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# **State group says Mura's open records ruling 'inexplicable'**

By David Seago

Whatcom County Superior Court Judge Steve Mura has grievously and wrongly undermined the public's right to know by ordering destruction of a public document held by the city of Bellingham.

Earlier this month, a city engineering report on a troubled, much-delayed reconstruction project at city-owned Martin Field just disappeared. Bellingham city officials destroyed - erased from history - a document that was clearly a legitimate public record.

This was done at Judge Mura's instruction.

To open-government advocates, Mura's ruling is inexplicable and astonishing. It is an insult to the citizens of Bellingham, who have a right to know how city officials badly bungled a reconstruction project at city-owned Martin Field. It is an insult to the citizens of Washington, who expect legitimate public records to stay public.

Mura's ruling, made last month, demonstrates little understanding of the state's Public Records Act. Along with the Open Public Meetings Act, the open-records law is one of the twin pillars assuring open government in Washington. It was enacted by citizen initiative in 1972 with over 72 percent approval.

Thus the Washington Coalition for Open Government is compelled to add a loud "amen" to The Bellingham Herald's Nov. 14 editorial chastising Judge Mura for his misguided, disturbing decision.

The document in question is a contractor performance report written by Gina Gobo, a project engineer for Bellingham's parks and recreation department.

The report detailed the department's justification, in April 2007, for terminating its contract with Matia Contractors for the ballfield reconstruction work, on grounds that Matia had failed to live up to terms of its contract. The city aimed to bill Matia for the costs of finishing the job correctly.

Matia exercised its right to seek arbitration. In July, an arbitrator issued a slam-dunk victory for Matia. He concluded that the performance report "grossly, falsely and unfairly denigrates the plaintiff's performance". He ordered the city to pay Matia \$240,000 and legal costs, and ordered the engineering report destroyed.

Such strong language was a devastating rebuke to the city. The arbitrator clearly believed the report was done in such bad faith that it deserved to be erased from the public record, so that it could do no further harm.

The arbitrator, Seattle attorney J. Richard Manning, may have had good intentions. But he had no legal authority to order destruction of a public document.

Tim Ford, open-government ombudsman for the state attorney general's office, told WCOG that his general conclusion is that "an arbitrator lacks authority to order an agency to withhold or destroy public records in violation of the Public Records Act."

Arbitrators can act to protect confidential information such as trade secrets, but the city's performance report was nothing of the kind. Even Manning noted that the report was prepared "for the public record."

So the arbitrator was wrong. But Judge Mura, who should have known better, compounded the error. When The Herald filed a public records request for the performance report last summer, the city and Matia went to court asking for a ruling.

Attorneys for Matia insisted the document should be destroyed. The city put up no resistance; of course it was happy to have the discredited report disappear.

Mura bought the argument by Matia's attorney that nothing in the Public Records Act says he couldn't order it destroyed.

That argument is preposterous. In certain exceptional cases, judges may order records sealed. But they can't order public records destroyed.

Even to order public records merely withheld, judges must cite specific exemptions provided in the Public Records Act. Mura cited none.

It is terribly unfortunate but understandable that The Herald choose not to continue an expensive court battle. We'd say the ruling sets a horrible precedent - except that the ruling is so obviously wrongheaded that we doubt it will set a precedent.

The city says it destroyed the performance report on Nov. 9, in compliance with Mura's order. It is not clear now how the order can be challenged.

But the citizens of Bellingham and Whatcom County have been served notice on two fronts: They have a Superior Court judge who woefully misreads the state's Public Records Act; and they have a City Council that should be investigating the performance of its own parks department.

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