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Public Disclosure Commission

STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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January 31, 2012

Preston Mui
Evergreen Freedom Foundation
2403 Pacific Avenue SE
Olympia WA 98501

Subject: Complaint Filed Against the City of Newcastle, PDC Case No. 12-148

Dear Mr. Mui:

The Public Disclosure Commission (PDC) has completed its investigation of the complaint you filed on July 28, 2010, alleging that the City of Newcastle violated RCW 42.17.190 by failing to timely file *"Reports of Lobbying by State and Local Government Agencies"* (L-5 report) for public agency lobbying activities undertaken during calendar years 2005 through 2007, and in 2009.

PDC staff opened a formal investigation into this matter on December 12, 2011, and reviewed the allegations in light of the following statutes:

RCW 42.17.190 allows public agencies to hire contract lobbyists to lobby, on the agency's behalf, the Washington State Legislature, the Governor's Office or any state agency. The L-5 report discloses lobbying activities undertaken by public agencies, either through hiring a contract lobbyist or through its employees.

RCW 42.17.020(31) states that "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW.

We reviewed your complaint, lobbyist information available to the public on the PDC website, the L-5 reports filed by the City of Newcastle, and also the Lobbyist Employer report (L-3 report) filed by the city. As a result of our review, we found:

- The City of Newcastle hired Michael Doubleday, a contract lobbyist, who engaged in reportable lobbying activities on behalf of the city during calendar years 2005 through 2009.

- PDC records indicate that the City of Newcastle timely filed two L-5 reports for the first two quarters of 2007.

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- In addition, the City of Newcastle filed an L-3 report on March 2, 2009, disclosing reportable lobbying activities undertaken by Mr. Doubleday during calendar year 2008.

- The reportable activities cited in your complaint are based on the Monthly Lobbyist Expense reports (L-2 report) timely filed by Michael Doubleday for lobbying activities undertaken on behalf of the City of Newcastle during calendar years 2005, 2006, the last two quarters of 2007, and 2009.

- On September 28, 2010, PDC staff sent a letter informing the City of Newcastle that a complaint had been filed by EFF alleging violations of RCW 42.17.190 for failing to file L-5 reports disclosing city lobbying activities undertaken during calendar years 2005 through 2007, and in 2009. No response was received from the City of Newcastle.

- PDC staff and the City of Newcastle exchanged e-mails in May and June of 2011 regarding the missing L-5 reports. The city submitted an e-mail on June 22, 2011, attaching the two previously filed L-5 reports for the first two quarters of 2007, copies of the Lobbyist Registrations (L-1 report) filed by Michael Doubleday, a January 2010 letter from the city terminating Mr. Doubleday's services, and the Accounts Payable and Vendor History for payments made to Mr. Doubleday for lobbying services he provided to the city during 2005 through 2009.

- It appears there was a miscommunication between Robert H. Baker, former City Clerk for the City of Newcastle, and PDC staff during a June 20, 2011, telephone conversation and the subsequent June 22, 2011 e-mail exchange. PDC staff was under the impression that the City of Newcastle would file the missing L-5 reports based on the Accounts Payable/Vendor History report for Mr. Doubleday. Mr. Baker, who is no longer City Clerk for the City of Newcastle, apparently thought the documents he attached to his e-mail were sufficient, and no additional information was necessary. No L-5 reports were filed by the City of Newcastle.

- On December 29, 2011, the City of Newcastle filed eight L-5 reports along with a cover letter and a summary of the contract lobbyist expenses paid to Michael Doubleday. The L-5 reports disclosed lobbying activities undertaken by the city for the fourth quarter of 2005, all of calendar year 2006 (one L-5 report), the third and fourth quarters of 2007, and all of calendar year 2009 (one L-5 report for each quarter).

- The L-5 reports filed by the City of Newcastle confirmed that no reportable lobbying activities were undertaken by city officials or employees during the fourth quarter of 2005, all of calendar year 2006, the third and fourth quarters of 2007, and all of calendar year 2009. The L-5 reports were filed two to six years late by the City of Newcastle.

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The allegations listed in your complaint concerning the failure to timely report lobbying activities undertaken by the City of Newcastle for the fourth quarter of 2005, and the first three quarters of calendar year 2006 are beyond the five year statute of limitations. Because the Commission has no jurisdiction to act on violations that are more than five years old, these allegations were not reviewed.

The City of Newcastle failed to timely file the required L-5 report for lobbying activities undertaken by the city during the last quarter of 2006, the third and fourth quarters of 2007, and all of calendar year 2009. However, this late filing is mitigated by the fact that the public had access to lobbying information filed by the city's registered lobbyist, Michael Doubleday, (the PDC website allows the public to perform a lobbyist database search or to view the actual lobbyist registrations and monthly expense reports). Additionally, the city reports no other lobbying was conducted by Newcastle city officials or employees.

Although the City of Newcastle filed late, it has now reported its lobbying activities for the last quarter of 2005, all of calendar year 2006, the third and fourth quarters of 2007, and calendar year 2009. Because the public had access to the information concerning the lobbying being conducted on behalf of the City of Newcastle, no enforcement action will be taken in this instance. The City of Newcastle will be reminded to report all future public agency lobbying activities on the L-5 report in a timely manner, and that failure to do so could result in enforcement action.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation. Because the investigation has not revealed evidence of material violations or substantial non-compliance with any of the laws or regulations under the Commission's jurisdiction that warrant formal enforcement action, I am dismissing your complaint against the City of Newcastle, with the concurrence of the Chair of the Public Disclosure Commission.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring lobbying activity to promote full compliance with the law. Your actions will contribute to better awareness of the Public Disclosure Law and better public disclosure of important lobbying information.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828, or by email at phil.stutzman@pdc.wa.gov.

Sincerely,

Andrea M. Doyle

Andrea McNamara Doyle
Executive Director

c: City of Newcastle