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**STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT**

ELSEVIER, INC., a foreign corporation,

Plaintiff,

v.

WASHINGTON STATE UNIVERSITY,

Defendant.

NO. 09-2-00137-3

WASHINGTON STATE
UNIVERSITY'S RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY AND/OR
PERMANENT INJUNCTION

I. INTRODUCTION

The Public Records Act [hereinafter PRA] "is a strongly worded mandate for broad disclosure of public records." *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 535, 199 P.3d 393 (2009) citing *Hearst Corp. v. Hoppe*, 90 Wn. 2d 123, 127, 580 P.2d 246 (1978). The PRA requires that "[e]ach agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of . . . this chapter, or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). The PRA's disclosure provisions must be liberally construed and its exemptions narrowly construed. RCW 42.56.030.

Pursuant to the process in RCW 42.56.540, Elsevier seeks to enjoin Washington State University [hereinafter WSU] from disclosing certain price list information and pricing adjustment terms [hereinafter price terms] from Elsevier's license agreements and amendments

1 with WSU. Elsevier appears not to dispute that the license agreements and amendments are
2 public records. Elsevier asserts that the price terms are trade secrets and/or valuable formulae
3 or research data and, therefore, exempt from disclosure under the PRA.

4 II. FACTS

5 On May 1, 2009, Dr. Theodore Bergstrom, an economics professor at the University of
6 California Santa Barbara, made a public records request to WSU seeking the current and prior
7 license agreements with the publishers Elsevier and Emerald. Nelson Decl. at 1-2.
8 WSU provided notice to both publishers pursuant to RCW 42.56.540. Nelson Decl. at 2. The
9 WSU license agreements with Emerald were disclosed as Emerald informed WSU that it
10 would not be seeking an injunction. *Id.*

11 After failing to reach a compromise with Dr. Bergstrom, Elsevier filed this lawsuit and
12 motion for preliminary injunction to prohibit WSU's disclosure of the price terms redacted in
13 Exhibit 1 to Plaintiff's Proposed Order. Exhibit 4 to the Nelson Declaration contains an index
14 to the responsive records to Dr. Bergstrom's public records request.

15 WSU contracted with over 30 major online publishers for access to over 63,000 online
16 journal titles at a cost of over \$2,746,000.00 in 2008. Carroll Decl. at 2. WSU receives access
17 to over 1,150 journal titles through its Elsevier ScienceDirect license agreement. *Id.* WSU
18 will pay Elsevier approximately \$1,111,142.27 for its Elsevier ScienceDirect license
19 agreement in 2009. Plaintiff's Proposed Order, Exhibit 1 at 6.

20 III. PRELIMINARY INJUNCTION

21 1. Issue: Whether the price terms are exempt from disclosure as trade secrets

22 Although WSU lacks sufficient knowledge of Elsevier's business plans and operations
23 to adequately evaluate whether the price terms at issue are trade secrets, Elsevier's motion for
24 preliminary injunction raises some concerns with regard to Elsevier's claim of trade secret.
25 The facts and law do not support a finding that the price terms are trade secrets.
26

1 The Uniform Trade Secrets Act [hereinafter UTSA], RCW 19.108, defines the term
2 “trade secret” as follows:

3 “Trade secret” means information, including a formula, pattern, compilation,
4 program, device, method, technique, or process that:

5 (a) Derives independent economic value, actual or potential, from not being
6 generally known to, and not being readily ascertainable by proper means by,
7 other persons who can obtain economic value from its disclosure or use; and

8 (b) Is the subject of efforts that are reasonable under the circumstances to
9 maintain its secrecy.

10 RCW 19.108.010(4).

11 “The definition of a ‘trade secret’ is a matter of law under the UTSA, but the
12 determination of whether specific information is a trade secret is a factual question.” *West v.*
13 *Port of Olympia*, 146 Wn. App. 108, 120, 192 P.3d 926 (2008), citing *Ed Nowogroski Ins., Inc.*
14 *v. Rucker*, 137 Wn.2d 427, 971 P.2d 936 (1999).

15 “A trade secret must derive independent economic value from not being known to or
16 generally ascertainable by others who can obtain economic value from their disclosure or use.”
17 *Woo v. Fireman’s Fund Ins. Co.*, 137 Wn. App. 480, 489, 154 P.3d 236 (2007), *rev’d in part on*
18 *other grounds*, 161 Wn.2d 43, 164 P.3d 454 (2007). A party claiming a trade secret must also
19 provide proof that a rival company would want the alleged trade secret materials as well as the
20 benefits the rival company would enjoy. *See McCallum v. Allstate Prop. & Casualty Inc. Co.*,
21 149 Wn. App. 412, 425, 204 P.3d 944 (2009) citing *Woo*, 137 Wn. App. at 489.

22 Additionally, “the party seeking to protect documents as trade secrets must show that it
23 has made reasonable efforts to maintain the secrecy of the materials.” *McCallum*,
24 149 Wn. App. at 425, citing *Woo*, 137 Wn. App. at 490.

25 The responsive records contain five license agreements and amendments: 1) Elsevier
26 ScienceDirect (current agreement); 2) Elsevier ScienceDirect (prior agreement); 3) Elsevier
Consult; 4) Elsevier Compendex; and 5) Elsevier Engineering Village. Nelson Decl. at
Exhibit 4.

1 Under the Elsevier Consult license agreement's terms, WSU agreed to "maintain the
2 confidentiality of the pricing terms of this agreement." Plaintiff's Proposed Order, Exhibit 1 at
3 120-21. The other four license agreements, however, do not include this or a similar provision.
4 Only the Elsevier ScienceDirect (prior agreement) contains pages marked "confidential."
5 *Id.* at 88-115. Of these 28 pages marked "confidential," Elsevier is only claiming that pages
6 88-100 are confidential and protected trade secrets. *Id.* Since pages 101-15 do not include
7 price information, it is not obvious why these pages marked "confidential" may have once
8 been confidential.

9 Based on the text of the Elsevier ScienceDirect (current agreement), Elsevier
10 Compendex, and Elsevier Engineering Village license agreements, Elsevier's efforts to
11 maintain and protect the secrecy of the price terms is not readily apparent. The Elsevier
12 ScienceDirect (current agreement), Elsevier Compendex, and Elsevier Engineering Village
13 license agreements contain no provisions limiting WSU's ability to discuss the terms of these
14 agreements with third parties or the public.

15 "To fall within the ambit of the trade secret exemption such information must be
16 'novel' in the sense that the information must not be readily ascertainable from another
17 source." *West v. Port of Olympia*, 146 Wn. App. 108, 120, 192 P.3d 926 (2008), quoting
18 *Spokane Research and Def. Fund v. City of Spokane* [Spokane Research], 96 Wn. App. 568,
19 578, 983 P.2d 676 (1999), *review denied*, 140 Wn.2d 1001 (2000) (internal quotation marks
20 omitted). Conclusory statements alone are insufficient to establish novelty. Courts have
21 required the party seeking to protect information as a trade secret to provide concrete examples
22 to illustrate how its information was materially different from that of its competitors.
23 *See McCallum*, 149 Wn. App. at 426; *Woo*, 137 Wn. App. at 489. Conclusory declarations
24 alleging that if competitors were to gain access to the alleged trade secret protected information
25 then the competitors would obtain an unfair advantage, are insufficient to establish novelty
26 without concrete examples of how the procedures of the party claiming trade secret were

1 materially different from those of its competitors. *See McCallum*, 149 Wn. App. at 426.
2 Similarly, conclusory statements that the party claiming a trade secret devoted considerable
3 time, manpower, and finances in developing the alleged proprietary documents is also
4 insufficient without specific examples to support such conclusions. *See Id.*

5 In *Spokane Research*, while addressing whether a lease that had been assigned to the
6 City of Spokane was a trade secret, Division III determined that “[a] lease is not inherently
7 novel” and that “[s]ecrecy for [a] lease is not possible in the event of default because the lease
8 will be disclosed.” *Spokane Research*, 96 Wn. App. at 578-79. An executed license agreement
9 is in many ways similar to an executed lease agreement.

10 In summary, for the price terms to be trade secrets, the court must find: 1) the price
11 terms derive independent economic value, actual or potential, from not being generally known
12 to, and not being readily ascertainable by proper means by other persons who can obtain
13 economic value from its disclosure; 2) Elsevier has made reasonable efforts to maintain the
14 secrecy of the price terms; and 3) the price terms are novel. Thus, based on the facts before the
15 court, the court should find that the price terms in issue are not exempt from disclosure under
16 RCW 19.108, the Uniform Trade Secrets Act, as an “other statute” under the PRA which
17 exempts or prohibits disclosure of specific information or records. RCW 42.56.070(1).

18 **2. Issue: Whether the price terms are exempt from disclosure under**
19 **RCW 42.56.270(1) as valuable formulae and/or research data**

20 The exemption for valuable formulae and research data provides:

21 The following financial, commercial, and proprietary information is exempt
22 from disclosure under this chapter:

23 (1) Valuable formulae, designs, drawings, computer source code or object
24 code, and research data obtained by any agency within five years of the request
25 for disclosure when disclosure would produce private gain and public loss;

26 RCW 42.56.270(1).

The purpose of RCW 42.56.270(1) is to “prevent private gain derived from the
exploitation of potentially valuable intellectual property created for public benefit.” *Evergreen*

1 *Freedom Found. v. Locke*, 127 Wn. App. 243, 249, 110 P.3d 858 (2005), citing *Progressive*
2 *Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 255, 884 P.2d 592 (1994).

3 Elsevier asserts that “public harm” may result from the unredacted disclosure of the
4 WSU-Elsevier online license agreements because the public disclosure of Elsevier’s pricing
5 formulae could limit Elsevier’s ability to accommodate the requirements of its large customers
6 like WSU. Elsevier argues that an unredacted disclosure of its license agreements with WSU
7 might cause Elsevier to change its business practices in a way that would cause Elsevier to
8 offer less favorable pricing terms to WSU. WSU lacks sufficient knowledge to know whether
9 the unredacted disclosure of the license agreements would result in public harm. Based on the
10 scenario described by Elsevier in its motion for preliminary injunction, Elsevier will be the
11 party that ultimately determines whether Elsevier will offer WSU more or less favorable terms
12 in the future. Consequently, Elsevier will determine whether the public harm that it predicts
13 will occur.

14 Elsevier relies on *Evergreen Freedom Foundation* and *Servais v. Port of Bellingham*,
15 127 Wn.2d 820, 904 P.2d 1124 (1995) to support its argument that the price terms are exempt
16 under RCW 42.56.270(1). These cases are, however, distinguishable from the present matter
17 before the court. The *Servais* court found an agency’s cash flow analysis that was prepared for
18 the agency’s use in upcoming lease negotiations to be exempt research data under the prior
19 version of RCW 42.56.270(1).¹ The *Servais* court did not address whether the Port of
20 Bellingham’s executed lease agreements were exempt from disclosure.

21 In *Evergreen Freedom Foundation*, the court determined that portions of the
22 Boeing 787 master site development agreement were exempt from disclosure under
23 RCW 42.56.270(1). The agency withheld portions of the agreement consisting of “designs that
24 reveal[ed] details of plans necessary to facilitate the 787 project.” *Evergreen Freedom Found.*,

25 ¹Prior to recodification in 2006, the valuable formulae and research data exemption was
26 RCW 42.17.310(1)(h).

1 127 Wn. App, at 249. The public loss sufficient to trigger the RCW 42.56.270(1) exemption in
2 *Evergreen Freedom Foundation* was the viability of the entire master site development
3 agreement involving the manufacturing of a new commercial aircraft model. *Id.* at 249-50.
4 The public harm of losing the one-off agreement in *Evergreen Freedom Foundation* is
5 considerably different from the possibility of less favorable pricing terms in future online
6 journal subscriber license agreements.

7 In *Spokane Research*, Division III determined that, in addition to not being a trade
8 secret, a lease was also not exempt under the valuable formulae and research data exemption
9 because the lease did “not meet the definition of research data because it [was] simply a
10 contract outlining the obligations of the parties.” *Spokane Research*, 96 Wn. App. at 576.

11 Assuming, arguendo, that this exemption applied to the license agreements, it could
12 only apply to records that WSU obtained within five years of May 1, 2009, the date of
13 Dr. Bergstrom’s public records request. Thus, the Elsevier ScienceDirect (prior agreement),
14 its first amendment, and the Elsevier Engineering Village license agreement, which were
15 executed and obtained by WSU prior to April 30, 2004, cannot be subject to this exemption
16 based on their vintage alone.

17 **3. Issue: Whether the price terms are exempt from disclosure under**
18 **RCW 42.56.270(11)**

19 RCW 42.56.270 provides:

20 The following financial, commercial, and proprietary information is exempt
21 from disclosure under this chapter:

22 ...

23 (11) Proprietary data, trade secrets, or other information that relates to: (a) A
24 vendor’s unique methods of conducting business; (b) data unique to the product
25 or services of the vendor; or (c) determining prices or rates to be charged for
26 services, submitted by any vendor to the department of social and health
services for purposes of the development, acquisition, or implementation of
state purchased health care as defined in RCW 41.05.011;

RCW 42.56.270(11).

1 WSU understands that RCW 42.56.270(11) only applies to vendor information
2 submitted to the Department of Social and Health Services for health care purchases and,
3 therefore, would not apply to this matter.

4 **4. Issue: Whether Plaintiff has satisfied its burden for a motion for preliminary**
5 **injunction**

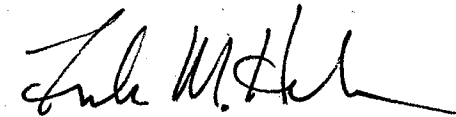
6 If the court finds that the price terms are public records exempt from disclosure as trade
7 secrets or as exempt under RCW 42.56.270(1), WSU will have no basis to dispute Elsevier's
8 proof of: 1) the additional elements required for injunctive relief under RCW 42.56.540
9 (disclosure would not be in the public interest and would substantially and irreparably damage
10 Elsevier); 2) the standard for granting a preliminary injunction as described in Elsevier's
11 Motion for Preliminary Injunction at 13; and 3) likelihood of success on the merits.

12 **IV. CONCLUSION**

13 The facts do not support a finding that the price terms are exempt from disclosure under
14 the PRA as trade secrets and/or exempt under RCW 42.56.270(1) or (11). The court should,
15 therefore, deny Elsevier's motion for preliminary injunction.

16 DATED this 17th day of June, 2009.

17 ROBERT M. MCKENNA
18 Attorney General

19 

20 FRANK M. HRUBAN, WSBA No. 35258
21 Assistant Attorney General
22 Attorney for Defendant
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Sent via U.S. mail, postage prepaid, to:

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17th day of June, 2009, at Pullman, Washington.


RITA M. HAAS

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**STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT**

ELSEVIER, Inc., a foreign corporation,

Plaintiff,

v.

WASHINGTON STATE UNIVERSITY,

Defendant.

NO. 09-2-00137-3

DECLARATION OF DIANE
CARROLL IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

I, Diane J. Carroll, state as follows:

1. I am a citizen of the United States and a resident of Whitman County, Washington.

2. I make this declaration based upon my personal knowledge and upon information made available to me in my official capacity.

3. I am employed at the Washington State University (WSU) Pullman campus as the Head of Collections for WSU Libraries. I have been serving in my present position for the past 2.5 years. Prior to coming to WSU, I served as the Collection Development Librarian at the Oregon Health and Science University Library for 7 years. I received a Ph.D. from the University of Wisconsin, Madison.

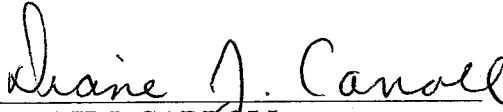
4. My present duties at WSU include: administration and approval of expenditure of the \$5 million-plus collections budget; maintaining a serials decision database for journal

1 collection assessment; reviewing and approving licenses with vendors and publishers for
2 electronic resources; and chairing the Collections Management Working Group.

3 5. WSU has contracts with approximately 30 major online publishers for access to
4 over 63,000 online journal titles at a cost of over \$2,746,000.00 in 2008. WSU receives access
5 to over 1,150 journal titles through its Elsevier ScienceDirect license agreement. The Clinics
6 on North America online journal titles from the Elsevier Consult license have been
7 incorporated into the Elsevier ScienceDirect current agreement. The database, Compendex, is
8 listed on a separate Elsevier license and is not part of the Elsevier ScienceDirect agreement.

9 I declare under penalty of perjury under the laws of the state of Washington that the
10 foregoing declaration is true and correct.

11 DATED this 16th day of June, 2009, at Pullman, Washington.

12 
13 DIANE J. CARROLL
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7 **STATE OF WASHINGTON**
8 **WHITMAN COUNTY SUPERIOR COURT**

9 ELSEVIER, Inc., a foreign corporation,

10 Plaintiff,

11 v.

12 WASHINGTON STATE UNIVERSITY,

13 Defendant.

NO. 09-2-00137-3

DECLARATION OF LINDA A.
NELSON IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

14 I, Linda A. Nelson, state as follows:

15 1. I am a citizen of the United States and a resident of Whitman County,
16 Washington.

17 2. I make this declaration based upon my personal knowledge and upon
18 information made available to me in my official capacity.

19 3. I am employed at the Washington State University [hereinafter WSU] Pullman
20 campus as the Public Records Coordinator in the Procedures, Records, and Forms Department
21 of the Office of Business and Finance. I have been serving in my present position for three
22 years.

23 4. WSU received a public records request from Dr. Theodore Bergstrom, Professor
24 of Economics, University of California Santa Barbara, dated May 1, 2009, for copies of
25 agreements between WSU and Elsevier, Inc., [hereinafter Elsevier] and between WSU and
26 Emerald Publishing Group, Ltd., [hereinafter Emerald]. A true and correct copy of this request

1 is attached to this Declaration as Exhibit 1. I acknowledged receipt of his request by email on
2 May 4, 2009.

3 5. On May 7, 2009, I sent notice by email to Elsevier and Emerald that WSU
4 would disclose the requested public records on May 26, 2009, unless they obtained injunctions.
5 True and correct copies of the notices to Elsevier and Emerald are attached as Exhibits 2 and 3,
6 respectively. A representative of Emerald informed me that Emerald did not have a problem
7 with disclosure of the WSU agreements with Emerald to Dr. Bergstrom. I forwarded the
8 responsive records concerning Emerald to Dr. Bergstrom on June 8, 2009.

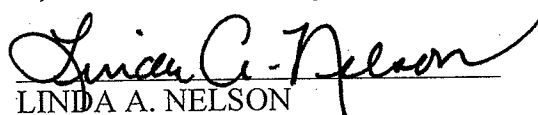
9 6. On May 19, 2009, Elsevier requested additional time to determine whether an
10 injunction would be necessary and to hire counsel in Washington. Based on this request for
11 additional time, I extended the disclosure date of the Elsevier records to June 3, 2009. I further
12 extended the disclosure date to June 10, 2009, based on a subsequent request for additional
13 time by Elsevier.

14 7. The license agreements that are responsive to Dr. Bergstrom's public records
15 request that WSU is prepared to disclose are described in the chart in the attached Exhibit 4.

16 8. On June 10, 2009, I emailed copies of the summons, complaint, motion for
17 preliminary injunction, declaration in support of the motion for preliminary injunction, note for
18 motion docket, and plaintiff's proposed orders (without Exhibit 1) to Dr. Bergstrom.
19 I understand that Dr. Bergstrom acknowledged receiving these materials during a telephone
20 call with my supervisor on June 11, 2009. A true copy of the email transmitting these records
21 is attached as Exhibit 5.

22 I declare under penalty of perjury under the laws of the state of Washington that the
23 foregoing declaration is true and correct.

24 DATED this 16th day of June, 2009, at Pullman, Washington.

25 
26 LINDA A. NELSON

UCSB

DEPARTMENT OF ECONOMICS
U. OF CALIF, SANTA BARBARA
SANTA BARBARA, CA. 93106

Theodore C. Bergstrom
Anron and Cherie Ruznick Prof of Economics
(805) 893-3744

tcdbecon.ucsb.edu
Fax: 805-893-8830

May 1, 2009

Diane Carroll
Head, Collections Washington State University Libraries
PO Box 645610
Pullman, WA 99164-5610

Dear Dr. Carroll,

Per the Washington Public Records Act, RCW 42.56.010, I am writing to request the following information from your office.

Please send me an unredacted copy of the most recent contract and of the previous contract if such exists for bundled site licenses with the publishers Elsevier and Emerald. Either a pdf copy by email or a paper copy by mail would be satisfactory.

Also if any of the following information is not readily found on the contract, please answer the following questions:

- 1) What is the total amount that you paid the publisher in the first year of the contract. If the contract is for multiple years, what prices are built into the contract for subsequent years?
- 2) If the contract does not apply to the publisher's entire list, to which of its journals does it give access?
- 3) Can you cancel subscriptions from the bundle purchased, and if so, what is the formula determining the amount of money saved by such cancellations?
- 4) What happens to rights of access to back issues if you should not renew the contract?
- 5) Does the contract allow other benefits, such as free posting of publishers's pdf's of the works of authors from consortium institutions?
- 6) With what other institutions, if any, do you share each of these subscriptions.

Received

MAY 11 2009

Washington State University
Procedures, Records & Forms

Page 2

If you have questions about this request, please contact me by email at tedb@econ.ucsb.edu or by phone at (805) 893-3744.

Sincerely,

Theodore C. Bergstrom

A handwritten signature in cursive script, appearing to read 'Theodore C. Bergstrom', with a long horizontal flourish extending to the right.

Professor of economics

University of California Santa Barbara

Subject: FW: Notice re Public Records Request 09-137 Disclosure
Date: Thursday, May 7, 2009 2:08 PM
From: Linda Nelson <nelsonl@wsu.edu>
To: Ralph Jenks <jenks@wsu.edu>

—— Forwarded Message

From: Public Records Coordinator <nelsonl@wsu.edu>
Date: Thu, 07 May 2009 14:07:23 -0700
To: <a.chiaino@elsevier.com>
Conversation: Notice re Public Records Request 09-137 Disclosure
Subject: Notice re Public Records Request 09-137 Disclosure

May 7, 2009

Via email only a.chiaino@elsevier.com

Mr. Adam Chiaino
Elsevier Regional Sales Director
P.O. Box 945
New York, NY 10159-0945

Via US Mail

Elsevier BV c/o Regional Sales Office
360 Park Avenue S.
New York, NY 10010-1710

Re: Notice -- Public Records Request 09-137

Dear Mr. Chiaino and Elsevier BV:

The purpose of this letter is to notify you of an upcoming disclosure under provisions of the Public Records Act (RCW 42.56). Washington State University is in receipt of a Public Records Request from Dr. Theodore C. Bergstrom, Department of Economics, University of California Santa Barbara, Santa Barbara, CA 93106 seeking:

1. A copy of the current and immediate past contract, if it exists, for

bundled site licenses with Elsevier and Emerald; and (if not found in the records requested under No. 1 above) 2. Any existing WSU record (s) which may contain: (a) the total amount paid the publisher in the first year of the contract, (b) what prices are built into the contract for subsequent years, (c) to which journals does it give access, (d) can subscriptions be canceled and, if so, what the formula for determining the amount of money saved by cancellation, (e) what happens to rights of access to back issues if contract not renewed, (f) does the contract allow other benefits such as free posting of publisher's pdfs of the work of authors from consortium institutions, and (g) with what other institutions, if any, does WSU share each of its subscriptions.

The responsive records include documents that identify you and Elsevier by name and contain information about you and Elsevier. Specifically, several agreements, amendments, license agreements, etc.

WSU intends to provide copies of the responsive records to the requester on May 26, 2009.

As a person and entity identified by name in the records to be released, you may contact the requester to seek a revision to the request and/or you may seek an injunction from the Whitman County Superior Court. If the Superior Court finds that examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions, the Court may issue an injunction preventing disclosure. If you submit such a request to the Superior Court seeking to prevent disclosure, you might consider naming the requester as a party to the action in addition to WSU.

Please contact Linda Nelson at 509-335-3928, if you have any questions. Thank you.

Sincerely,

Linda Nelson for

Ralph Jenks

Public Records Officer

Linda Nelson
Public Records Coordinator
Office of Procedures, Records, and Forms
P.O. Box 641225
Pullman, WA 99164-1225
509 335 3928
FAX 509 335 3969
nelsonl@wsu.edu

—— End of Forwarded Message

Subject: FW: Notice re Public Records Request 09-137 Disclosure

Date: Thursday, May 7, 2009 2:41 PM

From: Linda Nelson <nelsonl@wsu.edu>

To: Ralph Jenks <jenks@wsu.edu>

----- Forwarded Message

From: Public Records Coordinator <nelsonl@wsu.edu>

Date: Thu, 07 May 2009 14:40:32 -0700

To: <mkonen@emeraldinsight.com>

Conversation: Notice re Public Records Request 09-137 Disclosure

Subject: Notice re Public Records Request 09-137 Disclosure

May 7, 2009

Via email only mkonen@emeraldinsight.com

Ms. Margi Konen

Key Relationship Manager

Emerald Group Publishing

124 Mount Auburn St., University Place, Harvard Square, Suite 200N

Cambridge, MA 02138

Re: Notice – Public Records Request 09-137

Dear Ms. Konen and Emerald Group Publishing:

The purpose of this letter is to notify you of an upcoming disclosure under provisions of the Public Records Act (RCW 42.56). Washington State University is in receipt of a Public Records Request from Dr. Theodore C. Bergstrom, Department of Economics, University of California Santa Barbara, Santa Barbara, CA 93106 seeking:

1. A copy of the current and immediate past contract, if it exists, for bundled site licenses with Elsevier and Emerald; and (if not found in the records requested under No. 1 above)
2. Any existing WSU record(s) which may contain: (a) the total amount paid the publisher in the first year of the contract, (b) what prices are built into the contract for subsequent years, (c) to which journals does it give access, (d) can subscriptions be canceled and, if so, what the formula for determining the amount of money saved by cancellation, (e) what happens to rights of access to back issues if contract not renewed, (f) does the contract allow other benefits such as free posting of publisher's pdfs of the work of authors from consortium institutions, and (g) with what

other institutions, if any, does WSU share each of its subscriptions.

The responsive records include documents that identify Emerald Group Publishing by name and contain information about Emerald Group Publishing. Specifically, a current and immediate past license agreements with WSU.

WSU intends to provide copies of the responsive records to the requester on May 26, 2009.

As an entity identified by name in the records to be released, you may contact the requester to seek a revision to the request and/or you may seek an injunction from the Whitman County Superior Court. If the Superior Court finds that examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions, the Court may issue an injunction preventing disclosure. If you submit such a request to the Superior Court seeking to prevent disclosure, you might consider naming the requester as a party to the action in addition to WSU.

Please contact Linda Nelson at 509-335-3928, if you have any questions. Thank you.

Sincerely,

Linda Nelson for

Ralph Jenks
Public Records Officer

*Linda Nelson
Public Records Coordinator
Office of Procedures, Records, and Forms
P.O. Box 641225
Pullman, WA 99164-1225
509 335 3928
FAX 509 335 3969
nelsonl@wsu.edu*

—— End of Forwarded Message

Licensors	Year	Agreement	Exhibit 1 to Plaintiff's Proposed Order Page Nos.
Elsevier-ScienceDirect	2006	Summary of terms of current license	1
Elsevier-ScienceDirect	2009	Sixth amendment	2-4
Elsevier-ScienceDirect	2009	Fifth amendment-subscription list for 2009	5-14
Elsevier-ScienceDirect	2008	Second amendment	15-17
Elsevier-ScienceDirect	2007	First amendment	18-20
Elsevier-ScienceDirect	2006-09	Current license agreement with title list for 2006	21-62
Elsevier-ScienceDirect	2005	Third amendment	63-65
Elsevier-ScienceDirect	2005	Second amendment	66-68
Elsevier-ScienceDirect	2004	Amendment to terms	69-72
Elsevier-ScienceDirect	2002-03	Prior license agreement with title list for 2002	73-115
Elsevier-ScienceDirect	2008	4 Vet clinic titles	116-118
Elsevier Consult	2007	License agreement for Elsevier Consult	119-123
Elsevier - Compendex	2008	Second amendment	124-127
Elsevier - Compendex	2007	First amendment	128-129
Elsevier - Compendex	2006	License agreement for Compendex	130-137
Elsevier-Engineering Village	2001	License agreement for Engineering Village	138-144

Wednesday, June 10, 2009 12:36 PM

Subject: Notice re Elsevier Records Responsive to Your Public Records Request 09-137

Date: Wednesday, June 10, 2009 12:35 PM

From: Linda Ann Nelson <nelsonl@wsu.edu>

To: Ted Bergstrom <tedb@econ.ucsb.edu>

June 10, 2009

Via email only tedb@econ.ucsb.edu

Dr. Theodore C. Bergstrom
Department of Economics
University of California Santa Barbara
Santa Barbara, CA 93106

Re: Public Records Request 09-137

Dear Dr. Bergstrom:

Due to a pending court action related to your recent Public Records Request, WSU is unable to disclose the Elsevier records responsive to your Public Records Request 09-137 today.

Attached are copies of a Motion for Injunction filed by Elsevier. A hearing on the motion is scheduled for June 19, 2009. If your attorney is interested in speaking with WSU's attorney in this matter, please ask him or her to contact Frank Hruban, Assistant Attorney General, at (509) 335-2636.

The first installment, including responsive Emerald records, was mailed to you on June 8, 2009.

Please contact me at 509-335-2004 or Linda Nelson at 509-335-3928, if you have any questions. Thank you.

Best regards,

Linda Nelson for

Ralph Jenks
Public Records Officer

Linda Nelson
Public Records Coordinator
Office of Procedures, Records, and Forms
P.O. Box 641225
Pullman, WA 99164-1225
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