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

ERIC HOOD,

Plaintiff,

v.

CITY OF LANGLEY,

Defendants.

CASE NO. 19-2-00611-15

ORDER GRANTING DEFENDANT'S  
MOTION FOR JUDICIAL REVIEW AND  
DISMISSAL PURSUANT TO RCW  
42.56.550(3)

THIS MATTER came before this Court on Defendant City of Langley's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.550(3). The Court has considered all papers filed in support of and in opposition to Defendants' Motion for Judicial Review and argument presented by the parties. Filings considered include:

1. Defendant's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);
2. Declaration of Tara McDivitt in Support of Defendant's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);
3. Declaration of Debbie Mahler in Support of Defendant's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);
4. Declaration of Scott Chaplin in Support of Defendant's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);

5. Declaration of Jessica L. Goldman in Support of Defendant's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);
6. Plaintiff's Response to Defendant's Motion for Judicial Review;
7. October 4, 2023 Declaration of Eric Hood;
8. October 4, 2023 Declaration of William John Crittenden;
9. Defendant's Reply in Support of Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);
10. Supplemental Declaration of Tara McDivitt in Support of Defendant's Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.500(3);
11. October 18, 2023 Langley Letter to the Court;
12. October 30, 2023 Langley Letter to the Court; and
13. October 31, 2023 Hood Letter to the Court.

The Court having considered said pleadings and heard the arguments of counsel on October 11, 2023, this Court issued a letter ruling dated November 9, 2023, which is attached hereto as an Appendix and incorporated herein by this reference. A presentation hearing was thereafter held on December 11, 2023. Based on the foregoing, and for the reasons described in the Appendix, the Court now RULES:

1. This action under the Public Records Act, Chap. 42.56 RCW ("PRA") was filed by Mr. Hood against the City of Langley on October 9, 2019.
2. Mr. Hood submitted a PRA request ("PRR") to the City of Langley on July 20, 2018.
3. Among the records the City provided to Mr. Hood were a pdf folder entitled "Attorney client privilege redacted documents Marks 2" and a pdf folder entitled "Redacted – atty-client privilege."
4. For the reasons set forth in the Appendix, the City conducted an adequate search under the PRA.



  
**SUPERIOR COURT OF THE STATE OF WASHINGTON**  
**FOR ISLAND COUNTY**

*Law & Justice Facility, 101 NE 6<sup>th</sup> St, PO Box 5000, Coupeville WA 98239-5000*  
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**CHRISTON C. SKINNER**  
*Judge*  
**CAROLYN CLIFF**  
*Judge*  
**MEGAN FRAZIER**  
*Court Administrator*

November 9, 2023

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Re: Hood v. City of Langley, Island County Superior Court No. 19-2-00611-15

Dear Mr. Crittenden and Ms. Goldman;

This Public Records Act (“PRA”) case came before the Court for a hearing on October 11, 2023, on Defendant’s Motion for Judicial Review and Dismissal Pursuant to RCW 42.56.550(3)(“Motion”). This case was originally filed against the City of Langley by Eric Hood as a self-represented litigant in October of 2019, asserting that the City had failed to conduct a reasonable search in response to his July of 2018 request for public records relating to its decision to terminate its then-serving chief of police. Mr. Hood has filed several PRA cases against the City; after an initial burst of activity, there was essentially no activity in this case that appears of record after July of 2020, apparently reflecting the COVID-19

pandemic, the parties' work on the other pending cases<sup>1</sup>, or some other factor not apparent in the record until the City filed its Motion on September 13, 2023. Mr. Crittenden appeared in this case on behalf of Mr. Hood after the Motion was filed.

Ms. Goldman appeared on behalf of the City of Langley in person at the October 11<sup>th</sup> hearing, as did the City's mayor and manager. Mr. Crittenden appeared on behalf of Mr. Hood remotely at the October 11<sup>th</sup> hearing; Mr. Hood did not attend the hearing in person but may have attended a portion remotely. The Court reviewed the materials filed in support of, in opposition to, and in reply on the Motion prior to the October 11<sup>th</sup> hearing and heard argument from counsel. For ease of reference, the Court also asked the parties at the October 11<sup>th</sup> hearing to supply copies of the specific pages and other materials that were cited in voluminous exhibits to declarations filed in support of the motion, and both parties have done so. The Court took this matter under advisement at the conclusion of the October 11<sup>th</sup> hearing and is now prepared to rule.

### 1. Factual Background

On November 29, 2017, Island County Sheriff Mark C. Brown wrote to City of Langley Mayor Tim Callison regarding a subordinate's concerns about a potentially excessive, "use of force" incident involving Langley Police Chief David Marks. Decl. of Tara McDivitt, Ex. 15 at [436] [also identified with Bates No. 89 and with number "10" at bottom right corner](Sep. 13, 2023)("McDivitt Decl.").<sup>2</sup> The matter apparently received some publicity, and the City began to receive both complaints about Chief Marks' performance and record requests relevant to his employment situation. Decl. of Goldman, Ex. 2 at 2 ([City's Verified] Supplemental Response to Interrogatories at 2)(Sep. 13, 2023). Before Mr. Hood submitted the PRA request that is the subject of this case, Mayor

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<sup>1</sup> This Court presided over multiple proceedings in 2022 and the first part of 2023 in one such pending case, Hood v. City of Langley, Island County Superior Court No. 16-2-00107-1, and the Court's decision in that case is currently on appeal. Both parties were represented by the same lawyers at the first hearing in that case, during which the Court disclosed information about its prior dealings with both parties that one or both might reasonably consider relevant to a possible motion for disqualification – even though the Court did not and does not consider it to be a basis for recusal – in accordance with Comment 5 to CJC 2.11. Both counsel advised the Court at the hearing in this case that they were comfortable with the Court's decision to incorporate that disclosure by reference in this case and to proceed with this case with this Court presiding.

<sup>2</sup> Some declarations with voluminous exhibits were filed in this case without any sequential numbering system or other means to readily identify specific pages cited in the declarations, apparently based on the belief that the pleadings on file herein are available in a form in which each individual exhibit exists as a separate, "pdf" file and that citations to individual exhibit pages can readily be identified by the Court. That belief is not accurate. The Court has attempted to review and identify specific page citations to such voluminous declarations using the supplemental courtesy copies of the pleadings provided to the Court but is identifying questionable references in brackets and including supplemental descriptors to assist in locating and verifying record references.

Callison had already begun compiling records relevant to Chief Marks and the November 2017 allegations of excessive use of force. Id.

According to Mr. Hood, a local paper, the Whidbey News-Times, ran a story on July 10, 2018, reporting that Chief Marks had been fired by Mayor Callison. Response to Defendant's Motion for Judicial Review at 16, fn. 2. The version of the article available to the Court on the Internet on November 6, 2023, describes the concerns of Island County law enforcement referenced in Sheriff Brown's November of 2017 communication and a resulting criminal investigation conducted by Washington State Patrol detectives, as well as a six-page memorandum written by Island County Prosecutor Greg Banks reflecting his review of the WSP investigation. As quoted in the article, Prosecutor Banks was therein critical of Chief Marks' conduct in the incident, concluding that, although Chief Marks' conduct did not meet a definition of criminally sanctionable conduct, it did not meet the high standards expected of law enforcement officers either. The article cited by Mr. Hood asserts that Mayor Callison had hired an outside, "use of force" expert, Glenn Carpenter, who concluded, in a 45-page report, that Chief Marks had not violated local law enforcement policy or applied excessive force. The article quoted Mayor Callison as describing the decision to nonetheless terminate Chief Marks' employment as, "a very difficult decision to make" and as based on many factors: not just the November 2017 incident.

Ten days after the article was published, on July 20, 2018, Mr. Hood submitted the PRA request at issue in this litigation ("July 2018 PRA"):

Please disclose any records related to the City's decision to terminate Dave Marks. These would include but are not limited to any formal or informal complaints about Marks and any records requests referencing Marks. It would also include any internal communications among City employees, agents or elected officials related to Marks' conduct or actions. It would also include any City communications with any outside agencies, persons or entities related to Marks' conduct or actions. Please provide records in electronic format.

McDivitt Decl., Exhibit 1 at 2. The City responded by email dated July 23, 2023, reporting the City's Public Records Officer, Debbie Mahler, was on vacation but that she would, "be in contact", within 30 days. Id. The day of or the day after Ms. Mahler returned from vacation, she reviewed the request and informed Mayor Callison. Decl. of Goldman, Ex. 2 at 2.

Mayor Callison was the only City official with the responsibility and authority to terminate Chief Marks' employment.<sup>3</sup> See Id., Ex. 2 at 1-2. Before the July 2018 PRA arrived, Mayor Callison created files and records concerning Chief Marks and the allegations regarding his excessive use of force in the November 2017 incident. Mayor Callison set up a specific file folder, kept on both his desktop and his laptop computers, entitled, "Marks PRA", which he created when public record requests about Chief Marks started to come in. The Mayor also maintained records in a physical binder, entitled, "Marks Investigation", which he, "created on the first day of the investigation into Chief Marks when [the Mayor] received the initial formal complaint from the Island County Sheriff." Decl. of Goldman, Ex. 2 at 2. The Marks Investigation binder was made available to members of the City Council, so that they were aware of developments. Id. To respond to Mr. Hood's July 2018 PRA, Mayor Callison searched the physical records in his office. He also searched his desktop and laptop computers for emails and other responsive records, printing out those he decided were responsive to the July 2018 PRA. Mayor Callison provided those electronic documents, in printed form, and gave them to Ms. Mahler, along with the, "Marks Investigation" binder to Ms. Mahler to prepare the City's response. Mayor Callison did not keep contemporaneous records tracking the time that he devoted to the search but verified that he spent, "about a day (8 hours) searching, printing, checking for attachments, assembling, and then providing the result to Ms. Mahler for review and processing." See generally Decl. of Goldman, Ex. 2 at 1-3, 5.

Ms. Mahler did not rely solely on the documents identified by Mayor Callison to prepare the City's response. Ms. Mahler conducted her own search of electronic files, using the terms, "Marks", "Chief of Police", and "David Marks" located on the City's computer drive and the contents of email provided to the City Council using their generic email address. Before Mr. Hood's July of 2018 PRA request arrived, Ms. Mahler also communicated directly to members of Langley's City Council, referencing a remark made by one at a Council meeting about the public's concern about the allegations of excessive use of force to the effect that residents

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<sup>3</sup> Notwithstanding the remarks of Mayor Callison as reported in the July 10, 2018 newspaper article as having terminated Chief Marks' employment, the City of Langley asserts that Chief Marks was not, in fact, terminated but resigned. Defendants' Reply at 8 (Oct. 6, 2023). The record before the Court does not reflect an explanation for the discrepancy, which may or may not be attributable to Chief Marks' decision to engage an attorney as regards the matter, Supplemental Declaration of McDivitt, Ex. 17 at [7] ("Suppl. McDivitt Decl."), or to Mayor Callison's explanation, as quoted in the July 10<sup>th</sup> news article described in text above, that Chief Marks was entitled to a civil service hearing and appeal and that his actual status, as of the date of his remarks, was on administrative leave with pay.

had contacted Council members at their private email addresses, expressly noting that such communications were legally public records and requesting that all such city emails received at their private email addresses be forwarded to her at the official email address. Decl. of Debbie Mahler, Ex. 2.

The City produced its response to the July 2018 PRA request to Mr. Hood by email on August 30, 2018. Hood Decl., Ex. A-1 through A-8. One, “pdf” folder was entitled, “Attorney client privilege redacted documents Marks 2”, Id. at Ex. A-2; another was entitled, “Redacted – atty-client privilege,” Id. at Ex. A-8. The documents produced totaled about 323 pages. Id. at Paragraph 2. The documents produced included the, “Expert Use of Force Opinion by Glenn Carpenter”, Suppl. McDivitt Decl. at Exhibit 17 at [288-331] [last 44 pages of “Email # 6”] described in the July 10, 2018 news article, which specifically identified the materials that Mr. Carpenter had reviewed, catalogued as from “A” to “SS” at [292-93] [marked pages 5-6 of Carpenter report]. The documents produced included a June 18, 2018 letter to Mayor Callison from the attorney representing Mr. Marks, specifically referencing a letter that Prosecutor Banks had sent to the Mayor and to Washington State Patrol Detective Dan Commick, apparently referencing his opinion that Chief Marks’ conduct in the November 2017 incident had been, “negligent”. Suppl. Decl. of McDivitt, Ex. 17 at [7] [June 16, 2018 Skinner Letter to Callison page 1, ftn. 1]. Although Prosecutor Banks’ letter is not described more specifically in the lawyer’s letter, it appears to be the May 15, 2023 “Memorandum” referenced in the Carpenter Report at Item “SS”.

Mr. Hood filed the complaint in this case in October of 2019. After a brief but intense discovery skirmish involving the City’s responses to Mr. Hood’s discovery requests and/or multiple additional public records requests, activity in this case that appears of record largely went dormant after July of 2020 until the City filed its Motion in September of 2023. In response to the Motion, Mr. Hood complains both about the City’s process in responding to the July 2018 PRA – its failure to contemporaneously document its efforts to conduct an adequate search and to provide a formal exemption log – and what Mr. Hood regards as its substantive failure to conduct an adequate search. By way of specifics as regards the latter, Mr. Hood complains that the records produced by the City of Langley in response to his July 2018 PRA request included the report prepared by Glenn Carpenter but did not include many of the specific materials identified therein as reviewed to prepare it: that is., the, “A through SS” list. Decl. of Hood at Paragraph 10. Mr. Hood thereafter got many of those materials through public records requests directed to the specific agencies referenced in the Carpenter report; Mr. Hood got others from



the City in response to later public records and/or discovery requests. Hood Decl. at paragraphs 11 – 18. Mr. Hood also complains that some other specific documents that he obtained from other sources were never disclosed to him by the City. *Id.* at paragraphs 19-23. Mr. Hood also complains that many of the specific documents produced by the City to him on February 17, 2022, were responsive to his July 2018 PRA and that some complaints about Chief Marks had been withheld. Paragraph 24-26.

## 2. Analysis

The PRA is a strongly worded mandate for broad disclosure of public records. Burt v. Department of Corrections, 168 Wn. 2d 828, 832 (2010) ... Passed by popular initiative, it stands for the proposition that “full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.” Progressive Animal Welfare Society v. University of Washington, 125 Wn. 2d 243, 251 (1994); RCW 42.17A.001(11).

Neighborhood Alliance of Spokane County v. Spokane County, 172 Wn. 2d 702, 714-15 (2011) (parallel and some internal citations omitted). On judicial review, the Court is mindful that it is the policy of the PRA that members of the public are entitled to free and open examination of most public records, even if examination may cause inconvenience or embarrassment, *Id.* at 715. These important principles are to be applied broadly in this case, even if the City is fair in characterizing Mr. Hood as a professional public records requester who has, “...collected a small fortune in fines and settlements in these lawsuits.” Motion at 2. See Kozol v. Washington State Department of Corrections, 192 Wn. App. 1 (Div. III, 2015) (PRA case filed to further a scheme concocted in prison to make money off the PRA by using vague and ambiguous public records requests decided based on adequacy of search in response to request at issue: not on motives of requester).

The City asks this Court to determine that the City conducted an adequate search in response to the July 2018 PRA. Motion at 12. Mr. Hood responds both that the City has failed to meet its burden of proof under RCW 42.56.550(1) and that his affirmative evidence regarding records that he asserts should have been but were not produced before the Court establishes that the City failed to perform a reasonably adequate search. Response to Defendant’s Motion for Judicial Review (Oct. 5, 2023) at 25-26 (“Response”). Under the PRA, the focus of this Court’s

inquiry is not whether any and all responsive documents existed and were disclosed but rather whether the search itself was adequate. Neighborhood Alliance, 172 Wn. 2d at 719-720. The adequacy of the search must be reasonably calculated to uncover all responsive documents: a fact-specific inquiry that depends on the circumstances of the particular case at issue. Id. at 720. “When examining the circumstances of a case, then, the issue of whether the search was reasonably calculated and therefore adequate is separate from whether additional responsive documents exist but are not found.” Id. at 720. “[A] search need not be perfect, only adequate.” Meeropol v. Meese, 790 F. 2d 942, 956 (D. C. Cir., 1986), *cited with approval* in Neighborhood Alliance, 172 Wn. 2d at 720.

As for Mr. Hood’s concerns about the City’s search process, he complains that the City has no “contemporaneous documentation to show whether or how the City searched for responsive documents in 2018.” Response at 2. But Mr. Hood cites no authority for the proposition that contemporaneous documentation is required to establish the adequacy of a search for public records. The July 2018 PRA involved a matter of significant public interest that had by that time commanded a material amount of the City’s time and resources. Contemporaneous documentation might well have been helpful in establishing some details about the search – as, for example, the precise amount of time that Mayor Callison devoted to it – but, under these circumstances, was not required to enable to the Court to confidently assess the adequacy of the City’s search. The Court is also not persuaded that the City violated RCW 42.56.210(3), requiring agency responses based on refusal to allow inspection of a responsive public record to include a statement of the specific exemption authorizing withholding of the record and a brief explanation by failing to provide a formal exemption log with its response to the July 2018 PRA. Mr. Hood specifically asked for the City’s response in electronic format, and the City’s response included two separate attachments that included documents that had been redacted, citing attorney-client privilege, Hood Decl., Ex. A-2 and A-9. Although a formal exemption log certainly makes it easier to readily determine what documents were withheld, See McDivitt Decl. at Ex. 5 (the log required by court order in the first months of this litigation, Hood Decl., Ex G-3), the less formal – and shorter – information in the attachment file names under which documents that were withheld from disclosure and the redacted documents themselves that were produced in those files fairly notified Mr. Hood that content had been excised based on a claim of attorney-client privilege.

As for Mr. Hood’s complaint about the adequacy of the City’s search in response to the July 2018 PRA based on the public records he has gathered from other

sources or later requests to the City, the Court considers most to be without merit. Based on the Court's review of the underlying records, the City is correct in asserting that the City did, in fact, provide some of the documents that the City provided to him in response to his later public records requests in response to the July 2018 PRA. See Reply at II.1, 2-4 (Oct. 6, 2023). To the extent that Mr. Hood's complaints about a few of those documents appears to be that the contents of a "sharefile" referenced in one such email, Hood Decl. at Paragraph 19 and Supp. Decl. of McDivitt, Ex. 17 at [75]; or that the, "voicemail" referenced in another, Hood Decl. at Paragraph 26 and Supp. Decl. of McDivitt, Ex. 17 at [27], were not provided to him, Mr. Hood is relying on speculation alone in assuming that the contents of the, "sharefile" were ever downloaded into the City's system or that the City archived voicemail messages in searchable form. Such claims are not sufficient to overcome verified statements from those with personal knowledge about an agency's response: "[S]peculative claims about the existence and discoverability of other documents will not overcome an agency affidavit, which is accorded a presumption of good faith." Forbes v. City of Gold Bar, 171 Wn. App. 857, 867 (Div. 1, 2012). Similarly, Mr. Hood's speculations about various locations within the City that could have been but were not searched do not establish that the City's search was inadequate, Response at 26-31 (Oct. 5, 2023). The July 2018 PRA specifically sought records relevant to the City's decision to terminate Chief Marks, and Mayor Callison, as the City official solely responsible for that decision, was the most likely source for responsive documents. "[We] inquire into the scope of the agency's search as a whole and whether that search was reasonable, not whether the requester has presented alternatives that he believes would have more accurately produced the records he requested." Hobbs v. State, 183 Wn. App. 925, 944 (Div. II, 2014).

The Court also rejects Mr. Hood's assertion that the City was required to secure documents in the possession of others in order to respond to the July 2018 PRA. Mr. Hood acknowledges receipt of a complete copy of the, "excessive use of force" report authored by Glenn Carpenter, Hood Decl. at Paragraph 10, but complains that many of the materials expressly identified therein were not produced to him in response to the July 2018 PRA. Id. at Paragraphs 11-17. Mr. Hood asserts that this establishes that the City did not conduct an adequate search. Response at 19-21. In order to conduct an adequate search, an agency is required to, "follow obvious leads as they are uncovered." Neighborhood Alliance, 172 Wn. 2d at 720. When searching through an initial batch of responsive records reveals that responsive records may be located elsewhere within the agency, the agency properly follows up on that lead to search the other location and produce

responsive records. See Dotson v. Pierce County, 13 Wn. App. 2d 455 (Div. II, 2020), even when responsive records do not appear to be within the four corners of the public records request at issue, Id. at 466. But Mr. Hood cites no authority for the proposition that this, “duty to follow obvious leads” includes a duty to secure specific documents that are identified in the course of a reasonable search but that are records of some other public agency or entity, including an independent expert such as Glenn Carpenter, that are not within the agency’s possession.

As for Mr. Hood’s assertion that the City received complaints about Chief Marks after the November 2017 incident was publicized that were not produced in response to the July 2018 PRA, the July 2018 PRA expressly sought records related to the City’s decision to terminate Chief Marks’ employment, and its subsequent reference to formal and informal complaints about Chief Marks is fairly read to mean complaints that related to the City’s decision. Mayor Callison was the one who went through the complaints to determine which to produce, and the City’s response to the July 2018 included some two dozen pages of such complaints. Supp. Decl. of McDivitt, Ex. 17 at [61, 63, 67, 69, 85-86, 87, 89, 91, 103-04, 109, 115, 127, 134, 135, 136, 137-38, 139, 155-56, 157, 158-59, 244].<sup>4</sup> Of the scant handful identified by Mr. Hood as produced by the City only in response to a later request, Decl. of Hood at Paragraph 24, many refer to some other encounter with Chief Marks that the writer considered to be problematic. McDivitt Decl. at [494-95, 500-505, 506, 507]. Some include highlighting or handwritten comments about the age of the unrelated incident, Decl. of McDivitt at [506, 507] while others may fairly be characterized as involving unusual circumstances or collateral matters. Id. at [500-503]. Mayor Callison was the sole person who made the termination decision, and Mayor Callison was the one who went through the complaints to determine which ones, “related to” the City’s decision to terminate Chef Marks. Such a distinction between citizen complaints that were related to the City’s decision to terminate Chief Marks’ employment and those that were not is reflected in one of Mayor Callison’s contemporaneous emails produced in response to the July 2018 PRA, describing Mayor Callison’s perception that some of the citizen complaints appeared to be, “legitimate concerns”, while others were, “a little bit shaky in their claims”. Supp. Marks Decl., Ex. 17 at [69].

If the Court is thus not satisfied that most of the specific records that Mr. Hood complains should have been but were not produced in response to the July 2018 PRA, a few omissions appear to the Court to be problematic. The City’s response

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<sup>4</sup> Some of the records produced were the same complaint in multiple forms: for example, a complaint that was forwarded by email to another reader. The cited pages in text identify only the first version of the complaint the Court noted; not all versions that were produced.

to the July 2018 PRA did not include Island County Sheriff Brown's November 29, 2017 letter to Mayor Callison about his subordinates' allegations about Chief Marks' excessive use of force. Decl. of Hood, Paragraph 15. According to the City, there is no evidence that this document, received by the City several months before Chief Marks left was related in any way to the City's decision to terminate his employment. Defendant's Reply at 8-9 (Oct. 6, 2023). The Court disagrees. Mayor Callison created the, "Marks Investigation" binder on the first day of the investigation into Chief Marks, when he received the initial formal complaint from Island County Sheriff Brown. Mayor Callison gave the Marks Investigation binder to Ms. Mahler, "so she could include [the contents] in the City's response", Decl. of Goldman, Ex. 2 at 3; if there was a rationale for excluding the formal complaint from the Island County Sheriff Brown that kicked off the, "Marks Investigation", that rationale is not apparent in the City's responses to Mr. Hood's discovery requests, verified by Mayor Callison on October 13, 2020, on which the City has relied for its description of the Mayor's work to respond to the July 2018 PRA.

As Mr. Hood describes, Island County Sheriff Brown's November 29<sup>th</sup> letter to Mayor Callison is identified as an exhibit in the Carpenter Report, Hood Decl. at Paragraph 15; if Mr. Hood was somehow not aware of its existence before he received the City's response to the July 2018 PRA, he certainly got notice of it then. More troubling, from the Court's perspective, is Mr. Hood's assertion that the City did not provide him with a copy of Prosecutor Banks' July 5, 2018 email to Mayor Callison criticizing the Carpenter Report or the Mayor's July 6<sup>th</sup> email to Prosecutor Banks in response. Decl. of Hood, Paragraph 20 and Ex. K. Mayor Callison's response reads, in part, "The decision to arrest [the individual involved in the alleged excessive use of force incident], the lack of leadership in directing the assisting officers, the manner and deportment of the Chief were all issues that you touch upon below. And, they were issues among many others that lead me to make the decision to terminate his employment as Chief." *Id.* at K-1. If there was a rationale for excluding this email – describing some of Mayor Callison's reasons for terminating Chief Marks' employment – from among those that Mayor Callison printed out from the search of his desktop and laptop and/or that were copied from the Marks Investigation Binder in response to a request that sought documents related to the City's decision to terminate Chief Marks' employment, that rationale is not apparent in the verified materials from the City that are before the Court. And it is the verified materials from the City – not the, "after the fact" explanations or rationalizations of the City's litigation counsel, no matter how plausible they may be – that are entitled to a presumption of good faith.

From the Court's perspective, Mr. Hood's identification of isolated records that appear to the Court to have been readily accessible to the City to provide to Mr. Hood – Sheriff Brown's November 29, 2017 letter to Mayor Callison and the July 2018 email exchange between Prosecutor Banks and Mayor Callison – and that appear to the Court to be responsive to the July 2018 PRA thus establishes that the City's response was not perfect. But perfection is not required: the question is whether it was adequate. The distinction between a perfect search and an adequate one is, perhaps, most readily made in the abstract, in contemplation of a document that is mistakenly overlooked, see Neighborhood Alliance, 172 Wn. 2d at 718, or when a single responsive record is missed for reasons that are not clear but that is ultimately found and produced by the public agency to which the record request was directed. See Hood v. Centralia College, 23 Wn. App. 2d 1003 at 12 (section 4.a, "the Schierman email") (Div. II, 2022)(unpublished opinion). In this case, the verified materials from the City are silent as regards the reason why Sheriff Brown's November 29, 2017 letter was provided to Mr. Hood only in response to a later public records request and why Mayor Callison's July 6, 2018 email to Prosecutor Banks explaining his reasons for terminating Chief Marks' employment was apparently never produced to Mr. Hood at all.<sup>5</sup> But the fact that isolated records existed when a request was made that were not produced does not mean that the City's search for those records was inadequate. See Block v. City of Gold Bar, 189 Wn. App. 262, 278 (Div. I, 2015). PRA cases are meant to be expedited. Kilduff v. San Juan County, 194 Wn. 2d 859, 871 (2019). It is not clear to the Court whether the glacial pace of the prosecution of this case – the City of Langley has had a different mayor at least since this Court began presiding over public records litigation between these parties more than a year ago – accounts for the City's failure to provide a verified explanation for the isolated omissions that concern the Court; what is clear to the Court is that those isolated omissions do not establish that the City's search was inadequate.

In this Court's judgment, the City's response to the July 2018 PRA would have been closer to perfection if Sheriff Brown's November 29, 2017 letter and Mayor Callison's July 6<sup>th</sup> email to Prosecutor Banks had been included in the City's response. But the question before the Court is whether the City's search was adequate. The verified materials offered by the City establish that the City identified a need to start compiling records relevant to the November of 2017 incident alleging excessive use of force by Chief Marks when the official complaint from Sheriff Brown arrived in November of 2017. Months before Mr.

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<sup>5</sup> Mr. Hood appears to have gotten his copy of the email exchange through a public records request to the Island County Prosecuting Attorney. See Decl. of Hood, Ex. K (bears "PA" Bates numbers),

Hood submitted the July 2018 PRA, Mayor Callison started gathering together and organizing the City's records, mindful of the need to keep members of the City Council informed and in anticipation of public records requests prompted by the publicity about the incident. The City thus created a, "universe" of documents that were potentially responsive to the July 2018 PRA. Because the July 2018 PRA sought records related to the City's decision to terminate Chief Marks' employment, the City turned primarily to the City official responsible for making that decision to go through the potentially responsive documents to identify those that were actually responsive, and Mayor Callison spent some eight hours doing so. The Court is satisfied that the verified materials before it establish that the City's search in response to the July 2018 PRA was adequate.

### 3. Conclusion

Ms. Goldman is responsible to prepare a proposed order memorializing the Court's ruling, and the Court asks that she do so on a timetable to allow for its presentation for entry on the Court's Law and Motion Calendar by or before December 18, 2023.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Carolyn Cliff', with a stylized flourish at the end.

Carolyn Cliff