

- 1 3. The Court finds that issuance of an injunction would be in the public interest, and would
2 not cause substantial harm to others; and
- 3 4. The Court finds that irreparable harm will result which cannot be remedied at law if this
4 order is not entered because the City possesses a well-founded and justified belief that it
5 will be at risk of being sued and incur actual and substantial economic daily sanctions for
6 each alleged violation of the Public Records Act, RCW Chapt. 42.56, (“PRA”), which are
7 difficult, if not impossible, for the City to adequately measure in monetary damage terms.
- 8 5. The Court, after carefully considering the filings, the entire record herein and the relevant
9 law, finds that the City has a strong likelihood of success on the merits of the evidence in
10 this matter, and the City is entitled to a preliminary injunction as a matter of law.
- 11 6. Defendant James Egan submitted a PRA request, dated September 23, 2011, for copies of
12 36 in-car videos reviewed in connection with Seattle Police Department (SPD) Office of
13 Professional Accountability (OPA) investigations of four SPD officers, and a request,
14 dated January 10, 2012, for the same 36 in-car videos with audio redacted or deleted. All
15 of the requested recordings were made less than three years before the dates of Mr.
16 Egan’s requests.
- 17 7. The Privacy Act contains specific directions and limitations regarding access by the
18 public. RCW 9.73.090(1)(c) states: “No sound or video recording made under this
19 subsection (1)(c) may be duplicated and made available to the public by a law
20 enforcement agency subject to this section until final disposition of any criminal or civil
21 litigation which arises from the event or events which were recorded,” and RCW
22 9.73.090(1)(c) states: “Any person who knowingly alters, erases, or wrongfully discloses
23

1 any recording in violation of RCW 9.73.090 (1)(c) is guilty of a gross misdemeanor”
2 (RCW 9.73.080 (2)) .

3 8. RCW 9.73.090(1)(c) applies to any recordings made by video cameras mounted in law
4 enforcement vehicles including sound and accompanying video recordings, sound
5 recordings without accompanying video, and video recordings without accompanying
6 sound.

7 9. The word “public” in RCW 9.73.090(1)(c) refers to disclosures to individuals other than
8 the subjects of the recordings and their attorneys, and disclosures made pursuant to
9 criminal and civil discovery requests.

10 10. James Egan is not the subject of the requested 36 videos, nor did he request the videos as
11 the attorney for the subjects of 35 of those videos. The City has released a copy video IIS
12 10-0385, one of the 36 sound and video recordings, to Mr. Egan in response to an earlier
13 request he made as attorney for the subjects of that recording. Mr. Egan’s September 23,
14 2011 and January 10, 2012 requests were made as a member of the public under the PRA
15 and not through criminal or civil discovery.

16 11. The PRA requires agencies to provide access to public records upon request unless they
17 fall within the specific exemptions contained in the PRA or “other statute which exempts
18 or prohibits disclosure of specific information or records.” RCW 42.56.070(1).

19 12. The Court finds that RCW 9.73.090(1)(c) of the Washington Privacy Act is an “other”
20 statute within the meaning of RCW 42.56.070(1) of the PRA.

21 13. When an “other statute” provides an alternate means of obtaining records that provides
22 protections not reflected in the PRA, the “other statute” provides the exclusive process
23 for obtaining the records and there is no right to penalties and fees under the PRA.

1 14. The Court finds that RCW 9.73.090(1)(c) provides an alternate means for obtaining
2 copies of in-car videos that provides protections not reflected in the PRA. Under that
3 provision, an agency may not provide copies of in-car sound or video recordings to the
4 public until final disposition of any criminal or civil litigation which arises from the event
5 or events which were recorded.

6 15. Civil litigation arising from an event that has been recorded may not even be filed for at
7 least three years from the date of the event, thus, three years from the date of the
8 recorded event is the earliest date that a particular in-car sound or video may be released
9 to the public.

10 16. The Court finds that the City properly denied James Egan's public disclosure request for
11 copies of in-car videos, dated September 23, 2011, and his request for in-car videos with
12 audio redacted or deleted, dated January 10, 2012.

13 **II. ORDER**

14 Therefore, IT IS HEREBY ORDERED that:

- 15 1. The City's Motion for Declaratory Judgment is hereby GRANTED;
- 16 2. The City's Motion for Preliminary Injunction is hereby GRANTED;
- 17 3. A preliminary injunction is hereby entered, enjoining the City from duplicating and
18 making in-car recordings available to the public any earlier than three years from the date
19 of the events recorded and enjoining disclosure to James Egan of all but video IIS 10-
20 0385, which was previously provided to him by the City in his capacity as defense
21 attorney for the subjects of the video.

1 4. This preliminary injunction shall remain in effect until _____
2 _____ unless extended by
3 further order of this Court.

4 5. This Order, Judgment and Injunction binds the parties to these cases, and all of their
5 employees, agents, officers, and any others acting in their behalf.

6 6. Pursuant to CR 65(c) and RCW 7.43.040, the City, as a municipal corporation is not
7 required to post bond.

8 DONE IN OPEN COURT this _____ day of February, 2012.

9
10 _____
11 The Honorable Dean Lum
12 King County Superior Court Judge

13 Presented by:

14 **PETER S. HOLMES**
15 Seattle City Attorney

16 _____
17 Mary F. Perry, WSBA #15376
18 Gary T. Smith, WSBA #29718
19 Assistant City Attorneys
20 Attorneys for Plaintiff City of Seattle

21 Copies Received, Notice of Presentation Waived:

22 **LAW OFFICES OF JAMES EGAN LLC**

23 _____
James Egan, WSBA # 28257
Pro Se Defendant