

71461-9

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NO. 71461-9

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

JOHN F. KLINKERT,

Appellant,

v.

WASHINGTON STATE
CRIMINAL JUSTICE TRAINING COMMISSION,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Public Records Act (“PRA”) generally requires that the government’s records be open to public inspection. However, the PRA was created by the Legislature and is subject to limitations set by the Legislature.

The Legislature directed public agencies to withhold certain records where other concerns outweigh the benefit of public disclosure. RCW 43.101.400(1) directs the Washington State Criminal Justice Training Commission (CJTC) to withhold from public disclosure the “investigative files” provided to CJTC by police agencies that have fired a police officer for misconduct.

CJTC complied with this legislative mandate when it received John Klinkert’s public records request in 2009. Klinkert requested an investigative file forwarded to CJTC by a law enforcement agency that had fired an officer for misconduct. On November 18, 2009, CJTC advised Klinkert it was withholding the requested records and explained to Klinkert why the records were exempt from public disclosure. The statute of limitations set forth in the PRA gave Klinkert one-year from November 18, 2009, to file the present lawsuit. Klinkert did not file a lawsuit until almost four years later in July 2013. The trial court appropriately dismissed the lawsuit as untimely.

II. ISSUES PRESENTED

A. Whether the one-year time limit for filing a PRA action was triggered on November 18, 2009, when CJTC responded with an exemption log that identified withheld records and briefly explained why the records were withheld?

B. Whether the trial court properly dismissed Klinkert's lawsuit because it was filed after the statute of limitations expired?

III. STATEMENT OF THE CASE

The Washington State Criminal Justice Training Center ("CJTC") is a state agency tasked, among other things, with the licensing of Washington peace officers. RCW 43.101.085(6). Officers must be certified by CJTC as a condition of continuing employment. RCW 43.101.095(1). CJTC can revoke certification if an officer is terminated from employment for "disqualifying misconduct." RCW 43.101.105(d).

Washington law enforcement agencies are required to notify CJTC when an officer is terminated for disqualifying misconduct. RCW 43.101.135. Those agencies are further required to send the investigative file documenting the misconduct to CJTC if requested by CJTC. RCW 43.101.135. CJTC reviews the investigative file and any

other documents it compiles and determines whether to initiate an administrative proceeding to revoke the peace officer's certification. *Id.*

CJTC is statutorily prohibited from disclosing to the public the notice of termination and the investigative file submitted by the terminating law enforcement agency. RCW 43.101.400(1). If CJTC declines to initiate an administrative proceeding against the terminated officer, CJTC must destroy the investigative file. RCW 43.101.400(4).

On November 29, 2008, King County Sheriff's Deputy Paul Schene was involved in a physical altercation with an arrestee. CP 113. The King County Sheriff's Office (KCSO) subsequently terminated Deputy Schene's employment following an internal investigation that resulted in sustained findings of misconduct. CP 108. On October 6, 2009, KCSO submitted to CJTC "the entire investigative records relating to the Internal Investigation of Deputy Paul Schene." CP 106.

On October 27, 2009, appellant John F. Klinkert submitted a public records request to CJTC. CP 70. Klinkert requested that CJTC produce:

any and all documents, transcripts, emails, handwritten notes, recordings or images which the CJTC has that are related to the 11/29/08 incident in King County where two King County Sheriff's Deputies, Deputy Paul Schene and Deputy Travis Brunner assaulted a 15-year-old girl, Malika Calhoun, in a holding cell in SeaTac.

CP 70.

On November 18, 2009, CJTC disclosed some of the records requested by Klinkert, but withheld 714 pages. CP 71-77 (Exhibits 3-5). CJTC provided Klinkert with an exemption log that identified what records were withheld and why the records were exempt from public disclosure. CP 77 (Exhibit 5) (attached Appendix A). The exemption log identified one withheld page as a "Notice of Hire/Termination of Deputy Paul Schene." CP 77. The exemption log identified the remaining 713 withheld pages as the "King County Sheriff's Office Investigative File on Deputy Schene." CP 77. The exemption log also included the date of the records, the author of the records, the CJTC recipient of the two records, citation to the statutes that exempted each record from public disclosure, and a brief explanation as to why the identified records were exempt pursuant to the cited statutes. CP 77.

On November 30, 2009, Klinkert told CJTC that he was dissatisfied with the exemption log. CP 79-80. CJTC declined to amend the exemption log and Klinkert took no legal action.

On August 3, 2010, Klinkert contacted CJTC and complained again that the exemption log provided in November 2009 was inadequate. CP 87-91. Klinkert requested "a proper privilege log." CP 88. On August 5, 2010, Klinkert further requested all documents containing

Schene's handwriting that "related to the 11/29/08 incident in King County." CP 92-97.

CJTC promptly responded on August 5, 2010 and reiterated that the exemption log provided on November 18, 2009, was "fully adequate" because it:

identified that we were withholding the entirety of a 713-page investigative file received from the former employer of a terminated officer. We explained that the cited statute exempts all files we compile in the course of certification investigations. Since the information our privilege log provided about the author, recipient, nature, and intended use of the record allows you to make the "threshold determination of whether the claimed exemption is proper," that is a proper privilege log entry. Publishing an inventory of the investigative file's contents is not required for your "threshold determination," not required by the public disclosure law, and could easily defeat our proper claim of privilege.

CP 87-88 (emphasis in the original).

CJTC further advised Klinkert on August 5, 2010 that it had no records responsive to his request for documents containing Deputy Schene's handwriting and "related to the 11/29/08 incident in King County." CP 101.

For almost four years, Klinkert took no legal action to challenge CJTC's November 2009 decision to withhold the requested records or the adequacy of the exemption log that was provided. On July 24, 2013, Klinkert filed a lawsuit in Snohomish County Superior Court which

alleged that CJTC violated the PRA by improperly withholding the requested records. CP 56-113. The lawsuit also alleged that CJTC was “lying” when it responded to Klinkert on August 5, 2010, that it had no records responsive to Klinkert’s request for documents containing Deputy Schene’s handwriting that “related to the 11/29/08 incident in King County.” CP 56-113.

CJTC moved the superior court for an order dismissing Klinkert’s lawsuit pursuant to CR 12(b)(6). CP 42-53. Specifically, CJTC argued that Klinkert’s lawsuit was barred by the statute of limitations. CP 43-53. The trial court agreed and dismissed the lawsuit. CP 1-4. This appeal follows.

IV. ARGUMENT

Klinkert’s claim for relief primarily hinges on his argument that the one-year time limit for filing a PRA lawsuit did not apply to him because the exemption log provided by CJTC in November 2009 was legally insufficient to trigger the statute of limitations. Klinkert misconstrues the plain language of the PRA and case law interpreting it.

A. Standard Of Review

Review of an order dismissing a lawsuit pursuant to CR 12(b)(6) is *de novo*. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). The reviewing court may uphold a dismissal order on

any basis supported by the record. *LaMon v. Butler*, 112 Wn.2d 193, 200–01, 770 P.2d 1027, *cert. denied*, 493 U.S. 814 (1989).

A civil action may be dismissed for “failure to state a claim upon which relief can be granted.” CR 12(b)(6). A motion to dismiss under CR 12(b)(6) should be granted if it appears beyond doubt that the plaintiff cannot prove any set of facts consistent with the complaint that justify recovery. *Burton v. Lehman*, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005).

A PRA claim may be dismissed on motion of the public agency on grounds that the statute of limitations has expired. *Greenhalgh v. Dept. of Corrections*, 170 Wn. App. 137, 282 P.3d 1175 (2012). A plaintiff’s allegations are presumed to be true for purposes of a CR 12(b)(6) motion to dismiss. *Burton*, 153 Wn.2d at 422, 103 P.3d 1230.

B. The State 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

The trial court correctly concluded that the exemption log provided to Klinkert was adequate, and that the statute of limitations for Klinkert’s PRA lawsuit was triggered on November 18, 2009.

A public agency must promptly respond to a request for production of records. RCW 42.56.520. “Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the

specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.” RCW 42.56.210(3). In order to satisfy the exemption requirements of RCW 42.56.210(3), the public agency must provide the requestor with an exemption or privilege log that identifies the specified record, cites statutory exemptions, and briefly explains how the exemptions apply to the requested records. *Progressive Animal Welfare Society v. Univ. of Wash. (PAWS II)*, 125 Wn.2d 243, 271, n.18, 884 P.2d 592 (1994). The identifying information in the exemption log “need not be elaborate.” *Id.*

Courts will not tolerate “silent withholding” that may thwart a legitimate public records request. “Silent withholding” occurs when an agency advises a requestor that it is withholding a record in its entirety and claiming an exemption, but does not sufficiently identify the record and/or explain why it is being held such that the requestor or a reviewing court can assess whether a valid claim of exemption was made. *PAWS II*, 125 Wn.2d at 270-71.

In *Rental Housing Ass’n v. City of Des Moines*, a public agency withheld “hundreds of pages” of requested records but did not identify each withheld record or briefly explain how cited exemptions applied to each withheld record. *Rental Housing Ass’n v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009). The requestor filed a PRA lawsuit

contesting the claimed exemptions. *Id.* at 528-34. The agency moved to dismiss because the lawsuit was filed more than one year after the last production of records. *Id.* at 534-35. The Supreme Court of Washington ultimately ruled that the one-year statute of limitations in the PRA was not triggered until the agency provided a sufficient exemption log. *Id.* at 541. The Court explained that “[w]ithout the information a privilege log provides, a public citizen and a reviewing court cannot know (1) what individual records are being withheld, (2) which exemptions are being claimed for individual records, and (3) whether there is a valid basis for a claimed exemption for an individual record.” *Id.* at 540.

Klinkert argues that the exemption log provided to him in November 2009 was legally inadequate and therefore the statute of limitations has yet to start under the rule from *Rental Housing Ass’n*. Klinkert’s argument misconstrues the plain language of the PRA, as well as the interpretations of the PRA in *PAWS II* and *Rental Housing Ass’n*.

CJTC withheld only two records: (1) the one-page “Notice of Termination” for Deputy Schene, and (2) King County’s investigative file pertaining to Deputy Schene, a 713-page record accompanied by a cover letter. CP 77. Klinkert does not contest that CJTC properly identified and withheld the “Notice of Termination,” which CJTC identified as a

“personnel action report” that was “exempt from public disclosure under RCW 43.101.400(1).” CP 77.

The identification of the remaining 713 pages satisfied the identification requirements of RCW 42.56.210(3) and *PAWS II*. CJTC specifically identified the withheld record as the “King County Sheriff’s Office Investigative File on Deputy Schene.” CP 77. CJTC further described it as “an investigative file transmitted to CJTC pertaining to the termination of Paul Schene.” CP 77. The exemption log identified the title of the document, the date on the document, the author of the document, who at CJTC received the document, the type of document, and the length of the document. CP 77. The identification of the withheld records was entirely sufficient.

The exemption privilege log sufficiently offered a “brief explanation” as to why the identified record was exempt from public disclosure pursuant to the statutory citation:

these are records that may be used by the WSCJTC in an investigation of [Deputy Schene’s] certification. These documents cannot be disclosed under RCW 43.101.400(1).

CP 77. Unlike the vague explanations that amounted to silent withholding in *Rental Housing Ass’n*, the brief explanation CJTC gave Klinkert was enough information for Klinkert to make a threshold determination as to

whether a valid claim of exemption had been made. There was no “silent withholding” in this case.

Klinkert also argues that the exemption log was insufficient because it did not describe each individual page of the 713-page investigative file. This argument first ignores the fact that a single document or record can exceed 713 pages. Klinkert cites no authority requiring a public agency to describe each page of a multi-page record when the record is withheld in its entirety.

Klinkert further ignores the plain language of RCW 43.101.400(1). The section itself is entitled, “Confidentiality of Records.” The relevant provision provides:

. . . the following records of the commission are *confidential and exempt from public disclosure*: (a) The contents of personnel action reports filed under RCW 43.101.135; (b) all files, papers, and other information obtained by the commission pursuant to RCW 43.101.095(3); and (c) all investigative files of the commission compiled in carrying out the responsibilities of the commission under this chapter. *Such records are not subject to public disclosure, subpoena, or discovery proceedings in any civil action . . .*

(emphasis added). The Legislature’s use of the word “confidential” and the phrase “investigative files” was an expression of its intent to exclude the *entirety* of an investigative file compiled during an internal affairs investigation, regardless of the number of documents within the file. The

Legislature understood that an internal affairs investigation of police misconduct is likely memorialized in multiple documents by multiple authors, but there is only one “investigation” that is stored in the file.

Had CJTC described each page of the 713-page record, it would also undermine the “confidentiality” of the records. The Legislature not only mandated that these records are exempt from public disclosure, they are also supposed to be kept “confidential.” RCW 43.101.400(1). The Legislature’s purpose in keeping these records confidential would be defeated if CJTC were required to describe the records in the elaborate detail argued by Klinkert.

RCW 43.101.400(1) does not “conflict” with the PRA simply because it allows CJTC to withhold an entire file. *See Brief of Appellant* at 28-29. The PRA allows an agency to withhold records pursuant to an “other statute which exempts or prohibits disclosure of specific information or records.” RCW 42.56.070(1).¹ RCW 43.101.400(1) is an “other statute which exempts or prohibits disclosure of specific information or records.” The statute requires CJTC to withhold the entirety of investigative files submitted by law enforcement agencies that have terminated an officer for misconduct. RCW 43.101.400(1). The

¹ “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. . . .”

statute does not conflict with the PRA's general requirement that 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, an identification that allows the requestor to decide whether a valid claim of exemption was asserted.

Here, CJTC identified the 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"). 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. There is no "conflict" between the PRA and Chapter 43.101 that would invalidate RCW 43.101.400(1) and thereby invalidate the sufficiency of the exemption log provided by CJTC.

Finally, Klinkert argues that the "triggering" event was not the response from CJTC on November 18, 2009, but rather the response from CJTC on August 5, 2010 following Klinkert's "re-request" for an adequate privilege log. CJTC's August 5 response to Klinkert was simply a reiteration of what was explained to Klinkert in 2009. CP 87-88. It did not constitute a "new" event that triggered a new time limit.

C. The Trial Court Properly Dismissed The Case Because The Statute Of Limitations Expired Prior To The Filing Of The Lawsuit

Klinkert filed his lawsuit well after the statute of limitations expired, regardless of whether the applicable statute of limitation was the one-year time limit imposed by the PRA, the two-year “catch-all” time limit in RCW 4.16.130, or the three-year time limit in RCW 4.16.080(6). Each of these time limits expired before Klinkert filed his PRA lawsuit on July 24, 2013, almost four years after the statute of limitations was triggered on November 18, 2009.

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

A PRA action “must be filed within one year of the agency’s claim of exemption or the last production of a record on a partial or installment basis.” RCW 42.56.550(6). The PRA’s one-year statute of limitations is “clearly triggered” by either of these events. *Greenhalgh v. Dep’t of Correction*, 170 Wn. App. 137, 147, 282 P.3d 1175 (2012).

Klinkert’s lawsuit was brought pursuant to the PRA. CP 53 (“This is an action to enforce the Public Records Act . . . RCW 42.56 *et seq.*”). Klinkert was advised on November 18, 2009 that CJTC withheld the records at issue and claimed exemptions. CP 71-77 (Exhibits 3-5). Klinkert had one year from November 18, 2009, to file a lawsuit

challenging the claimed exemptions. RCW 42.56.550(6). He did not and his 2013 lawsuit was properly dismissed.

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

If a statute such as the PRA does not set a statute of limitations, the statute of limitations is two years from the date that an action accrues. RCW 4.16.130 ("An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued"). Klinkert argues that the one-year limit in the PRA did not apply to him. If he were correct, RCW 4.16.130 would arguably apply.

However, the plain language of RCW 4.16.130 provides that it applies only to actions where a limitation of action is "not hereinfore provided for," i.e., cases where there is no statute of limitations in the chapter of the RCW that creates the cause of action. Klinkert's lawsuit was a PRA action (Chapter 42.56 RCW) based on withheld records and a claim of exemption. A statute of limitations for challenges to a claim of exemption is specifically "provided for" in the PRA. RCW 42.56.550(6). Accordingly, RCW 4.16.130 does not apply to PRA actions challenging a claim of exemption.

Furthermore, the PRA's one-year time limit controls if using another statute of limitations would result in an absurd consequence.

Dep't of Corrections v. Bartz, 173 Wn. App. 522, 297 P.3d 737 (2013). In *Bartz*, the agency produced the requested record. Bartz sued after one year, but less than two. Bartz argued that the PRA's statute of limitations did not apply because the PRA's time limit only applied to cases involving an agency's "last production of a record on a partial or installment basis." *Bartz*, 173 Wn. App. at 535. Bartz argued that because the agency made only one production, the production was not "on a partial or installment basis" and therefore the one-year time limit in the PRA did not apply to him. *Id.* Bartz argued that he was entitled to the two-year "catch-all" statute. The court rejected Bartz's argument, noting that it would be "absurd to conclude that the legislature intended to create a more lenient statute of limitations for one category of PRA requests in light of its 2005 deliberate and significant shortening of the time for filing a claim from five years, under the old Public Disclosure Act, to one year, under the [current] PRA." *Bartz*, 173 Wn. App. at 537.

In Klinkert's case, it would be absurd to create a more lenient statute of limitations to challenge an agency's claim of exemption where the PRA explicitly provides for a statute of limitations for *all* actions challenging a claim of exemption. RCW 42.56.550(6). There is no reason for a "second" limitation of time to file the same cause of action.

Klinkert cites *Tobin* and *Johnson*, but neither case assists his argument. In *Tobin*, the court held that production of a single document did not trigger the one-year statute of limitation in the PRA because a single production of a record is not production of a record “on a partial or installment basis” as described in RCW 42.56.550(6). *Tobin v. Worden*, 156 Wn. App. 507, 514, 233 P.3d 906 (2010). The *Tobin* court rejected the argument that RCW 42.56.550(6) was also intended to encompass an agency’s one-time production of records. *Id.* *Tobin* did not address what statute of limitation, if any, applied to a single production of records.

Similarly, in *Johnson* the agency responded to the public records request and produced its only responsive document. *Johnson v. Dep’t of Corrections*, 164 Wn. App. 769, 264 P.3d 216 (2011). *Johnson* filed a PRA lawsuit more than two years later. *Id.* at 774. *Johnson*’s PRA lawsuit was dismissed as time-barred. *Id.* Like *Tobin*, *Johnson* appealed on grounds that the PRA statute of limitations was never triggered because the agency did not claim an exemption or produce records on a “partial or installment basis,” the only two “triggers” specifically identified in RCW 42.56.550(6). *Johnson*, 164 Wn. App. at 776. The court did not reach the merits of the issue because the suit was untimely using either the one-year or two-year statute of limitations. *Id.* at 778.

Johnson and *Tobin* are inapposite because there is no dispute here that CJTC *did* claim an exemption, a fact not present in *Johnson* or *Tobin*. The plain language of RCW 42.56.550(6) clearly provides that a claim of exemption triggers the one-year time limit. CJTC's claim of exemption on November 18, 2009, specifically triggered the one-year statute of limitation

Like *Johnson*, even if the two-year "catch-all" statute of limitations applied to this case, Klinkert's lawsuit was still untimely because a two-year time limit expired on November 18, 2011, two years after CJTC claimed an exemption to the requested records on November 18, 2009. Even using August 5, 2010 as the trigger date as Klinkert argues, the time limit expired on August 5, 2012. The lawsuit was properly dismissed as untimely even under 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.

Klinkert argues his lawsuit was timely because the three-year statute of limitations set forth in RCW 4.16.080(6) applied to his case and the triggering event for the three-year statute of limitations occurred on August 5, 2010, when he repeated his complaint that the exemption log provided in November 2009 was "inadequate" and he made a separate records request. This argument fails.

First, RCW 4.16.080(6) specifically provides that it does not apply to claims for penalties pursuant to a statute that “provides a different limitation.”² The penalties that Klinkert seeks are pursuant to a statute--the PRA--that specifically provides for a “different limitation” of one year. RCW 42.56.550(6). The plain language of RCW 4.16.080(6) removes a PRA lawsuit from the three-year statute of limitations.

Second, for the same reason that it would be an absurd result to apply the two-year limitation in RCW 4.16.130 to a PRA action, it would be equally absurd to apply RCW 4.16.080(6). *See Bartz*, 173 Wn. App. at 536-38. The PRA specifically provides a one-year limitation for actions that challenge a claim of exemption under the PRA. RCW 42.56.550(6). It makes no sense to have different statutes of limitations for PRA lawsuits challenging a claim of exemption. *Id.*

Finally, even if the three-year statute of limitations applied, the triggering event occurred on November 18, 2009. Klinkert’s argument that the trigger-date is August 5, 2010 is not persuasive. Klinkert’s correspondence on August 5, 2010 addressed two subjects: (1) it restated Klinkert’s prior complaint that the exemption log provided in November 2009 was inadequate, and (2) it requested documents with Deputy

² The following actions shall be commenced within three years: . . .

(6) . . . an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, *except when the statute imposing it prescribed a different limitation* . . . (emphasis added).

Schene's handwriting on them that "related to the 11/29/08 incident in King County." CP 87-97. Neither "triggered" a new time limit to challenge CJTC's claim of exemption on November 18, 2009.

CJTC claimed the exemption on November 18, 2009. CJTC did not provide a different exemption log in August 2010 in response to this complaint. The statute of limitations for a cause of action for improper claim of exemption was triggered on November 18, 2009.

With respect to Klinkert's request on August 5, 2010 for documents with Deputy Schene's handwriting on them "related to the 11/29/08 incident in King County," CJTC responded the same day, "We have no records responsive to that specific request." CP 101. Klinkert's first amended complaint alleged that this response was "almost certainly false." CP 60. 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.

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. In *Bartz*, the agency disclosed documents to the records requestor. *Bartz v. Dep't of Corrections*, 173 Wn. App. at 739. The plaintiff sued and alleged that the agency responded in bad faith because it had more responsive records. *Id.* at 532. The court held that the one year time limit provided for in

RCW 42.56.550(6) applied to the claim even though the statute did not specifically address the time limit for an action challenging a single production of records. *Id.* at 536. The court held that applying a different statute of limitations for different PRA actions would result in absurd consequences that could not have been intended by the legislature. *Id.* at 537.

RCW 42.56.550(6) is also silent on when a cause of action arises where the public agency asserts it has no responsive records. This court should follow *Bartz* and hold that the PRA's one-year time limit applies to challenges to an agency's assertion that it has no responsive records. Applying different statutes of limitation for different PRA actions results in absurd consequences. *Bartz*, 173 Wn. App. at 537, This is especially true in Klinkert's case.

Klinkert admits that he received records from King County on November 25, 2009 that could "prove" that CJTC *did* have responsive records. CP 60. If Klinkert's claims are true, Klinkert was aware on August 5, 2010 that he had a cause of action. There was no reason to give Klinkert three years to file an action when all other PRA actions must be commenced in one year. RCW 42.56.550(6). Klinkert had one year from August 5, 2010, to challenge CJTC's assertion that it had no responsive records. Klinkert's claim was untimely and properly dismissed.

V. CONCLUSION

Klinkert filed his PRA lawsuit well after the statute of limitations expired and the trial court properly dismissed it. This Court should affirm.

RESPECTFULLY SUBMITTED this 12th day of June, 2014.

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By:



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Appendix A

Exemption Log – November 18, 2009
John F. Klinkert
PDR- October 27, 2009

Document Title	Document Date	Author	Recipient(s) (cc's: underneath)	Document Type	Exemption	Explanation of How Exemption Applies
Notice of Hire/Termination on Deputy Paul Schene 1 page	9/24/09	Robin Fenton, King County Sheriffs Office	Sonja Hirsch, Washington State Criminal Justice Training Commission (WSCJTC)	Personnel Action Report for Paul Schene	Exempt – RCW 42.56.070(1), 42.56.510, 43.101.400 (1), 43.101.135	This is a personnel action report and such reports are confidential and exempt from public disclosure under 43.101.400 (1).
King County Sheriff's Office Investigative File on Deputy Schene 713 pages including a Cover Letter of 1 page	Cover Letter transmitting and summarizing investigative file dated 9/30/09	Robin Fenton, King County Sheriffs Office	Addressed to Doug Blair, Washington State Criminal Justice Training Commission Received by Sonja Hirsch, Washington State Criminal Justice Training Commission	This is an Investigative File transmitted to WSCJTC pertaining to the termination of Paul Schene	Exempt RCW 42.56.070(1), 42.56.510, 43.101.400 (1), 43.101.135	The Commission received additional documentation or information related to the personnel action report regarding the termination of Deputy Schene by King County Sheriff's Office; these are records that may be used by the WSCJTC in an investigation of his certification. These documents cannot be disclosed under RCW 43.101.400 (1).

NO. 71461-9-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent,

v.

JOHN F. KLINKERT,

Appellant.

DECLARATION OF
SERVICE

DAISY LOGO declares as follows:

On Thursday, June 12, 2014, I deposited into the United States
Mail, first-class postage prepaid and addressed as follows:

JOHN F. KLINKERT
14316 11TH PLACE W
LYNWOOD, WA 98087

Copies of the following documents:

- 1) Brief of Respondent
- 2) Declaration of Service

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

RESPECTFULLY SUBMITTED this 12th day of June, 2014.



DAISY LOGO
Legal Assistant

2014 JUN 12 PM 2:49
COURT OF APPEALS DIV 1
STATE OF WASHINGTON