No. 46081-5-II

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION 2

TIMOTHY WHITE

V.

CLARK COUNTY

APPELLANT'S SECOND REVISED REPLY TO RESPONDENT'S BRIEF

Knoll D. Lowney, WSBA No. 23457
Marc Zemel, WSBA No. 44325
Smith & Lowney, P.L.L.C.
2317 East John St.
Seattle, WA 98112
(206) 860-2883

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules and Regulations

Other Washington Authorities

Other Authorities

I. INTRODUCTION

Allowing public access to these critical election records under the Public Records Act (PRA) would further transparency in our election process, which is vitally important to maintaining the public's confidence in our electoral system. The statutory and constitutional provisions that protect secrecy of the ballot and insure against ballot tampering have the same goals and are complementary to the goals of election transparency. Those provisions do not create an exemption from the PRA and Clark County ("the county") has not shown that production of the public records in question would in any way undermine the secrecy of the ballot or allow ballot tampering. The county's strained constitutional and statutory arguments and its wild speculations about the harms that could result from allowing public access cannot justify casting a shroud of secrecy over the election process.

The county does not dispute that the images Appellant White (hereafter "Plaintiff") requested are "public records" and have not met its burden to show production would jeopardize the constitutional secrecy in voting or allow ballot tampering. The Court should therefore order immediate production of the records requested and remand for calculation of penalties and other relief.

II. ARGUMENT AND AUTHORITY

A. Election Transparency is Compatible with a Secret Ballot

Public release of anonymous ballot images provides a level of access to our election process consistent with state practices and legislative intent for transparent elections, while safeguarding the right to a secret ballot. The fundamental flaw with the county's position is that it argues ballot secrecy necessarily precludes election transparency, which is a false choice. Public verification and the secret ballot work together to guarantee Washington elections are free and fair.

1. Election Records and Ballot Images Are Public to Preserve Election Integrity

Election transparency is critically important to the integrity of our elections and Clark County has not carried its burden to show any explicit PRA exemption exists to override the public's interest in the requested records. In Washington, we recognize an interest in "preserving electoral integrity" through "promoting transparency and accountability in the electoral process, which [the state] argues is essential to the proper functioning of a democracy." Doe v. Reed, 561 U.S. 186, 198 (2010) (internal quotation marks omitted); *see also*, Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (*per curiam*) ("Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy.").

Transparency supports electoral integrity by exposing and deterring mistakes and fraud, which "drives honest citizens out of the democratic process and breeds distrust of our government." Reed, 561 U.S. at 197 (quoting Purcell, 549 U.S. at 4). It is also the expressed policy of our state that "public confidence in government at all levels is essential and must be promoted by all possible means...[including] *full access to public records so as to assure continuing public confidence of fairness of elections...*" RCW 42.17A.001(5) (emphasis added); *see also id.* at .001(11).

The county does not dispute that the requested records are "public records," so the Court should provide full access to them "to assure continuing public confidence of fairness of elections..." *Id.* at .001(5).

2. Article 6 Section 6 Provides Voter Anonymity

In addition, the county still has not met its burden to show production of the records would violate Art. 6 sec. 6 by revealing how individuals voted. RCW 42.56.550(1). Unable to point to any evidence in the record, the county asks the court to speculate about the public's ability to compare separate pieces of information to identify voters. *See* Clark County Response (hereafter "Clark Brief") at 12 (misstating what its

citations actually say).[1] The Court must not accept the county's invitation to speculate. State v. Blight, 89 Wn.2d 38, 46, 569 P.2d 1129 (1977) (appellate court "may not speculate upon the existence of facts that do not appear in the record."). Without carrying its burden with specific reference to evidence, the county must produce the records.

Our constitutional right to "absolute secrecy in preparing and depositing" our ballots (Art. 6 sec. 6) ensures that *no one*—not even county auditors or temporary election workers who scrutinize cast ballots—has the right to know how someone else votes. Moyer v. Van De Vanter, 12 Wash. 377, 382 (1895) ("the ballot shall be a secret one, that it may not be known for which candidate any particular voter voted, in order that bribery may be prevented.").[2] Plaintiff's PRA request does not seek any information that would violate the constitutional secrecy in voting, nor should compliance with the request reveal any.

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[1] The county mistakenly cites to CP 76 (Declaration of Cathie Garber) and RP 28-29 in an attempt (1) to show the size of the precincts for the November 2013 election, even though the declaration provides only hypothetical statements and does not specifically refer to the election at issue; and, (2) to suggest (without evidence) that the auditor subtotals ballots and therefore hypothetically could provide information revealing how individuals voted.

[2] This is precisely the same secrecy in voting guarantee provided by the Colorado constitution, despite the county's representations to the contrary (Clark Brief at 31). *Compare* Marks, 284 P.3d, 118, 121-22 *with* Moyer, 12 Wash. at 382.

Elections are not autocratic; the people have a critical role. *See* Plaintiff's Opening Brief at 19-20. To ensure the constitutional right to a secret ballot where citizens observe and inspect ballots every election, the Legislature codified that "no record may be created or maintained" that identifies how a voter voted, including the ballot itself. RCW 29A.08.161; *see also* RCW 29A.36.111(1); RCW 29A.04.206(2).

These enactments are essential to keep votes anonymous where election workers, officials and public observers inspect cast ballots, count ballots, and make vote tallies. Plaintiff's Opening Brief at 19-20; *See also e.g.* Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now, 82 P.3d 1199, 119 Wn.App. 665. 674-75 (Div. 2 2004) (describing absentee ballot process where Pierce used "temporary election workers—often retirees—" to examine cast paper ballots and "remake" them if they were not machine readable). The Legislature possessed the wisdom and foresight to protect voters' anonymity while innumerable eyes scrutinize ballots and election records. RCW 29A.08.161

The autocratic secrecy the county projects is not the voting secrecy the constitution provides. Unqualified concealment of ballots, even after deposited by the voter, cannot be reconciled with a system dependent on public confidence and where people are expressly permitted to observe ballots and obtain election records. *See* CP 160; Loeffelholz, 119

Wn.App. at 674-75; RCW 29A.60.170(2); RCW 29A.64.041; RCW 29A.40.130; RCW 29A.04.230; WAC 434-262-025. The county's recognition that the Legislature "allows persons to observe the canvassing of ballots" (Clark Brief at 11) undercuts its argument that Art. 6 sec. 6 prevents the public from seeing the scanned images at issue.

In practice, the constitution provides an unqualified right to vote anonymously; it does not dictate a ballot can never be seen by anyone other than the voter. Art. 6 sec. 6 is therefore akin to a "conditional exemption," described in Resident Action Council, exempting only information that reveals how an individual voted in an election. 300 P.3d at 383-84 (if applying the exemption requires a particularized finding of the need to protect a privacy right or a vital governmental interest, it is conditional). The county has not met its burden to show the digital images in question reveal how individuals voted or how disclosure would in any way jeopardize secrecy in voting. *See* Plaintiff's Opening Brief at 17-20. When "the condition is not satisfied in the given case, the records must be disclosed." Resident Action Council, 300 P.3d at 385.

3. Election Records and Ballot Images Are Expressly Public

Indeed in Washington, election records—including ballot images—are public, further showing our elections are not the black boxes the county portrays. *See e.g.* RCW 29A.04.230 (requiring Secretary of

State to keep election records where s/he canvasses the results and must "make such records available to the public upon request.").

RCW 29A.04.230 is relevant because it shows the Legislature's intent to make all election records and materials public, including the county-created images at issue. The county argues only "canvassing records" are available to the public under that statute (Clark Brief at 35), which taken as true would certainly include the records in question here. The county created the requested records to assist in canvassing the election with the Hart Intercivic system, and the records are therefore publicly accessible. *See* RCW 29A.04.013; CP 73-74 at ¶¶ 4-5.

Yet this affirmative statement that canvassing and election records are public is not even necessary to compel the county to produce the records under the PRA. Under the Act public access to public records is the default, qualified only by explicit exemptions (which are absent here). RCW 42.56.070(1). By singling out canvassing records, the Legislature clarified the public's right to access them because of the profound importance election transparency has for our democratic system. Regardless of which agency holds the records, the importance of transparency remains. In this case, the county possesses the requested records and Plaintiff properly issued his request to it. CP 26.

B. The Out of State Authorities Are Persuasive

The county strains to convince the Court to ignore the on-point authorities Plaintiff cited from other states, without distinguishing them. Clark Brief at 30-37. As the Supreme Court has done in a PRA case in the past, the Court should adopt the reasoning in Marks v. Koch, 284 P.3d 118 (2011), Price v. Town of Fairlee, 190 Vt. 66, 26 A.3d 26 (2011) and the other authorities cited because of the "remarkably similar scenario" they present. Gendler v. Batiste, 174 Wn.2d 244, 261 (2012) (adopting reasoning of Louisiana court).

1. All the States Require Secret Ballots while Publishing Images

The Court should follow the reasoning of the jurisdictions that provide copies of ballots as public records so Washington can enjoy the same level of election transparency. All the states mentioned in Plaintiff's opening brief, including Vermont, mandate secret ballot elections like Washington, so the comparisons are apt. *See* Smith & Son, Inc. v. Town of Hartford, 196 A. 281, 283, 109 Vt. 326 (Vt. 1938) ("The material guaranty of this constitutional mandate of vote by ballot is inviolable secrecy as to the person for whom an elector shall vote...no one else shall be in a position to know for whom he has voted..."); Nelson v. Bullard, 194 N.W. 308, 311, 155 Minn. 419 (Minn. 1923) ("The vital purpose of

our ballot system is twofold: First, to enable each voter to cast a secret ballot; and second, to require him to do so."); Cal. Const. Art. 2 sec. 7; Colo. Const. Art. 7, sec. 8; Mich. Const. Art. 2, sec. 4.

In fact, the secret ballot is a fundamental principle throughout the United States, showing production does not violate any constitutional mandate. *See* Buckley v. Valeo, 424 U.S. 1, 237 (1976) (Burger, C.J., concurring in part, dissenting in part) ("one of the great political reforms was the advent of the secret ballot *as a universal practice.*" (emphasis added)); Steven F. Huefner, Remedying Election Wrongs, 44 HARV. J. ON LEGIS. 265, 290 (2007) ("anonymity of voting is a fundamental principle of American democracy today."); Burson v. Freeman, 504 U.S. 191, 214 (Scalia, J. concurring) (describing the secret ballot as a "venerable" part of the American tradition).

Because Washington's same secrecy in voting requirement is the rule of the land where states already provide copies of cast ballots to the public, the Court should adopt the reasoning in Colorado and Vermont to protect election transparency in Washington through public verification.

2. Records Retention Schedules Do Not Show Exemptions

The county argues Price is distinguishable because Vermont law provides a permissible ballot destruction schedule, even though

Washington law provides the same thing. *See* Clark Brief at 33-34; RCW 29A.60.110 ("retained for at least sixty days"). Indeed, the county does not cite to any Washington statute to show a contrast, instead relying on the declaration of Cathie Garber to show the county's practice. Clark Brief at 34. The truth is, Washington statute does not mandate ballot destruction, either. RCW 29A.60.110; *see* also WAC 434-262-200 and WAC 434-219-330.

In any case, retention schedules, which are implemented for all government records subject to the PRA, do not provide PRA exemptions. RCW 40.14.060; *See also e.g.* Washington State Archives, Office of Secretary of State, *State Government General Records Retention Schedule* (August 2011), *available at* http://www.sos.wa.gov/_assets/archives/RecordsManagement/SGGRRS5.1.pdf; Secretary of State, *State Government Records Retention Schedules*, http://www.sos.wa.gov/archives/RecordsManagement/RecordsRetentionSchedulesforStateGovernmentAgencies.aspx (last visited November 7, 2014) (providing links to records retention schedules for all Washington state agencies). There are countless examples where retention schedules are provided for records made public upon request. Requiring records' retention ensures their availability to the public, it does not exempt records from production.

3. California and Minnesota Practices Provide Meaningful Examples

The county also implores the Court to disregard California and Minnesota practice of posting digital images of cast ballots online for public review, even though those examples show there is no harm in producing the images here. Clark Brief at 35-36. Plaintiff cited to those examples to demonstrate that digital images of cast ballots are routinely released to the public electronically, and that the sky does not fall. Considering the county's apocalyptic portrayal of a world where these images are public, real-life examples showing no such problems exist are relevant and should persuade the Court. There is no evidence that publicizing ballot images reveals how individuals voted or cause harm.

C. Title 29A RCW Does Not Exempt the Records

Statutory provisions that are designed to safeguard cast ballots from tampering are likewise designed to increase confidence in elections and do not exempt the requested records from production under the PRA. The county incorrectly highlights the chain-of-custody provisions of Title 29A that aim to ensure cast ballots are not lost or tampered with, without identifying any statutory intent to remove ballots from public scrutiny. *Id.* at 13-15, 17; *see e.g.* RCW 29A.60.110 (permitting observers to watch ballots transferred from one "sealed" container to another).

Title 29A provides those chain-of-custody provisions to preserve the authenticity of official paper ballots as compiled in case of a recount or election contest. That purpose permits public access to related digital files when there is no risk of tainting the ballot box, like here. Indeed, the Vermont Supreme Court concluded that ballots are kept under seal to "preserve their integrity and reliability as physical evidence" and to have "the identical verity they bore when cast," permitting public access despite those storage precautions. Price, 26 A.3d at 32 (interpreting, *inter alia*, 17 V.S.A. § 2590(a), (c)). The Court should follow the Vermont Supreme Court's reasoning to determine the chain-of-custody purpose because of the "remarkably similar scenario" it addresses. Gendler, 174 Wn.2d at 261 (adopting reasoning of Louisiana court). The chain-of-custody provisions of Title 29A RCW have no bearing on Plaintiff's request.

Moreover, in Loeffelhoz, 119 Wn.App. 665, the Washington Court of Appeals concluded that laws requiring ballots be placed in containers "secured with numbered seals... [and] stored in a secure location"[3] did *not* remove "the process of 'remaking'[4] absentee ballots" from the public eye.

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[3] *Compare* former RCW 29.36.060 (discussed in Loeffelhoz) *with* RCW 29A.40.110 (relied on by the county, here).

[4] The ballot "remake" process is now known as ballot "duplication." RCW 29A.60.125. In Loeffelhoz, the court also described a ballot examination process (119 Wn.App. at 673-74), now known as the "ballot resolve" process, which Clark County does digitally, viewing the scanned images of ballots in the Ballot Now program, without handling the

Id. at 673, 704. It follows that the same secure storage/chain-of-custody requirements do not exempt digital ballot images from public access.

It is determinative that the Legislature did not design the chain-of-custody provisions of Title 29A to remove ballots from public scrutiny because "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, 300 P.3d at 382 (emphasis added); *see also* Deer v. DSHS, 122 Wn.App. 84, 91 (2004) (The PRA "exempt[s] from its purview *only* those 'public records most capable of causing substantial damage to the privacy rights of citizens.'" (emphasis added) (quoting Limstrom, 136 Wn.2d at 607)); Fisher Broadcasting Seattle TV LLC d.b.a KOMO 4 v. City of Seattle, et al. No. 87271-6, Slip Op. at 13 (Wash. Sup. Ct., June 12, 2014) (finding no exemption in an "other statute" where the legislative goal was not to protect personal privacy).

1. Chapter 13.50 RCW is Not Analogous

The county fails in trying to analogize the chain-of-custody provisions of Title 29A RCW and the juvenile privacy exemptions of

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original paper ballots at all. CP 73-74 at ¶ 4 ("ballot images can be 'resolved' **in** the 'Ballot Now' program.").

Chapter 13.50 RCW by ignoring the fundamental differences between those statutes. *See* Clark Brief at 18-19. While the appellate court found a PRA exemption in Chapter 13.50 RCW (*see* Deer v. DSHS, 122 Wn.App. 84), that chapter regulates sensitive records in juvenile court files, where the legislature has recognized the importance of secrecy to protect minors. *See* Laws of 2014, ch. 175, § 1(2) ("the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records."). There is not the same level of public interest in accessing those records as is present for the requested records in the election context. *See* RCW 42.17A.001(5). While the balancing of privacy and public records may weigh towards privacy in the context of juvenile records, such is not the case for elections. There is an overwhelming public interest in assuring transparency in elections, to ensure that the elections are actually fair and the public has trust in our election system. *See* Section II.A.1, above.

Moreover, sealing juvenile records is specifically designed so the juvenile can overcome prejudice and reintegrate into society. Laws of 2014, ch. 175, § 1(1) ("The public has a compelling interest in the rehabilitation of former juvenile offenders and their successful reintegration...When juvenile court record are publicly available, former juvenile offenders face substantial barriers to reintegration..."). Sealing

these records is specifically intended to create secrecy around a court process, whereas sealing containers with ballots merely documents authorized access for chain-of-custody purposes.

Comparing the statutory language also shows Chapter 13.50 RCW contains "explicit exemption" language, while Title 29A does not. First, Chapter 13.50 is titled "Keeping and Release of Records...," summarizing its purpose. Second, the chapter explicitly states records "shall be *confidential* and shall be *released* only pursuant" to another section. RCW 13.50.100(2) (emphasis added); *See also id.* at .100(3)-(7) (explicitly regulating circumstances where records may not be "*released*"); RCW 13.50.050(2) ("shall be open to the public, unless sealed" by another chapter); *id.* at .050(3)-(10) (also regulating circumstances where certain records may be "*released*"). In contrast, Title 29A contains no statement of intent to exempt the records under the PRA at all.

The exemptions under Chapter 13.50 are explicit, clearly aimed at protecting the privacy interests of juveniles, in contrast to the chain-of-custody provisions of Title 29A. Comparing these two statutes illustrates that the chain-of-custody provisions in Title 29A RCW do not contain any explicit exemption to Plaintiff's request.

2. Even If Title 29A RCW Provided a PRA Exemption, Its Purpose Limits Its Scope.

Even assuming Title 29 RCW provides a PRA exemption for ballots—a dubious conclusion considering the absence of any indication that the security provisions are intended to remove ballots from public scrutiny—its scope would be very limited and inapplicable here. Hearst, 90 Wn.2d at 133 ("the purpose of [an] exemption severely limits its scope."); *see also* PAWS II, 125 Wn.2d at 256.

As mentioned, the purpose of keeping ballots in sealed containers under the chain-of-custody provisions of Title 29A is to prevent and detect inadvertent or fraudulent alterations to the election tally, and to ensure the authenticity of ballots for a recount or contest. Price, 26 A.3d at 32. Courts have repeatedly recognized that this is the purpose of sealed containers. *See e.g.* State v. Brown, 145 Wn.App. 62, 184 P.3d 1284 (Div. 3, 2008) (blood test container sealed to show sample is free from adulteration).[5] Therefore, any PRA exemption found in Title 29A RCW

[5] *See also* State v. Doe, 6 Wn.App. 978, 497 P.2d 599 (Div. 2 1972) (drugs sealed in containers "for preservation as evidence"); Geisness v. Scow Bay Packing Co., Inc., 16 Wn.2d 1, 132 P.2d 740 (1942) (sealing salmon containers helped determine the timing of contamination); State v. Tretton, 1 Wn.App. 607, 610, 464 P.2d 438 (Div. 2 1969 ("The fact that other persons had access to the vault in which the envelope was placed does not alone create a missing link in the chain of custody. Lt. Snyder testified that he broke the seal on the envelope when he received it. This sufficiently establishes that the material had not been tampered with...").

would be severely limited to situations where producing records risks tainting the ballots—a situation absent here.

Because the county creates the digital ballot images at issue *before* the paper ballots are placed in sealed ballot boxes—and copying the images does not require accessing the paper ballots anyway—producing the requested images creates no chain-of-custody risks. Plaintiff's Opening Brief at 22-23; CP 73 at ¶ 4 (ballots scanned before their tabulation); RCW 29A.60.110 (ballots sealed "after their tabulation"); Clark Brief at 4 ("RCW 29A.60.110 requires all paper ballots to be sealed and secured immediately *after* scanning and tabulation."); CP 243 at lines 16-20 (scanned images are sent to the Ballot Now program, in which the county can "screen print" the ballot images to a Word document or PDF, without opening the ballot boxes). Since there are no chain-of-custody or ballot-tampering risks, Title 29A RCW does not exempt the records in question from production.

D. Redaction is Required

The county is wrong that redaction is not required where identifying marks can be removed from the records. *See* Clark Brief at 29. The county parrots similar arguments presented by the agency in Resident Action Council, 300 P.3d 376 (2013), which the Supreme Court rejected. There, the agency argued that "the PRA's redaction requirement, which

applies only to information the disclosure of which would violate personal privacy or vital governmental interests, does not apply to any categorical exemptions and applies only to conditional exemptions." *Id.* at 386. The Court concluded the agency was "clearly wrong" (*id.* at 387), explaining that "an agency must redact to overcome any and all relevant exemptions, insofar as possible. Requiring anything more or different would be too complicated, unworkable, and time-consuming for agencies operating under the PRA." *Id.* (citations omitted).

Here, "[i]f [the county's] interpretation were correct, only a small number of the PRA's numerous exemptions...would be subject to the redaction requirement, contrary to the overriding purpose of the PRA and the legislature's admonition that the PRA 'shall be liberally construed and its exemptions narrowly construed.'" *Id.* If the requested records turn out to contain information revealing how individuals voted—despite no such evidence in the record—the county must redact that information before producing the images to protect voters' constitutional right.

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E. The County Misconstrues Plaintiff's Request

1. Plaintiff Tailored His Request to Avoid Disrupting the Election.

Plaintiff requested copies of "digital image files of all pre-tabulated ballots," "without disruption of the election." CP 26, 28. To comply, the county did not need to alter its canvassing process, which already scans all ballots as a matter of course before they are tabulated, creating the digital images of the "pre-tabulated ballots" that Plaintiff requested. CP 73 at ¶ 4 (ballots routinely scanned before tabulation) CP 243 at lines 16-20 (scanned images are sent to the Ballot Now program, with which the county can "screen print" the ballot images). Moreover, the county could have provided the records on an installment basis, without disrupting the election. RCW 42.56.080. The county's assertion that tallying and certifying the election would have been "delayed" if it complied with Plaintiff's request is wrong. *See* Clark Brief at 27.

2. Plaintiff's Motives are Irrelevant and He Did Not Seek to Contest the Election with His Request

Plaintiff's purpose for making his request is completely irrelevant. Koenig v. City of Des Moines, 158 Wn.2d 173, 190, 142 P.3d 162 (2006); King County v. Sheehan, 114 Wn.App. 325, 341 (Div. 1, 2002). The Court should therefore not even consider Plaintiff's purpose, but even if the Court does, Plaintiff did not make his request to contest the election as

the county claims. The county misrepresents Plaintiff's motivation in an ill-conceived scheme to place his request under the exclusive purview of Chapter 29A.68 RCW. Yet, even if the purpose was relevant to find an exemption (it is not), and even if Plaintiff's purpose was to contest an election (it was not), Chapter 29A.68's alternative means of accessing ballot information is not exclusive and does not supplant the PRA. *See* Plaintiff's Opening Brief at 32-33.

When misrepresenting Plaintiff's request as an election contest, the county ignores his explicit reference to overseas voter registration, which he wanted to verify. CP 27 ("In the case of requested overseas and military voter registration received electronically...the window to research and document a challenge is but two weeks"); Clark Brief at 22. Plaintiff's request clearly shows the "challenge" to which he referred was a challenge to voter registration. *See* RCW 29A.08.810. Such a challenge is wholly separate from the "election *contest*" the county ascribes. *See* Clark Brief at 22.

Moreover, Plaintiff's motivation extended much further, seeking to "increase public involvement with the election process, increase oversight, and avoid errors, fraud or abuse by election officials who would know the public is watching—not to challenge or contest the election." Plaintiff's Opening Brief at 32, fn. 42. Regardless, Plaintiff's purposes are

irrelevant. Koenig v. City of Des Moines, 158 Wn.2d at 190; King County v. Sheehan, 114 Wn.App. at 341.

F. Plaintiff is Entitled to Recover His Costs and Fees

For vindicating his right to receive a response from the county, Plaintiff is entitled to recover his costs of litigation as a matter of law, even if the Court does not reverse the trial court's ruling on the records themselves. Sanders v. State, 169 Wn.2d 848, 866, 240 P.3d 120 (2010) ("Whether to award costs and attorney fees is a legal issue reviewed de novo"); *Id.* at 860 (Plaintiff entitled to "costs *and* reasonable attorney fees" for vindicating the right to receive a response); Plaintiff's Opening Brief at 41-42. Plaintiff therefore respectfully contends the trial court did not have the discretion to deny Plaintiff his costs or to choose not to conduct a lodestar analysis of Plaintiff's attorney fees, as the county contends.[6] Plaintiff's Opening Brief at 41-42; Clark Brief at 38. Even if the Court does not order production of the requested records, the Court should remand for calculation of Plaintiff's costs and for a lodestar analysis of attorney fees for prevailing on his claim that Clark's response was improper.

[6] Sanders v. State, 169 Wn.2d 827, 866, 240 P.3d 120 (2010) ("Whether to award costs and attorney fees is a legal issue reviewed de novo.")

III. CONCLUSION

For the reasons explained above and in Plaintiff's Opening Brief, this Court should reverse the Superior Court's decision and order production of all requested records, recovery of Plaintiff's reasonable attorney's fees and costs, and impose a daily penalty for the county's PRA violations.

Respectfully submitted this 10th day of December, 2014

SMITH & LOWNEY PLLC

By _____
Knoll Lowney, WSBA No. 23457
Marc Zemel, WSBA No. 44325

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 10th, 2014, I served the foregoing Revised Reply Brief of Appellant to the following by e-mail:

Jane Vetto
Clark County Prosecuting Attorney
Civil Division
1300 Franklin Street, Suite 380
Vancouver, WA 98666-5000
jane.vetto@clark.wa.gov

Rebecca R. Glasgow
Deputy Solicitor General
PO Box 40100
Olympia, WA 98504
Email: RebeccaG@atg.wa.gov; StephanieL1@atg.wa.gov

William John Crittenden
300 E. Pine Street
Seattle, WA 98122
Email: wjcrittenden@comcast.net

Dated this 10th day of December, 2014, at Seattle Washington.

Jessie C. Sherwood