71461-9

71461-9

No. 71461-9

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

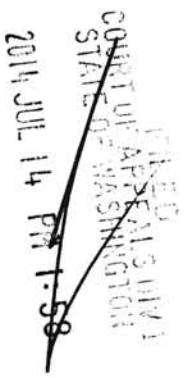
JOHN F. KLINKERT,

Appellant

v.

WASHINGTON STATE CRIMINAL JUSTICE
TRAINING COMMISSION,

Respondent



On Appeal from the Superior Court of Washington
for Snohomish County

The Honorable Marybeth Dingledy, Judge

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

1. A note on abbreviations in this Reply Brief

"AB" means "Appellant's Brief" and "RB" means Respondent's Brief. Thus, for example, "AB 17-19" designates pages 17-19 of Appellant's Brief and "RB 17-19" designates pages 17-19 of Respondent's Brief.

2. Corrections to errata in Appellant's Brief (with apologies)

- On AB 5 in the second line of Argument 4, "Within" should be "within".
- On AB 10 in the heading at the top of the page, insert "**STATE**" between "**WASHINGTON**" and "**CRIMINAL**".
- On AB 17 in the last sentence, the period after "Bidinger" should be a comma.
- On AB 21, 22, 37, 44 all the sections labeled "Standard of Review" should be double-spaced.
- On AB 25 in the first sentence of the last paragraph, the phrase "on notice to sue with the statute" should read "on notice to sue within the one-year statute".
- On AB 26 four lines from the bottom, the ">" should be a period.
- On AB 28 in the second line, "withholding at." Should read "withholding at all.".

- On AB 37 the third line in the "Standard of Review" section should begin with "limitations" rather than "Limitations".
- On AB 44 in the last paragraph, the phrase "last refusal was August 5, 2010. (CP 101-4)" should read" last refusal as to my first records request was August 5, 2010. (CP 87)".
- On AB 45 in the third line of the second paragraph, the citation "CP 97-3, CP 97-9)" should read "(CP 93, 97-9, CP 101-4)".

3. Difficulties in replying to Respondent's Brief

RAP 10.3(b) requires the Respondent's Brief to "answer the brief of appellant…", yet when I read the WSCJTC's Respondent's Brief I found it difficult to determine exactly which parts of my Appellant's Brief the WSCJTC was answering, because the Attorney General (WSCJTC's lawyer) does not refer to arguments in my Appellant's Brief. The only time the Attorney General cites my Appellant's Brief at all is on RB 12. Several times in Respondent's Brief the Attorney General says things like "Klinkert argues that …" but then he either provides no citations to my Appellant's Brief or he gives a page reference to something in the CP, i.e., in the Clerk's Papers for the proceedings below in Snohomish County Superior Court. I am therefore somewhat at a loss as to how to relate the Attorney General's Respondent's Brief to my Appellant's Brief for the Court.

To simplify matters and help this Court understand both the arguments in my Appellant's Brief and the WSCJTC's arguments in the Attorney General's Respondent's Brief, I will present for the Court in the sections immediately below a short summary of my argument along with the complete topic outline of my Appellant's Brief. I also summarize the Attorney General's argument and present his topic outline.

4. A brief summary of my argument in Appellant's Brief

To summarize my four main arguments listed on AB 5:

Because WSCJTC's privilege log was inadequate and satisfied neither of the two prongs of the one-year Public Records Act statute of limitations contained within the Act itself in RCW 42.56.550(6), the applicable statute of limitations for my Public Records Act lawsuit is the three-year statute in RCW 4.16.080(6) pertaining to lawsuits based on statutory penalties. The trigger date that starts the statute running is the date of an agency's last denial of requested records. Here that trigger date was August 5, 2010, when WSCJTC last refused to provide an adequate privilege log. I satisfied the three-year statute because I filed my original Complaint under the Public Records Act on July 30, 2013, within the three-year statute. Therefore this Court should reverse the Superior Court's dismissal of my First Amended Complaint.

5. Outline of topic headings and subheadings in Appellant's Brief

1. When the one-year statute of limitations in RCW 42.56.550(6) is not applicable, the statute of limitations is triggered by an agency's last denial of records without the adequate "brief explanation of how [an] exemption applies to the record[s] withheld" required by RCW 42.56.210(3).

2. WSCJTC's two short emails of August 5, 2010 denying my second request were WSCJTC's last denial of a requested record, and the emails were not valid privilege logs sufficient to trigger the one-year statute of limitations in RCW 42.56.550(6).

    a. The two short emails were not sufficient to trigger the first prong of the one-year statute of limitations in RCW 42.56.550(6)

        (1) The inadequacy of WSCJTC's purported privilege logs under *Rental Housing Association*

        (2) The correct definition of "disclosure" under *Sanders v. State*

        (3) No silent withholding: *Rental Housing Association* and *PAWS II*

        (4) WSCJTC's claim of the "other statute" exception in RCW 42.56.070(1) is disallowed by *PAWS II* because it conflicts with the public Records ACT.

        (5) Conclusion: No triggering of the first prong

    b. An agency's one-time provision of records to a requester does not qualify as an "installment" that triggers the second prong of the one-year statute of limitations in RCW 42.56.550(6)

        (1) Split of authority

        (2) *Tobin v. Worden* is the better-reasoned case

        (3) No triggering of the second prong

(4) Thus, neither prong of RCW 42.56.550(6) was triggered

(5) WSCJTC in effect denied access to requested public records

3. The applicable statute of limitations in this case is the three-year period in RCW 4.16.080(6) for lawsuits seeking statutory penalties, because my original Complaint under the Public Records Act and my First Amended Complaint and attached exhibits both sought statutory penalties under RCW 42.56.550(4).

a. Tools for this Court to use in its analysis

b. The Washington Supreme Court favors the statute of limitations with the longer time frame

c. A plain meaning interpretation

d. Traditional canons of statutory construction

e. The Attorney General's objection to the three-year statute does not apply in this situation

f. The Washington Supreme Court favors the longer statute of limitations

g. Conclusion: Traditional canons of statutory interpretation favor the three-year statute

4. Because I filed my original Complaint on July 30, 2013, within the applicable three-year statute of limitations, the hearing judge should not have granted WSCJTC's CR 12(b)(6) motion to dismiss.

6. A brief summary of WSCJTC's argument in Respondent's Brief

WSCJTC's argument is contained in Respondent's Brief headings B, C, C.1, C.2, and C.3. Here is a summary of those arguments, when considered as one argument:

WSCJTC's privilege log provided to me on November 18, 2009 was valid and triggered the one-year statute of limitations contained within the Public Records Act in RCW 42.56.550(6). Even if one were to use the two-year catch-all statute of limitations in RCW 4.16.130, Klinkert did not satisfy the two-year statute. The three-year statute in RCW 4.16.080(6) is not applicable, but even if it is applicable Klinkert did not satisfy it. Therefore the Court should affirm the Superior Court's dismissal of Klinkert's First Amended Complaint.

7. Outline of topic headings and subheadings in Respondent's Brief

B. The statute of limitations was triggered on November 18, 2009, when CJTC identified records it withheld and provided an exemption log explaining why the records were exempt from public disclosure

C. The trial court properly dismissed the case because the statute of limitations expired prior to the filing of the lawsuit

1. Klinkert's lawsuit was appropriately dismissed as untimely pursuant to the one-year statute of limitations set forth in the PRA

2. Klinkert's lawsuit was untimely even under the "catch-all" two-year statute of limitations set forth in RCW 4.16.130

3. The three-year statute of limitations in RCW 4.16.080(6) does not apply because the PRA provides for a different limitation on actions

B. PRELIMINARY TO MY REBUTTAL

On RB 15 the Attorney General opposes an argument which I never made – namely, that the proper statute of limitations for situations where the one-year statute of limitations in RCW 42.56.550(6) does not apply, is the catch-all two year statute of limitations in RCW 4.16.130.

C. REBUTTAL OF THE ARGUMENT IN REPONDENT'S BRIEF

1. On RB 8 in the first full paragraph, the Attorney General gives a misleading definition of "silent withholding" as the term is used in *Progressive Animal Welfare Society v. University of Washington* (*PAWS II)*, 128 Wash.2d at 270-271. First, and perhaps this is a trivial point, *PAWS II* does not provide a formal definition of "silent withholding." Second, the Attorney General has omitted the relevant example of "silent withholding" cited by the Washington Supreme Court – of which the WSCJTC's own withholding provides a perfect instance. Here are the relevant quotations from *PAWS II*:

> The Public Records Act does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records. Failure to reveal that some records have been withheld in their entirety gives requesters the misleading impression that all documents relevant to the request have been disclosed. [Citation omitted.] Moreover, without a specific identification of each individual record withheld in its entirety, the reviewing court's ability to conduct the statutorily required de novo review is vitiated ..."

and "...an agency's response to a requester must include specific means of identifying any individual records which are being withheld in their entirety. [Footnote omitted] [Emphasis added] *PAWS II*, 128 Wash.2d at 270-271

The WSCJTC's 713-page investigative file certainly contains "individual records which are being withheld in their entirety, so WSCJTC was, and still insists on, "silently withholding" by calling the entire file a "record".

2. On RB 9 in the first full paragraph, the Attorney General claims I made an argument which I never actually made, and he does so without citing where in my Appellant's Brief I made the argument. I never argued that "the statute of limitations has yet to start under the rule of *Rental Housing Ass'n.*" I did argue, in several places on AB 44-47, that the three-year statute of limitations began to run on August 5, 2010.

3. On RB 9 in the second full paragraph, the Attorney General's linguistic usage of the word "record" attempts to use it to refer to the entire 713-page IIU file of records. On RB 10 in the first full paragraph, the Attorney General continues to use "record" in a misleading way. A file of 713 pages is not a "record." Nor is it a "document", a word which the Attorney General also uses in the first full paragraph on RB 10 to refer to the file. On RB 10 in the second full paragraph, and continuing on to the top of RB 11, the Attorney General relies on his misleading definition of

silent withholding" that I mentioned earlier on Page 12 of this Reply Brief, this time combining the definition with his misleading use of "record".

4. On RB 11 in the first full paragraph, the Attorney General attributes to me an argument I never made, namely that "the exemption log was insufficient because it did not describe each individual page of the 713-page investigative file." That accusation is unwarranted. I have never made a claim that WSCJTC must "describe each individual page of the 713-page investigative file." Therefore, the Attorney General's claim that I "cite[ ] no authority requiring a public agency to describe each page of a multi-page record when the record is withheld in its entirety" is pointless and misleading. Note that the Attorney General again makes a claim, by implication, that the WSCJTC's investigative file does actually constitute one "record."

5. On RB 11 in the last sentence at the bottom and continuing on to the top of RB 12, the Attorney General's argument about RCW 43.101.400(1) presents a "conflict", in that the purported legislative intent, even if it were to exist, is not supportable under case law regarding conflicts with the Public Records Act under RCW 42.56.030, as I argued in my Appellant's Brief at AB 29-30, an argument that the Attorney General never cites in his Respondent's Brief.

6. On RB 12 at the top, the Attorney General says that "The

Legislature understood that an internal affairs investigation of police misconduct is likely memorialized in multiple documents by multiple authors…", but this is exactly my point, and each "document" is a "record" contrary to the Attorney General previous claim that there is only one 713-page record. And his additional claim in the same sentence, namely that "there is only one 'investigation' that is stored in the file", is beside the point.

7. On RB 12 in the first sentence of the first full paragraph the Attorney General again refers misleadingly to a "713-page record" and implies that I asked for a description of "each page", but I repeat that I never requested such a thing, so there was no such request as claimed in the second sentence of the first full paragraph, to "describe the records in the elaborate detail argued by Klinkert." I simply requested an adequate privilege log, one that described each record in the file. Also notice that now the Attorney General says "records", not "record".

8. On RB 12 in the first full paragraph, in regard to the Attorney General's claim that the investigative file records must be kept confidential, I submitted a Statement of Additional Authority on April 18, 2014 that cited *Sargent v. Seattle Police Department*, 179 Wash.2d 376, 314 P.3d 1093 (2013), a Washington Supreme Court case that discusses "the effective law enforcement exemption." One holding of *Sargent,*

supra, 314 P.3d at 1105, is that "the exemption does not apply categorically to an internal disciplinary investigation ", that is to an IIU investigative file. Although WSCJTC did not claim that particular exemption, but rather claimed the exemption in RCW 43.101.400(1) pertaining to "investigative files of the commission….", we know from CP 104, an email to me from Greg Baxter, the Public Records Officer for WSCJTC, that the entire investigative file that WSCJTC withheld supposedly pertains to the King County Sheriff's Office's internal investigation of Deputy Paul Schene.

9. In the first sentence of the second full paragraph on RB 12 the Attorney General attempts to rebut the "conflict" argument I made in my Appellant's Brief, citing AB 28-29, and he claims that the PRA allows withholding an entire file under the "other statute" exemption in RCW 42.56.070(1) which he quotes in his footnote 1. Now, as I argued on AB 29-30, the "other statute" exemption does not apply if the other statute conflicts with the PRA. That is, at AB 29-30 I discussed the "other statute" exemption but the Attorney General does not address my argument, which is that according to *PAWS II*, 125 Wash.2d at 261-2, because there is a "conflict" under RCW 42.56.030 between RCW 43.101.400(1) and RCW 42.56.210(3) as interpreted by *Rental Housing Association*, *supra*, the "other statute" exemption is overridden by the

PRA's conflict provision in RCW 42.56.030. Therefore actually one could argue that not only must the WSCJTC disclose the existence of the records on a privilege log, but it must also produce the records.

Consider *Deer v. Department of Social and Health Services*, 122 Wash.App. 54, 93 P.3d 195 (2004) which sets forth a test for the existence of a "conflict" with another statute. In *Deer* the Court of Appeals used the following guideline as the test for a possible"conflict" being considered: whether a claimed exemption in Chapter 13.50 RCW "conflict[ed] with the PDA's purpose of holding public officials and institutions accountable and provided access to public records." The Court of Appeals found that Chapter 13.50 RCW did not conflict with the Public Records Act because it contained an "alternative means of requesting" the sought-after records. *Deer*, 93 P.3d at 198-199. But that is not the situations in my case, where WSCJTC's claimed "other statute" -- RCW 43.101.400(1) – does contradict the Public Records Act's "purpose of holding public officials and institutions accountable" and there is no alternative means for me to obtain the records in the WSCJTC's investigative file -- or, in lieu of the records, a valid privilege log. Thus, there is a conflict with the Public Records Act and WSCJTC's claim of an "other statute" exemption fails.

As part of his argument here, the Attorney General makes the claim, at the very bottom of RB 12 and the top of RB 13, that "[t]he statute [i.e.,

RCW 43.101.400(1)] does not conflict with the PRA's general requirement than an agency identify the individual records it withholds because the statute allows CJTC to identify an "investigative file" received from the terminating police agency as one record…". Now, the statute's wording allows nothing of the kind; this claim is precisely one of the major issues in this appeal. Also, as I have already shown above at Pages 15-16 and at AB 28-30, insofar as the WSCJTC interprets the statute to do so by calling an entire investigative file a "record", it conflicts with RCW 42.56.210(3) of the Public Records Act and with *Rental Housing Association, supra.*

10. On RB 13 in the first full paragraph, the Attorney General claims that the WSCJTC "identified the record -- again the Attorney General misuses "record" -- with enough specificity to allow Klinkert to know what record was withheld ("King County Sheriff's Office Investigative file on Deputy Schene 713 pages"). However, there is <u>not</u> enough specificity, because some of the true records included in the investigative file might not really have been part of the IIU investigation of Deputy Schene at all. But we'll never know unless the individual records in the file are described on a privilege log.

On RB 13 in the second sentence of the first full paragraph, the Attorney General says, "This identification, in conjunction with the claim

of exemption that was applied and a brief explanation as to why the exemption applied, allowed Klinkert to assess whether a proper claim of exemption was made." My answer here is that it is obvious that a proper claim of exemption was not made – because the individual records in the investigative file were not described on a privilege log. And, contrary to what the Attorney General claims in the third sentence of the first full paragraph of RB 13, and as I showed on AB 28-30, there is a conflict between the PRA and Chapter 43.101 RCW.

11. On RB 13 in the last paragraph, the Attorney General says that the WSCJTC's August 5, 2010 response to me following my re-request for an adequate privilege log did not constitute a new event that triggered a new time limit. Yes, it did, as I showed on AB 21in my discussion of *Johnson v. Department of Corrections*, 164 Wash.App. 769, 265 P.3d 216 (2011). The Attorney General in his Respondent's Brief never provides a citation for a holding of any case pertaining to a trigger date other than the case holding in *Johnson, supra*, which I cited on AB 21. He does not refer to my argument 1 on AB 21-22, and on RB 13 (in the bottom paragraph) the Attorney General offers only two sentences in rebuttal of my entire argument 1 about the trigger date for the statute of limitations.

12. On RB 14 in the first paragraph, the Attorney General mentions

the three candidate statutes of limitations (the one-year, the two-year and the three-year statutes), and says that "Each of these time limits expired before Klinkert filed his PRA lawsuit on July 24, 2013...." However, contrary to the Attorney General's implied promise here, he later never really attempts seriously to show – on RB 19, for example -- that the three-year statute of limitations expired before I filed my lawsuit. He simply claims again that the trigger date was November 18, 2009 (which is the trigger date for the one-year statute in RCW 42.56.550(6).

13. The title of the Attorney General's brief two-paragraph argument C. 1 on RB 14 is "Klinkert's lawsuit was appropriately dismissed as untimely pursuant to the one-year statute of limitations set forth in the PRA." I rebutted this two-paragraph argument in detail in my arguments 2.a. and 2.b on AB 22-37, but the Attorney General nowhere refers to that detailed rebuttal. I will not repeat that rebuttal in this Reply Brief but instead refer the Court to AB 22-37. Also, it is not clear why the Attorney General is arguing again that the one-year statute of limitations applies – after he just finished arguing in section B on RB 7-13 that the WSCJTC's privilege log was adequate to trigger the one-year statute of limitations.

14. The Attorney General in his argument C. 2. on RB 15-18 aims to show that my lawsuit was untimely under the two-year catch-all statute of limitations in RCW 4.16.130. Strangely, the Attorney General in this

section devotes several pages to discussing here, regarding the two-year catch-all statute, three cases I myself discussed in AB 31-35 for my argument 2.b regarding WSC JTC's failure to activate the second prong of the two-pronged one-year statute of limitations in RCW 42.56.550(6). The three cases are *Tobin v. Worden*, 156 Wash.App.507, 233 P.3d 906 (2010); *Bartz v. Department of Corrections*, 173 Wash.App. 522, 297 P.3d 737 (2013); and *Johnson v. Department of Corrections*, 164 Wash.App. 769, 265 P.3d 216 (2011). Yet the Attorney General's argument is irrelevant. Because I have always argued that the two-year statute does not apply, the Attorney General is attacking a straw man. That is, I agree with the Attorney General that my lawsuit would be untimely under the two-year statute, but the two-year statute is not the applicable statute. The applicable statute of limitations is the three-year statute in RCW 4.16.080(6), as I argued on AB 37-43.

15. The Attorney General's argument C. 3. on RB 18 attempts to show that the three-year statute in RCW 4.16.080(6) is not applicable to my lawsuit, and that even if applicable I did not satisfy it. But his argument contains several flaws, and in two places his argument even favors me.

a. First, in the last paragraph on RB 18-21 the Attorney General says that I claimed that "the triggering event for the three-year statute occurred on August 5, 2010, when [I] repeated [my] complaint that the

exemption log… was 'inadequate' and [I] made a separate records request." (Although the Attorney General provides no citation for this argument of mine, it occurs several times on AB 44-46.) Technically my argument is that the triggering event is the date of the agency's last denial of requested records, not the date of my repeated request for an adequate privilege log -- although the dates happen to be the same here: August 5, 2010.

Here is one explanation of why an agency's reusal to provide a valid privilege log counts as a denial of requested records:
RCW42.56.210(3) says that if the agency refuses "in whole or in part, inspection of any public record", it must

> "include a statement of the specific exemption authorizing the withholding of the record (or paret) and a brief explanation of how the exemption applies to the record withheld."

Logically this means that if the agency does not provide a valid privilege log, it must provide (or, allow inspection of) the requested records. That is, the agency must do A or B. If the agency does not do B (provide the brief explanation, i.e., the privilege log required by *Rental Housing Association*) logically the agency must do A, i.e., provide the records. WSCJTC did not provide a valid privilege log, so it must provide the records but it refuses to do so by continuing to claim that its privilege log is adequate.

b. Second, the Attorney General says at the top of RB 19 that RCW 4.16.080(6) is not the applicable statute because it states that "it does not apply to claims for penalties pursuant to a statute that 'provides a different limitation'", and the Attorney General quotes RCW 4.16.080(6) in his footnote 2 at the bottom of RB 19. Then the Attorney General claims that the statute RCW 42.45.550(6) provides for that (one-year) limitation, and argues that therefore RCW 4.16.080(6), the three-year statute, removes my lawsuit from its protection. I already showed in my argument 2.a and 2.b on AB 22-37 that the one-year statute in the Public Records Act, RCW 42.56.550(6), does not apply to my situation. Thus, the Attorney General's argument on RB 19-21 fails, because the one- year statute in RCW 42.56.550(6) does not "provide a different limitation" to my situation.

c. Third, in the second paragraph on RB 19 the Attorney General says that because "[t]he PRA specifically provides a one-year limitation for actions that challenge a claim of exemption under the PRA..., [it] makes no sense to have different statutes of limitations for PRA lawsuits challenging a claim of exemption", and the Attorney General cites *Bartz v. Department of Corrections*, 173 Wash.App. at 536-38 in support.

I already rebutted *Bartz*'s purported argument about absurdity on AB 31-33, but the Attorney General does not refer the Court to AB 31-33. Also, it certainly does make sense to apply a different statute of limitations in a situation where an agency claims it provided a valid privilege log but actually never did. In fact, this is the exact situation covered in *Rental Housing Association of Puget Sound v. City of Des Moines*, *supra*.

d. Fourth, the Attorney General argues in the last paragraph at the bottom of RB 19 continuing onto RB 20, that even if the three-year statute applies, the trigger event occurred on November 18, 2009, not August 5, 2010. Note that November 18, 2009 is the date of the WSCJTC's first response to me that provided its two-line privilege log. And note that August 5, 2010 was not only the date of my re-request for an adequate privilege log; it was also the date of the WSCJTC's last denial of my re-request, which as I showed in my argument 1 on AB 21-22 and pointed out again in this Reply Brief under item a. on Page 21 , is the trigger date when the one-year statute does not apply.

e. Fifth, the Attorney General unwittingly makes my own argument for me when he says on RB 20 at the end of the second full paragraph, "If Klinkert had reason to believe that CJTC 'lied' when it responded that it had no records responsive to Klinkert's records request of August 5, 2010, his cause of action arose on August 5, 2010." But

when I filed this lawsuit I did have this date -- August 5, 2010 – in mind as the trigger date for the applicable statute of limitations – the three-year statute in RCW 4.16.080(6).

f. Sixth, in the last paragraph at the bottom of RB 20, the Attorney General again unwittingly makes an argument on my behalf when he admits that "RCW 42.56.550(6) is silent on the time limitation for a PRA action to challenge an agency's claim that it has no responsive records." This admission contradicts the Attorney General's earlier claim in C.1 on RB 14 that the applicable statute of limitations is the one year period in RCW 42.56.550(6). Again in the first full paragraph on RB 21 he repeats his admission.

Actually one can argue that the statute of limitations has not even begun to run, because WSCJTC has not yet provided a valid privilege log describing all the records in the IIU file it is withholding. That is, the WSCJTC is still "silently withholding" records.

(However, I really did realize that WSCJTC was withholding records when it provided its two-line purported privilege log, so the issue here really is: which statute of limitations applies to the date of my realization.)

To restate the immediately preceding point slightly differently: currently RCW 42.56.550(6) does not cover the following situations regarding the "silent withholding" of records:

- An agency explicitly refuses to provide requested records but does not explain why.
- An agency receives a request but never replies to the requester.
- An agency mistakenly denies that it possesses requested records and the requester does not know the agency has the records.
- An agency intentionally lies that it does not possess requested records but the requester reasonably must know that the agency has the records. For example, an agency asserts what WSCJTC is asserting, that a 713-page investigative file is one "record" and provides a two-line privilege log for the investigative file plus one other record.
- An agency intentionally lies, and seven years later the requester learns that the agency had the records all along.

It seems reasonable to me that the applicable statute of limitations for the first, second, and fourth situations above is the three-year statute in RCW 4.16.080(6), and it is triggered by the requester's discovery of the truth, or the date he reasonably should have discovered the truth.

g. Seventh, the Attorney General on RB 21 again makes the *Bartz*

"absurdity" argument he made earlier on RB 15 and which I rebutted on AB 33-34. The Attorney General does not refer the Court to my rebuttal.

h. Eighth, in the last paragraph at the bottom of RB 21, the Attorney General once more argues in my favor – but now only by implication rather than explicitly -- that the relevant trigger date was August 5, 2010. However, he then merely asserts without argument that the relevant statute of limitations was the one-year period in RCW 42.56.550(6), in order to show that I did not satisfy the one-year period.

D. CONCLUSION

As a convenient reminder of what I am asking this Court, I repeat here the Conclusion in my Appellant's Brief. I ask this Court to

(1) Reverse the Superior Court judge's dismissal of my lawsuit;

(2) Remand this case to Snohomish County Superior Court;

(3) Order WSCJTC to file an Answer to my First Amended Complaint within the 10 days required by CR 12(a)(4)(A);

(4) Order the WSCJTC to provide me with a valid privilege log;

(5) Suggest to the Snohomish County Superior Court that on remand it consider imposing the maximum monetary penalties on WSCJTC for its preposterous claims, blatantly scornful of

the Public Records Act, that a 713-page file constitutes only one record; and

(6) Declare that in this situation, where an agency never provides a valid privilege log and doesn't provide records in installments, the applicable statute of limitations is the three-year period stated in RCW 4.16.080(6) for lawsuits seeking statutory penalties.

Dated this 14th day of July, 2014

Respectfully submitted,

John F. Klinkert

John F. Klinkert
Appellant pro se

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

JOHN F. KLINKERT, Appellant vs. WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION, Respondent	NO. 71461-9 DECLARATION OF MAILING

I certify that I am over 18 years of age, that I am not a party to this action, and that I served a copy of APPELLANT'S REPLY BRIEF on the party named below on the date below by depositing it in the US mail, postage prepaid, in Lynnwood, Washington.

John Hillman, Asst. Attorney General
Attorney General's Office
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

DATED this 14th day of July, 2014 at Lynnwood, Washington.

Caron C. Curry-Klinkert

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