

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS**

8	RORY BIALOSTOSKY, an individual in Pro Se,	)	CASE NO.: 19CV11216
9)	
10	Plaintiff,	)	AMENDED COMPLAINT FOR
11	v.	)	DECLARATORY AND INJUNCTIVE
12		)	RELIEF PURSUANT TO ORS 192.427 &
13	TERI CUMMINGS, also known as THERESA CUMMINGS, in her official capacity as a West Linn City Councilor,	)	ORS 192.431
14		)	FEE AUTHORITY: ORS 21.135(1), (2)(F)
15	Defendant.	)	(\$265)
16		)	CLAIM NOT SUBJECT TO
17		)	MANDATORY ARBITRATION
18		)	FINDINGS OF FACT AND
19		)	CONCLUSIONS OF LAW REQUESTED
20		)	PURSUANT TO ORCP 62

For his amended Complaint, allowed via written consent obtained from Defendant's
counsel, Plaintiff alleges:

PARTIES

1.

At all times relevant to this matter, Plaintiff (hereafter "Mr. Bialostosky") has been and
is currently a resident of West Linn, Oregon in Clackamas County.

2.

1 specifically the Inspection of Public Records statutes found in ORS 192.311-192.431. Ms.
2 Cummings' notes and notebooks as described in Paragraph 4 are public records under ORS
3 192.311. As a result, Mr. Bialostosky and other members of the community have a legal right
4 under ORS 192.314 to inspect these records.
5

6 6.

7 On January 29th, 2019, Mr. Bialostosky submitted a public records request to the City
8 requesting to inspect the handwritten notes and specifically the notebooks that Ms.
9 Cummings has written in while acting as a City Councilor. The City Recorder, Kathy
10 Mollusky, informed Mr. Bialostosky via email that the City was not the custodian of the
11 records requested by Mr. Bialostosky, but that she had asked Ms. Cummings to bring in the
12 notebooks to allow Mr. Bialostosky to inspect them. Ms. Cummings refused to turn her
13 notebooks over to the City Recorder.
14
15

16 7.

17 Subsequently, after a monthlong delay and review, the City Attorney informed Mr.
18 Bialostosky that it was not the custodian of the requested records, and that therefore its
19 response to Mr. Bialostosky's request was complete. Thus, Ms. Cummings is established as
20 the custodian of the notes and notebooks which she took and maintained in her official
21 capacity.
22

23 8.

24 Mr. Bialostosky then turned to his only option—a request to inspect the records
25 sought made directly to Ms. Cummings pursuant to ORS Chapter 192, also known as an
26

1 inspection petition. Mr. Bialostosky sent a public records request to Ms. Cummings via email
2 and mail on February 26th, 2019. A true and correct copy of this request, and the email
3 accompanying it, are attached hereto as Exhibit 1.
4

5 9.

6 ORS 192.418, titled "Effect of failure of Attorney General, district attorney or **elected**
7 **official** to take timely action on inspection petition," gave Ms. Cummings seven (7) days
8 from receipt of the request to respond to Mr. Bialostosky's inspection petition.
9

10 10.

11 Ms. Cummings received Mr. Bialostosky's inspection petition on February 26th,
12 2019. The deadline for Ms. Cummings to respond to Mr. Bialostosky's request for the
13 purposes of determining whether Mr. Bialostosky could seek declaratory and injunctive relief
14 through this action was March 5th, 2019.
15

16 11.

17 As of March 11th, 2019, Ms. Cummings has not taken any action on Mr.
18 Bialostosky's records request and has not attempted to correspond with Mr. Bialostosky
19 regarding his records request. This constitutes a denial of the request under ORS 192.418.
20

21 12.

22 Mr. Bialostosky has no other plain, speedy, or adequate remedy at law other than this
23 action.
24

25 13.

26 Pursuant to ORS 192.431(3), Mr. Bialostosky is entitled to recover its costs and

1 disbursements and reasonable attorney's fees (if one is retained) incurred herein.

2
3 **FIRST CLAIM FOR RELIEF**
4 **(Declaratory)**

5 14.

6 Mr. Bialostosky realleges and incorporates his General Allegations herein.

7 15.

8 Pursuant to ORS 192.427 and ORS 192.431, this Court has the authority to grant
9 declaratory relief regarding whether records in the custody of an elected official are public
10 records under Oregon law, and whether said public record must be disclosed to the public.

11 16.

12 The records in question here, notes and notebooks taken and maintained by an elected
13 official acting in their official capacity, are public records under Oregon law. As such, the
14 requested records are subsequently subject to the disclosure and inspection by members of
15 the public, including Mr. Bialostosky.

16 17.

17 Mr. Bialostosky requests that this Court issue declaratory relief in the form of a
18 judgment declaring that Ms. Cummings as an elected official is a public body who is subject
19 to Oregon's Public Record Laws, that the notes and notebooks in the custody of Ms.
20 Cummings taken and maintained by Ms. Cummings in her official capacity are public
21 records under Oregon law, and that the public records which Plaintiff seeks are subject to
22 disclosure and inspection by members of the public. Further, Mr. Bialostosky requests that
23 this Court declare that the notes and notebooks in the custody of Ms. Cummings as
24
25
26

1 referenced above must be produced in accordance with Oregon Public Records Law.

2
3 **SECOND CLAIM FOR RELIEF**
4 **(Injunctive)**

5 18.

6 Mr. Bialostosky realleges and incorporates his General Allegations herein.

7 19.

8 Pursuant to ORS 192.427 and 192.431, this Court has jurisdiction to enjoin the public
9 body from withholding records and to order the production of any records improperly
10 withheld from the person seeking disclosure.

11 20.

12 Mr. Bialostosky requests that this Court issue injunctive relief, enjoining Ms.
13 Cummings from withholding the notes and notebooks taken and maintained by Ms.
14 Cummings in her official capacity. Additionally, Mr. Bialostosky seeks a judgment
15 compelling Ms. Cummings to produce said records immediately to Mr. Bialostosky.
16
17

18 **WHEREFORE**, Mr. Bialostosky prays for a judgment against Ms. Cummings as
19 follows:
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21 **Pursuant to Mr. Bialostosky's first claim for declaratory relief, a judgment:**

22 a. Declaring that Ms. Cummings, as an elected official in her official capacity, is
23 a public body and is subject to Oregon's Public Record Laws;

24 b. Declaring that the notes and notebooks in the custody of Ms. Cummings taken
25 and maintained by Ms. Cummings in her official capacity are public records under Oregon
26

1 law and are subject to disclosure and inspection by members of the public including Mr.
2 Bialostosky.

3
4 c. Declaring that the notes and notebooks in the custody of Ms. Cummings taken
5 and maintained by Ms. Cummings in her official capacity must be produced in accordance
6 with Oregon's Inspection of Public Records statutes.

7 **Pursuant to Mr. Bialostosky's second claim for injunctive relief, a judgment:**

8
9 a. Enjoining Ms. Cummings from withholding the notes and notebooks taken
10 and maintained by Ms. Cummings in her official capacity from inspection by Mr.
11 Bialostosky and other members of the public.

12 b. Compelling Ms. Cummings to produce to Mr. Bialostosky for inspection by
13 Mr. Bialostosky her notes and notebooks taken and maintained by Ms. Cummings in her
14 official capacity.

15
16 **Pursuant to both of Mr. Bialostosky's claims, a judgment:**

17 a. Awarding Mr. Bialostosky costs, disbursements incurred herein and attorney's
18 fees if an attorney is retained.

19
20 b. Awarding to Mr. Bialostosky any other relief that this Court may deem just
21 and equitable.

22 Respectfully submitted,

23 

24 RORY BIALOSTOSKY

25 Plaintiff, Pro Se

26 roryforstudents@gmail.com

(503)577-3837

DATED this 23rd day of May, 2019.

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on this 24th day of May, 2019, I caused to be served a true and correct
4 copy of the foregoing Amended Complaint for Delcaratory and Injunctive Relief, and the
5 accompanying exhibit on the person(s) and address listed below.
6


7
8 Service was made by:

9
10 Mailing a true and correct copy of the foregoing documents by First Class Mail, postage
11 pre-paid to the name(s) and address listed below;
12

13
14 Emailing a true and correct copy of the foregoing documents to the person(s) known
15 email address(es).
16

17
18 Christopher K. Dolan & Timothy V. Ramis
19 2 Centerpointe Dr #600
20 Lake Oswego, OR 97035
21 Email: chris.dolan@jordanramis.com & tim.ramis@jordanramis.com
22

23 DATED this 24th day of May, 2019.

24 
25 _____
Rory Bialostosky, Plaintiff
26