

**FILED**

**AUG 26 2013**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 31658-1

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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CLARENCE J. FAULKNER, Appellant,

v.

DEPARTMENT OF CORRECTIONS, Respondent.

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APPEAL FROM THE SUPERIOR COURT FOR  
FRANKLIN COUNTY

The Honorable Bruce A. Spanner

No. 12-2-51010-8

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REPLY BRIEF OF APPELLANT FAULKNER

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A. INTRODUCTION

Respondent Department of Corrections (the "Department") has argued that item two of Mr. Faulkner's PRA request, the Coyote Ridge Correction Center Local Mail Rejection Disposition Notice Mail Rejection F-4-60 did not exist. Mr. Faulkner replies and counters that the requested form was understood to be the OPTIONS FOR REJECTED MAIL form, and failure to produce it violated the Public Records Act (PRA). Then, the Department argued that the delay and failure to promptly produce item one, the requested legal mail signature sheet, complete with signatures and notations, did not constitute bad faith. Finally, the Department argued that Mr. Faulkner is not entitled to his costs. Mr. Faulkner will address each argument in turn.

B. SUMMARY OF ARGUMENT

Mr. Faulkner will first show that the mail disposition form he requested was known by the title OPTIONS FOR REJECTED MAIL, and the Department understood it to be the form he was requesting. Faulkner will show that failure to produce it violates the PRA on several fronts. He will then address the legal mail signature sheet, and show that the combined actions of the Department in not promptly providing it constitutes bad faith as required when the complainant is an incarcerated person. Finally, he will demonstrate that he is entitled to his costs for this appeal.

C. ARGUMENT

1. Faulkner's PRA Request For A Copy Of The Coyote Ridge Correction Center Local Mail Rejection Disposition Notice Mail Rejection F-4-60 Was Understood To Be The OPTIONS FOR REJECTED MAIL Form Contained In Appeal Packet Tracking Number F-4-60, And Failure To Produce It Violated The PRA.

On July 8, 2012, Faulkner made a simple request for, "A copy of the CRCC Local Mail Rejection Disposition Notice Mail Rejection F-4-60." CP 84. He was referencing a specific mail rejection identified as F-4-60, and as defendants note, "... all documentation and paperwork associated with this particular mail rejection would bear this tracking number." See Brief Of Respondent at p.3 footnote 1. The Defendant sought no clarification regarding the request for this one page document.

At the Coyote Ridge facility, whenever prisoner mail is rejected, a MAIL REJECTION NOTICE (DOC 05-525) CP 149, and contrary to the statements by Randall Smith at CP 124, a local CRCC OPTIONS FOR REJECTED MAIL form is prepared and presented to the offender. CP 186. Faulkner received this form and complained that it was not offering him the appeal option normally listed as #7. The OPTIONS form is attached

whether or not the offender wishes to appeal, though selective language of Randall Smith states otherwise at CP 124. This is in fact the notice given offenders to either make a disposition choice, appeal, or take notice that the rejected mail will be discarded if one does not respond.

After receiving a request to search for the requested document, Mr. Michael True of the CRCC mailroom e-mailed, "Here is a scan of the legal signature sheet for 7/2/2012. The Rejection was appealed and the whole packet (Rejection disposition sheet, rejection notice and rejected item) are at Headquarters, Mike Watkins." CP 104. Mr. True, a full-time CRCC mailroom employee recognized that Faulkner was referring to the other document in the appeal packet and even he did not refer to it as Options For Rejected Mail, he called it a rejection disposition sheet.

On August 29, 2012, after completing a search, defendants notified Faulkner that there was one page responsive to his request. CP 91. The response letter did not indicate whether the one page offered as responsive was the F-4-60 disposition form or the other requested document, a legal mail signature sheet. Neither did the agency raise any question as to his request. A copy of the F-4-60 disposition form surfaced when in discovery defendants produced a tort claim document packet. CP 186.

An agency's statutory obligation to supply the fullest assistance to PRA inquirers per RCW 42.56.100 has been

interpreted to mean two things: first, a requestor is not required to "provide the exact name of the requested record." and, second, an agency is required to "liberally construe the scope of a records request." Overstreet, Ed., Public Records Act Deskbook: Washington's Public Disclosure and Open Meetings Law § 4.1 (Wash. State Bar Assoc. 2006)(citing Horsehead Indus., Inc. v. U.S. Env'tl. Prot. Agency, 999 F. Supp. 59, 66 (D.D.C. 1998); Knight v. Food & Drug Admin., 938 F. Supp. 710, 716 (D.Kan. 1996)).

Mr. Faulkner made a request for two one-page identifiable records. An identifiable public record is, "one for which the requestor has given a reasonable description enabling the government employee to locate the requested record." Beal v. City of Seattle, 150 Wn. App. 865, 872, 209 P.3d 872 (2009); see also WAC 44-14-04002(2)(an "identifiable record" is one agency staff can "reasonably locate"). The "identifiable record" requirement is satisfied when there is a "reasonable description" of the record "enabling the government employee to locate the requested records." Bonamy v. City of Seattle, 92 Wn. App. 403, 960 P.2d 447 (1998). However, a requestor is not required to identify the exact record he or she seeks. Volante v. King County Fire Dist. No. 20, 114 Wn. App. 565, 571, n.4, 59 P.3d 109 (2002). When the query was sent to Mr. Michael True of the Coyote Ridge mailroom, he recognized the requested form by its content and not by its name. CP 124. Only after

litigation commenced did the defendants claim the misnomer amounted to a request for a non-existent record.

Here, Mr. Faulkner was not required to provide the exact name of the record he was requesting and DOC cannot parse the request to preclude any other document pertaining to the request.

For these reasons and arguments, Mr. Faulkner asserts that the defendants violated the PRA in respect to his request for the disposition notice. The agency was not adhering to the principles of the PRA and working cooperatively with him in an effort to satisfy his request.

2. The Department's Actions In Processing Faulkner's PRA Request, And, Failure To Promptly Produce The Signed Legal Mail Signature Sheet Once The Department Became Aware Of Their Error And Came Into Possession Of The Requested Document Constitutes Bad Faith In Violation Of The PRA And Meets The Standards For A Bad Faith Finding And Penalties Under RCW 42.56.565(1), As Required When The Complainant/Requester Is A Washington State Prisoner.

The Department claims that through an effort at brevity, a desire to comply with the PRA, a heavy workload, and an appeal process, they were prevented from complying with the PRA in



producing a one-page legal mail signature sheet. Defendants also claim that once they became aware of their error in producing a "blank" legal mail signature sheet, "... the Department worked to get Faulkner the correct version of the legal mail signature sheet, the version with the associated signatures and notations." see Brief Of Respondent at 15.

Faulkner replies to these claims, not as a rehashing of the admitted PRA violation, but when taken in combination the actions amount to "bad faith."

First, in formulating the Statement Of The Case, the defendant does not mention, or include, that after responding to Mr. Faulkner's letters on October 1, 2012, and October 3, 2012, Ms. Terry Pernula, a Public Disclosure Unit Public Disclosure Specialist, acknowledged the error with the "blank" signature sheet and promptly moved to obtain the proper document. See Brief Of Respondent at 4. The e-mail resulting in the production of the correct sheet is in the record at CP 13. This is an important omission because beginning at that point there was no need to conduct any additional search and work through October, November, and into December, 2012, to obtain the correct document. See Brief Of Respondent at 4-5. The correct legal mail signature sheet had already been located on October 3, 2012.

The effort at brevity by Ms. Terrell, a seasoned Public Disclosure Specialist/Communications Consultant, was not a

result of "summarization" defined as a concise recap of the main points, but a "truncation" or shortening by cutting off. This truncation resulted in the omission of the most important item on the document, the proof of delivery signature/notation.

Similarly, Barbara Parry of Public Disclosure Appeals, makes the same truncation during the unneeded appeal processing. Her October 31, 2012, decision of appeal #602-21017-2 clearly misstates that Mr. Faulkner's request was for the truncated statement, not his full and clear original request. See CP at 121.

Then defendants claim that the production of the "blank" sheet was, "... later compounded by the high volume of requests and administrative appeals the Department process. CP 78-82; see CP88."

On February 7, 2013, Paula Terrell, swore under penalty of perjury, "The Department responds to thousands of public records requests each year. Last year, the Department responded to a total of 14,226 requests, which includes inmate central and medical file reviews, health record requests, and the broader requests for records handled by the public disclosure unit or designated statewide public disclosure coordinators. Of these 14,226 requests, 4,484 were for records other than file reviews or offender health related records and were handled by the public disclosure unit or designated statewide public

disclosure coordinators." CP 79.

Counsel for defendants submitted the February 7, 2013, Declaration of Paula Terrell and restated, "The Department receives an average of approximately 1,000 public records requests per month." She followed with, "Last year, the Department responded to a total of 14,226, which includes inmate central and medical review files, health record requests, and the broader requests for records handled by the public disclosure unit and designated statewide public disclosure coordinators." CP 61.

These numbers in support of a heavy workload contributing to the error were presented to the trial court as 2012 numbers coinciding with the July through December 2012 processing of Mr. Faulkner's request.

Defendants produced their chronological records request worksheet/spreadsheet showing the sequence of requests from July 1, 2012 through December 31, 2012. CP 17-23. Mr. Faulkner analyzed the numbers and found that in the last six months of 2012 the Department received only a total of 2,461 requests for an average of only 410 per month, far less than the reported workload. CP 24.

Only now, does the Department report to this appellate court that the high workload numbers were actually 2011 numbers, the year prior to Mr. Faulkner's request. See Brief Of Respondent at 14. By 2012, the Department's workload had

apparently decreased significantly. The inflated workload was inappropriately presented to the trial court as a defense for the Department's failure to promptly provide Mr. Faulkner the correct signed legal mail signature sheet when they came into possession of it on October 3, 2012. See Brief Of Respondent at 15 and CP 79; CP 116. This error warrants review, especially in light of the fact the numbers were presented to the trial court as coinciding with the processing of Mr. Faulkner's request from July, 2012, into December, 2012.

Then the Defendants argue, "Once the Department became aware of its error, the Department worked to get Faulkner the correct version of the legal mail signature sheet, the version with the associated signatures and notations. CP 103-105." Brief Of Respondent at 15. Rather, the evidence supports that the Department came into possession of the correct document on October 3, 2012, when Public Disclosure Specialist Terry Pernula obtained the correct sheet from Brenda Murphy of the Coyote Ridge Corrections Center. CP 106. WAC 44-14-040(11) provides, "If, after the (agency) has informed the requestor that it has provided all available records, the (agency) becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis (emphasis added)."

There was no need for the Department to continue "working to provide" the requested document, rather the Department was continuing to withhold the document unnecessarily. Bad faith exists when the State knows it has records that should be disclosed, but intentionally and without justification fails to disclose them. See Yousoufian v. The Office of Ron Sims, King County Executive, et al., 114 Wn. App. 836, 853, 60 P.3d 667 (2002). The action of withholding the correct legal mail signature sheet further subtracts from the requester being given the "fullest of assistance" in processing Mr. Faulkner's request as required by the PRA.

Defendants also assert that the Department's appeal process hampered them from promptly providing the correct sheet. CP 54. Defendants asserted, "When Ms. Parry receives an appeal she obtains the public disclosure file from the public disclosure unit, reviews the entirety of the file, forms an understanding of the circumstances of the request, calls and e-mails the responding individuals to conduct a small investigation, and ultimately reaches a decision regarding whether an additional search needs to be conducted." CP 52 cited from the Declaration of Barbara Parry. CP 115-117. Faulkner appealed on September 24, 2012. CP 119. Despite the assertion that the appeals officer performs a detailed review of the request in its entirety, the appeal decision letter sent to Mr. Faulkner on

October 31, 2012, erroneously quotes Mr. Faulkner's request using the truncated language, not the full and clear request by Mr. Faulkner on July 8, 2012. CP 121. Even a mildly detailed review of the file would show the discrepancy and the fact that Public Disclosure Specialist Pernula recognized the problem before the appeal was even submitted, and she moved to, and obtained, the correct document.

No portion of the PRA nor legal precedent requires an agency to prolong fulfilling a request pending an agency appeal. Even Barbara Parry is required by the PRA to give Mr. Faulkner the fullest of assistance. The record shows that she failed in this regard.

Further, Defendant categorizes Mr. Faulkner's reference to a willfully created blank document as an attempt to twist the date into a sinister motive. Brief of Respondent p. 16. To the contrary, it was Public Disclosure Specialist Terry Pernula who first stated, "The one provided appears to be a 'blank' computer generated one." CP 106. While the form may present a legal question, the record shows it was created on July 18, 2012, and speaks for itself. CP 94. Closer review of the record will show that it was created by Mr. Michael True who was well aware of the missing legal mail problem since he was the one who processed the 7/2/2012 CRCC incoming legal mail. A reasonable interpretation of a request for a "Legal Mail Signature Sheet," or other

delivery confirmation would be to produce a "completed" form, not a "blank" form.

Finally, the Department argues, "Moreover, at the penalties hearing in the lower court, Faulkner conceded that he could not identify anything that suggests that those working on his request had reason to believe that the request was important or time-sensitive. See CP 6." Brief of Respondent at pp. 15-16. Nothing in the PRA, or any Washington State precedent suggests or mandates that a request be deemed "important," rather the PRA requires that all requests be given the fullest of assistance. Giving any credence to the importance of Mr. Faulkner's request violates the PRA provision forbidding agencies from distinguishing among persons requesting records.

"Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons." RCW 42.56.080.

In the prison environment, personal and legal mail is highly important and time-sensitive to the prisoner/recipient and to the correspondents. It is a mockery of the PRA and its intended purpose to interject such an

argument in defense of the delays in providing Mr. Faulkner with the one-page legal mail signature sheet clearly available and tracked by the Department's DOC Mail Policy 450.100 X (A),(B),and (C). CP 140.

D. CONCLUSION

For the reasons stated above and in his Opening Brief, Mr. Faulkner respectfully asks this Court to reverse the trial court's Order of April 19, 2013, finding that the Defendant did not violate the PRA in regards to the mail rejection disposition notice. He then asks the Court to reverse the trial court's Order of April 19, 2013, finding that, in regards to the legal mail signature sheet, the Defendant violated the PRA but did not so so in bad faith, and to hold the Department liable for a bad faith violation of the Public Records Act and determine the period for which the Department is liable. He then asks either this Court determine the penalties or remand this case back to the trial court to determine penalties.

He finally asks that he be awarded reasonable costs.

Respectfully submitted this 21<sup>st</sup> day of August, 2013.



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CERTIFICATE OF SERVICE

I certify that I served the original and a copy of the foregoing Appellant's REPLY BRIEF, Court of Appeals Division III, No. 316581, with the Clerk of the Division III Court of Appeals, and I served a copy on Respondent's counsel of record by mailing it through the "Legal Mail" process of the Washington State Reformatory Unit, U.S. Mail postage prepaid on this the 21st day of August, 2013, addressed to:

Clerk, Court of Appeals  
Division III  
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and to Respondent's counsel:

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I certify under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of August, 2013, at Monroe, Washington.



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