



State of Washington
PUBLIC DISCLOSURE COMMISSION

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Memorandum

To: Public Disclosure Commission

From: Jennifer Hansen, Compliance Officer

Date: May 22, 2023

Subject: Request from Elizabeth Berry & Various Campaigns, Reporting Modification

Partial Modification – Background & Request:

- On May 21, 2023, the Public Disclosure Commission (PDC) received a request from Representative Elizabeth Berry for redaction of her residential address on Personal Financial Affairs Statements (F-1 reports) pursuant to [RCW 42.17A.120](#) and [WAC 390-28-100\(1\)\(d\)\(ii\)](#).
- Rep. Berry is also requesting redaction of information connected to 177 contributions made to various campaigns by her and her spouse, Michael Hill, previously disclosed by the recipients of these contributions, pursuant to the filing requirements described in [RCW 42.17A.240](#).
- Rep. Berry stated that she has received credible threats to her safety due to her legislative duties and that the threats have been documented by law enforcement.
- On May 22, 2023, PDC Staff spoke to Berry Campaign staff member, Jason Bennett, about Rep. Berry's request, informing him that permission would be needed from each recipient of a contribution from Rep. Berry in order to bring this partial modification request to the Commission for consideration. Mr. Bennett has begun the process of obtaining the required written consent for staff to modify any campaign reports per the Commission's Order, if Rep. Berry's request is granted.
- On May 18, 2023, Rep. Berry amended her current F-1 report covering calendar year 2022, and the three F-1 reports previously submitted and covering calendar years 2021,

2020 and 2019, to identify her address using the reporting alternative described in [WAC 390-24-200\(2\)\(a\) & \(b\)](#).

- Representative Berry's records would be exempt from public disclosure if the Commission finds in accordance with [RCW 42.17A.120](#) and [WAC 390-28-080](#) that disclosure of such information would present a personal risk to a reasonable person.

Applicable Laws & Rules:

RCW 42.17A.120

Suspension or modification of reporting requirements.

(1) The commission may suspend or modify any of the reporting requirements of this chapter if it finds that literal application of this chapter works a manifestly unreasonable hardship in a particular case and the suspension or modification will not frustrate the purposes of this chapter. The commission may suspend or modify reporting requirements only to the extent necessary to substantially relieve the hardship and only after a hearing is held and the suspension or modification receives approval. A suspension or modification of the financial affairs reporting requirements in RCW [42.17A.710](#) may be approved for an elected official's term of office or for up to three years for an executive state officer. If a material change in the applicant's circumstances or relevant information occurs or has occurred, the applicant must request a modification at least one month prior to the next filing deadline rather than at the conclusion of the term.

(2) A manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under RCW [42.17A.710\(1\)\(g\)\(ii\)](#) would be likely to adversely affect the competitive position of any entity in which the person filing the report, or any member of the person's immediate family, holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more.

(3) Requests for reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW [34.05.482](#) through [34.05.494](#) and in accordance with the standards established in this section. The commission, the commission chair acting as presiding officer, or another commissioner appointed by the chair to serve as presiding officer, may preside over a brief adjudicatory proceeding. If a modification is requested by a filer because of a concern for personal safety, the information submitted regarding that safety concern shall not be made public prior to, or at, the hearing on the request. Any information provided or prepared for the modification hearing shall remain exempt from public disclosure under this chapter and chapter [42.56](#) RCW to the extent it is determined at the hearing that disclosure of such information would present a personal safety risk to a reasonable person.

(4) If the commission, or presiding officer, grants a modification request, the commission or presiding officer may apply the modification retroactively to previously filed reports. In that event, previously reported information of the kind that is no longer being reported is confidential and exempt from public disclosure under this chapter and chapter [42.56](#) RCW.

(5) Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order.

(6) The commission shall adopt rules governing the proceedings.

RCW 42.17A.240

Contents of report.

Each report required under RCW [42.17A.235](#) (1) through (4) must be certified as correct by the treasurer and the candidate and shall disclose the following, except an incidental committee only must disclose and certify as correct the information required under subsections (2)(d) and (7) of this section:

- (1) The funds on hand at the beginning of the period;
- (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, with the following exceptions:
 - (a) Pledges in the aggregate of less than one hundred dollars from any one person need not be reported;
 - (b) Income that results from a fund-raising activity conducted in accordance with RCW [42.17A.230](#) may be reported as one lump sum, with the exception of that portion received from persons whose names and addresses are required to be included in the report required by RCW [42.17A.230](#);
 - (c) Contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum if the treasurer maintains a separate and private list of the name, address, and amount of each such contributor;
 - (d) Payments received by an incidental committee from any one person need not be reported unless the person is one of the committee's ten largest sources of payments received, including any persons tied as the tenth largest source of payments received, during the current calendar year, and the value of the cumulative payments received from that person during the current calendar year is ten thousand dollars or greater. For payments to incidental committees from multiple persons received in aggregated form, any payment of more than ten thousand dollars from any single person must be reported, but the aggregated payment itself may not be reported. The commission may suspend or modify reporting requirements for payments received by an incidental committee in cases of manifestly unreasonable hardship under this chapter;
 - (e) Payments from private foundations organized under section 501(c)(3) of the internal revenue code to an incidental committee do not have to be reported if:
 - (i) The private foundation is contracting with the incidental committee for a specific purpose other than election campaign purposes;
 - (ii) Use of the funds for election campaign purposes is explicitly prohibited by contract; and
 - (iii) Funding from the private foundation represents less than twenty-five percent of the incidental committee's total budget;

(f) Commentary or analysis on a ballot proposition by an incidental committee is not considered a contribution if it does not advocate specifically to vote for or against the ballot proposition; and

(g) The money value of contributions of postage is the face value of the postage;

(3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(4) All other contributions not otherwise listed or exempted;

(5) A statement that the candidate or political committee has received a certification from any partnership, association, corporation, organization, or other combination of persons making a contribution to the candidate or political committee that:

(a) The contribution is not financed in any part by a foreign national; and

(b) Foreign nationals are not involved in making decisions regarding the contribution in any way;

(6) The name and address of each candidate or political committee to which any transfer of funds was made, including the amounts and dates of the transfers;

(7) 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, and the total sum of all expenditures. An incidental committee only must report on expenditures, made and reportable as contributions as defined in RCW [42.17A.005](#), to election campaigns. For purposes of this subsection, commentary or analysis on a ballot proposition by an incidental committee is not considered an expenditure if it does not advocate specifically to vote for or against the ballot proposition;

(8) The name, address, and electronic contact information of each person to whom an expenditure was made for soliciting or procuring signatures on an initiative or referendum petition, the amount of the compensation to each person, and the total expenditures made for this purpose. Such expenditures shall be reported under this subsection in addition to what is required to be reported under subsection (7) of this section;

(9)(a) The name and address of any person and the amount owed for any debt with a value of more than seven hundred fifty dollars that has not been paid for any invoices submitted, goods received, or services performed, within five business days during the period within thirty days before an election, or within ten business days during any other period.

(b) For purposes of this subsection, debt does not include regularly recurring expenditures of the same amount that have already been reported at least once and that are not late or outstanding;

(10) The surplus or deficit of contributions over expenditures;

(11) The disposition made in accordance with RCW [42.17A.430](#) of any surplus funds;

and
(12) Any other information required by the commission by rule in conformance with the policies and purposes of this chapter.

WAC 390-28-100

Reporting modifications—Possible qualifications—Standards—Statement of financial affairs.

(1) Under RCW [42.17A.120](#), the commission or presiding officer may modify reporting requirements, including the statement of financial affairs, if literal application of the requirement would work a manifestly unreasonable hardship and the suspension or modification would not frustrate the purpose of the law. One or more of the following may be considered by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when such standard is met:

(a) **Banks, savings accounts, insurance policies - Financial interests.** An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW [42.17A.710](#) (1)(b) if:

(i) The financial institution or other entity in which the applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant;
and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** An applicant may be exempted from reporting the information otherwise required by RCW [42.17A.710](#) (1)(f) and (g), if:

(i) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the applicant in whole or in part;

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant including, but not limited to:

(A) Violating a legally recognized confidential relationship that serves a legitimate business interest, and otherwise was not formed to prevent required disclosure, although such relationship may be subject to administrative subpoena or court order to require disclosure; or

(B) Adversely affecting the competitive position of an entity in which the applicant had an interest of ten percent or more as described in RCW [42.17A.120](#); and

(iii) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** An applicant may be exempted from reporting the information otherwise required by RCW [42.17A.710](#) for members of the applicant's immediate family, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest is not a present or prospective source of income to the applicant or to any other person who is dependent upon the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW [42.17A.120](#).

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW [42.17A.710](#) (1)(h) through (k):

(i) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC [390-24-200](#), plus the name of the county. Judges, prosecutors, or

sheriffs may describe a personal residence in the alternative manner provided under RCW [42.17A.710](#)(2), and WAC [390-24-200](#) without a modification.

(ii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider and grant such a modification to amend the description of a residential address to the extent necessary to protect the applicant or an immediate family member who has received a threat, has obtained a no contact order, or has presented a similar personal safety concern.

(e) **Other.** An applicant may be exempted from reporting information otherwise required under RCW [42.17A.710](#) which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW [42.17A.710](#) (1)(g)(ii) and WAC [390-24-020](#) by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, website, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW [42.17A.710](#) (1)(g)(ii) and WAC [390-24-020](#) by disclosing any required information of which the applicant is aware, provided the applicant certifies that the applicant is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW [42.17A.710](#) (1)(g) and WAC [390-24-020](#) by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under RCW [42.17A.710](#) (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.** When an applicant is required to report the activities of an entity

solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW [42.17A.710](#) (1)(g)(ii) by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW [42.17A.710](#) (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter [26.09](#) RCW;

(c) Separate property court decree under chapter [26.09](#) RCW;

(d) Domestic partnership agreement under chapter [26.60](#) RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter [26.60](#) RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.