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January 23, 2023

*Via email*

Phil Stutzman  
Compliance Officer  
Washington Public Disclosure Commission  
[pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov)

**Re: Response to Complaint, PDC Case Number 119958**

Mr. Stutzman:

Having reviewed the complaint submitted by Mr. Asmussen in the above-referenced matter, the Attorney General's Office is pleased to respond.

Mr. Asmussen's complaint includes two allegations. First, he asserts that the Attorney General's Office violated RCW 42.17A.635(2) and (3) and engaged in "grassroots lobbying" in 2021 and 2022 by:

- Creating "one-pagers" summarizing agency-request legislation, which are used to brief legislators on these bills;
- Publishing a page on the agency website that lists the agency-request bills along with a short description of each, and includes links to the one-pagers; and
- Making social media posts that share information about agency-request legislation, such as relevant articles, statistics, and newspaper editorials.

Second, Mr. Asmussen asserts that the agency improperly omitted the staff time utilized to create and publish these materials in its quarterly reporting of agency lobbying activity.

Both of these allegations lack merit. The Attorney General's Office—like all state agencies—is expressly authorized 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. RCW 42.17A.635(2), (3). The Office's decision to inform the public about these activities serves the interests of public transparency and accountability, requires *de minimis* use

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of agency resources, and is fully consistent with state law. The Attorney General's Office complies with all laws and regulations regarding agency lobbying.

Several years ago, former PDC legal counsel Nancy Krier provided a training to the Attorney General's legislative team on grassroots lobbying. That training has been handed down, and the Attorney General's Office continues to follow Ms. Krier's recommended best practices.

We also follow longtime practices of the Attorney General's Office going back multiple administrations and common practices of other executive agencies, recognizing that we have a duty of transparency to Washingtonians, who have a right to know what their government is doing on their behalf.

### **Overview of Relevant Law**

"Lobbying" means attempting to influence the passage or defeat of any Washington state legislation. RCW 42.17A.005(34).

Generally, public funds may not be used directly or indirectly for lobbying. RCW 42.17A.635(2). "However," this general restriction "does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties." *Id.* Furthermore, any state agency "may expend public funds for lobbying" in the form of "(a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency." RCW 42.17A.635(3). In short, state agencies are expressly authorized by law to use public funds to provide information and advocate the agency's positions and interests to the legislature.

A "grass roots lobbying campaign" entails the expenditure of more than \$1,000 within a three-month period or \$500 within a one-month period "in presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation[.]" RCW 42.17A.640(1). It follows that disclosures to the public that are *not* primarily for the purpose of influencing legislation do not constitute grassroots lobbying.

Reporting requirements applicable to the legislative activities of state agencies and elected officials are governed by RCW 42.17A.635(5). This statute requires agencies to report, among other information, a "listing of expenditures incurred by the agency for lobbying including but not limited to travel, consultant or other special contractual services, and brochures and other publications, the principal purpose of which is to influence legislation[.]" RCW

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42.17A.635(5)(c). Various activities are expressly excluded from the definition of “lobbying” for purposes of the reporting requirements, including preparing written communications, reports to the legislature, and agency policy positions. RCW 42.17A.635(5)(d)(ii), (v)(A), (v)(C).

Here, the Attorney General’s Office’s creation of “one-pagers” for legislators is well within its legal authority under RCW 42.17A.635(2) and (3), as these documents are communications with legislators about agency-request legislation. The agency’s decision to disclose these one-pagers to the public is not a “grass roots lobbying campaign,” but a (virtually cost-free) means of informing the public of the agency’s work. The same is true of the publication of agency-request legislation on a page of the agency’s website and of the agency’s social media posts: these activities are designed to inform the public, and involve *de minimis* staff time and no direct costs.

### **Response to Complaint**

#### **One-pagers**

The PDC has historically recognized that written briefing materials are often necessary to assist oral briefings of legislators, which is a permissible use of agency resources. *See* RCW 42.17A.635(2), (3). The Attorney General’s Office prepares these one-pagers knowing that bill sponsors and other members of the legislature will invariably request them. The Office chooses to make these one-pagers accessible to the public in the interest of transparency, but their essential purpose is to assist with legislative briefings. The time it takes for staff to post the one-pagers on the Attorney General’s Office’s existing website is *de minimis*, taking no more than a few minutes.

Mr. Asmussen’s allegation of “grassroots lobbying” is fundamentally a complaint about the *public* posting of the one-pagers. *See* RCW 42.17A.640(1) (“grass roots lobbying” entails “presenting a program to the public”). If the PDC were to issue guidance directing agencies not to make legislative briefing documents readily accessible to the public, our agency would of course comply with that guidance. However, the Attorney General’s Office believes that it serves the public interest to know what our agency shares with legislators in meetings regarding our legislative priorities—and that this information should be broadly accessible to the public (not just to individuals who affirmatively make public-records requests).

Furthermore, with regard to reporting requirements, the law explicitly exempts the “preparation of written correspondence” (like the one-pagers) from the definition of “lobbying” for purposes of agency reporting requirements. RCW 42.17A.635(5)(d)(v)(A) (“For purposes of this subsection [requiring quarterly reporting], “lobbying” does not include ... preparation of written correspondence”); *see also* Pub. Discl. Comm’n, *Lobbying Activities*, <https://www.pdc.wa.gov/registration-reporting/lobbying/public-agency-lobbying/lobbying->

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[activities](#) (listing the “preparation of written correspondence” among “Activities That Are Not Lobbying”).

In the years prior to the COVID-19 pandemic, the Attorney General’s Office would estimate and report the costs associated with printing the one-pagers for legislators. During the virtual legislative session in 2021 and the hybrid session in 2022, the agency did not accrue these printing costs.

### **Webpage**

The Attorney General’s Office hosts a webpage—not an entire website—that lists all of its agency-request legislation for a given year in a single place. See [2021 Legislative Agenda](#); [2022 Legislative Agenda](#). The annual “Legislative Agenda” page is just one of hundreds of webpages hosted on the agency’s website, <https://www.atg.wa.gov>. Publishing this page (which includes links to the “one-pagers” discussed above) requires *de minimis* staff resources well below the reporting threshold for agency lobbying. It does not involve any direct costs.

The primary purpose of the “Legislative Agenda” page is not to influence legislation, but to provide transparency to the public regarding our agency’s legislative priorities. The page is purely informative: it does not ask the public to sign a petition, contact legislators, or take any action to influence legislation. This is consistent with the hundreds of other pages on the agency website, which are also primarily designed to inform the public; they include such items as legal guidance documents, consumer resources, complaint forms, legal division descriptions, press releases, agency reports, task forces, and the like—all of which provide Washingtonians with insight into the work of the Attorney General’s Office.

Publishing a list of legislative priorities is a longstanding practice in the Attorney General’s Office going back at least to the previous administration. For example, the agency website still includes webpages listing Attorney General Rob McKenna’s [2007](#), [2008](#), [2009](#), and [2010](#) legislative priorities and agendas.

And this common practice is not limited to the Attorney General’s Office. For example, the Department of Natural Resources’ website includes a webpage listing the Commissioner of Public Lands’ [2023 Legislative Priorities](#). And the Office of the Superintendent of Public Instruction has a similar page on its website for [2023 Legislative Priorities](#).

Tracking the relevant statutory language, the PDC’s guidance explains that grassroots lobbying is “a program *addressed to the general public, a substantial portion of which is intended, designed or calculated primarily to influence state legislation.*” Pub. Discl. Comm’n, *Grassroots Lobbying*, <https://www.pdc.wa.gov/registration-reporting/lobbying/grassroots-lobbying> (referencing language found in RCW 42.17A.640(1)). The PDC observes that “[t]ypical

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grassroots lobbying expenditures include ... creating or maintaining websites” for the purpose of influencing legislation. *Id.* But a single webpage that merely informs the public of the Attorney General’s Office’s legislative agenda does not fall within such “lobbying expenditures.” Adding a single webpage to the agency website does not require the use of public resources (aside from *de minimis* staff time), nor does the legislative agenda webpage seek to “influence state legislation” by asking for public action, such as signing a petition, contacting a legislator, or testifying.

To be sure, if the PDC were to revise its guidance to prohibit agencies from posting their legislative agendas on public-facing webpages, we would of course take down these pages. However, the Attorney General’s Office believes that it serves the public interest to permit agencies to disclose their legislative priorities to the public—particularly as to agencies, like ours, headed by officials who are directly elected by the public. These agencies should remain accountable to a well-informed public.

### **Social Media**

Mr. Asmussen’s complaint points to five tweets by the Attorney General’s Office related to agency-request legislation on large-capacity magazines and hospital-provided charity care. These five tweets do not constitute a grassroots lobbying campaign—rather, like the materials discussed above, their primary purpose was to inform the public about agency-request legislation, including why the agency was requesting these bills. For the most part, these tweets simply reiterated the same information provided to legislators in the one-pagers, just in a different format (a social media posting) that might reach a different or broader segment of the public.

For example, one tweet informs the public of studies demonstrating that banning the sale of large-capacity magazines can save lives—the same information provided to legislators in the one-pager on this bill. Other tweets about this bill respond to criticism about its constitutionality by explaining that courts of appeals had unanimously upheld similar legislation in other states—again, the same information provided in the one-pager. One of the tweets merely shares a link to a Seattle Times editorial making the same point. A single tweet about the charity care bill likewise reiterates information from the one-pager, pointing out that expanding hospitals’ charity-care obligations will ease financial stress on low-income families caused by hospital bills. Finally, a fifth tweet simply quotes the Attorney General’s public statement urging the House of Representatives to send the large-capacity magazine bill to the Governor. These informative tweets regarding the Attorney General’s Office’s positions on legislation the agency had requested are lawful, appropriate, and serve the public interest.

Recent examples of similar social media posts about other state agencies’ support for their agency-request legislation abound. For example, the Commissioner of Public Lands has tweeted

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about supporting [HB 1895/SB 5633](#), [SB 5598](#), and [SB 5619](#); the State Treasurer has tweeted about supporting [SB 5125](#); and the Governor has tweeted about supporting [SJR 8202](#). It is neither surprising nor problematic for state agencies and officials to utilize social media to inform the public—and the fact that social media posts are directed to the public does not somehow transform them into “grassroots lobbying” absent any indicia of a lobbying campaign.

None of the AGO’s tweets entailed any direct use of public resources, as Twitter accounts cost nothing to create and use. The time it takes agency staff to post a tweet is *de minimis*, and certainly far below the reporting threshold. Unlike the examples of “grassroots lobbying” included in the PDC’s guidance, these tweets did not entail any “expenditures” such as those associated with purchasing advertisements, hiring dedicated lobbying staff, or conducting online activities that entail costs such as “purchasing e-mail lists” or paying hosting fees for an entire website. See Pub. Discl. Comm’n, *Grassroots Lobbying*, <https://www.pdc.wa.gov/registration-reporting/lobbying/grassroots-lobbying>. Indeed, social media posts of any kind are not among the activities listed by the PDC as examples of “grassroots lobbying”—which makes sense, since most social media sites are free to use, and they help make state agencies more transparent and accessible to the public.

Moreover, like the “Legislative Agenda” webpage, the tweets do not call on the public to take any action to influence legislation. They simply inform the public of the agency’s position with regard to agency-request legislation. Again, if the PDC were to revise its guidance to prohibit posting on social media about agency-request legislation, the Office would refrain from communicating with the public in this manner in the future. But again, the Attorney General’s Office believes it serves the interests of public transparency and accountability to the public to publicize the agency’s activities and positions regarding agency-request legislation.

\* \* \*

We trust this response provides the PDC with the information needed to resolve Mr. Asmussen’s complaint. Should you require any additional information or explanation, please do not hesitate to contact me directly.

Sincerely,



KRISTIN BENESKI  
First Assistant Attorney General

KB/kw