The Court
22 rejects the requested reduction of 57% finding that some of the claims on which PETA

1 prevailed and those on which it did not are interrelated and incapable of segregation. In
2 addition, the Court notes that PETA has already reduced its requested fees by not seeking fees
3 for attorney Caitlin Zittkowski and additional work performed by attorneys Smith and
4 Bernstein.

5 WHEREFORE, the Court awards attorney fees in the amount of \$277,584.00

6 With regard to the request for costs in the amount of \$26, 885.10, the court has carefully
7 reviewed the Declarations of Counsel and in particular, Ex. G to the Peterson Declaration, and
8 finds that a reduction of \$14,566.65 is appropriate to account for the costs of videotaping the
9 depositions. *See* CR 30(b)(8)(D).

10 WHEREFORE, the Court awards costs in the amount of \$12,318.45.

11
12 **B. Statutory Penalty Award to PETA**

13 The Court has considered the arguments made by the parties regarding the amount of
14 statutory penalties to be awarded and the aggravating and mitigating factors set forth in
15 **Yousoufian v. Ron Simms**, 168 Wn.2d 444, 459, 229 P.3d 735 (2010). The Court found the
16 *Wades* and *O'Dea* cases to be informative but notes that the facts in *Wades* are far more
17 egregious given that the agency continued to withhold non-exempt records after being ordered
18 by the court to produce them. In the present matter, UW acted swiftly following the court's
19 ruling on the dispositive motions to expand and refine the search for responsive documents. In
20 addition to reviewing the Declarations of Counsel, the Court carefully considered the
21 Declarations of Mses. Saunders and Thompson-Iritani.

1 The Court makes the following findings which were significant to the Court in applying
2 the *Yousoufian* aggravating and mitigating factors:

- 3 • The PRA requests at issue were submitted during the COVID 19 pandemic
4 which caused delay and disruption in almost all facets of daily professional life;
- 5 • Additional searches by the University according to the agreed parameters
6 resulted in additional documents that were produced to Plaintiff in April 2022.
7 The additional documents produced consisted of emails and documents from
8 agreed custodians that mention PETA. The additional search efforts did **not**
9 result in any additional records that were responsive to the underlying public
10 records requests. Specifically, the additional searching did not result in any
11 photos or videos relating to the Third and Sixth Requests, or reports relating to
12 the Fourth Requests.
- 13 • On the imposition of daily penalties regarding the 3rd and 6th requests, no
14 evidence was presented that additional records were withheld after Plaintiff
15 issued its public records requests.

16 The above findings are considered mitigating factors. An aggravating factor, which this
17 Court finds deeply troubling is the Defendant's obfuscation of settlements and judgments
18 payable by the UW for past violations of the PRA. Clearly, PETA was entitled to this
19 information as well as to a knowledgeable 30(b)(6) deponent on this issue. One can hardly
20 fathom information more suited to a public records request than the amount of settlements and
21 judgments paid out by a given state agency. That Ms. Earl-Hubbard had to undertake such
22 Herculean efforts to obtain this information is unacceptable. *See* Declaration of Ms. Earl-
23 Hubbard and Exhibits K through O.

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1 The mitigating factors were reviewed as applied to these facts for the purposes to
2 determining whether to decrease the penalty. Similarly, aggravating factors were reviewed to
3 determine whether to increase the penalty as applied to the facts in this matter. This court
4 carefully weighed and reviewed all of the evidence and facts in this matter and argument of
5 counsel as to the appropriate amount of the penalty to be set. This Court is mindful of and
6 followed the guiding analysis (16 factors) as stated by the Washington Supreme Court in
7 Yousoufian, 168 Wn.2d 444, and “[o]ur multifactor analysis is consistent with the PRA and our
8 precedents and provides guidance to trial courts, more predictability to parties, and a framework
9 for meaningful appellate review. We emphasize that the factors may overlap, are offered only
10 as guidance, may not apply equally or at all in every case, and are not an exclusive list of
11 appropriate considerations. Additionally, no one factor should control. These factors should
12 not infringe upon the considerable discretion of trial courts to determine PRA penalties.” Id.

13 Taking all of the factors and facts of this case into account, the Court imposes penalties
14 to be paid by Defendant to PETA for the Third, Fourth and Sixth Requests in the amount of
15 **\$250,000.00** (two hundred and fifty thousand dollars).

16
17 DONE this 11th day of October ~~11~~¹¹, 2022. SRP

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19 
20 _____
21 The Honorable Suzanne R. Parisien
22

23 ORDER DETERMINING AMOUNT OF FEE, COST
24 AND STATUTORY PENALTY AWARD
TO PETA-6

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