

From: [ATG MI PRR Correspondence](#)
To: [Maxford Nelsen](#)
Subject: RE: Request for public records (PRR-2018-0871)
Date: Friday, December 14, 2018 1:54:50 PM

Mr. Nelsen –

This email is in response to your correspondence seeking a review of the Attorney General's Office response to your public records request. Your request was for the following:

A copy of the common interest agreement involving (1) the Washington Office of the Attorney General, (2) the Oregon Department of Justice, (3) the California Department of Justice, (4) the Service Employees International Union (SEIU), (5) the American Federation of State, County and Municipal Employees (AFSCME), and (6) Altshuler Berzon LLP. For clarity, I am seeking a copy of the common interest agreement referenced in the attached emails.

In our response to your request, we withheld a record based on the attorney work product privilege. That privilege is reflected in the Public Records Act (PRA) in RCW 42.56.290. You asked for a review of our office's response. We have determined that the privilege protects this record from disclosure under the PRA. The attorney work product privilege protects records that reflect an attorney's mental impressions, opinions, and information prepared in anticipation of potential litigation, including attorneys' litigation strategy. Who may be a parties to a common interest agreement and to potential litigation, what interests they may or may not share, how they choose to collaborate, etc. reflect the attorneys' strategy regarding potential litigation. For these reasons, the record is privileged and will be withheld.

Thank you for the opportunity to conduct this review.

Christina Beusch
Deputy Attorney General

From: Jensen, LaDona (ATG) <LaDonaJ@ATG.WA.GOV>
Sent: Monday, November 26, 2018 2:32 PM
To: Maxford Nelsen <MNelsen@freedomfoundation.com>
Subject: RE: Request for public records (PRR-2018-0871)

Hi, yes, under [WAC 44-06-120](#).

From: Maxford Nelsen <MNelsen@freedomfoundation.com>
Sent: Monday, November 26, 2018 2:30 PM
To: Jensen, LaDona (ATG) <LaDonaJ@ATG.WA.GOV>
Subject: RE: Request for public records (PRR-2018-0871)

Thanks, LaDona. Just so I'm clear, is this reconsideration being treated as a "review of denial" under [WAC 44-06-120](#), or would that be considered a separate procedure?

Maxford Nelsen

Director of Labor Policy | Freedom Foundation
MNelsen@FreedomFoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
[FreedomFoundation.com](#)

From: Jensen, LaDona (ATG) <LaDonaJ@ATG.WA.GOV>
Sent: Monday, November 26, 2018 12:00 PM
To: Maxford Nelsen <MNelsen@freedomfoundation.com>
Subject: RE: Request for public records (PRR-2018-0871)

Max –

Thank you for your below request for the withholding to be reconsidered. The document in question is being reviewed/reconsidered. We anticipate having a final decision on or before December 7, 2018. If a decision has been rendered prior to that date, I will notify you. If this time assessment needs adjustment, I will let you know that as well. Thank you.

LaDona

From: Maxford Nelsen <MNelsen@freedomfoundation.com>
Sent: Tuesday, November 20, 2018 4:06 PM
To: Jensen, LaDona (ATG) <LaDonaJ@ATG.WA.GOV>
Subject: RE: Request for public records (PRR-2018-0871)

Hi LaDona,

Thank you. I'm afraid I'm going to have to push back a little bit on this one.

As you are aware, the Public Records Act (PRA) is to be "liberally construed and its exemptions narrowly construed." (RCW 42.56.030).

Further, RCW 42.56.100 requires agencies to “provide for the fullest assistance to inquirers.”

Lastly, you cite “Attorney Work Product Privilege” as the basis for withholding the records and reference RCW 42.56.290 as the source for the statutory exemption. However, RCW 42.56.290 does not, itself, specifically mention attorney work product. Elsewhere, the PRA sets more specific parameters for the disclosure of material prepared by attorneys. In reference to attorney invoices, for instance, RCW 42.56.904 notes that,

“...specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions... with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure.”

While a common interest agreement may contain elements that may “reveal the opinions or mental impression of attorney,” I find it hard to believe that there is nothing in the document other than attorneys’ legal opinions. At minimum, things like the title of the document, a listing of parties to the agreement, the date it was executed, etc., should all be subject to disclosure.

Accordingly, I would request that the Attorney General’s Office provide a copy of the requested document redacted only to the extent necessary to protect attorneys’ legal opinions from disclosure.

Thank you.

Maxford Nelsen

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From: Jensen, LaDona (ATG) <LaDonaJ@ATG.WA.GOV>
Sent: Monday, November 19, 2018 1:42 PM
To: Maxford Nelsen <MNelsen@freedomfoundation.com>
Subject: RE: Request for public records (PRR-2018-0871)

Mr. Nelsen –

This email is to conclude your below public records request. We have identified 3 pages (MN4-00001 – MN4-00003) that are responsive to your request. However, these pages are being withheld in their entirety under the following:

Attorney Work Product Privilege – RCW 42.56.290	Communication between attorneys that reveals opinions or mental impression of attorney, or information prepared, collected, or assembled in litigation or in anticipation of litigation	RCW 42.56.290
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Please contact me at the below email address or at Office of the Attorney General, Public Records & Constituent Services, P.O. Box 40100, Olympia, WA 98504-0100, if you have any questions. We will now consider this request closed. Thank you.

La Dona Jensen
Director of Public Records
& Constituent Services
ladonaj@atg.wa.gov

From: Maxford Nelsen
Sent: Tuesday, October 23, 2018 4:22 PM
To: ATG WWW Public Records Requests
Subject: Request for public records

AGO Staff,

In accordance with Chapter 42.56 RCW, I’d like to submit the following request for public records on behalf of the Freedom Foundation. Specifically, I am seeking:

1. A copy of the common interest agreement involving (1) the Washington Office of the Attorney General, (2) the Oregon Department of Justice, (3) the California Department of Justice, (4) the Service Employees International Union (SEIU), (5) the American Federation of State, County and Municipal Employees (AFSCME), and (6) Altshuler Berzon LLP. For clarity, I am seeking a copy of the common interest agreement referenced in the attached emails.

It is my preference to receive any responsive documents electronically. Please do not hesitate to let me know if you would like me to clarify any aspect of this request.

Best,

Maxford Nelsen
Director of Labor Policy | Freedom Foundation
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