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

CINDY FERENCE,

Plaintiff,

v.

KING COUNTY HOUSING
AUTHORITY, and MOVING KING
COUNTY RESIDENTS FORWARD,

Defendants.

No.

COMPLAINT FOR INJUNCTIVE
RELIEF UNDER THE OPEN PUBLIC
MEETINGS ACT; AND FOR
DISCLOSURE UNDER THE PUBLIC
RECORDS ACT

COMES NOW, Plaintiff Cindy Ference, and makes the following complaint for: an injunction and costs under the Open Public Meetings Act, RCW 42.30130 and RCW 42.30.120(2); disclosure, costs and penalties under the Washington Public Records Act, RCW 42.56.550; and declaratory relief.

INTRODUCTION

1. The King County Housing Authority describes itself as “safeguarding the public trust.”¹ But this agency, responsible for housing thousands of elderly, disabled and poor people, resists public scrutiny. It uses an allegedly private nonprofit organization, which has the *same board members*, offices and staff as the Housing Authority, to carry out

¹ <http://www.kcha.org/about/>.

1 housing programs without public notice or oversight. And when asked for records about
2 construction projects affecting the public housing community, the Housing Authority has
3 claimed that no records exist. This lawsuit seeks to enforce the Open Public Meetings Act
4 and Public Records Act so that Cindy Ference and other residents can monitor and have a
5 voice in the Housing Authority's decision-making process.
6

7 JURISDICTION AND VENUE

8 2. This court has jurisdiction pursuant to RCW 42.30.130, RCW 42.56.550, and RCW
9 2.08.010.

10 3. Venue lies in this court pursuant to RCW 4.12.025(1) and RCW 42.56.550(1).
11

12 PARTIES

13 4. Plaintiff Cindy Ference, a person with disabilities, lives in the Northridge housing
14 for senior and disabled residents in Shoreline, Wash. She maintains a Web site called "Our
15 Community, a Resident's Perspective," devoted to raising awareness of Housing Authority
16 policies and actions. Ms. Ference frequently attends meetings of the Housing Authority
17 Board of Commissioners. She is a member of the Housing Authority's Resident Advisory
18 Committee.
19

20 5. The King County Housing Authority was created in 1939 pursuant to the Housing
21 Authorities Law, RCW 35.82.030. Its powers outlined in RCW 35.82.070 include
22 building, operating and renting low-income housing, and administering the federal section
23 8 program. The Housing Authority is governed by a 5-member Board of Commissioners
24 appointed by the King County executive and confirmed by the County Council. Current
25 Commissioners are: Chairman Doug Barnes, a real estate consultant; Michael Brown, vice
26 president of The Seattle Foundation; Terry McLlarky, retiree and public housing resident;
27

1 Richard Mitchell, formerly general counsel to Gov. Christine Gregoire and now a private
2 attorney for government agencies and shareholder at Graham & Dunn; and Susan Palmer,
3 secretary-treasurer of the Boeing machinists union. The Housing Authority is an “agency”
4 as defined by the Public Records Act, RCW 42.56.010(1), and a “public agency” as
5 defined by the Open Public Meetings Act, RCW 42.30.020(1).
6

7 6. Moving King County Residents Forward is registered with the state as a nonprofit
8 corporation. It has the same address, same staff and same governing board as the King
9 County Housing Authority. It describes its purpose as carrying out the functions of the
10 King County Housing Authority. It was created by the King County Housing Authority,
11 which controls its articles of incorporation and appoints its board members. Moving King
12 County Residents Forward is a “subagency” as defined by RCW 42.30.020(1)(c).
13

14 **FACTS**

15 A. The Housing Authority Uses a Nonprofit Organization to Conduct Business
16 Privately.

17 7. On January 28, 2013, Ms. Ference attended a “special” meeting of the Housing
18 Authority Board of Commissioners at the Housing Authority offices in Tukwila, Wash.
19 Immediately following adjournment of that board meeting, she observed a second meeting
20 of the commissioners in the same location. Four of the five commissioners and several
21 senior staff members, including Housing Authority Executive Director Stephen Norman,
22 were present for the second meeting. The publicly posted agenda for the Housing
23 Authority board’s January 28 meeting did not alert the public that a second meeting was
24 planned and Ms. Ference decided to find out more.
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1 8. On February 1, 2013, Ms. Ference emailed to the Housing Authority a request for
2 “all documents relating to the meeting on Monday, January 28th, 2013 that immediately
3 followed the Commissioners Board meeting.” Her request cited the Public Records Act,
4 Chap. 42.56 RCW.

5
6 9. Four days later, Tim Baker, a senior management analyst at the Housing Authority,
7 responded to Ms. Ference’s records request, stating in part that “the meeting you are
8 referring to was for the Board of the Moving King County Residents Forward –
9 MKCRF....Attached are the documents distributed at the MKCRF meeting.” This was the
10 first time Ms. Ference learned that the Housing Authority commissioners serve in a dual
11 capacity as the governing body of two agencies: a) the Housing Authority and b) an
12 obscure nonprofit organization called Moving King County Residents Forward (MKCRF).

13
14 10. The Housing Authority analyst, Mr. Baker, produced five documents in response to
15 Ms. Ference’s records request. These documents showed that MKCRF functions as an arm
16 of the Housing Authority. The documents included:

17 a) “Resolution No. 7,” stating in part that “Moving King County Residents Forward
18 (‘MKCRF’) is a Washington nonprofit corporation...whose purpose is to perform the
19 functions of, or to carry out the purposes of, its qualified Supported Organization, King
20 County Housing Authority (‘KCHA’).” The resolution also stated that “KCHA has
21 appointed” new Housing Authority Commissioner Susan Palmer to replace outgoing
22 Commissioner Nancy Holland-Young on the MKCRF board.

23
24 b) Minutes of the October 15, 2012 MKCRF meeting, showing that the MKCRF
25 board consists of the same people who serve on the Housing Authority Board of
26
27

1 Commissioners, that the MKCRF board meets in Housing Authority offices, and that the
2 Housing Authority staff acts as MKCRF's staff during business hours.²

3 c) A copy of a bylaw permitting MKCRF directors to vote by written consent in
4 lieu of a meeting. Under this bylaw, the Housing Authority Commissioners can make
5 decisions affecting Housing Authority programs by mailing written consent to the Housing
6 Authority director at Housing Authority offices, while claiming to be acting as a separate
7 organization's directors.
8

9 In sum, the documents produced to Ms. Ference revealed that Housing Authority
10 Commissioners have been using a separate organization to do the public's business without
11 public notice, and have authorized themselves to vote in writing rather than in the presence
12 of the public.
13

14 11. The Housing Authority Board of Commissioners is a "governing body" of a public
15 agency as defined by RCW 42.30.020(2).

16 12. Because the MKCRF board has the same members as the Housing Authority board,
17 and because MKCRF carries out the functions and purposes of the Housing Authority
18 using Housing Authority staff and facilities, every meeting of the MKCRF board
19

20 ² The October minutes also described MKCRF approval of a deal whereby the Housing Authority
21 would "transfer" 509 public housing units to MKCRF so as to increase cash flow and allow for
22 repairs of the units. The mixing of Housing Authority and MKCRF business is starkly illustrated
23 by the following MKCRF meeting minutes concerning the 509-dwelling transfer:

24 "Doug Barnes requested a complete picture of the finances at the next (Housing Authority)
25 Finance Committee Meeting. Discussion was held as to the need for two Finance
26 Committees. Stephen Norman would like all discussions wrapped into one meeting. The
27 financial information about the 509 properties is of keen interest to both Boards, thus it is an
28 appropriate topic for a KCHA Finance Committee."

25 Thus, although MKCRF is supposedly a separate organization, it will receive financial information
26 about a MKCRF-Housing Authority partnership solely through the Housing Authority Board's
27 Finance Committee so that the Housing Authority staff doesn't have to make two presentations.
28 No public housing residents attended the unadvertised October 2012 meeting of the MKCRF
board.

1 constitutes a meeting of the Housing Authority Board of Commissioners. For that reason,
2 the MKCRF board meetings must be public.

3 13. The MKCRF board is – in and of itself - the governing body of a subagency which
4 is subject to the Open Public Meetings Act. For that additional reason, MKCRF must
5 make decisions publicly.
6

7 14. The Housing Authority Board of Commissioners has conducted Housing Authority
8 business in private MKCRF meetings in violation of the Open Public Meetings Act
9 (OPMA), Chap. 42.30 RCW.

10 15. The MKCRF board has held private meetings in violation of the OPMA.

11 16. Illegal meetings of the two governing bodies include, but are not limited to, the
12 October 2012 and January 2013 meetings of the MKCRF board, which involved a quorum
13 of Housing Authority board members and were not announced to the public in advance.
14

15 17. On March 15, 2013, citing the Public Records Act, Ms. Ference requested Housing
16 Authority records related to MKCRF. This time, she asked for all records of Housing
17 Authority Commissioners’ communications pertaining to MKCRF since September 1,
18 2012, and “all records related to past, planned or proposed use of Housing Authority
19 facilities and/or staff time by Moving King County Residents Forward since March 1,
20 2012.”
21

22 18. As of April 22, 2013, Ms. Ference has received one installment of records in
23 response to her March 15 request. The records include several contracts, approved by the
24 Housing Authority and MKCRF in October 2012, outlining an elaborate scheme whereby:
25

- 26 • the Housing Authority leases 509 dwellings in 22 properties to MKCRF for a total
27 rent of \$1 a year;

- MKCRF is designated the “owner” of the 22 properties for purposes of obtaining \$4 million a year in federal rent subsidies, although the Housing Authority actually retains fee ownership of the properties; and
- the Housing Authority continues to manage the 22 properties.

The Housing Authority also provided a narrative explanation of the deal, stating that the contracts effectively converted 509 dwelling units of public housing into Section 8 housing so as to capture federal subsidies (called “Housing Assistance Payments”). Thus, in regard to this deal, the Housing Authority is representing that MKCRF is a separate entity, even though records show that MKCRF receives staff support, offices, and legal services from the public Housing Authority and has the same governing board.

19. After Ms. Ference inquired about the relationship between the Housing Authority and MKCRF, the Housing Authority for the first time attempted to provide public notice of an MKCRF meeting. The agenda for the Housing Authority board’s April 15, 2013, meeting included, without explanation, as the last item, “Moving King County Residents Forward Annual Meeting.”³ The agenda did not list the business to be transacted during the MKCRF part of the meeting.

20. Ms. Ference attended the April 15 meeting of the Housing Authority Board at the Housing Authority’s headquarters in Tukwila. She observed the board adjourn and then reconvene in the same location in its capacity as the MKCRF board.

21. The April 15 agenda did not satisfy OPMA requirements pertaining to the second meeting.

³ The April agenda reflects a change from January, when the MKCRF board met at the end of the Housing Authority board meeting, but was not included in the public meeting agenda.

1 22. At the second meeting on April 15, the Housing Authority’s public records officer,
2 Connie Davis, recommended that the MKCRF board adopt “Resolution Number 9
3 Regarding Voluntarily Compliance with the Open Public Meetings Act and Public Records
4 Act.”⁴

5
6 23. Proposed Resolution No. 9, like Resolution No. 7 discussed in Paragraph 10(a)
7 above, states that MKCRF’s purpose is to “perform the functions of, or to carry out the
8 purposes of...King County Housing Authority.” Proposed Resolution No. 9 also
9 acknowledges that the Housing Authority and MKCRF have the same board. The
10 resolution nevertheless asserts that MKCRF is not subject to the Open Public Meetings Act
11 or Public Records Act. The resolution’s operative sections state that MKCRF will
12 “voluntarily” comply with the two sunshine laws “to the extent practical,” while reserving
13 the right to act as a private nonprofit corporation “as the board of directors determines to
14 be in the Corporation’s best interest.” Also, the proposed resolution purports to ratify,
15 through a public vote, the 22-property lease which was unlawfully acted upon in a private
16 meeting in October 2012.

17
18 24. After some discussion, during which Mr. Mitchell expressed concern about
19 exposure to OPMA penalties, the board deferred a vote on proposed Resolution No. 9.

20
21 25. Proposed Resolution No. 9 has not been mentioned on any publicly posted meeting
22 agenda.

23 26. In an April 15 staff memo to the board, Ms. Davis referred to Ms. Ference’s March
24 15 public records request as the impetus for Resolution No. 9, stating:

25
26 _____
27 ⁴ Ms. Davis is the deputy executive director and chief administrative officer of the King County
28 Housing Authority. She also is the registered agent for MKCRF, according to corporation papers
filed with the state.

1 This (records) request has highlighted the possibility that when MKCRF, a
2 private nonprofit entity, meets to discuss KCHA-related business, it may be
3 subject to the rules of an 'agency' under RCW 42.56 the Public Records
4 Act or a 'public agency' under RCW 42.30 the Open Public Meetings Act.
5 We believe the public disclosure request arose out of confusion between the
6 different nature and obligations of MKCRF, a private entity, and KCHA, a
7 governmental entity. MKCRF does not fall under the specific statutory
8 definitions of either act, however, legal counsel recommends that given
9 MKCRF's support of and involvement with KCHA, MKCRF voluntarily
10 elect to follow the requirements of the two acts, where practical.

11 27. According to the staff memo, Resolution No. 9 would not prevent the MKCRF
12 board from voting by written consent in lieu of a meeting.

13 28. Unless an injunction is issued, the public will have no assurance that the MKCRF
14 and Housing Authority boards will stop meeting privately. Resolution No. 9, if adopted,
15 will allow the MKCRF board members to decide for themselves when it is "practical" and
16 "in the Corporation's best interest" to comply with this state's sunshine laws. Resolution
17 No. 9 reflects an unlawful policy that OPMA compliance is "voluntary" and optional.

18 **B. The Board's Finance Committee Meets Privately.**

19 29. In May 2011, the Housing Authority Board of Commissioners voted to create a
20 Finance Committee to replace the board's treasurer position and to improve the board's
21 oversight of finances. The May 2011 board minutes stated that the board's Finance
22 Committee would meet "either telephonically, electronically or in person."

23 30. The Housing Authority has never given public notice of meetings of the board's
24 Finance Committee.

25 31. The Finance Committee of the Housing Authority board has taken actions in
26 private meetings in violation of the OPMA.
27
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1 32. The public has no assurance that the private meetings of the Finance Committee
2 will stop without an injunction to prevent them.

3 C. The Housing Authority Unlawfully Denied a February 8, 2013 Records Request.

4 33. In addition to attending Housing Authority meetings, Ms. Ference advocates for
5 residents by monitoring projects affecting the public housing community. On February 8,
6 2013, Ms. Ference sent an email to Ms. Davis, the Housing Authority's records officer,
7 stating as follows:
8

9 Pursuant to Chapter 42.56 RCW, I request copies of all relevant documents
10 including, but not limited to all emails, memorandums, reports, and other
11 relevant documents to justify the Housing Authority's decision to replace
12 all sliding doors, all swing doors and all windows of Northridge 1
apartments as part of the Capital building envelope project.

13 I prefer to have copies of these documents sent by electronic transmission to
14 cindyf309@gmail.com, if available in such format. If there are costs
associated with this request, please notify me in advance.

15 If you choose to deny this request, please provide a written explanation for
16 the denial including a reference to the specific statutory exemption(s) upon
17 which you rely. Also, please provide all segregable portions of otherwise
exempt material.

18 34. On February 14, 2013, Mr. Baker, the Housing Authority management analyst, sent
19 an email responding to Ms. Ference's request. He wrote:

20 The King County Housing Authority received your request for documents
21 filed under RCW 42.56, the WA Public Records Act on February 8, 2013.
22 Specifically, you requested all documents to justify KCHA's decision to
23 replace all sliding doors, swing doors and windows at Northridge I as a part
of building envelope project.

24 There are no "KCHA" documents to produce for this request. Instead, staff
25 decisions were made upon conforming to the Uniform Federal Accessibility
26 Standards (UFAS). <http://www.access-board.gov/ufas/ufas-html/ufas.htm>
27 and the Americans with Disabilities Act (ADA)
http://www.ada.gov/2010ADASTandards_index.htm and from the U.S.
28 Department of Energy (see below).

1
2 UFAS is what HUD mandates housing authorities follow when considering
3 accessibility standards in our construction projects. The sliding doors at
4 Northridge do not meet UFAS or ADA standards and must be replaced. The
5 thresholds and the force required to operate these doors do not meet the
6 standards.

7
8 The decision to replace the sliding doors for swing doors was based on
9 several factors: 1) swing doors are more thermally efficient over sliding
10 doors, here is an excerpt from the U.S. Dept of Energy: Glass or "patio"
11 doors, especially sliding glass doors, lose much more heat than other types
12 of doors because glass is a very poor insulator. Most modern glass doors
13 with metal frames have a *thermal break*, which is a plastic insulator
14 between inner and outer parts of the frame. Models with several layers of
15 glass, low-emissivity coatings, and/or low-conductivity gases between the
16 glass panes are a good investment, especially in extreme climates. When
17 buying or replacing patio doors, keep in mind that swinging doors offer a
18 much tighter seal than sliding types.

19
20 It's impossible to stop all the air leakage around the weather-stripping on a
21 sliding glass door and still be able to use the door. In addition, after years of
22 use the weather-stripping wears down, so air leakage increases as the door
23 ages. If the manufacturer has made it possible to do so, you can replace
24 worn weather-stripping on sliding glass doors.

25
26 Here are two links you can review
27 <http://energy.gov/energysaver/articles/doors>
28 <http://www.green3dhome.com/YourHouse/Exterior/Doors.aspx>

2) Swing doors have lower maintenance costs--with sliding glass doors, the
rollers fail, the tracks and latch assemblies break, and the weather seals
become damaged and require replacement. Swing doors have only the
weather seal to maintain.

3) KCHA has installed swing doors at Juanita Trace in Kirkland and is not
setting a precedent by installing this type of door at Northridge.

Because the envelope project involves removing the siding, it makes
economic and construction sense for KCHA to install new doors and
windows while the siding is removed because the existing siding will be
removed and it will allow for a fast installation of the new door and
window, and allow for the proper flashing of the door assembly and the new
deck surface.

1 There is no more information to produce for your request, therefore I will
2 consider your 2/8/13 request complete and closed.

3 (Emphasis in original).

4 35. Although Ms. Ference had requested “all emails, memorandums, reports, and other
5 relevant documents to justify” replacement of doors and windows at her housing complex,
6 the Housing Authority did not produce any documents in response to her request. Mr.
7 Baker sent his own assertions about the project in lieu of producing the requested records.

8 36. The Housing Authority did not ask for clarification of Ms. Ference’s February 8
9 record request.

10 37. The Housing Authority did not claim any exemptions in response to Ms. Ference’s
11 February 8 request.

12 38. Mr. Baker referred to “staff decisions” about the project at issue without providing
13 any records of such decisions. As a public agency entrusted with tax money, the Housing
14 Authority must have some documentation of its expenditure decisions. For example, there
15 should be staff correspondence leading to, describing, and/or confirming the decisions
16 referenced by Mr. Baker.

17 39. Presumably, Housing Authority staff members do not rip out tenants’ doors and
18 windows without some written authority to do so. It is not credible that there are “no
19 ‘KCHA’ documents” related to a construction project in a public housing complex.

20 40. Mr. Baker described “an excerpt from” an unidentified U.S. Department of Energy
21 document which, according to his public records response, was a factor in the Northridge I
22 project decision at issue. It is apparent from Mr. Baker’s response that the Housing
23 Authority possessed the U.S. Department of Energy document in question, and that the
24 Authority possessed the U.S. Department of Energy document in question, and that the
25 Authority possessed the U.S. Department of Energy document in question, and that the
26 Authority possessed the U.S. Department of Energy document in question, and that the
27 Authority possessed the U.S. Department of Energy document in question, and that the
28 Authority possessed the U.S. Department of Energy document in question, and that the

1 document was responsive to Ms. Ference's records request. The cited document was
2 unlawfully withheld from Ms. Ference.

3 41. Mr. Baker asserted that the "sliding doors at Northridge do not meet UFAS or ADA
4 standards" because of "the force required to operate these doors." The Housing Authority
5 presumably possesses test results, inspection reports, tenant complaints, surveys or other
6 documentation supporting Mr. Baker's assertions about deficient doors. The Housing
7 Authority unlawfully withheld whatever records indicate that the sliding doors do not meet
8 accessibility standards.

9
10 42. The records requested by Ms. Ference are not exempt from disclosure requirements
11 of the Public Records Act.

12
13 D. The Housing Authority Unlawfully Denied a Second Records Request Related
14 to the Northridge 1 Project.

15 43. On February 14, 2013, Ms. Ference made a second records request pertaining to the
16 building envelope project at the Northgate I building where she lives. In an email to the
17 records officer, Ms. Davis, she wrote in part:

18 Pursuant to Chapter 42.56 RCW, I request copies of all relevant documents
19 including, but not limited to all emails, memorandums, reports, and other
20 relevant documents to justify the Housing Authority's decision to replace
the deck walls with railing as part of the Capital building envelope project.

21 Once again, Ms. Ference asked for a specific explanation of any denial of disclosure.

22 44. On February 22, 2013, Mr. Baker provided the following response to Ms. Ference's
23 February 14 records request:

24 The King County Housing Authority received your request for documents
25 filed under RCW 42.56, the WA Public Records Act on February 14, 2013.
26 Specifically, you requested all documents that would justify KCHA's
27 decision to replace the deck walls with railing as part of the building
envelope project for Northridge.

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The decision to replace the deck walls with deck railings does not have its source in any KCHA produced documents that can be sent to you, therefore I have no documents to produce for your request. However, I will explain the rationale to you on why we are doing this type of deck improvement.

KCHA has installed deck rails on 4 developments in recent years, so we are not setting precedent by installing them at Northridge. It has been KCHA's design standard to place desk rails on all senior buildings with decks for last several years and will continue to be a standard for any upcoming developments that are in need of renovation that meet that criteria.

KCHA has had ongoing problems with deck walls, including fire hazards and safety hazards for when tenants use the deck for storage of their personal items, (which is also a violation of their lease) and water penetration/intrusion and maintenance issues. Railings will discourage tenants from storing personal items on the decks and railings do not help induce water penetration and have lower on-going maintenance costs.

Also, HUD has directed PHAs to increase our property's esthetic looks for marketability reasons. KCHA believes that deck rails, as opposed to deck walls, will help with marketability.

I have no further information to provide to you about your 2/14/13 request, therefore I will consider your request complete and closed.

45. The Housing Authority did not produce any documents in response to the February 14 public records request. Once again, Mr. Baker sent his own assertions about justification for the project in lieu of producing the requested records.

46. The Housing Authority did not ask for clarification of Ms. Ference's February 14 record request.

47. The Housing Authority did not claim any exemptions in response to Ms. Ference's February 14 request.

48. The records requested by Ms. Ference are not exempt from disclosure requirements.

1 49. Mr. Baker referred to a “design standard” as a reason for replacing Northridge deck
2 walls with railings. The Housing Authority presumably possesses some record
3 documenting the existence of the referenced “design standard.” Any such record is
4 responsive to the February 14 records request and has been unlawfully withheld from Ms.
5 Ference.
6

7 50. Mr. Baker also cited safety problems, water penetration, and “maintenance issues”
8 as reasons for replacing Northridge deck walls with railings. The Housing Authority
9 presumably possesses some records referring to or documenting the safety, water
10 penetration and maintenance concerns which were cited by Mr. Baker. Any such records
11 are responsive to the February 14 request and have been unlawfully withheld from Ms.
12 Ference.
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14 51. Mr. Baker said another reason for the deck railing project was a U.S. Department
15 of Housing and Urban Development (HUD) directive to improve the “esthetic” appearance
16 of Housing Authority properties. The Housing Authority must possess some record of that
17 HUD directive cited by Mr. Baker. Any such record is responsive to Ms. Ference’s
18 request and has been unlawfully withheld.
19

20 52. Presumably, Housing Authority staff members do not rip out tenants’ deck walls
21 without some written authority to do so. There should be staff correspondence leading to,
22 confirming and/or describing the decision to invest tax money in the deck railing project.
23

24 53. The Housing Authority unlawfully withheld planning and approval records for the
25 deck railing project.
26

27 54. On February 25, 2013, Ms. Ference wrote a letter to the Housing Authority
28 expressing her concerns about the door, window and deck projects which were the subject

1 of her February records requests. In response, Bill Cook, the Housing Authority's property
2 management director, wrote a letter to Ms. Ference dated March 15, 2013, stating in part as
3 follows:

4 Please understand that the \$2.3 million budget and the preliminary scope of
5 work that has been discussed with you and other residents is based
6 primarily on either known conditions at Northridge or historical records
7 relating to other KCHA apartment buildings similar in design and age as
8 Northridge. A detailed investigation by KCHA's architectural and
engineering consultants of the items mentioned in your letter – decks,
sliding, windows and swing doors – is just now underway....

9 You may be interested to know that the \$2.3 million budget sets aside
10 approximately \$600,000 for plumbing repairs and \$1.7 million for the
11 building envelope. Based upon further investigation, KCHA has
12 determined that piping within the building is an acceptable condition... This
has reduced the budgeted expense for this part of the project from \$600,000
to \$142,000....

13 55. Mr. Cook described "historical records" as a basis for the door, window and deck
14 projects which were the subject of Ms. Ference's records requests. Such historical records
15 are responsive to both her February 8 and her February 14 records requests, and have been
16 unlawfully withheld from Ms. Ference.

17 56. Mr. Cook referred to "known conditions" as justification for replacing the decks,
18 windows and doors at issue. The Housing Authority failed to produce photos and other
19 records of the known conditions.

20 E. A Third Records Request Also Was Unlawfully Denied.

21 57. On March 26, 2013, Ms. Ference e-mailed the following records request to the
22 Housing Authority's records officer, Ms. Davis:

23 Pursuant to Chapter 42.56 RCW, I request copies of all relevant documents
24 relating to the budgeting, financial forecast (anticipated costs) and funding
25 sources for the Capital project shown below including, but not limited to,
26
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1 budgets, resolutions approved by the Commissioners, grant applications and
2 award letters....

3 Scope of Work

4 The Tenant Improvements will include the following scope
5 of work: Tenant improvement construction of a fitness center
6 in approximately 1,722 SF commercial space below
7 occupied residential apartments. Provide labor, materials,
8 tools, equipment for minor structural, MEP, HVAC,
9 communication, fire suppression, interior finishes, and build
10 to spec per design and drawings. Project is located at the
11 corner of 8th Avenue SW and Roxbury Avenue, Seattle, WA
12 in the White Center area. KCHA expects to begin
13 construction May 8, 2013 and complete Substantial
14 Completion August 14, 2013.

15 58. Ms. Davis acknowledged the request in an email on March 27. On April 5, Mr.
16 Baker responded to the request as follows:

17 As a follow up to my 4/1/13 email to you, this response is to your request
18 for documents relating to the budgeting, financial forecast and funding
19 sources for the tenant improvement construction for a fitness center at 8th
20 Ave SW & Roxbury Ave, located in the Greenbridge neighborhood.
21 The mixed income master planned community of Greenbridge, formally
22 known as Park Lake Homes, has been redeveloped into a mix of rental
23 housing, community facilities, and land for sale for new market rate home
24 ownership. As part of the 95 acre redevelopment, KCHA provided
25 approximately 13,500 square feet of retail space so that the residents of the
26 community would have access to some neighborhood based services. This
27 project is the improvement of one of the retail spaces (1,722 sq ft) so that
28 the space can be leased to a company called *Fitness With a Purpose*. The
space is currently unimproved and cannot be rented for any use without
further improvement.

The Housing Authority is using non-federal, non-restricted funds for the
purpose of paying for the improvements. The work has been permitted, has
been publicly bid and the Housing Authority will pay State prevailing
wages for the work. The attached budget is the most recent estimate of the
cost of the project. There was no applicable grant proposal, award letter or
Board resolution since none were required in order to build out this space,
therefore we have no documents of those types to produce for you.
I will now consider your 3/26/13 request for documents complete and
closed.

1 59. The Housing Authority produced a 1-page spreadsheet, showing “construction
2 procurement” estimates and “new” cost estimates for the 8th and Roxbury project, in
3 response to Ms. Ference’s March 26 records request. No other records were produced.

4 60. The Housing Authority did not ask for clarification of the March 26 record request.

5 61. The Housing Authority did not claim any exemptions in response to Ms. Ference’s
6 March 26 request.

7 62. Once again, Mr. Baker provided a narrative explanation to Ms. Ference instead of
8 producing the requested records. For example, he described the source of project funds as
9 non-federal and non-restricted. But Ms. Ference did not ask for information. She asked
10 for “*documents* relating to....funding sources” for the 8th and Roxbury project. She
11 expressly invoked the Public Records Act, Chap. 42.56 RCW, which triggered an
12 obligation to promptly produce all non-exempt records responsive to her request. The
13 Housing Authority does not have the option of providing information in lieu of records.

14 63. The Housing Authority cannot decide what Ms. Ference should, and should not,
15 know about its capital projects. The capital projects are planned and carried out at
16 taxpayer expense. It is a violation of the Public Records Act to withhold records regarding
17 construction planning, decision-making, and funding sources without citing any applicable
18 exemptions and without even identifying what responsive records exist.

19 64. Mr. Baker said the 8th and Roxbury work “has been publicly bid.” The Housing
20 Authority must have records of the request for bids and contractor responses. Those
21 records relate to the project budgeting, and therefore are responsive to Ms. Ference’s
22 March 26 records request and have been unlawfully withheld.

1 65. The records requested by Ms. Ference are not exempt from disclosure
2 requirements.

3 CAUSE OF ACTION – PUBLIC RECORDS ACT (PRA)

4 66. Paragraphs 1 through 65 are incorporated by reference herein.

5 67. The records requested by Ms. Ference on February 8, February 14 and March 26,
6 2013, are public records as defined by RCW 42.56.010(2).

7 68. The Housing Authority failed to produce all non-exempt public records requested
8 by Ms. Ference, in violation of the PRA.

9 69. The Housing Authority violated the PRA requirement to provide the fullest possible
10 assistance to records requesters.

11 70. The Housing Authority violated the PRA requirement to produce records promptly
12 upon request.

13 71. The Housing Authority engaged in unlawful silent withholding of requested
14 records.

15 72. The Housing Authority violated the PRA by failing to conduct an adequate search
16 for requested records.

17 CAUSE OF ACTION – OPEN PUBLIC MEETINGS ACT (OPMA)

18 HOUSING AUTHORITY

19 73. Paragraphs 1 through 72 are incorporated by reference herein.

20 74. The Housing Authority Board of Commissioners has taken action, as defined by
21 RCW 42.30.020(3), in violation of the OPMA.

22 75. The Housing Authority Board of Commissioners has failed to permit the public to
23 attend meetings, in violation of the OPMA.

1 76. The Housing Authority Board of Commissioners has adopted resolutions without
2 the public notice required by RCW 42.30.060(1). Such resolutions are null and void.

3 77. The board's Finance Committee has met privately in violation of the OPMA.

4 78. The public is threatened with continuing violations of the OPMA.
5

6 MOVING KING COUNTY RESIDENTS FORWARD (MKCRF)

7 79. Paragraphs 1 through 78 are incorporated by reference herein.

8 80. The MKCRF board has taken action, as defined by RCW 42.30.020(3), in violation
9 of the OPMA.

10 81. The MKCRF board has failed to permit the public to attend meetings, in violation
11 of the OPMA.

12 82. The MKCRF board has adopted resolutions without the public notice required by
13 RCW 42.30.060(1). Such resolutions are null and void.
14

15 83. The public is threatened with continuing violations of the OPMA.
16

17 RELIEF REQUESTED

18 The plaintiff respectfully requests this Court to grant the following relief:

- 19 1. An order for the Housing Authority to show cause, pursuant to RCW
20 42.56.550(1), why it has denied Ms. Ference an opportunity to inspect or copy
21 the requested public records;
- 22 2. An order requiring the Housing Authority to produce all requested records;
- 23 3. An award of penalties of up to \$100 per day for each day that Ms. Ference was
24 denied an opportunity to inspect any non-exempt record, pursuant to RCW
25 42.56.550(4);
26
27
28

- 1 4. An award of all costs, including reasonable attorney fees, as required by the
- 2 Public Records Act, RCW 42.56.550(4), and the Open Public Meetings Act,
- 3 RCW 42.30.120(2);
- 4
- 5 5. An order declaring that Moving King County Residents Forward is a subagency
- 6 of the King County Housing Authority;
- 7
- 8 6. An order declaring that the governing bodies of the King County Housing
- 9 Authority and Moving King County Residents Forward violated the Open
- 10 Public Meetings Act;
- 11
- 12 7. An order declaring illegally adopted resolutions as null and void;
- 13
- 14 8. An immediate order enjoining the defendants' governing bodies from meeting
- 15 privately and from voting by written consent;
- 16
- 17 9. A permanent injunction against open meeting violations by boards and
- 18 committees;
- 19
- 20 10. An order permitting the plaintiff to amend this Complaint to add individual
- 21 board members as defendants, and to seek civil penalties against such individual
- 22 members; and
- 23
- 24 11. Such other relief as the court deems just and equitable.

25 DATED this 23rd day of April 2013.

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