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

ALYNE FORTGANG,

Plaintiff,

v.

WOODLAND PARK ZOO a/k/a  
WOODLAND PARK ZOOLOGICAL  
SOCIETY,

Defendant.

**Case No.:**

**COMPLAINT FOR VIOLATIONS OF  
THE WASHINGTON PUBLIC  
RECORDS ACT**

COMES NOW Plaintiff Alyne Fortgang, by and through her attorneys of record, and hereby complains and alleges that the Woodland Park Zoo a/k/a Woodland Park Zoological Society is in violation of the Washington State Public Records Act, RCW 42.56 *et seq.* (“PRA”), by refusing to disclose to the public information relating to use of taxpayer dollars and certain public documents relating to the health and welfare of the elephants held in captivity at the Woodland Park Zoo.

**PARTIES**

1. Plaintiff Alyne Fortgang is a single woman and a resident of the City of Seattle, in King County, in the state of Washington. Ms. Fortgang pays taxes and fees to the City of Seattle, which is used in part to fund the Zoo.



1           9.       The City of Seattle retains ownership and control over the property and facilities  
2 of the Zoo. Ownership of Zoo animals rests with the Zoo, but reverts to the City of Seattle upon  
3 expiration or termination of the Operating Agreement. The Operating Agreement may be  
4 terminated if the Zoo fails to care for the Zoo animals in accordance with federal, state, and local  
5 laws and regulations.

6           10.       The Operating Agreement requires the Zoo to provide a formal annual report and  
7 to present an annual plan and monthly reports to the superintendent of the City of Seattle's  
8 Department of Parks and Recreation, to provide quarterly supplementary reports to the City of  
9 Seattle's Board of Park Commissioners, and to provide annual reports to the City of Seattle's  
10 Parks and Green Spaces Levy Oversight Committee. The superintendent of the City of Seattle's  
11 Department of Parks may, upon request, inspect the Zoo records regarding the veterinary  
12 management and treatment of Zoo animals in order to ensure that Zoo animals are receiving  
13 proper care and treatment.

14           11.       On August 28, 2013, the Zoo released its Draft Expert Review Panel "Report of  
15 the Expert Panel charged to examine the medical health, behavioral and social health, and  
16 reproductive program of elephants at the Woodland Park Zoo in Seattle" ("Report").

17           12.       On November 6, 2013, Plaintiff submitted a public records request to the Zoo that  
18 is the focus of the instant complaint. The request asked eight specific questions. Among other  
19 things, the public records request sought information on use of taxpayer dollars by the Zoo for  
20 the elephants, as well as information and background documents used by the Zoo for its Report.

21           13.       On November 13, 2013, the Zoo contacted Plaintiff in writing acknowledging  
22 receipt of the public records request and promising a response by December 20, 2013.

23           14.       On December 20, 2013, the Zoo responded to Plaintiff's public records request.

24           15.       Among other things, the Zoo responded by stating that the Zoo is "a private  
25 company" but was "responding to your questions despite any legal obligation to do so." The  
26 Zoo's response addressed each of the specific requests; however, the Zoo only provided  
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1 responses to two. The Zoo indicated that, as to the other requested public records, “The zoo  
2 considers this information not subject to a public records request.”

3 16. To date, the Zoo has still not provided the other requested public records.

4 17. Plaintiff has been prejudiced and continues to be prejudiced as a result of the  
5 Zoo’s failure to comply with the PRA.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **(The Zoo is Subject to the PRA)**

9 18. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

10 19. The PRA applies to all state agencies and all local agencies, as well as “hybrid”  
11 organizations with both private and public attributes which are the “functional equivalent” of  
12 public agencies.

13 20. The Zoo qualifies as a “hybrid” organization that is subject to the PRA as it has  
14 both private and public attributes which make it the “functional equivalent” of a public agency  
15 because it performs a governmental activity, taxpayer funding is essential to its existence, there  
16 is robust oversight of the Zoo by the City of Seattle, and the Zoo exists solely for the public  
17 purpose of operating the Zoo pursuant to the Operating Agreement.

18 21. The Zoo partially responded to Plaintiff’s public records request.

19 22. The Zoo complied with the PRA requirement of acknowledging receipt of the  
20 Plaintiff’s public records request within five days.

21 23. The Zoo should be estopped from claiming it is not subject to the PRA based on  
22 its past and continuing practice of partial compliance with PRA requests.

23 **SECOND CAUSE OF ACTION**

24 **(Failure to Produce Records in Violation of the PRA)**

25 24. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

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1 25. The PRA requires an agency to make requested public records promptly available  
2 for inspection and copying unless the records as are exempt from disclosure in whole or in part.  
3 RCW 42.56.070(1); 42.56.080.

4 26. The Zoo has violated the PRA by refusing the following requests from Plaintiff:

- 5 a. Records used to determine the average time elephants at the Zoo spend in  
6 the barn;
- 7 b. Records used to determine the annual cost of keeping elephants at the Zoo;
- 8 c. Records reflecting the time that elephant keepers staff the barn;
- 9 d. Records relating to the \$480,000 spent by the Zoo responding to criticism  
10 of the Zoo's elephant program;
- 11 e. Records reflecting costs of the Zoo elephant Task Force to date;
- 12 f. Records reflecting the agreement between the Zoo and a third party  
13 relating to services provided on the Task Force and Elephant Review Panel; and
- 14 g. Records relating to polling data referenced by the Zoo in a recent news  
15 article.

16 **THIRD CAUSE OF ACTION**

17 **(Withholding Public Records Under Improper Exemptions)**

18 27. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

19 28. The Zoo has responded to Plaintiff's public records request by asserting that  
20 certain records are "classified personnel records" or otherwise represent "contracts with  
21 vendors", "third-party contracts", and "a business arrangement" that are "not subject to a public  
22 disclosure request."

23 29. The Zoo has erroneously interpreted the PRA exemptions located in RCW 42.56.

24 30. The Zoo has wrongfully withheld and will continue to wrongfully withhold public  
25 records that should otherwise be made available to Plaintiff.

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1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiff prays for the following relief:

3 A. A declaration that the Zoo is subject to the PRA;

4 B. A declaration that the Zoo has violated the PRA by failing to produce public

5 records;

6 C. An order enjoining the Zoo to produce all of the records requested by Plaintiff;

7 D. An award of all costs and reasonable attorneys' fees incurred in connection with  
8 this action pursuant to RCW 42.56.550(4);

9 E. An award of a statutory penalty for each day Defendant was in violation of the  
10 PRA at the maximum end of the penalty range set forth in RCW 42.56.550(4); and

11 F. Such other and further relief as the Court deems appropriate.

12 DATED this 11th day of March, 2014.

13 **Kilpatrick, Townsend & Stockton LLP**

14  
15 By: \_\_\_\_\_

16 Rob Roy Smith, WSBA # 33798  
17 [rrsmith@kilpatricktownsend.com](mailto:rrsmith@kilpatricktownsend.com)  
18 Christopher T. Varas, WSBA #32875  
19 [cvaras@kilpatricktownsend.com](mailto:cvaras@kilpatricktownsend.com)  
20 1420 Fifth Avenue, Suite 4400  
21 Seattle, WA 98101  
22 Telephone: (206) 467-9600  
23 Facsimile: (206) 623-6793

24 *Attorneys for Plaintiff*