



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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April 24, 2019

Delivered electronically to "jcornejo@mcclatchy.com"

Subject: PDC Case 47514

Dear The Olympian:

Below is a copy of an electronic letter sent to Andrew Saturn concerning a complaint filed with the Public Disclosure Commission (PDC).

As noted below to Andrew Saturn, the PDC will not be conducting a more formal investigation into these allegations or taking further enforcement action in this matter.

PDC staff is reminding The Olympian about the importance of making commercial advertiser documents and books of account open for public inspection during normal business hours for three years following the election to which the records pertain, as required pursuant to RCW 42.17A.345. This information can be requested electronically or in person during normal business hours. Additional information regarding this requirement can be found in [WAC 390-18-050](#). PDC staff expects that The Olympian will make such information available to the public in future years in accordance with PDC laws and rules.

If you have questions, you may contact Tabatha Blacksmith at 360-586-8929, toll-free at 1-877-601-2828 or by e-mail at pdc@pdc.wa.gov

Sincerely,

/s _____
Tabatha Blacksmith
Compliance Coordinator

Endorsed by,

/s _____
Barbara Sandahl
Deputy Director
For Peter Lavallee
Executive Director



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April 24, 2019

Delivered electronically to "saturn@gmail.com"

Subject: Complaint regarding The Olympian, PDC Case 47514

Dear Andrew Saturn:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on February 18, 2019. Your complaint alleged that The Olympian (the "Respondent") may have violated RCW 42.17A.345, .320 & .335 by failing to allow public inspection of commercial advertiser records & disclose sponsor identification on political advertisements, and by publishing false statements regarding a candidate.

PDC staff reviewed your allegations, the applicable statutes, rules, and the response provided by the Respondent to determine whether it supports a finding of a violation. Based on staff's review, we found the following:

- The Respondent is a newspaper that sells the service of communicating messages or producing material for broadcast or distribution to the general public for the purpose of appealing for votes or financial or other support to an election campaign (political advertising). Based on this activity, the Respondent is a "commercial advertiser" as defined under RCW 42.17A.005(11) & WAC 390-18-050.
- RCW 42.17A.345 & WAC 390-18-050 require commercial advertisers to make their documents and books of account open for public inspection during normal business hours for three years following the election to which the records pertain. Pursuant to RCW 42.17A.345, the documents and books of account shall specify 1) the names and addresses of persons from whom it accepted political advertising or electioneering communications; 2) the exact nature and extent of the services rendered; and 3) the total cost and the manner of payment for the services. WAC 390-18-050(3) states that commercial advertisers can provide such information to the requester in person during normal business hours or electronically (if requested electronically) by email or online publication.
- In October of 2018, the Respondent published two advertisements for Linda Oosterman's campaign: A "strip" ad that ran on 10/23/18 and an online ad that ran on 10/15/18 and 10/29/18. The cost for the ads totaled \$1,920 and these expenditures were timely reported to the PDC as follows:
 - \$1,420 paid to "The Olympia" (typographical error in vendor name) for "advertising" on 10/9/18 (reports 100865943 & 100866432); and
 - \$500 of the \$1,088.51 paid to "Percival Consulting Group" for "advertising" on 11/7/18 (report 100877021).

- Both the “strip” and online advertisements identified the sponsor (Re-Elect Linda Oosterman) by name and included the sponsor’s address as required pursuant to RCW 42.17A.320.
- On October 19, 2018, the Complainant sent two emails to Rolf Boone, an employee of the Respondent, requesting information regarding advertising purchased by “Linda” (no last name provided). In his first email, the Complainant asked if the ads placed by Linda were online or print ads and expressed interest in buying some opposition ads. In his second email, the Complainant asked Mr. Boone to forward his request “to the most appropriate person” and indicated he could be reached via email. The Complainant indicates he never received responses to these emails. The Complainant indicated that he also sent a message to The Olympian via its web portal on October 20, 2018 but did not receive a response.
- On February 12, 2019, the Complainant sent an email to Dusti Demarest, an employee of Respondent, reminding the Respondent that Washington State law allows citizens to request commercial advertiser records. In the February 12 email, the Complainant requested details regarding “the 10/9/18 expenditure of \$1,420 for Linda Oosterman’s campaign” to include “related contracts, payments, campaign communications, final printed/displayed ad(s) as well as any revisions, variations, etc.” The Complainant informed Mr. Demarest that he was unable to locate the name of the individual at The Olympian who is responsible for handling requests for commercial advertiser records and asked that his request be forwarded to “the person responsible.” The Complainant states that he never received a response to this email.
- On March 21, 2019, the Respondent indicated to the PDC its belief that it did not violate RCW 42.17A.345 because requests for commercial advertiser records sent “to an employee by email are not a proper means of obtaining public inspection” and that “such requests need to be clearly and explicitly made in person at the Newspaper’s office.” The Respondent also noted that the Complainant’s requests were directed at two employees who are not responsible for advertisements. However, neither RCW 42.17A.345 nor WAC 390-18-050 prescribe how or where requests for commercial advertiser records must be made. It should be noted that WAC 390-18-050 allows the public to request that records be sent to them electronically (e.g. by email) so it is not unreasonable for a member of the public to assume that a request for records can be made electronically. The situation was further complicated by the Respondent’s failure to 1) respond to the Complainant’s multiple requests for records; 2) advise the Complainant regarding its preferred method of receiving such requests; and 3) post clear guidance or contact information on its website concerning such requests.
- In its March 21, 2019 response, the Respondent also stated that the Complainant requested information beyond the scope of what RCW 42.17A.345 requires, specifically “campaign communications (an undefined term),” ad “revisions, variations, etc.,” and “the final printed/displayed ads.” WAC 390-18-050(5) specifies the additional records that must be maintained and available for public inspection, including, but not limited to, payment information, a copy of the final ad, a description of the major work components or tasks undertaken to provide the service, and records of additional services provided (e.g. design, layout). Therefore, while some elements of the Complainant’s requests may have exceeded the scope of RCW 42.17A.345 and WAC 390-18-050(5), other elements of the request were within the scope of the requirement and that information should have timely been provided to the Respondent (e.g. the customer’s name and address, the exact nature and extent of services rendered, the total cost and manner of payment). Based on the information provided, it appears that the Respondent did not attempt to fulfill any part of the request or contact the Complainant to discuss or clarify his request.
- In its response to the PDC, the Respondent indicated that the Complainant did not provide the last name of the person for whom he was requesting records until February 12, 2019. While the Complainant’s failure to provide the full name of the customer for whom records were being requested understandably prevented the Respondent from fulfilling the Complainant’s request

right away, it appears that no attempt was made to contact the Complainant to obtain the missing last name. Furthermore, the request for records was not later fulfilled, once the customer's full name was known.

- The Respondent's reply also disputes that it is statutorily required to provide "drafts or amendments to advertisements that were not run or details of advertising to be run by a candidate prior to it being run or the service provided." Pursuant to WAC 390-18-050(4), information regarding political advertising or electioneering communications must be made available within 24 hours its distribution or broadcast and within 24 hours of any changes or updates. Therefore, while the Respondent was not required to provide records pertaining to ads that did not run, it should have provided records regarding ads that were distributed or broadcast (and any updates or changes thereto) related to Linda Oosterman's October 9, 2018 expenditure.
- The Complainant alleged that three editorial articles published by the Respondent, dated October 27, 2018, October 30, 2018 and November 9, 2018 respectively, contained false statements about him and thereby violated RCW 42.17A.335. The Complainant provided the Respondent with counter evidence, disputing the statements, but did not receive a reply and no corrections were made.
- Pursuant to RCW 42.17A.335, it is violation for a person to sponsor, with actual malice, a statement constituting libel or defamation, including political advertising or an electioneering communication, that contains a false statement of material fact about a candidate for public office. Any violation of this section shall be proven by clear and convincing evidence.
- WAC 390-05-290(4) states that "political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the space or time is not normally required."
- RCW 42.17A.005(22)(b)(iii) defines "electioneering communication" to exclude "a news item, feature, commentary, or editorial in a regularly scheduled news medium that is (A) of primary interest to the general public; (B) in a news medium controlled by a person whose business is that news medium; and (C) not a news medium controlled by a candidate or a political committee."
- The editorial articles published by the Respondent do not fit the aforementioned definitions of "political advertising" and/or "electioneering communications" and, subsequently, do not meet the criteria for libel or defamation set forth in RCW RCW 42.17A.335, which concerns false statements made in political advertising and electioneering communications.
- The Respondent provided the requested commercial advertiser records regarding Linda Oosterman's October 9, 2018 expenditure to the Complainant by email on April 22, 2019.

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1).

PDC staff is reminding The Olympian about the importance of making commercial advertiser documents and books of account open for public inspection during normal business hours for three years following the election to which the records pertain.

If you have questions, you may contact Tabatha Blacksmith at 1-360-586-8929, toll-free at 1-877-601-2828, or by e-mail at pdc@pdc.wa.gov

Sincerely,

/s _____
Tabatha Blacksmith
Compliance Coordinator

Endorsed by,

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Barbara Sandahl
Deputy Director
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cc: The Olympian