

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**STATE OF WASHINGTON
COUNTY OF KING**

In re:

SHANE MILLER,

Appellant

vs.

CITY OF MERCER ISLAND,

Respondent

CASE: APL 19-002

REQUEST FOR CONTINUANCE /
RESCHEDULING OF HEARING
DATE

Dear Mr. Hearing Examiner:

I feel that I have no choice but to bring this Request for Continuance / Rescheduling of the November 19 Appeal Hearing due to:

1. Documents incl. Exhibits for the hearing must be submitted 7 days in advance of the hearing, or on November 12
2. Today I received thirteen emails from the City of Mercer Island w/ documents that I have been waiting for since May. Exhibit A – thirteen emails received today
3. I believe there are likely to be thousands of pages of documents in the links contained in the 13 emails
4. I require time to review the 13 emails and estimated thousands of pages of documents

- 1 5. I require time to review WITH MY ATTORNEY the 13 emails and estimated thousands
2 of pages of documents
- 3 6. I was very clear with the City that I required these documents long ago and absolutely no
4 later than last Friday October 29
- 5 7. Recall at the hearing on October 28, I had predicted the City would deliver to me these
6 documents after the last possible time when I would be able to use them, which was on
7 Friday October 29
- 8 8. I work full time during Monday through Friday and will be taking my daughters to an out
9 of town basketball tournament this weekend
- 10 9. As a result, I do not have any available time to review these documents or to review and
11 discuss these documents with my attorney between now and when my documents are due
12 to be submitted.
- 13 10. There is absolutely no chance that I will be able to prepare anything using the documents
14 disclosed today.
- 15 11. I sent many emails on Friday October 29 explaining that the records received today had to
16 be received by Friday October 29 in order to be reviewable by me and my attorney in
17 advance of the deadlines.
- 18 12. I received zero documents on Friday October 29, zero documents on Saturday October 30
19 and zero documents on October 31
- 20 13. I had CC'd Mr. Hearing Examiner on some, but not all, of the emails that I had sent on
21 Friday October 29.
- 22 14. Mr. Hearing Examiner responded by asking that I stop CC'ing Mr. Hearing Examiner on
23 emails related to attempts at securing the documents via records requests
- 24 15. Mercer Island City Manager, Ms. Jesse Bon, made promises via email on August 23, 2021
25 that information would be provided to me "expedited" by City Attorney, Mr. Bio Park. It
wasn't until today November 1, 2021 – more than 2 months after the promise via email –
that possibly some or all of the records were produced. More than 2 months would not
qualify as "expedited"
16. Records previously obtained included improper redactions. E.g. an email from Ms. Jimmi
Serfling to Mr. Travis Saunders was improperly redacted claiming attorney-client privilege

1 communication. Neither Ms. Serfling nor Mr. Saunders are attorneys, and therefore neither
2 could have been giving the other legal advice. I strongly believe the City improperly
3 redacted that and other communications solely because they did not want me to see
4 communication. This is illegal.

5 17. I had previously found documents that were unable to be open due to what appeared to be
6 corrupted files, which had to be remedied by a City Paralegal Staff Employee.

7
8 18. Note I have not yet reviewed the estimated thousands of pages dumped on me / my inbox
9 during today, but it is my expectation based on the pattern of problems witnessed thus far
10 that there will be many missing, improperly redacted, and corrupted or otherwise unable to
11 be open documents among the masses of many documents.

12 19. It was improper of the City to send a Voluntary Compliance Settlement Agreement that
13 says it had expired on or about October 22 weeks in advance of having first produced the
14 records in its possession that were needed to order to assess the merits of the VCSA.

15
16 20. The Attorney reviewing the VCSA has asked to see the document dump received today
17 prior to her providing legal advice and opinion as to whether the VCSA should be
18 considered, negotiated or accepted.

19 21. It has been very nearly 4 years since this matter began on or about February 2, 2018. The
20 City had waited approximately 20 months to eventually issue the NOV and did so under
21 entirely different staff, i.e. only after Mr. Anthony Myers replaced Ms. Jimmi Serfling.

22 22. There will not be any harm from a small delay in order to allow review of the documents
23 received today; however, there would be great harm to my ability to prepare and defend and
24 prevail in the case should a small delay not be granted at this time based on the facts and
25 circumstances presented herein and known to be true and correct.

1
2 23. It is clear from records received the Voluntary Compliance Settlement Agreement language
3 including Slopes data that are materially at odds with language shown from Licensed
4 Surveyors. For example, the City is saying the Slope is 43% whereas the Licensed
5 Surveyors are saying 37%. Note also I spoke with a Washington State licensed surveyor
6 and he has confirmed via email the 37% slope is correct. The importance of this cannot
7 possibly be overstated because > 40% slopes are regulated as steep slopes whereas <40%
8 slopes generally are not. This is precisely why the City has repeatedly including in the
9 Notice of Violation documents declared the slope is 43.8%, even though the Surveyors
10 have proven otherwise.

11 24. Also, there are many other potential issues observed in the VCA, which I need time to
12 explore before bringing to the Appeal Hearing. This is especially true now that new
13 document records have been produced by the City during today via the 13 different emails.

14 25. Public records requests have not been produced timely. Given the significance of the
15 Record found via the Surveyor (i.e. Surveyor says slope is 37% vs. City claim of 43%)
16 additional time is necessary to review and determine whether additional or similar records
17 exist and are not provided.

18 26. Disclosure and Due Process are core tenets of a fair legal system. Unfortunately, disclosure
19 has failed since May until possibly this very day. Due Process can only be attained by me
20 with the necessary time to review the new Disclosure.

21 27. Up until today, there has been failure of Disclosure and Due Process whereby significant
22 information asymmetry was forced upon me by the City. It was only due to significant
23 efforts on my part these records were produced today. There is also little or no reason the
24 City could not have produced the records by this time, and in fact I believe the law required
25 production before this time. Six months is a long time to wait.

1
2 CONCLUSION

3
4 It is beyond inappropriate for me to have to limit preparation by excluding what appears to
5 be hundreds or even thousands of pages worth of City records that were first made available to me
6 today, which is just days from when I must submit exhibits per the hearing schedule and rules. I
7 have been placed at unnecessary risk failing at the Appeal Hearing due to forced pressure applied
8 unfairly and in bad faith. The City has had since May when #21-300 was properly entered in the
9 NextRequest system, yet the City chose to wait until today to produce the records first received
10 during today. Most likely I would need to withdraw the Appeal altogether as a direct result of the
11 City's actions as well as inaction should the hearing date not be rescheduled as per the points
12 above. See the Exhibits enclosed for evidence. I simply cannot review all the new documents and
13 simultaneously prepare and submit a complete case by November 12 while also working full time
14 and scheduled to be out of town during the coming weekend of November 6. I have four children
15 ages 5, 10, 11 and 12 that depend on me during evenings and weekends. What the City has done
16 to me and my family is bad faith and absurd. I can be reached at (206) 910-8443 should you have
17 questions or to discuss.

18
19 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is
20 true and correct.

21 Signed at _Mercer Island_____, [City] ___WA_____ [State] on __November 1,
22 2021_____ [Date].

23 Shane Miller

Shane Miller

24 (printed name) Signature
25



Shane yahoo email

10/29/21

Fwd: In Re: APL 19-002 - Shane Miller v. City of M...



To: Jessi Bon, Cc: John Galt & 4 more

[Details](#)

Ms. Bon,

May you please assist with getting your staff to produce the records requests of 21-300 and 21-483.

I require the records today so that I may review during this weekend of Oct 30th. This is because an Appeal before the Hearing Examiner is set for November 19 and I must submit a declaration and exhibits by November 12. I am unavailable the weekend of November 6th and therefore must complete this exercise during this weekend of October 30th. It is not possible for me to do so without the records requested.

Records request 21-300 has been open for the past 5 months since May and 21-483 has been open for the past 3 months since August.

Also, there has been issues with emails getting redacted for attorney-client privilege when there is no attorney on the email thread. An example of this is included in the attached declaration. Can you please ensure improper redaction is not preventing records from getting hidden due to improper redaction?

Please see attached declaration explaining the issues in more detail.

As an aside, is it normal for a records requests to remain open for more than 5 months? I've never experienced a delay like this.

Please respond today so that I may know this us getting addressed in time for me to prepare for the Nov 12 appeal filing deadline. Again, to possibly meet this deadline I need to be reviewing these records this Holiday weekend of October 30th.

I look forward to hearing from you.

Thank you,
Shane

Sent from my iPhone



Shane yahoo email

10/29/21

Fwd: In Re: APL 19-002 - Shane Miller v. City of M...



To: Bio Park, Cc: John Galt & 4 more

[Details](#)

Mr. Park,

If I don't hear from the City by this afternoon per below re: records requests open for the past 5 months including 21-300 and 21-483, a Washington State Bar Complaint will be filed against you at 5:00 p.m. today. The Complaint will allege, at minimum, Abuse of Power, Obstruction of Justice and Code of Ethics violations.

Sincerely,
Shane Miller

Sent from my iPhone

All Results

City of Mercer Island Public Records Inbox - Google 2:48 PM
Your City of Mercer Island public records request #21-483 has been closed.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records Record request #21-483 ha...

City of Mercer Island Public Records Inbox - Google 2:47 PM
[External Message Added] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A message was sent to you...

City of Mercer Island Public Records Inbox - Google 2:43 PM
[Document Released] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records Documents have been relea...

City of Mercer Island Public Records Inbox - Google 2:39 PM
[Document Released] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A document has been releas...

City of Mercer Island Public Records Inbox - Google 2:21 PM
[Document Released] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A document has been releas...

City of Mercer Island Public Records Inbox - Google 2:13 PM
[Document Released] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A document has been releas...

● **City of Mercer Island Public Records** Inbox - Google 2:11 PM
[Document Released] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A document has been releas...

● **City of Mercer Island Public Records** Inbox - Google 2:07 PM
[Document Released] City of Mercer Island public records request #21-483

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A document has been releas...

● **City of Mercer Island Public Records** Inbox - Google 12:02 PM
Your City of Mercer Island public records request #21-300 has been closed.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records Record request #21-300 ha...

● **City of Mercer Island Public Records** Inbox - Google 11:58 AM
[External Message Added] City of Mercer Island public records request #21-300

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A message was sent to you...

City of Mercer Island Public Records Inbox - Google 11:34 AM
[Document Released] City of Mercer Island public records request #21-300

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records A document has been releas...

★ **Shane yahoo email** Trash - Yahoo! 11:29 AM
Fwd: [Document Released] City of Mercer Island public records request #21-300

trying 2 of 2 Begin forwarded message: From: City of Mercer Island Public Records <prr@mercergov.org> Subject: [Document Released] City of Mercer Island public records re...

➦ **City of Mercer Island Public Records** Inbox - Google 11:28 AM
[Document Released] City of Mercer Island public records request #21-300

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records Documents have been relea...

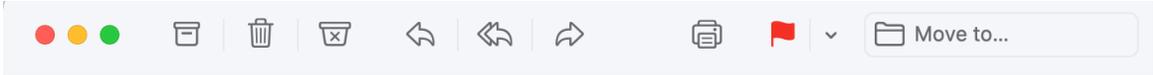
★ **Shane yahoo email** Sent - Yahoo! 11:04 AM
Fwd: [Document Released] City of Mercer Island public records request #21-300

look who is trying to clean up their act... Begin forwarded message: From: City of Mercer Island Public Records <prr@mercergov.org> Subject: [Document Released] City of Mercer I...

➦ **City of Mercer Island Public Records** Inbox - Google 11:03 AM
[Document Released] City of Mercer Island public records request #21-300

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. -- City of Mercer Island Public Records Documents have been relea...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



City of Mercer Island Public Records Inbox - Google 2:48 PM

Your City of Mercer Island public records request #21-483 has been closed.
To: shanemillerus@gmail.com,
Reply-To: mercerisland_21-483-requester-notes@inbound.nextrequest.com

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Mercer Island Public Records

Record request #21-483 has been closed and published.

[View Request 21-483](#)

<https://mercerisland.nextrequest.com/requests/21-483>


POWERED BY NEXTREQUEST
The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)



City of mercer is



City of Mercer Island Public Records

Inbox - Yahoo! 11:03 AM

[Document Released] City of Mercer Island public records request #21-300

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-300-requester-notes@inbound.nextrequest.com

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Mercer Island Public Records

Documents have been released for record request #21-300:

- 21-300 7709 Part 1 Email Released 11.01.2021.zip
- 21-300 7709 Part 2 Email Released 11.01.2021.zip
- 21-300 7709 Part 3 Email Released 11.01.2021.zip

[View Request 21-300](#)

<https://mercerisland.nextrequest.com/requests/21-300>



POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)



★ **S** **Shane yahoo email** 10/29/21
Re: [Document Released] City of Mercer Island pu... [Details](#)
To: Mary Swan, Cc: John Galt & 5 more

Hi Mary,

Can this request 21-483 (in addition to 21-300) please be completed today?

This is because I have an Appeal scheduled with the Hearing Examiner on November 19th and must submit a declaration and exhibits by November 12th. In order to meet the deadline of November 12th, I must complete the work during this weekend of October 30th. This is because I am not free during the weekend of Nov 6th and therefore must complete during this weekend October 30th.

Please note this records request has been open since August. (And 21-300 has been open since May). That is, I've been waiting 3 months on these records (and waiting 5 months on 21-300). I can't work with partial installments; that is, I need a complete records set.

As an aside, is it normal for a records request to remain open for 3-5 months like this? I've never before experienced a delay like this.

Would welcome your thoughts.

Thank you,
Shane Miller

Sent from my iPhone