

STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH RCW 42.17A

Benton County Officials: Andy Miller; Jerome Delvin; Josie Delvin; Jacki Lahtinen; Steven Kean; and Eric Hsu; David Giles; Paul Warden; Rachel Shaw; Brian McElroy; Julie Richardson; Ken Hohenberg; Kennewick City Council; Chris Skinner; Al Wehner; Richland City Council; Prosser City Council; West Richland City Council;

Respondents.

PDC Case 2311
(Formerly Case 15-001)

Report of Investigation

I. Background and Timeline

- 1.1 In September of 2012, the Benton County Commissioners approved the creation of the Benton County Criminal Justice Sales Tax Citizens Advisory Committee (Advisory Committee) "to analyze and review all aspects of the Benton County criminal justice system." The Advisory Committee included Benton County residents, and a number of local and county officials that were approved by the Benton County Commissioners.
- 1.2 The Advisory Committee met from September 2012 through July 2013 to determine the criminal justice needs of Benton County, and the cities of Kennewick, Prosser, Richland and West Richland. Committee members discussed whether or not a criminal justice sales tax measure should be submitted to Benton County voters to fund those criminal justice needs.
- 1.3 The Advisory Committee completed their work and reported to the Benton County Commissioners in late summer of 2013, recommending the Commissioners place a measure on the ballot for a 0.3% sales tax increase to fund the county's current and future criminal justice needs.
- 1.4 The Benton County Commissioners supported sending a ballot measure to the voters, but requested recommendations from the Benton County Law & Justice Council (BCLJC) concerning their thoughts on the overall criminal justice needs for Benton County and the local cities.
- 1.5 In 2000, the Washington State Legislature passed legislation (RCW 72.09) requiring each county in Washington State to create a county law and justice council.

- 1.6 The BCLJC is comprised of Benton County officials and local city officials within Benton County, and “was designed to encourage collaboration among local criminal justice agencies to maximize and share local resources.” In January of 2014, the BCLJC finalized their work and reported to the Benton County Commissioners their recommendations for Benton County’s criminal justice needs that included how much revenue would be generated from the sales tax increase, how those funds would be spent and allocated between Benton County and the cities of Kennewick, Prosser, Richland and West Richland, and the proposed ballot language.
- 1.7 On March 4, 2014, the Benton County Commissioners approved Resolution 14-5, and placed a ballot proposition on the August 5, 2014 primary election ballot, to increase the sales and use tax to fund law and justice needs throughout Benton County.
- 1.8 On May 20, 2014, the West Richland City Council held an open public meeting in which the council adopted a Resolution in support of Proposition 14-5. On June 3, 2014, the Richland City Council at an open public meeting, adopted Resolution No. 85-14 “Supporting Proposition 14-5, to Increase the Sales Tax by 0.3% in Benton County for Public Safety Spending (Criminal Justice)...”
- 1.9 On February 14, 2014, the Citizens for Safe Communities PAC (CSC PAC) filed a Committee Registration (C-1pc report) registering as a ballot committee in support of the August 5, 2014, Benton County law and justice ballot proposition. The C-1pc disclosed CSC selected the Full Reporting option, listed Al Wehner, as the Campaign or Committee Manager; and Josie Delvin, as Committee treasurer.
- 1.10 On March 17, 2014, the Benton County Citizens for Efficient Criminal Justice and Law Enforcement filed a C-1pc report registering as a ballot committee in opposition to the August 5, 2014, ballot proposition.
- 1.11 On June 26, 2014, Radphord-Leon Howard filed a complaint with the PDC alleging that a number of public officials and public agencies in Benton County violated RCW 42.17A.555 by using public resources to aid a campaign in support of a ballot measure to increase taxes to support regional policing. **Exhibit #1.**
- 1.12 On July 16, 2014, Mr. Howard files a "first supplement" to the complaint alleging that a number of officials in Benton County violated RCW 42.17A.555, and he made new allegations of violations of RCW 42.17A.565 for local officials' soliciting contributions from employees of their agencies. **Exhibit #2.**
- 1.13 On July 18, 2014, Mr. Howard filed a 45-Day Citizen Action Complaint (Complaint) with the Attorney General’s Office, alleging that a number of Benton County officials, and officials from the cities of Kennewick, Prosser, Richland and West Richland, violated RCW 42.17A.555 by using public resources of their respective agencies to support the August 5, 2014 ballot proposition. **Exhibit #3.**

- 1.14 On July 29, 2014, Mr. Howard files a second supplement to the complaint alleging: (1) A number of officials in Benton County violated RCW 42.17A.555; (2) CSC failed to disclose the complete addresses for contributors and committee vendors as required; and (3) a number of local Benton County law enforcement unions and non-profit organizations concerning the use of agency shop fees to make political contributions. **Exhibit #4.**
- 1.15 Specifically, the initial complaint and two supplemental filings by Mr. Howard made numerous allegations of violations of RCW 42.17A.555 concerning a number of Benton County officials, and officials from the cities of Kennewick, Prosser, Richland and West Richland as detailed in section II of this report of investigation. The allegations included using the facilities of their respective local public agencies, including agency computers, emails, police and sheriff's uniforms, vehicles, agency staff time, and other facilities to support the August 5, 2014 Benton County sales and use tax measure.
- 1.16 On August 5, 2014, the citizens of Benton County approved Proposition 14-5 by 1,969 votes, 18,873 "Yes" votes (52.69%) to 16,944 "No" votes (47.31%).
- 1.17 On September 18, 2014, Roger Lenk, a local citizen who has filed previous complaints with the PDC, submitted an email and attached: (1) An email from Kennewick Police Chief Ken Hohenberg to Kennewick City Manager Mosley transmitting a copy of his 2014 Performance Review; and (2) A March 22, 2014, email from Prosser Mayor Paul Warden providing recipients information about CSC including fundraising goals and solicited support for the committee. **Exhibit #5.**
- 1.18 On September 26, 2014, Mr. Lenk submitted an additional email providing copies of documents he received from the City of Kennewick in response to a public records request, that included (**Exhibit #6**):
 - 1) A Council Agenda coversheet for the April 15, 2014 meeting concerning adopting Resolution 14-17, in support of the Benton County sales and use tax; a copy of Chief Hohenberg's annual report that he presented to council; and three tables showing how the sales tax revenue will be used to hire additional law enforcement in CY 2014, 2015, and 2016.
 - 2) A May 13, 2014 email from Al Wehner using his private email address send to Sara Schilling, a reporter with the Tri-City Herald, and attaching the photo from the law enforcement press conference with a copy sent to Chief Hohenberg.
 - 3) A May 13, 2014 statement (press release) made by the Benton County Sheriff and Police Chiefs concerning the Benton County Law & Justice sales tax measure.
 - 4) A chart from the BCLJC detailing what the proposed ballot measure would provide.
 - 5) Emails dating back to 2012 concerning meetings of the BCLJC, its predecessor the Criminal Justice Sales Tax Advisory Committee, and minutes of Executive Board meetings.

II. Respondents and Allegations listed in the complaint

2.1 The Respondents listed in Mr. Howard's complaint letter and the two supplements included the following:

- Citizens for Safe Communities PAC, a local political committee that supported the sales and use tax measure and its committee officers.
- West Richland Police Officers Association.
- Kennewick Police Officers Benefit.
- Kennewick Police Management Association.
- The Cities of Kennewick, Prosser, Richland, and West Richland.
- Andy Miller (Benton County Prosecuting Attorney).
- Jerome Delvin (Benton County Commissioner).
- Josie Delvin (Benton County Clerk).
- Eric Hsu (Public Defense Manager, Benton County Office of Public Defense).
- Steven Keane (Benton County Sheriff).
- Jacki Lahtinen (Administrator, Benton County District Court).
- David Giles (City of Prosser Police Chief).
- Paul Warden (City of Prosser Mayor).
- Rachel Shaw (City of Prosser Clerk).
- Brian McElroy (City of West Richland Police Chief).
- Julie Richardson (City of West Richland City Clerk).
- Ken Hohenberg (City of Kennewick Police Chief).
- Chris Skinner (City of Richland Police Chief).
- Al Wehner (City of Richland Former Police Captain).

Allegations concerning violations of RCW 42.17A.555 (Use of public facilities):

2.2 Mr. Howard submitted a multi-page complaint letter and the two supplements that included the following allegations:

1. On May 13, 2014, five law enforcement officers, Sheriff Keane, and Police Chiefs Brian McElroy, David Giles, Ken Hohenberg and Chris Skinner, appeared in uniform at a press conference to support the August 5, 2014 ballot proposition.
2. The same five law enforcement officers also appeared in uniform in front of their respective Benton County Commission and City Council meetings, and provided testimony in support of Proposition No. 14-5.
3. Several Benton County elected and local officials used official agency vehicles or received an auto allowance to attend/conduct activities in support of the August 5, 2014 ballot proposition.
4. The City Councils of Kennewick, Prosser, Richland, and West Richland allowed Citizens for Safe Communities PAC officers to make presentations at official City Council meetings in support of the criminal justice ballot measure.

5. A number of public officials and employees from Benton County, Kennewick, Prosser, Richland, and West Richland officials, as part of the Benton County Law and Justice Council, used public facilities to support the sales tax measure.
6. A number of public officials from Benton County, Kennewick, Prosser, Richland, and West Richland officials used public facilities to assist Citizens for Safe Communities PAC (CSC PAC) with its efforts to promote the sales and use tax measure by compiling and emailing law and justice budget and crime-related statistics to CSC committee members using public agency computers. The information was then posted on the CSC website, and the officials received a follow-up email from CSC members requesting they visit the CSC website and review the information for accuracy.
7. Andy Miller, a candidate for re-election to Benton County Prosecutor, and Josie Delvin, a candidate for re-election to Benton County Treasurer, both used Benton County public facilities to assist their re-election campaigns.
8. CSC PAC officers and members used the public facilities of their respective offices and agencies to solicit and accept contributions for the committee.
9. Benton-Franklin Community Health Alliance used Benton County public facilities to endorse the Benton County Law & Justice ballot proposition.
10. Respondents Hohenberg, Miller and Wehner coordinated CSC PAC presentations to community groups (Benton County Democrats, Chamber of Commerce, Kiwanis) and participated in writing a "Letter to the Editor" of the Tri-City Herald concerning the ballot proposition.
11. Respondents Sheriff Keane, Chief Hohenberg and Mr. Wehner communicated information about meeting with the Benton County Sheriff's Guild, and Respondents Keane and Wehner communicated information about meeting with the Benton County Corrections Officer Association, to discuss the ballot proposition using public agency computers and email system.
12. There was a public email chain concerning a private Pancake Breakfast Fundraiser which mentioned the ballot proposition and distributing information about the ballot proposition at the event.

Allegation: Elected officials soliciting contributions from subordinates (RCW 42.17A.565)

- 2.3 Sheriff Keane and Chief Hohenberg allegedly solicited contributions from employees in violation of RCW 42.17A.565.

Allegations concerning violations of RCW 42.17A.235 and .240 (Committee contribution and expenditure reporting):

- 2.4 CSC PAC failed to provide the required contributor information on Monetary Contribution reports (C-3 reports) and the required vendor information on Summary, Full Report Receipts and Expenditures (C-4 reports) filed by the committee.

Allegations listed in the complaint letter and supplemental information provided concerning violations of RCW 42.17A.500:

- 2.5 RCW 42.17.500 states that no “labor organization” may use agency shop fees “...paid by an individual who is not a member of the organization to make contributions...” to a political committee, but goes on to state that a “labor organization does not use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures...”
- 2.6 The complainant alleged that three local Benton County law enforcement associations made monetary contributions to CSC PAC, and that they used agency shop fees to make the following contributions: (1) West Richland Police Officers Association made a \$700 monetary contribution to CSC PAC on July 1, 2014; (2) Kennewick Police Officers Benefit made two contributions totaling \$1,000 to CSC PAC that included a \$500 contribution on April 21, 2014, and a \$500 contribution on May 10, 2014; and (3) Kennewick Police Management Association made a \$1,000 monetary contribution to CSC PAC on April 23, 2014.
- 2.7 No evidence was provided by the complainant to substantiate the allegations. Staff reviewed the contributions and statute, but did not find enough evidence to warrant investigating this allegation. Staff did receive a response from the West Richland Police Officers Association, indicating that no agency shop fees were used in making the \$700 contribution to CSC PAC.

Allegations that PDC staff did not investigate:

- 2.8 Finally, there were several additional allegations that staff reviewed and determined were not under the jurisdiction of the PDC or were not considered to be a violation of RCW 42.17A. Those allegations were not investigated by PDC staff and included the following:
- The Tri-Cities Hotel Motel Association made a \$1,000 contribution to CSC which the complaint alleged was made with tax-payer funds, and was made by a tax-exempt organization.
 - The Kennewick Police Department Foundation and Tri-City Fraternal Order of Police Lodge #7 are 501c3 tax exempt organizations that made contributions to a political campaign using tax exempt funds.
 - Kris Watkins, President & CEO of the Tri-Cities Visitor & Convention Bureau, violated RCW 42.17A.555 by using public facilities to support a ballot proposition.

The Tri-Cities Visitor & Convention Bureau is not a public agency, and Ms. Watkins is the President/CEO of a local private organization, and not a local government official or employee, so she is not subject to RCW 42.17A.555.

- Ana Armijo, Benton County Superior Court Interpreter/Translator violated RCW 42.17.555 by allowing her name to appear on the CSC web site.
- Paul Warden, Mayor of Prosser is a named respondent concerning other allegations, but the allegation that his name appeared on the CSC website was not investigated.
- The allegation that Kennewick Police Chief Ken Hohenberg violated .565 by soliciting contributions from employees of his agency was not be reviewed or investigated in accordance with PDC Interpretation No. 95-03 which states that RCW 42.17A.565 only applies to local elected officials and their agents. Chief Hohenberg is not an elected official, and not subject to the statute.

III. Findings

A. Al Wehner

- 3.1 Al Wehner was a former City of Richland Police Captain who retired on May 1, 2014, a member of the Benton County Law & Justice Council, and also the Campaign Manager for CSC PAC. After retiring, Mr. Wehner stated that he also made presentations to the cities of Richland, West Richland and Prosser to discuss ballot measure as the Campaign Manager for CSC PAC and a private citizen.
- 3.2 The complaint alleged that Mr. Wehner violated RCW 42.17A.555 when he: (1) Used City of Richland resources, including an undercover police vehicle, as a CSC committee member and a member of BCLJC to promote the ballot measure; (2) Used City of Richland resources to coordinate the May 13, 2014 press conference in support of a ballot measure; (3) Used City of Richland facilities to send and receive emails that included information to be posted on the CSC website; and (4) Used City of Richland facilities to make presentations to the cities of Richland, West Richland and Prosser supporting a ballot measure.
- 3.3 On July 7, 2014, PDC staff received an email from Mr. Wehner that included an attached eight-page response letter to the initial complaint. **Exhibit #7.** Mr. Wehner stated concerning the complaint and the additional supplemental filings that: *“There are a number of allegations that Mr. Howard makes, certifying or declaring under penalty of perjury that are patently false. Some of his claims are contradicted by his own.*
- 3.4 Mr. Wehner noted that in his response that he is providing *“information on allegations made against other respondents”* but only speaking for himself and on behalf of the Citizens for Safe Communities, and was not speaking *“for the other respondents, the county, or the cities.”*
- 3.5 He went on to state the following:

"At no time did the city ever assign, direct or imply I was to work towards obtaining approval of this ballot measure....Any involvement I have in supporting this measure is my own personal choice under my constitutional right of free speech, and was done on my personal time..."

May 13, 2014, law enforcement officers appear in uniform at a press conference

- 3.6 In his response to the complaint, Mr. Wehner stated that he notified the media concerning the May 13, 2014 press conference, in his capacity as a CSC committee member and a private individual, using his personal computer and email address. He stated that the press conference was scheduled for the noon hour "...to allow the sheriff and police chiefs to attend during their personal lunch hour..."
- 3.7 Mr. Wehner further stated that the press conference was held at a Sun Pacific Energy facility, which is a privately owned building, and that five local law enforcement officials appeared at the press conference which included Benton County Sheriff Keane; and Police Chiefs Giles, Hohenberg, McElroy & Skinner. He stated that all five individuals appeared in uniform at the "pre-arranged" press conference to support the Benton County L & E sales tax measure, and that no public resources were used in scheduling the press conference.
- 3.8 Mr. Wehner further stated that since the activity was an open press conference and "part of the normal and regular conduct of the office or agency, this allowed the five law enforcement officials "...to express their support for the ballot measure." He stated that the law enforcement officials drove their official assigned vehicles to the press conference and wore their respective agency uniforms to the press conference. He stated that the law enforcement officials in this matter "...normally wear their uniforms to press conferences" and added the officials "...are permitted to express their support for the ballot measure" in accordance with the normal and regular conduct exemption found in RCW 42.17A.555(3).
- 3.9 Mr. Wehner further stated that the photograph taken by the Tri-City Herald and supplied by the complainant was only available on the on-line version of the article and did not appear in the print version of the newspaper.

Appearances before the cities of Richland, West Richland and Prosser to discuss ballot measure

- 3.10 The complaint alleged that on May 6, 2014, the Richland City Council allowed Respondents Wehner, Chief Hohenberg, and Prosecutor Miller to be introduced in the their official capacity and as CSC committee officers, to provide information and testimony prior to the Council adopting a Resolution supporting the Benton County law and justice tax measure. The complaint alleged that Benton County Citizens for Efficient Criminal Justice and Law Enforcement "were not invited to make such a presentation, nor afforded an approximately equal opportunity for the expression of an opposing view."

- 3.11 In his response to the initial complaint, Mr. Wehner stated that he contacted the cities of Richland, West Richland and Prosser as a private citizen, "...to request permission for representatives from the CSC to appear before the councils..." and provide testimony soliciting support for Proposition 14-5, the Benton County criminal justice sales tax measure. He believed each city listed on their respective agendas that CSC members would be appearing at the upcoming city council meetings.
- 3.12 Mr. Wehner further stated that each city's agenda is a publicly available document, and that when he appeared before the Richland, West Richland and Prosser City Councils, "No opposition member identified themselves or asked to speak during our presentations, nor during the public comment sections."
- 3.13 Mr. Wehner took exception with the allegation that the three cities violated PDC laws by failing to notify the "opposition group" that CSC committee members were going to be appearing before each city council and making a presentation, and that there was no such requirement. He stated the opposition group were aware that the four largest cities in Benton County were going to be discussing Proposition 14-5 at an upcoming council meeting, and nothing prevented them from making the same request, to appear at the meeting, or to make comments during the public comments section.

Benton County Law & Justice Council meetings that supported Proposition 14-5

- 3.14 RCW 72.09.300(1) states in part: "Every county legislative authority shall by resolution or ordinance establish a local law and justice council." "...the size and composition of the council, shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior, juvenile, district, and municipal courts, the county jail administrator, the county clerk, the county risk manager, and the secretary of corrections and his or her designees. Officials designated may appoint representatives...."
- 3.15 In his response to the complaint, Mr. Wehner stated he was assigned to the Benton County Law & Justice Council (BCLJC) in September of 2012, and that the BCLJC studied the criminal justice needs of Benton County and the four major cities within the county for over a year. He stated that when the BCLJC had completed its work, the council recommended the Benton County Commissions "...place a .3% public safety sales tax on the ballot to meet the county's current and future criminal justice needs."
- 3.16 Mr. Wehner further stated that Eric Hsu, Benton County Public Defense Manager, served as the Chairperson of the BCLJC, and included all Benton County local criminal justice public officials or employees. He stated that the BCLJC meetings were considered public meetings, that were held at noon during the BCLJC member's lunch hour, and using a public facility or meeting room/space such as at the Sheriff's Office.
- 3.17 During calendar year 2013, the BCLJC members included Mr. Wehner, Mr. Hsu and the following:

- Andy Miller, Benton County Prosecuting Attorney.
- Josie Delvin, Benton County Clerk.
- Steven Keane, Benton County Sheriff.
- Jacki Lahtinen, Administrator, Benton County District Court.
- David Giles, City of Prosser Police Chief.
- Paul Warden, City of Prosser Mayor.
- Brian McElroy, City of West Richland Police Chief.
- Ken Hohenberg, City of Kennewick Police Chief.
- Chris Skinner, City of Richland Police Chief.
- Shon Small, Benton County Commissioner.
- Darryl Banks, Benton and Franklin Counties Juvenile Department.
- Pat Austin, Benton and Franklin Counties Superior Court Administrator.
- Denise Gerry, Benton and Franklin Counties Office of Public Defense.

3.18 In September of 2013, Mr. Hsu, received an email at his Benton County computer and email address from Mr. Wehner, who sent the email from his personal email address. The email from Mr. Wehner included an attached document entitled "Strategic Plan."

3.19 On September 18, 2013, Mr. Hsu using his Benton County work computer and county email address, sent an email to the email to all BCLJC members at their public email addresses, and the attached the "Strategic Plan" document that he had received from Mr. Wehner. **Exhibit #8.** The email reminded members of the upcoming September 25, 2013 BCLJC meeting, and requested the members take the time to review the attached Strategic Plan in detail, so that it can be discussed and presented for formal adoption by the BCLJC at the September 25, 2013 meeting. The Strategic Plan was a 14-page document was broken down into three sections (Sections A-C) that began with a Preface, and included the following:

Preface:

"This plan includes various issues the campaign committee should consider in promoting the ballot measure." "This plan is designated to serve as a starting point for both the BCLJC and campaign committee. Recommendations offered are based upon my knowledge and experience in campaign matters."

"Persons participating in this effort, who have political experience, are encouraged to offer their insight and opinions. It is anticipated the plan will be changed as needed to ensure successful passage of the measure." "Passage of this measure is critically important to the criminal justice system in Benton County."

Section A: "General Information"

Section A provided information concerning the authority for placing a Criminal Justice Sales Tax measure on the ballot, the history of local ballot measures for Benton and Franklin counties, the movement for a sales tax measure in Benton County in 2014.

The information included the preliminary work undertaken by the Advisory Committee in 2012 concerning the sales tax measure, and legal considerations that referred to and cited RCW 42.17A.555, provided the exemptions found in the statute, and went on to state the following:

“Public officials involved in supporting or opposing a ballot measure need to be aware of legal restrictions.”

“We need look no further than Franklin County to see the problems when there are violations, perceived or real, of this statute. The state’s Public Disclosure Commission is currently investigating a citizen’s complaint that the Pasco School District improperly used public resources during the February 2013 election for a bond issue.”

Section B “The Role of the BCLJC”

Section B discussed the authority for the BCLJC, the goals of the BCLJC, the timeline for the BCLJC to complete its work and to make recommendations to the Benton County Commissioners.

Section C “The Role of the Campaign Committee”

Section C provided information concerning creating a political committee in support of a local ballot measure. The information discussed the legal requirements of a ballot measure committee, the goals of a ballot measure committee, and identified key committee positions (without naming any specific individual) including committee officers, campaign manager, and steering committee members, and described the duties and responsibilities for each position. The information identified other committee positions such as voter analyst, and coordinators for fundraising, advertising, doorbelling, yard signs and letters to the editors of local newspapers.

The “Role of the Campaign Committee” information included a one and one-half page committee timeline with a detailed chart which discussed dates by which the following committee activities should be undertaken:

- The committee should be formed, staffed and have a name selected.
- Committee Treasurer files the necessary PDC paper to register a ballot measure committee.
- Committee Spokesperson makes formal announcement of the committee’s formation.
- Committee establishes fundraising goals.
- Political advertisements to be designed, printed, aired and distributed, and states that newspaper, radio, and direct mail political advertisements need to be mailed, placed or begin airing one week prior to the ballots being mailed out by the County Auditor.

The chart notes that television advertising is normally “the least effective of campaign advertising.”

- Purchasing committee yard signs stating “design and wording should be simple and concise”, and noted that the placement of the yard signs should be in high visibility areas and right-of-ways.
- Doorbelling efforts (including prioritizing neighborhoods and targeting specific addresses based on Voter Analyst), Get-out-the-vote (GOTV) activities, other outreach efforts.
- Coordinate community presentations to civic organizations like the Rotary and Kiwanis, begin operations of kiosk booths at high pedestrian traffic areas, and ask law enforcement to reach out to neighborhood groups with information.
- To identify letter-to-the-editor writers, coordinate different issues with the campaign, and space them out with one appearing every week.

3.20 On September 25, 2013, the BCLJC held a meeting of its members in which they discussed the “Strategic Plan” for the proposed Benton County law and justice sales tax measure. The documentation provided by the complainant included the September 25, 2013, BCLJC meeting minutes which listed the members present, and involved members discussing and adopting the “Strategic Plan”, the BCLJC’s work and timeline moving forward, determining which ballot the sales tax measure will appear, and subcommittee work.

3.21 In his response to the complaint, Mr. Wehner stated he presented the Strategic Plan to BCLJC members in attendance at the meeting, and that the Strategic Plan was divided into two sections that included: (1) BCLJC’s role in responding to requests from the Benton County Commissioners; and (2) “...how a campaign to support such a measure might be structured.” He added that the information concerning the “Role of the Campaign Committee” that was provided to BCLJC members, was to help the BCLJC “...better understand the difference between the BCLJC role and a campaign function.”

3.22 In January of 2014, BCLJC finalized their work and reported to the Benton County Commissioners recommending they place a Benton County sales tax measure on the ballot, increasing the sales tax by 0.3% in Benton County and to spend those funds on public safety and criminal justice needs throughout the county.

B. Citizens for Safe Communities (CSC)

3.23 Citizens for Safe Communities (CSC) was a first-time political committee formed in 2014, to support the August 5, 2014, law and justice sales tax measure. The campaign finance reports filed by CSC (C-3 and C-4 reports) disclosed that the committee raised and spent a total of \$29,296.

- 3.24 The C-1pc report filed by CSC on February 14, 2014, disclosed CSC selected the Full Reporting option listed Al Wehner, as the Campaign or Committee Manager; and Josie Delvin, as Committee treasurer. Staff reviewed the CSC website which listed CSC Steering Committee members as: Ken Hohenberg, Kennewick Police Chief; Andy Miller, Benton County Prosecutor; and Josie Delvin, Benton County Clerk. . The CSC website disclosed the following CSC Honorary Chairpersons: Bill McCurley: Chairman, McCurley Integrity Dealerships; Bill Lampson: President, Lampson International; Kris Watkins, President & CEO of the Tri-Cities Visitor & Convention Bureau; Ana Armijo, Benton County Superior Court Interpreter/Translator; Paul Warden: Mayor of Prosser; Karen McGinnis: Director, HAMMER Training Center; and Craig D. Eerkes: President, Sun Pacific Energy.
- 3.25 The complaint alleged that: (1) CSC PAC failed to provide the required contributor information on Monetary Contribution reports (C-3 reports) and the required vendor information on Summary, Full Report Receipts and Expenditures (C-4 reports) filed by the committee; and (2) CSC PAC officers and members used the public facilities of their offices to solicit contributions. In addition, based on staff's investigation, staff is alleging that CSC PAC failed to timely file C-3 and C-4 reports on its initial paper-filings, and failing to timely file the C-3 and C-4 reports electronically.
- 3.26 On August 14, 2014, PDC staff received an email from Ms. Delvin, and two-page attached response letter from Mr. Wehner and Ms. Delvin on behalf of CSC. **Exhibit #9.**
- 3.27 In CSC's response to the complaint, Mr. Wehner and Ms. Delvin stated that the initial discussions concerning the formation of CSC as a ballot measure committee began in late January 2014, and CSC was officially formed as a political committee in February of 2014
- 3.28 In CSC's response to the complaint, Mr. Wehner and Ms. Delvin stated that CSC held approximately five meetings, including one meeting in April 2014, one meeting in May 2014, and three meetings in June 2014. The CSC meetings were informally led by Craig Eerkes, Mr. Wehner provided updates on CSC campaign activities, and Ms. Delvin provided fundraising and contribution updates. CSC fundraising activities were conducted primarily by the citizens' groups that supported the sales tax measure, and a few committee members who made personal contributions on behalf of the committee.
- 3.29 In CSC's response to the complaint, Mr. Wehner and Ms. Delvin stated that CSC received very few monetary contributions at the committee's post office box. All monetary contribution checks were forwarded to Ms. Delvin or Mr. Wehner for deposit into the campaign bank account, except for one contribution that was sent directly to the bank. Ms. Delvin entered the information into the PDC's ORCA electronic software and filed the PDC reports.
- 3.30 During the investigation, staff found that CSC PAC supported a local ballot measure on the August 5, 2014 primary election ballot, which required the political committee to file more frequent and detailed reports of contribution and expenditure activities four months prior to the election or beginning May 1, 2014.

- 3.31 Political Committees were required to file weekly C-3 reports every Monday beginning May 1, 2014, disclosing contributions that were received and deposited the previous seven days. Political committees are required to timely deposit monetary contributions received into the campaign bank account or depository within five business days of receipt, and to file one C-3 report for each bank deposit.
- 3.32 Political committees under the Full Reporting option in 2014 were also required to file monthly C-4 reports by the 10th of each month disclosing contribution and expenditure activities incurred in the previous calendar month. Ballot measure committees that had measure on the 2014 primary election ballot were required to file the following C-4 reports:
- A 21-day Pre-Primary election C-4 report was due on July 15, 2014, covering the period June 1 through July 14, 2014.
 - A 7-day Pre-Primary election C-4 report due on July 29, 2014, covering the period July 15 through July 28, 2014.
 - A Post-Primary election C-4 report by September 10, 2014, covering the period July 29 through August 31, 2014.

CSC PAC failed to timely file C-3 and C-4 reports

- 3.33 Staff reviewed the Monetary Contribution reports (C-3 reports) and the Summary, Full Report Receipts and Expenditures (C-4 report) filed by CSC and the allegations listed in the complaint concerning the committee's failure to timely and accurately file PDC reports.
- 3.34 CSC timely filed five of the seven C-4 reports submitted during the course of the 2014 ballot measure. Staff would note that the first six C-4 reports were filed on paper, which were mailed in and scanned by IT staff. **Exhibit #10.** Since it was a local ballot measure, none of the information disclosed on the paper-filed reports was entered into the PDC contribution and expenditure databases. The only way a member of the public could review the information, was to navigate to the "View Reports" links on the PDC website, and scroll through each page of each C-3 or C-4 report.
- 3.35 Staff note that the initial paper-filed reports listed above contain contribution and expenditure information for incorrect and overlapping reporting periods (i.e.- April 10 to May 9, 2014, instead of April 1-30 and May 1-31, 2014). Based on the overlapping reporting dates, the contribution and expenditure information was not timely disclosed on two of the paper-filed C-4 reports. Those two initial C-4 reports disclosed \$12,696 in contributions received and \$3,770 in expenditures made, including the initial C-4 report which was filed three days late, and the March 10 to April 9, 2014 C-4 report which was filed four days late.

3.36 The chart below lists the correct contribution and expenditure as disclosed on the electronically filed C-4 reports, for the proper reporting periods and only includes one late-filed C-4 report.

C-4 Report	Date Due	Date Filed	Contrib. Received	Expend. Made	Expenditure details	Days Late
Feb C-4 report	3/10/2014	3/13/2014	\$ 0	\$ 0	N/A	0
March 2014 C-4 report	4/10/2014	4/14/2014	\$ 8,200	\$ 78	\$51 for food & beverages	4
April 2014 C-4 report	5/12/2014	5/12/2014	\$ 3,130	\$ 701	IK contribution Website \$630; \$71 for office supplies.	0
May 2014 C-4 report	6/10/2014	6/10/2014	\$ 5,916	\$ 4,972	Print brochures \$1,625 expend. & \$1,366 IK cont; Yard signs \$1,370; Banners \$298; T-shirts \$299.	0
21-Day Pre Primary C-4	7/15/2014	7/15/2014	\$ 11,850	\$ 23,044	Radio ads 3- buys (\$12,582); Direct mail (\$6,733); Newspaper ads (\$2,129)	0
7-Day Pre Primary C-4	7/28/2014	7/25/2014	\$ 0	\$ 0	N/A	0
Post-Primary C-4 Report	9/10/2014	9/4/2014	\$ 0	\$ 501	Reimburse official for misc. office supplies (\$491)	0
Totals			\$ 29,296	\$ 29,296		0-4

3.37 CSC PAC filed a number of C-3 reports (manually on paper) that included multiple bank deposits, and those contributions were not timely disclosed on a separate C-3 report. The late filed contributions totaled \$12,450 were disclosed one to 22 days, and were required to have been disclosed on a separate C-3 report. **Exhibit #11.**

3.38 The \$12,450 in late filed monetary contributions represented 42.5% of all contributions received, and were disclosed on the C-3 reports listed below. Staff note that of the \$12,450 in late filed contributions, almost one-half of the late filed contributions, or \$6,600 in contributions were filed manually on paper one to four days late. However, none of those contributions were listed in the PDC contribution database until just before the election.

C-3 report filed on April 14, 2014, totaling \$6,600:

- Out of the total amount reported (\$6,600), the C-3 report listed six contributions totaling \$5,500 that were received on March 18, 2014, and one \$100 contribution received on March 28. The seven contributions totaling \$5,600 were required to have been disclosed on a C-3 report no later than April 10, 2014 and were disclosed four days late.

C-3 report filed on June 10, 2014, totaling \$7,650:

- Out of the total amount reported (\$7,650), six contributions totaling \$900 were received on May 10, 2014, deposited on May 12, 2014, and due to be disclosed on a C-3 report on May 19, 2014. The six contributions were disclosed on a C-3 report filed on June 10, 2014, 22 days late.
- In addition, a \$1,000 contribution was received and deposited on May 21, 2014, and three contributions totaling \$1,350 were received and deposited on May 23, 2014. The four contributions totaling \$2,350 were due to be disclosed on a C-3 report on May 26, 2014, and were disclosed on a C-3 report filed on June 10, 2014, 15 days late.
- Finally, five contributions totaling \$2,400 were received and deposited on June 2, 2014, and one contribution totaling \$1,000 was received and deposited on June 5, 2014. The six contributions totaling \$3,400 were due to be disclosed on a C-3 report on June 9, 2014, and were disclosed on a C-3 report filed on June 10, 2014, one day late.

C-3 report filed on June 23, 2014, totaling \$4,800:

- Out of the total amount reported (\$4,800), a \$200 contribution was received and deposited on May 27, 2014, and should have been disclosed on a C-3 report no later than June 2, 2014. The \$200 contribution was disclosed on a C-3 report filed on June 23, 2014, 21 days late.

CSC PAC failed to timely disclose required contributor information on C-3 reports

- 3.39 CSC PAC disclosed receiving a total of \$29,296 in total contributions that included \$27,200 in monetary contributions received from 55 different contributors, and three in-kind contributions totaling \$2,096. CSC received: (1) 42 monetary contributions from individuals totaling \$16,300; and (2) 13 monetary contributions from local businesses, associations, unions, not-for-profit organizations, and other entities totaling \$10,900.
- 3.40 When asked why she neglected to provide the mailing addresses for contributors and vendors, Ms. Delvin stated that some of the addresses were not available to her when the reports were due, but mostly she her concerns were

“about disclosing the home addresses of law enforcement and criminal justice personnel. Initially the city and state for those individuals was disclosed. ORCA is not a very user friendly system to amend information.”

- 3.41 On August 9, 2014, four days after the primary election was held, CSC filed a number of amended C-3 and C-4 reports electronically, disclosing the complete address for the majority of contributors and vendors. **Exhibit #12.** The amended C-3 reports disclosed the Occupation and Employer for 23 individual contributors that made monetary contributions of more than \$100.
- 3.42 CSC listed “Unknown” for both the Occupation and Employer for five additional contributors that made monetary contributions of more than \$100, and has not provided any updates to that information.
- 3.43 Ms. Delvin stated that “...all information has been amended, disclosed and filed with the PDC. I still have a great concern regarding the disclosure of home addresses for law enforcement, criminal justice individuals and public officials.”
- 3.44 PDC staff’s review noted that CSC substantially complied concerning the timeliness in filing the C-3 and C-4 reports disclosing contribution and expenditure information, but those reports were filed on paper. The C-3 and C-4 reports were filed on paper well before the August 5, 2015 primary election was held.

CSC PAC failed to timely file C-3 and C-4 reports electronically

- 3.45 The electronic filing requirements in RCW 42.17A.245 requires political committees expending or expecting to expend \$5,000 in the current year to comply with the law and file the C-3 and C-4 reports using ORCA or similar campaign finance filing software.
- 3.46 CSC PAC made a \$1,370 expenditure on May 27, 2014 to Diane Wehner, to reimburse her for an out-of-pocket purchase for committee yard signs. When combined with other CSC expenditures, the \$1,370 expenditure resulted in CSC PAC’s expenditures totaling \$5,751, which put CSC PAC over the \$5,000 electronic filing expenditure threshold, and requiring the committee to file its committee C-3 and C-4 reports electronically using ORCA.
- 3.47 On July 31, 2014, CSC PAC electronically filed its C-3 and C-4 reports, six days before the August 5, 2014 primary election date. CSC PAC electronically filed the C-3 and C-4 reports 64 days late, based on the required electronic filing date of May 27, 2015.
- 3.48 As noted above, on August 9, 2014, CSC filed a number of amended C-3 and C-4 reports electronically disclosing the complete address for the majority of contributors and vendors. That information was disclosed four days after the primary election was held.

Allegation regarding CSC PAC officers and members using the public facilities of their offices to solicit contributions

3.49 The complaint alleged CSC PAC officers and members that are public officials or employees, including Mr. Wehner, Mr. Miller, Ms. Delvin, and Chief Hohenberg used their respective public offices to solicit contributions for the committee. No evidence was provided to support this allegation, and all four of the individuals listed above acknowledge soliciting contributions for CSC PAC on their own time, but not using any public resources or equipment.

C. Benton County

C-1. Steven Keane, Benton County Sheriff

3.50 The complaint alleged that Steve Keane, Benton County Sheriff violated RCW 42.17A.555 by: (1) Appearing in uniform at the May 13, 2014 press conference; (2) Using his name and title in the joint press release concerning the May 13, 2014 press conference; (3) Using Benton County resources as a CSC committee member and a member of BCLJC in attendance for September 2013 meeting to promote the ballot measure; (4) Using Benton County facilities to send an email to Mr. Wehner that included Sheriff's Office budget, staffing, crime statistics and criminal justice information to be posted on the CSC website and reviewed the information once posted on the CSC website; and (5) Used Benton County resources, including the uniform to solicit contributions to CSC.

3.51 On August 20, 2014, Sheriff Keane submitted an email and attached a letter in response to staff's request for a response to the allegations in the complaint. **Exhibit #13.** Sheriff Keane stated that he did not use Benton County facilities to plan or generate support for the criminal justice sales tax ballot proposition. Staff did not investigate the second allegation concerning Sheriff Keane's name and title being used to supporting a ballot proposition, since the Commission does not consider an individual's name and title to be a prohibited use of a public facility or resource.

Sheriff Keane used Benton County resources as a BCLJC member to promote the ballot measure

3.52 As Benton County Sheriff, Sheriff Keane is statutorily included as a member of the BCLJC. In his response to the complaint, he stated that his role on the council was to discuss Sheriff's Office issues affecting Benton County's criminal justice system, and as a BCLJC member, he attended meetings, and used his Sheriff's Office computer and email account to send and receive emails containing information with other council members.

3.53 Sheriff Keane further stated that his activities undertaken on behalf of the BCLJC were "part of the normal and regular conduct" as Sheriff, and none of the facilities were used to support the ballot proposition. He recalled that he received requests for information from fellow BCLJC Council members, the Citizen's Advisory Committee, and the CSC all in the form of an email, and that he gathered the requested information from records maintained within the Sheriff's Office.

Sheriff Keane Uniform Issue

- 3.54 PDC Interpretation 04-02 includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following statements under the Not Permitted column:
- “Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.).”*
- 3.55 In his response to the complaint, Sheriff Keane stated that he did attend an open press conference in uniform on May 13, 2014 concerning Benton County Proposition No. 14-5. He stated that as the incumbent Benton County Sheriff, he is on call 24 hours a day, and he is expected to be available and respond to urgent matters at any time of the day. He stated he responds to all sorts of emergency situations and that he is assigned an unmarked patrol car, equipped with emergency equipment.
- 3.56 Sheriff Keane further stated that he rarely changes into civilian clothes during the work week, and went on to state the following:
- “Normally in situations where I’m aware of a pre-scheduled meeting/appointment where my uniform may not be appropriate, I’ll change into civilian attire if possible. This press conference took place at 12:00 pm during my normal lunch hour and was held in a privately owned facility and was open to the general public. I attended this press conference in uniform. My schedule on that particular day made it impossible to change out of uniform”*
- 3.57 Sheriff Keane further stated that on the morning of May 13, 2014, he drove to the City of Prosser to attend a regularly scheduled meeting of the Benton County Board of County Commissioners in his Sheriff’s uniform.
- 3.58 Sheriff Keane further stated the Benton County Sheriff’s Office is located in the City of Kennewick, and that the City of Prosser is located 40 miles from Kennewick. He stated that when he attends the meetings in Prosser, he typically does not get back to Kennewick until late in the morning, and that the May 13th press conference was scheduled to begin at noon. He stated that after the press conference, he had a meeting scheduled at 1:30 p.m. back at the Sheriff’s Office with a private citizen and one of his Undersheriff’s.
- 3.59 Sheriff Keane further stated that his
- “...schedule didn’t allow for me to take myself out of service, drive home to change into civilian attire to attend the press conference. Also, as I believe my actions meet RCW 42.17A.555. (2)(3), to include activities which are a part of the normal and regular conduct of this office.”*

Sheriff Keane's use of Benton County facilities to send information to CSC Committee

- 3.60 In his response to the complaint, Sheriff Keane stated that he did provide "...*crime statistic information to the Citizens' Advisory Committee, as well as to Citizens for Safe Communities. All information provided was public information and is maintained by the Benton County Sheriff's Office.*" He stated that he had provided similar information on numerous other occasions to the media, various civic and local community organizations, the Board of Benton County Commissioners and at open public meetings. He added that information concerned a variety of Sheriff's Office related issues that included gang related crime updates, general crime trends, budgetary matters, manpower needs, etc.
- 3.61 Sheriff Keane further stated that the Sheriff's Office routinely provides information to private citizens upon request using Benton County Sheriff's Office computer and email. He stated that all of the information provided by his office was public information including crime statistics, calls for service, gang information, budget and other office related information.
- 3.62 Sheriff Keane further stated concerning the CSC information sent to Mr. Wehner, that one of his Undersheriff's provided him with information that had been requested by Mr. Wehner, as a private citizen in his capacity as CSC Manager. Mr. Wehner had requested information about Benton County Sheriff Office manpower needs and assessments, and that his records sergeant provided him with information about Sheriff's service calls and crime-related statistics. He stated he compiled the information in the Sheriff's Office and sent it to Mr. Wehner using his Sheriff's Office work computer and email address for posting on the CSC website. He stated that he believed it was:

"...part of the normal and regular conduct of this office to answer media or private citizen inquiries." "When a private citizen requests information, I consider it a public records request, even though the formal process isn't always followed."

"I provided information to the Citizen's Advisory Committee and to Al Wehner by email upon request. Information requested was information held by the Benton County Sheriff's office and is available to the media and private citizens. I was simply providing documents and data maintained by the Benton County Sheriff's Office, but was not utilizing staff time or county facilities for the purpose of assisting a campaign. "

Sheriff Keane's attendance of a meeting of Benton County Deputy Sheriff's Guild promoting the ballot measure and soliciting contributions

- 3.63 Sheriff Keane stated that he received an email from Mr. Wehner (as a private citizen and campaign manager of CSC), requesting that he attend a meeting of the Benton County Deputy Sheriff's Guild and explain how the sales tax monies would be spent by the Sheriff's Office. He stated that part of his normal conduct as Sheriff is to attend meetings periodically of the Benton County Deputy Sheriff's Guild, and his role at those meetings is to provide updated information to Guild members on issues of importance. He stated he has attended prior Guild meetings both in uniform and in civilian clothing, depending on his schedule.

- 3.64 Concerning his appearance in uniform at a Guild meeting in which he discussed the Benton County sales tax measure, and whether he spoke in his "official capacity" Sheriff Keane stated that "...every member knows I'm the Sheriff whether I'm in uniform or not" and that he did not solicit a contribution from the Benton County Deputy Sheriff's Guild on behalf of CSC.

C-2. Andy Miller, Benton County Prosecuting Attorney

- 3.65 Andy Miller is the incumbent Benton County Prosecuting Attorney, and PDC records dating back to 1996, indicated that he has been the elected Prosecutor since at least 1994. He was re-elected Prosecutor in 1998, 2002, 2006, 2010 and 2014 respectively. Mr. Miller has selected the Mini Reporting Option for each of last five elections that he has appeared on the ballot.
- 3.66 The complaint alleged that Prosecutor Miller violated RCW 42.17A.555 by: (1) Using Benton County facilities, including his work time, computer, email address, and assigned county vehicle or that he received a "vehicle or auto allowance, to support the ballot measure as a CSC committee member and a member of BCLJC in attendance for September 2013 meeting to promote the ballot measure; (2) Used Benton County facilities to send an email to Mr. Wehner on January 22, 2014 that included Benton County Prosecutor's Office budget, staffing, and criminal justice information to be posted on the CSC website, and then used the office to reviewed the information once it had been posted on the CSC website; (3) Used Benton County resources to make presentations as a CSC member to the Richland, West Richland, and Prosser City Councils to solicit support for the sales tax measure; and (4) Used Benton County resources to assist his 2014 re-election efforts for Benton County Prosecutor.
- 3.67 On August 2, 2014, Mr. Miller submitted an email in response to staff's request that he respond to the allegations in the initial complaint. On August 26, 2014, Mr. Miller submitted an additional email and attached a letter in response to staff's request for additional information concerning the second supplemental complaint filed by Mr. Howard. Both emails have been combined into one exhibit, and Mr. Miller's responses have been combined to address the allegations as detailed below. **Exhibit #14.**
- 3.68 Concerning the allegation that Mr. Miller used Benton County facilities to promote his candidacy, PDC staff note that Mr. Miller was unopposed as a candidate seeking re-election to at least his fifth term as Benton County Prosecutor in 2014. In addition, when he registered as a candidate with the PDC, he selected the Mini Reporting option. Based on those facts and the lack of any evidence provided by the complainant, the fourth allegation listed above was not investigated by PDC staff. Mr. Miller stated that he is not provided a Benton County vehicle as Prosecutor, and he does not receive a vehicle or auto allowance.

Mr. Miller's use of Benton County resources as a CSC committee member and BCLJC member to promote the ballot measure

- 3.69 In his response to the complaint, Mr. Miller stated that he could not distinguish his being a BCLJC member from serving in his official capacity as Benton County Prosecutor, since RCW 72.09.300 states that law and justice councils shall include as a member the county prosecutor. He stated that the BCLJC held its meetings in the County building at noon, and he thought they met quarterly, but added that his attendance was sporadic.
- 3.70 Mr. Miller further stated that he was not sure whose idea it was to form CSC or when that decision was made, but he assumed that it was either Mr. Wehner or Chief Hohenberg. He was listed as a CSC steering committee member on the Committee Registration filed by the committee. Mr. Miller stated that he never attended any CSC meetings, but he did send and receive emails with CSC committee officers and members using his personal email address.
- 3.71 Mr. Miller further stated he was aware that Chief Hohenberg and Mr. Wehner met with individuals in the community concerning the CSC, and added that he did not use his Benton County Prosecutor's Office to support CSC activities or the ballot measure. He stated that he "routinely" checked his personal email while in the office using his work computer, but stated that was an accepted use of his computer. After being contacted about the complaint, he double checked his sent emails from his personal email address and found "...that all CSC emails were sent before or after work hours or on weekends which is consistent with my memory."
- 3.72 Mr. Miller further stated when he drafted the January 22, 2014, email that he did not "...make a conscious decision as to what capacity I was sending the email" and he acknowledged using his Benton County computer and county email address to send the email to Chief Hohenberg, then Captain Wehner, and Mr. Hsu. He stated at this point in time, the Benton County Commissioners had not made a decision to place the public safety tax measure on the ballot, and added that he was "...not sure that the Commissioners would vote to place it on the ballot."
- 3.73 Mr. Miller further stated that he felt the BCLCJ did not have all of the information necessary to provide the Benton County Commissioners with the specific services that Proposition 14-5 would be providing and what approval of the measure would accomplish. He stated that he believed the use of the word "campaign" in January 22, 2014 email was consistent with small "c" campaign as opposed to a capital "C" Campaign. He stated that he did not believe there was a ballot measure at that time, and the BCLJC "...still needed to present a convincing case" to the Benton County Board of Commissioners that the public safety tax should be presented to the voters."
- 3.74 Mr. Miller further stated the January 22nd email referred to a meeting with the publisher of the Tri-City Herald, Greg McConnell, who had convened a community group to meet and discuss issues of the *"interplay of the criminal justice system and the mental health issues."* He stated the complainant took exception to him attending the meeting which he characterized as being *"...different than the typical editorial board meeting."* He stated the group discussed the proposed sales tax measure that included a balance of additional police officers, public defenders and prosecutors along with mental health initiatives such as the creation of a mental health court. Mr. Miller went on to state that:

"in the past, there have been elements in Benton County that have opposed inclusion of mental health reforms in a public safety tax proposal. I believed at the time that if the publisher was publicly supportive of including the mental health initiatives in the public safety proposal it would help us with the county commissioners."

Mr. Miller's use of Benton County facilities to send information to CSC Committee

- 3.75 Mr. Miller stated that Mr. Wehner had sent him an email as a private citizen, requesting information from the Benton County Prosecutor's Office and he responded by providing him with information concerning how the funds generated from the sales tax measure, if approved, would be spent, and how it would affect the Prosecutors Office. He stated that he did *"...not believe that any of the information advocated for or against the passage of the tax. I compiled the information and no other employees were used."* He stated that his understanding was that he had previously compiled similar information as part of his work as a member of the BCLCJ.
- 3.76 Mr. Miller stated that he gave the same information to *"the Benton County Board of Commissioners for their consideration when they decided to put the question on the ballot."* He stated that was not sure if the information he provided was already on the Benton County website, since he does not use the Benton County website. He confirmed that no Benton County staff time was spent researching materials he compiled, and that no documents were created.
- 3.77 Mr. Miller stated that his understanding concerning information requests made to the Prosecutor's Office is that it includes any request for information, and does not have to be labeled as "public records request" or be on any specific form. He stated that the Prosecutor's Office in the last few years *"has encouraged a broad view of public records request and I believe that broad view is supported by the case law."*
- 3.78 Mr. Miller stated that he received an email from Mr. Wehner requesting information from the Prosecutor's Office and that he responded to the email as he does for any request for information, and provided Mr. Wehner with information about how the money from the ballot measure, if approved, would be allocated and spent. He said the information he sent to Mr. Wehner was similar or identical to information his office had already provided to the Benton County Commissioners, and to the BCLJC, and all of the information that he provided to the CSC, was available to the general public.

Mr. Miller's use of Benton County facilities to make presentations at a Richland City Council meeting

- 3.79 Mr. Miller stated concerning this allegation that he is unclear if the complainant mistakenly believed that he drove a Benton County vehicle or that he was receiving a car allowance, or that he should not be allowed to address the Richland City council as Prosecutor. He stated that he drove his personal vehicle to the city council meeting, and at the meeting he explained how the Benton County prosecutor's office and other offices would spend the tax money if Proposition 14-5 was approved.

- 3.80 Mr. Miller stated that did not believe that any of the comments he made to the Richland city council violated any PDC laws or rules.
- 3.81 Staff reviewed the video of the May 6, 2014 Richland City Council meeting in which Mr. Miller addressed the council and stated the Prosecuting Attorney's Office spends more time on city cases than on county cases. He spent some time discussing two examples of cases that he worked on with detectives from the City of Richland involving the death of a 14-year old boy, and the other involving the shooting of a returning veteran from the war in Afghanistan. Mr. Miller discussed the problems associated with gang crimes and the difficulties in getting witnesses to cooperate or testify, and that both of those shootings were conducted by gang members.
- 3.82 During the May 6, 2014 council meeting, Mr. Miller also explained the difficulties he has encountered in prosecuting gang crimes, and that the two cases highlighted the current gang problems in Benton County, and why he believes the county is in need of a "Gang Prosecutor" to address this issue. He stated that the ballot measure would provide additional funding for Prosecutor and Police staffing, as well as funding for at-risk counseling for juveniles at the middle schools and funds for mental health issues. He recommended that the city council adopt the resolution in support of the ballot measure since it provides a balance of being "tough on crime" through the criminal justice system for those gang members that commit crimes, while also providing funding for supervision of at-risk youngsters who are vulnerable to gangs, and mental health funding for the homeless.

C-3. Josie Delvin, Benton County Clerk, and Jerome Delvin, Benton County Commissioner

- 3.83 Jerome Delvin is an incumbent Benton County Commissioner, and former Washington State House and Senate member. Josie Delvin is the spouse of Mr. Delvin, and the incumbent Benton County Clerk, who was elected to that office in November of 2006, and re-elected in 2010, and again in 2014.
- 3.84 The complaint alleged that Ms. Delvin violated RCW 42.17A.555 by: (1) Using a Benton County official agency vehicle or receiving an auto allowance to drive to events in support of the ballot proposition; (2) Being reimbursed by Benton County for CSC committee expenses that included telephone and post office box rental to attend/conduct activities in support of the ballot proposition; (3) Using Benton County resources to assist her 2014 re-election efforts for Benton County Clerk.
- 3.85 The complaint alleged that Jerome Delvin violated RCW 42.17A.555 by: (1) Using Benton County facilities, including his work time, computer, email address, and assigned county vehicle or that he received a "vehicle or auto allowance, to support the ballot measure; and (2) Being reimbursed by Benton County for CSC committee expenses that included telephone and post office box rental to conduct activities in support of the ballot proposition.

- 3.86 As an incumbent Benton County Commissioner, Mr. Delvin voted to create the Citizens Advisory Committee, to have the BCLCJ develop the costs and services provided by the criminal justice sales tax measure, and to place the measure on the ballot.
- 3.87 No evidence was found by staff or provided by the complainant to substantiate the allegation that he used county facilities to support the ballot measure, so it was not investigated by PDC staff. In addition, the second allegation was not investigated by staff since Ms. Delvin listed the Delvin's telephone and post office box on the C-1pc report field by CSC as detailed below.
- 3.88 Staff noted that Ms. Delvin was unopposed as a 2014 candidate seeking re-election to the office of Benton County Clerk, and that the only expenditure she made was the \$1,015 she paid to the Benton County Auditor's Office for her filing fee. Based on those facts and the lack of any evidence provided by the complainant, this allegation was not investigated by PDC staff.
- 3.89 On August 25, 2014, Ms. Delvin submitted an email and attached a letter in response to staff's request that she respond to the allegations made against her in the complaint. **Exhibit #15.** In her letter, she stated that the information she provided for the CSC website is the same information she provided to the BCLJC, and the Citizens Advisory Committee.
- 3.90 In her response to the complaint, Ms. Delvin stated that as Benton County Clerk, she was not responsible for placing the sales tax measure on the ballot or obtaining approval of the ballot measure. She stated that she was a member of the BCLJC due to her position as Benton County Clerk, and that she had no other role or duties on the council. She stated that the BCLJC meetings were held during the lunch hour in the Benton County building, and were sporadic in nature.
- 3.91 Ms. Delvin further stated that all of the information she provided was available to the general public, and that she compiled the information during the normal course of her duties as Benton County Clerk. She stated that she researched the information for BCLJC, so none of the CSC information that she provided to Mr. Wehner's request for information was new.
- 3.92 Ms. Delvin further stated that she does not have a Benton County vehicle assigned to her and has never been reimbursed for her travel in her personal vehicle. She stated the telephone number she listed on the C-1pc she filed for CSC as committee treasurer was her personal cell phone, and the post office box is her and Commissioner Delvin's personal post office box, and has been for over 25 years. Finally, she stated that her personal cell phone and post office box were not reimbursed by either the State of Washington or Benton County as alleged in the complaint.

C-4. Eric Hsu, Benton County Public Defense Manager

- 3.93 The complaint alleged that Eric Hsu, Benton County Public Defense Manager, violated RCW 42.17A.555 by: (1) Using Benton County facilities as a member of BCLJC in to

send out a September 18, 2013, email to all BCLJC members in which he attached a Strategic Plan drafted by Mr. Wehner that promoted the ballot measure; (2) Using Benton County facilities to send an email to Mr. Wehner that included Benton County public defender budget, staffing, and criminal justice information to be posted on the CSC website, and then used the office to reviewed the information once it had been posted on the CSC website; and (3) Using Benton County facilities to make a presentation to the Benton County Commissioners concerning Resolution 14-5, which supported the ballot measure.

- 3.94 On August 1, 2014, Mr. Hsu sent in a letter in response to staff's request that he respond to the allegations made against him in the initial complaint. On August 12, 2014, Mr. Hsu submitted an email in response to staff's request for additional information concerning the second supplemental complaint filed by Mr. Howard. Both emails have been combined into one exhibit, and Mr. Hsu's responses have been combined to address the allegations as detailed below. **Exhibit #16.** Mr. Hsu stated that he was not a member of the CSC committee or involved with CSC in any fashion.

Mr. Hsu's use of Benton County facilities to make a presentation at Benton County Council meeting

- 3.95 Concerning the allegation that Mr. Hsu used Benton County facilities to promote the ballot measure when he made a February 25, 2014 presentation to the Benton County Commissioners concerning Resolution 14-5, he stated that he provided the Commissioners with the information produced by the BCLJC in his official capacity as Chair of the BCLJC.
- 3.96 Mr. Hsu further stated that he compiled, drafted and presented the information to the Benton County Commissioners in an open public meeting, based on their earlier request for BCLJC action and at their direction. He stated his actions were part of the "normal and regular" activities of his office in accordance with the exemption found in RCW 42.17A.555(3). Based on those facts and the lack of any evidence provided by the complainant that Mr. Hsu promoted the ballot proposition at the presentation, the third allegation listed above was not investigated by PDC staff.

Mr. Hsu's use of Benton County resources as a BCLJC member to promote the ballot measure

- 3.97 Mr. Hsu stated that he served as Chair of the BCLJC in calendar years 2013 and in 2014. He stated that after the Advisory Committee, which had been commissioned by the Benton County Commissioners, completed their work and recommended a Public Safety Sales Tax measure, the Commissioners then requested that the BCLJC work out more of the details and present a Resolution to them for a future tax measure.
- 3.98 Mr. Hsu stated that as Chair of the BCLJC, he sent out a September 18, 2013, email to all BCLJC members as a reminder of their next meeting date, and attached a Strategic Plan for the members to review that had been drafted by Mr. Wehner (see exhibit 15 in Mr. Howard's initial complaint).

- 3.99 Mr. Hsu stated that he assumed the complainant was alleging that the Strategic Plan was considered to be *“a publication that supports or promotes a ballot”* and that he violated PDC laws and rules when he forwarded the plan using his Benton County computer and email address. He acknowledged that a portion of the Strategic Plan discussed the “role that a “future” campaign committee would play, but added that at the time *“no ballot proposition even existed until at least February 25, 2014, when I proposed, and the Board of County Commissioners accepted,* a resolution to place such a ballot proposition on the August 5, 2014 Primary Election.” He stated that the majority of the information contained in the Strategic Plan discussed the steps that BCLJC members felt needed to be undertaken by them to present a Resolution to the Commissioners in a timely manner.
- 3.100 Mr. Hsu stated that the Strategic Plan provided BCLJC members with information concerning their involvement with the council and the “do’s and don’ts” of campaigning on work time, and how it related to BCLJC members legal restrictions and requirements. He went on to state the following:

“...based on my review the Strategic Plan did a very good job of distinguishing between the role of the BCLJC (to prepare and present the resolution for the ballot measure to the Board of the County Commissioners) and the future role of a campaign committee (to actually promote the ballot measure.”

Mr. Hsu’s use of Benton County facilities to send information to CSC Committee

- 3.101 Mr. Hsu stated that Mr. Wehner sent him an email as a private citizen using his private email account, requesting information from the Benton County Public Defender’s Office and he responded by providing him with information concerning how the funds generated from sales tax measure, if the ballot proposition was approved, how the funds would be spent, and how it would affect the Public Defender’s Office. He stated that the information he provided to Mr. Wehner was available on the Benton County website and as part of the information he provided to BCLJC and the County Commissioners.
- 3.102 Mr. Hsu stated that he did “...not believe that any of the information advocated for or against the passage of the tax. I compiled the information and no other employees were used...” He added that he had previously compiled similar information as part of his work as Chair of the BCLCJ.

C-5. Jacki Lahtinen, Administrator, Benton County District Court

- 3.103 The complaint alleged that Jacki Lahtinen, Administrator for Benton County District Court, violated RCW 42.17A.555 by: (1) Using Benton County resources as a member of BCLJC in attendance for September 2013 meeting to promote the ballot measure; (2) Using Benton County facilities to send an email to Mr. Wehner that included Benton County District Court budget, staffing, and criminal justice information to be posted on the CSC website, and then using the office to review the information once it had been posted on the CSC website.

3.104 On August 20, 2014, Ms. Lahtinen submitted an email and attached a letter in response to staff's request she respond to the allegation made against her in the complaint. **Exhibit #17.** In her letter, she stated she did not provide any information to the March 2014 email from Mr. Wehner, and that the March 19th email she sent to Mr. Wehner was "...to correct factual statements regarding District Court." Ms. Lahtinen stated:

- As budget manager for Benton County District Court she would "routinely answer questions from other agencies and the public regarding my budget" as part of her job, and reiterated that the email she sent was "...a correction and explanation to the section regarding Benton County District Court funds..."
- She did not compile or create any new information in response to the March 17, 2014 email from Mr. Wehner, and that the information she provided had previously been compiled and provided to the Citizens Advisory Committee, which was the predecessor to the BCLJC, and to the BCLJC as a member. She noted that Benton County District Court's has always had a representative be part of the BCLJC.
- As a member of the BCLJC, she has attended between 12-15 BCLJC meetings including the ones in 2013 and 2014, and the meetings were held about once a month at the noon hour.
- She reviewed the CSC website and emailed a correction to Mr. Wehner about the information posted on the website concerning district courts. She estimated that she spent between 10-15 minutes in total reviewing the district court information on the website using her work computer, and emailing the correction.
- The information on the CSC website was publicly available information that she had previously provided to the Citizens Advisory Committee and the BCLJC.

D. City of Kennewick

D-1. Ken Hohenberg, City of Kennewick Police Chief

3.105 The complaint alleged that the City of Kennewick violated RCW 42.17A.555 by allowing presentations to be made at an official City Council meeting by Citizens for Safe Communities PAC officers, which promoted the criminal justice ballot measure.

3.106 The complaint also alleged that Ken Hohenberg, City of Kennewick Police Chief violated RCW 42.17A.555 by:

- Appearing in his City of Kennewick police uniform and driving his city assigned police vehicle at the May 13, 2014 press conference.
- Using his name and title in the joint press release concerning the May 13, 2014 press conference.
- Using City of Kennewick resources as a member of BCLJC attending the September 2013 meeting to promote the ballot measure.

- Using City of Kennewick facilities to send an email to Mr. Wehner that included the City's Police Office budget, staffing, crime statistics and criminal justice information to be posted on the CSC website, reviewing the information once it was posted on the CSC website, and making presentations to ?.
- Using City of Kennewick resources, including his uniform, to solicit contributions to CSC.

3.107 PDC staff received three responses from Lisa Beaton, City Attorney for the City of Kennewick, on behalf of city and Chief Hohenberg. Ms. Beaton's three responses have been combined into one exhibit, and included the following (**Exhibit #18**):

- On August 6, 2014, PDC staff received a five-page initial response letter from Ms. Beaton to the initial allegations listed in the complaint.
- On August 25, 2014, PDC staff received an email from Bonnie Lanning, staff member for the Kennewick City Attorney's office, attaching a five page response letter from Ms. Beaton responding to the second supplement received from complainant and PDC staff's questions.
- On October 24, 2014, PDC staff received a four-page response letter from Ms. Beaton responding to the complainant and PDC staff's questions.

3.108 PDC staff did not investigate the second allegation concerning Chief Hohenberg's name and title being used to support a ballot proposition, since the Commission does not consider an individual's name and title to be a prohibited use of a public facility.

3.109 In her initial response, Ms. Beaton stated that the "City of Kennewick concurs with the response provided by A.P. Wehner, Jr..." and her response incorporates the contents of his response by reference. She stated that "at no time did the Kennewick City Council entertain a presentation by the Citizens for a Safe Community."

Chief Hohenberg appearing in uniform to support the ballot measure:

3.110 PDC Interpretation 04-02 includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following statements under the Not Permitted column:

"Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.)."

3.111 Chief Hohenberg was listed on the C-1pc report filed by the Citizens for a Safe Community committee as a committee member. Ms. Beaton stated that:

- Chief Hohenberg attended the May 13, 2013 press conference, and wore his City of Kennewick uniform and drove to the event in his City of Kennewick patrol car.
 - The event was held during the lunch hour and in the conference room of a private building.
 - Chief Hohenberg appeared and participated in his capacity as an individual.
- 3.112 Staff provided Ms. Beaton with PDC Interpretation No. 04-02, "Guidelines for Local Public Agencies in Campaigns" which includes a section for police officers and firefighters concerning wearing uniforms and related equipment while participating in "political activities." Ms. Beaton stated the following:
- Chief Hohenberg's schedule on May 13, 2014, did not allow him an opportunity to change out of his uniform, since he attended a morning breakfast meeting that was followed by a staff meeting from 9:00 am to noon.
 - *"Unlike a patrol officer or even a sergeant, the Chief of Police does not work specific shifts and in fact is required to be available 24-7..."*
 - While there was no *"...law enforcement matter which occurred unexpectedly..."* it is expected that during a press conference, the Kennewick Police Chief *"...will wear his uniform during normal business hours and be available to respond if an event does take place."*
- 3.113 In her response to the complaint on behalf of Chief Hohenberg, Ms. Beaton further stated that Chief Hohenberg provided information to the Benton County Commissioners at the March 4, 2014, meeting in which the Commissioners approved a Resolution placing the measure on the ballot. She stated that he drove his police vehicle and appeared before the Benton County Commissioners wearing his City of Kennewick police uniform. She stated that Chief Hohenberg provided information about the City of Kennewick's police and public safety needs, and what the ballot measure would provide. She stated that "Chief Hohenberg also separately read into the record a letter from the Citizens for a Safe Community political committee..." of which he is a member.
- 3.114 Ms. Beaton further stated that on May 6, 2014, Chief Hohenberg drove his police vehicle and appeared in uniform before the Richland City Council where "he participated in a presentation to the Richland City Council as a representative of the Citizens for a Safe Community political committee." Ms. Beaton also stated that city council meeting took place in the evening, after work hours, and that Chief Hohenberg appeared in his capacity as an individual and not as Police Chief.
- 3.115 Ms. Beaton further stated that Chief Hohenberg is assigned a vehicle as Kennewick Police Chief, for his use during work hours and also during "non-business hours." She stated that Chief Hohenberg:

- Drives his city assigned vehicle to meetings, gatherings and events that are held “during non-business hours” and that he is expected to be available on a 24 hour, seven days a week basis.
- Typically wears his uniform when he is appearing before the City Council.
- Was required to attend a May 6, 2014, Kennewick City Council, which he did after he attended the Richland City Council meeting that was held the same evening, and prior to the Kennewick City Council meeting.
- Drove to the Richland City Council meeting in his patrol car and in uniform, and then he drove back to attend the Kennewick City Council meeting later than evening.
- Did not make a presentation to the Kennewick City Council in his capacity as a CSC member.

Chief Hohenberg using City of Kennewick facilities to support the ballot measure

3.116 Ms. Beaton stated that Chief Hohenberg did not participate or assist with drafting the joint statement that was part of the May 13, 2014 press conference and that Mr. Wehner drafted all of those documents using his personal home computer. She confirmed that the press release did include the City of Kennewick work telephone number for Chief Hohenberg to be contacted about the ballot proposition. She went on to state:

- The BCLJC was created in 2000 in accordance with a Benton County resolution and RCW 72.09.300, and Kennewick is a participating agency. Chief Hohenberg is the Kennewick Police Department representative on the BCLJC, as are the City Attorney and one Kennewick City Council Member.
- As a member of the BCLJC and as Kennewick Police Chief, Chief Hohenberg provided information concerning the budgetary needs of the Kennewick Police Department and how the proposed sales tax measure will provide for those needs.
- Chief Hohenberg made a presentation to the Kennewick City Council concerning the police departments Annual Report in which he discussed 2013 crime statistics, current staffing levels, and future needs, and he also provided information about the impacts the ballot measure would have on those needs.

3.117 Concerning the three emails attached as part of the complaint against Chief Hohenberg, Ms. Beaton stated the following:

- May 9, 2014, email string between Chief Hohenberg and Mr. Wehner: Mr. Wehner is inquiring about Chief Hohenberg’s attendance at a Benton County Sheriff Officers Guild meeting to discuss the ballot proposition. The response by Chief Hohenberg to Mr. Wehner did not violate the PDC statute, since it merely indicated that he was not available to meet with the Guild.

- March 16, 2014, email from Ken Hohenberg: Chief Hohenberg sent this email using his personal computer and his personal email address on a Sunday. Again the response by the Chief did not violate the statute.
- July 17, 2014, letter to the editor from Ken Hohenberg: Chief Hohenberg wrote the letter to the editor as a Kennewick resident at home using his personal computer during his personal time. In the letter, he did not state or represent that he is Kennewick's Police Chief or "...that he is speaking on behalf of the City of Kennewick. It is not a violation of the statute for Ken Hohenberg to express his personal opinion based upon his personal experience."

3.118 Finally, an allegation was made against Chief Hohenberg concerning an email he sent to Kennewick City Manager Mosley, that included a copy of his 2014 Performance Review that included under the heading "Organizational Goals" a category entitled "Sustainable Criminal Justice Funding." The complainant stated that two of Chief Hohenberg's Performance Goals listed in the multi-page document included the following:

- Take the lead role in moving the 3/10 Criminal Justice sales tax funding proposal to the County Commissioners by March 2014.
- Develop a steering, campaign, and honorary chair persons to move the measure forward to the voters for a fall election.

The complainant alleged that Chief Hohenberg's salary was being increased for the second goal.

3.119 Ms. Beaton stated concerning the first goal that as Kennewick Police Chief, Chief Hohenberg is a member of the BCLJC, and he participated in the presentation the BCLJC made to the Benton County Commissioners recommending the Commissioners adopt a resolution and place the sales tax measure on the ballot. She stated that merely presenting a recommendation to the Benton County Commissioners as a BCLJC member, at an open public meeting, was not a violation of RCW 42.17A.555.

3.120 Concerning the second goal, Ms. Beaton stated that public safety is one of the top goals for the Kennewick City Council, and Chief Hohenberg is responsible for directing police operations, which is a huge component of public safety. She stated that while Chief Hohenberg was a CSC member, there was no evidence that that he violated RCW 42.17A.555 as a committee member or that his salary was increased due to his participation on the committee.

City of Kennewick information posted on CSC website

3.121 Ms. Beaton stated that the Kennewick Police Department (KPD) responded to a request for information from Mr. Wehner with the CSC, which was forwarded to KPD crime analyst, Kim Hathaway.

- 3.122 Ms. Hathaway is the staff person who maintains the crime statistics and regularly responds to public records requests for this type of information from citizens and the media. Ms. Beaton noted that KPD also provided the same information to members of the group opposed to the Criminal Justice Sales Tax ballot measure.
- 3.123 Ms. Beaton stated that Ms. Hathaway sent the crime statistics information to Mr. Wehner and the CSC, noting that the information had previously been posted on the KPD website. She stated that the same information had been compiled for the KPD annual report, and that the KPD website contains local crime statistics dating back ten years, and all of the annual KPD reports dating back to 2008. Ms. Beaton stated that none of the information compiled by Ms. Hathaway and provided to Mr. Wehner in response to his request supported passage of the ballot measure.
- 3.124 Ms. Beaton stated that Chief Hohenberg's review of the City of Kennewick information that Mr. Wehner posted on the CSC website for "factual accuracy" did not violate RCW 42.17A.555. She added one of Chief Hohenberg's responsibilities was to make sure that accurate information is provided to the public regarding the public safety needs of the City of Kennewick. She stated that he reviewed the information on the CSC website to confirm the content.

E. City of Richland

- 3.125 The complaint alleged that the City of Richland violated RCW 42.17A.555 by allowing presentations to be made at an official City Council meeting by Citizens for Safe Communities PAC officers, which promoted the criminal justice ballot measure. The complaint also alleged that Chris Skinner, City of Richland Police Chief and Al Wehner, Richland Police Captain, violated RCW 42.17A.555 by using the facilities of the City of Richland to support the sales tax ballot measure.
- 3.126 Concerning Chief Skinner, the complaint alleged that he:
- Appeared in his City of Richland police uniform and drove his city assigned police vehicle to the May 13, 2014 press conference.
 - Used his name and title as Richland Police Chief in the joint press release concerning the May 13, 2014 press conference.
 - Used City of Richland resources as a member of BCLJC at the September 2013 meeting to promote the ballot measure.
 - Used City of Richland facilities to send an email to Mr. Wehner that included the City's Police Office budget, staffing, crime statistics and criminal justice information to be posted on the CSC website, and reviewed the information once posted on the CSC website, and made presentations in support of the ballot measure.
- 3.127 On August 6, 2014 PDC staff received a seven-page response letter along with seven attached exhibits from Heather D. Kintzley, City Attorney for the City of Richland, concerning the allegations against Police Chief Chris Skinner, Police Captain Al Wehner, and the Richland City Council. **Exhibit #19.** Ms. Kintzley stated that Chief Skinner's involvement with the Benton County sales tax measure (Proposition 14-5) included:

- Working on developing a budget for the City of Kennewick's Police Department portion of the funds to be received if the sales tax measure is approved by voters.
- Attending meetings of the Benton County Law and Justice Council as a member.
- Introducing CSC members to the Richland City Council prior to the presentation at the May 6, 2014 Council meeting.
- Attending the May 13, 2014 press conference in support of the Proposition 14-5.
- Making a collective statement in support of the ballot measure as part of the Benton County Sheriff and Police Chiefs.

3.128 Ms. Kintzley further stated there is no evidence to support a violation of RCW 42.17A.555 against Captain Wehner concerning the allegations that he used the facilities of the Richland Police Department to assist Proposition 14-5. She stated that Captain Wehner retired effective May 1, 2014, and the allegations made against him should be dismissed.

E-1. Chris Skinner, Richland Police Chief

3.129 PDC Interpretation 04-02 includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following statements under the Not Permitted column:

"Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.)."

3.130 In her response to the complaint, Ms. Kintzley stated that Chief Skinner attended the May 13, 2013 press conference, wore his City of Richland police uniform, and drove to the event in his City of Richland patrol car. She stated the press conference was held during the lunch hour and in the conference room of a private facility.

3.131 Ms. Kintzley further stated Chief Skinner appeared with four other law enforcement members at the press conference, and that law enforcement officials and officers like Chief Skinner routinely wear their uniforms to events, including press conferences. She stated *"...the support expressed in favor of Proposition 14-5 at the open press conference was consistent with the authority granted under RCW 42.17A.555(2)."*

3.132 Ms. Kintzley stated Chief Skinner travels in the City of Richland police vehicle assigned to him, and that he is authorized to drive his city assigned vehicle to meetings, press conferences, and a variety of other functions. She stated that the use of the vehicle and his appearing in his police uniform are *"...consistent with the normal and regular*

conduct of his office” due to the fact “...he could be called away at any time to respond to a situation warranting a code response.”

- 3.133 Ms. Kintzley further stated that Chief Skinner appeared at the May 6, 2014 Richland City Council meeting in his uniform and introduced the CSC members to the Richland City Council. She stated that at that meeting, CSC members made presentations concerning Proposition No. 14-5. She stated that the City of Richland’s “...*long-standing tradition is for department directors to introduce or “host” presenters who appear before the council...*” and that one of the conditions is that Chief Skinner is expected to attend all Richland City Council meetings, unless excused by the City Manager. She added that the Richland Police Chief “...*routinely wears his uniform to all council meetings and is essentially on-call 24 hours a day...*”

Statements made after 5/13 press conference by Benton County Sheriff and Police Chiefs

- 3.134 In conjunction with the May 13th press conference, Chief Skinner along with the other four law enforcement officials made a “collective statement in support” of Proposition 14-5 on behalf of the Benton County Sheriff and Police Chiefs. The collective statement of support and Chief Skinner’s involvement “...was executed during the lunch hour at a private facility; no city resources or time were spent preparing or executing the document...”
- 3.135 The collective statement of support for Proposition 14-5 “...simply memorialized the verbal statements made during the open press conference....” in accordance with RCW 42.17A.555(2).
- 3.136 In addition, the complaint listed a related allegation concerning the press conference and a May 9, 2014 email from Sheriff Keane to Chief Hohenberg asking questions about the press conference such as confirming the location, who is notifying the media, and whether or not there is “...*an issue sending a press release via email from a County computer?*” (First Supplement Exhibit No. 13)

CSC Presentation at Richland City Council Meeting

- 3.137 In her response to the complaint, Ms. Kintzley stated that the City of Richland “*reluctantly entered the conversation related to the proposed sales tax increase, and was not at the forefront of any discussions....*” She stated that Richland did not reach out and contact CSC committee members to “solicit a presentation” concerning Proposition 14-5 to be made at a Richland City Council meeting.
- 3.138 Ms. Kintzley further stated that Mr. Wehner, who had recently retired as Richland Police Captain, as a private citizen and a member of CSC, contacted Marcia Hopkins, Richland City Clerk, and requested that CSC members be allowed to make a presentation to the Richland City Council concerning the Benton County sales tax measure (Proposition 14-5). She stated that after they discussed the issue with the City Manager’s Office, they contacted Mr. Wehner and informed CSC that the request to make a presentation had been granted. She stated that the Richland City Council’s involvement with Proposition 14-5 was limited to the following two meetings:

- May 6, 2014 Richland City Council meeting: CSC members made a presentation to the City Council concerning Proposition No. 14-5; and
 - June 3, 2014 Richland City Council meeting: The Richland City Council votes to approve Resolution No. 85-14 in support of Proposition No. 14-5, a Benton County sales tax measure.
- 3.139 Ms. Kintzley further stated that on May 30, 2014, Ms. Hopkins published the agenda for the upcoming June 3, 2014 Richland City Council meeting.
- 3.140 Ms. Kintzley noted that the City of Richland complied with the provisions of RCW 42.17A.555(1) by providing proper public notice about the proposed adoption of Resolution 14-5 being an agenda item at the meeting. She stated “the City properly referenced the title and number of the ballot proposition in the notice of the public meeting” and attached a copy of the June 3, 2014 agenda for the Richland City Council meeting.
- 3.141 The agenda listed under the “Consent Calendar: Resolutions – Adoption”, Resolution No. 85-14, entitled “Supporting Proposition No. 14-5, to increase the Sales Tax by 0.3% in Benton County for Public Safety Spending (Criminal Justice).” Ms. Kintzley stated that Resolution 85-14 was unanimously approved by the Richland City Council, and that there was no discussion amongst the council members concerning its passage.
- 3.142 Ms. Kintzley further stated concerning Mr. Howard’s allegations about not inviting an opposing committee “equal time” to provide information about opposing Proposition No. 14-5: *“Any group opposing Proposition 14-5 could have availed itself of the public comment section of any regular council meeting. No barrier was ever enacted to prevent any group opposing Proposition 14-5 from coming forward to express its opinion to City Council.”*
- 3.143 PDC staff reviewed the videotape of the May 6, 2014 Richland City Council meeting that included a “Public Safety Sales Tax Presentation by Citizens for Safe Communities (CSC).” Staff’s review included the following:
- The meeting began with David Rose, Mayor of Richland informing the audience there would be a presentation concerning the Benton County Public Safety Sales Tax measure. Mayor Rose introduced Richland Police Chief Skinner, who stated the Benton County Commissioners voted to place a criminal justice sales tax on the ballot in August of 2014, and if approved, the City of Richland would be the recipient of a portion of that sales tax revenue.
 - Chief Skinner discussed Richland’s portion of the revenue, that the funds provided from the sales tax measure would allow the city’s criminal justice system the opportunity for growth, and provided information about what the sales tax measure would provide for the City.

He stated that part of the presentation is from CSC steering committee members to *"talk about the holistic approach of the criminal justice sales tax"* and some of the benefits to be realized county wide from the measure.

- Chief Skinner introduced Andy Miller, Benton County Prosecutor, who stated that the Benton County Prosecuting Attorney's Office spends more time on city cases than on county cases. Mr. Miller discussed two examples of shootings he worked on, one with detectives from the City of Richland involving the death of a 14-year old boy, and the other involving the shooting of a returning veteran from the war in Afghanistan in downtown Kennewick.
- Mr. Miller discussed the problems associated with gang crimes, referred to the "gang code" and explained the difficulties he has experienced in getting witnesses to cooperate or testify, and also in prosecuting gang crimes. He stated he believes the county is in need of a "Gang Prosecutor" to address this issue, and acknowledged that Benton County *"...is not going to be able to arrest and prosecute our way out of this..."* gang situation. He stated that the ballot proposition if approved, would provide funding to help address the growing gang issue by providing additional Prosecutor and Police staffing, as well as funding for at-risk counseling for juveniles at the middle schools and for mental health issues.
- Ken Hohenberg, Kennewick Police Chief, was next to speak and he stated that in the council's packets there was an updated version of the information from the CSC which provides a good outline as to how the County Commissioner's came to their decision. CSC and the citizens committee prior to that presented its law and justice proposal to the Benton County Commissioners for consideration. He stated that the criminal gang problem is not just a local Benton County issue, or a Washington state issue, but it is a national issue. He stated the Benton County Commissioners agreed that Benton County would receive 60% of the funding from the sales tax measure, with the remaining 40% of the funding distributed between the cities based on population.
- Chief Hohenberg stated there is money allocated for a mental health court through the district courts, and the measure also provides funds for two booking officers and four additional corrections staff would be fully funded by the Benton County portion. He stated the cities and Benton County are all working well together on the gang issues, and that intervention and prevention are the only ways to slow down the criminal gang problem.
- Finally, Al Wehner, retired Richland Police Captain, was the final speaker and he stated *"what we are asking for tonight is for the city council to pass a resolution to support the public safety sales tax..."* He stated CSC members have appeared and made presentations to the other cities in Benton County, and that both the City of Kennewick and Prosser have passed Resolutions in support of the sales tax measure.
- Mr. Wehner stated that CSC members made a presentation to West Richland City Council recently and they are scheduled to vote on adopting a resolution soon.

He stated that is why they were here tonight asking the council to pass a resolution in support of the ballot proposition.

City of Richland and Chief Skinner provided information posted on CSC website

- 3.144 In her response to the complaint, Ms. Kintzley stated that the complainant *“appears to allege that the City of Richland erred by releasing information without first receiving an officials public records request”* but did not state how that violated RCW 42.17A. She stated that the City of Richland codified its *“Public Information Program that governs the release of information upon request”* and explained the difference between a request for information and a public records request, which seeks *“identifiable records.”*
- 3.145 Ms. Kintzley further stated that Chief Skinner received a request for information from the CSC at his official City of Richland Police Chief email address. She stated that the email was from Mr. Wehner, on behalf of CSC, and sent using his private email address, requesting City of Richland crime statistics including Part I crime statistics for the last 10 years, and budget numbers for the Richland Police Department. She stated Chief Skinner compiled the information requested by CSC, and then sent an email to Mr. Wehner providing the requested information in an attached document.
- 3.146 After receiving the information, Mr. Wehner, in his capacity as CSC committee officer, posted the City of Richland information on its website. Mr. Wehner then asked Chief Skinner to review the City of Richland information he had posted on the CSC website and to verify that the information was accurate. She stated that *“Chief Skinner reviewed and verified information he previously provided that was being presented on the CSC website”* and that he was acting in his official capacity as Police Chief and within his scope of responsibilities.
- 3.147 Ms. Kintzley further stated that the emails sent by Chief Skinner to CSC and Mr. Wehner, and his reviewing the information that was posted on the CSC website were done in the Chief’s official capacity and that his actions were part of his *“normal and regular conduct”* as Police Chief. She stated that Richland Municipal Code 2.56 *“...requires that the release of information by the City be factual, or in other words accurate”*, and that Chief Skinner did not violate RCW 42.17A.555.

F. City of West Richland

- 3.148 The complaint alleged that: (1) The City of West Richland violated RCW 42.17A.555 by allowing presentations to be made at an official City Council meeting by Citizens for Safe Communities PAC officers, which promoted the criminal justice ballot measure. (2) Brian McElroy, City of West Richland Police Chief, violated RCW 42.17A.555 by using the facilities of the City of West Richland to support the sales tax ballot measure by appearing in his City of West Richland police uniform and driving his city assigned police vehicle at the May 13, 2014 press conference.

- 3.149 On August 4, 2014 PDC staff received an email from Julie Richardson, City Clerk for the City of West Richland, attaching a two-page response letter from Brian McElroy, West Richland Police Chief, and herself to the allegations listed in the complaint, along with several attached documents. **Exhibit #20.**

CSC Presentation at West Richland City Council Meeting

- 3.150 In her response to the complaint, Ms. Richardson attached documents concerning the West Richland City Council and the Law and Justice Sales Tax measure including city council "Agenda Action Items", meeting minutes, and a resolution. In the joint response from Chief McElroy and Ms. Richardson, Ms. Richardson stated that on March 28, 2014, she received an email from Al Wehner stating that *"Representatives from the Citizens for Safe Communities is requesting to make an appearance before the West Richland City Council during their April 15th meeting. We will ask the council to pass a resolution supporting the Benton County Public Safety Sales Tax, which will appear on the August 5h primary ballot."*
- 3.151 On April 15, 2014, Mr. Wehner contacted Ms. Richardson by telephone and by email, and informed her that Andy Miller, Benton County Prosecuting Attorney, would be making the presentation to the West Richland City Council that evening. The CSC presentation was an agenda item on the West Richland City Council agenda, and the agenda was posted in the city's three customary posting places, and the city's website. The Council meeting agenda was also sent to the local chamber of commerce, fire district, and newspaper for posting.
- 3.152 In the response, Ms. Richardson stated that West Richland City staff did not contact CSC about making a presentation, but instead CSC requested to appear before the city council. The response went on to state that no one from the *"Benton County Citizens for Efficient Criminal Justice & Law Enforcement (Committee formed to oppose the ballot measure) nor any other opposition groups contacted the City Clerk to request an appearance before the council."*
- 3.153 Ms. Richardson stated that as City Clerk, she *"did not know of such opposition groups"*, and that during the May 20, 2014, West Richland City Council meeting the council passed a resolution supporting the ballot measure and during the meeting the public was provided an opportunity to provide testimony or make a statement.
- 3.154 PDC staff reviewed the May 20, 2014, West Richland City Council meeting minutes which stated that Chief McElroy *"presented a recommendation to pass a resolution supporting the Law and Justice 3/10ths of 1% sales tax in the August Primary 2014"* The meeting minutes indicated that after Chief McElroy's presentation, West Richland Mayor Gerry opened the public hearing, took public testimony from one member of the public in support of the ballot proposition, and then closed the matter one minute later.

3.155 PDC staff reviewed the audiotape of the April 15, 2014 West Richland City Council meeting that included a "Public Safety Sales Tax Presentation by Citizens for Safe Communities (CSC)." The agenda and meeting minutes indicated that Andy Miller, would be making a presentation on as a representative of CSC. The meeting began with Mayor Gerry introducing Ms. Miller to make a presentation to the City Council about the Law & Justice sales tax measure. There was no mention on the tape that Mr. Miller is the incumbent Benton County Prosecuting Attorney or a member of CSC or BCLJC. Staff's review included the following:

- Mr. Miller complimented the City of West Richlands Police force and Chief McElroy and stated that cooperation was excellent between the cities and Benton County, as well as amongst the Police Chiefs and the County Sheriff. He stated if the ballot measure is approved, 40% of the revenue would be allocated to the cities within Benton County, including West Richland, he discussed what Benton County would receive and how those funds would be spent.
- Mr. Miller stated the sales tax measure spends funds for prevention programs that he believed to be one of the keys in dealing with issues like homelessness, street kids, and victims of child abuse and domestic violence. He noted there are some funds earmarked for the Metro Drug task force, to help offset the continued reductions in federal funds received, and that he had been worrying they would have to dip into county reserve funds for the task force. He added there is also funding for drug and mental health courts, providing treatment rather than incarcerating individuals.
- Mr. Miller said he believes this ballot proposition offers a comprehensive program to address those issues, and that the sales tax that funds the measure sunsets in ten years. He stated at that time, voters will need to evaluate if the money has been well spent and the programs paid for by the sales tax have been worth it. He stated if we accomplish the things we hope, we may not need this tax in ten years, but that is up to the voters since they will ultimately decide how the tax dollars are spent.
- In response to a questions about a CSC handout at a recent local meeting, Brian McElroy, West Richland Police Chief, the next speaker confirmed that the document was from the CSC committee, which is the group promoting the sales tax measure. He stated that Al Wehner would have been involved with the production of that document on behalf of CSC, and that he would have Mr. Wehner sent a copy of the CSC document to all council members.
- The council member stated the CSC information and presentation was very helpful, and Chief McElroy mentioned the CSC website has detailed information of what the sales tax will provide city by city, for Benton County and what the money will be earmarked for in the criminal justice system.
- Chief McElroy stated that as many council members know, his budget proposals over the last several years has been to add four law enforcement officers. He stated that if the sales tax measure was approved, the City of West Richland would receive \$330,000 in annual revenue.

He stated those funds would allow the city to fund the 3-4 FTE police officers he had been requesting. He stated that West Richland is fortunate as a residential community to not have much violent crime, but added the criminals from surrounding communities and county at large are criminals that they all share.

- Chief McElroy stated the majority of the violent crimes are from the gangs and the associated drug activity and thefts, and that there are gang members in West Richland and the police are aware of it. He stated that the additional officers provided by the sales tax measure would assist West Richland in addressing the gang issue by allowing for at least two officers to be on every shift. He stated they could also conduct more prevention and intervention efforts, not only through the schools, but communities and neighborhoods within West Richland to help prevent some of this type of activity.
- Chief McElroy stated one of the benefits if the sales tax measure is approved, is that Benton County will receive 60% of the sales tax revenue, which will allow the county to enact more anti-gang related programs. He stated that will have a positive impact on West Richland and other cities, as will the funding being provided to establish a mental health court. He added there are also funds provided that would allow West Richland to maintain its participation in the METRO drug task force, in which one officer is currently involved. Since West Richland has 16 full time officers, he stated the funding of one officer with the task force is a significant amount of police resources.
- Chief McElroy stated that when all of these efforts are combined, it will likely save the city money by allowing for individuals to get the treatment necessary to address their addiction or mental health needs, rather than placing them in jail. He stated that he is excited about the opportunities the measure presents and City of West Richland should look at this issue in a positive way.
- Mr. Miller stated that the sales tax measure would be on the August 2014 primary election ballot. The Council member thanked Mr. Miller and informed him that if there is anything the council or city can do, just let them know. The council member stated the measure is being promoted by a citizens group, and asked if that was correct and Mr. Miller confirmed that it was. Mr. Miller stated that they have to be careful about this type of discussion, since there are very specific laws that prohibit any government official or agency from using any public funds or resources to be in favor, encourage or support a ballot proposition.
- Mr. Miller said that one of the local school boards is painfully aware of those provisions from one of their levies, which is why CSC was set up as a separate committee funded by private donations. He noted that he, Chief Hohenberg, and Captain Wehner are all part of the CSC and had to be careful of what they said and did, and stay clear of those prohibitions.

- 3.156 PDC Interpretation 04-02 includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following statements under the Not Permitted column:

“Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.).”

- 3.157 In the response, Chief McElroy stated that on May 13, 2014, he along with Sheriff Keane, and Police Chiefs Giles, Hohenberg, and Skinner appeared at a press conference held at a Sun Pacific Energy Annex Building in Kennewick, a private entity. He stated that the purpose of the press conference was *“to speak to local media to inform the public of how the tax revenue would be used throughout the local jurisdictions”* if the August 5, 2014, Benton County Law and Justice sales tax measure was approved.
- 3.158 Chief McElroy was wearing his City of West Richland police uniform at the press conference, and drove his city assigned vehicle to the event. The press conference lasted about 30 minutes and *“Chief McElroy briefly spoke on the benefits the City of West Richland would receive from the additional sales tax revenue.”*

G. City of Prosser

- 3.159 The complaint alleged that the City of Prosser violated RCW 42.17A.555 by allowing presentations to be made at an official City Council meeting by Citizens for Safe Communities PAC officers, which promoted the criminal justice ballot measure.
- 3.160 The complaint and a second supplement alleged violations of RCW 42.17A.555 against the following City of Prosser officials:
- Paul Warden, Mayor for the City of Prosser: concerning his: (1) Use of City of Prosser facilities to send two emails that supported the future ballot measure; (2) Use of City of Prosser facilities as a member of BCLJC to promote the ballot measure.
 - David Giles, City of Prosser Police Chief: concerning his: (1) Appearing in his City of Prosser police uniform and driving his city assigned police vehicle for the May 13, 2014 press conference. (2) Use of his name and title in the joint press release with the other law enforcement officials concerning the May 13, 2014 press conference; and (3) Use of City of Prosser facilities to send an email to Mr. Wehner that included information concerning the City of Prosser Police budget, crime statistics and criminal justice information to be posted on the CSC website, and that he reviewed the information using his work computer.
- 3.161 PDC staff received the following communications from Howard Saxton, a private attorney with Saxton Riley, PLLC responding on behalf of City of Prosser and Police Chief David Giles (**Exhibit #21**):

- An August 8, 2014, email from Mr. Saxton with an attached two-page initial response letter to the complaint and the April 22, 2014, agenda for the Prosser City Council meeting, along with a copy of Resolution 14-1454 indicating the city's support for the Benton County sales tax measure.
- An August 18, 2014, email from Mr. Saxton responding on behalf of City of Prosser Mayor Paul Warden, and attaching a five-page response letter to the 2nd supplement received from complainant and PDC staff's questions.
- An October 6, 2014, email from Mr. Saxton with a one-page attached response to PDC staff's September 25, 2014 questions.

Mr. Saxton's three response have been combined into one exhibit, and are incorporated into his answers below.

G-1. David Giles, Police Chief for Prosser

- 3.162 PDC Interpretation 04-02 includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following statements under the Not Permitted column:

"Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.)."

- 3.163 In his response to the complaint, Mr. Saxton stated that Chief Giles did participate in the May 13, 2013 press conference, and wore his City of Prosser police uniform and drove to the event in his City of Prosser patrol car *"during his unpaid lunch hour."* He stated that Chief Giles was already in the Tri-Cities area on May 13th *"on other City business using his official city vehicle when he attended the press conference that was held during his unpaid lunch hour."*
- 3.164 Mr. Saxton further stated that Chief Giles also signed a "Statement" in support of Proposition 14-5 *"that discussed but did not support the ballot measure.... during his unpaid lunch hour."* The "Statement" that was signed by Chief Giles along with the other police chiefs and County Sheriff explained Proposition 14-5 did *"not endorse the ballot measure."*
- 3.165 Mr. Saxton further stated that the "Statement" provided facts about how the ballot measure, if approved, would affect law enforcement and the criminal justice system in Benton County. He stated that *"Press conferences and Factual statements about the effects of a Ballot Measure are permitted pursuant to RCW 42.17A.555(2) and (3)."*
- 3.166 Concerning the allegation that Chief Giles used City of Prosser facilities to send an email in response to a request for information concerning the City of Prosser Police budget, crime statistics and criminal justice information, Mr. Saxton stated that *"requests for*

documents whether made on the City Public Request Form or other means, can still be provided to the public" He stated that the request from Mr. Wehner and the CSC for crime statistics for the City of Prosser was a simple request and not time intensive, and the city timely provided the documents as requested by Mr. Wehner which were posted on the CSC website.

- 3.167 On March 20, 2014, Chief Giles sent an email to Mr. Wehner stating "I have reviewed my section of the CSC website, and it is correct and well done." Mr. Saxton stated that Chief Giles did use his work computer to review the City of Prosser crime information that had been posted on the CSC website, and to send the March 20th email to Mr. Wehner confirming "that the information about Prosser was accurate." He stated that the city and Chief Giles were authorized to "*provide factual statements about the effects of a ballot measure on its operations*" as part of the normal and regular conduct provisions found in RCW 42.17A.555.

G-2. Paul Warden, Mayor of Prosser

- 3.168 Mayor Warden was a member of the Benton County Law and Justice Council in 2013 and 2014. Mayor Warden was not a CSC committee member, but he attended CSC meetings on his own time, using his own vehicle, and without using any facilities for the City of Prosser.
- 3.169 On August 23, 2013, Mayor Warden sent a two-page email entitled "Council Update" that provided fellow Prosser City Council members information for the upcoming council meeting concerning the following issues (2nd Supplement, Exhibit 1): (1) Waste Water Achievement; (2) PUD Joint Visioning Meeting; (3) Municipal Budget Training; (4) Tree Down, Brown and Park; and (5) Law Enforcement Sales Tax. The last section of the email was the law enforcement sales tax portion which discussed Kittitas County's recent renewal of a 3/10 of one percent sales and use tax for law and justice, and the important role the Ellensburg Sherriff and his spouse played in getting the ballot measure passed.
- 3.170 Mayor Warden sent the email to all of the Prosser City Council Members (Don Aubrey, Scott Hamilton, Morgan Everett, Steve Becken, Bob Elder, and Deb Brumley) and to Rachel Shaw, Prosser City Clerk. The email informed the six recipients that he had asked Dale Miller, Ellensburg Chief of Police to speak with the Benton County Sheriff and local Kennewick, Prosser, Richland and West Richland law enforcement officials about the proposed measure, since Kittitas County recently passed their ballot measure.
- 3.171 Mayor Warden stated that he thought that having Chief Miller discuss the issue with other law enforcement officials may provide some "*insights on what he thought worked for them and what some of the pitfalls to avoid.*" He stated the sales tax measure, if approved, would provide an additional \$140,000 per year for City of Prosser to use for law enforcement purposes. He added that passage of the measure "*could positively impact county costs that all cities pay for jails and courts.*"

- 3.172 Mr. Saxton stated that Mayor Warden was acting in his official capacity as Mayor, when he used the desktop computer in his City of Prosser office to send the email, using his official City of Prosser email address. He stated that *"The meeting mentioned in the August 23, 2013, email precedes the date of the Benton County Resolution placing the Criminal Justice Sales Tax (CJST) Ballot Measure before the voters (approved March 25, 2014)."*
- 3.173 Mr. Saxton stated that Mayor Warden routinely sends out updates to Prosser City Council members concerning city issues and upcoming council meetings. He stated the Mayor does not send out an email every week, and that in 2014 year-to-date, Mayor Warden has sent out 32 emails concerning Prosser City Council Updates out of a total of 40 weeks.
- 3.174 On March 22, 2014, Mayor Warden sent a two-page email entitled "Weekly Update Sat March 22" that provided fellow Prosser City Council members information for the upcoming council meeting. (September 18, 2014, Roger Lenk Supplement, pages 3-4) The email was sent to all of the Prosser City Council Members (Don Aubrey, Scott Hamilton, Morgan Everett, Steve Becken, Bob Elder, and Deb Brumley) and to Rachel Shaw, Prosser City Clerk, concerning the following issues: (1) Park Restroom; (2) GIS Hi Def Ortho (overhead photography of the city); (3) Bosco (City of Prosser K-9's health issues update); (4) Law & Justice Sales Tax; and (5) Rachel (referring to City Clerk Ms. Shaw).
- 3.175 The section of Mayor Warden's email concerning the Law & Justice Sales Tax stated the following:
- *"The campaign to pass the Law and Justice Sales Tax kicks off with a press conference in Tri Cities on Monday at noon."*
 - *"As one of the honorary chairs of the Citizens for Safe Communities I will be in attendance."*
 - *"This group is doing a lot of fundraising for the campaign with a target of \$25,000. So if any of you would like to support this endeavor with time or money please let me know...There is a great website up and running so check that out."*
- 3.176 Mr. Saxton further stated that Mayor Warden sent the email using his personal computer while at home on Saturday, March 22, 2014. He stated that Mayor Warden sent the email from home by logging onto the City of Prosser email system remotely, and using his City of Prosser email address, and he sent the email to the Prosser City Council members and Ms. Shaw.

CSC Presentation at Prosser City Council Meeting

- 3.177 Mr. Saxton attached documents concerning the Prosser City Council and the Law and Justice Sales Tax measure that included the city council agenda and Resolution 14-1454.

- 3.178 He stated the agenda for the April 22, 2014 Prosser City Council meeting include the number, title and full text of the proposed ballot measure to be reviewed and discussed, and it *“also allotted equal time for proponents of the measure and opponents of the measure to speak.”*
- 3.179 Mr. Saxton stated that CSC committee members had submitted a request to the City of Prosser to be placed on the agenda for the city’s April 22, 2014, city council meeting. The April 22, 2014, agenda listed under section 6 for Prosser Council Action that *“Resolution 14-___”* was being considered by the Council concerning Proposition 14-5, a Benton County proposed ballot measure to increase the county’s sales and use tax to fund public safety needs.
- 3.180 The agenda went on to state *“Should this proposition be approved Yes [] No []*, and allotted 15 minutes for the Proponents that listed Andy Miller, Chief Hohenberg, and Al Wehner for the Benton County Public Safety Sales and Use Tax, and 15 minutes for opponents, but no names were included on the agenda. Staff reviewed the meeting minutes for the City of Prosser’s April 22, 2014 City Council meeting which stated the following:
- City of Kennewick Police Chief Ken Hohenberg congratulated the Council on hiring Police Chief Giles, and he spoke favorably of his interaction with the regional Police Departments.
 - Chief Hohenberg addressed the council and spoke in favor of Proposition 14-5 and provided Prosser City Council members with information concerning the ballot measure. In responding to a questions from a councilmember, he stated the ballot measure would provide \$9.2 million in total revenue per year.
 - Chief Hohenberg thanked Mayor Warden for his involvement with the CSC committee and his support.
 - Mr. Wehner stated the impact to tax payers has been estimated at \$87 per year or \$7.25 per month.
 - Mayor Warden called for public comments in opposition to the ballot measure, and since there were no comments offered in opposition, a motion was made and seconded by the Council to adopt Resolution No. 14-1454 *“...stating the City Council's support of placing on the ballot a proposition for an increase in Sales and Use Tax for funding public safety needs in Benton County at the August 5, 2014, Primary Election.”*
- 3.181 Mr. Saxton stated that the Prosser City Council *“followed statutory procedure when its City Council passed a resolution in support of the ballot measure.”* He added that the agenda for all Prosser City Council meetings are posted on the city’s website on Friday before the council meeting and is provided to all local news media outlets.

H. West Richland Police Officers Association

- 3.182 The complaint alleged that West Richland Police Officers Association (WRPOA) may have used agency shop fees to make a \$700 monetary contribution to CSC that was disclosed as having been received on July 1, 2014. On September 11, 2014, PDC staff received a letter from Elizabeth Lemoine, an attorney with the law firm Makler, Lemoine & Goldberg, P.C., representing the West Richland Police Officers Association (WRPOA) in this matter.
- 3.183 On September 30, 2014, PDC staff sent an email to Ms. Lemoine requesting she respond to questions concerning whether WRPOA receives agency shop fees from its members and used those funds to make the \$700 contribution to CSC. Staff also questioned whether WRPOA made the CSC contribution using general treasury funds or funds from a segregated account, and where WRPOA received the funds used to make the \$700 contribution to CSC.
- 3.184 On October 16, 2014, Ms. Lemoine sent a letter to PDC staff stating that WRPOA made the \$700 monetary contribution to the CSC committee "out of their general bank account (consisting of one savings and one checking)." She stated the source of the WRPOA funds are membership dues, and that WRPRO does not receive funds from any other sources. She stated that WRPRO does not receive "agency shop fees" as they understand that term to mean, and did not use "agency shop fees" to make the contribution.

IV. Scope

- 4.1 PDC staff reviewed the June 26, 2014, 45-day citizen action letter filed by Radphord-Leon Howard.
- 4.2 PDC staff reviewed the following additional documents submitted by Mr. Howard and Roger Lenk:
- July 16, 2014: Mr. Howard files a "first supplement" to the complaint alleging that a number of officials in Benton County violated RCW 42.17A.555, and he made new allegations of violations of RCW 42.17A.565 for local officials' soliciting contributions from employees of their agencies.
 - July 29, 2014: Mr. Howard files a second supplement to the complaint alleging: (1) A number of officials in Benton County violated RCW 42.17A.555; (2) CSC failed to disclose the complete addresses for contributors and committee vendors as required; and (3) a number of local Benton County law enforcement unions and non-profit organizations concerning the use of agency shop fees to make political contributions.
 - September 18, 2014: Roger Lenk submitted an email and attached: (1) An email from Kennewick Police Chief Ken Hohenberg to Kennewick City Manager Mosley transmitting a copy of his 2014 Performance Review; and (2) A March 22, 2014, email from Prosser Mayor Paul Warden providing recipients information about CSC including fundraising goals and solicited support for the committee.

- September 26, 2014: Mr. Lenk submitted an additional email providing copies of documents he received from the City of Kennewick in response to his public records request, that included: (1) A Council Agenda coversheet for the April 15, 2014 meeting concerning adopting Resolution 14-17, in support of the Benton County sales and use tax; a copy of Chief Hohenberg's annual report that he presented to council; and three tables showing how the sales tax revenue will be used to hire additional law enforcement in CY 2014, 2015, and 2016; (2) A May 13, 2014 email from Al Wehner using his private email address send to Sara Schilling, a reporter with the Tri-City Herald, and attaching the photo from the law enforcement press conference with a copy sent to Chief Hohenberg; (3) May 13, 2014 statement (press release) made by the Benton County Sheriff and Police Chiefs concerning the Benton County Law & Justice sales tax measure; (4) Chart from the BCLJC detailing what the proposed ballot measure would provide; and (5) Emails dating back to 2012 concerning meetings of the BCLJC, its predecessor the Criminal Justice Sales Tax Advisory Committee, and minutes of Executive Board meetings.

4.3 Staff reviewed the following responses received from the numerous Respondents:

- On July 7, 2014, PDC staff received an email from Mr. Wehner using his private email address, and he attached an eight-page response letter to the initial complaint.
- On August 4, 2014, PDC staff received an email from Julie Richardson, City Clerk for the City of West Richland, attaching a two-page response letter from Brian McElroy, West Richland Police Chief and herself to the allegations listed in the complaint.
- On August 6, 2014, PDC staff received a seven-page response letter from Heather D. Kintzley, City Attorney for the City of Richland, concerning the allegations made against Chris Skinner, Police Chief, and the Richland City Council.
- On August 6, 2014m PDC staff received a five page initial response letter from Lisa Beaton, City Attorney for the City of Kennewick, responding on behalf of city and Chief Hohenberg to the initial allegations listed in the complaint. PDC staff also received two additional responses from Ms. Beaton on August 25, 2014 and October 27, 2014, concerning staff's request for additional information.
- On August 14, 2014, PDC staff received an email from Ms. Delvin, and two-page attached response letter from Mr. Wehner and Ms. Delvin on behalf of CSC concerning staff's August 8th letter requesting a response to the complaint.
- On August 18, 2014, PDC staff received an email from Mr. Saxton responding on behalf of City of Prosser Mayor Paul Warden, and attaching a five-page response letter to the 2nd supplement received from complainant and PDC staff's questions. PDC staff also received additional responses from Mr. Saxton
- On August 20, 2014, Benton County Sheriff Keane submitted an email and attached a letter in response to the allegations made against him in the complaint.

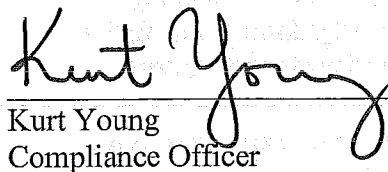
- On August 20, 2014, Jackie Lahtinen submitted an email and attached a letter in response to the allegation made against her in the complaint.
- On August 25, 2014, Benton County Clerk and SCS Committee Treasurer Josie Delvin submitted an email and attached a letter in response to the allegation made against her in the complaint.
- On August 26, 2014, Benton County Prosecuting Attorney Andy Miller submitted an email and attached a letter in response to the allegation made against him in the complaint.
- On September 11, 2014, PDC staff received a letter from Elizabeth Lemoine, an attorney with the law firm Makler, Lemoine & Goldberg, P.C., representing the West Richland Police Officers Association.
- On October 6, 2014, PDC staff received an email from Mr. Saxton responding on staff's follow-up questions and attaching a one-page response letter to the 3rd supplement received from complainant.
- On October 24, 2014, PDC staff received a four page response letter from Ms. Beaton responding to the third supplement received from complainant and PDC staff's questions.

V. Laws, Rules and Interpretations

- 5.1 **RCW 42.17A.240** states in part that a political committee must disclose on C-3 reports "(2) The name and address of each person who has made one or more contributions during the period, together with the money value and date of each contribution and the aggregate value of all contributions received from each person during the campaign, or in the case of a continuing political committee, the current calendar year." In addition, the C-4 reports must disclose (6) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure..."
- 5.2 **RCW 42.17A.245** states in part that each political committee that "expended five thousand dollars or more in the preceding year or expects to expend five thousand dollars or more in the current year shall file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055... Failure by a candidate or political committee to comply with this section is a violation of this chapter."
- 5.3 **WAC 390-16-034** states that "Pursuant to RCW 42.17A.240, each report required under RCW 42.17A.235 shall disclose, in addition to the name and address of each person who has made one or more contributions in the aggregate amount of more than one hundred dollars, the occupation and the name and address of the person's employer."

- 5.4 **RCW 42.17A.555** states, in part: “No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency.”
- 5.5 **WAC 390-05-273** defines the “normal and regular conduct” of a public office or agency as “conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”
- 5.6 **PDC Interpretation 04-02** includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following under the Not Permitted column:
- Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.).
 - This same prohibition also applies to related equipment including but not limited to: firearms; badges; nametags; holsters; handcuffs; jackets; belts; vests; shoes; agency patches, logos, insignias, emblems; and radios.
 - Prohibited uses include but are not limited to using or wearing those uniforms at campaign functions. Exceptions exist for officials to attend campaign functions in uniform and may be made on a case-by case basis under exigent circumstances.

Respectfully submitted this 30th day of March, 2017.


Kurt Young
Compliance Officer

List of Exhibits

- Exhibit #1** June 26, 2014, Radphord-Leon Howard filed a complaint with the PDC alleging that a number of public officials and public agencies in Benton County violated RCW 42.17A.555 by using public resources to aid a campaign in support of a ballot measure to increase taxes to support regional policing.
- Exhibit #2** July 18, 2014, Mr. Howard filed a 45-Day Citizen Action Complaint (Complaint) with the Attorney General's Office, alleging that a number of Benton County officials, and officials from the cities of Kennewick, Prosser, Richland and West Richland, violated RCW 42.17A.555 by using public resources of their respective agencies to support the August 5, 2014 ballot proposition.
- Exhibit #3** July 16, 2014, Mr. Howard files a "first supplement" to the complaint alleging that a number of officials in Benton County violated RCW 42.17A.555, and he made new allegations of violations of RCW 42.17A.565 for local officials' soliciting contributions from employees of their agencies.
- Exhibit #4** July 29, 2014, Mr. Howard files a second supplement to the complaint alleging: (1) A number of officials in Benton County violated RCW 42.17A.555; (2) CSC failed to disclose the complete addresses for contributors and committee vendors as required; and (3) a number of local Benton County law enforcement unions and non-profit organizations concerning the use of agency shop fees to make political contributions.
- Exhibit #5** September 18, 2014, Roger Lenk submitted an email complaint that was added to this Report of Investigation and he attached: (1) An email from Kennewick Police Chief Ken Hohenberg to Kennewick City Manager Mosley transmitting a copy of his 2014 Performance Review; and (2) A March 22, 2014, email from Prosser Mayor Paul Warden providing recipients information about CSC including fundraising goals and solicited support for the committee.
- Exhibit #6** September 26, 2014, Mr. Lenk submitted an additional email providing copies of documents he received from the City of Kennewick in response to his public records request.
- Exhibit #7** July 7, 2014, PDC staff received an email from Al Wehner and he attached an eight-page response letter to the initial complaint.
- Exhibit #8** Strategic Plan for the 2014 Criminal Justice Sales Tax" prepared by Al Wehner For the BCLCJ.
- Exhibit #9** August 14, 2014, PDC staff received an email from Josie Delvin on behalf of Citizens for Safe Communities (CSC), and she attached a two-page response letter from Mr. Wehner and Ms. Delvin.
- Exhibit #10** Paper-filed C-4 reports submitted by CSC.

- Exhibit #11** Paper-filed C-3 reports submitted by CSC.
- Exhibit #12** August 9, 2014, amended C-3 and C-4 reports are electronically filed by CSC.
- Exhibit #13** August 20, 2014, PDC staff received an email from Sheriff Keane and he attached a letter in response to the allegation made against him in the complaint.
- Exhibit #14** August 2, 2014, PDC staff received an email from Andy Miller in response to the allegations made against him in the initial complaint. August 26, 2014, Mr. Miller submitted an additional email and he attached a letter in response to staff's request for additional information concerning the second supplemental complaint
- Exhibit #15** August 25, 2014, PDC staff received an email from Ms. Delvin and she attached a letter in response to the allegation made against her in the complaint and staff's question.
- Exhibit #16** August 1, 2014, PDC staff received an email from Eric Hsu and he attached a response to the allegations made against him in the initial complaint. August 12, 2014, Mr. Hsu submitted an email and attached a letter in response to staff's request for additional information concerning the second supplemental complaint filed by Mr. Howard.
- Exhibit #17** August 20, 2014, PDC staff received an email from Ms. Lahtinen and she attached a letter in response to the allegation made against her in the complaint.
- Exhibit #18** August 6, 2014 PDC staff received a five-page letter from Lisa Beaton, City Attorney for the City of Kennewick, responding on behalf of the city to the allegations listed in the complaint. August 25, 2014 PDC, staff received an email from Kennewick City Attorney's office staff, and attached a five page response letter from Ms. Beaton responding to the second supplement received from the complainant and PDC staff's questions. October 24, 2014 PDC staff received a four page response letter from Ms. Beaton responding to the third supplement received from complainant and PDC staff's questions.
- Exhibit #19** August 6, 2014 PDC staff received a seven-page response letter along with seven attached exhibits from Heather D. Kintzley, City Attorney for the City of Richland, concerning the allegations made against Chris Skinner, Police Chief, Al Wehner, Police Captain; and the Richland City Council in the complaint.
- Exhibit #20** August 4, 2014 PDC staff received an email from Julie Richardson, City Clerk for the City of West Richland, and she attached a two-page response letter from Brian McElroy, West Richland Police Chief and herself to the allegations listed in the complaint, along with several attached documents.

Exhibit #21 August 8, 2014, PDC staff received an email from Howard Saxton, a private attorney with Saxton Riley, PLLC responding on behalf of City of Prosser and Police Chief David Giles, and attaching: (1) a two-page initial response letter to the complaint; (2) the agenda to the April 22, 2014, Prosser City Council meeting; and (3) a copy of Resolution 14-1454. August 18, 2014, PDC staff received an email from Mr. Saxton responding on behalf of City of Prosser Mayor Paul Warden, and attaching a five-page response letter to the 2nd supplement received from complainant and PDC staff's questions. October 6, 2014, Mr. Saxton submitted an email with a one-page attached response to PDC staff's September 25, 2014 questions.

