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6 UNITED STATES DISTRICT COURT FOR THE
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE
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10 UNITED STATES OF AMERICA,

11 PLAINTIFF,

12 v.

13 THE CITY OF SEATTLE, and its Department,
14 SEATTLE CITY LIGHT,

15 DEFENDANTS.
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CASE NO. 16-CV-889

TEMPORARY RESTRAINING
ORDER

19 Plaintiff United States of America (“United States”), on behalf of its agency the Federal
20 Bureau of Investigation (“FBI”), has filed a Motion for an Order temporarily restraining Defendants
21 the City of Seattle (the “City”) and its Department, Seattle City Light (“City Light” and collectively,
22 the “City”), from disclosing in response to requests the City has received under the Washington State
23 Public Records Act (“PRA”), RCW 42.56, et seq., sensitive law enforcement information which was
24 shared with the City pursuant to an understanding of confidentiality and in furtherance of the FBI's
25 national security and criminal investigative missions and is further described in the TRO Motion
26 (“Protected Information”).

27 The Court has reviewed the TRO Motion, and the declarations by Steven Gumtow, and by
28 Gregory W. Jennings. The Court has also had an opportunity to review a classified supplemental

1 declaration by SSA Gumtow, in camera, ex parte, and under seal, but has treated the classified
2 declaration for background purposes and has not needed to rely on it for purposes of this Order. In
3 addition, the Court has heard from Counsel for the City, who has been provided with a copy of the
4 Complaint, the TRO Motion, and the Declarations.

5 The Court now finds that the United States is entitled to entry of a Temporary Restraining
6 Order enjoining the City from disclosing the Protected Information, for the following reasons:

7 The function of a preliminary injunction is to preserve the status quo pending a determination
8 of the action on the merits. *Los Angeles Mem. Coliseum Comm'n v. Nat. Football League*, 634 F.2d
9 1197, 1200 (9th Cir. 1980). In determining whether to grant a temporary restraining order or a
10 preliminary injunction, the Ninth Circuit considers: (1) the likelihood of success on the merits; (2) the
11 possibility of irreparable injury to a plaintiff if an injunction is not granted; (3) the extent to which the
12 balance of hardships favor plaintiff; and (4) whether the public interest will be advanced by the
13 injunction. *See, e.g., id.* The analysis is often compressed into a single continuum where the required
14 showing of merit varies inversely with the showing of irreparable harm. *See Prudential Real Estate*
15 *Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 874 (9th Cir. 2000). The moving party must then
16 establish a likelihood of irreparable injury—not just a possibility—in order to obtain preliminary
17 relief. *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (“standard requires
18 plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of
19 an injunction.”)

19 First, the Court finds that if an injunction is not issued, the FBI will be irreparably injured. If
20 the Protected Information is released, the United States will not be able to obtain its return; the
21 confidentiality of the Protected Information will be destroyed, and the recipients will be free to
22 publish it or post the sensitive information wherever they choose, including on the Internet, where it
23 would harm important federal law enforcement operational interests as well as the personal privacy of
24 innocent third parties.

25 Second, the Court finds that the United States has a likelihood of success on the merits. The
26 United States has established, at least at this stage of the case that the Protected Information is: (1)
27 protected by the explicit exemption in Section 42.56.240(a) of the PRA for “[s]pecific intelligence
28 information . . . compiled by . . . law enforcement agencies . . . the nondisclosure of which is essential
to effective law enforcement or for the protection of any person’s right to privacy”; (2) covered by

1 federal law enforcement privileges; (3) subject to a federal common law duty of confidentiality based
2 on explicit promises of confidentiality to the FBI by the City; and (4) subject to the FBI's right to
3 control the disclosure of the information for any unauthorized secondary purposes other than the
4 limited purpose for which the information was provided to the City.

5 Third, the Court finds that the balance of the equities also favors entry of an injunction. Any
6 delay from entry of a TRO will cause no harm to the Defendants or to any PRA requester; however,
7 in the absence of an injunction, the United States will suffer irreparable harm.

8 Fourth, the Court finds that the public interest will be served by issuance of an injunction.

9 In addition to the federal principles of equity, Section 42.56.540 of the PRA contemplates
10 actions such as this by third parties to obtain judicial relief to prevent governmental entities subject to
11 the PRA from releasing records in which the third parties have an interest. RCW 42.56.540. This
12 section authorizes third parties with an interest in the non-disclosure of records to bring injunctive
13 actions against governmental entities to prevent such entities from releasing the records, if they can
14 establish the records are protected either by PRA exemptions or by other non-disclosure statutes or by
15 common law rights, and the disclosure of the records would irreparably damage vital governmental
16 functions and not be in the public interest. *Id.* The United States is entitled, as is any other third
party, to avail itself of these provisions of state law.

17 Accordingly it is hereby ORDERED, ADJUDGED AND DECREED that Defendants the City
18 of Seattle and Seattle City Light shall be and hereby immediately enjoined, until further Order from
19 this Court, from releasing any of the Protected Information identified in more detail in the TRO
Motion;

20 Defendants are hereby directed to notify the PRA requesters of the pendency of this action.

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22 Dated this 13th day of June.

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26 The Honorable Richard A. Jones
27 United States District Judge
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