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Donoval v. City of Sun Valley Appellant's Brief 2 Dckt. 40853

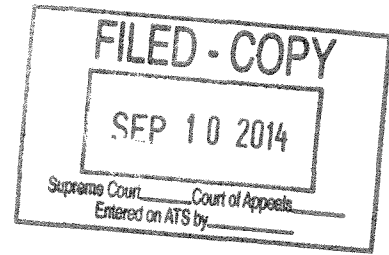
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IN THE SUPREME COURT OF IDAHO

JAMES R. DONOVAL,)	
Appellant-Plaintiff,)	
)	
v.)	No. 40853
)	
THE CITY OF SUN VALLEY, IDAHO, an Idaho)	
municipal corporation;)	
Respondent-Defendant.)	

MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW OF APPELLATE COURT FINDINGS PURSUANT TO IDAHO APPELLATE COURT RULE 118

NOW COMES the Appellant-Plaintiff JAMES R. DONOVAL (“Mr. Donoval”), and in support of his Petition For Review Of Appellate Court Findings Pursuant To Idaho Appellate Court Rule 118 states as follows:

Introduction

The purpose of the Idaho Public Records Laws (i.e. Idaho Statute 9-337 through Idaho Statute 9-346) can be found in the “Statement Of Purpose” of the Idaho Legislature when RS 24228 enacting the Idaho Public Records Laws was passed in 1990, namely:

“Those who are elected to public office and those who are employed in government are trustees and servants of the people and it is in the public interest to enable any person to review and commend or criticize the operation and actions of government and governmental officials and employees, *even though allowing the people to examine the operations and actions of government may cause inconvenience and additional expense to government and may result in criticism or embarrassment of officials and employees* (emphasis added).

Toward this end, this proposed legislation provides that every person has a right to inspect and take a copy of any public record of this state except as may be

provided by statute. The legislation provides that all governmental records in Idaho are open at all reasonable times for inspection, unless access is expressly denied by statute. This right of access is premised on the first amendment to the Constitution of the United States, on Article I, Section 9 of the Constitution of the State of Idaho, on the common law and on strong historical and statutory precedent in this state. The records of governmental activity and officials at all levels should generally be accessible to members of the public ***to determine whether those entrusted with the affairs of the government are honestly, faithfully and competently performing their functions as public servants*** (emphasis added).”

The matter herein involves Mr. Donoval’s assertions that he was denied access to legitimate public records prepared during the Prior Administration Of Sun Valley by the New Administration Of Sun Valley¹, as was required pursuant to Idaho Statute 9-338 and Idaho Statute 9-339². During the proceedings before the Blaine County Court, Honorable Judge Jonathon Brody (the “District Court”), Mr. Donoval provided sworn-to affidavits verifying that the documents he was provided by the New Administration Of Sun Valley were forgeries of the documents he had requested. In addition, Mr. Donoval provided sworn-to affidavits asserting that employees of the New Administration Of Sun Valley had removed documents from Sun Valley City Hall, and had destroyed Sun Valley documents, both of which violated Idaho statutes related to public records (Idaho Statute 50-908 and Idaho Statute 90-349(3)³).

¹ The administration of former Sun Valley Mayor Wayne Willich, which ended on January 3, 2012, is sometimes referred to herein as the “Prior Administration Of Sun Valley”. The administration of current Sun Valley Mayor DeWayne Briscoe, who was sworn in as Mayor Of Sun Valley on January 3, 2012, is sometimes referred to herein as the “New Administration Of Sun Valley”.

² Although not provided in detail herein, Idaho Statute 9-338 “Right To Examine” provides for the right of a petitioner to examine and obtain copies of public records of a government entity, while Idaho Statute 9-339 “Response To Request For Examination Of Public Records” establishes the obligations of the government entity to respond to a public records request.

³ Idaho Statute 50-908 provides in relevant part: “The unauthorized ***destruction or removal*** (emphasis added) of city records, is prohibited.” Idaho Statute 90-349(3) provides in relevant part: “Public records of the state and/or territory of Idaho are the property of the citizens of the state in perpetuity and ***they may not be improperly or unlawfully transferred or removed from their proper custodian*** (emphasis added).”

The District Court found that by simply answering, in an un-sworn-to fashion, that the documents Mr. Donoval sought “did not exist” or “no longer existed”, the New Administration Of Sun Valley had done all that was required of it under the Idaho Public Records Laws, without making any findings related to the sworn-to allegations of removal, destruction and falsification of the documents Mr. Donoval sought.

The Idaho Appellate Court (the “Appellate Court”), entered a split decision, with Pro Tem Justice Perry and Justice Gratton (the “Appellate Majority”) finding that Mr. Donoval had not borne his burden to prove that New Administration Of Sun Valley had not provided Mr. Donoval with the documents he had sought, in direct contradiction to the Idaho Supreme Court’s findings in *Bolger v. Lance*, 137 Idaho 792 (Idaho Sup.Ct. 2002) that the government entity (not the petitioner) bears the burden of proof in an Idaho Public Records Laws case. The Opinion of Appellate Majority (the “Appellate Opinion”), written by Justice Pro Tem Perry, failed to even acknowledge or discuss the implications of the sworn-to forgery allegations, as had also been the case with the District Court. The Appellate Opinion also failed to even discuss several other specific relevant issues raised by Mr. Donoval in his briefs, including a) whether Sun Valley public records were removed or destroyed in violation Idaho statutes, and, b) the District Court’s reliance on testimony and documents that were never entered into the record before the District Court through sworn-to affidavits or live testimony. In her dissent, Justice Lansing agreed with Mr. Donoval that the matter should have been remanded back to the District Court for further evidential hearings related to the forgeries and the circumstances surrounding the loss, and/or destruction, of the documents Mr. Donoval had sought.

Mr. Donoval asserts that the Idaho Supreme Court should 1) accept this matter for review, 2) define what the parameters of proceedings should be before a district court when a government entity is asserted to not have complied with the production of records under the Idaho Public Records Laws in circumstances such as has occurred herein, and, 3) at a minimum, remand the matter back to the District Court for further evidential hearings, as was suggested by Justice Lansing in her dissent.

GENERAL PRINCIPLES RELATED TO PUBLIC RECORDS LITIGATION

a) The Generic And Vague Procedures For A Public Records Law Suit Described In The Idaho Public Records Laws

The relevant procedural portions of the Idaho Public Records Laws that have been at issue before both the District Court and the Appellate Court are:

“Idaho Statute 9-343: (1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of section 9-337 through 9-348, Idaho Code.”

“Idaho Statute 9-344: “The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow.”

Although *Idaho Statute 9-343* provides that a petitioner who believes that the government entity has failed to provide documents required to be produced under *Idaho Statute 9-338* and *Idaho Statute 9-339* can “institute proceedings”, and that pursuant to *Idaho Statute 9-344* the court before whom the proceedings are brought must have an “examination of the pleadings”, hold “oral arguments” and review “additional evidence”, there is no further statutory directions, nor Idaho case law, which defines the parameters of such hearings and proceedings and describes the rights of the petitioner to require that

the government entity respond under oath to the petitioner's claims of failure to produce documents. The only Idaho case which even comes close to touching on the particular issue is *Bolger v. Lance*, where the Idaho Supreme Court found that the petitioner was not entitled to any further production, because the additional documents that the petitioner sought were not part of the original public records request⁴. However, this situation is totally different than the *Bolger v. Lance* scenario, as Mr. Donoval asserts that documents covered by his public records requests were forgeries and the legitimate documents that Mr. Donoval continues to seek have still not been produced.

Other than *Bolger v. Lance*, there are very few (if any) Idaho cases that discuss the parameters of the Idaho Legislature's intentions when enacting *Idaho Statute 9-343* and *Idaho Statute 9-344*. In particular, there is no cases that analyze the parameters of what form of hearing should or must be required in an Idaho Public Records Laws case, especially in a circumstance such as this where the petitioner asserts that the documents he is seeking are, or were, in existence and that the government entity is withholding them, or where the documents that have been provided in response to the public records request are asserted to be forgeries. Mr. Donoval asserts that under the circumstances, the Idaho Supreme Court should follow the findings of Justice Lansing in her dissent that the circumstances described in the case herein require that the matter be remanded back to the District Court for further evidential hearings related to the forgery allegations, and so that the New Administration Of Sun Valley must be required to respond, under oath, as to

⁴ "Mr. Henry is not entitled to an order compelling inspection of public records *not requested* (emphasis added), nor is he entitled to conduct further discovery regarding information that may be contained in the records that were produced. Therefore, at this point he has received the relief to which he is entitled with respect to examining the public records requested" (*Bolger v. Lance* @ 161).

the circumstances surrounding the loss or destruction of the documents Mr. Donoval sought.

b) Although No Idaho Case Has Touched On The Issue, Multiple Federal Cases Have Found That Where The Government Entity Does Not Produce Documents Sought, Or Where There Are Allegations Of “Bad Faith” In Failing To Produce The Documents Sought, The Government Entity Must Respond With Sworn-To Testimony

Although Idaho case law has not provided any guidance on the issue, there is a long history of federal precedent related to the federal Freedom Of Information Act (i.e. 5 U.S.C. 552) (“FOIA”) that provides that when the person requesting the records asserts that the government entity has not produced documents that it should be producing or has committed “bad faith” in failing to produce the documents requested, the governmental entity must then produce sworn-to testimony related to its efforts and actions concerning the documents being sought.

In Laughlin v. Commissioner Of IRS, 103 F.Supp.2d 1219 (U.S. S.D.Cal. 1999) the U.S. District Court for the Southern District Of California, extensively discussed the situation where a governmental agency asserts that a document sought under a FOIA request has been lost or destroyed. Citing two other federal cases on the matter (Miller v. U.S. Dept. Of State, 779 F.2d 1378 (U.S. 8th.App. 1985) and Weisberg v. U.S. Dept. Of Justice, 705 F.2d 1344 (U.S. D.C. 1983)), the Laughlin v. IRS Court stated:

“In a case where missing or destroyed documents are at issue, in order to grant a summary judgment in favor of an agency’s claim that it has fully discharged its disclosure obligations under FOIA, the agency must show **beyond a material doubt** (emphasis added) that it has conducted a search reasonably calculated to uncover all relevant documents. The emphasis is not on whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.

The adequacy of an agency’s search is dependent on the particular circumstances of the case. The burden remains on the agency to demonstrate that it has thoroughly searched for the requested documents where they might

reasonably be found. The reasonableness of an agency's search may be ***proved through affidavits of responsible agency officials*** (emphasis added) so long as the affidavits are relatively detailed, nonconclusory, and submitted in good faith.

Once the agency has shown ***by convincing evidence*** (emphasis added) that its search was reasonable, the burden is on the complainant to rebut the agency's evidence by showing that the search was not conducted in good faith." (@ 1222)

In *Island Film, S.A. v. Dept. Of Treasury*, 869 F.Supp.2d 123 (U.S. D.C. 2012) the U.S. District Court for the District of Columbia, in an FOIA case, reiterated the requirement that the agency bears the burden of confirming that it made the required search, and that the agency must verify the effort by non-conclusory affidavits of agency officials entered into the record. (@ 131). The *Island Film v. Treasury* Court went on to state that the "affidavits or declarations must describe what records were searched, by whom, and through what process." (@131)

As recently as March of 2013, in *Lazaridis v. U.S. Dept. Of State*, -- F.Supp.2d --, 2013 WL 1226607 (U.S. D.C. 2013), the U.S. District Court for the District of Columbia, also confirmed that when litigation ensues related to public records under the FOIA, and when the agency has not produced the requested records, the agency must provide affidavits describing the extent of its search for the public records at issue, including "using methods which can reasonably be expected to produce the information requested.". The *Lazaridis v. Dept Of State* Court confirmed that "***an inadequate search for records also constitutes an improper withholding*** (emphasis added) under the FOIA" (citing *Maydak v. U.S. Dept. Of Justice*, 254 F.Supp.2d 23 U.S. D.C. 2003)).

In the last two years, both Pennsylvania and New York courts have confirmed that under their state public record disclosure statutes that a governmental agency must provide verified and sworn-to testimonials of the efforts made to seek the documents requested. In *Office Of Governor v. Scolforo*, 65 A.3d 1095 (Comm. Ct. Of Penn. 2013),

the Commonwealth Court Of Pennsylvania followed the federal court rulings under FOIA cases that affidavits must be submitted to justify nondisclosure or failure to produce documents sought in a public record request. (@1103) And in Legal Aid Society v. New York Dept. Of Corrections, 962 N.Y.S.2d 773, 105 A.D.3d 1120 (Sup.Ct. N.Y.3d 2013), the New York Supreme Court, Appellate Division, confirmed that an agency's response to failure to produce documents sought in a public record request was not complete until a certification was filed describing that the requested records could not be found after a diligent search was made. (@ 1122)

Thus, at least under the federal FOIA, where a government entity has not produced documents that were in existence at one time (as is the case herein), or where there are allegations of "bad faith" refusal to produce documents subject to a freedom of information request (as is also the case herein), the government entity must place sworn-to evidence in the record before the federal district court as to the efforts that the government entity made in seeking to obtain the documents, or otherwise answer the allegations of "bad faith". In fact, in several cases, the federal courts have raised the burden of proof on the government entity to "convincing evidence" where there are allegations of "bad faith" against the government entity (see Laughlin v. Commissioner of IRS @1222).

As noted by Justice Lansing in her dissent in the Appellate Opinion, the District Court and Appellate Majority simply ignored the sworn-to evidence placed into the record before the District Court by Mr. Donoval that documents he sought had existed and were not being produced and that forgeries were instead produced. The District Court and the Appellate Majority failed to acknowledge any of the numerous assertions of "bad

faith” or “bad acts” on the part of officials of the New Administration Of Sun Valley (further described herein), which should have required a sworn-to response on the part of the New Administration Of Sun Valley for its failure to produce the documents requested in the matter. Because the New Administration Of Sun Valley failed to put sworn-to evidence in the record before the District Court explaining the efforts it took to locate the documents or otherwise explain the allegations of falsification or destruction of documents, Mr. Donoval asserts that the Idaho Supreme Court should follow Justice Lansing’s conclusion in her dissent that the matter should, at a minimum, be remanded back to the District Court for further evidential proceedings.

STATEMENT OF RELEVANT FACTS

The Public Records Requests

In November of 2011 former Sun Valley Mayor Wayne Willich (“Former Mayor Willich”) was defeated by then Sun Valley City Council President DeWayne Briscoe (“Current Mayor Briscoe”) as the Mayor Of Sun Valley (see generally Affidavit of Willich, Record 572-606; and Affidavit of Hammer, Record 485-571). Immediately upon being sworn in as Mayor Of Sun Valley in early January of 2012, Current Mayor Briscoe sought, and received, the approval of the Sun Valley City Council to terminate Mr. Donoval’s wife, Sharon R. Hammer (“Former Administrator Hammer”), who had served under Former Mayor Willich as the Sun Valley City Administrator (see Affidavit of Hammer (Record 485-571).

In February and March of 2012, Current Mayor Briscoe announced that Sun Valley was commencing a forensic audit of the Prior Administration Of Sun Valley, which was going to focus on certain financial transactions that Current Mayor Briscoe

had publicly asserted included undefined criminal acts by Former Administrator Hammer (Record 191-198).

Mr. Donoval submitted several public record requests to the New Administration Of Sun Valley related to financial transactions and the use of Sun Valley issued credit cards, which were the subject of the forensic audit and the accusations of criminal misconduct against the Prior Administration Of Sun Valley, including Former Administrator Hammer (Record 43-56, Record 58-72 and Record 74-86). Mr. Donoval specifically sought that he be provided with credit card invoices and the authorization documents (“Yellow Sheets”) supporting the approval of the payment of the Sun Valley issued credit card invoices for a fourteen (14) month period during 2010 and 2011 (September of 2010 through October of 2011) (i.e. the “Public Records Requests”) for three Sun Valley employees, including Former Administrator Hammer (Record 43-56, Record 58-72 and Record 74-86), all of which were the subject of the misconduct allegations of the New Administration Of Sun Valley which prompted the commencement of the forensic audit.

The Public Records Requests Responses Of The New Administration Of Sun Valley

On July 25, 2012, Mr. Donoval sent Sun Valley City Attorney Adam King (“City Attorney King”) an email specifically demanding that Mr. Donoval be able to review “original” documents covered by the Public Records Requests at Sun Valley City Hall on July 27, 2012 (Donoval Aff., Record 441; Record 88). Mr. Donoval was first required to pay the New Administration Of Sun Valley for all of the documents that the New

Administration Of Sun Valley asserted were required to be copied to comply with the Public Records Requests of Mr. Donoval (Record 88; Donoval Supp. Aff., Record 638).

On July 27, 2012, Mr. Donoval appeared at Sun Valley City Hall. City Attorney King was not present at the time. Instead, Mr. Donoval was met by Sun Valley Executive Assistant Virginia Egger (“Assistant Egger”) who asserted that she was “in charge” (Donoval Supp. Aff., Record 638). Mr. Donoval was presented with a stack of copies of documents, in no particular order, which he was required to sift through to find any documents that were pertinent to the Public Records Requests he had submitted. A significant portion of the documents that Mr. Donoval was provided were not relevant to the Public Records Requests that Mr. Donoval had made (Donoval Supp. Aff., Record 638-639). Numerous of the documents that Mr. Donoval sought in the Public Records Requests were not in the stack of documents (Donoval Aff., Record 441). And none of the original documents Mr. Donoval sought in the Public Records Requests were made available to Mr. Donoval (Donoval Supp. Aff., Record 639). When questioned, Assistant Egger responded that she would make efforts to locate the documents that had still not been provided, and that she was not “authorized” to allow Mr. Donoval access to the original documents he sought (Donoval Supp. Aff., Record 638). Mr. Donoval left Sun Valley City Hall with copies of any of the documents that related to his Public Records Requests (Donoval Aff., Record 441).

Immediately after the July 27, 2012 inspection, Mr. Donoval informed City Attorney King in two separate writings of the failures of the New Administration Of Sun Valley and Assistant Egger to provide anywhere near the extent of records covered by the Public Records Requests or to produce the original documents Mr. Donoval had sought

be produced, and, specifying exactly what Mr. Donoval was still expecting from the New Administration Of Sun Valley to come into compliance with the Public Records Requests (Donoval Aff., Record 442; Record 90; Record 92). In referring to the documents still not produced, and the participation of Sun Valley Treasurer Michelle Frostenson (“Treasurer Frostenson”) in the matters, Mr. Donoval specifically stated to City Attorney King:

“Please provide some type of verification as to whether these yellow sheets for each credit card bill is in Sun Valley’s possession, and what happened to them if they are not. These documents were always in the Treasurer’s possession, and if they are no longer available we believe Frostenson and Sun Valley has some explaining to do.” (Donoval Aff., Record 442; Record 90).

On August 2, 2012, City Attorney King sent Mr. Donoval an email asserting that the remainder of the records Mr. Donoval had sought in the Public Records Requests were “completed and available” for Mr. Donoval to pick up at Sun Valley City Hall (Donoval Aff., Record 442; Record 96). The packet of photocopies provided to Mr. Donoval in the envelope Mr. Donoval picked up at Sun Valley City Hall on August 3, 2012 continued to fail to provide multiple of the credit card invoices and Yellow Sheets Mr. Donoval had sought (Donoval Aff., Record 442-443). The continued failure of the New Administration Of Sun Valley to fully comply with the Public Records Requests, again, required Mr. Donoval to submit a written demand to City Attorney King that the New Administration Of Sun Valley produce the remaining credit card invoices and Yellow Sheets that had still not been produced (Donoval Aff., Record 443; Record 102).

On August 8, 2012, Mr. Donoval submitted another formal letter to City Attorney King detailing what had transpired to date (as is described above) (Donoval Aff., Record 443; Record 105-107). The August 8, 2012 letter to City Attorney King specifically put City Attorney King on notice that the Yellow Sheets that had been provided in response

to the Public Records Requests were forgeries, and again insisted that Mr. Donoval be allowed to inspect the “original” Yellow Sheets from which the photocopies had been made by August 10, 2012 (Donoval Aff., Record 443; Record 105-107). On August 9, 2012, Mr. Donoval submitted another letter to City Attorney King related to the physical inspection of the original documents covered by the Public Records Requests to take place on August 10, 2012, which included a draft schedule to be jointly completed by Mr. Donoval and Assistant Egger and/or City Attorney King to confirm what original documents (or copies) had been produced and which original documents (or copies) had not been produced pursuant to the Public Records Requests (Donoval Aff., Record 444; Record 110-113). At approximately 7:00 p.m. on August 9, 2012, City Attorney King submitted an email to Mr. Donoval asserting that:

“The original documents that you have referenced that you are seeking are in the possession of the Attorney General’s Office pursuant to a subpoena served on the City Of Sun Valley in the criminal investigation. Therefore, there will be no additional documents to inspect, so you will not need to come to City Hall tomorrow. The City Of Sun Valley is continuing to investigate the matter and if any originals that you seek are located, I will let you know.” (Donoval Aff., Record 444; Record 115)

Almost everything about City Attorney King’s August 9, 2012 email to Mr. Donoval was eventually found to have been fallacious. First, no Subpoena was ever issued to the New Administration Of Sun Valley by either the Idaho Attorney General’s office or the Blaine County Prosecutor’s office related to the documents Mr. Donoval was seeking⁵. Second, an attorney with the Idaho Attorney General’s office confirmed that the Idaho Attorney General’s office was not in possession of the documents covered

⁵ Neither the New Administration Of Sun Valley, the Idaho Attorney General’s office or the Blaine County Prosecutor’s office submitted a copy of a Subpoena to the New Administration Of Sun Valley as part of their pleadings (Record, 255-259; Record 382-391), nor was a Subpoena ever made part of the record herein.

by the Public Records Requests (Donoval Aff., Record 447; Record 464) as had been claimed by City Attorney King. This was also subsequently confirmed, under oath, in an Affidavit provided by the Idaho Attorney General's office confirming that the Idaho Attorney General's office was not in possession of any of the documents covered by the Public Records Requests and stating that the Idaho Attorney General's office could not verify that any documents that were provided to the Idaho Attorney General's office by Sun Valley included the documents covered by the Public Records Requests (Donoval Aff., Record 448, Record 466-468). And third, almost half of the Yellow Sheets Mr. Donoval sought in the Public Records Requests were never provided to Mr. Donoval at any time through the entire proceedings, although City Attorney King asserted that *all the records* Mr. Donoval had sought in the Public Records Requests were provided to the Idaho Attorney General's office.

On August 10, 2012, Mr. Donoval submitted an extensive email to City Attorney King demanding that City Attorney King provide multiple answers to Mr. Donoval related to the Public Records Requests, including a) that City Attorney King provide Mr. Donoval with a copy of the Subpoena City Attorney King claimed had been served upon Sun Valley by the Idaho Attorney General's office; b) that either City Attorney King or some other Sun Valley official vouch that the documents covered by the Public Records Requests were actually turned over to the Idaho Attorney General's office, c) that either City Attorney King or some other Sun Valley official certify that the documents provided to Mr. Donoval were actually copied from the original documents purportedly turned over to the Idaho Attorney General's office; and, d) that an explanation be provided for when the copies of the original documents covered by the Public Records Requests were

actually made (Donoval Aff., Record 444; Record 117). City Attorney King never responded to Mr. Donoval's email of August 10, 2012.

Later in the day of August 10, 2012, after Mr. Donoval sent the email to City Attorney King, Mr. Donoval received several additional copies of documents in the mail in an envelope marked as being from "The City Of Sun Valley", postmarked August 8, 2012, but without any indication of who took responsibility for actually sending the documents to Mr. Donoval (Donoval Aff., Record 445; Record 126). The documents Mr. Donoval received in the envelope included copies of all the missing credit card invoices he had sought (Donoval Aff., Record 445). In addition, copies of several of the still missing Yellow Sheets were provided to Mr. Donoval in the envelope, but multiple of the Yellow Sheets covered by the Public Records Requests were still not provided (Donoval Aff., Record 446). In fact, a schedule was provided as part of the envelope Mr. Donoval received on August 10, 2012, apparently prepared by a Sun Valley official, that admitted that multiple of the Yellow Sheets covered by the Public Records Requests had still not been provided to Mr. Donoval (Donoval Aff., Record 446).

On August 10, 2012, Mr. Donoval also submitted letters to both the Idaho Attorney General's office and the Blaine County Prosecutor's office, describing the history of the Public Records Requests, detailing that the Yellow Sheets that had been provided were forgeries, and demanding that if either possessed any of the documents covered by the Public Records Requests that Mr. Donoval be allowed to review those documents (Donoval Aff., Record 445; Record 119-123). The Idaho Attorney General's office eventually responded by Affidavit, as has been described herein, confirming that it did not possess the documents covered by the Public Records Requests nor could it

confirm that it had ever received any documents covered by the Public Records Requests⁶. As will be described further, Mr. Donoval did not receive any form of response regarding the August 10, 2012 letter to the Blaine County Prosecutor's office until October of 2012, well after suit had been filed herein (Donoval Aff., Record 448).

Ultimately, the New Administration Of Sun Valley failed to provide Mr. Donoval with access to any of the original records he sought in the Public Records Requests, even though such is required by *Idaho Statute 9-338*. Instead, Mr. Donoval was provided with copies of only twenty-five (25) of the forty-two (42) Yellow Sheets he sought in the Public Record Requests, without any explanation as to what had happened to the remaining seventeen (17) Yellow Sheets he sought, even though Mr. Donoval had made multiple, formal, written requests to the New Administration Of Sun Valley and City Attorney King to do so. And the twenty five (25) copies of Yellow Sheets Mr. Donoval did receive from the New Administration Of Sun Valley, were asserted to have been forgeries.

The Public Records Law Suit Before The District Court

Having not received the remaining Yellow Sheets he was entitled to receive under the Public Records Requests, and having instead been provided forgeries, Mr. Donoval filed the Complaint with the District Court on August 20, 2012 (Record 1-18) with Exhibits (19-198), naming the New Administration Of Sun Valley as a defendant. Because City Attorney King had asserted that the original documents covered by the Public Records Requests had been turned over to the Idaho Attorney General's office pursuant to a Subpoena, Mr. Donoval also named the Idaho Attorney General's office as

⁶ Mr. Donoval did not receive the response of the Idaho Attorney General's office until after he had already filed the Complaint with the District Court (Donoval Aff., Record 447).

a defendant. Because it was asserted that the Idaho Attorney General's office possessed the original documents covered by the Public Records Requests, in the Complaint, Mr. Donoval included the following language in his request for relief (Record 18):

“b) Mandating Attorney General Wasden, or individuals from his office with authority, to verify that Attorney General Wasden's office either does, or does not, possess the original documents covered by the Three Public Record Requests.

c) Mandating that Attorney General Wasden's office allow the Plaintiff to physically inspect the original documents covered by the Three Public Record Requests in its possession, in camera before the court if required, to confirm that the copies provided by Sun Valley to the Plaintiff in response to the Three Public Record Requests are legitimate copies of the original documents in the possession of Attorney General Wasden's office, and to verify whether any of the missing original yellow sheets covered by the three Public Record Requests are also in the possession of Attorney General Wasden's office.”

Subsequent to the filing of the Complaint, the Idaho Attorney General certified that it did not possess any of the documents Mr. Donoval was seeking, nor could it certify that it had ever possessed any of the documents Mr. Donoval was seeking (see Affidavit Of Idaho Attorney General, Record 466-468). In addition, on September 4, 2012, after the Complaint had already been filed, Mr. Donoval received an email from City Attorney King asserting that City Attorney King had been misled by Treasurer Frostenson when he had stated that the documents covered by the Public Records Requests had been turned over to the Idaho Attorney General's office pursuant to a Subpoena (Donoval Aff., Record 447-448)⁷. City Attorney King asserted that the original documents covered by the Public Records Requests had not been turned over *pursuant to a Subpoena* to the *Idaho Attorney General's office* after all, but had instead been *voluntarily* turned over to

⁷ It is hard to fathom how, as the Sun Valley City Attorney, City Attorney King could not have been acutely aware of any of the facts associated with the release of any Sun Valley public records, and instead was apparently relying on the oral assertions of Treasurer Frostenson, without City Attorney King having adequately investigated the whereabouts of the original documents sought by Mr. Donoval in the Public Records Requests.

the *Blaine County Prosecutor's office* on an unspecified date, and that the copies that had been provided to Mr. Donoval in response to the Public Records Requests were actually copies of the copies that had been retained by the New Administration Of Sun Valley itself (Donoval Aff., 447; Record 272). In his email of September 4, 2012, City Attorney King failed to explain why Mr. Donoval still had not been provided with copies of at least half of the Yellow Sheets covered by the Public Records Requests.

Because of City Attorney King's admitted *mea culpa* (purposeful or otherwise) related to whether the Idaho Attorney General's office possessed any of the records covered by the Public Records Requests, and because Mr. Donoval received the Affidavit filed by the Idaho Attorney General's Office (Donoval Aff., Record 448; Record 466-478), Mr. Donoval was required to go through the effort of dismissing the Idaho Attorney General's office from the case (Record 263-268), which was granted by the District Court on October 12, 2012 (Record 269). However, because City Attorney King had now asserted that the Blaine County Prosecutor held the documents covered by the Public Records Requests, Mr. Donoval was also required to seek leave to add the Blaine County Prosecutor's office as a defendant in the matter (Record 263-269), which was also granted by the District Court on October 12, 2012 (Record 269). On October 22, 2012, Mr. Donoval filed the Amended Complaint in the matter herein naming the Blaine County Prosecutor's office as a defendant (Record 294-321) with Supplemental Exhibits (Record 270-293).

Because it was now asserted that the Blaine County Prosecutor actually possessed all of the original documents Mr. Donoval sought in the Public Records Requests, Mr. Donoval sought that the Blaine County Prosecutor allow Mr. Donoval to inspect the

original documents at issue in the Amended Complaint by stating in his request for relief (Record 320-321):

“b) Mandating Prosecutor Thomas or individuals from his office with authority, to verify that Prosecutor Thomas’ office either does, or does not, possess the original documents covered by the Three Public Record Requests.

c) Mandating that Prosecutor Thomas’ office allow the Plaintiff to physically inspect the original documents covered by the Three Public Record Requests in its possession, in camera before the court if required, to confirm that the copies provided by Sun Valley to the Plaintiff in response to the Three Public Record Requests are legitimate copies of the original documents in the possession of Prosecutor Thomas’ office, and to verify whether any of the missing original yellow sheets covered by the three Public Record Requests are also in the possession of Prosecutor Thomas’ office.”

In the meanwhile, on October 14, 2012, the Blaine County Prosecutor’s office issued a letter to Mr. Donoval asserting that Mr. Donoval could not review any of the documents in its possession that had been provided by the New Administration Of Sun Valley because they were part of a criminal investigation (Donoval Aff., Record 448-449; Record 470), even though Mr. Donoval already had copies of Yellow Sheets at issue⁸.

On November 13, 2012, the New Administration Of Sun Valley filed its *unverified* Answer To Amended Complaint (Record 322-379). On November 23, 2012, the New Administration Of Sun Valley filed its *unverified* Objection (Record 392 -410). No affidavits or other sworn-to testimony was provided by Sun Valley to describe what type of investigations (if any) were performed by officials of the New Administration Of Sun Valley related to the documents covered by the Public Records Requests. The New Administration Of Sun Valley merely asserted, unsupported by any sworn-to statements,

⁸ Mr. Donoval had issued a second letter to the Blaine County Prosecutor dated September 25, 2012 again requesting that Mr. Donoval be able to physically inspect the original documents covered by the Public Records Requests that the New Administration Of Sun Valley and City Attorney King asserted had been turned over to the Blaine County Prosecutor’s office, under the supervision of the Blaine County Prosecutor’s office (Donoval Aff., Record 448; Record 288-293).

that the Yellow Sheets that had not been provided to Mr. Donoval “did not exist”, and therefore the New Administration Of Sun Valley had complied with Mr. Donoval’s Public Records Requests (see Answer, Record 322-379; Transcript) .

On November 28, 2012, the Blaine County Prosecutor’s office issued a letter to Mr. Donoval confirming that the criminal investigation was concluded and that Mr. Donoval could inspect the records in the possession of the Blaine County Prosecutor’s office (Donoval Aff., Record 449; Record 472). On December 31, 2012, Mr. Donoval inspected the records being held by the Blaine County Prosecutor’s office under the supervision of staff of the Blaine County Prosecutor’s office (Donoval Supp. Aff., 640-641). The documents Mr. Donoval reviewed at the Blaine County Prosecutor’s office included fourteen (14) files, which included credit card statements, back-up documents and some Yellow Sheets for Sun Valley issued credit cards for the periods of September of 2010 through October of 2011 (Donoval Supp. Aff., Record 640-641). At the December 31, 2012 inspection, after at least six (6) months of making demands, Mr. Donoval was finally able to actually physically inspect the original credit card statements and back-up documents he sought in the Public Records Requests (Donoval Supp. Aff., Record 640-641).

However, the December 31, 2012 physical inspection of the Yellow Sheets continued to be a problem. Although Mr. Donoval did physically inspect the original Yellow Sheets in the possession of the Blaine County Prosecutor’s Office for some of the months at issue, there continued to be no production of any originals or copies of seventeen (17) of the Yellow Sheets Mr. Donoval had been seeking (Donoval Supp. Aff., Record 640-641). And, the original Yellow Sheets that were reviewed by Mr. Donoval

continued to be the same Yellow Sheets that Mr. Donoval had been informed were forgeries (Donoval Supp. Aff., Record 640-641).

Mr. Donoval thereafter filed his Memorandum In Support Of Amended Complaint For Production Of Public Records Pursuant To The Idaho Public Writings Law (Record 608-633), supported by an Affidavit Of Wayne Willich Former Mayor Of Sun Valley (Record 572-606), an Affidavit Of Sharon R. Hammer Former Sun Valley City Administrator Of The City Of Sun Valley (Record 485-571), an Affidavit Of James R. Donoval (Record 438-484), and, a Supplemental Affidavit Of James R. Donoval (Record 637-646).

The Affidavits of Former Mayor Willich (Record 572-606) and Former Administrator Hammer (Record 485-571) submitted to the District Court certified, under oath, that all of the Yellow Sheets that Mr. Donoval had eventually been provided by officials of the New Administration Of Sun Valley included forgeries of their initials, and were not the actual Yellow Sheets that had been approved during the Prior Administration Of Sun Valley during the months at issue in 2010 and 2011. Former Mayor Willich and Former Administrator Hammer both certified, under oath, that the legitimate Yellow Sheets Mr. Donoval was seeking, which actually had been approved during the Prior Administration Of Sun Valley, were still in Sun Valley's possession in at least January of 2012 when both left office (only three months prior to when Mr. Donoval submitted the Public Records Requests to the New Administration Of Sun Valley). Mr. Donoval also provided Affidavits to the District Court (Record 438-484; Record 637-646) asserting that Sun Valley employees during the New Administration Of Sun Valley had been witnessed removing original Sun Valley financial records from Sun Valley City

Hall and had destroyed other Sun Valley records subsequent to the installation of Current Mayor Briscoe as Mayor Of Sun Valley.

In the Affidavits Mr. Donoval provided to the District Court, Mr. Donoval asserted to the District Court that the New Administration Of Sun Valley had failed to provide Mr. Donoval with copies of, and failed to allow Mr. Donoval to physically inspect, any of the forty two (42) legitimate Yellow Sheets that Mr. Donoval had been seeking. In his Complaint and Amended Complaint, Mr. Donoval asserted that the New Administration Of Sun Valley had either destroyed or falsified documents that were subject to Mr. Donoval's Public Records Requests, as well as the forensic audit that was proceeding, which would therefore result in false conclusions being made by the forensic auditor performing the forensic audit regarding the Prior Administration Of Sun Valley.

Because the Blaine County Prosecutor's office had allowed Mr. Donoval to physically review all of the documents in its possession, Mr. Donoval filed a Motion To Dismiss the Blaine County Prosecutor's office from the matter (Record 634-636), which was granted by the District Court on January 15, 2013 (Record 665). Because the Blaine County Prosecutor's office was dismissed from the case, and Mr. Donoval had still not been provided with the right to examine the legitimate original Yellow Sheets covered by the Public Records Requests, in the Memorandum In Support Of Amended Complaint For Production Of Public Records Pursuant To The Idaho Public Writings Law Mr. Donoval specifically sought the following in his request for relief (Record 608-633):

“b) Mandating that Sun Valley, and in particular the “custodian” defined by the Court, provide Mr. Donoval with access to the original Yellow sheets for each and every credit card invoice for credit cards issued to Former Administrator Hammer, Former Treasurer Frostenson and Fire Chief Carnes for the periods of September of 2010 to October of 2011, as are described in the Affidavits of

Former Mayor Willich and Former Administrator Hammer, under threat of civil and criminal contempt.”

In addition, in the Memorandum In Support Of Amended Complaint For Production Of Public Records Pursuant To The Idaho Public Writings Law, Mr. Donoval specifically sought that an evidential hearing be held in the matter (Record 632).

On January 10, 2013, on behalf of the New Administration Of Sun Valley, Sun Valley retained attorney Kirtlan Naylor (“Attorney Naylor”) filed an Affidavit (Record 647-650) which included a letter dated February 9, 2012 from Attorney Naylor to Scott Birch of the Idaho Attorney General’s office, indicating that Attorney Naylor had sent documents (including *credit card statements*) to Mr. Birch, although a) none of the copies of the documents Attorney Naylor purportedly had sent to Mr. Birch were attached to the Affidavit, b) a detailed log of the documents sent to Mr. Birch was not included with the letter or made part of Attorney Naylor’s Affidavit, and, c) the letter failed to specify that Attorney Naylor had also sent any of the *Yellow Sheets*, as opposed to just *credit card statements*, to Mr. Birch. On January 14, 2013, Attorney Naylor filed an Affidavit (Record 651-664) confirming that Mr. Donoval had checked the box entitled “I wish to examine these records” on the Sun Valley standard public record request form in regards to the previously described Original Public Records Law Suit. These two Affidavits were the entire extent of sworn-to evidence entered into the record before the District Court on behalf of the New Administration Of Sun Valley.

The January 15, 2013 Hearing And The District Court’s Ruling

Prior to a January 15, 2013 hearing scheduled by the District Court, the District Court gave no indication as to the format of the hearing the District Court would be

holding or what procedures the District Court would follow pursuant to the general directions of *Idaho Statute 9-344*. However, as has been noted, prior to the January 15, 2013 hearing, Mr. Donoval sought that the District Court set an evidential hearing for the matter (Record 632), so that Mr. Donoval could bring forward his own witnesses (including Former Mayor Willich and Former Administrator Hammer) and issue Subpoenas to other witnesses if required.

Without confirming or denying that the District Court would grant Mr. Donoval's request for an evidential hearing, at the January 15, 2013 hearing the District Court heard arguments of both parties (see Transcript). Attorney Naylor argued that Sun Valley had done all it was required to do to produce the documents that Mr. Donoval was seeking, and that the remainder of the documents Mr. Donoval sought simply did not exist. Neither Attorney Naylor or any official of the New Administration Of Sun Valley responded in any way to the allegations that the Yellow Sheets that were provided to Mr. Donoval were forgeries, or that documents had been removed from Sun Valley City Hall or destroyed by Sun Valley employees. Mr. Donoval asserted that without a Court order or Subpoena, the New Administration Of Sun Valley (including attorney Naylor himself) was prohibited by Idaho statutes from voluntarily turning over any of the original documents Mr. Donoval was seeking to any other government entity (including the Idaho Attorney General's office or the Blaine County Prosecutor's office) or removing the original documents Mr. Donoval sought in the Public Records Requests from Sun Valley City Hall. Mr. Donoval also asserted that whereas Sun Valley had entered no sworn-to evidence into the record before the District Court contradicting the sworn-to assertions that the Yellow Sheets that he had been provided were forgeries, and provided no sworn-

to evidence contradicting the sworn-to statements of Former Mayor Willich and Former Administrator Hammer certifying that the Yellow Sheets Mr. Donoval was seeking had been in existence as of at least January of 2012, that Mr. Donoval was entitled to a ruling that Sun Valley had failed to provide Mr. Donoval with the documents he had sought (akin to a summary judgment ruling). Mr. Donoval sought a ruling mandating the production of the documents he sought and had still not been provided, and that fines be entered against appropriate Sun Valley officials for failing to do so, as is authorized pursuant to Idaho Statute 9-345. After listening to arguments at the January 15, 2013 hearing, the District Court took the matter under advisement.

On February 14, 2014, without allowing the evidential hearing Mr. Donoval sought in the matter, the District Court entered its Memorandum Decision Denying Plaintiff's Request For An Order To Compel Production Of Public Records (Record 666-675), finding that Sun Valley had complied with its obligations under Idaho Statute 9-339 and the Idaho Public Records Laws.

The Appellate Court Proceedings

Mr. Donoval filed his Notice Of Appeal in the matter (Record 676-691). After Mr. Donoval filed his Appellant's Brief, and the New Administration Of Sun Valley filed its Respondent's Brief, Mr. Donoval sought that the Respondent's Brief be stricken because it was polluted with matters that had never been entered into the record by sworn-to evidence before the District Court. Of particular note was the New Administration Of Sun Valley's multiple assertions throughout its Respondent's Brief that Mr. Donoval was seeking that the Appellate Court enter some form of criminal

sanctions against officials of the New Administration Of Sun Valley, when such simply was not the case. The Idaho Supreme Court denied Mr. Donoval's Motion To Strike.

As part of his arguments in his Appellant's Reply Brief, Mr. Donoval referred to multiple assertions in the Respondent's Brief which were never made part of the record before the District Court, and reiterated his request that the Supreme Court reject any factual assertions made by Sun Valley based on information which was not properly put into the District Court record by sworn-to statements, and that the Supreme Court not rely on any such assertions as part of its findings.

The Idaho Supreme Court remanded the case to the Appellate Court. On May 5, 2014, oral arguments were heard in the matter before Justice Gratton, Justice Lansing and Pro Tem Justice Perry. At the oral arguments, the Justices raised for the first time several issues which were not brought forward by the New Administration Of Sun Valley in its Respondent's Brief, including whether Mr. Donoval had formally and adequately sought that the documents he was seeking be compelled to be produced in the pleadings before the District Court (which as has been previously noted, Mr. Donoval actually had).

On July 22, 2014, the Appellate Court entered its unpublished Opinion No. 637 (the "Appellate Opinion"). The Appellate Opinion was a split decision in that Pro Tem Justice Perry (who authored the Appellate Majority opinion) and Justice Gratton found that Sun Valley had complied with its obligations under the Idaho Public Records Laws. Justice Lansing's dissent found that the matter should have been remanded back to the District Court for further evidential proceedings, as Mr. Donoval had sought.

Mr. Donoval asserted in his Petition For Reconsideration, Clarification, Correction And Rehearing filed with the Appellate Court that the Appellate Court's most

blatant error was that the Appellate Court had incorrectly placed the burden on Mr. Donoval to prove that Sun Valley had not provided the documents Mr. Donoval sought, in contradiction to the Idaho Supreme Court's findings in *Bolger v. Lance* that the New Administration Of Sun Valley bore the burden of proof in the matter. In addition, Mr. Donoval sought that the Appellate Court correct several factual errors in the Appellate Opinion and reconsider several of its findings. On August 14, 2014, the Appellate Court entered its Order Denying Petition For Rehearing without providing any explanation for its denial.

ISSUES FOR REVIEW

Issue 1

The Appellate Court improperly shifted the burden of proof from the New Administration Of Sun Valley to Mr. Donoval, in contradiction to Idaho case law on public records matters.

Idaho case law makes clear that when an individual believes that he has been denied access to a public record, and files a law suit asserting such, the burden of persuasion regarding whether complete disclosure has been made to the person requesting the documents rests on the governmental entity, and the government entity must show cause why the documents requested have not been produced (see *Bolger v. Lance*). There is no question that the Appellate Majority improperly switched this burden to Mr. Donoval. And the fact that the Appellate Majority did so in an unpublished Appellate Opinion, means that, arguably, Mr. Donoval was subject to a different burden of proof than other litigants in Idaho Public Records Laws cases have been, or will be in the future, because of the Appellate Court's refusal to allow this case to be used as legal precedent.

In the Appellate Opinion, the Appellate Majority went through an extensive discussion of a two prong procedural test related to findings in an Idaho Public Records Laws case. However stretched the analysis is, the simple fact is that the Appellate Majority placed the burden on Mr. Donoval to have proven that the documents he sought in the Public Records Requests were not properly produced, as opposed to enforcing Idaho case law which requires that the government entity bears the burden of persuasion in an Idaho Public Records Laws case (see Bolger v. Lance), and federal precedent that requires that where “bad faith” is asserted (as Mr. Donoval asserted), that the government entity must show by sworn-to, “convincing evidence” that it had made every effort possible to locate the documents at issue or describe why they were not being produced (see Laughlin v. Commissioner Of IRS, Miller v. U.S. Dept. Of State, and, Weisberg v. U.S. Dept. Of Justice).

The Appellate Majority rested its conclusion on the basis that “***Donoval had not shown***” (emphasis added) that it appeared that certain public records were being withheld” (Appellate Opinion @ 10)⁹. This refocusing of the burden from Sun Valley to Mr. Donoval stands on its head both the Idaho Legislature’s obvious intent, and the Idaho Supreme Court’s obvious intent in Bolger v. Lance, that it is the respondent government, not the document requestor, that bears the burden of proving that documents do not exist or have been fully produced. The fact that the Appellate Majority satisfied itself that the New Administration Of Sun Valley had provided Mr. Donoval with un-sworn-to

⁹ In addition, Footnote 6 of the Appellate Opinion is pretty clear evidence that the Appellate Majority improperly transferred the burden of proof in the matter from the New Administration Of Sun Valley to Mr. Donoval. If anyone was required to provide testimony or evidence that it had complied with its obligations, it was the New Administration Of Sun Valley, who had the burden of persuasion in the matter (see Bolger v. Lance), not Mr. Donoval, and yet the Appellate Majority refused to acknowledge this fact, instead choosing to criticize Mr. Donoval.

statements in correspondences which Mr. Donoval had no ability to cross examine, after Mr. Donoval provided sworn-to evidence related to the existence of documents and falsification of documents, makes a mockery of civil procedure requiring that proper evidence be presented at trial to support a claim or defense, and that only properly entered evidence be allowed to be presented to support an appeal. The Appellate Majority simply chose to accept unverified information in un-sworn-to correspondences not properly entered into the record to rule against Mr. Donoval.

Mr. Donoval also asserts, as he did in his briefs, that based on federal precedent, because Mr. Donoval asserted that the New Administration Of Sun Valley acted in bad faith (i.e. lied about where the documents were, lied that a Subpoena had been issued requiring release of the documents when it had not, allowed the removal of original documents in violation of Idaho statutes, potentially illegally destroyed documents, and, falsified documents) that the burden in a case such as this is raised to the “convincing evidence” standard. Mr. Donoval asserts that the Appellate Majority should have been following the legal precedent set in federal case such as *Laughlin v. Commissioner Of IRS*, *Miller v. U.S. Dept., Of State*, and, *Weisberg v. U.S. Dept. Of Justice*), and put a greater burden on the New Administration Of Sun Valley in a situation like this, not a lesser burden.

Finally, even if the burden shifted, Mr. Donoval placed into the record what he believes is overwhelming sworn-to evidence that the documents he sought existed and have not been produced and that the documents that were produced were forgeries. How the Appellate Majority can minimize, or ignore this sworn-to evidence, is beyond rationality.

Mr. Donoval requests that the Idaho Supreme Court reverse the findings of the Appellate Majority that Mr. Donoval bore the burden in this case. Considering that the New Administration Of Sun Valley placed no sworn-to evidence in the record as to whether it complied with its obligations to produce documents that clearly were in existence less than three months prior to Mr. Donoval seeking them, Mr. Donoval requests that the Idaho Supreme Court reverse the Appellate Majority's findings, and remand the matter back to the District Court for further evidential hearings, as Justice Lansing suggested.

Issue 2
The District Court and the Appellate Court erred by not making rulings related to the forgery allegations.

It is disturbing that both the District Court and the Appellate Majority refused to acknowledge in any way the sworn-to testimony that the documents provided to Mr. Donoval by the New Administration Of Sun Valley were forgeries, and the implications of those forgeries as far as whether the New Administration Of Sun Valley complied with its Idaho Public Records Laws obligations¹⁰. Both Former Mayor Willich (Record 572-606) and Former Administrator Hammer (Record 485-571) verified, under oath, that the initials on the copies of the twenty five (25) Yellow Sheets Mr. Donoval was provided were not theirs and that the documents were, in fact, forgeries. No official, employee or agent of the New Administration Of Sun Valley provided any contradictory evidence (sworn-to or non-sworn-to) to counter those assertions.

Why the District Court and the Appellate Majority chose to simply ignore the un-responded to, under-oath allegations of Former Mayor Willich and Former Administrator

¹⁰ At least Justice Lansing asserted that the matter should be remanded to the District Court for further hearings on the matter.

Hammer that the documents Mr. Donoval sought were in existence a mere three months before Mr. Donoval requested them, and were not produced, and that the documents that Mr. Donoval received were actually forgeries, as if those sworn-to statements are meaningless - is beyond comprehension.

Mr. Donoval raised these issues to both the District Court and the Appellate Court and both the District Court and Appellate Majority simply ignored the implications of these assertions. As Mr. Donoval asserted in his pleadings, as a matter of law, a falsified or forged document cannot possibly be a legitimate public record, and thus, the supplying of a falsified or forged document in response to a public record request cannot possibly comply with a government's duties under the Idaho Public Records Laws. Any other finding simply defies reason - legal or otherwise. There is no question that District Court and the Appellate Majority should have found, as a matter of law, that because the New Administration Of Sun Valley failed to respond in any way to the sworn-to forgery allegations, that the twenty five (25) Yellow Sheets that were provided to Mr. Donoval were, in fact and at law, forgeries, and either found that the New Administration Of Sun Valley did not comply with Mr. Donoval's request (and issued fines), or remanded the matter back to the District Court for further proceedings (as Justice Lansing suggested).

Mr. Donoval raised this issue to Justice Perry at oral argument before the Appellate Court, and asserted that not requiring the government entity to answer to the failure to produce, or as to forgery allegations, under oath, was a dangerous precedent. Under the Appellate Majority's rationale, any unethical public official can respond to a public record request, as Sun Valley did, by simply refusing to provide documents in its possession which may show their own criminal or other misconduct by responding "it

doesn't exist" when it does, or by providing falsified and forged documents to cover their own criminal or other misconduct, and there is nothing that a citizen (such as Mr. Donoval or even a newspaper seeking to report on the issue), could do about it to seek verification of the legitimacy of the documents. The District Court and the Appellate Majority allowed the New Administration Of Sun Valley officials to get away with refusing to produce documents which would show their own misconduct, and providing falsified and forged documents to Mr. Donoval to cover their own misconduct, without having to answer to those allegations in any way. In essence, the District Court and the Appellate Majority have sanctioned silence and the submission of falsified documents as an appropriate answer to allegations of government misconduct in a case under the Idaho Public Records Laws. That seems to violate any canons of governmental ethics, or the purpose of the previously cited Statement Of Purpose that the Idaho Legislature drafted when enacting the Idaho Public Records Laws in 1990.

Issue 3

Both the District Court and the Appellate Court failed to face the issue of the illegality of Sun Valley's release of original records Mr. Donoval sought to other governmental entities in violation of Idaho statutes, even though the issue was consistently raised in Mr. Donoval's pleadings.

In his filings before the District Court, and in both his Brief and Reply Brief before the Appellate Court, Mr. Donoval asserted that the New Administration Of Sun Valley violated his right to inspect the original records he was seeking in July and August of 2012, by having voluntarily transferred those original records to either the Idaho Attorney General or the Blaine County Prosecutor¹¹. Both the District Court and the

¹¹ Mr. Donoval made this a specific issue in his Memorandum In Support Of Amended Complaint before the District Court (Record 608-633) and argued this issue at the January 15, 2012 hearing before the District Court (see Transcript). Mr. Donoval also made this assertion in two places in his original Brief (Pg. 42-43 and Pg. 45). Mr. Donoval expanded on his argument in the Reply Brief (Pg. 28-32).

Appellate Court ignored Mr. Donoval's assertions and arguments as to this issue. It seems that when an appellant raises an issue on appeal, at a minimum, the Appellate Court should face the issue and provide some form of ruling or guidance. The Appellate Court simply chose to ignore Mr. Donoval's request for a ruling on the issue.

Mr. Donoval asserted that Attorney Naylor (or other employees, officials or agents of the New Administration Of Sun Valley) removed original public records from Sun Valley City Hall in violation of both Idaho Statute 50-908 and Idaho Statute 90-349(3), and apparently provided them voluntarily to either the Idaho Attorney General or the Blaine County Prosecutor. The net effect of those illegal and/or improper transfers of original documents was that when Mr. Donoval appeared at Sun Valley City Hall in July and August of 2012, those original documents should have been located at Sun Valley City Hall for Mr. Donoval's review, not in the hands of either the Idaho Attorney General or the Blaine County Prosecutor¹². Instead, Mr. Donoval was required to seek the review of the original documents no longer in the possession of the New Administration Of Sun Valley from both the Idaho Attorney General and the Blaine County Prosecutor.

Certainly, the New Administration Of Sun Valley could have sent *copies* of the documents Mr. Donoval sought to either the Idaho Attorney General or the Blaine County Prosecutor. But absent some official Sun Valley City Council resolution (which is not in the record) or a Subpoena or court order (which are also not in the record), it was a violation of Idaho statutory law for the New Administration Of Sun Valley to not have physical possession of the *original* documents Mr. Donoval sought at Sun Valley City Hall when Mr. Donoval sought them, and thus the removal of those original documents

¹² Idaho Statute 9-343(2) required the New Administration Of Sun Valley to retain possession of the documents Mr. Donoval sought until the matters associated with the Public Records Requests were resolved.

was a violation of Mr. Donoval's right to view them when he appeared at Sun Valley City Hall in July and August of 2012. Mr. Donoval believes he was entitled to a specific ruling of the Appellate Court on this issue, and is now entitled to a ruling by the Idaho Supreme Court on the issue, as it has consistently been raised in Mr. Donoval's filings herein.

Issue 4

The Appellate Court erred by failing to recognize the broad range of inherent authority of the District Court in a public records case.

During oral argument, Justice Gratton asked Mr. Donoval whether there was any flexibility in the Idaho statutes which would allow a judge to do anything other than simply mandate that the governmental entity disclose the public record, or rule that they had adequately complied with a request – as is described in *Idaho Statute 9-344*.

Mr. Donoval asserts that there is inherent authority, whether not specified in the Idaho statutes themselves, for Idaho courts to take the action Mr. Donoval sought, including mandating that sworn-to responses from the officials of the New Administration Of Sun Valley as to the circumstances related to the loss, destruction or the whereabouts of the non-produced documents and the forgeries, be provided.

Although there is no Idaho case law on the issue, in regards to federal precedent, in 1974, in *Renegotiation Board v. Bannerkraft Closting Co., Inc.*, 415 U.S. 1, 94 S.Ct. 1028 (U.S. Sup.Ct. 1974), the U.S. Supreme Court discussed that the intent of the federal FOIA was to provide courts with inherent and broad authority, not necessarily specifically described in the federal FOIA, to ensure that public entities disclose public records. In *Renegotiation Board*, the U.S. Supreme Court stated:

“The broad language of the FOIA, with its obvious emphasis on disclosure and with its exemptions carefully delineated as exceptions; the truism

that Congress knows how to deprive a court of broad equitable power when it chooses to ... makes the District Court the enforcement arm of the statute ... With the express vesting of equitable jurisdiction in the district court by Sec. 552(a), there is little to suggest, despite the Act's primary purpose, the Congress sought to limit the inherent powers of an equity court." (@ 19)

Mr. Donoval continues to assert that Idaho courts, under the Idaho Public Records Laws, like federal courts under the federal FOIA, have a broad range of authority, not a limited range, which should allow Idaho courts to mandate that Idaho government entities provide responses to allegations of destruction or falsification of public records when such allegations are raised by the person requesting the documents. As is described in *Renegotiation Board* federal courts have presumed inherent authority under the federal FOIA to ensure that persons seeking public records are assured that all legitimate efforts are made to comply with the requestor's requests. As there is no guidance in *Idaho Statute 9-344* or Idaho case law on the issue, Mr. Donoval asserts that the Appellate Majority failed to look to federal precedent on the issue. Mr. Donoval requests that the Idaho Supreme Court issue findings that Idaho courts have inherently authority to hold evidential hearings related to the allegations of loss/destruction of documents and falsification of documents, as was asserted by Mr. Donoval, and as Justice Lansing proposed in her dissent, and remand the matter back to the District Court for evidential hearings in the matter.

Issue 5

The Appellate Court erred by allowing non-verified information not properly entered into the record before the District Court to be rampantly used in the Respondent's Brief, which certainly affected the Appellate Court's findings.

In his Reply Brief before the Appellate Court, Mr. Donoval asserted that the New Administration Of Sun Valley should not be able to rely on non-verified facts, assertions or arguments, not formally entered into the record before the District Court through

sworn-to testimony or affidavits, as such information is not “evidence” which the Appellate Court could use as part of its review of the matter (Reply Brief, Pg. 5-7; 11-18). In several instances, the Appellate Court did as Mr. Donoval feared and relied on non-verified assertions of the New Administration Of Sun Valley that should not have been allowed as part of the appellate record.

In contradiction to Mr. Donoval’s Motion To Strike portions of the Respondent’s Brief, which was denied on December 12, 2013, the Idaho Supreme Court allowed an extensive amount of unsubstantiated and unverified matters to pollute the Respondent’s Brief, which clearly affected the Appellate Court’s findings in the matter. In particular, the New Administration Of Sun Valley was allowed to extensively argue that Mr. Donoval had improper motives in seeking the Public Records Requests, even though Idaho Statute 9-338(5) prohibits the government from questioning the public record requestor’s motives (Reply Brief, Pg. 5-7). The New Administration Of Sun Valley was allowed to include non-verified statements of City Attorney King to be included as part of its defense that it had complied with its obligations under Idaho Public Records Law (Reply Brief, Pg. 13-15). The New Administration Of Sun Valley was allowed to use Attorney Naylor’s arguments at the January 15, 2013 hearing to somehow turn into facts which were used as evidence of the New Administration Of Sun Valley’s compliance with its obligations under the Idaho Public Records Laws (Reply Brief, Pg. 18). And finally, the New Administration Of Sun Valley was allowed to make forty eight (48) separate references in the Respondent’s Brief that Mr. Donoval was seeking some form of criminal charges against officials of the New Administration Of Sun Valley, when

such was not the case (see Donoval Memorandum In Support Of Motion To Strike Respondent's Brief).

The New Administration Of Sun Valley's rampant use in its Respondent's Brief of a) non-verified information not placed into the record before the District Court, b) allegations of impropriety on Mr. Donoval's part prohibited by Idaho Statute 9-338(5), c) arguments of Attorney Naylor before the District Court as facts for the Appellate Court to base its findings on, and, d) excessive and inaccurate claims of the New Administration Of Sun Valley that Mr. Donoval was somehow seeking criminal sanctions against officials of the New Administration Of Sun Valley – all require that the Idaho Supreme Court accept this matter, and provide guidance to future litigants under the Idaho Public Records Laws as to the parameters of what evidence must be entered into the record of an Idaho Public Records Laws law suit, and what matters are barred from being considered as part of the record of an Idaho Public Records Laws law suit.

Issue 6

The Appellate Court made several outright factual errors in the Appellate Opinion based on information improperly entered into the record before the District Court, or facts which were not entered into the record before the District Court at all.

In several instances in the Appellate Opinion, the Appellate Court cited information that was either not factually correct, or not properly in the appellate record (or in the appellate record at all), to support its findings. Mr. Donoval seeks that the Idaho Supreme Court recognize the misuse of such information and correct the findings of the Appellate Court accordingly.

The Idaho Attorney General's Office Never Possessed The Documents Mr. Donoval Sought In The Public Records Requests

On Pg. 2 of the Appellate Opinion, the Appellate Court asserts that “Unbeknownst to Donoval, the original records had been in the attorney general’s possession before Donoval submitted his public records request to Sun Valley, and Sun Valley had provided Donoval with duplicates of the copies Sun Valley retained.” And then on Pg. 2 of the Appellate Opinion, the Appellate Court asserts that “Donoval was informed by the attorney general that the attorney general’s office had transferred the original records to the Blaine County prosecutor.” The Idaho Attorney General disavowed any confirmation that it had ever received any of the documents that the New Administration Of Sun Valley asserts it gave to the Idaho Attorney General or that Mr. Donoval was seeking (see Idaho Attorney General Affidavit, Record 466-468).

Although Mr. Donoval did view the original documents at the office of the Blaine County Prosecutor on December 31, 2012, there is no other evidence in the record as to when the documents were actually transferred to the Blaine County Prosecutor, or by whom. Through the entire proceedings, the New Administration Of Sun Valley has simply been allowed to infer that somehow the Idaho Attorney General transferred the documents at issue to the Blaine County Prosecutor, without any sworn-to (or even unsworn-to) confirmation of that in the record by either the Idaho Attorney General or the Blaine County Prosecutor themselves¹³. Mr. Donoval has consistently asserted that the documents he viewed at the Blaine County Prosecutor’s office on December 31, 2012 could have very well been transferred to the Blaine County Prosecutor well after Mr.

¹³ The Idaho Supreme Court must find it curious that the Idaho Attorney General outright disavowed any claims that the New Administration Of Sun Valley had ever actually provided the Idaho Attorney General with any of the documents that Mr. Donoval sought (see Affidavit Of Idaho Attorney General, Record 466-468); and the Blaine County Prosecutor refused to cooperate with the New Administration Of Sun Valley by providing an Affidavit of any sort in regards to when he actually obtained the documents at issue from the New Administration Of Sun Valley, or who he actually obtained the documents from.

Donoval had sought their physical inspection in July and August of 2012, and the New Administration Of Sun Valley simply refused Mr. Donoval the right to inspect them at the time. Part of the “bad faith” assertions of Mr. Donoval is that the New Administration Of Sun Valley refused Mr. Donoval access to the original documents described in the Public Records Requests in July and August of 2012, and only thereafter transferred the documents to the Blaine County Prosecutor when Mr. Donoval continued to pursue the matter and filed suit.

However, the fact is that, contrary to the two statements in the Appellate Opinion described above, the Idaho Attorney General denied it ever received the documents at issue or ever transferred the documents at issue to the Blaine County Prosecutor. The Appellate Court erred in including this statement in the Appellate Opinion.

Mr. Donoval Entered Substantial, Sworn-To Testimony Into The Record Before The District Court, To Support His Claims

In Footnote 6 of the Appellate Opinion, the Appellate Majority asserts that Mr. Donoval “offered no witness testimony and did not introduce into the record even a single item of evidence.” This soliloquy is difficult to swallow considering that Mr. Donoval’s Complaint (Record 1-198) and the Amended Complaint (Record 294-321) were verified (i.e. under oath), that Mr. Donoval submitted his own Affidavits under oath, and that Mr. Donoval submitted the Affidavits of both Former Mayor Willich (Record 522-606) and Former Administrator Hammer (Record 485-571). Considering the lack of guidance in either *Idaho Statute 90-343* or *Idaho Statute 90-344* as to the parameters of a public records law suit hearing, the fact that Mr. Donoval sought that an evidential hearing be scheduled (which the District Court apparently did not think was necessary), and, the fact that Mr. Donoval went to great lengths to provide his own sworn-to

statements in the form of the verified Complaint and Amended Complaint and the Affidavits of himself, Former Mayor Willich and Former Administrator Hammer, the assertion that Mr. Donoval “offered no witness testimony and did not introduce into the record even a single item of evidence”, is simply fictitious and a warped interpretation of what transpired in the matter.

The Appellate Majority erred in including this finding in Footnote 6 of the Appellate Opinion, and the Idaho Supreme Court should confirm that Mr. Donoval did submit substantial, verified evidence to support his claims that he had not been provided all the documents he sought, that some of the documents he was provided were forgeries, and that officials of the New Administration Of Sun Valley acted in “bad faith” throughout the entire process.

The New Administration Of Sun Valley Provided No Sworn-To Evidence Of Its Efforts To Locate The Documents Mr. Donoval Sought Or In Regards To The Forgery Or Destruction Allegations

On Pg. 6, the Appellate Opinion states “Sun Valley made available over 1500 pages of documents within two days of an email from Donoval to the Sun Valley city attorney”. This is the exact type of non-sworn-to, fallacious information in the correspondences from officials of the New Administration Of Sun Valley (especially City Attorney King) that the Appellate Majority improperly allowed to pollute its thoughts and sway its decision against Mr. Donoval. Mr. Donoval flatly denies that the Public Records Requests Mr. Donoval submitted required the production of anywhere near 1,500 pages. The three Public Records Requests at issue herein involved that approximately one

hundred twenty eight (128) pages be produced¹⁴. The other three public records requests Mr. Donoval sought at the same time involved the production of one sheet of paper for the twelve months of one fiscal year each, or thirty six (36) pages at most¹⁵. In reality, the six public records requests Mr. Donoval provided only required the production of less than two hundred (200) pages, not the 1,500 pages City Attorney King alleges, in unverified form, were required in the correspondence the Appellate Majority refers to above. The New Administration Of Sun Valley may have thrown 1,500 pages of documents on the table when Mr. Donoval appeared at Sun Valley City Hall on July 27, 2012, but the substantial majority of documents had no relevance to any of the public records requests Mr. Donoval actually submitted. It should also be noted that City Attorney King was not even present at Sun Valley City Hall on July 27, 2012 when Mr. Donoval appeared to verify how many documents were actually provided for Mr. Donoval's review.

The disturbing part of the inclusion of this statement in the Appellate Opinion (or that the Appellate Majority even used it in its analysis) is that it is the basis for the Appellate Majority's opinion that Sun Valley had made great efforts to find the documents that Mr. Donoval still asserts have not been produced. The statement described has no basis in fact, is not verified, and was never formally entered into the record – and still the Appellate Majority relied on it as the basis for its findings (presumably along with all of the other non-verified statements of officials of the New

¹⁴ The total documents that should have been produced for the three Public Records Requests at issue in this case were fourteen (14) two page credit card invoices, and fourteen (14) Yellow Sheets for the three Sun Valley employees at issue, or a total of 128 pages.

¹⁵ Although not at issue here, the other three public record requests Mr. Donoval submitted at the same time as the three Public Records Requests at issue here, sought confirmation of payments for taxes and other employee benefit contributions shown on Sun Valley's checking account statements for one fiscal year. This should have required that one page of copying be provided for each month during that fiscal year, for three separate payments, or a total of thirty six (36) pages of records.

Administration Of Sun Valley that were allowed to be part of the record). The Idaho Supreme Court should enter findings specifically that the New Administration Of Sun Valley failed to provide any sworn-to evidence in the record as to its efforts to locate the documents sought by Mr. Donoval, and that the New Administration Of Sun Valley failed to provide any sworn-to evidence in the record to counter Mr. Donoval's claims of "bad faith" in failing to produce the documents Mr. Donoval sought in the Public Records Requests.

Issue 7

Contrary to the Appellate Court's findings, Mr. Donoval made specific demands for the production of the documents from the particular government entity that was asserted to be holding the documents at the time.

Mr. Donoval was criticized throughout the Appellate Opinion for failing to "compel" the production of the public records he sought specifically from the New Administration Of Sun Valley itself in the pleadings¹⁶. This issue was not raised by the New Administration Of Sun Valley, either before the District Court or in its Respondent's Brief before the Appellate Court. The issue was instead first raised, *instanter*, by Justice Lansing at oral argument before the Appellate Court, to which Mr. Donoval, who had not been forewarned of the issue, responded that, at a minimum, he had made such a demand in the Memorandum In Support Of Amended Complaint filed with the District Court on January 8, 2013 (Record 632), prior to the January 15, 2013 hearing.

¹⁶ For example, the Appellate Majority asserted in Footnote 2 of the Appellate Opinion that Mr. Donoval's Amended Complaint could have been dismissed because Mr. Donoval did not explicitly make a demand for the District Court to compel the New Administration Of Sun Valley to produce the documents not theretofore produced. Justice Lansing also extensively discusses this in Footnote 8 of the Appellate Opinion.

There is nothing in Idaho Statute 9-343 which requires the magic language that the person filing suit “compels” the production of the documents from the government entity in the complaint which “institutes proceedings”. Arguably, the fact that the “proceedings” have been “instituted” under Idaho Statute 9-343, itself gives rise to the demand that the documents be compelled to be produced by the government entity, because the language describing that the plaintiff in the law suit is seeking that the documents be compelled to be produced is included in Idaho Statute 9-343 itself.

However, contrary to the assertions of the Appellate Majority and Justice Lansing, the record actually reveals that Mr. Donoval did demand in the various pleadings that the original documents he sought be produced, by the government entity that was purported to have been holding the original documents at the time when Mr. Donoval filed the pleadings.

As Mr. Donoval has noted, at the time Mr. Donoval filed the original Complaint against both Sun Valley and the Idaho Attorney General, Mr. Donoval had been told by City Attorney King that **all** the documents Mr. Donoval was seeking were in the possession of the Idaho Attorney General (Record 115). Thus, Mr. Donoval included the language previously described in the Complaint seeking that the Idaho Attorney General’s office be compelled to produce the documents covered by the Public Records Requests.

Then when the Idaho Attorney General certified that it did not possess any of the documents Mr. Donoval was seeking, nor could it certify that it had ever possessed any of the documents Mr. Donoval was seeking (see Affidavit Of Idaho Attorney General, Record 466-468); and only after City Attorney King changed his story and asserted that

in reality that *all* the documents Mr. Donoval was seeking were actually in the possession of the Blaine County Prosecutor (Record 272), Mr. Donoval filed the Amended Complaint which added the Blaine County Prosecutor as a defendant. This time, Mr. Donoval included the language previously described in the Amended Complaint seeking that the Blaine County Prosecutor's office be compelled to produce the documents covered by the Public Records Requests.

Finally, when Mr. Donoval's inspection of documents at the Blaine County Prosecutor's office revealed that the Blaine County Prosecutor did not possess the documents Mr. Donoval had sought under the Public Records Requests, Mr. Donoval included the language in the Memorandum In Support Of Amended Complaint filed with the District Court on January 8, 2013, seeking that the New Administration Of Sun Valley be compelled to produce the documents which had still not been produced.

Contrary to the Appellate Court's statements in the Appellate Opinion that Mr. Donoval did not specifically demand or compel that the documents he sought be produced or that he be allowed to inspect the originals, Mr. Donoval did explicitly do so, first to the Idaho Attorney General in the Complaint, then to the Blaine County Prosecutor in the Amended Complaint, and finally to Sun Valley itself in the Memorandum In Support Of Amended Complaint. The Appellate Opinion makes it appear that Mr. Donoval somehow did not comply with his pleading requirements, when, based on what the New Administration Of Sun Valley had been asserting as to the location of the documents Mr. Donoval was seeking, Mr. Donoval had prepared appropriate pleadings demanding the production of the original documents he was seeking from whatever entity was asserted to be holding them at the time. The statements

by the Appellate Court related to Mr. Donoval's failure to properly seek that either the Idaho Attorney General, the Blaine County Prosecutor or the New Administration Of Sun Valley be compelled to produce the documents Mr. Donoval sought in the Public Records Requests, were outright not supported by the actual pleadings in the matter, and were also highly prejudicial to the Appellate Court's impressions and findings related to Mr. Donoval. Mr. Donoval seeks that the Idaho Supreme Court confirm that Mr. Donoval properly plead his demands for production of the original documents sought in the Public Records Requests as was required pursuant to Idaho Statute 9-343 from the government entity that was asserted to actually have possession of the originals at the various times in the proceedings.

Issue 8

Mr. Donoval was improperly criticized in the Appellate Opinion for having drafted an expansive Complaint and Amended Complaint to establish a record for the District Court and the Appellate Court, and to support the assertions of "bad faith" of Sun Valley officials, in large part due to the lack of direction in Idaho Statute 9-343 and Idaho Statute 9-344.

In Footnote 8 of the Appellate Opinion, Justice Lansing issued an extensive critique of Mr. Donoval's extensive pleadings in the matter, concluding that it was Mr. Donoval's pleadings and other documents filed with the District Court which is why the District Court "lost its way". Although Mr. Donoval agrees with Justice Lansing's findings that the matter should have been remanded back to the District Court for further proceedings, Mr. Donoval believes that Justice Lansing's criticism of Mr. Donoval in Footnote 8 of the Appellate Opinion was unwarranted and is prejudicial to Mr. Donoval's request that the Idaho Supreme Court review the matter.

As has been described herein, the language of Idaho Statute 9-343 and Idaho Statute 9-344 provides little, if any, real guidance as to what the complaint for an Idaho

Public Records Laws law suit must include or not include, or any guidance as to what a hearing in an Idaho Public Records Laws law suit must provide for. The fact that Justice Lansing and the Appellate Majority included an expansive disagreement over what the January 15, 2013 hearing really was in the Appellate Opinion itself, is an indication that even the three Justices could not come to terms with what kind of pleadings were required and the type of hearing Mr. Donoval was entitled to.

Because there is no statutory guidance as to what the hearing under Idaho Statute 9-344 provides for, Mr. Donoval took the position that it was akin to an “on the record” appeal from the decision of the New Administration Of Sun Valley to deny the Public Records Requests, and included anything and everything in the Complaint and Amended Complaint that he believed was relevant to the proceedings before the New Administration Of Sun Valley, including all of the correspondences and facts related to the various meetings and production (or non-production) of the documents being sought. Mr. Donoval verified the allegations in the Complaint and Amended Complaint to ensure that the matters were under oath when Mr. Donoval argued them before the District Court. Mr. Donoval then supplemented the sworn-to evidence in the Complaint and the Amended Complaint, with Mr. Donoval’s Affidavits, and the Affidavits of Former Mayor Willich and Former Administrator Hammer, for factual matters that were not already in the Complaint and Amended Complaint (i.e. the forgeries of documents and the verification that other documents Mr. Donoval sought had been in Sun Valley’s possession at least as late as January of 2012). Considering the lack of direction in Idaho Statute 9-344 or Idaho case law on an Idaho Public Records Laws proceeding, Mr.

Donoval believed he was providing an extensive, and required, record for the District Court to use in proceeding to make its eventual decision.

In addition, Mr. Donoval was well aware of the heightened burden of proof (i.e. “convincing evidence”) in federal FOIA cases, when the government is alleged to have withheld documents in “bad faith” (see *Laughlin v. Commissioner of IRS @1222*). Both the Appellate Majority and Justice Lansing criticized Mr. Donoval for putting in his pleadings the detailed facts upon which he made his “bad faith” assertions. Even if Mr. Donoval had not put extensive facts in his Complaint and Amended Complaint, Mr. Donoval would have been required to prepare an extensive Affidavit of himself to include the exact same facts and allegations that were included in the Complaint and the Verified Complaint, to ensure that the allegations of “bad faith” on the part of officials of the New Administration Of Sun Valley were submitted into the record before the District Court.

Mr. Donoval’s supposed “rambling” detail of the chronology of events in the Complaint and Amended Complaint was exactly what the District Court and the Appellate Court used to understand what transpired in the matter, and what the Idaho Supreme Court will use in deciding the matter herein as well. Had Mr. Donoval not put all of those details in the Complaint or Amended Complaint, considering that the New Administration Of Sun Valley put no evidence into the record before the District Court, how would either the District Court or the Appellate Court, and now the Idaho Supreme Court, have been made aware of what had actually happened in the matter? This is especially relevant considering that the District Court chose not to hold the evidential hearing Mr. Donoval sought in the matter. If Mr. Donoval had not placed the “rambling”

information he had, under oath, in the Complaint and Amended Complaint, what kind of record would Mr. Donoval have built for appellate review?

It seems improper for the Appellate Court to have been able to understand the details of what happened between the parties only because of Mr. Donoval's efforts in providing that detail in the Complaint, the Amended Complaint, his own Affidavits, and the Affidavits of Former Mayor Willich and Former Administrator Hammer, and then criticize Mr. Donoval for doing so. Mr. Donoval believes that Justice Lansing's harsh rebuke of Mr. Donoval's pleadings in Footnote 8 of the Appellate Opinion (as well as other criticisms of Mr. Donoval in the Appellate Opinion) were inappropriate, considering that it was only because of those extensive pleadings that the information which the Appellate Court used to decide this case was preserved in the appellate record. In reality, instead of criticizing Mr. Donoval for his purported verbosity, Justice Lansing should acknowledge instead that Mr. Donoval had the foresight to ensure that the record before the District Court included the detailed chronology of what happened in the matter, so that the District Court, the Appellate Court, and now the Idaho Supreme Court, could fully understand the matter and make its decisions, even if those decisions were against Mr. Donoval.

Issue 9

Should the Idaho Supreme Court reverse the decisions of the District Court and the Appellate Court, and remand the matter back to the District Court, the Idaho Supreme Court should direct that fines be entered against Sun Valley officials pursuant to Idaho Statute 9-345 for failing to properly produce the documents Mr. Donoval sought, or to explain their whereabouts, the first time.

As Mr. Donoval asserted in his briefs before the Appellate Court, *Idaho Statute 9-345* provides that the "custodian" of public records (as is defined in *Idaho Statute 9-*

337(3)) should be fined \$1,000 per document that was not produced for Mr. Donoval. Contrary to the allegations in the Respondent's Brief, Mr. Donoval was not seeking criminal findings against any employees or officials of the New Administration Of Sun Valley from either the District Court or the Appellate Court. Instead, Mr. Donoval was seeking that the District Court or the Appellate Court name who the "custodian" of records of the New Administration Of Sun Valley was, and that any documents the District Court or the Appellate Court determined were improperly withheld from Mr. Donoval, be subjected to the \$1,000 per document fine described in Idaho Statute 9-345.

Should the Idaho Supreme Court make findings that the matter should be remanded back to the District Court, as is sought by Mr. Donoval, Mr. Donoval seeks that the Idaho Supreme Court also directs that the fines described in Idaho Statute 9-345 also be assessed against whichever official of the New Administration Of Sun Valley is found to have been the "custodian" of the documents Mr. Donoval sought.

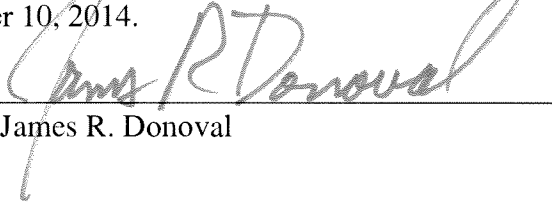


Respectfully Submitted
James R. Donoval, Appellant

PROOF OF SERVICE

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The undersigned certifies that a true and correct copy of the foregoing document was mailed via U.S. Mail upon the party identified above at the address indicated therein, by James R. Donoval by 5:00 p.m. on September 10, 2014.



James R. Donoval