NO. 92161-0

Court of Appeals NO. 45756-3-II

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**SUPREME COURT**
**OF THE STATE OF WASHINGTON**

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MIKE BELENSKI,

Petitioner,

v.

JEFFERSON COUNTY,

Respondent.

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# PETITION FOR REVIEW

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## A. IDENTITY OF PETITIONER

Plaintiff Mike Belenski ("Belenski") requests this Court to accept review of the decision terminating review by the Court of Appeals, Division II, designated in Part B of this petition.

## B. DECISION BELOW

Belenski seeks review of a single portion of the published Court of Appeals decision, *Mike Belenski v. Jefferson County*, No. 45756-3-II, (May 19, 2015). In that decision, the Court of Appeals held that because more than two years had passed between the date Jefferson County ("County") responded to Belenski's Public Records Act[1] ("PRA") request (October 4, 2010) and the date the litigation was filed (November 19, 2012), that the two-year "catch-all" statute of limitations contained in RCW 4.16.130 barred his claim. (Opinion, 12-13). The Court made no ruling regarding the applicability of the statute of limitations in the PRA, RCW 42.56.550(6).

The Court's decision omitted key information brought to its attention. While the decision is accurate that the County responded by advising Belenski there were "no responsive records" for his request, the decision failed to contain the fact that Belenski later discovered that for 15 months (until about January 3, 2012) the County knowingly concealed records responsive to his request. (Opening Br. pg 24, CP 124-125, 138-140, 123, 129, 195-196).

[1] Codified as RCW 42.56

To allow the County to benefit from concealing or silently withholding records, which denied Belenski the opportunity to pursue judicial review pursuant to RCW 42.56.550(3), contradicts Supreme Court precedent and is contrary to the legislative mandates of the PRA.

A copy of the decision is in the Appendix at pages one to twenty-one. On June 8, 2015, Petitioner filed a timely motion for reconsideration. The Court issued an Order on June 23, 2015 requesting an Answer to the motion for reconsideration. (Appendix, page 22). The County answered on July 6, 2015. On July 31, 2015, the motion for reconsideration was denied without comment. (Appendix, page 23).

## C. ISSUES PRESENTED FOR REVIEW

1. Is RCW 42.56.550(6) is the applicable statute of limitation to be applied to the September 27, 2010 public records request for Internet Access Logs (IALs)?

2. If RCW 42.56.550(6) is not the applicable statute of limitations involving the September 27, 2010 request, should the "Discovery Rule" be applied to the accrual of the "catch all" statute of limitations, RCW 4.16.130?

3. Did the County conceal or silently withhold IALs responsive to the September 27, 2010 public records request?

## D. STATEMENT OF THE CASE

The relevant facts of this case are straight forward. On September 27, 2010, Belenski submitted a public records request to the County requesting inspection of

the Internet Access Logs[2] (IALs) from February 1, 2010 to September 27, 2010. This request clearly states it is a request for public records pursuant to the Public Records Act (PRA), RCW 42.56. (CP 211). In a letter dated October 4, 2010, from the County's Public Records Officer Lorna Delaney, Belenski was advised that the County had "no responsive records" to his request. (CP 214).

A follow up conversation involving the September 27, 2010 request occurred in the basement of the Jefferson County Courthouse on March 21, 2011, between Belenski and Jefferson County Deputy Prosecuting Attorney David Alvarez. During this conversation, DPA Alvarez advised Belenski that the reason he did not receive the IALs was because "we don't use them for anything so we don't have to keep them" (CP 194, 631).

Because Belenski had made previous public records requests for IALs, he was confused as to why the County had not provided the IALs he requested. (CP 120). Given the "no responsive records" answer provided by the County's Public Records Officer Lorna Delaney and the "we don't use them for anything so we don't have to keep them" statement by DPA Alvarez, Belenski thought the IALs were being intentionally destroyed. (CP 121). To provide support for a possible civil suit involving the destruction of public records, and so that the County could not claim it was an accident or oversight that he did not get the IALs pursuant to his September 27, 2010 request (CP 121), Belenski submitted a public records

[2] Internet Access Logs (IALs) contain a record of every single contact between a county issued personal computer ("PC") and the World Wide Web. (CP 17-18, 361)

request to the County on November 2, 2011, for the more recent time frame of January 1, 2011 to November 1, 2011. (CP 121, 231).

Jefferson County Information Services (IS) Manager David Shambley, in a letter attached to a December 9, 2011 email, advised Belenski that a catastrophic hard drive failure had occurred (CP 195, 233) and that "Good archive data prior to 11-10-2011 cannot be provided. Miscellaneous text files from sporadic dates can and will be provided" (CP 234).

On January 3, 2012, a little more than 3 weeks after receiving Mr. Shambley's December 9th email, Belenski, accompanied by a computer systems consultant, Tom Thiersch, met with Mr. Shambley and David Winegar, who is also an IS employee. As soon as Belenski entered the room where the discussions would be held to determine what would be included regarding his November 2, 2011, request for IALs, he asked Mr. Shambley why he had not received the IALs pursuant to his September 27, 2010 public records request and Mr. Shambley replied that "Chris Grant decided that you didn't have the software to look at them." Neither Chris Grant, an IS employee at the time of the request, or any other employee of Jefferson County contacted Belenski to determine what software he owned or had access to. Additionally, because he did not request the IALs in electronic form in his September 27, 2010, public records request, any question about what software might have been available to Belenski at that time was irrelevant to the County's ability to fulfill the request.

The County provided Belenski with a DVD on January 19, 2012 that did not contain any of the IALs that had been requested on September 27, 2010, or on November 2, 2011. This DVD only contained only a WebSpy "Analysis Report" that summarized IAL data for various days. (CP 196).

It is not possible for the WebSpy report to contain the summary information that it did unless the underlying data existed at the time the report was prepared; the County admits that the IALs were used to create the WebSpy summary report provided to Belenski on January 19, 2012. (CP 56, 62).

On March 12, 2012, Belenski advised the Board of County Commissioners that he had not received the IALs he requested, but was brushed off. (CP 124-125).

In an effort to locate Chris Grant, Belenski submitted a public records request dated August 30, 2012 in which he requested contact information and emails involving Chris Grant. (CP 248, 601). As a result of the records produced by the County involving this request, Belenski became aware of additional information (in the form of emails) that at least some of the IALs responsive to his September 27, 2010 did exist at the time he made his request, but Jefferson County had chosen to not disclose the existence of those IALs to him. (CP 125, 138-140). Specifically, only 1 day after Petitioner made his September 27, 2010 request for IALs, County Internet Technician Chris Grant wrote an email (CP 138) to County Deputy Prosecuting Attorney David Alvarez and County Public Records Officer Lorna Delaney which stated:

*David,*

***We have Internet access logs**, but they are not natively viewable. They must be pulled out of a database and generated in a human readable format by the firewall reporting system (Viewpoint). Since this is not something we normally do, do we need to generate this report specifically for him?*

(CP 138, emphasis added).

As a result, both Deputy Prosecuting Attorney David Alvarez and County Public Records Officer Lorna Delaney were well aware that the County possessed records responsive to his September 27, 2010 request for IALs, but concealed the existence of these records from him.

Having received no IALs, no exemption (privilege) log, and no claim of exemption for the IALs requested on September 27, 2010, Belenski filed this litigation on November 19, 2012.

## E. ARGUMENT

**This Court should grant review for the following reasons:**

Division II's decision conflicts with binding State Supreme Court precedent (RAP 13.4(b)(1)) and this Petition involves an issue of substantial public interest (RAP 13.4(b)(4)) that should be determined by the Supreme Court involving the application of RCW 42.56.550(6) and RCW 4.16.130.

The Supreme Court has repeatedly held that withholding records under the PRA is only valid when and if the agency makes a "claim of exemption" and provides a "privilege log" or "withholding index". *Rental Housing Association of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 537-540 (2009).

In the instant case, the County withheld records and never made a "claim of exemption", or provided a "privilege log" or "withholding index" for the IALs responsive to the September 27, 2010 public records request. See also, *PAWS v. UW*, 125 Wn.2d 243, 271 (1994); *PAWS v. UW* at 271 footnote 18.

The County chose to **silently withhold** records responsive to the September 27, 2010 request. This Court has defined the failure to disclose the existence of requested records as the **silent withholding** of records which is prohibited under the Public Records Act (PRA). ("An undisclosed record results in the prohibited silent withholding discussed in PAWS, 125 Wn.2d at 270") *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wn.2d 702, Footnote 16, (2011).

Additionally, the ruling of the Court of Appeals in this case would render RCW 42.56.550(6) meaningless and would undermine the very purpose of the PRA; i.e. the broad access to public records. A plain reading of the PRA's one-year statute of limitations clearly indicates it is triggered by either of two occurrences: (1) the agency's claim of an exemption or (2) the agency's last production of a record on a partial or installment basis. (RCW 42.56.550(6)). (CP 167-169). The Court of Appeals stated "Belenski did not file his complaint until November 19, 2012, over two years after the County responded to request #1[3].". (Opinion, 13). Under RCW 42.56.550(6) it makes no difference, with regards to triggering this statute of limitations, when an agency like the County responds to a

[3] Request #1 is the September 17, 2010 request for Internet Access Logs.

public records request. What matters is when a claim of exemption is made or when the last production of records is made. RCW 42.56.550(6) is rendered meaningless as long as more than two years have passed since the agency responded to the public records request, which could hardly be the intent of the legislature.

The reliance by the Court of Appeals on RCW 4.16.130, conflicts with the construction clause of the PRA (RCW 42.56.030) which states: "In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern." It also conflicts with this Court's decision in *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 149 (2010) ("[W]hen there is the possibility of a conflict between the PRA and other acts, the PRA governs".) Therefore, RCW 42.56.550(6) should be the controlling statute of limitations, not RCW 4.16.130.

1. The Court of Appeals decision is contrary to this Court's ruling in *Rental Housing Association of Puget Sound v. City of Des Moines*, 165 Wn.2d 525 (2009)

The facts and circumstance involving Belenski's September 27, 2010 public records request for IALs fall squarely within *Rental Housing Association of Puget Sound v. City of Des Moines*, 165 Wn.2d 525 (2009).

This Court has overwhelmingly ruled that the RCW 42.56.550(6) one-year time limit will not shield agencies that don't make timely and sufficient efforts to advise records requestors what records are being withheld and why. In its decision, this Court answered the question of when the one-year statute of limitations clock starts to run (Id. at 535 to 540). The key issue is when a "claim of

exemption" under RCW 42.56.550(6) is effectively made. And it can't be effectively made, wrote Justice Stephens, when the agency is engaged in what the Court had earlier described in *PAWS v. University of Washington*, 125 Wn.2d 243, 270 (1994), as "silent withholding" by not adequately identifying the record(s) it is refusing to turn over and explaining why it is not disclosing the record(s). By law, she wrote, withholding records under the PRA is only valid when and if the agency provides a "privilege log" or "withholding index". Justice Stephens wrote (*Rental Housing Authority* at 540) that "Without 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. Failure to provide the sort of identifying information a detailed privilege log contains defeats the very purpose of the PRA to achieve broad public access to agency records. ". (CP 168-169).

The *Rental Housing Authority* opinion and its analysis of the *PAWS* case make it clear that RCW 42.56.550(6) is the statute of limitations that controls in circumstances where records are concealed or silently withheld from a requestor, or where an agency has failed to make a claim of exemption for the records and provide a privilege log, which are exactly the circumstances involving the instant case.

In discussing statute of limitations, the Court in *Rental Housing Authority* found that "Undeniably, statutes of limitation serve a valuable purpose by

promoting certainty and finality, and protecting against stale claims." (citations omitted). "However, liberally construing the PRA to effectuate open government-as we must-does not defeat these goals. Certainty and finality are promoted by a construction of RCW 42.56.550(6) that reads "claim of exemption" consistent with other provisions of the PRA, particularly RCW 42.56.210(3), as well as our prior holdings and administrative regulations implementing the Act. " (citations omitted). (*Rental Housing Authority* at 540).

Therefore, liberally construing the PRA does not defeat the goals of statutes of limitation, and it is not until the County makes a claim of exemption and provides a privilege log for the IALs it is withholding or provides the IALs, that the statute of limitations found in RCW 42.56.550(6) will begin to run.

Nothing prevented the County from claiming an exemption and providing a privilege log for the IALs responsive to the September 27, 2010 request. Since it had been more than a year and a half prior, on January 22, 2009, that *Rental Housing Authority* was published, the mandates the County was required to follow were already established.

Lastly, the Court of Appeals applied the wrong statute of limitations regarding the September 27, 2010 request. The two-year "catch all" statute of limitations, RCW 4.16.130, states "An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued." Because "an action for relief" under the PRA is hereinbefore provided for in RCW 42.56.550(6) for concealed or silently withheld records, or the failure

to make a claim of exemption and provide a privilege log, RCW 4.16.130 is not an applicable statute of limitations involving the September 27, 2010 request. (CP 170-171).

2. The Court of Appeals strict application of RCW 4.16.130 is contrary to this Court's rulings involving the "Discovery Rule" and conflicts with the mandates of the PRA

The Court of Appeals ruled that because more than two years had passed between the date the County responded to the September 27, 2010 request for IALs and the date the litigation was filed, the two-year "catch-all" statute of limitations contained in RCW 4.16.130 barred this claim. (Opinion, 12-13).

However, while more than two years had passed between the date the County responded to the request (October 4, 2010) and the date the litigation was filed (November 19, 2012), statutes of limitations under Chapter 4.16 do not begin to run until a cause of action accrues. RCW 4.16.005 ("actions can only be commenced within the periods provided in this chapter after the cause of action has accrued."). See also, *1000 Virginia Ltd. P'ship v. Vertecs Corp.* 158 Wn.2d 566, 575, (2006). Usually, a cause of action accrues when the party has the right to apply to a court for relief. In many instances, an action accrues immediately when the wrongful act occurs, but in circumstances where the plaintiff is unaware of the harm sustained, a "literal application of the statute of limitations" could "result in grave injustice." To avoid this injustice, courts have applied a discovery rule of accrual, under which the cause of action accrues when a plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements

of the cause of action. This does not mean that the action accrues when the plaintiff learns that he or she has a legal cause of action; rather, the action accrues when the plaintiff discovers the salient facts underlying the elements of the cause of action. Id at 575-576. (citations omitted).

The County has the burden of proving a statute of limitations defense. *Wallace v. Lewis County*, 134 Wn. App. 1, 13 (2006) ("Whether the plaintiff has exercised due diligence under the discovery rule is a question of fact, which is the defendant's burden to prove." citing *Mayer v. City of Seattle*, 102 Wn. App. 66, 76 (2000) (defendant has burden of proving a statute of limitation defense)) and the County has provided no arguments, explanation or evidence as to how Belenski failed to exercise due diligence, or when he knew or should have known records were being silently withheld from him, or when he discovered or should have discovered salient facts underlying the elements of a cause of action. Therefore, the County has failed to prove a statute of limitations defense.

This Court stated in *US Oil v. Department of Ecology*, 96 Wn.2d 85, 93 (1981) "We have a duty to construe and apply limitation statutes in a manner that furthers justice." Allowing the County to conceal records from Belenski and then permitting the County to use the statue of limitations as a shield to his legitimate claims does not further justice. Without application of the Discovery Rule, agencies like Jefferson County can conceal or silently withhold records from requestors, and escape the consequences and remedial provisions of the PRA, as long as they can keep their illegal conduct a secret from the requestor for two

years. The Court of Appeals ruling that the statute of limitations begins to run with any agencies' response to a public records request, no matter how dishonest, deceitful or underhanded the agency is in concealing the existence of records, is contrary to the rulings of this Court, the mandates of the PRA, and any sense of justice.

The County lied to Belenski when it advised him that it had "no responsive records" to the September 27, 2010 request for IALs (CP 214), and the deception continued when DPA Alvarez told him the reason he did not get these IALs was because "we don't use them for anything so we don't have to keep them" (CP 194, 631) with DPA Alvarez knowing that the County did have IAL responsive to the request, because Internet Technician Chris Grant had sent him an email advising him of that fact (CP 138). Rather than advising Belenski that the County did have IALs responsive to his request, DPA Alvarez and the County continued to act in bad faith and with deception.

This Court has held that "Equitable tolling is permitted where there is evidence of bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff." "In Washington equitable tolling is appropriate when consistent with both the purpose of the statute providing the cause of action and the purpose of the statute of limitations." *Millay v. Cam*, 135 Wn.2d 193, 206, (1998).

Due to the deception and silent withholding orchestrated by the County, and that Belenski could not immediately know of his injury, the Discovery Rule is applicable in this case. *In re Estates of Hibbard*, 118 Wn.2d 737, 749-750 (1992), ("Application of the rule is limited to claims in which the plaintiffs could not have immediately known of their injuries due to professional malpractice, occupational diseases, self-reporting or **concealment of information** by the defendant. Application of the rule is extended to claims in which plaintiffs could not immediately know of the cause of their injuries."). (emphasis added). (See also, *DOE v. Finch*, 133 Wn.2d 96, 101 (1997)),

It was not until January 3, 2012, (more than 15 months after Belenski's September 27, 2010 request for IALs that Jefferson County Information Services Manager David Shambley advised Belenski that the reason the he did not receive the IALs involving this request was because "Chris Grant decided that you didn't have the software to look at them." (CP 195-196). This was the first time Belenski had notice that records had been concealed from him and that he had been injured. (CP 166, CP 124). Since this litigation was filed on November 19, 2012, it was filed well within one year of the discovery of the County's deception.

A requestor of public records must rely on the agency to provide an honest, non-deceptive and accurate response to a public records request. Since the County used deception to delay discovery that records had been silently withheld, the Discovery Rule should be applied to the September 27, 2010 request.

The application of the two-year statute of limitation (RCW 4.16.130), by the Court of Appeals, to the September 27, 2010 request for IALs is clearly in direct conflict with the holdings by this Court, contrary to the mandates of the PRA and encourages, rather than discourages, the silent withholding of records. Courts are required to liberally construe the PRA in favor of disclosure and production of public records and as such, statutes of limitations must be interpreted to protect a requestor's right to judicial review of an agency's dishonesty and deception.

When enforcing a statute, a court is to determine and enforce the intent of the legislature. "The meaning of a statute is inherently a question of law and our review is de novo." *Department of Labor and Industries v. Gongyin*, 154 Wn.2d 38, 41 (2005) (citations omitted). "The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose." Id.

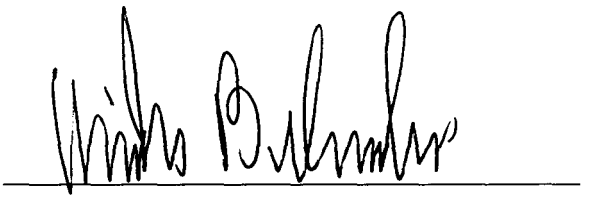
It is an untenable argument that the PRA policy of liberal construction and broad disclosure of public records mandated by the legislature would allow an agency to escape sanctions for silently withholding records if the agency is successful in ensuring the silent withholding remained undetected for two years.

## F. CONCLUSION

For the reasons set forth above, Petitioner requests this Court to do the following: 1) accept review to reinforce its earlier ruling in Rental Housing Association v City of Des Moines (80532-6) regarding when a response to a

public records request triggers the one year statute of limitations (RCW 42.56.550(6); 2) find summary judgment for the Petitioner with regards to the September 27, 2010 public records request for IALs based on the County's silent withholding / wrongful withholding of IALs responsive to this public records request; 3) remand with an order for discovery as to any remaining issues, including penalties; 4) remand with an order for an award of costs and penalties pursuant to RCW 42.56.550(4); 5) enter an Order granting Petitioner reasonable expenses on appeal as allowed by RAP 18.1; 6) for such other and further relief the Court deems just and equitable.

Respectfully submitted this 28th day of August, 2015.



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# APPENDIX

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| MIKE BELENSKI,<br><br>Appellant,<br><br>v.<br><br>JEFFERSON COUNTY, a Washington State political subdivision,<br><br>Respondent. | No. 45756-3-II<br><br>PUBLISHED OPINION |

JOHANSON, C.J. — In this Public Records Act (PRA)[1] case, Mike Belenski appeals a superior court order granting summary judgment in favor of Jefferson County (County). Belenski argues that the County was required to produce records in response to his requests for (1) the County's Internet access logs (IAL), (2) the electronic records he was seeking for which the County does not generate a backup, and (3) records and contact information relating to a former county employee.

We hold that (1) the County's IALs are subject to disclosure under the PRA because they contain information relating to the conduct of government and therefore are public records, but the PRA statute of limitations bars Belenski's claims relating to one of the IAL requests, (2) the

[1] Ch. 42.56 RCW.

County is not required to respond to Belenski's request for electronic records for which the County does not generate a backup because that request did not involve identifiable public records, (3) the County properly withheld records regarding its former employee under statutory exemptions, properly provided a brief explanation to support its claimed exemptions, and did not silently withhold records. Accordingly, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

## FACTS

### I. BACKGROUND

The County provides an extensive network of computers, servers, and other technology for use by its employees. At any given time, there are over 300 county-owned personal computers (PCs) in service. The County's Information Service Department (IS) secures and maintains this infrastructure using firewall software known as "SonicWall" that, in conjunction with another program called "Viewpoint," automatically generates information regarding contacts between county PCs and the Internet. The record of these contacts is known as an "Internet Access Log" (IAL)[2] or "System Log." The default setting on the software saves this information for 13 months, with each new day deleting and replacing the oldest day. The purpose of providing Internet access to county employees is to give them "tools to perform their job tasks," and network and Internet access is provided as a research and communication apparatus to assist in conducting county business. Clerk's Papers (CP) at 30.

[2] The County contends that IAL is different from an "Internet Access Audit Log," which the County is required to maintain by Jefferson County Resolution 17-198. According to the County, an Internet Access Audit Log would only be generated upon the request of a department head.

Belenski made four separate PRA requests for records associated with Internet use by county employees.[3] First, on September 27, 2010, Belenski requested the County's IAL from February 1, 2010 to September 27, 2010 (request #1). The County responded on October 4 that it had no responsive records.

Second, on November 2, 2011, Belenski requested to inspect IALs from January 1, 2011 to November 1, 2011 (request #2). As a result of Belenski's request, IS manager David Shambley discovered that there had been a catastrophic hard drive failure that affected the Viewpoint software. Shambley then informed Belenski that "[g]ood solid archive data" for the IALs was available from only November 10, 2011 forward but that the County had managed to salvage data on some sporadic dates which it would collect and provide. CP at 379. The County offered to permit Belenski to inspect the available IAL data "in their entirety," but Belenski amended his request to seek electronic copies instead of inspection. CP at 226. The County later provided Belenski a compact disc (CD) containing this information. The County considered the request fulfilled at this point, but Belenski considered the IAL data contained on the CD insufficient.

Third, on December 8, 2011, Belenski submitted a PRA request for "electronic copies of every electronic record for which Jefferson County [IS] does not generate a back up" (request #3). CP at 40. The County responded, refusing to produce records because Belenski's request was not a request for "identifiable" public records pursuant to RCW 42.56.080.

[3] Belenski made an additional request for "[t]he certificate(s) of records destruction for the [IALs] for February 1, 2010 to September 27, 2010." CP at 216. Because Belenski makes no argument related to this additional request, this request is irrelevant for purposes of this appeal.

Fourth, in August 2012, Belenski requested all records and contact information for a former IS employee (request #4). The County responded, producing some partially redacted documents and providing Belenski with an exemption log for the records that it refused to produce based on the PRA's various privacy exemptions. Belenski argues that the County's response was inadequate because it did not contain brief explanations.

Belenski filed suit on November 19, 2012, alleging several causes of action and complaining of various deficiencies associated with the County's responses to his requests. Shortly thereafter, the County provided the "brief explanations" that Belenski claims were missing from request #4.

## II. PROCEDURE

The County moved for summary judgment, arguing in part that (1) the statute of limitations bars Belenski's claim with respect to request #1, (2) the IALs were not "public records" as defined by the PRA, and (3) in any event, the County had nevertheless satisfied Belenski's request #2 by producing the CD. The County argued further that Belenski had not requested identifiable records in request #3 and that the County had included proper exemption logs with regard to request #4.

The superior court ruled that the County was entitled to summary judgment on Belenski's requests #1, #2, and #3.[4] After an in camera review, the superior court ruled that the County had properly withheld and redacted documents relating to request #4. But the court found that the County had failed to provide brief explanations which entitled Belenski to recover his costs. The

[4] The superior court ruled that the IALs did not constitute public records within the purview of the PRA because they were not related to government conduct or a proprietary function and, thus, did not satisfy the second prong of the PRA's definition of "public record." The superior court also agreed that Belenski's request #3 was not a request for "identifiable" public records.

superior court dismissed Belenski's claims for requests #1, #2, and #3 and awarded Belenski $434.99 as costs incurred resulting from request #4. Belenski filed a motion for reconsideration, but the superior court declined to reconsider its earlier rulings. Belenski appeals these orders and the superior court's May 2013 memorandum.

## ANALYSIS

### I. STANDARD OF REVIEW

We review challenges to an agency action under the PRA de novo where, as here, the record consists of documentary evidence, affidavits, and memoranda. RCW 42.56.550(3); *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 428, 327 P.3d 600 (2013). Similarly, we review summary judgment orders de novo, viewing the facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). Trial courts properly grant summary judgment where the pleadings and affidavits show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). When reviewing a grant of summary judgment, we consider solely the issues and evidence the parties called to the trial court's attention on the motion for summary judgment. RAP 9.12.

### II. PUBLIC RECORDS – REQUESTS #1 AND #2

Belenski argues that the IALs are public records pursuant to the PRA because the IALs are writings that contain information relating to the conduct of government that are retained by the County. The County responds that the IALs are not public records under the PRA because a nexus does not exist between the IALs and a government function. We agree with Belenski and hold that under the plain language of the PRA, the requested IALs are writings prepared and retained

by the County that contain information relating to the conduct of government.[5] We hold, however, that the County was not required to produce records in response to request #1 because the PRA statute of limitations bars Belenski's claim regarding that request.

A. LEGAL PRINCIPLES

The PRA is a "'strongly worded mandate'" aimed at giving interested members of the public wide access to public documents to ensure governmental transparency. *Worthington v. Westnet*, 180 Wn.2d 500, 506, 341 P.3d 995(2015) (quoting *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). The statute's language "reflects the belief that the sound governance of a free society demands that the public have full access to information concerning the workings of the government." *Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389 (1997). Accordingly, courts must avoid interpreting the PRA in a way that would tend to frustrate that purpose. *Worthington*, 180 Wn.2d at 507. The PRA "shall be liberally construed . . . to promote this public policy and to assure that the public interest will be fully protected." RCW 42.56.030.

Whether a document is a "public record" is a critical determination for the PRA's purposes because the Act applies only to public records. *Dragonslayer, Inc. v. Wash. State Gambling Comm'n*, 139 Wn. App. 433, 444, 161 P.3d 428 (2007). A public record is defined very broadly,

[5] Belenski also argues that the burden is on the County to show that the IALs are not public records, implying that the County has failed to do so. Although Belenski is correct that the burden is on the agency seeking to prevent disclosure of public records, that burden is only placed on the agency once the threshold inquiry of whether the records are "public records" is met. *Dragonslayer, Inc. v. Wash. State Gambling Comm'n*, 139 Wn. App. 433, 441, 161 P.3d 428 (2007).

encompassing virtually any record related to the conduct of government. *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 147, 240 P.3d 1149 (2010).

RCW 42.56.010(3) sets forth the definition of "public record" for purposes of the PRA and provides in relevant part,

> "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

Accordingly, to constitute a public record under the PRA, a record must be (1) a writing (2) containing information relating to the conduct of government or the performance of a governmental or proprietary function and (3) prepared, owned, used, or retained by a state or local agency. *Nissen v. Pierce County*, 183 Wn. App. 581, 590, 333 P.3d 577 (2014), *review granted*, 343 P.3d 759 (2015).

B. THE IALs "CONTAIN INFORMATION RELATING TO THE CONDUCT OF GOVERNMENT"

There is no genuine dispute that the IALs constitute writings that are retained by the County. At issue here is whether the IALs "contain[ ] information relating to the conduct of government or the performance of government." RCW 42.56.010(3). We broadly interpret the second element of the public record test to allow disclosure. *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 746, 958 P.2d 260 (1998).

The purpose of providing Internet access to county employees is to give them "tools to perform their job tasks" and to research and communicate for county business. CP at 30. The requested IALs were generated when a government employee, using a government computer, accessed the Internet. The IALs contain a record of every contact a county employee makes to the Internet. An IAL record displays, among other things, Internet protocol (IP) addresses and the

time the contact is made. According to Shambley, the IALs contain "data about data, the so-called meta-data."[6] CP at 364. Apparently, this information can be used to identify which websites employees are contacting, notwithstanding the fact that doing so would involve a "cumbersome" process. CP at 364.

County employees use the Internet to obtain information to perform their work. Therefore, there is no question that the IALs record work-related Internet use on a county-owned computer.[7] Accordingly, we hold that the requested IALs fall squarely within the definition of public records.[8]

C. PRIOR CASE LAW IS DISTINGUISHABLE

Although our courts have previously construed the second prong of the PRA definition, this is a case of first impression because of the unique nature of the requested data. The County relies on our opinion in *Dragonslayer*, 139 Wn. App. at 439, and our Supreme Court's decision in *Concerned Ratepayers Ass'n v. Public Utilities District No. 1 of Clark County*, 138 Wn.2d 950, 983 P.2d 635 (1999), in support of the proposition that the IALs are not public records because the County did not use the IALs for any purpose before Belenski's requests. Therefore, the County

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[6] Our Supreme Court has held that the metadata stored as part of an electronic record is a public record subject to disclosure. *O'Neill*, 170 Wn.2d at 147.

[7] The County also contends that the IALs do not satisfy prong three of the definition because the County did not prepare, own, retain, or use them. This argument lacks merit because the County owned the computers and software that created the IALs; Jefferson County Resolution 17-98 required the IS to maintain the IALs and the County retained the IALs at least temporarily.

[8] Because the trial court concluded that the IALs were not public records, it did not consider whether any part of the requested information might be "purely personal in nature" nor did it consider whether any exemptions might apply. Because the County has not claimed that any part of the requested information is purely personal, we do not address that issue nor do we address whether any exemptions might apply.

argues there is no nexus between the IALs and any government use or decision-making as the aforementioned cases require. But those cases are distinguishable because the records at issue in those cases were created by third parties. Here, it is undisputed that the requested information was generated from within the government agency and that no third parties are involved.

In *Dragonslayer*, the issue was whether audited financial statements prepared by an independent public accountant firm and subsequently submitted to the Gambling Commission were public records under the PRA. 139 Wn. App. at 440. There was no dispute that prongs one and three of the public record definition were satisfied because the financial statements were "writings" that were retained by the commission pursuant to the Washington Administrative Code. *Dragonslayer*, 139 Wn. App. at 444. The *Dragonslayer* court was asked to determine whether the financial statements prepared by a third party related to the conduct of government. 139 Wn. App. at 447. Finding the record inadequate to make that determination, we remanded the matter and directed the trial court to make additional findings as to how the commission used the firm's financial statements in order to determine whether they were related to a public function. *Dragonslayer*, 139 Wn. App. at 446.

In part, the *Dragonslayer* court relied on language from *Concerned Ratepayers*. There, our Supreme Court held that technical documents related to the construction of a power plant that were prepared by a third party were nevertheless public records. *Concerned Ratepayers,* 138 Wn.2d at 962. The *Concerned Ratepayers* court reasoned that because a nexus existed between the information and the public utility district's decision-making process, the technical documents were, therefore, "used" by the agency. 138 Wn.2d at 960-61. The court stated, "[T]he information

relates not only to the conduct or performance of the agency or its proprietary function, but is also a relevant factor in the agency's action." *Concerned Ratepayers*, 138 Wn.2d at 960-61.

The County relies on *Dragonslayer* and *Concerned Ratepayers* to argue that a "nexus" is required between the IALs and government function. But in *Dragonslayer* and *Concerned Ratepayers*, it was unclear whether the requested records related to a government function because the information was generated by a third party and not by the agency.[9] Therefore, those courts required that the *third-party-generated information* must be actually "used" by the government agency to be considered a public record. *Concerned Ratepayers*, 138 Wn.2d at 961; *Dragonslayer*, 139 Wn. App. at 446.

But here, where government employees use government computers and software to access the Internet for their assigned work, there is no need to require the resulting IALs to be "used" by the agency in order to be a record "containing information relating to the conduct of government." RCW 42.56.010(3). Under these facts and under a plain reading of the PRA, it is sufficient that the requested information "contain[s] information relating to . . . governmental . . . function." RCW 42.56.010(3).

The County also relies on *Tiberino v. Spokane County*, 103 Wn. App. 680, 13 P.3d 1104 (2000), to support its argument that there needs to be a "nexus" or "use" requirement. Although the requested information in *Tiberino* did not involve third-party-generated information, that case is nevertheless distinguishable. There, Division Three of this court held that personal e-mails sent

[9] We also note that while the *Dragonslayer* court's analysis revolved around prong two of the "public record" definition, *Concerned Ratepayers* involved an examination of prong three of that definition. 138 Wn.2d at 958.

from Tiberino's county-owned computer were public records within the scope of the PRA because the county printed the e-mails in preparation for litigation resulting from Tiberino's termination, a proprietary function. *Tiberino*, 103 Wn. App. at 688. Thus, the County argues that county-generated e-mail was not considered a public record until it was "used" in connection with government business. But in *Tiberino*, it was undisputed that the e-mails was purely personal in nature even though they were generated by a government employee on a government computer. Here, in contrast, the County does not claim that any of the requested IALs are purely "personal" in nature. We therefore find *Tiberino* unhelpful on the issue of whether the requested IALs are public records.

To further support its argument that the IALs do not relate to government conduct, the County argues that the IALs were collected only as an unwanted function of the County's software program. The County argues further that IAL data might be a public record within the terms of the PRA if it were used to create an audit log of employee Internet use that was then used in connection with some proprietary function. The record establishes that the County never reviewed the IALs or used them for any governmental function. IS manager Shambley declared that he had never been asked to produce the IAL data by any county supervisor, manager, elected official, or director. The County "virtually ignored" the IALs, at least until Belenski's PRA requests. CP at 292.

But the County's arguments do not address whether the IALs nonetheless "contain[ ] information related to the conduct of government." RCW 42.56.010(3). And we hold that there is no requirement under the PRA that the IALs be "used" by the government when the IALs are created by government employees using government computers and software in the course of their

assigned work. To the extent the superior court required such a use or nexus, it erred. Under these circumstances, the IALs contain information relating to the conduct of government such that they satisfy prong two of the "public records" definition.

D. STATUTE OF LIMITATIONS ON REQUEST #1

The County also argues that any claim Belenski can assert with regard to his request for the County's IALs from February 1, 2010 to September 27, 2010 (request #1), is barred by either the PRA's one-year statute of limitations, RCW 42.56.550(6), or by the two-year "catch-all" statute of limitations contained in RCW 4.16.130. We hold that Belenski's claim with regard to request #1 is barred by the two-year statute of limitations.

A request for records under the PRA is subject to two separate limitation periods. One provision in the Act itself provides that a plaintiff must file an action within one year of either (1) an agency's claim of exemption from the PRA's disclosure requirements, or (2) an agency's "last production of a record on a partial or installment basis." RCW 42.56.550(6); *Johnson v. Dep't of Corr.*, 164 Wn. App. 769, 775, 265 P.3d 216 (2011), *review denied*, 173 Wn.2d 1032 (2012). Alternatively, the two-year "catch-all" statute controls when there are no other applicable statutes of limitation. *Johnson*, 164 Wn. App. at 777.

Here, the County contends that its answer to Belenski's request #1 of "no responsive records" triggered the running of the PRA's one-year statute of limitations. CP at 214. Although it is not immediately clear whether such a response would trigger the PRA's one-year statute, we need not answer this question because Belenski's suit was untimely under the latter two-year statute.

Belenski made request #1 on September 27, 2010. The County mailed a letter stating that it had "no responsive records" on October 4, and e-mailed him the same answer on October 5. CP at 214. Belenski does not dispute having received the responses on those dates. Belenski did not file his complaint until November 19, 2012, over two years after the County responded to request #1. Accordingly, we hold that Belenski's claim regarding the County's IALs from February 1, 2010 to September 27, 2010 (request #1) is barred by the statute of limitations contained in RCW 4.16.130.

### E. County's Production of CD On Request #2

The County further argues that if the IALs are considered public records, it nevertheless satisfied request #2 by providing Belenski with the CD containing the "aggregate" IAL summary. Belenski responds that he never agreed to accept a summary report of the Internet activity in lieu of his request for the complete IALs.

But this issue is not ripe for our review, and even if it were, the record is not developed enough to determine whether the CD was sufficient to satisfy Belenski's request. The superior court made no ruling regarding the CD as it pertained to request #2. And from the record before us, we cannot discern what the CD actually contained. The record includes neither the CD itself nor any copy of the files thereon. To address this contention, additional fact finding is required on remand.

## III. Identifiable Records – Request #3

Belenski next contends that PRA request #3 for "electronic copies of every electronic record for which Jefferson County [IS] does not generate a back up" was a request for "identifiable" records. CP at 40. We conclude that Belenski's request was not one for identifiable

public records because the County never kept records in such a way that would allow them to identify records that were not "backed up" and because the PRA does not require an agency to conduct research or to explain public records.

A request under the PRA must be for an "*identifiable public record*." *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 447-48, 90 P.3d 26 (2004) (emphasis added) (quoting former RCW 42.17.270 (1987)). A mere request for *information* does not so qualify. *Wood v. Lowe*, 102 Wn. App. 872, 879, 10 P.3d 494 (2000); *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410-12, 960 P.2d 447 (1998). Moreover, although there is no official format for a valid PRA request, "a party seeking documents must, at a minimum, [(1)] provide notice that the request is made pursuant to the [PRA] and [(2)] identify the documents with reasonable clarity to allow the agency to locate them." *Hangartner*, 151 Wn.2d at 447. The PRA does not require agencies to research or explain public records, but only to make those records accessible to the public. *Bonamy*, 92 Wn. App. at 409. And a court cannot order production of records that do not exist. *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wn.2d 702, 753, 261 P.3d 119 (2011). When a request is invalid, the agency is excused from complying with it. *Bonamy*, 92 Wn. App. at 412.

Belenski's claim that he requested "identifiable records" is unpersuasive. First, the County does not bifurcate records in a manner that would allow it to provide Belenski with a copy of every record that the County does not "back up." Shambley described IS's recommendation that county employees take it upon themselves to employ precautionary measures to save electronic records to external servers or drives maintained by the County. Whether or not county employees heed this advice is not something that IS tracks. Consequently, if the County were required to research an untold number of records to respond to Belenski's request, it would be obligated to create and

produce records that do not currently exist. *Bonamy*, 92 Wn. App. at 409; *Neighborhood Alliance*, 172 Wn.2d at 753. This is a result that the PRA neither intends nor requires.

Second, Belenski's request is essentially a request for information. In *Bonamy*, Division One of this court held that Bonamy failed to make a request for identifiable records in part because he stated that he wanted to "know" what policy guidelines govern investigations into employee conduct and how they differ from other related policies rather than simply requesting copies of the policies themselves. 92 Wn. App. at 409. Similarly, in *Smith v. Okanogan County*, 100 Wn. App. 7, 19, 994 P.2d 857 (2000), Smith asked the Okanogan County Commissioners' Office to advise him when, how, and why the county became a municipal corporation. The court held that Smith's request failed to identify a public record. *Smith*, 100 Wn. App. at 19. Instead, Smith was essentially requesting information. *Smith*, 100 Wn. App. at 19.

Here, responding to the County's assertion that he had failed to request identifiable records, Belenski said that he wanted the records in part because he wanted to identify "what public records are at risk of permanent loss." CP at 237. By virtue of his request, Belenski was essentially seeking information associated with the County's approach or policy regarding storage and maintenance of electronic records. Belenski sought to determine whether there are records (and if so, which records) that the County does not trouble itself to secure. For the foregoing reasons, we hold that Belenski's request #3 was not a request for "identifiable" public records within the meaning of the PRA.

## IV. EMPLOYMENT RECORD EXEMPTIONS – REQUEST #4

Belenski further argues that the County improperly withheld records related to a former county employee because the claimed exemptions for employees and applicants no longer apply

to a former employee. Belenski claims that at least some of the records that were withheld entirely should have been produced with partial redactions. We hold that Belenski's claims fail because he cites no authority to suggest that exemptions for employee privacy do not apply to former employees.[10]

A. APPLICATION OF EXEMPTION TO FORMER EMPLOYEES

The PRA requires a government agency to disclose any public record upon request; however, an agency lawfully withholds production of records if one of the PRA's enumerated exemptions applies. RCW 42.56.070(1); *Sanders v. State*, 169 Wn.2d 827, 836, 240 P.3d 120 (2010). "The PRA's exemptions are provided solely to protect relevant privacy rights or vital governmental interests that sometimes outweigh the PRA's broad policy in favor of disclosing public records." *Resident Action Council*, 177 Wn.2d at 432. The burden is on the agency to establish that an exemption applies. RCW 42.56.550(1); *Resident Action Council*, 177 Wn.2d at 428.

Here, the County invoked the exemptions contained in former RCW 42.56.250(2)-(3) (2010) either to withhold entirely or redact partially records associated with the former employee's personnel file and employment application materials. Former RCW 42.56.250 exempts some public employee records from public inspection and copying under the PRA and provides that the following records are exempt,

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[10] Belenski also asserts that the superior court erred by failing to make written findings that the exemptions were proper specifically because the protected relevant privacy rights or vital government interests applied to the former employee's personnel information. But Belenski did not raise this issue before the superior court, and he cites no authority to support the notion that a court must enter such findings when it determines that an exemption applies. Therefore, we decline to further address this assertion.

> (2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;
>
> (3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

The record reveals that the County withheld four documents in their entirety. Three of these documents were related to the former employee's county employment application and one was related to his family's medical information. The employment application documents include background checks, résumés, the application itself, and driving records. These documents clearly constitute the type of employment application material categorically exempt under former RCW 42.56.250(2). The County also produced three documents with partial redactions to exclude residential addresses, personal e-mail and telephone numbers, as well as medical information. Each of these are also properly exempt under the PRA. *See* former RCW 42.56.250(3); RCW 42.56.360(2).

The crux of Belenski's argument appears to be that the County was not entitled to refuse to produce these records by availing itself of the aforementioned exemptions because the former employee is neither an applicant nor is he an employee. But there is no language in either of those exemptions that limits their application only to current employees or only to those whose applications for employment happen to be contemporaneous with a PRA request. Such a reading would defy reason and jeopardize privacy. *See Seattle Firefighters Union Local No. 27 v. Hollister*, 48 Wn. App. 129, 134, 737 P.2d 1302 (1987) (construing public employee privacy

exemption contained in former RCW 42.17.310(1)(b) (1987) to apply to retired firefighters and police officers). We hold that the exemptions apply to the former employee's records and, therefore, the County properly withheld or redacted them.

Belenski next also argues that a one-page "screenshot" that the County withheld under former RCW 42.56.250(2) and (3) should have been produced with partial redactions because it contains the former employee's employee number aside from his exempt home address. But our courts have held that an employee's name coupled with his or her identification number, can be properly exempt under the PRA for privacy because such material could potentially provide access to other exempt personal information. *Tacoma Pub. Library v. Woessner*, 90 Wn. App. 205, 221-22, 951 P.2d 357, 972 P.2d 932 (1998).[11] We hold that the County properly withheld the screenshot record.

B. BRIEF EXPLANATIONS

Belenski argues that the County's exemption logs continue to lack the necessary "brief explanation" required by the PRA. Br. of Appellant at 31. Belenski also asserts that the County "silently withheld" records from him. Br. of Appellant at 34. We hold that the County provided a sufficient brief explanation in its revised exemption log.

An agency withholding or redacting any record must specify the exemption *and* give a brief explanation of how the exemption applies to the document. RCW 42.56.210(3); *Sanders*,

[11] Belenski also claims that he should have been entitled to a partially redacted screenshot because the screenshot displayed a time of 11:48 AM. But the time that appears on the screenshot is not an actual part of the employee record being displayed. Rather, it is the time that the screenshot was taken on the county employee's computer, separate and distinct from the redacted record. The record itself shows only the former employee's name, his home address, and his employee number, which, as we have explained, is all exempt under the PRA for privacy.

169 Wn.2d at 846. Merely identifying the document and the claimed exemption does not suffice to satisfy the brief explanation requirement. *Sanders*, 169 Wn.2d at 846.

Here, the County initially cited only the name of the document and the applicable exemption in the exemption log it provided to Belenski in response to request #4. Shortly after Belenski commenced this litigation, the County provided a revised exemption log that contained a new section dedicated to brief explanations for each claimed exemption. The superior court ruled that because the County satisfied its obligation under the PRA only after Belenski filed suit, Belenski was entitled to recover his costs. Because he prevailed on this issue, the nature of Belenski's argument to this court is unclear.

To the extent that he contends that the revised exemption logs lack the requisite brief explanation, Belenski's argument fails. In addition to identification of each record and the applicable exemption, the revised log features a section entitled "Brief Explanation." CP at 657-58. There, the County provides a description of either the nature of the document that justifies exemption as a whole or an explanation as to the particular information that permits redaction. We hold that Belenski's claim fails.

### C. SILENT WITHHOLDING

Belenski claims that the County silently withheld records from him. Belenski bases this assertion on the fact that he later discovered numerous records responsive to request #4 that had not been provided to him by the County. In Belenski's view, the fact that his request for the former employee's records "had only been sent to 3 entities" was evidence that the County purposely and deceptively withheld records. Br. of Appellant at 34. We hold that the County did not silently withhold records.

The PRA prohibits "silent withholding" or the failure to reveal that some records have been withheld in their entirety, which gives requesters the misleading impression that all documents relevant to the request have been disclosed. *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn.2d 243, 270-71, 884 P.2d 592 (1994). "'The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents.'" *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 866, 288 P.3d 384 (2012) (quoting *Neighborhood Alliance*, 172 Wn.2d at 720), *review denied*, 177 Wn.2d 1002 (2013).

The record shows that the County forwarded Belenski's request #4 to three departments: auditor/payroll, central services, and Board of County Commissioners/Human Resources (BoCC/HR). Belenski cites no authority to support the proposition that the County violated the PRA by filtering Belenski's request through only three county departments. Nor does Belenski show that the County's search for the requested documents was unreasonable. As part of request #4, Belenski asked for all e-mails to and from the former employee, all records documenting his training involving the PRA, and all records containing his contact information. Considering the nature of Belenski's request, it was reasonable to contact the auditor/payroll, central services, and BoCC/HR.

Moreover, even had the County provided the same records Belenski was able to acquire through other means, it would have been entirely within the right of the County to redact the former employee's personal information as explained above. The County did not violate the PRA by "silently withholding" records.

CONCLUSION

We hold that the County's IALs are "public records" because they contain information relating to the conduct of government. Therefore, we reverse the trial court's grant of summary judgment to the County on request #2. We affirm the trial court's grant of summary judgment to the County on requests #1, #3, and #4. Accordingly, we reverse in part, affirm in part, and remand for action consistent with this opinion.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Maxa, J.
MAXA, J.

J
LEE, J.

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| MIKE BELENSKI,<br>Appellant,<br><br>v.<br><br>JEFFERSON COUNTY,<br>Respondent. | No. 45756-3-II<br><br>ORDER REQUESTING AN ANSWER TO MOTION FOR RECONSIDERATION |

**APPELLANT** moves for reconsideration of the opinion filed May 19, 2015 in the above entitled matter. As the motion appears to raise a substantial issue and an answer would assist the Court in resolving the motion, the Court requests that the **RESPONDENT** file an answer to the motion for reconsideration within ten (10) days of this order. Accordingly, it is

**SO ORDERED.**

**DATED** this 23rd day of June, 2015.

**FOR THE COURT:**

Johanson, C.J.
CHIEF JUDGE

cc: Jeffrey Scott Myers
Mike Belinski
David W Alvarez

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| MIKE BELENSKI,<br><br>Appellant,<br><br>v.<br><br>JEFERSON COUNTY,<br><br>Respondent. | No. 45756-3-II<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

**APPELLANT** moves for reconsideration of the Court's **May 19, 2015** opinion. Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. Johanson, Maxa, Lee

**DATED** this 31st day of July, 2015.

**FOR THE COURT:**

Johanson, C.J.
CHIEF JUDGE



cc: Jeffrey Scott Myers
Mike Belinski
David W Alvarez