

Sent: 5/22/2025 10:44:15 AM
From: Susewind, Kelly (DFW) <Kelly.Susewind@dfw.wa.gov>
To: Esquibel, "Shane" <(GOV)>
Cc:
Bcc:
Importance: Normal
Subject: Analysis
Attachments: [Memorandum \(Final\).docx](#)

Hi Shane.

Attached is the evaluation we discussed.

Let me know if you'd like to discuss or need more information.

Kelly

MEMORANDUM

DATE: May 16, 2025

TO: Kelly Susewind, Director of Washington Department of Fish and Wildlife
Amy Windrope, Deputy Director of Washington Department of Fish and Wildlife

FROM: Thomas R. Knoll, Jr., Criminal Justice Legal Liaison

SUBJECT: Independent Review of Records

I. INTRODUCTION

On May 6, 2025, I received two partially filled boxes of records¹ that contained correspondence from some of our currently appointed Fish and Wildlife Commissioners (Commissioners) and outside special groups that interact with Washington Department of Fish and Wildlife (WDFW). These records spanned roughly the period from 2022-2024. I was informed that these records had been gathered or developed pursuant to a recent public records request. Upon initial review² of these documents, the reviewers noted multiple instances where it appeared the Commissioners were potentially engaging in inappropriate conduct while working for WDFW.

By letter dated May 8, 2025, I was asked to review the same records as described above and to provide my independent assessment of the material by submitting a written opinion.³ I was directed to look at the record and conclude whether the material indicates inappropriate conduct or not. Specifically, I would be looking for what appears to be violations of law/rules (including the Public Records Act (PRA), policies (including the Commission's Rules of Procedure), creating a conflict of interest or the appearance of a conflict of interest, and/or other behavior that hinders or risks the agency's ability to complete its mission.

¹The exact page count for these records is unknown, but the combined page count for the two boxes clearly consists of several hundred pages.

² I have not been advised who all the participants are that reviewed the records.

³ This task was officially assigned to me on May 8, 2025, by letter from the Director.

My role at WDFW as the Criminal Justice Legal Liaison for Enforcement does not require a working relationship with our appointed Commissioners and therefore, I know very little about them or the subject matter they have addressed on behalf of WDFW for the last couple of years. This has put me at a slight disadvantage when reviewing the records because I often lack the context for the discussions taking place in the record.⁴ However, this lack of institutional knowledge has forced me to focus on only the documents that demonstrate inappropriate behavior on their face. As a result, my opinions offered herein are based primarily on indisputable evidence contained in the documents rather than mere supposition or firsthand knowledge.

As I am not familiar with the Commission's work in general for WDFW, I was likewise unfamiliar with the Commission's Rules of Procedure (CRP) and the Open Public Meetings Act (OPMA), codified in chapter 42.30 RCW. In preparation for this review, I read both the 2021 and 2023 versions of the CRP and the OPMA and have a clear understanding of both.

II. IMPETUS FOR REVIEW

Although not instructed directly about whom the review should focus upon, the records made that conclusion rather obvious. With the termination of Commissioner Tim Ragen (Ragen), a review of his computer⁵ revealed potentially concerning conduct involving three other Commissioners. However, the most concerning behavior came from Lorna Smith (Smith) and Melanie Rowland (Rowland). Another reason for the review is clearly tied to a recent public records lawsuit that involves records discovered on the Ragen computer.

This memo and the conclusions contained herein will focus only upon Commissioners Smith and Rowland for the simple reason that their inappropriate conduct is most glaring in the records I reviewed.

III. QUESTION PRESENTED

⁴ I understand my review will most likely provide a new and fresh analysis of what the records contain, but at the same time, I encourage WDFW to give great weight to the opinions of those individuals who have reviewed these same records and may have more intimate knowledge about the inter-workings of the Commission than me.

⁵The review was conducted for the purpose of preserving records pursuant to WDFW's retention schedule.

Do the records contain instances of potential violations of the PRA, CRP, OPMA, and/or creating a conflict of interest or interfering with WDFW's mission?

IV. ANALYSIS

A. Failure to recognize the importance of records retention and PRA compliance

The understanding of records management, retention, and the PRA is rudimentary to all state employment, including appointed Commissioners working for the WDFW. To this end, the Commissioners receive specific training on these subjects from the Attorney General's Office. This training advises the participants that:

All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to ensure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. (RCW 40.14.020).

Also, they are instructed that "Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention period. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the applicable records committee." (WAC 434-662-040).

Not only is record retention important, but also the dissemination of said records in response to a public records request pursuant to RCW 42.56 *et seq.* The failure to fulfill a records request by wrongfully withholding a document can be severe. (See *Wade's Eastside Gun Shop, Inc. v. Dept. of Labor & Indus.*, 185 Wn.2d 270, 277, 372 P.3d 97 (2016), penalties can be assessed per page).

Here, Rowland fails to appreciate the importance of record retention and properly providing responsive records to WDFW concerning pending public record requests. For example, on November 18, 2022, during a Commission Meeting, Rowland claimed to have received a text on her phone regarding the meeting discussion. Thereafter, WDFW received a public records request for that one text message. When requested to provide that information, Rowland purposely delayed providing the needed response. She first claimed the text was deleted (a violation of RCW 40.14.020). Then she transcribed the text message. Transcribed electronic data fails to meet the requirements of WAC 434-662-040. Finally, after much resistance, she produced the electronic version of the text message once the Governor's Office demanded compliance. What could have been accomplished in a couple minutes, took about two months to complete. Rowland excused her behavior by claiming she did not fully understand the records and PRA training because it was training by "firehose."⁶

In September of 2023, WDFW received a public records request wherein the Commissioners would be most likely to have responsive records. This time, both Smith and Rowland delayed responding to the request. In fact, Rowland was recorded as stating she would not respond to the record request unless forced. Delaying responses and outright refusal to respond creates liability for WDFW and leaves assigned Assistant Attorney Generals little to no defenses before the court should it be necessary to defend WDFW in a public records lawsuit. Aside from the financial risk these Commissioners created for WDFW, their behavior reflects poorly on WDFW as a whole and the Governor's Office who appointed them. Fortunately, in the case described above, WDFW was able to provide installments of the records to the requester as WDFW worked through the internal conflict with its Commissioners. This conflict about providing responsive records is wholly unnecessary. The duty to respond is clearly outlined in statute and case law.

B. Litigation with Claire Davis and appearance of conflict

Claire Davis is an attorney licensed to practice law in Washington. Since 2017, Ms. Davis has continued to represent several private interest groups (Wild Fish Conservancy (WFC), Washington Wildlife First (WWF), and The Conservation Angler (TCA)), against the WDFW. In total, she has brought 12 lawsuits against WDFW. In 2023, Ms. Davis had five pending lawsuits against WDFW.

⁶ Email from Rowland dated January 31, 2023.

With the litigation history described above, Ms. Davis is certainly well known to WDFW and for that matter, to the Commission. In fact, the record demonstrates that Ms. Davis is extremely well connected to three Commissioners (Ragen, Rowland and Smith) because she corresponds directly⁷ with them and often through their private email accounts.⁸ Because of this apparent tight relationship, Ms. Davis apparently saw nothing wrong with inviting these three Commissioners to discuss with her and ask questions about a pending lawsuit she filed on behalf of WFC and TCA against WDFW.⁹ Not only does this type of communication appear to violate the Rules of Professional Conduct, but this communication appears to violate the CRP: namely (1) “maintain confidentiality of sensitive or privileged Commission business;” (2) “represent all citizens of the state, not constituents from a particular area or special interest;” and (3) “not engage in any activity which gives rise to a conflict of interest or appearance of conflict of interest as a Commission member.” The record does not show what was discussed about the pending lawsuit, but this type of communication is clearly inconsistent with the Commissioner’s CRP and seems to indicate they may be colluding with an opposing party to the detriment of WDFW. WDFW needs to be able to trust their Commissioners and know they can remain discreet with confidential information, but the foregoing example appears to be at odds with the trust aspect.

C. Meetings with special interest groups (possible collusion)

The CRP says the duty of a Commissioner is to “Represent all citizens of the state (who own the resource), not constituents from a particular area or special interest group.” This procedure appears to be clearly ignored when the calendars of Ragen, Rowland and Smith are reviewed. From early 2022 through 2023, these three Commissioners had 20 private meetings with the WWF, WFC and a few other animal rights interest groups. The common denominator in all these meetings was the presence of Claire Davis, the special interest groups’ attorney. Further, eight of these meetings occurred just prior to the regularly scheduled Commission Meetings. Although transcripts of what occurred during these private meetings are not available, it appears that the Commissioners may have been colluding with the special interest groups for

⁷ The record demonstrates that it was commonplace for this attorney to express her concerns or ideas directly to the Commissioners and this was discovered through documents obtained from Ragen’s computer.

⁸ Email from Davis to three Commissioners dated August 13, 2023.

⁹ August 13, 2023 email.

the purpose of propagating an “agenda” consistent with the private interest groups’ desires. At a minimum, these private meetings create an appearance of favoritism to those groups, and this is contrary to the role of a Commissioner pursuant to the CRP.

D. Excel spreadsheet and private advocacy by special interest groups (possible collusion)

The following discussion is based on the least direct evidence from the record, but in my opinion, it deserves mention. It provides yet again, another example of where Claire Davis has a direct line of communication to those Commissioners that seem sympathetic to her causes.

One of the documents discovered from Ragen’s computer and preserved by WDFW was an email from Claire Davis to Ragen that contained a link to an Excel spreadsheet. The author of the spreadsheet is not entirely clear and the purpose for which this document was made available to Ragen is also not clear. However, this document contained a list of past, current and future potential Commissioners. Additionally, the document divulged opinions, expressed by certain special interest groups and their counsel, about sitting Commissioners and potential replacements. The extent to which this document was shared with other Commissioners cannot be determined from the record, but it is reasonable to conclude it was shared with both Rowland and Smith since communications by Ms. Davis often included those individuals. The document on its face clearly lists who are the favorites within the Commission for specific interest groups. The reason Ms. Davis shared this document with Ragen cannot be entirely proven from the record, but it does seem to inform Commission members who received it, what individuals are more favorable to the small subset of special interest groups than others. At a minimum, the document seeks to provide private opinions to a select few Commissioners and maybe for the purpose of influencing future Commission votes. Again, this communication appears to create a conflict of interest and favor certain interest groups over others. This is in conflict with the CRP.

E. Use of personal emails/devices to communicate offline

The record is replete with examples where Ragen, Rowland, and Smith used personal emails and devices to conduct business for the Commission. Use of personal emails and devices to send and receive messages was not the exception, but a consistent way of doing business. When these methods of communication were used, they often included correspondence with Claire Davis or the special interest groups she represented and/or communications just between Ragen, Rowland, and Smith where they commiserate among themselves. This continued to occur even after the Commissioners were instructed not to use such devices. Having these communications outside work email and/or on other

electronic devices gives the impression that the Commissioners are not transparent about what is being performed for WDFW. For example, earlier I mentioned a public records request that came in because Rowland received a private text during the Commission Meeting.

Aside from the transparency concern, records management and the gathering of records responsive to public records requests become problematic when records come from personal emails and devices. WDFW must trust that the Commissioners are providing all relevant records from their personal accounts and devices when requested. In the past, and currently during a pending public records lawsuit filed in 2025, it is not entirely clear that Rowland and/or Smith have been forthcoming with their responsive records. As stated before, Rowland refused to provide records unless forced. This attitude regarding public records requests is simply inexcusable and flies in the face of the RCW 42.56 *et seq.*

Use of private email and devices to conduct WDFW business is a huge liability for WDFW. The risk could easily be rectified if only Rowland and Smith would be willing to follow direction. If WDFW unsuccessfully defends against a public records case where Commissioners are featured prominently, this outcome would reflect poorly on the agency as a whole and the Governor's Office since Commissioners are appointed.

F. OPMA and internal dispute about webinar

Pursuant to RCW 42.30 *et seq.*, the Commission needs to be cognizant of what events they attend together where their numbers consist of five (quorum) or more because in those circumstances the Commission could be considered transacting official business. Further, if the official action by the Commission is not properly advertised, the participating Commissioners are subject to civil liability.

In October 2023, Smith invited¹⁰ all her Commission colleagues to attend a Carnivore Panel webinar hosted by Adrian Treves, PhD., professor from the University of Wisconsin. The host advised that the panel was specifically created for the problems facing Washington and also encouraged the Commission to submit questions to the panelist in advance of the meeting so those questions could be fully answered during the webinar. Shortly thereafter, Smith and the other Commission members were discouraged from attending in a number greater than four and certainly advised not to participate in submitting questions because that could be deemed to violate the OPMA. Smith took exception to this

¹⁰ Smith invitation occurred through her personal email account.

opinion and advocated separately that the other Commission members attend. According to her position everyone could attend because the “. . . participants will not be visible to each other, no will names of attendees be visible (sic).”¹¹ Ultimately, less than five Commission members attended the webinar and the issue over it became moot.

There are two observations about the foregoing situation that are concerning. First, sound counsel was provided as to how to avoid a potential conflict with the OPMA, but that counsel was summarily rejected because interest about the webinar took precedence over the restrictions of the law. In other words, to Smith, the end justified the means. This is particularly troubling because all Commissioners are bound to uphold the terms and conditions of the CRP and the OPMA, regardless of personal opinion. In fact, the OPMA imposes monetary sanctions for violations, despite what may have amounted to good intentions. Smith’s objection to wise counsel regarding the webinar event shows a lack of judgment on her part. The second fact that jumps off the page to me is Smith’s assertion that all Commission members can attend without violating the OPMA because they are not visible on the webinar. This is simply dishonest behavior. It makes no difference whether the Commission members can be seen or not, the point is that if more than five attend, this could be considered official business action. A Commissioner should always be above reproach, even when nobody is thought to be looking. Based on Smith’s analysis above, I wonder in what other ways she has bent procedure and/or laws to fit her perception of justifiable conduct. Quite possibly, she may have also stretched the truth about her responses regarding public record requests.

G. Compensation for time worked

The compensation requests submitted by Smith for work allegedly performed for WDFW appears to be suspicious. I reviewed a packet of payment requests from January 2024 through February 2025, and it shows she claimed payment for work performed every day during that time except for Christmas, New Years, and five other days. This seems unrealistic, especially since the Commission job is not meant to provide full-time employment. The completeness of the payment request records are unknown, but on their face, the billing claims seems unreasonable. This issue should be reviewed further.

¹¹ Email from Smith dated October 17, 2023.

V. SUMMARY AND CONCLUSION

The foregoing observations and conclusions best summarize the two boxes of records that I reviewed. There is no question in my mind that Commissioners Rowland and Smith present serious risks to WDFW in terms of failure to fully abide by the CRP, especially when it comes to avoiding a conflict of interest and favoritism to the special interest groups represented by Claire Davis. From the record, it appears as though Ms. Davis and the Commissioners have each other on speed dial. For example, as mentioned before, there is a pattern of special interest group meetings consistently occurring just prior to Commission Meetings. Further, the number of personal emails exchanged between the group (Ragen, Rowland, Smith, and Claire Davis) is a problem, especially when it involves current litigation against WDFW. Additionally, the resistance to providing records pursuant to a public records request in conjunction with those records coming from personal accounts and devices is particularly problematic. Also, Smith's belief that she can engage in activity that may be unlawful, so long as that activity is not observed cuts directly against the expectation WDFW should have for their Commission Members: each of them should be above all, honest and trustworthy.

Based on the contents contained herein, you may want to advise the Governor's Office accordingly. Moving forward, he may want to consider what options are available to him pursuant to RCW 43.06.070 through RCW 43.06.090. I would also encourage the Governor's Office to review any and all other documentation relevant to the Commissioners' actions for the above described time period. Such documentation may have further constructive guidance and firsthand information to resolve my concerns identified above.

Thank you for your attention.