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SUPREME COURT
STATE OF WASHINGTON
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NO. 101464-3

SUPREME COURT OF THE STATE OF WASHINGTON

ERIC HOOD, an individual,

Appellant,

v.

CENTRALIA COLLEGE, a public agency,

Respondent.

RESPONDENT CENTRALIA COLLEGE'S ANSWER TO APPELLANTS' MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

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Rules

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RAP 9.11(a)(1) 2

I. INTRODUCTION

This Court should deny the Motion for Additional Evidence on Review (Motion). The underlying issue in this case is the appropriateness of Centralia College's (College) response to a public records request. The additional evidence the Appellant seeks to introduce is evidence that occurred in a public records request exchange with an entirely different government entity (City of Asotin), well after the events in this matter, and have no relevance to the underlying issue in this case. For these reasons, RAP 9.11 is not satisfied and the motion should be denied.

II. FACTS RELEVANT TO THIS MOTION

For purposes of this motion response, the College does not dispute the facts asserted by Appellant.

III. ARGUMENT

The Motion should be denied because the facts do not satisfy the standard for consideration of additional evidence pursuant to RAP 9.11(a). Allowing new evidence on appeal is an

extraordinary remedy. *See, East Fork Hills Rural Ass'n v. Clark County*, 92 Wn. App. 838, 845, 965 P.2d 650 (1998), *as amended* (Nov. 13, 1998). Each of the six RAP 9.11 requirements must be met. *See, In re Recall Charges Against Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003) (*en banc*). The Appellant only asserts the first two of six requirements are satisfied, and for this reason alone the Motion should be denied. However, assuming arguendo the Appellant had asserted all six requirements were satisfied, the Motion still has two independently fatal flaws: first, additional facts are not necessary to fairly resolve the issue on review and would not change the outcome; and second, it would not be inequitable to decide the case solely on the evidence already taken in the trial court.

The first fatal flaw in the Motion is that the proposed evidence is not relevant to the issue on review. As a result, the evidence is not "needed to fairly resolve the issue" and would not "probably change the decision being reviewed." RAP 9.11(a)(1), (2). The issue on review is the appropriateness

of the College's response to a public records request. *See, e.g., Neighborhood All. of Spokane Cnty. v. Spokane County*, 172 Wn.2d 702, 719–20, 261 P.3d 119 (2011). The response of a different government agency to a different request by Appellant is not relevant to the analysis of the College's actions in this case, and would not impact the outcome here. For these reasons alone, the Motion fails to meet RAP 9.11(a)(1) and (2), and should be denied.

The second fatal flaw is that there exists enough evidence in the record to show that the College responded adequately to Appellant's request. The trial court stated the evidentiary basis for its decision in its ruling, citing to the reasons as to why the College's response was adequate. *See* Appendix 1, pg. 3. The record contains these statements, as well as several affidavits and hundreds of pages of supporting documentation and related information, which are sufficient to support the finding that the College conducted a statutorily adequate response. For this

reason alone, the Motion fails to meet RAP 9.11(a)(6) and should be denied.

IV. CONCLUSION

Appellant has asserted that a City of Asotin attorney's passing reference to the Division II Court of Appeals decision merits further consideration by the Court. There is nothing about this information that would affect the analysis of the present case before the court. Here, the case turns upon the reasonableness of the College's search and response to Appellant's public records request. The City of Asotin's passing discussion of the lower court's decision is not relevant and should be ignored. The Appellant's Motion has failed to meet the requirements of RAP 9.11(a)(1), (2), and (6). Therefore, the College respectfully requests that the Court deny the extraordinary remedy of allowing new evidence if this case is accepted for review.

CERTIFICATE OF COMPLIANCE

I certify that this Answer contains 631 words, in compliance with RAP 18.17(b).

RESPECTFULLY SUBMITTED this 28th day of November 2022.

ROBERT W. FERGUSON
Attorney General

/s/ Sharon English, WSBA # 37652 for
JUSTIN KJOLSETH, WSBA # 46859
Assistant Attorney General
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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be served via electronic mail on the following:

Eric Hood, *pro se*
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 28th day of November 2022, at Olympia, Washington.

/s/ Sharon English, WSBA # 37652 for
JUSTIN KJOLSETH, WSBA # 46859
Assistant Attorney General

ATTORNEY GENERAL'S OFFICE-EDUCATION DIVISION

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Transmittal Information

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Respondent.

APPENDIX TO RESPONDENT CENTRALIA COLLEGE'S ANSWER TO APPELLANTS' MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

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Supreme Court Case No. 101464-3

APPENDIX TO RESPONDENT CENTRALIA COLLEGE'S ANSWER TO APPELLANTS' MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

Appendix Number	Description	Pages
1	Order on Merits (Public Records Act) Dated July 23, 2021	1-4

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be served via electronic mail on the following:

Eric Hood, *pro se*
5256 Foxglove Lane
P.O. Box 1547
Langley, WA 98260
ericfence@yahoo.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 28th day of November 2022, at Olympia, Washington.

/s/Sharon English, WSBA # 37652 for
JUSTIN KJOLSETH, WSBA # 46859
Assistant Attorney General

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20-2-02234-34
ORDSMWP 70
Order of Dismissal With Prejudice
10719200

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Thurston County Clerk

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

ERIC HOOD, Plaintiff, v. CENTRALIA COLLEGE, Defendant.	NO. 20-2-02234-34 ~~[PROPOSED]~~ ORDER ON THE MERITS **PUBLIC RECORDS ACT**

msw

THIS MATTER came before the Court on June 25, 2021, at a merits hearing on Plaintiff's Complaint alleging Defendant, Centralia College (College), violated RCW 42.56, the Public Records Act (PRA).

The Court, having heard the arguments of Plaintiff, *pro se*, and of counsel for the College, and having reviewed the case file and all of the pleadings, the Court hereby enters the following:

I. FINDINGS OF FACT

1. On or about September 23, 2019, Plaintiff sent a public records request to the College, stating: "I learned that your organization was recently audited by the state auditor. May I have all records it got from the auditor and all records of any response to the audit or to the audit report?";

2. The College responded the same day and asked if Hood's request referred to the Financial Audit for 2018. Hood confirmed that his request referred to the Financial Audit for 2018 that resulted in Report No. 102348;

msw

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1 3. The College conducted a search described in the Declaration of Julie Huss. The
2 College identified relevant College employees who might have responsive records, including the
3 Financial Services Director for the College and an accountant who had worked with the SAO on
4 the audit and worked with those employees to identify responsive records;

5 4. On October 8, 2019, the College provided links to two documents, Audit Reports,
6 that it identified as responsive. The College told Plaintiff that it interpreted his request as "asking
7 for," in addition to the Audit Reports, "the management letter issued by the state auditor's office,
8 and emails in response to the management letter." It told him the cost of the documents would
9 be $1.80 and stated, "[I]f this is not what you are requesting, please let me know";

10 5. The same day, Plaintiff responded: "I am not sure what is ambiguous. Are the
11 documents you mentioned the only ones you received from the auditor? And do you have any
12 responses to the audit or the audit report?";

13 6. The same day, the College responded by further describing some of the
14 documents it had already assembled and others that it determined would likely be responsive to
15 the audit and audit report, including an email string about the draft management letter,
16 scheduling the exit interview, and the final management letter. The College also clarified, "At
17 the start of the audit process, the auditor sends an engagement letter which initiates the audit
18 process. I believe there are emails about scheduling meetings for the auditors to do the audit
19 process. I don't have a count as to how many documents fall into this category yet. I am trying
20 to frame search parameters based on what I understand you are asking for and see what is
21 responsive";

22 7. Plaintiff responded: "Thanks for the info. I am most interested in records showing
23 the City's [sic] response to the audit. Since I don't know what [sic] how it responded, I don't
24 know how I can be clearer";

25 8. On October 9, 2021, the College stated, "Sounds good. The management letter
26 and the emails back and forth about the management letter are in that $1.80 bundle"; and

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1 9. Plaintiff paid the processing fees and the College provided the described records.
2 After that, the College received no communication from the Plaintiff until the Complaint in this
3 matter was filed.

4 **II. CONCLUSIONS OF LAW**

5 1. An agency has an obligation to conduct a search reasonably calculated to produce
6 the records sought by the requestor. In assessing the adequacy of a search, the focus of the inquiry
7 is not whether responsive documents do in fact exist, but whether the search itself was adequate.
8 *Neighborhood All. of Spokane Cnty. v. Spokane Cnty.*, 172 Wn.2d 702, 719-20, 261 P.3d
9 119 (2011).

10 2. The Plaintiff identified and described documents with sufficient clarity to
11 constitute a valid request for public records but the scope of his unchanged request, which the
12 College tried to determine, was open to subjective interpretation. Although the College could
13 have been more clear, the College sought clarification by describing the documents it had
14 searched for and asking Plaintiff to indicate if he wanted additional documents, but Plaintiff did
15 not follow up with specifics.

16 3. Based on the College's communications with Plaintiff, the College reasonably
17 understood Plaintiff to be seeking the records it described to him on October 8, 2019, and later
18 provided, including the College's informal and formal response to the audit report and
19 management letter. The College's search was therefore reasonably calculated to identify all
20 responsive records, and adequate under the Public Records Act.

21 4. Plaintiff is not entitled to penalties under RCW 42.56.550(4), as no denial or
22 withholding of records has taken place.

23 5. The College has not violated the PRA; thus, Plaintiff is not entitled to an award
24 of costs or attorney's fees under RCW 42.56.550(4).

25

26

MJW

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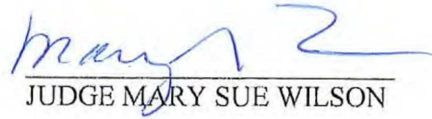
III. ORDER

It is hereby ORDERED THAT the Plaintiff's claims are dismissed with prejudice.

DATED this 23 day of July 2021.



JUDGE MARY SUE WILSON

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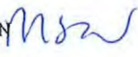

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