No. 70992-5-I

No. 91571-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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ISABELLE BICHINDARITZ,

Respondent,

v.

UNIVERSITY OF WASHINGTON,

Appellant.



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ON APPEAL FROM KING COUNTY SUPERIOR COURT
(Hon. Monica J. Benton)
King County Superior Court No. 12-2-05747-8 SEA

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# PETITION FOR REVIEW

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## I. IDENTITY OF PETITIONER

Petitioner Isabelle Bichindaritz Ph.D. was born in France and speaks with a French accent. She was employed as a professor at the University of Washington until she was terminated. Dr. Bichindaritz was the plaintiff below and the respondent at the Court of Appeals in this case, which was brought under the Public Records Act. RCW 42.56 et seq.

## II. CITATION TO THE COURT OF APPEALS DECISION

At trial, the Honorable Monica Benton, found that the University acted in bad faith with a self-serving motive in delaying production of 12,000 documents (containing three smoking gun documents) long enough so the records would not be available for use in Dr. Bichindaritz's federal lawsuit (Conclusion of Law 2.7; Conclusion of Law 2.17). She imposed a penalty of $723,290.50 ($0.50 per page for each day of delay after June 7, 2011) and awarded $102,958.03 in attorney fees.

The Court of Appeals reversed the trial court concluding that since Dr. Bichindaritz had closed her PRA case for a few months and then reinstated it, most of the misconduct occurred outside the PRA's statute of limitations, and thus the actual amount of time it took the University to produce the documents after the new PRA request was submitted (about 5 months), was reasonable.

A copy of the decision is in the Appendix at pages A-001 through

A-011. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at page A-012. A copy of the order denying petitioner's motion to publish is in the Appendix at page A-013.

## III. ISSUE PRESENTED FOR REVIEW

Under the PRA (RCW 42.56.520), responses to requests for public records shall be made promptly by agencies. When an agency is a defendant in a federal discrimination lawsuit and it intentionally withholds 12,000 records, some of which contain information relevant to the petitioner's discrimination claims, for two years, when time was of the essence; and then after the discovery cutoff in the federal discrimination lawsuit, produces the records redacted to mask the relevance of certain records; if part of the delayed production falls outside the PRA statute of limitations, is the Court of Appeals wrong to conclude that the trial court committed error by considering facts outside the statute of limitations in assessing whether the records were promptly produced?

Should attorney fees and costs be awarded on appeal?

## IV. STATEMENT OF THE CASE

### A. The Federal Litigation

On August 25, 2010, Dr. Bichindaritz filed a lawsuit against the University in the Federal District Court in Seattle alleging that the University had discriminated against her on the basis of her sex by not

granting her tenure in an all male computer science department, and retaliated against her for opposing discrimination. CP 951-960. In the complaint, Dr. Bichindaritz focused her claim on the actions of Department Director Orlando Baiocchi from 2005 through 2010. CP 955-58. Dr. Bichindaritz alleged that Dr. Baiocchi treated her differently and blocked her tenure several times despite the tenure committee's recommendations in favor of tenure, ultimately culminating in her termination. CP 955-58.

The federal sex discrimination complaint did not contain an allegation of national origin discrimination even though nation origin discrimination had been identified as a claim in her March 11, 2010 EEOC filing. CP 579.

The federal sex discrimination case was litigated over the next two years. The discovery cutoff was June 5, 2011. CP 582. Defendant's motion for summary judgment to dismiss the retaliation claim was filed on July 5, 2011. CP 583. The plaintiff's response to the summary judgment motion was filed on July 25, 2011. CP 585. On September 19, 2011, the University's summary judgment motion was denied. CP 588. A bench trial was held from April 9, 2012 through April 16, 2012, and the court entered its decision for the University on April 20, 2012. CP 592-3.

### B. The PRA Request and Production

Before the federal litigation began, and before Dr. Bichindaritz filed her EEOC complaint, she sought, among other things, to obtain records under the PRA including production of "all emails related to me." CP 393-96. She listed over 90 names of persons who may have sent or received such emails. *Id.* This request was assigned No. 09-11792. CP 401.

By October 2009, all of the documents responsive to the PRA request had been assembled by the University. FF 1.8-.9, CP 1130, CP 762, CP 750-52, CP 780, FF 1.19, CP 1132; see also CP 667-76 and CP 969.

In early June 2010, Dr. Bichindaritz visited the Office of Public Records (OPR) at the University and spoke to Assistant Public Records Officer Andrew Palmer who said, "there were 2-3 boxes remaining" and that "these would be completed in July." CP 969; CP 879.

On June 15, 2010, the University terminated Dr. Bichindaritz. FF 1.17, CP 1132.

Dr. Bichindaritz was informed that, "the remaining 10,000 records would be released to me by July 20, 2010." CP 982 and 993; see also CP 983 and 993.

On July 28, 2010, when the promised production did not occur, Dr. Bichindaritz followed up with the University about its progress on her requested documents. CP 880 and 993. She was told that the final emails would be provided in September 2010. *Id.* The last production before Dr. Bichindaritz filed her lawsuit in August 2010, occurred on July 28, 2010, in which "Stage 5" production was announced. CP 1191-2.

It is undisputed that, "as of July 30, 2010, about 12,000 pages had still not been produced" by the University. FF 1.19, CP 1132. The University did not complete production by the end of July as promised.

After the federal sex discrimination lawsuit was filed, PRA production slowed to a snail's pace. Dr. Bichindaritz testified that, sometime after the lawsuit was filed, "[d]uring one of my conversations with the Office of Public Records, I was informed that the responsive documents were in the possession of the Attorney General's Office at the University of Washington." CP 880.[1] This may explain the University's inability to produce the remaining documents by the end of July as promised.

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[1] This fact is omitted from the Court of Appeals' decision.

### C. The Statute of Limitations Issue

Contrary to the University's promise of a July 2010 completion date for the production, no additional documents were produced until December 2010, at which time "Stage 6" production was announced as ready for pick up. Stage 6 contained 4098 pages of emails at a cost of $614.70. CP 1206.

It is significant that these documents were fully reviewed and ready for pick up, meaning about 8,000 documents remained to be produced.

In December 2010, Dr. Bichindaritz was in France and did not pick up the documents. FF 1.6, CP 1133; CP 684.

On January 31, 2011, the University sent Dr. Bichindaritz, through her attorney, a letter and invoice that referenced Request #TR-2010-00156, asking for her to contact the office and indicating, "If we have not heard from you by that date; we will dispose of the copied records and close your request." CP 1214, 421; FF 1.27, CP 1133-34.

On February 7, 2011, her attorney at that time, Rick Gautschi, called the University and closed case #TR-2010-00156. FF 1.27, CP 1134, see also CP 423. Dr. Bichindaritz understood that suspending PRA Request No. 09-11792 would not inhibit the progress of her suit "because

[she] would get . . . more [documents], during the lawsuit discovery process." CP 880.

For the next three months, Dr. Bichindaritz utilized the discovery process in the federal litigation, which ended with the discovery cutoff on June 5, 2011. CP 582. Believing that documents had not been produced in the federal litigation, Dr. Bichindaritz immediately contacted the University to reopen her 2009 PRA claim by letter dated June 6, 2011, asking the University to, "restart processing my first public records request to you, which is #09-11792". (FF 1.28, CP 1134; CP 425). The new request asked for the very same emails requested in 2009.

The 4098 pages of emails, which were identified as the Stage 6 production that were not picked up by Dr. Bichindaritz, but which were ready for pick up in December 2010, were not produced at that time.

The University admitted in a CR 30(b)(6) deposition conducted in 2013 that the PRA documents are not destroyed and redacted pages are saved. CP 715-16. Thus, the 4038 pages could have been produced on the same day they were requested.

Despite the June 2010 timeline, in which Assistant Public Records Officer Andrew Palmer said "there were 2-3 boxes remaining" and that "these would be completed in July" (CP 969; CP 879); and despite the fact that over 4,000 of the 12,000 documents in those boxes were reviewed and

approved for release in December 2010; a month passed with no document production, but the University productive in other ways.

On July 5, 2011, the University filed its motion for summary judgment. CP 583. The plaintiff's response to the summary judgment motion was filed on July 25, 2011, again without the benefit of any PRA production although time was of the essence. CP 585.

In August 2011, the University began filing its motions in limine, since the Federal discrimination trial date was set for October 3, 2011. CP 582.

On August 15, 2011, the University produced the first documents responsive to the June 6, 2011 PRA request totaling 4,379 pages of emails. CP 323. Three more production stages followed, but the record does not indicate whether the 2010 Stage 6 documents were included in the August production, a later production, or whether they were spread over all four productions.

On September 16, 2011, the federal judge struck the October trial date. CP 587. On September 19, 2011, the University's summary judgment motion was denied. CP 588. Motions in limine dragged through September and during that time Mr. Gautschi withdrew the plaintiff's jury demand and withdrew as Dr. Bichindaritz's Counsel. CP 588.

Now that Dr. Bichindaritz was without her original lawyer and without a jury, ***ALL OF THE REMAINING PAGES OF EMAILS FROM THE 2009 PRA REQUEST (about 7,700 pages) WERE PRODUCED BETWEEN OCTOBER 7 AND NOVEMBER 15, 2011***. CP 323.

The Sheridan Law Firm, P.S. appeared as Dr. Bichindaritz's counsel in October 2011 and represented her through the federal bench trial and in this litigation (a separate law firm represented her in the federal appeal). CP 589.

Unfortunately, long after all of the depositions were conducted in the case, and long after the June discovery cutoff, Dr. Bichindaritz found herself with 12,000 pages of documents to review while getting ready for trial. She reviewed the August 2011 production, but owing to costs and other issues, was not able to review the remainder of the production until February 2012 after the University stopped charging for electronic copies. CP 882, 454.

After she obtained the production, Dr. Bichindaritz identified two emails that pertained to her EEOC filing regarding national origin discrimination. The first document was an April 2007 email string regarding travel requests submitted by Dr. Bichindaritz from Professor

Larry Wear to Dr. Baiocchi (the named defendant in the federal discrimination case) stating,

> During the Second World War someone asked Churchill which was the heaviest cross he had to carry and he said 'the Cross of Loraine' referring to De Gaulle living in London. Don't need to say more...

CP 388 (A0059548_273). In the federal litigation, it was not produced in discovery. CP 882. It was produced in response to the June 2011 PRA request on November 3, 2011, which was a request for the 2009 documents still not produced. CP 719, 734, 737, 685, FF 1.37. It was produced long after the discovery cutoff in the federal litigation. CP 685, FF 1.5, 1.14, 1.20, 1.28.

The second document was an email string between Professor Hanks and Dr. Baiocchi involving course schedule issues. Hanks wrote:

> That is a long story, Steve ... "Technically" it started when you left the Senate (officially, I mean), but in fact she managed to start attending just now. Many, many years ago I had an Alfa Romeo. Everything there was a complication, even the mechanism to move the seats had twenty moving parts ... One day a mechanic look at me and said: "These Europeans ... , if it can be simple, why not make it complicate[d]? That image comes to my mind now and then, since I joined the Institute ...
>
> (Well, The Alfa is not French ... )

CP 390 (A0059549_153). It was produced in response to the PRA request on November 3, 2011. CP 719, 734, 737, 685, FF 1.37. It was produced

long after the discovery cutoff in the federal litigation. CP 685, FF 1.5, 1.14, 1.20, 1.28

After obtaining these documents, Dr. Bichindaritz sought to amend the federal complaint to include a national origin claim, but was denied on April 6, 2012. CP 1328-29. Dr. Bichindaritz sought to dismiss the case and to bring the case in state court but was denied. CP 590-91. Both emails became exhibits in the federal bench trial, but were not offered since they pertained to national origin and not gender. CP 1363.

On February 14, 2012, Dr. Bichindaritz filed a parallel action in state court. CP 1. On February 23, 2012, she amended the complaint to add the PRA claim. CP 51. The parallel action in state court was subsequently dismissed by the trial court with the exception of Dr. Bichindaritz's PRA claim. CP 69.

In 2013, Dr. Bichindaritz asked the trial court to review in camera some of the documents produced with redactions in 2011. On July 25, 2013 and August 2, 2013, the trial court issued two orders releasing documents unredacted. CP 611, CP 612. Among them was a January 2008 email exchange between Professor Larry Wear and Dr. Baiocchi regarding Dr. Bichindaritz, which included comments made by a female faculty member who shared a committee assignment with Dr. Bichindaritz.

The email string was heavily redacted to delete comments by Dr. Baiocchi and others that were unfavorable to the University's federal case. The following portion of the email had not been produced and was of particular interest to Dr. Bichindaritz and to the trial court. Professor Wear wrote to Dr. Baiocchi:

> I believe the nursing person made the comments about gender. The nursing person who was on Isabelle's committee hinted that we might be picking on Isabelle's teaching because she was a woman. I didn't care for her much.

CP 237, 620 CP 1138 (#006792). This document was printed on 10/6/09 but not produced in the federal litigation, and not produced with the nurse-related comments unredacted until 2013, when Judge Benton ordered its unredacted production. As a result, Dr. Bichindaritz lost witnesses and opportunities for discovery and cross-examination in the federal case. CP 948, 1655.

The University provided only a stamped citation to the exemption section of the PRA when it redacted documents. In this case, the University claimed as the exemption, RCW 42.56.230(3), which provides an exemption to production for, "Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." The trial court found that this exemption did not apply. CP 611, CP 612.

The PRA case was tried by affidavit and on September 6, 2013, the trial court entered detailed findings of fact. CP 1128. The trial court found that the University acted in bad faith with a self-serving motive in delaying production of 12,000 documents (containing three smoking gun documents) long enough so that the records would not be available for use in Bichindaritz's federal lawsuit. (Conclusion of Law 2.7; Conclusion of Law 2.17). Judge Benton imposed a $723,290.50 penalty ($0.50 per page for each day of delay after June 7, 2011) and awarded $102,958.03 in attorney fees.

## V. ARGUMENT

### A. The Petition Involves An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court Because The University Engaged In Serious Deceptive Misconduct That Goes To The Heart Of The PRA's Purpose

This Court should accept review because the University made a calculated decision to delay and withhold production of 12,000 pages of emails it considered important to the petitioner's federal case.[2] Unless this Court acts, the University will not be held accountable for serious

[2] The University claims that since the federal judge denied a FRCP 60 motion after the trial court made its ruling in this case, the documents should not be considered as important. But this misses the point. The University considered the documents important enough to delay, redact, and withhold, behavior the PRA is designed to prevent and discourage.

misconduct and the public will suffer, because the lesson being taught by the Court of Appeals is delay and manipulation by government is acceptable. The "nursing person" email is the most graphic example of the University's misconduct. The email shows that the University identified and printed out the document in October 2009, but did not produce it until the PRA trial court ordered its unredacted production in 2013. It was withheld for two years without justification, which amounted to a silent withholding, and when it was produced in 2011, it was redacted based on an exemption that did not apply.[3] No log was provided to summarize what was under the black ink covering the important entries, so Dr. Bichindaritz could not know that the redacted portion identified a potential witness who thought that the tenure denial was related to gender, and revealed that Dr. Baiocchi was discussing that very issue with a male professor during her tenure review. None of it was available for the

[3] A two-year delay in production is akin to a silent withholding, since by the time the records were produced they had little or no application to the federal discrimination case because all the discovery deadlines had long passed. "The Public Records Act clearly and emphatically prohibits silent withholding by agencies of records relevant to a public records request." Progressive Animal Welfare Soc. v. Univ. of Washington, 125 Wn.2d 243, 270, 884 P.2d 592, 607 (1994).

federal trial. As a result, Dr. Baiocchi was able to falsely testify at the federal trial as follows:

> Q. All right. And did you receive any complaints, after you got in about how you were managing the organization?
>
> A. Complaints? No.
>
> Q. Yeah. Did anybody suggest that perhaps you were favoring men over women?
>
> A. No, sir.

CP 1680.

Professor Wear's "nursing person" email to Dr. Baiocchi directly contracts Baiocchi's trial testimony. See CP 237 ("I believe the nursing person made the comments about gender... The nursing person who was on Isabelle's committee hinted that we might be picking on Isabelle's teaching because she was a woman.")

The PRA "'is a strongly worded mandate for broad disclosure of public records.'" Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 731, 174 P.3d 60 (2007) (*quoting* Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). "The PRA's purpose is to increase access to government records." Sanders v. State of Washington, 169 Wn.2d 827, 849, 240 P.3d 120 (2010). To that end, the legislature has declared:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating

> authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW 42.56.030 (emphasis added).

"Agencies are required to disclose any public record on request unless it falls within a specific, enumerated exemption. RCW 42.56.070(1). The burden is on the agency to show a withheld record falls within an exemption, and the agency is required to identify the document itself and explain how the specific exemption applies in its response to the request." Neighborhood Alliance of Spokane Cnty. v. Cnty. of Spokane, 172 Wn.2d 702, 715, 261 P.3d 119 (2011) (*citing* RCW 42.56.550(1) and Sanders v. State, 169 Wn.2d 827, 845-46, 240 P.3d 120 (2010)).

Had Dr. Bichindaritz not withdrawn her claim in February 2011, the statute of limitations would not have been triggered, because the University used improper exemption citations for the "nursing person" email and many of the documents later produced. Rental Hous. Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 539-40, 199 P.3d 393, 400 (2009) (City's reply letter to the RHA on August 17, 2005

insufficient to constitute a proper claim of exemption and did not trigger the one-year statute of limitations under RCW 42.56.550(6)).

Agency action taken or challenged under the PRA is reviewed de novo. RCW 42.56.550(3). The Court of Appeals essentially put on blinders and concluded that five months to produce 12,000 pages of documents was not too long under the PRA. The problem with that ruling is that it does not consider context or motive.

"Responses to requests for public records shall be made promptly by agencies." RCW 42.56.520. Under this section, an agency has five days to respond to a PRA request by: "(1) providing the requested records, (2) providing a reasonable time in which the requested records will be provided, or (3) denying the request." Smith v. Okanogan County, 100 Wn. App. 7, 17, 994 P.2d 857 (2000), Doe I v. Washington State Patrol, 80 Wn. App. 296, 908 P.2d 914 (1996). A delayed response, especially when time is of the essence, is an aggravating factor justifying an increased penalty. Yousoufian v. Sims, 168 Wn.2d 444, 467, 229 P.3d 735 (2010).

The context leads to one conclusion, which is that to determine whether five months is too long, the time outside the statute of limitations should be considered, and here, once considered, the time was too long.

As in Loeffelholz v. Univ. of Washington, 175 Wn.2d 264, 278, 285 P.3d 854, 860 (2012), which held that, "because of the unique nature of a hostile work environment claim, this unrecoverable conduct is admissible as background evidence to give context to any postamendment discriminatory conduct," the same rule must apply here. In determining what is reasonable, the Court must consider how long the documents were withheld, and the motive for withholding those documents. Otherwise, the Court will ignore justice and reach an indefensible result.

### B. Attorney Fees And Costs Should Be Awarded For The Appeal

Petitioner requests attorney fees and costs on appeal pursuant to RCW 42.56.550(4); see Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 447, 327 P.3d 600, 613 (2013).

## VI. CONCLUSION

This Court should accept review and address the issue of whether the trial court properly considered facts outside the statute of limitations in concluding that the University violated the PRA by delaying production and improperly redacting documents.

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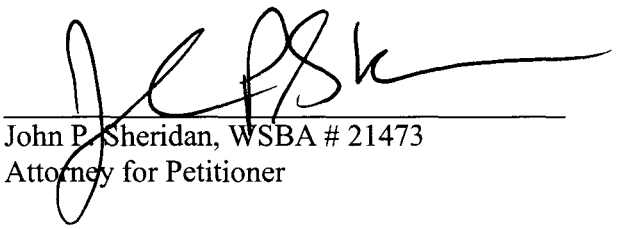
RESPECTFULLY SUBMITTED this 10th day of April, 2015.

THE SHERIDAN LAW FIRM, P.S.

By: 

John P. Sheridan, WSBA # 21473
Attorney for Petitioner

## DECLARATION OF SERVICE

Patti Lane states and declares as follows:

1. I am over the age of 18. I am competent to testify in this matter, and am a legal assistant for the Petitioners' attorney of record. I make this declaration based on my personal knowledge and belief.

2. On April 10, 2015, I caused to be delivered via email by agreement to the following attorneys:

| | |
|---|---|
| Seth J. Berntsen<br>Garvey, Schubert & Barer<br>1191 2nd Avenue, Suite 1800<br>Seattle, WA 98101<br>sbertsen@gsblaw.com | Howard M. Goodfriend<br>Smith Goodfriend, P.S.<br>1619 8th Avenue North<br>Seattle, WA 98109-3007<br>howard@washingtonappeals.com |

a copy of PETITION FOR REVIEW TO SUPREME COURT.

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

DATED this 10th day of April, 2015, at Seattle, King County, Washington.



s/Patti Lane
Patti Lane, Legal Assistant

# APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | |
|---|---|
| ISABELLE BICHINDARITZ, an individual,<br><br>Respondent,<br><br>v.<br><br>UNIVERSITY OF WASHINGTON,<br><br>Appellant,<br><br>and<br><br>ORLANDO BAIOCCHI, an individual,<br><br>Defendant. | No. 70992-5-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION<br><br>FILED: February 17, 2015 |



BECKER, J. — This is an appeal from a judgment in a Public Records Act case imposing a large penalty and award of attorney fees against the University of Washington. We reverse.

The dispute arose from the University's decision to deny tenure to Isabelle Bichindaritz, Ph.D., a former professor at the University's Tacoma Institute of Technology.

On September 9, 2009, Bichindaritz e-mailed a request to the University's Office of Public Records seeking "a complete copy of all of my personnel files and public records at the University of Washington, at the University of

Washington Tacoma, and at the Institute of Technology." The request also sought copies of "every email related to me (Isabelle, Isabelle Bichindaritz) among all the people involved below" and went on to list approximately 96 different university employees.

The University received Bichindaritz's request on September 10, 2009, and responded by letter 5 business days later. The letter estimated that it would take approximately 25 business days to assemble and process the responsive documents relating to Bichindaritz's request; that records would be made available "on a rolling production basis to avoid unnecessary delay"; and that Bichindaritz would be notified if the University needed additional time to locate, review, or assemble documents. The director of the University's Office of Public Records immediately began to locate and assemble responsive documents by contacting University faculty. If she did not receive a response from a faculty member, she followed up on her original request by e-mail.

By the end of October 2009, all responsive documents—totaling approximately 25,000 pages—had been assembled. The University then began to review the records and to redact information that was exempt from disclosure under state and federal law. This proved to be a time-consuming process, and the University notified Bichindaritz several times that the estimated production date would have to be pushed back. In six stages during the 14 months between October 13, 2009, and December 9, 2010, the University provided Bichindaritz with some 13,000 pages of documents that had been reviewed and in some cases redacted.

Meanwhile, on March 11, 2010, Bichindaritz filed an administrative complaint alleging sex discrimination, retaliation, and national origin discrimination by the University.

On June 15, 2010, the University terminated Bichindaritz.

As of July 30, 2010, there were still 12,000 pages awaiting review—about half of the documents assembled in response to her request. Finding of Fact 1.19.

On August 25, 2010, Bichindaritz filed a gender discrimination lawsuit against the University in federal court.

On December 9, 2010, the University produced stage 6 with a letter indicating that the production was still "partial."

On January 31, 2011, the University informed Bichindaritz that her request would be closed if she did not view or pick up the stage 6 documents by February 7, 2011.

On February 7, 2011, Bichindaritz directed the University to close her request. According to Bichindaritz, counsel advised her that the documents would be obtained through discovery in the federal lawsuit. The University closed the request and stopped processing the remaining documents.

According to Bichindaritz, the discovery process in federal court was unsatisfactory. On June 6, 2011, a day after the federal court discovery deadline passed, she asked the University to resume processing the remaining documents related to her September 2009 public records request. The University estimated that the remaining documents would be available by July

20, 2011. After several e-mails notifying her that additional time would be necessary, the University disclosed the *final* 12,000 pages in four stages between August 15, 2011, and November 15, 2011. With the last stage, the University produced a 12-page privilege log.

On February 14, 2012, with her trial in federal court two months away, Bichindaritz filed suit against the University in superior court, asserting civil rights claims under Washington law.

On February 23, 2012—a date significant to the statute of limitations issue in this appeal—she amended her complaint to add a cause of action under Washington's Public Records Act, chapter 42.56 RCW, for failing to provide documents in a timely manner between September 9, 2009, and November 15, 2011.

On April 20, 2012, after a bench trial, judgment was entered against Bichindaritz in her federal lawsuit.

On July 16, 2012, the trial court in this matter dismissed Bichindaritz's civil rights claims as barred by res judicata and collateral estoppel.

The order of July 16, 2012, also dismissed "all claims associated with or arising from the University's response to Plaintiff's September 9, 2009 public records act request" as time barred under the one-year statute of limitations in RCW 42.56.550. This time bar applied to the University's response to the initial request that was closed on February 7, 2011. It did not bar suit on any violations committed by the University when it resumed the processing of documents on June 6, 2011, because that date was within one year before February 23, 2012.

On July 1, 2013, the superior court ordered the University to respond to a request for production of 485 pages of documents that Bichindaritz believed had been improperly redacted. On July 13, 2013, the University submitted a memorandum explaining that 384 of those pages had not been redacted, 58 of those pages had already been provided in response to Bichindaritz's 2009 request, and the remaining pages had been properly redacted. On August 2, 2013, after reviewing 43 documents in camera, the trial court released a number of e-mails that the court determined had been improperly redacted.

The trial court then held a trial by affidavit as allowed by RCW 42.56.550 and ruled against the University. The court entered extensive findings and conclusions adapted from a set proposed by Bichindaritz. The court was particularly troubled by the redaction of an e-mail that had been sent from one professor to another on January 11, 2008, during the tenure decision process. It had been provided to Bichindaritz in redacted form on November 3, 2011. The redacted portion stated, "I believe that the nursing person made the comments about gender. The nursing person who was on Isabelle's committee hinted that we might be picking on Isabelle's teaching because she was a woman." Bichindaritz believed this e-mail might have provided critical support for her gender discrimination lawsuit in federal court if she had obtained it in unredacted form before trial.

The superior court ultimately determined that the University violated the Public Records Act by waiting until the end of 2011 to produce the 12,000 documents "that were assembled and ready for distribution by October 2009."

Clerk's Papers at 1149. The court concluded that the University acted in bad faith with a self-serving motive to delay production long enough so the records would not be available for use in Bichindaritz's federal lawsuit. Conclusion of Law 2.7; Conclusion of Law 2.17. The court imposed a $723,290.50 penalty ($0.50 per page for each day of delay after June 7, 2011) and awarded Bichindaritz $102,958.03 in attorney fees. The University appeals.

The parties agree that de novo review is appropriate for the interpretation and construction of the Public Records Act. Bichindaritz, however, contends that the findings of fact should be reviewed for substantial evidence. See West v. Wash. State Dep't of Natural Res., 163 Wn. App. 235, 245, 258 P.3d 78 (2011), review denied, 173 Wn.2d 1020 (2012); Marriage of Rideout, 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003).

As indicated by RCW 42.56.550(3), review of a trial court's decision in a Public Records Act matter is generally de novo. Fisher Broad.-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515, 522, 326 P.3d 688 (2014) ("Our review of both the agency action and the court opinions below is de novo.") Whether the more deferential review of findings of fact for substantial evidence is proper to apply in a public records case where facts are in dispute need not be decided in this case. Here there is no factual dispute about what the documents say and when they were disclosed. The dispositive issue is whether the trial court erred by faulting the University for taking five months to deliver the final 12,000 documents after Bichindaritz renewed her request on June 6, 2011. Conclusion of Law 2.17 ("By reactivating the 2009 PDA request on June 6, 2011, plaintiff's request could

have been met the next day, June 7, 2011, given completed assembled documents"); Conclusion of Law 2.21.

The University agrees that all documents responsive to Bichindaritz's request had been assembled by the end of October 2009 and remained in that state when Bichindaritz reactivated her request on June 6, 2011. What the University challenges is the court's conclusion that as soon as the documents were assembled, they were ready to be produced.

The University is right. While the statute requires that responses to requests for public records shall be made "promptly," it also expressly recognizes that an agency may need additional time to determine whether any part of the information requested is exempt:

> Additional time required to respond to a request may be based upon the need to . . . determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

RCW 42.56.520. By the time Bichindaritz closed her 2009 request in February 2011, the University had assembled about 25,000 pages but had reviewed only about half of them for applicable exemptions. It was unreasonable to expect the University to *produce* the remaining 12,000 pages the same day Bichindaritz reopened her request simply because it had already *assembled* those documents.

Bichindaritz does not argue otherwise. In fact, the record reflects her recognition that review and redaction of records is a time-consuming process separate from assembling them. The University's first set of interrogatories asked Bichindaritz, among other things, to identify what would have been a

reasonable estimate of time to produce the records referred to in her public records request. Bichindaritz answered by observing that the last half (the 12,000 pages) had been processed within 6 months, whereas the production of the first half had been "spread in time over approximately one year and half. It seems to me that a reasonable estimate would be 6 months from the date of request." Clerk's Papers at 1413, 1415. In other words, Bichindaritz admitted the last 12,000 pages were timely produced and that she was only complaining about the amount of time it took the University to deliver the first six stages—the 14 months following her initial request in September 2009.

Bichindaritz contends that the finding of a delay that violated the Public Records Act should be sustained on the basis that 14 months was unreasonable. But delays during that 14-month period occurred more than one year before February 23, 2012, the date Bichindaritz filed suit under the Act. Therefore they may not be considered in deciding whether the University violated the Public Records Act, as such claims are time barred under the one-year statute of limitations in RCW 42.56.550. The trial court so ruled in the order of partial summary judgment entered on July 16, 2012. The trial court never modified that order, although asked by Bichindaritz to do so. As can be seen by comparing the findings and conclusions proposed by Bichindaritz with the findings and conclusions actually entered by the trial court, Bichindaritz wanted the trial court to withdraw that interlocutory order of partial summary judgment. But the trial court deleted from its findings and conclusions the language proposed by Bichindaritz. Compare Clerk's Papers at 1139-40 (Conclusion of Law 2.1) and

Clerk's Papers at 1149 ("Conclusion") with Clerk's Papers at 2016-17 (Proposed Conclusions of Law 2.2, 2.3) and Clerk's Papers at 2028 (Proposed Conclusion 2.27.2.) See also Clerk's Papers at 2347, 2371 (plaintiff's trial brief requesting reconsideration of the order on partial summary judgment). The unappealed order of partial summary judgment remains in effect as a conclusion of law precluding redress of violations that may have occurred before February 23, 2011. The court's findings and conclusions discuss delays in the initial six stages of production (2009-2010), but only as an aggravating factor for the penalty. The court decided a *violation* had occurred based only on the five-month production of the final 12,000 pages between June and November 2011. And as discussed above, that finding of violation rests on the unsustainable assumption that documents are ready to be produced as soon as they are assembled.

Bichindaritz suggests that the finding of violation can be sustained on the basis that the University "repeatedly missed production deadlines." The University did miss several self-imposed deadlines between June 2011 and November 2011. But the Act only demands that agencies provide reasonable estimates for production. Forbes v. City of Gold Bar, 171 Wn. App. 857, 864, 288 P.3d 384 (2012) ("The operative word is 'reasonable.'"), review denied, 177 Wn.2d 1002 (2013). The Act does not necessarily require an agency to comply with its own self-imposed deadlines. The question is whether the agency "was acting diligently in responding to the request in a reasonable and thorough manner." Hobbs v. State, ___ Wn. App. ___, ___, 335 P.3d 1004, 1011 (2014). Bichindaritz does not argue, and the record does not indicate, that the University

was less than diligent in completing the review and redaction of the final 12,000 pages. Indeed, as noted above, Bichindaritz admitted in discovery that six months was a reasonable time.

Bichindaritz cites Violante v. King County Fire District No. 20, 114 Wn. App. 565, 570-71, 59 P.3d 109 (2002). But the Violante court was concerned with an agency that tried to excuse its nonresponsiveness on the basis that the requester had other means of access to the documents. Violante does not suggest that an agency's failure to meet its own estimated date of production automatically violates the Public Records Act.

A more useful precedent is West v. Department of Licensing, 182 Wn. App. 500, 331 P.3d 72, review denied, 339 P.3d 634 (2014). West alleged that the Department had violated the Public Records Act by failing to reasonably search for, identify, and produce records related to motor vehicle fuel tax payments to Indian tribes. The Department responded in installments and not always within its estimates of time needed. After nine months, the Department had delivered almost 50,000 pages and still had as many as 10,000 pages to review. The trial court entered summary judgment for the Department. This court affirmed, recognizing that when a request for records is broad in scope and the number of responsive records is substantial, an agency must be allowed time to review the records "to determine whether they were responsive and whether they should be produced, disclosed, redacted, or withheld." West, 182 Wn. App. at 512.

Bichindaritz does not refute the University's assertion that locating and assembling the responsive documents was only the beginning; reviewing and redacting them was the time-consuming part of the process. Bichindaritz does not meaningfully distinguish this case from West. The trial court did not conclude, and neither do we, that the University was disingenuous when it advised her that the process was taking more time than originally estimated.

The trial court erred in concluding that the University violated the Act. It is unnecessary to address other issues discussed in the briefs. Those issues include: whether a penalty can be imposed on a per-page basis as opposed to per-record; whether this court should take judicial notice of the federal court's ruling that the nondisclosure of the "nursing person" e-mail was immaterial; whether the University's request for an evidentiary hearing should have been granted; whether the 12,000 pages should have been grouped as a single "public record" when calculating the penalty; whether the trial court erred in imposing post-judgment interest on the penalty; and whether the award of attorney fees is sufficiently supported by meaningful findings and conclusions.

We reverse the judgment for the penalty of $723,290.50 and the judgment for attorney fees and costs.

Becker, J.

WE CONCUR:

Leach, J.

Schindler, J.

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

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|---|---|
| ISABELLE BICHINDARITZ, an individual,<br><br>Respondent,<br><br>v.<br><br>UNIVERSITY OF WASHINGTON,<br><br>Appellant,<br><br>and<br><br>ORLANDO BAIOCCHI, an individual,<br><br>Defendant. | No. 70992-5-I<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

Respondent, Isabelle Bichindaritz, has filed a motion for reconsideration of the opinion filed on February 17, 2015. The court has determined that said motion should be denied. Now, therefore, it is hereby

ORDERED that respondent's motion for reconsideration is denied.

DONE this 11th day of March, 2015.

FOR THE COURT:

Becker, J.
Judge

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

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|---|---|
| ISABELLE BICHINDARITZ, an individual,<br><br>Respondent,<br><br>v.<br><br>UNIVERSITY OF WASHINGTON,<br><br>Appellant,<br><br>and<br><br>ORLANDO BAIOCCHI, an individual,<br><br>Defendant. | No. 70992-5-I<br><br>ORDER DENYING MOTION TO PUBLISH OPINION |

Respondent, Isabelle Bichindaritz, has filed a motion to publish the opinion filed on February 17, 2015. The court has determined that said motion should be denied. Now, therefore, it is hereby

ORDERED that respondent's motion to publish the opinion is denied.

DONE this 11th day of March, 2015.

FOR THE COURT:

Becker, J.
Judge

# RCW 42.56.030
# Construction.

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

[2007 c 197 § 2; 2005 c 274 § 283; 1992 c 139 § 2. Formerly RCW 42.17.251.]

# RCW 42.56.070
# Documents and indexes to be made public.

(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. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the

secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

[2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

## Notes:

***Reviser's note:** Subsection (6) of this section was renumbered as subsection (7) by 1992 c 139 § 3; and subsection (7) was subsequently renumbered as subsection (9) by 1995 c 341 § 1.

**Part headings -- Severability -- 1997 c 409:** See notes following RCW 43.22.051.

**Effective date -- 1989 c 175:** See note following RCW 34.05.010.

**Intent -- Severability -- 1987 c 403:** See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

# RCW 42.56.230
# Personal information.

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of early learning; or

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual

is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse; and

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure.

[2014 c 142 § 1. Prior: 2013 c 336 § 3; 2013 c 220 § 1; prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

## Notes:

**Effective date -- 2013 c 336:** See note following RCW 46.08.066.

**Effective date -- 2011 c 350:** See note following RCW 46.20.111.

**Effective date -- 2010 c 106:** See note following RCW 35.102.145.

**Effective date -- 2009 c 510:** See RCW 31.45.901.

**Finding -- Intent -- Liberal construction -- 2009 c 510:** See note following RCW 31.45.010.

# RCW 42.56.520
# Prompt responses required.

Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (4) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

[2010 c 69 § 2; 1995 c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18; 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.320.]

## Notes:

**Finding -- 2010 c 69:** "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [2010 c 69 § 1.]

# RCW 42.56.550
# Judicial review of agency actions.

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section 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.

[2011 c 273 § 1. Prior: 2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

## Notes:

**Intent -- Severability -- 1987 c 403:** See notes following RCW 42.56.050.

Application of chapter 300, Laws of 2011: See note following RCW 42.56.565.