



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

March 17, 2023

Delivered electronically to "rwf@atg.wa.gov"

Subject: PDC Case 119958

Dear Attorney General Ferguson:

Enclosed is a copy of an electronic letter sent to Wayne Asmussen concerning a complaint filed with the Public Disclosure Commission (PDC).

As noted in the enclosed letter to Wayne Asmussen, the PDC has dismissed this matter in accordance with RCW 42.17A.755(1) and will not be conducting a more formal investigation into these allegations or taking further enforcement action in this matter.

However, PDC staff is reminding you about the importance of exercising caution and restraint when advocating the position of the agency concerning its legislative priorities to the public, to ensure there is no implied "call to action," especially when communicating with the public through the use of social media platforms. For example, publicizing details about when an AGO bill is up for hearing could be read as an invitation/solicitation for the public to engage lawmakers at that hearing.

If you have questions, you may contact Phil Stutzman at 360-664-8853, toll-free at 1-877-601-2828, or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,
Electronically Signed Philip E. Stutzman
Phil Stutzman
Compliance Officer

Endorsed by,
Electronically Signed Kim Bradford
Kim Bradford
Deputy Director
For Peter Frey Lavalley
Executive Director



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Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

March 17, 2023

Delivered electronically to "waynea@509x3.com"

Subject: Complaint regarding Bob Ferguson (Washington State Attorney General), PDC Case 119958

Dear Wayne Asmussen:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on December 22, 2022. Your complaint alleged that the Office of the Attorney General may have violated RCW 42.17A.635(2) by engaging in "indirect lobbying" of the legislature by providing information about its preferred legislation to the public. Indirect lobbying is prohibited for public agencies but reportable as "grassroots lobbying" by others when certain thresholds are met, as defined by RCW 42.17A.640.

PDC staff reviewed your allegations; the applicable statutes, rules, and reporting requirements; the responses provided by the Attorney General's Office (AGO); the applicable PDC reports filed by Respondent; and other relevant information, to determine whether the record supports a finding of one or more violations.

Based on staff's review, we found the following:

- The complaint alleged, during the 2021 and 2022 legislative sessions, the Attorney General's Office used its facilities for the purpose of lobbying the public to support the professed legislative priorities of Attorney General Bob Ferguson. The complaint alleged this lobbying effort included (a) creating "one-pagers" urging support for specific bills by AGO staff; (b) publication of these "one-pagers" on the AGO's website; and (c) tweets by AGO staff lobbying for passage of these specific bills. The complaint also alleged the cost of this lobbying effort was not reported by the agency on its quarterly L-5 public agency lobbying reports.
- The complaint included links to the AGO's Legislative Agenda for 2021 and 2022; the AGO's L-5 reports for Quarter 1 of 2021 and 2022; Screenshots of AGO tweets; and a collection of "one-pagers" from the AGO's website in 2021 and 2022 listing its Legislative Priorities in support of various pieces of proposed legislation.

Response from Attorney General's Office:

- Kristin Beneski responded on behalf of the Attorney General's Office, stating, in accordance with RCW 42.17A.635(2) and (3), it is expressly authorized, like all state agencies, to provide

information to and communicate with legislators on "matters of official agency business," to request legislative action, and to advocate the agency's official position.

- Ms. Beneski stated former PDC legal counsel Nancy Krier provided a training to the Attorney General's legislative team on grassroots lobbying. Ms. Beneski said that training has been handed down and the AGO continues to follow Ms. Krier's recommended best practices. Ms. Beneski also stated AGO staff follows the longtime practices of former administrations and of other executive agencies.
- Ms. Beneski stated the AGO created and used "one-pagers" to communicate with legislators about agency-request legislation, in accordance with RCW 42.17A.635(2) and (3). Ms. Beneski stated the agency's decision to disclose these "one-pagers" to the public was a means of informing the public of the agency's work. She said the same was true of the agency's publication of its agency-request legislation on a page of the agency's website and of the agency's social media posts. Ms. Beneski stated these activities were designed to inform the public of the agency's activities, not to engage in prohibited indirect lobbying.

One-pagers

- Ms. Beneski stated the AGO prepares "one-pagers" knowing that bill sponsors and other members of the legislature will typically request them. She said the AGO makes these "one-pagers" accessible to the public in the interest of transparency, but their essential purpose is to assist with legislative briefings.
- Ms. Beneski said if the PDC were to issue guidance directing agencies to not make legislative briefing document readily accessible to the public, the AGO would comply with that guidance.

Webpage

- Ms. Beneski stated the AGO hosts a "Legislative Agenda" webpage that is one of hundreds of webpages hosted on the agency's website that lists all of its agency-request legislation for a given year in a single place. The webpage includes links to the "one-pagers."
- Ms. Beneski stated the primary purpose of the "Legislative Agenda" page is not to influence legislation, but to provide transparency to the public regarding the AGO's legislative priorities. She noted the webpage does not ask the public sign a petition, contact legislators, or take any action to influence legislation.
- Ms. Beneski pointed out that prior administrations have posted information about their legislative priorities and that the current AGO website includes webpages listing former Attorney General Rob McKenna's 2007, 2008, 2009, and 2010 legislative priorities and agendas.
- Ms. Beneski also stated this practice is not limited to the Attorney General's Office, noting that the Commissioner of Public Lands and the Office of the Superintendent of Public Instruction currently list their 2023 Legislative Priorities on their respective websites.

Social Media

- Ms. Beneski noted the complaint takes issue with five tweets (public messages on the social-media service Twitter) by the Attorney General's Office related to agency-request legislation concerning large-capacity magazines and hospital-provided charity care. Ms. Beneski stated the primary purpose of the tweets was to inform the public about the agency-request legislation, including why the agency was requesting these bills. She stated that, for the most part, these tweets reiterated the same information provided to legislators in the one-pagers, but in a different format that might reach a different or broader segment of the public.
- Ms. Beneski cited examples of other state agencies or officials placing similar social media posts in support of their agency-request legislation, including the Commissioner of Public Lands, the State Treasurer, and the Governor.

- Ms. Beneski noted none of the AGO's tweets included a "call to action" to influence legislation, but simply informed the public of the agency's position with respect to its agency-request legislation.

Training Materials Concerning Lobbying

- The Attorney General's Office provides guidelines to its employees concerning lobbying activities. The guidelines include the definition of lobbying, examples of reportable lobbying activities, and examples of non-reportable activities. The guidelines also explain what expenses must be reported, and other information that must be tracked for the quarterly L-5 reports.
- The guidelines also include a caution when notifying stakeholders about a hearing, emphasizing the need to not ask them to lobby or attend a hearing on behalf of the agency, noting such activity would be prohibited lobbying activity.
- The Attorney General's Office also has an Operations Manual for its Policy, Legislative Affairs and External Relations Unit. It includes two sections on lobbying, providing the PDC definition of lobbying, and detailing what is required for quarterly reporting on the L-5 report.

No evidence was found that the Attorney General's Office issued any "calls to action" to influence legislation when providing information to the public about its legislative priorities and agency-request legislation.

Public agencies are prohibited from all lobbying, as lobbying is defined in RCW 42.17A.005(34), unless explicitly allowed by RCW 42.17A.635(2) and (3). Public agency lobbying, including activities referred to as "grassroots/indirect lobbying," not explicitly allowed by this statute would constitute a violation of RCW 42.17A.635(2) and (3) regardless of the dollar value of the expenditure.

Based on these findings, staff has determined that in this instance, the creation and use of "one-pagers" to provide information to legislators and keep the public informed of the AGO's legislative priorities, dedicating a Legislative Priorities webpage on the agency's website, and use of social media to keep the public informed of the AGO's legislative priorities, do not amount to a finding of a violation warranting further investigation.

However, staff is reminding the Attorney General's Office about the importance of exercising caution and restraint when advocating the position of the agency concerning its legislative priorities to the public, to ensure there is no implied "call to action," especially when communicating with the public through the use of social media platforms. For example, publicizing details about when an AGO bill is up for hearing could be read as an invitation/solicitation for the public to engage lawmakers at that hearing.

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).

If you have questions, you may contact Phil Stutzman at 360-664-8853, toll-free at 1-877-601-2828, or by e-mail at pdc@pdc.wa.gov.

Sincerely,
Electronically Signed Philip E. Stutzman
Phil Stutzman
Compliance Officer

Endorsed by,

Electronically Signed Kim Bradford

Kim Bradford
Deputy Director
For Peter Frey Lavallee
Executive Director

cc: Bob Ferguson (Washington State Attorney General)