No. 89546-5

(Court of Appeals No. 681630)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ANNE BLOCK,

Petitioner

v.

CITY OF GOLD BAR,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Anne Block moves this Court for review of the Court of Appeals' decision in *Block v. Gold Bar,* _____Wash. App. Div. I _____ *See* Appendix A.

B. COURT OF APPEALS DECISION

Block v. Gold Bar decision allows an agency to hold Ex-Parte hearings without providing notice *and* meaningful opportunity to be heard, rewrites Washington State Court Rule 45, and places the burden on the requester, and violates basic provisions of the 14th Amendment to United States Constitution.

Block v. Gold Bar was filed on November 6, 2011. The Respondent files this timely motion for discretionary review. Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in ruling that a CR 45 Subpoena can be Served Electronically and Does Not Have to Comport to Washington State Court Rule 45 mandating a subpoena must be physically served?

2. Whether a Court that Receives a Notice of Unavailability prior to An Agency Filing a Motion to Compel Must Afford a Citizen with Notice *and* a Meaningful Opportunity to Be Heard?

3. Whether an agency must provide a requester with notice and a meaningful opportunity to be heard prior to any hearing?

D. STATEMENT OF THE CASE

1. Introduction

Basic constitutional principles are at stake in this case and are not only necessary to a sustain a free democratic and open government here in Washington but are basic fundamental guaranteed rights secured under Washington and the United States Constitutions: (1) the fundamental right of the public to know the workings of their government through public records requests made under the Public Disclosure Act, RCW 42.17.250, et seq.,; and (2) the right of a citizen to be afforded notice *and* a meaningful opportunity to be heard prior to any judgment entered into the record. This case reflects the ongoing struggle between a Washington citizen who sought access to public records pursuant to RCW 42.56, and the agency's long history of attacking a citizen instead of disclosing records it alone possesses, maintains, and controls.

This Petition assumes, but does not require, familiarity with the descriptions of the history of this case which appear in the Briefs on the merits. This is based on Petitioner's understanding that, under the Court's current practice, any Justice reviewing this Petition will have access to the Briefs.

Washington State's Const. mandates due process of law, which guarantees a citizen a right to be provided notice *and* a meaningful opportunity to be heard. It is a two pronged-analysis. Accordingly, this High Court should examine the following issues: (1) whether or not a citizen who must be afforded notice of a hearing *and* a meaningful opportunity to be heard prior to deprivation of life, liberty or property pursuant to the 14th Amendment and WA Const. Art 1, § 3.; (2) whether a citizen's fundamental due process rights were violated when an agency served a CR 45 subpoena electronically instead of pursuant to CR 45 which mandates physical service; (3) Whether or not an agency can have a Motion to Compel heard *only after* a citizen files a Notice of Unavailability of Record; (4) Whether or not a judgment entered without notice *and* an opportunity to be heard must be void; and (5) Whether a Motion to Strike Pursuant to Washington State's Anti-SLAPP Legislation can be heard regardless of when in the process filed.

In this case, the evidence clearly documented that Petitioner Block filed a Notice of Unavailability with the trial court and Gold Bar's City attorney Margaret King (King). But instead of candid professional conduct, City of Gold Bar's attorney King used Block's father's terminal state as an opportunity to file what amounts to a Strategic Suit Against Public Participation (SLAPP) mainly because the public records request

Petitioner Block sought records which would have exposed the City's law firm was billing the taxpayers of Gold Bar for services rendered to a non-client, Eastside Computers. King refused to produce Gold Bar's IT contractor Eastside Computers for deposition, claiming that he was not her witness but then later noted in a letter in another matter that Eastside was her witness. Eastside is the City of Gold Bar's contractor who collected and sorted the City's public records for the last four years. The City of Gold Bar and Kenyon Disend as of today has refused to release public records relating to King's representation of Eastside Computers, in violation of RCW 42.56.

2. Factual and Procedural History

Pro Se Petitioner Anne Block is a resident of and pays taxes in the City of Gold Bar, located in Snohomish County, Washington. Petitioner Block sent a public records request to the City of Gold Bar seeking access to records implicating the City's law firm in using taxpayer monies to assist a non-client, Eastside Computers (Eastside). Instead of the City producing Eastside for deposition when noted, the City's attorney King appeared at deposition and refused to bring her witness, Eastside. King's law firm of Kenyon Disend then billed the taxpayers of Gold Bar (which also includes Petitioner), for services rendered to Eastside.

At the time relevant to Petitioner's suit, the City of Gold Bar had a

city paralegal clerk, Penny Brenton (Brenton). Brenton who was ordered to write a WSBA complaint against Petitioner by Gold Bar's Mayor Joe Beavers (Beavers) and former Gold Bar council member Dorothy Croshaw affirmed on the WSBA complaint that it was hers. Brenton then used Gold Bar resources, such as computers and email communication, to monitor its deposition and actively informed King. The WSBA dismissed the complaint and Brenton has agreed to testify against the City in Petitioner Block's 42 U.S.C. §1983 complaint which will more than likely be filed prior to this Court's Review.

Although 42 U.S.C. § 1983 is a permissible statute for which a Petitioner such as Block can utilize when her civil rights have been violated, it does not turn back the gross deprivation of Petitioner Block's constitutional right to be provided notice and a meaningful opportunity to be heard prior to any judgment being entered into the record.; In Re Marriage of Mahalingham, 21 Wn.App. 228, 584 P.2d 971 (1978); Reilly v. State, 18 Wn.App. 245, 253, 566 P.2d 1283 (1977). Right to notice is an essential requirement of due process that applies in civil cases as well as criminal proceedings. *See* U.S. Const. Amend.14. Notice, open testimony, time to prepare and respond to charges, *and* meaningful hearing before competent tribunal in orderly proceeding are all elements of civil due process. *See* WA Const. Art 1, § 3; US Const.; In re Moseley, 34 Wn.App.

179, 660 P.2d 315 (1983).

Petitioner, as a taxpayer and a resident of Gold Bar has a constitutionally protected right to access all public records paid for with Petitioner's tax revenue. This includes email communication between a non-client Eastside and the City's law firm.

In weeks after filing a suit seeking access to public records, early November 2011, involving what Petitioner perceives to be unethical conduct on the part of King, Petitioner's life was threatened, threats to burn crosses on her front lawn, dead animals had been left on her front door step, and she was just informed that her father was terminal and not expected to live much longer. Petitioner is also a solo practitioner who assists sick Department of Energy workers throughout the United States. The above factors resulted in two Notices of Unavailability filed with the trial court and to Kenyon Disend's attorney King. All Notices of Unavailability were filed *prior to* King's CR 45 subpoena and all before any subsequent and relevant motions in this case.

In November 2011, Gold Bar council member Chuck Lie (Lie), told Petitioner that Beavers and King were planning to "aggressively attack you!" Within two days of Beavers threatening Petitioner to Lie, King attempted to physically serve Petitioner with a CR 45 subpoena at her house while Block was out of the area. After being unsuccessful in

physically serving a CR 45 subpoena, King then sent Petitioner an email with a CR 45 subpoena setting a deposition for four business days later alleging that Petitioner agreed to electronic service. CR 45 subpoenas must be physically served *and* require a minimum of a five day notice. Disgusted that his tax money was being used to attack a citizen who simply requests public records, Lie resigned from the Gold Bar council in early January 2012 and has agreed to testify against the City in Petitioner's civil rights suit.

Only after Petitioner noted that she would be unavailable did King then file a Motion to Compel Petitioner's testimony in a public records case and then failed to provide notice and a meaningful opportunity to be heard in violation of Petitioner's due process rights guaranteed by the 14th Amendment and WA Const. Art 1, § 3. Petitioner's father died on February 13, 2012.

Facts in this case clearly document that the City's Motion to Compel Petitioner's testimony occurred *only after* Petitioner Block informed the City and its attorney King through court filings of Notice of Unavailability that her father was terminal and she would not be back in Washington State until January 7, 2012. The City and its law firm continue as of today to withhold responsive records which relate to this case as well as the two WSBA complaints it participated in. Instead of the

City and its law firm complying with basic open government principles, King and Beavers decided the best way to handle a public records requester was to file motions only after being notified that Petitioner would be out of state visiting her terminal father, or as council member Chuck Lie stated "aggressively attack a concerned citizen" who simply requested records pursuant to RCW 42.56. Public records request sought pursuant to RCW 42.56 regarding the issues raised herein remain ignored by the City and its law firm.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. Overview

Petitioner Block's constitutional rights have been violated by an agency that has a long history of hiding public records and conspiring to harm citizens who request public records. This case involved misconduct by the City and its law firm and a conspiracy to harm Petitioner's professional reputation in the community where she lives, pays taxes and maintains an office.

By allowing an agency to file an Ex-Parte Motion only after receiving a Notice of Unavailability effectively chills a citizen's challenge to an agency's conduct pursuant to RCW 42.56 and amounts to a SLAPP. As it stands, the Block decision creates a substantial deterrent to average citizens who have been denied access to records and who may have no

recourse but to challenge an agency's action in court. What average citizen can afford to defend against a government funded agency's well-staffed law firm's SLAPP. If Petitioner Block had been afforded her constitutional right to be notified and a meaningful opportunity to be heard, Petitioner would have filed an Anti-SLAPP Motion, but King and Beavers decided the best way to handle a public records requester was to file motions only after being notified that Petitioner was unavailable. As of the date of this filing, the City of Gold Bar has misappropriated over $700,000.00 hiding public records at various law firms. Petitioner as a taxpayer and an advocate for social justice will continue to seek access to public records pursuant to RCW 42.56.

In this case, basic provisions of the 14th Amendment to the United States Constitution were violated and do not comport with basic due process rights guaranteed by the United States and Washington Constitutions. Unless significant aspects of the decision are reversed, Petitioner stands for the proposition that the agency has a right to decide what a citizen should have a right to know, and encourages an agency to file motions which amount to a SLAPP.

2. The Block Court Rewrote Washington Court Rule 45 Which Mandates Physical Service of Subpoenas

By erring in its analysis in a manner that chills citizen challenges

to improper withholding of records and favors resistant agencies, the Court of Appeals Block decision turns back the clock in the evolution of what due process is due to a citizen when a state actor is a government entity. Petitioner Block submits that the Court of Appeals decision rewrites Washington Court Rule 45 which mandates that all subpoenas' be physically served upon a deponent. More importantly, and certainly relevant in this case, is the failure of the agency to give Petitioner Notice and a meaningful opportunity to be heard was violated by the same agency that has a lot to lose if it's wrongdoing is released.

This Supreme Court repeatedly and firmly held that a right to *notice* and a meaningful opportunity to be heard is not only an essential requirement of due process, but it's a fundamental right that applies to *civil* as well as criminal proceedings. The *Block* decision chips away at basic due process and if allowed to stand will trickle down to trial courts and agencies, and encourage agencies to file Motions after being notified of a requester's unavailability. Petitioner respectfully submits that the *Block* decision frustrates the purpose of RCW 42.56 by weakening its fundamental provisions that places the burden on the agency not the requester in public records cases. Allowing an agency to file motions only after being notified of unavailability and violate basic mandates of CR 45, adversely affects the public interest and will encourage an agency to file

SLAPP suits instead of complying with RCW 42.56.

3. Affirmation of Key Principles of Due Process Requirements Must be Enforced by this Court in Civil Matters

A review of this case is fundamental and necessary precondition to the sound governance of a "free society," and the Petitioner Block's case speaks to how agencies will punish and deter citizens from bringing an agency to task and further stifles "continuing confidence in . . . governmental processes," to "assure that the public interest will be fully compensated for bringing actions challenging agencies.

The purpose of the public records act is to ensure the sovereignty of the people and the accountability of the governmental agencies that serve them. RCW 42.17.251; *Newman v. King County*, 133 Wn.2d 565, 570, 947 P.2d 712 (1997); *PAWS*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994); *Limstrom v. Ladenburg,* 136 Wn.2d 595, 963 P.2d 869 (1998).

Virtually every legislative modification of the already stringent Act has been to strengthen the policy of open government, by strengthening the punitive and deterrent aspects of the Act. Under *Block,* the trial court's record may now be arbitrarily be ignored by the Court of Appeals, and the burden is now on the requester to prove that her actions, not the agency's action, are reasonable under RCW 42.56.

F. CONCLUSION

The public's interest in open government, as reflected by the facts of this case, began with a legitimate records request concerning the City of Gold Bar's law firm of Kenyon Disend charging the taxpayers for services rendered to a non-client. The Respondent decided the best way to handle the public records request was to meet and conspire to harm Petitioner's professional reputation and "aggressively attack" Petitioner instead of complying with RCW 42.56. As of the date of this filing, the City of Gold Bar still does not have a public records policy in place and continues to allow public officials to use their personal email address for government business. The Mayor himself not only communicates with news sources but actively writes defamatory articles about Petitioner on his blogs in attempts to defame the professional reputation of a citizen who is only guilty of exposing the corruption inside a county and a city where she lives, works and pays taxes.

Such precedent if allowed to stand would not only frustrate RCW 42.56 beyond *Block,* it would encourage an agency to file SLAPPs to evade public disclosure and violate the civil rights of the citizens they are paid to protect.

The Petitioner respectfully submits this case must be reviewed as it violates basic due process requirements that guarantees a citizen's right

to be notified *and* a meaningful opportunity to be heard. Petitioner argues that such deprivation of a citizen's due process rights do not comport with constitutional principles afforded to every Washington and United States citizen pursuant to the 14th Amendment. Petitioner has a constitutional right to be provided notice *and* a meaningful opportunity to be heard and that has been violated in this case. *See also,* WA Const. Art 1, § 3; US Const.

Respectfully submitted this 23rd day of October 2013.

Anne K. Block, Pro Se

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ANNE BLOCK, Appellant, v. CITY OF GOLD BAR, Respondent.	)	No. 68163-0-I/Consolid.w/ No. 68561-9-I UNPUBLISHED OPINION FILED: September 23, 2013

SPEARMAN, A.C.J. — Anne Block sued the City of Gold Bar alleging violations of the Public Records Act. After Block failed to appear for her deposition, the trial court granted the City's motion to compel and for monetary sanctions. The court ordered Block to appear for a deposition at a later date and to pay the sanctions by that date or face possible dismissal. Block appeared but refused to pay the sanctions imposed. After a hearing, the trial court determined that Block failed to show good cause for her noncompliance with its orders and dismissed her case. Because the trial court properly exercised its discretion in granting the City's motion to dismiss, we affirm.[1]

FACTS

On November 10, 2011, Anne Block served the City of Gold Bar with a "Complaint for Access to Public Records" alleging violations of the Public Records Act (PRA), chapter 42.56 RCW. Shortly after filing her complaint, Block filed two notices of unavailability. First, Block filed a notice stating that she would be "out-of-state on a

[1] We also deny Block's motion to consider new evidence. See RAP 9.11(a).

family emergency" between December 14, 2011 and January 7, 2012. Clerk's Papers (CP) at 314. Then, she filed a notice stating that she would be "out of the area on business" between November 21 and 24. CP at 309.

Block also immediately began to initiate discovery. The day she filed her lawsuit, Block sent an e-mail to the City's attorney stating her intent to depose elected officials during the month of December and attaching a set of discovery requests. Block sent additional discovery requests by e-mail about a week later. On November 18, the City's attorney responded by e-mail, noting that the discovery requests did not comply with the applicable rules, but stating, "I will agree to accept service electronically of these discovery documents, as well as all pleadings in this case, if you agree to do the same." CP at 238. Within minutes, Block responded, "I will accept service electronically." CP at 238.

Block scheduled a CR 26 conference for November 21, but then cancelled. She then informed the City that she would postpone depositions until January, citing her father's ill health and her desire for "downtime" with her child and grandchild.

On Saturday, November 19, and again on Monday, November 21, the City attempted, but failed, to personally serve Block with a notice of deposition and subpoena, scheduling her deposition for December 1.[1] The City then served the documents by mail and e-mail on November 21, in accordance with the parties'

[1] The City explains that personal service of the notice of deposition and subpoena had been arranged before Block agreed to accept electronic service.

agreement. The date of the deposition was set to accommodate Block's unavailability after December 14.

On the same date, Block sent an e-mail to the City's attorney stating, "As you know my life has been threatened; I will remain unavailable until January 2012, only working from my laptop and by a secured telephone line."[2] CP at 36. The City's attorney responded to Block's claim of unavailability:

> I received your e-mail claiming that you are now "unavailable" until January, because you claim that threats have been made on your life. I have no knowledge that any such threats have actually been made, other than your repeated e-mail allegations, and such an allegation is not a basis for avoiding discovery in litigation in any event * especially in litigation that you yourself initiated as the plaintiff. A party is not entitled to commence litigation and then go into hiding for several months.

CP at 39. Block reiterated, "Unless its [sic] by telephone, its [sic] not going to happen." CP at 39. Block said she would be available in January 2012.

The next day, on November 22, having learned that Block had asked to reschedule a hearing in another matter for 9:30 a.m. on December 1, the City filed and served an amended notice of deposition and subpoena moving the time of the deposition from 10:00 a.m. to 1:30 p.m.

On November 23, Block filed another notice of unavailability stating that she had "recently received a death threat" and had therefore "cancelled all in person appearances for the month of December 2011." CP at 307. She stated that she had

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[2] Block also took the position that her deposition could not take place on December 1 because that date was within 30 days of the filing of the summons and complaint in violation of CR 30(a). But the 30-day waiting period under CR 30(a) did not apply because the rule prevents only a plaintiff, under certain circumstances, from setting a deposition within that time frame.

notified the City and requested that no "in person motions, depositions, hearings, and other matters" be set until the middle of January 2012. CP at 307. Block did not serve the City with the notice.

On the same date, Block informed the City's attorney by e-mail that she had decided to seek legal counsel. She also denied that she had agreed to accept service by e-mail, but insisted she had agreed only to "communicate" electronically. CP at 275. The City's attorney sent Block her November 18 message agreeing to "accept service electronically." CP at 276. The City's attorney maintained that Block's decision to seek counsel did not affect her obligation to appear for her scheduled deposition and warned Block that if she failed to appear, the City would seek sanctions.

Block did not appear for her deposition on December 1.[3] The City filed and served a "Motion for Costs, Expenses, and Fees and Motion to Compel." CP at 286. The City noted the motion for a hearing on December 20.

A superior court commissioner granted the City's motion after a hearing, noting that Block had not responded to the motion. The court's order provided for the amount of fees to be submitted and approved ex parte within ten days. The order compelled Block to appear for a deposition on January 9, 2012, and to pay the amounts approved by the court prior to the deposition. The City sent the court's order to Block by mail and e-mail on the day it was entered.

[3] At 1:50 p.m. on that date, Block sent the City's attorney an e-mail stating that she would continue to communicate electronically and asking when her deposition would be scheduled in January 2012.

The City submitted billing records in support of its request for $7,049 in fees and costs. On December 30, a superior court judge pro tem approved the City's requested fees and costs, finding that the sums expended by the City were reasonable. The order provided that if Block failed to timely pay the sanctions imposed, "the City shall be entitled to set a hearing on the issue whether the plaintiff can show good cause for failure to comply with this Order, in the absence of which this matter shall be dismissed." CP at 81.

Block appeared for her deposition on January 9. When the City's counsel asked if she brought payment to satisfy the terms imposed, Block said, "I did not. I will not. I will be appealing to the Washington State Court of Appeals." CP at 148. When asked about her understanding of the requirements of the court's order, Block responded that "a signature, commissioner's signature on a piece of paper is the first step of a very long process to the Washington State Supreme Court." CP at 150.

On January 19, Block filed both a notice of discretionary review in this court challenging the commissioner's December 20 order and a motion in the trial court to modify the order.[4] The City filed a motion to dismiss Block's lawsuit, based on her failure to comply with the December 20 and December 30 orders.

The trial court considered both parties' motions at a February 3 hearing. The court treated Block's motion to modify as a motion to revise under RCW 2.24.050 and denied it as untimely because it was not filed within ten days of the December 20 order, as required by the statute.

[4] In January 2012, Block filed yet another notice of unavailability, stating that she would be "out of the country thus unavailable" between January 18 and 25. CP at 181.

Block appeared at the hearing. She argued that she was not properly served with the subpoena to appear at the December 1 deposition, and that the City improperly noted the motion to compel and for sanctions during a period when she had filed a notice of unavailability. The trial court determined that while Block articulated objections to the underlying orders, she failed to demonstrate, much less allege, good cause for her failure to pay the sanctions. The trial court entered findings of fact, conclusions of law, and an order and judgment of dismissal. Block appeals.[5]

ANALYSIS

As a preliminary matter, we note that Block's briefing to this court is inadequate in several respects. For example, Block's factual assertions are largely unsupported by citations to the record, contrary to RAP 10.3(a)(5). Many of the facts she relies upon appear to be wholly outside of the record before us. Block also appeals three orders, but fails to clearly identify the specific basis for her challenge to each order.

In addition, Block misrepresents the standard of review. She cites the standard of review under the PRA and urges this court to review the order of dismissal de novo. See RCW 42.56.550 (challenges to agency action involving the PRA subject to de novo review). She also argues that with respect to the order of dismissal, the trial court was required and failed to view the evidence in the light most favorable to her, the non-moving party. In support of this argument, Block relies on caselaw addressing the trial

[5] Block initially filed notices of discretionary review challenging the December 20 and December 30 orders. She then filed a notice of appeal seeking review of the February 3, 2012 order dismissing her complaint. A commissioner of this court ruled that review of all three orders is available as a matter of right and consolidated the appeals.

court's evaluation of evidence when ruling on a motion for summary judgment. See e.g. Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995).

But the trial court did not evaluate any substantive evidence nor did it rule on the merits of Block's claims under the PRA. Instead, the trial court dismissed Block's complaint as a sanction for her failure to comply with prior court orders. We review such an order to determine whether the trial court's decision is manifestly unreasonable or based on untenable grounds. Magaña v. Hyundai Motor Am., 167 Wn.2d 570, 582, 220 P.3d 191 (2009); Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A decision rests on untenable grounds when the trial court relies on unsupported facts or applies the wrong legal standard; a decision is manifestly unreasonable if the court applies the correct legal standard to supported facts but adopts a view that no reasonable person would take. Magaña, 167 Wn.2d at 583. Since the trial court is in the best position to decide the issue, we defer to the trial court's decision and "[a]n appellate court can disturb a trial court's sanction only if it is clearly unsupported by the record." Id.

Significantly, Block does not assign error to any of the trial court's findings of fact or conclusions of law. She does not challenge the trial court's finding that she failed to pay the terms imposed in accordance with the December 20 and December 30 court orders. Nor does she challenge the findings that she failed to demonstrate good cause for her lack of compliance, that no lesser sanction would deter the conduct, and that the City was prejudiced in its ability to prepare for trial as a result. See Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 688, 132 P.3d 115 (2006) (when a trial court imposes a severe

sanction such as dismissal for violation of a discovery order, the record must show that the court considered a lesser sanction, willfulness of the violation, and prejudice). Likewise, Block does not challenge the amount of the sanctions. These unchallenged findings are verities on appeal. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

Block argues that the trial court improperly dismissed her case in spite of the fact that the City did not comply with CR 45, the civil rule governing subpoenas. She also challenges the dismissal because the City's motion for sanctions was set for December 20, a date when she was unavailable. In essence, Block argues that she legitimately refused to comply with the order to pay sanctions because the City did not personally serve her with a subpoena to properly compel her attendance at her deposition and because she was deprived of an opportunity to respond to the City's motion for sanctions and motion to compel. We disagree.

CR 37(d) specifically authorizes the imposition of monetary sanctions on a party who fails to attend his or her own deposition. In order to avoid the City's scheduled deposition, Block needed to seek a protective order under CR 26. She failed to do so, and consequently, was subject to sanctions. Block's reliance on CR 45 is unavailing for several reasons. First, as explained, Block did not move for a protection order nor did she timely object to the December 20 order. Second, the City served Block with a subpoena by e-mail and the record establishes that Block expressly agreed to accept such service. And most importantly, Block, as the plaintiff, was entitled to "reasonable notice in writing" of her deposition. CR 30(b)(1). Only a party seeking to compel the

attendance of a deponent who is not a party or managing agent of a party is required to serve a subpoena on that deponent in accordance with CR 45. CR 30(b)(1). Block cites no authority supporting her claim that the City was required to use a subpoena. The City's attempt to personally serve Block with notice and a subpoena does not establish that compliance with CR 45 was mandatory.[6]

Block also challenges the commissioner's December 20 order on the ground that the court improperly set an "ex-parte" hearing on the City's motion on a date when she was unavailable and thereby violated her right to due process. But the hearing was not "ex parte" merely because only the City appeared. Due process requires only that a party receive proper notice of proceedings and an opportunity to present his or her position to the court. Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 697, 41 P.3d 1175 (2002). Here, the City filed and served its motion for sanctions and to compel on December 12, before Block's period of unavailability began. Block failed to respond to the motion in any manner. She did not request an extension of time to respond, seek to continue the hearing, nor request to participate by telephone. While Block suggests that her notice of unavailability, standing alone, had a legally binding effect on the City's counsel and the trial court, she does not cite any authority supporting this position. See In re Disciplinary Proceeding Against King, 168 Wn.2d 888, 906, 232 P.3d 1095 (2010) (rejecting claim that litigant may unilaterally bind

[6] We also reject Block's assertion that the City failed to provide five days' notice of her deposition in accordance with CR 30(b)(1). The City notified Block of her deposition on Monday, November 21. The deposition was scheduled for Thursday, December 1, six days later, excluding the date of service, the weekend, and two-day Thanksgiving court holiday. Although the City notified Block on Tuesday, November 22, of a time change in order to accommodate her request to schedule another court hearing on the morning of December 1, nothing in the rule requires five days' prior notice of a time change.

opposing counsel or tribunal merely by filing a notice of unavailability). Block had an opportunity to present her position and have the trial court consider it. Due process requires no more. See Rivers, 145 Wn.2d at 696-97.

In sum, Block fails to show that the trial court did not properly exercise its discretion when it entered the discovery orders, and after Block did not comply with the orders, granted the City's motion to dismiss. We affirm.

Spearman, A.C.J.

WE CONCUR:

Appelwick, J.

Cox, J.

APPENDIX B

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

ANNE BLOCK, Plaintiff vs. CITY OF GOLD BAR, Defendant.	No: 11 2 09706 2 **COMPLAINT FOR ACCESS TO PUBLIC RECORDS**

Plaintiff Anne Block a Pro Se attorney brings this Complaint for Access to Public Records against the City of Gold Bar ("City"), and in support thereof avers the following:

I. JURISDICTION

1.1 This court has jurisdiction pursuant to RCW 42.56.550 in that the public records of which the plaintiff is seeking disclosure are maintained by the City in Snohomish County.

Anne Block, Pro Se
WSBA #37640
313 Shelby St
Gold Bar, WA 98251
Tele: 360-863-3308

EXHIBIT A

II. FACTS

A. On or about January 15, 2011 Request for Records

2.1 On or about January 15, 2011, Plaintiff made a public records request as follows:

> All email communication and documents sent or received by wrightcm1@msn.com from any Gold Bar or county employee past and/or present. Please note that I am requesting all email communication and documents to be provided in native searchable format including metadata from August 1, 2009 to January 14, 2011. See *Shoreline.*

2.2 On or about January 18, 2011, the City responded with the following:

> Your request has been assigned number PRR 2011-008.
>
> There are no records responsive to your request.
>
> The City considers this request satisfied.

2.3 On or about January 18, 2011, Plaintiff responded to the City with the following:

> I have direct evidence that contradicts this... Look a little hardier.

2.4 On or about January 18, 2011, the City responded to PRR 2011-008 with the following:

> Looking anew

2.5 On or about February 25, 2011, the City responded to PRR 2011-008 with additional emails and yet another response as follows:

> The City has searched all email folders for "wrightcm" and has the resulting emails on a CD for pickup at City Hall.

Anne Block, Pro Se
WSBA #37640
313 Shelby St
Gold Bar, WA 98251
Tele: 360-863-3308

EXHIBIT A

> Thank you for your heads-up on this, we used the experience to modify our procedures for future searches.
>
> The City considers the request satisfied.
>
> Attached is the listing of the 2009 emails found. The 2010 and 2011 emails will be searched again.
>
> The City expects a response on or before February 18, 2011.

2.6 On or about February 25, 2011, the City responded again with the following response to PRR 2011-008 as follows:

> The City of Gold Bar is currently prioritizing its responses to the multiple Public Records Requests in accordance with Gold Bar Resolution 10-14. The attached list has the first priorities for March highlighted in yellow. Other items may be added should resource time be available should we complete the first priorities.

2.7 On or about March 25, 2011, the City responded again to PRR 2011-008 with the following response:

> In checking the files, this request has been satisfied. We inadvertently sent the April priority list to you under this number.

2.8 On June 14, 2011, Plaintiff sent the following response regarding PRR 2011-008:

> We have direct evidence that contradicts that the City complied with this PRR. Please look a little harder.

2.9 On or about August 30, 2011, the City responded again to PRR 2011-008

> Laura Kelly has reviewed this file and finds that the request has been satisfied. If you have specific information about non-compliance, send the details so that we can investigate further.

B. On or about March 13, 2011 Request for Public Records

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2.10 On or about March 13, 2011, Plaintiff made a public records request as follows:

> All email communication sent to or received by Michael Meyers (Eastside Computers) in December 2010 by any Gold Bar City employee, official or attorney.

2.11 On or March 14, 2011 the City responded with the following:

> Your request has been assigned number PRR 2011-024.
>
> The City will include this request in its schedule update on March 25, 2011.
>
> Joe Beavers

2.12 On or about May 5, 2011, the City responded again with following:

> Attached are the emails from Kenyon-Disend to Michael Meyers (Eastside Computers) for December 2010.
>
> Attached are the emails from Kenyon-Disend to Michael Meyers (Eastside Computers) for December 2010.
>
> There were no emails sent from Law Lyman et al to Michael Meyers in December 2010.
>
> The City will complete its review of this request on or before May 30, 2011.

2.13 On July 25, 2011, the City responded to PRR 2011-024 again as follows:

> After an additional review, two more emails were located. The documents have been withheld in their entirety as noted on the log. The PDF file is attached. If you would like to have this mailed to you on a CD, the cost is $ 5.31 for domestic US service.

2.14 On or about July 27, 2011, the City responded to PRR 2011-024 again as follows:

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> The City of Gold Bar is currently prioritizing its responses to the multiple Public Records Requests in accordance with Gold Bar Resolution 10-14. The attached list has the first priorities for August highlighted in yellow. Other items may be added should resource time be available and we complete the first priorities.

2.15 On or about August 26, 2011 the City responded to PRR 2011-024 again with the same response:

> The City of Gold Bar is currently prioritizing its responses to the multiple Public Records Requests in accordance with Gold Bar Resolution 10-14. The attached list has the first priorities for August highlighted in yellow. Other items may be added should resource time be available and we complete the first priorities.

2.16 On or about October 1, 2011 Plaintiff responded to the City PRR 2011-024 response as follows:

> In light of the WA Supreme Court's decision in *Neighborhood Alliance*, I am requesting that City reconsider its claims of exemptions between Margaret King and Michael Meyers. Pursuant to *Neighborhood Alliance*, how the agency searched for records, and the fact that Ms. King does not have an attorney client relationship with Eastside Computers, I am giving the City one last opportunity to consider its claims of exemptions which in any way relates to PRR 2011 024.
>
> As you know, I am getting ready to file suit seeking access to Chris Wright's email communication; if the City refuses to release responsive records to PRR 2011 024, I will include this PRR violation in my next suit as well.

C. On or about March 31, 2011 Request for Public Records

2.17 On or about March 31, 2011, Plaintiff made a public records request as follows:

> All records which in any way relates to the $840.00 "Community Contribution" listed on the Kenyon Disend's bill for legal services rendered in January 2011.

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2.18 On or about March 14, 2011, the City responded to the request by a letter stating the following:

> Your request has been assigned number PRR 2011-023.
>
> There are no other responsive records. There is only the bill, it speaks for itself.
>
> The City considers this request satisfied.

2.19 On or about March 14, 2011, Plaintiff responded to the City response to PRR 2011-023 as follows:

> I hope you understand how silly this sounds. What your email/letter appears to be stating is that a fairy came in dropped off $840.00 in cash to pay Kenyon & Disend. This would also mean that there are no receipts, cashed checks, etc. (documents).
>
> Please look a bit harder.

D. On or about September 24, 2011 Request for Records

2.20 On or about September 24, 2011 Plaintiff requested the following public records:

> Please send me ALL email communication and its attachments between and among Joe Beavers and Margaret King which in any way relates to Anne Block. Please provide all email record in native searchable format including metadata. Please limit your search from August 30, 2011 to Present.

2.21 On or about September 27, 2011, the City responded with the following:

> Your request has been assigned number PRR 2011-059.
> This request will be on the October priority list which is scheduled for release on Thursday, September 29, 2011.

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2.22 On or about September 29, 2011 City responded to PRR 2011-059 with the following:

> The City of Gold Bar is currently prioritizing its responses to the multiple Public Records Requests in accordance with Gold Bar Resolution 10-14. The attached list has the first priorities for October highlighted in yellow. Other items may be added should resource time be available and we complete the first priorities.
>
> In addition, attached is a listing of found emails for your review. The attachment should be self-explanatory, but reply back if you have any questions about it or want a copy of the emails noted.

2.23 On or about October 28, 2011, the City responded again to PRR 2011-059 with the following:

> The City of Gold Bar is currently prioritizing its responses to the multiple Public Records Requests in accordance with Gold Bar Resolution 10-14. The attached list has the first priorities for November highlighted in yellow. Other items may be added should resource time be available and we complete the first priorities.

2.24 Plaintiff specifically requested electronic records and stated the following:

> For those responsive records that currently exist in electronic format (such as email, Word, or PDF files), please provide those documents in native searchable format including metadata. You are free to forward the files to me by email or copy the .pst files (with metadata) onto a CDR or DVD. Alternation of original email from its original .pst file along with its metadata is considered a violation of the Public Records Act; *see Shoreline*. For those documents which exist only in paper form, please scan those documents into PDF files and copy those files onto a CDR or DVD. Where paper copies of records available in electronic form contain handwritten marks or notes, please provide both the native electronic record and a copy of the paper record.
>
> "Public record" includes "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary

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function prepared, owned, used, or retained by any state, county, city, or local agency regardless of physical form or characteristics." RCW 42.56.010(2). "'Writing' means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.56.010(3).

This request specifically includes -and you are specifically directed to obtain, preserve in native format, and produce -any records that exist on City computers, portable phones, iPhone, BlackBerries, Kindle, IPad, or other devices, or in email, data, voice mail, or text mail accounts owned, controlled or paid for by the City. See *Mechling v. Monroe.*

2.25 Plaintiff specifically requested that the City log and label each record it was claiming exempt from disclosure. Plaintiff's request stated:

For each record that you contend is exempt from public disclosure, please specifically identify the record by subject, title, author, custodian and date, and specifically state how the specific statutory exemption applies to the record as required by RCW 42.56.210(3). For each responsive record that you contend is exempt from public disclosure, in whole or in part, please specifically identify the record by subject, title, author, custodian and date, and state how a specific statutory exemption applies to each record as required by **RCW 42.56.210(3) and *Rental Housing Ass'n* v. *Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009).**

Whether or not the City asserts that any requested records are exempt from disclosure you are required by RCW 42.56.100 to protect all records from loss or destruction until this matter is resolved.

2.26 The City failed to respond in a timely manner and has violated his own regulations in responding to public records request.

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2.27 Upon information and belief the City is withholding responsive records by labeling them "not conduct of government business."

2.28 The City has refused to provide a log any records its claiming exempt.

2.29 Upon information and belief Christopher Wright is using his personal computers system to conduct government business.

2.30 Upon information and belief the City altered responsive electronic records by refusing to provide a large number of its records in native searchable format with metadata.

2.31 Upon information and belief, the City has been hiding public records.

2.32 As of the date of this filing, the Defendant has refused to comply with the Public Records Act.

III. CLAIM FOR PUBLIC RECORDS

3.1 The City is a local agency subject to the provisions of RCW Chapter 42.56

3.2 On information and belief, the City has violated RCW Chapter 42.56 by withholding records that are not exempt from public disclosure or which should have been redacted rather than withheld in their entirety.

3.3 On information and belief, the City has violated RCW Chapter 42.56 by failing to adequately identify records that were withheld and/or redacted, failed to provide log and label public records its claiming exempt, and by failing to

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adequately explain how claimed exemptions applied to specific records withheld and/or redacted.

3.4 On information and belief the City has violated RCW Chapter 42.56 by refusing to produce responsive records in native searchable format including metadata as requested.

3.5 On information and belief, additional responsive records existed when each request for records was made.

IV. PRAYER FOR RELIEF

4.1 Plaintiff asks this Court to order the City:

a. to properly identify records that were redacted or withheld, and to fully explain how any claimed exemptions apply to particular records;

b. to provide all records to the Court for an in camera inspection to determine whether records have properly been redacted or withheld;

c. to provide the plaintiff with copies of any records or portions of records that the Court determines are not exempt from public disclosure; and/or

d. to show that the estimate of time required to respond to the plaintiff's requests was reasonable.

4.2 Plaintiff asks the Court to award the Plaintiff statutory penalties of $100 per day for each day that requested records were improperly withheld by the Defendant pursuant to RCW 42.56.550(4).

4.3 Plaintiff asks the Court to award the plaintiff attorney fees and cost pursuant to RCW 42.56.550(4).

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4.4 Plaintiff asks the Court to grant such other relief as the Court may find just and equitable.

V. RESERVATION OF RIGHTS

5.1 Plaintiff reserves the right to amend this *Complaint for Access to Public Records* based on subsequent responses or actions of the City with respect to the requests for records set forth herein.

5.2 Plaintiff reserves the right to file a motion for change of venue.

Submitted this 10th day of November 2011.

By: _____

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DECLARATION OF SERVICE

I, Krista Dashtestani, delcarre and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party top this action and competent to be a witness herein.

2. On the 23rd day of October 2013, I placed a copy of Petitioner Anne Block's Petition for Review of *Block v. Gold Bar* Case No: 681630 using the First Class, U.S. Mail, Postage Prepaid to the following counsel of record:

Ann Marie Soto and Mike Kenyon
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820

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

Krista Dashtestani

Krista Dashtestani