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Washington State Supreme Court

JAN 14 2016 *byh*

Ronald R. Carpenter
Clerk

No. 92496-1

SUPREME COURT OF THE STATE OF WASHINGTON

JAMES BARSTAD,

Appellant,

Vs

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent

APPELLANT'S REPLY TO RESPONDENT'S ANSWER

C/O JAMES BARSTAD [#759730]

MONROE CORRECTIONAL COMPLEX

P.O. BOX 777; WSRU-D339

Monroe, Washington [98272]

I. REPLY TO ANSWER:

On page 4, Respondents state that the "Retention Schedule requires the Department to retain for two years the infraction documents and hearing records used to create the daily memorandum." However, the actual Retention Schedule, on page 31 of 48 and 35 of 48 (See APPENDIX "A" herein), contain the language "includes, but is not limited to: "Offender lists" of lay in status or not released from assigned units for work or other assignments (Page 31), and [LOGS OF] "Offenders who were in lay in status or not released from assigned units for work or other assignments." (Page 35). Both of these sections state, unequivocally, "Retain for 2 years after end of calendar year then Destroy."

As the specific record sought is a "Log of Offenders / Offender list" of who were in lay in status or not released from assigned units, the specific record sought (See APPENDIX B" herein) is specifically covered by the actual Retention Schedule. Deciding to call the "log/list" a "transitory memorandum" does not exempt the record from the 2 year retention period. Both page 31 and 35 are denoted as "Non-Archival." When we look to page 42 of 48, the Retention Schedule explicitly states that Non Archival records must be retained for the minimum period, in ~~this~~ case "2 years after calendar year." (See APPENDIX "C" herein)..

Respondents then cite the State Governmental General Records Retention Schedule on Page 5, at note 2. Appellant is at a disadvantage, as he does not have the availability to access this document on the internet. Assuming arguendo that the cited document does in fact state that a "transitory memorandum" may be properly destroyed, as it was a "secondary document containing only information copied from the infraction and hearing records" (Page 10, Answer) (Bold and Underline emphasis added), a very important question arises: Why didn't the Department disclose the "primary documents" as responsive to the original Public Disclosure Request? This question is more poignant when we consider that the specific record sought is not limited to "only information copied from the infraction and hearing records," but in fact contains more information. Further, since the daily "transitory memo" is produced on a computer, there is still no excuse for non-disclosure of the daily "transitory memorandum."

The answer for their non-disclosure is that the information sought is not there on the primary documents. Appellant has provided to this Court copies of what was disclosed by the Department. It is again attached herein as APPENDIX "D". Appellant would like this Court to inquire of the Respondents exactly how PDU 24877, pp. 4 7, 9 12, 14, and 16, reflect any information regarding the sanction

imposed, the nature of the sanction, and whether or not any trier of fact could determine that the sanction was authorized in the first place. Also important, whether the sanction was imposed under constitutional guarantees of due process and protection from the violation of civil rights. At this time, I would like to remind this Court that the sanction was imposed prior to any hearing or other due process. In sum, the "transitory memorandum" contains more information than was provided as "responsive" to the original Disclosure Request (See APPENDIX "C" herein). The disposal of the specific record sought was improper and shows bad faith on the part of the Respondents.

The Respondents are playing a shellgame and thumbing their noses at the PRA, in deciding what to disclose and what to hide from the public. Further, claiming it "involves only a limited question of statutory interpretation and does not raise a significant question of law" (Page 6, Answer), shows their arrogance and denial of accountability. The recent issue of allowing prisoners out too early shows the necessity of an Ombudsman to oversee the DOC as they had more than a decade of "Notice" in order to correct their error. They have gone unchecked for far too long, with no accountability and with impunity. The DOC has also added time to offenders sentences, over and above the sentence imposed by the trial court. See, State v Dress, 168 Wn App

319, 279 P 3d 875 (2012) and State v Broadaway, 133 Wn 2d 118 942 P 2d 363 (1997), as further examples of the Respondents' megalomania.

The state points out RCW 42 56 565(1) as an instance of showing that Legislature did not include monetary penalties for violating the Retention Schedule Act, RCW ~~44~~ 14. While it is true that prisoners have notoriously made a substantial windfall from PRA litigation in previous years, it must also be noted that the majority of those cases and wins were against the DOC, further proving that Respondents have no intentions of respecting the PRA. It seems that Legislature has bent over backwards to amend the Act to assist the DOC, but they seem to continue to try the boundaries of the Act. Whether the Appellant in the present case will be awarded damages is not the issue. It is the blatant defiance of the form, content, language, and spirit of the PRA that is being called into question.

It is also true that the court held in City of Federal Way v Koenig, 167 Wn 2d 341, 217 P 3d 1172 (2009), that under Stare Decisis this court will not overrule its own prior holding based on the fact that one of several bases for the holding no longer applies if the fundamental underlying basis for the holding is sufficient to support the holding. This court also held that Stare Decisis "requires a clear showing that an established rule is

incorrect and harmful before it is abandoned." Koenig (Bold Underline emphasis added).

The state also points out that "this court assumes legislative acquiescence to courts' PRA interpretation where courts had interpreted the PRA and Legislature did not alter statute in response." (Pg. 8, Answer). The Appellate Court rulings are in error regarding the spirit of the PRA, and making the "triggering event" the request for a document. If a document is not due to be properly destroyed for two years, and the agency then destroys it in six months, while not disclosing the information they claim they are required to retain and disclose, then they purposefully circumvent the PRA. These rulings are "incorrect and harmful" to the PRA, and I can guarantee that this "loophole" will be addressed by the Legislature if this Court continues to relieve the Respondents of their duty to uphold both the PRA and the Retention Act of RCW 40.14.

"The PRA specifically mandates broad disclosure and imposes mandatory penalties for non disclosure." The records sought were not exempt. They contained MORE information than the "primary documents" which were conveniently NOT disclosed, as they evidence violations of civil rights. In construing the PRA, courts must "look at the Act in its entirety in order to enforce the laws's overall purpose." RCWA 42.56.001 et.seq., Rental House Ass'n of Puget Sound v

City of Des Moines, 156 Wn 2d 775, 791 246 P 3d 768 (2011).

"The purpose of the PRA is to 'ensure the sovereignty of the people and the accountability of the governmental agencies that serve them' by providing full access to information concerning the conduct of government." Kitsap County Prosecuting Attorney's Guild v Kitsap County, 156 Wn App 110, 118 231 P 3d 219 (2010) (Bold emphasis added).

"The purpose of the penalty scheme is to 'discourage improper denial of access to public records and [promote] adherence to the goals and procedures' of the statute." Hearst Corporation v Hoppe, 90 Wn 2d 123, 140, 580 P 2d 246 (1978)

In Building Industry Association of Washington v McCarthy, 152 Wn App 720, 218 P 3d 196 (Div 2, 2009) (hereinafter BIAW), it was determined that the retention schedule was not violated and the PRA mandates penalties. In the present case, the retention schedule is obviously (and admittedly) violated.

In West v Washington Department of Natural Resources, 163 Wn App 235 258 P 3d 78 (2011), it was argued that "unless the courts should apply RCW 40 14 ... agencies will circumvent the PRA and improperly destroy records." West's prediction has come true in the present case, and it cannot go unchecked.

Suppose that the (unauthorized) "sanction" handed down

at the (non existent) "infraction hearing" was "removal of index finger." Only the specific record sought would have shown the sanction imposed (See APPENDIX "C"). The records disclosed under PDU-24877 would only have informed of the date the finger was removed. No other "primary document" information was disclosed by the Respondents and no exception was offered. They merely stated that it was "properly destroyed;" but at the original Thurston County Superior Court hearing; the Respondents admitted this was a "criminal act," albeit not subject to monetary (civil) penalty.

Since the actual sanction was imposed prior to any hearing, how then can the Respondents diminish the importance of this present case by stating it "does not involve a significant issue of substantial public interest that would allow for review by this Court." (Page 9, Answer). They seem to think that they could, hypothetically, remove index fingers of prisoners, prior to any hearing, and that they would not need to disclose this fact, but instead merely disclose the date the fingers were removed. They state they can then improperly destroy the records prior to the Retention Schedule, since less information is retained on the primary document, thus committing a criminal act. Now the Respondents would like this Court to agree with them that this was within the legislature's intent when they

wrote the PRA. Even though the Legislature has relegated prisoners to second class citizens in regards to winning damages, I am sure that a removal of fingers, or other **secret** form of physical punishment, would be within their sphere of interest

Again, as argued in the Petition for Discretionary Review the PRA explicitly states, "In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern." This explicitly incorporates RCW 40 14, regardless of how the Respondents would like to circumvent the legislature's intent. This Court must correct this manifest injustice and find for the Appellant.

II. CONCLUSION:

For the reasons and argument presented herein, Appellant requests this Court close the loophole, to prevent further circumvention of the PRA by the improper and early destruction of public records, in violation of both RCW 40 14 and RCW 42 56

Respectfully submitted this 7th day of January,
2016

JAMES BARSTAD
C/O JAMES BARSTAD [#759730]
MONROE CORRECTIONAL COMPLEX
P O BOX 777; WSRU D339
Monroe Washington [98272]

2.5 OFFENDER MOVEMENT

The activity of tracking and monitoring movement of offenders into, within or out of the correctional facility.

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
13-09-68454 Rev. 0	Extraditions Records relating to agency planning and coordination of offender extraditions to out-of-state detention facilities.	Retain for 6 years after extradition fulfilled, cancelled or expired <i>then</i> Destroy.	NON-ARCHIVAL NON-ESSENTIAL OPR
83-06-32467 Rev. 2	Movement Rosters – Counts and Lists Records relating to tracking offender populations. Includes, but is not limited to: <ul style="list-style-type: none"> Offender movement and location; Offender population; Various lists of offenders relating to work assignments, name and identification numbers, release dates; Offender lists of lay-in status or not released from assigned units for work or other assignments. 	Retain for 2 years after end of calendar year <i>then</i> Destroy.	NON-ARCHIVAL NON-ESSENTIAL OFM
95-05-54932 Rev. 2	Transportation – Offenders Records relating to the transport of offenders to and from the institutions or offenders transporting into a facility from the county of origin. Includes, but is not limited to: <ul style="list-style-type: none"> Transportation officer receipts; Transport records from county facility. 	Retain for 3 years after end of calendar year <i>then</i> Destroy.	NON-ARCHIVAL NON-ESSENTIAL OFM

2.6 SECURITY AND CONTROL

The activity of imposing control over offender populations in an effort to provide protection and prevent security disturbances and improper conduct.

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF RECORDS	RETENTION AND DISPOSITION ACTION	DESIGNATION
13-09-68456 Rev. 0	<p>Law Library Access</p> <p>Records relating to requests from offenders for access to facility's law library.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Granted or denied requests; • Scheduling; • Call-out logs; • Copies of offender's filed court documents. 	<p>Retain for 2 years after end of calendar year</p> <p>then</p> <p>Destroy.</p>	<p>NON-ARCHIVAL NON-ESSENTIAL OFM</p>
83-06-32469 Rev. 2	<p>Logs – Security and Control</p> <p>Logs relating to the various types of tracking throughout the facility to include movements of physical items (vehicles, keys, tools), staff and offenders.</p> <p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Custody, key, tool and vehicle control; • Cell block and unit tower security and control; • Drug screening and urinalysis; • Administrative segregation; • Telephone logs; • Offender mail logs; <p><u>Offenders who were in lay-in status or not released from assigned units for work or other assignments.</u></p>	<p><u>Retain for 2 years after end of calendar year</u></p> <p>then</p> <p>Destroy.</p>	<p>NON-ARCHIVAL NON-ESSENTIAL OFM</p>



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

WASHINGTON STATE REFORMATORY
P.O. Box 777 • Monroe, Washington 98272-0777

TO ALL STAFF
FROM SGT'S KNOX/DOPSON

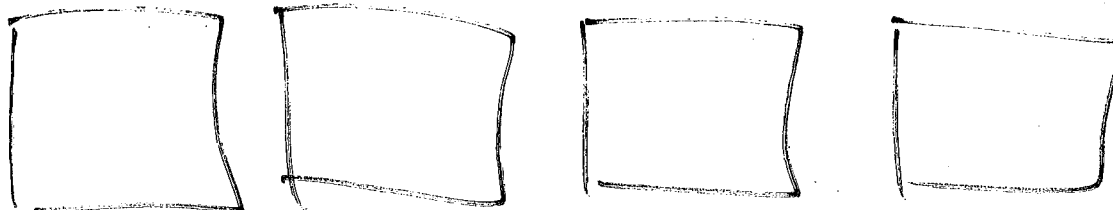
DATE: 10/27/12
SUBJECT: A/B UNITS
Disciplinary Sanction List

NAME	DOC #	CELL #	SANCTION
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		B Unit	
Barstad	759730	B 4-36L	Unassigned Status 1200-2030 Mon-Fri Only

Unless otherwise stated cell confinement means the inmate is only allowed out of his cell for work, meals, school, visits, official call outs (not to include barber shop), (1) 15 minute shower per day, (1) 20 minute phone call per day, one scheduled religious service per week if so stipulated when sanction is levied and confinement is over 7 days. Unless otherwise stipulated, extra duty will be performed in the living-units. CC will be run for last for mainline. Units, Booths, Bulletin board, Dayroom, Entries, Gym, Hobby shop, Rec. Sup, Chapel, P.A.B, Twr 9, Shif

PHOTOS OF



INMATES ON THIS LIST

APPENDIX

B

Essential Records

Public records that state government agencies must have in order to maintain or resume business continuity following a disaster. While the retention requirements for essential records may range from very short-term to archival, these records are necessary for an agency to resume its core functions following a disaster.

Security backups of these public records should be created and may be deposited with Washington State Archives in accordance with Chapter 40.10 RCW.

Non-Archival

Public records which do not possess sufficient historic value to be designated as "Archival". Agencies must retain these records for the minimum retention period specified by the appropriate, current records retention schedule.

Agencies should destroy these records after their minimum retention period expires, provided that the records are not required for litigation, public records requests, or other purposes required by law.

Non-Essential Records

Public records which are not required in order for an agency to resume its core functions following a disaster, as described in Chapter 40.10 RCW.

OFM (Office Files and Memoranda)

Public records which have been designated as "Office Files and Memoranda" for the purposes of RCW 40.14.010.

RCW 40.14.010 – Definition and classification of public records.

(2) "Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda."

OPR (Official Public Records)

Public records which have been designated as "Official Public Records" for the purposes of RCW 40.14.010.

RCW 40.14.010 – Definition and classification of public records.

(1) "Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or

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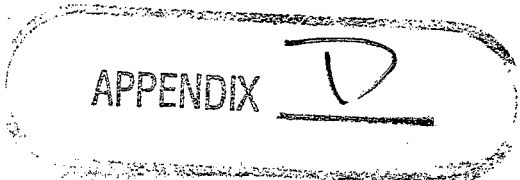
***PT Loss column is point's loss upon a finding of guilt. R= WAC violation reduced
 Custody points Close 0-39, Medium 40-55, Minimum 56-up
 Segregation Hearing Schedule - Monday, Wednesday and Friday,
 Disciplinary will try to adhere to schedule when possible,

APPENDIX *D*

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
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***PT Loss column is point's loss upon a finding of guilt. R= WAC violation reduced
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 Disciplinary will try to adhere to schedule when possible,
 Due to time lines hearings may be held on non scheduled days.

Note: The Disciplinary list consists of infractions that WSRU Disciplinary Department has received.



[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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APPENDIX

D

CERTIFICATE OF SERVICE BY MAILING

I, JAMES BARSTAD, being of the age of majority and competent to state the matters set forth herein, do hereby swear and Declare the following:

That on the 11 th day of JANUARY 2016, I placed into the U S Postal Service, at the MONROE CORRECTIONAL COMPLEX with the proper prison forms attached, copies of the following documents:

- 1) APPELLANT'S REPLY TO RESPONDENT'S ANSWER
- 2) CERTIFICATE OF SERVICE BY MAILING

These mailings were addressed to the following parties:

- 1) WASHINGTON STATE SUPREME COURT
TEMPLE OF JUSTICE
P O BOX 40929
OLYMPIA, WA 98504 0929
- 2) WASHINGTON ATTORNEY GENERAL
Attn: Haley Beach
P O BOX 40116
OLYMPIA WA 98504 0116

Further, I certify these facts as true, correct, certain, and complete under penalty of perjury pursuant to the laws of the State of Washington and of the United States of America.

JAMES BARSTAD

C/O JAMES BARSTAD [#759730]
MONROE CORRECTIONAL COMPLEX
P O BOX 777; WSRU D339
MONROE Washington [98272]