NO. 101464-3

SUPREME COURT OF THE STATE OF WASHINGTON

ERIC HOOD, an individual,

Petitioner,

v.

CENTRALIA COLLEGE, a public agency,

Respondent.

RESPONDENT CENTRALIA COLLEGE'S ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

JUSTIN KJOLSETH, WSBA # 46859
Assistant Attorney General
OID No. 91035
P. O. Box 40100
Olympia, WA 98504-0100
(360) 586-0727
Justin.Kjolseth@atg.wa.gov

Attorney for Centralia College

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I. INTRODUCTION

In 2019, Centralia College received an ambiguous public records request for nondescript, broad categories of records and immediately contacted the requester to seek clarification. Based on a series of e-mail exchanges, the College reasonably concluded that it had correctly identified the scope of the request and conducted a reasonable search, then promptly disclosed the responsive records to Petitioner, Eric Hood. The College communicated its interpretation clearly. Mr. Hood's responses to requests for clarification confirmed the College's interpretation of his ambiguous request. After delivering the documents to Mr. Hood, the College did not hear from him again until roughly a year later, when he filed his pro se Public Records Act lawsuit just before expiration of the statute of limitations.

The unpublished Court of Appeals decision correctly applied well-established public records case law when it held the College properly requested clarification, conducted a search reasonably calculated to uncover the responsive records, and did

not violate the Public Records Act. The Court of Appeals decision is consistent with longstanding case law requiring that agencies respond to requests for identifiable records, bear the burden of establishing that a search is adequate, and justify any withholdings or redactions. Mr. Hood's disagreement with the application of those long-established precedents to these specific facts does not present an issue of substantial public interest. This Court should deny review.

II. COUNTER-STATEMENT OF ISSUES[1]

1. Did the Court of Appeals properly apply public records case law when it held that the College reasonably interpreted Mr. Hood's clarifying communications, conducted a search reasonably calculated to uncover the records sought, and provided the records to Mr. Hood?

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[1] Mr. Hood's petition does not seek review of the Court of Appeals' rejection of his argument related to the College's estimate of time. *Hood v. Centralia College*, 23 Wn. App. 2d 1003, 2022 WL 3043208, at *10 (Wash. Ct. App. Aug. 2, 2022). (unpublished)

2. Did the Court of Appeals properly apply public records case law when it held that Mr. Hood is not entitled to attorney's fees when he is not a prevailing party, not an attorney, and where there is no evidence that attorney's fees are connected to the litigation?

III. COUNTER-STATEMENT OF THE CASE

A. The College's Response To Hood's Public Records Request

In September 2019, Mr. Hood made a public records request to Centralia College's public records e-mail address. The initial request stated: "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?" CP 307. The Public Records Officer, Julie Huss, promptly responded the same day, asking for clarification about which audit he was referencing in his request. CP 306. Mr. Hood indicated that he was asking for records associated with a 2018 audit. *Id*.

As Ms. Huss worked on the request, she again reached out to Mr. Hood to provide links to two documents she thought were responsive and to inform him of her understanding of the scope of his request. At the end of her message, she asked for him to let her know if he wanted additional documents. She stated:

> Your request is a little big [sic] ambiguous. I have interpreted it to mean you are asking for the Audit Report (attached/linked above), the management letter issued by the state auditor's office, and emails in response to the management letter. The cost for the documents not included in this email is $1.80. [I]f this is not what you are requesting, please let me know.

CP 305. Mr. Hood's response to this inquiry was as follows: "I am not sure what is ambiguous. Are the documents you mentioned the only ones you received from the auditor? And do you have any responses to the audit or the audit report?" *Id*. In a further effort to clarify what records he was requesting, Ms. Huss replied:

> There is an email with a draft management letter attached. There is an email string about the draft management letter talking about the items in the draft and scheduling the exit interview from the

> audit and the final management letter. These are the documents that make up that $1.80 cost.
>
> At the start of the audit process, the auditor sends an engagement letter which initiates the audit process. I believe there are emails about scheduling meetings for the auditors to do the audit process. I don't have a count as to how many documents fall into this category yet.
>
> I am trying to frame search parameters based on what I understand you are asking for and see what is responsive.

CP 304–05. Mr. Hood answered: "Thanks for the info. I am most interested in records showing the City's [sic] response to the audit. Since I don't know what [sic] how it responded, I don't know how I can be clearer." CP 304. Ms. Huss interpreted this statement as an indication that Mr. Hood wanted the communications showing the College's informal and formal response to the audit report and management letter, which she understood as the intended meaning of the term "response to the audit" in Mr. Hood's e-mail. CP 230.

Once Ms. Huss reached this understanding of Mr. Hood's request, she identified the relevant College employees who might

have responsive records. CP 230–31. Ms. Huss worked with College employees to identify the College's response to the audit report and management letter. CP 231, 208. After reviewing the records with both employees, Ms. Huss determined that she had assembled all of the documents responsive to Mr. Hood's request. CP 232.

Ms. Huss then informed Mr. Hood that the responsive records would cost $1.80 in processing fees on October 9, 2019. Mr. Hood paid the records fee, received the responsive records, and did not state that he disagreed with the Colleges' stated understanding of his request or was dissatisfied with the College's response until he filed a lawsuit in this nearly a year later, just before expiration of the one-year statute of limitations. *Id*.

B. Procedural History

In late October 2020, Mr. Hood, filed a pro se lawsuit against the College alleging violations of the PRA. CP 1–6. In the course of discovery for that lawsuit, Mr. Hood issued a

document request that was significantly broader than his original public records request. CP 120–21. In a discovery conference, the scope of the request was further broadened. CP 82.

In response to the broad discovery request, the College conducted a wide-ranging search of all documents to or from the State Auditor's Office between September 2018 and mid-March 2019, which captured records unrelated to the 2018 audit about which Mr. Hood had requested records. CP 226. The response to the discovery request included over 2,500 pages of e-mails and attachments, most of which had nothing to do with the audit that was the subject of Mr. Hood's public records request. CP 220, 226.

The College moved for summary judgment. The Superior Court granted summary judgment in favor of the College, holding that it met its PRA obligations. CP 335–38. The Court found that Hood's public records request was open to multiple, subjective interpretations. CP 337. The Court found that the College reasonably interpreted and otherwise adequately

responded to Mr. Hood's public records request. *Id*. On appeal, Division II issued an unpublished opinion affirming the Superior Court's decision, applying well-settled case law on the issues of seeking clarification to a public records request, adequately searching for public records, and denying attorney fees to a party who does not prevail. *Hood*, 2022 WL 3043208. Mr. Hood now seeks review of that unpublished decision.

IV. REASONS WHY REVIEW SHOULD BE DENIED

The trial court and the Court of Appeals correctly applied appellate decisions that recognize an agency's right to seek clarification of a public records request and require an agency to conduct a search reasonably calculated to uncover the responsive records. Mr. Hood does not identify any conflict that allows for review under RAP 13.4(b)(1) or (2).

A. The Court of Appeals Decision Is Consistent with Established Public Records Act Case Law

The Court of Appeals applied well-established principles. Consistent with—and expressly relying upon—*Neighborhood Alliance of Spokane Cnty* and *Bonamy*, the Court of Appeals

applied the settled principle that agencies may seek clarification of PRA requests. *Hood,* 2022 WL 3043208 at **8–10. Consistent with—and expressly relying upon—*Block* and *Neighborhood Alliance of Spokane Cnty*, the Court of Appeals held the College to its burden of showing that the search was adequate and affirmed the trial court's findings that the agency's search was reasonable. *Hood*, 2022 WL 3043208 at **10–13; *Block v. City of Gold Bar*, 189 Wn. App. 262, 355 P.3d 266 (2015), *review denied*, 184 Wn.2d 1037, 379 P.3d 951 (2016). There is no conflict that would justify review.

1. The Court of Appeals decision is consistent with appellate decisions regarding an agency's ability to request clarification under the Public Records Act

The Court of Appeals properly and reasonably determined that Hood's request was sufficiently ambiguous to warrant further clarifying conversations. It is well established that, under RCW 42.56.520, agencies may seek clarification of PRA requests. *E.g.*, *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012, 978 P.2d

1099 (1999); *Kleven v. City of Des Moines*, 111 Wn. App. 284, 294, 44 P.3d 887 (2002), *recons*. *denied* (2022). In fact, an agency that is "unclear about what was requested, . . . [is] *required* to seek clarification." *Neighborhood Alliance of Spokane Cnty. v. Spokane County*, 172 Wn.2d 702, 727, 261 P.3d 119 (2011) (emphasis added).

In the present case, the Court of Appeals decision falls in line with *Kleven* and *Bonamy*. Given the request's ambiguity, the College was more than justified in following-up with Mr. Hood to determine the scope of the search. In those clarifying communications, Ms. Huss specifically identified the documents she thought were within the scope of the request and asked Mr. Hood to let her know if he was asking for something different. CP 305. His response did not initially indicate whether those documents were all that he wanted, but, after a second attempt at clarification, Mr. Hood clarified that his interest was focused on records relating to the College's response to the audit. CP 304.

The Court of Appeals here engaged in the routine task of applying settled law about clarification of PRA requests to Mr. Hood's case. Under that unchallenged precedent, the Court of Appeals concluded that the College properly sought clarification and structured its search around that clarification.

Mr. Hood relies on an unpublished Court of Appeals decision to attempt to establish a conflict between the Court of Appeals' application of the law in this case and applications in other cases. Petition at p. 25 (citing *Strahm v. Snohomish County*, 12 Wn. App. 2d 1068, 2020 WL 1644353 (Wash. Ct. App. Mar. 23, 2020) (unpublished)). Even if there were an inconsistency, it would not justify review under RAP 13.4(b)(2), which applies only to conflict "with a *published* decision of the Court of Appeals." (Emphasis added.) And there is no inconsistency. *Strahm* is easily distinguishable here, because in that case there was no back-and-forth clarifying conversation with the requester to narrow down the potentially responsive records, unlike this case. 2020 WL 1644353, at *11.

2. The Court of Appeals decision is consistent with appellate decisions regarding agency obligations to search for records under the Public Records Act

The Court of Appeals also applied the long-established principle that agencies must conduct a search reasonably calculated to produce the records sought by the requestor, and to disclose those records to the requestor. *Hood*, 2022 WL 3043208 at **10–13. The focus is not whether responsive documents in fact exist, but whether the search itself was adequate. *Neighborhood Alliance of Spokane Cnty*, 172 Wn.2d at 719–20; *see also Hobbs v. State*, 183 Wn. App. 925, 944, 335 P.3d 1004 (2014) ("[W]e inquire into the scope of the agency's search as a whole and whether that search was reasonable, not whether the requester has presented alternatives that he believes would have more accurately produced the records he requested."). The burden of establishing that the search was adequate is on the agency. *Neighborhood Alliance of Spokane Cnty*, 172 Wn.2d at 721.

The Court of Appeals properly applied longstanding precedent when it concluded that the College conducted an adequate search for responsive records. The Court of Appeals relied on *Neighborhood Alliance*, *Kleven*, and *Block. Hood,* 2022 WL 3043208, at **10–12.

Applying those cases, the Court of Appeals correctly affirmed summary judgment. The College satisfied its burden on summary judgment through affidavits from several employees, including Marla Miller, Samuel Small, and Julie Huss.[2] CP 207–307. Those affidavits demonstrate that, after determining the scope of the search, Ms. Huss worked with these employees to ensure that the responsive documents were provided. After determining the scope of the search, Ms. Huss worked with these employees. CP 230-31. Ms. Huss consulted with them regularly during the search process to ensure they were providing the appropriate records. CP 208, 231. The employees

[2] Ms. Schierman was no longer employed with the College during the course of this litigation. CP 94.

searched their electronic and physical records and produced 68 pages of responsive records that were provided to Mr. Hood, including e-mails. CP 235–303.

Mr. Hood does not identify any conflict between the Court of Appeals' application of the standard in this case and any other published appellate decision. Mr. Hood's Petition relies heavily on *West v. City of Tacoma*, 12 Wn. App. 2d 45, 456 P.3d 894 (2020), but *West* is readily distinguishable on two grounds. First, in this case the College had a clarifying conversation with Mr. Hood that informed the scope of its search. CP 304–05. No such clarifying conversation took place in *West.* Second, unlike the City of Tacoma in *West*, here the College did search for e-mails, as detailed in the affidavits submitted by College employees. CP 207–307. In *West*, the City of Tacoma entirely failed to search for e-mails. 12 Wn. App. 2d at 80–81.

Similarly, this case is readily distinguishable from the unpublished decision in *Banks v. City of Tacoma,* 17 Wn. App. 2d 1064, 2021 WL 2229038 (Wash. Ct. App. Jun. 2, 2021)

(unpublished). In *Banks*, and unlike here, there was no clarifying conversation with the requesters about the meaning of the request or the desirability of specific sets of records. *Id*. at *2.

Likewise, the Court of Appeals decision in this matter does not conflict with *Cantu v. Yakima School District No. 7*, 23 Wn. App. 2d 57, 514 P.3d 57 (2022). *Cantu* stands for the proposition that, if a request is ambiguous, "it is incumbent upon the [agency] to clarify that ambiguity." *Cantu*, 23 Wn. App. 2d at 99. That is precisely what the College did here. CP 304–05.

The *O'Dea* case is distinguishable because here, the College provided the additional documents immediately upon finding them in discovery. *See O'Dea v. City of Tacoma,* 19 Wn. App. 2d 67, 82, 493 P.3d 1245 (2021); Petition at p. 29. Where *O'Dea* involved the withholding of records that were known to the agency, no such withholding of known records took place in this case. Hood cites to *Yousoufian* but never explains how it conflicts with the Court of Appeals decision in this case. Petition at pp. 20, 22.

The Court of Appeals applied the correct public records case law when it concluded the College conducted an adequate search. Hood has not established any conflict warranting review under RAP 13.4(b)(1) or (2).

B. The Denial of Attorney Fees To a Non-Prevailing Pro Se Public Records Litigant Aligns with Decisions of This Court

The Court of Appeals properly determined that Mr. Hood was not entitled to costs and attorney's fees. The PRA provides for the award of costs and attorneys' fees to a prevailing party against a state agency. RCW 42.56.550(4). The denial of attorneys' fees to a person who is neither a prevailing party nor an attorney does not conflict with any published appellate decision.

The cases cited by Mr. Hood each involved a prevailing party public records requester who was represented by an attorney, and therefore, entitled to attorney's fees on a statutory basis. *See* Petition at pp. 30–31. *Spokane Research and Def. Fund v. City of Spokane*, 155 Wn. 2d 89, 99,104, 117 P.3d

1117 (2005); *Amren v. City of Kalama*, 131 Wn.2d 25, 35–36, 929 P.2d 389 (1997). They do not establish a conflict.

C. This Case Does Not Present an Issue of Substantial Public Interest

The Court of Appeals decision in this case is a fact-specific application of well-settled law. While those well-settled legal principles are important, Mr. Hood does not seek review of a change to those rules, but review of their case-specific application. Mr. Hood's disagreement with the application of settled law to the facts of this case does not justify review under RAP 13.4(b)(4).

In arguing that this case involves issues of substantial public interest, Mr. Hood misreads the Court of Appeals decision. Contrary to Mr. Hood's suggestion, the Court of Appeals' decision does not allow agencies to withhold records by narrowly interpreting broad requests. Petition at p. 32. It simply recognizes that agencies may seek clarification, and clarification occurred in this case. CP 304–05. Nor does the Court of Appeals decision somehow limit the ability of litigants

to recover costs associated with litigation. Petition at pp. 40–41. It simply gives effect to the plain language of the statute that fees are available only for "prevailing parties" and "attorneys." *Hood*, 2022 WL 3043208, at *14. Finally, the Court of Appeals decision does not implicate the transparency of public audits. Petition at pp. 34–36. It is undisputed that agency records, including State Auditor's Office records, are public records. It is also undisputed that under the PRA, "[a]n agency must disclose responsive public records 'unless the record falls within the specific exemptions of [the PRA] . . . or other statute.'" *Kittitas County v. Allphin*, 190 Wn.2d 691, 701, 416 P.3d 1232 (2018), *as amended* (June 18, 2018) (quoting RCW 42.56.070(1)). The College did not argue, and the Court of Appeals did not hold, that audit records are exempt from public disclosure. The Court of Appeals simply upheld an agency's decision to request clarification and then conduct a reasonable records search based on that clarification; it did not reduce the public's access to agency audit records. Mr. Hood's Petition should be denied.

V. CONCLUSION

This Court should deny Mr. Hood's Petition for Review.

CERTIFICATE OF COMPLIANCE

I certify that this Answer contains 3120 words, excluding the parts of the document exempted from the word count in compliance with RAP 18.17(b).

RESPECTFULLY SUBMITTED this 3rd day of January 2023.

ROBERT W. FERGUSON
Attorney General

/s/ Justin Kjolseth
JUSTIN KJOLSETH, WSBA # 46859
Assistant Attorney General
Justin.Kjolseth@atg.wa.gov
Attorney for Centralia College

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's electronic filing system, which will serve a copy of this document to:

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 3rd day of January 2023, at Olympia, Washington.

/s/ Justin Kjolseth
JUSTIN KJOLSETH, WSBA # 46859
Assistant Attorney General

ATTORNEY GENERAL'S OFFICE-EDUCATION DIVISION

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