No. 32912-7-III

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

BENTON COUNTY

v.

DONNA ZINK

BRIEF OF APPELLANTS DONNA ZINK

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INTRODUCTION

On October 10, 2015, Declaratory Judgment was granted to Benton County by the Benton County Superior Court under Uniform Declaratory Judgments Act (UDJA) (Chapter 7.24 RCW). Benton County argued to the trial court that while the Public Records Act (PRA) (Chapter 42.56 RCW) mandates agencies use their resources to provide hard paper copies,[1] the PRA does not require an agency to use agency resources to provide copies of public records in electronic format. Further Benton County argued that the UDJA is a standalone statute authorizing a trial court to render Declaratory Judgment without citation to a specific statute. Based on the arguments and evidence submitted by Benton County, the trial court found that:

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[1] **Agency facilities shall be made available to any person for the copying of public records** except when and to the extent that this would unreasonably disrupt the operations of the agency. RCW 42.56.080 (emphasis added)

A reasonable charge may be imposed for providing copies of public records and **for the use by any person of agency equipment or equipment** ...which charges shall not exceed the amount necessary to reimburse the agency ... **for its actual costs directly incident to such copying.** RCW 42.56.120 (emphasis added).

In determining the actual per page cost **for providing photocopies of public records**, an agency may include all costs directly incident to copying such public records including the **actual cost of the paper and the per page cost for use of agency copying equipment.** RCW 42.56.070(7)(a)(emphasis added).

In determining the actual per page cost or **other costs for providing copies of public records**, an agency **may not include staff** salaries, benefits, or other general administrative or overhead charges, **unless** those **costs are directly related to the actual cost of copying the public records**. Staff time to copy and mail the requested public records may be included in an agency's costs. RCW 42.56.070(7)(b)(emphasis added).

An agency need not calculate the actual per page cost or **other costs it charges for providing photocopies of public records if to do so would be unduly burdensome**, but in that event: The agency may not charge in excess of fifteen cents per page for **photocopies** of public records or for **the use of agency equipment** to photocopy public records. RCW 42.56.070(8)(emphasis added).

- An agency is only required to use public resources to make hard paper copies of records maintained in hard paper only form (CP 215: 2);
- An agency is only required to use public resources to make hard paper copies of records maintained in electronic format needing redaction (CP 215: 1);
- The PRA authorizes agencies to outsource responses to requests for public records in electronic format to an outside vendor for fulfillment (CP 215: 3);
- An agency may charge a requester twenty-five cents per page or the actual cost, whichever is less, for records provided in electronic form (CP 218: 8);
- Scanning a redacted electronic record into electronic format is creating a new document which agencies are not required to do under the PRA (CP 218: 9);
- Scanning a paper copy into an electronic format is creating a new document which agencies are not required to do under the PRA (CP 218: 10);
- The Uniform Declaratory Judgments Act (UDJA) (Chapter 7.24 RCW) is a standalone statute providing the Superior Court with the authority to enter a Declaratory Judgement (CP 214: FOF/COL 3); and
- A justiciable controversy exists under the PRA and the UDJA was properly invoked by Benton County (*Id*).

(CP 220-221). The Benton County Superior Court has made obvious error concerning both the strict mandatory requirements of the PRA in providing access to public records and use of agency equipment and staff as well as the requirements for Declaratory Judgment under the UDJA.

The Washington Public Records Act (PRA), is a strongly worded mandate of the people demanding that members of the public be given **timely and prompt access to the "publics" records**[2] in order for the people to remain in control over the instruments they created.[3] Under the strongly worded mandate of the PRA all public agencies in Washington State must provide access to the public records owned, used, created or maintained by that specific public agency unless a specific exemption applies to the requested records even if disclosure of the record causes inconvenience.[4] Public agencies cannot charge to locate and make the "public's records" available to the public; including redaction of the requested records.[5] Once the records have been located, redacted (if authorized), and assembled, an agency cannot charge for the inspection of said records. Agencies must provide access to agency facilities to make

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[2] RCW 42.56.080 ; RCW 42.56.100 ; RCW 42.56.520

[3] RCW 42.56.030.

[4] RCW 42.56.030. "[C]ourts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." *Koenig v. Thurston County*, 175 Wn.2d 837, ¶9, 287 P.3d 523 (2012).

[5] RCW 42.56.120

copies.[6] Agencies cannot charge for staff time unless that staff time is directly related to copying the records. An agency may charge a reasonable amount for copy charge which shall not exceed the amount necessary to reimburse the agency for the cost to copy records.[7]

Agencies are to establish rules and regulations in harmony with the intent of the PRA to provide the "public's records" as expeditiously as possible while still protecting the "public's records" from disorganization and to prevent interference with other essential functions of the agency.[8] Agency facilities **shall** be made available to any person for the copying of public records.[9] An agency may charge a reasonable fee for providing copies of public records and for the use by any person of agency equipment.

Benton County initiate this action in the Benton County Superior Court for a judicial determination that: "(a) the Public Records Act does not mandate that a public agency create an electronic public record if it does not possess the public record in electronic form; (b) the Public Records Act does not mandate that a public agency create a second

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[6] RCW 42.56.120

[7] RCW 42.56.120

[8] RCW 42.56.100

[9] RCW 42.56.080

electronic record with respect to an electronic record it possesses but which must be redacted under the terms of the Public Records Act; and (c) if a public agency chooses to or is obligated to create an electronic record, the Public Records Act allows the agency to hire a third party vendor to create and electronic record that must be redacted and to charge the requester the actual cost of creating an electronic record." (CP 1)(Complaint CP 1-8 and Summons CP 9-10).

The County's motion was granted by the trial court on October 10, 2014 (CP 215-219). It is the decisions, orders, and Declaratory Judgment entered by the Benton County Superior Court that this appeal arises.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1) Order Denying Motion to Dismiss Declaratory Relief

Assignment of Errors of Trial Court's Decision and Order (CP 212-214)

a. Did the trial court err in denying Zink's "*Motion To Dismiss Benton County's Complaint for Declaratory Relief,* entered October 10, 2014?" (CP 214: Order)

b. Does the evidence and argument submitted to the court (CP 212-213: 1-14) support the trial court's findings of fact and conclusions of law that:

    1. The record evidences an existing dispute between the parties regarding the County's rights and obligations under the Public Records Act (PRA)(CP 213: FOF 1);

2. Such dispute is not hypothetical and can be determined by declaratory judgment from this Court (CP 213: FOF 1); and

3. The County has a direct and substantial interest in the outcome of this dispute and the Court's ruling on the requested declarations? (CP 214: FOF 2)

c. Does the trial court findings of fact (FOF) lead to the reasonable conclusion that a justifiable controversy exists providing and the trial court jurisdiction under RCW 7.24 has properly been invoked? (CP 214: COL 3)

d. Did the trial court abuse its discretion in denying Zink's Motion to Dismiss Benton County's Complaint for Declaratory Relief? (CP 214: Order 1)

2) Order Granting Summary Judgment and Declaratory Relief

Assignment of Errors of Trial Court's Decision and Order (CP 215-219)

a. Did the trial court err in granting Benton County's "*Motion for Summary Judgment and Declaratory Relief,* under RCW 7.24.010, entered October 10, 2014?" (CP 218-219: Order 1 & 2).

b. Did the evidence and argument presented by the parties to the court (CP 216-217: 1-16) provide relevant and factual evidence supporting the court's findings of fact and conclusions of law? (CP 217-218: FOF/COL 1-11);

c. Does the evidence and argument submitted to the court support the trial court's findings of fact and conclusions of law that:

1. There is an existing dispute between the parties regarding County's authority and obligations under the PRA (CP 217: FOF/COL 1);
2. The dispute between the parties is not hypothetical and can be determined by declaratory judgment issued by this Court (CP 117: FOF/COL 1);
3. A justiciable controversy exists, and this Court's jurisdiction under RCW 7.24 has properly been invoked (CP 217; FOF/COL 2);
4. No other parties are necessary or indispensable parties to this action (CP 217: FOF/COL 3);
5. There are not disputed facts material to the issue of whether Benton County is authorized under the PRA to have scanning services performed by a third party and charge Ms. Zink the actual reasonable cost thereof (CP 217: FOF/COL 4);
6. Benton County obtained quotes from three vendors as to the cost of scanning services, and a charge of 25 cents per page was the lowest price quoted and is reasonable (CP 218: FOF/COL 5);
7. The Public Records Officer for the Benton County Prosecutor's Office does not have software on her computer to enable her to electronically redact any of the documents responsive to her request (CP 218: FOF/COL 6);

8. To provide Ms. Zink with electronic versions of responsive documents that it possesses in paper form only or that it possesses in electronic format that must be redacted, the Prosecutor's Public Records Officer would need to create additional public records (CP 218: FOF/COL 7);

9. The PRA does not require that agencies perform copying or scanning with agency personnel, and it allows agencies to recover the actual cost of the charges services imposed by a vendor (CP 218: FOF/COL 8);

10. The PRA does not obligate agencies to duplicate their efforts and create new electronic documents from electronic records that must be redacted (CP 218: FOF/COL 9);

11. The PRA does not obligate agencies to create new electronic records from records it holds in paper only form (CP 218: FOF/COL 218 10); and

12. Benton County is entitled, as a matter of law, to the Declaratory Relief it seeks (CP 218: FOF/COL 11)?

d. Do the findings of fact and conclusions of law support the trial courts order granting Benton County's Motion for Summary Judgment; and

e. Do the finding of fact and conclusion of law support the trial courts order for Declaratory Judgement in favor of Benton County? CP 218: Order 2)

3) Declaratory Judgment Regarding Benton County's Authority and Obligations Under the Public Records Act

Assignment of Errors of Trial Court's Declaration of Legal Authority and Obligations Pursuant to the PRA (CP 220-221)

a. Did the trial court err and abuse its discretion in making the following Judicial Declarations concerning the PRA and an agencies obligations to provide electronic copies of public records to a member of the public (CP 220):

1) Washington's Public Records Act (PRA), Chapter 42.56 RCW, allows Benton County to hire a third party vendor to create electronic records from records it possess only in paper form and to charge Ms. Zink twenty-five cents per page or the actual cost, whichever is less, to have such electronic records created if she requests responsive documents be provided in electronic form (CP 220: Declaration 1);

2) Washington's Public Records Act (PRA), Chapter 42.56 RCW, allows Benton County to hire a third party vendor to create electronic records from electronic records that must be redacted and to charge Ms. Zink twenty-five cents per page or the actual cost, whichever is less, to have such electronic records created if she requests responsive documents be provided in electronic form (CP 220: Declaration 1);

3) Washington's Public Records Act (PRA), Chapter 42.56 RCW, does not obligate the County to use agency resources (pay someone) to create electronic documents retained in paper only form (CP 220: Declaration 2); and

4) Washington's Public Records Act (PRA), Chapter 42.56 RCW, does not require a public agency to use agency resourced (pay someone) to create additional electronic records retained in electronic form, but that it appropriately redacts under the terms of the PRA (CP 221: Declaration 3)?

STATEMENT OF THE CASE

On August 30 2013, Ms. Zink sent a PRA request to Benton County to review or and/or copy all SSOSA forms as well as all victim impact statements filed and maintained anywhere in Benton County (CP 180). Benton County responded on September 20, 2013, that the first installment of requested records would be available on October 4, 2013 for review. (CP 73: Bottom e-mail).

On September 20, 2013, Ms. Zink contacted Benton County and requested to know the cost charged for scanning the documents and sending them electronically via e-mail. (CP 73 & 95 - top e-mails). Benton County responded that the documents are not in electronic format and Ms. Zink can review the records in the Prosecutor's office. (CP 95 - bottom e-mail).

On September 24, 2013, Benton County clarified that the requested records were in paper only form and required substantial redactions. Benton County stated that they would not scan documents and provide them in electronic format because the County did not have the resources to provide the records in the format requested. Benton County stated that they would

send the requested paper documents to Staples and have them scanned at the rate of $.25/page (CP 97; CP 109 – bottom e-mail).

Ms. Zink agreed to pick up and pay for the paper copies on October 4, 2013 (CP 99). Upon review of over 100 pages of the requested records released in paper form only it was discovered that the records were created using a computer and therefore existed in electronic format. (CP 79 – top e-mail; 101 – bottom e-mail).

On November 23, 2013, Ms. Zink contacted Benton County to request the records be produced in electronic format as originally requested (CP 79 – top e-mail; 101 – bottom e-mail.).

On November 25, 2013, Benton County responded stating that only a small portion of the SSOSA evaluations are kept in electronic format and those needed to be redacted. Benton County refused to scan any document without use of an outside vendor. (CP 81; CP 83 bottom e-mail; CP 101 – top e-mail).

The communication continued between the two parties with Benton County claiming no requirement to use agency resources to produce copies of documents in electronic format due to paper only and redaction and Ms. Zink insisting that the records were being wrongfully withheld by Benton County (CP 83; 85; 87 & 89).

On December 30, 2013, Ms. Zink informed Benton County that her request was for copies in electronic format only. (CP 103 – bottom e-mail). Benton County responded that they would be sending the records to an outside vendor and would bill her prior to e-mailing the requested records (CP 103 – top e-mail; 105 bottom e-mail). Ms. Zink responded that she had not requested use of an outside vendor and did not recommend Benton County incur a cost she did not authorize. (CP 105 – top e-mail).

On January 8, 2014, Benton County notified Ms. Zink that they had made paper only copies of the requested records and provided her with an exemption log listing the redactions made (CP 107-109).

On January 28, 2014, Benton County filed a Complaint for Declaratory Relief requesting the Benton County Superior Court to enter declaratory judgment ordering that:

a. The Public Records Act does not mandate that a public agency create an electronic public record if it does not possess the public record in electronic form;

b. The Public Records Act does not mandate that a public agency create a second electronic record with respect to an electronic record it possesses but which must be redacted under the terms of the Public Records Act; and

c. If a public agency chooses to or is obligated to create an electronic record, the Public Records Act allows the agency to hire a third party

vendor to create and electronic record that must be redacted and to charge the requester the actual cost of creating an electronic record."

(CP 1)(Complaint CP 1-8 and Summons CP 9-10).

On February 19, 2014, Ms. Zink filed an answer (CP 11-21) and requested the trial court to enter a declaratory judgment declaring that:

a. Benton County provide the requested documents in electronic format using the County's scanning equipment;

b. Benton County use the electronic redaction software owned by Benton County;

c. Making a pdf copy using a scanner is not making a new electronic record and is no different from a paper copy except no ink or paper is used;

d. Benton County must use its own scanning equipment rather than an outside vendor which will unreasonably increase costs and staff time;

e. Benton County may charge a reasonable fee to provide scanned copies which should be no more than making paper copies;

f. An award of expenses and costs pursuant to the PRA;

g. Per diem penalties for wrongful withholding of public records;

h. Permission to amend pleadings to include additional claims, show cause motions, or additional parties; and

i. Any other relief that is just and equitable.

(CP 19-20). On March 3, 2014, Benton County motioned the trial court to order Ms. Zink to furnish a more definite statement based on the fact that the

paragraph numbers did not match (compare CP 11-21 to CP 29-35) and Ms. Zink had requested costs, fees, and penalties without paying the filing fee (CP 22-28).

On March 28, 2014, the trial court ordered Ms. Zink to either strike her request for fees, costs, and penalties or pay the filing fee required for a counterclaim (CP 36-37).

On March 28, 2014, Ms. Zink submitted a revised Answer (CP 29-35). Benton County objected to the inclusion of the words "including mandatory penalties." (CP 35).

On April 4, 2014, Ms. Zink submitted a 2nd revised Answer and Pray for Relief (CP 38-44) omitting the words "including mandatory penalties." (CP 44).

On approximately July 8, 2014 (CP 208), Benton County responded to Ms. Zink's first set of interrogatories (CP 182-207). In their answers Benton County stated that:

a. The Benton County Sheriff's office has sixty-four (64) printers, twenty-six (26) scanners, four (4) scanner/copiers, three (3) scanners/copiers/faxes, four (4) fax machines and seventeen (17) licenses to fax electronic documents from a computer (CP 191).

b. The Benton County Prosecuting Attorney's Office (excluding the Division of Child Support) has two (2) scanners, three (3) facsimile machines, eight (8) printers, three (3) fax/scanner/printer devices, one

(1) copier/printer and one (1) license to fax electronic documents from a computer (CP 192).

c. Further, Benton County stated that there are fifty-nine (59) County employees with the ability to redact electronic documents including one (1) staff member in the Prosser Office. (CP 193).

d. Benton County stated documents have been scanned into an electronic format in response to a request for an electronic copy of public records (CP 196; CP 198),

e. A request for public records has never been sent to an outside vendor to convert paper copies to electronic copies in the past (CP 197; CP 198),

f. Copy fees have been waived for requests for public records (CP 199); and

g. Different technologies are used to scan and convert a document as compared to faxing a document (CP 202).

On September 9, 2014, Benton County motioned the trial court for summary judgment and declaratory relief (CP 45-49; CP 50-67).

On September 29, 2014, Ms. Zink motioned the trial court to dismiss for lack of standing (CP 136-140).

On October 10, 2014, both motions were heard in the trial court (RP (October 10, 2014) 1-56). The trial court denied Ms. Zink's motion to dismiss for lack of standing (CP 212-214) and granted Benton County's

motion for summary judgment and declaratory relief (CP 215-219); declaring that the PRA:

1) Allows Benton County to hire a third party vendor to create electronic records from records it possesses only in paper form and from its electronic records that must be redacted and to charge Ms. Zink twenty-five cents per page or the actual costs, whichever is less, to have such electronic records created if she requests responsive documents be provided in electronic form;
2) Does not require Benton County create or pay someone to create additional records that the County possesses in paper form only; and
3) Does not require Benton County to create or pay someone to create additional electronic records from records that the County possesses in electronic form, but that it appropriately redacts under the terms of the PRA (CP 220-221).

It is from this Order and Declaratory Judgment that Ms. Zink appeals to this court for relief (CP 222-236).

STANDARD OF REVIEW

Interpretation of a statute is a question of law reviewed de novo. *State v. Engel*, 166 Wn.2d 572, ¶7, 210 P.3d 1007 (2009)).

Grants of summary judgment are reviewed de novo, and the reviewing Court engages in the same inquiry as the trial court. *Lallas v. Skagit County*, 167 Wn.2d 861, ¶7, 225 P.3d 910 (2009).

Public agency actions taken or challenged under the PRA are subject to de novo review. RCW 42.56.550(3); PAWS II, 125 Wn.2d at 252. *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, ¶7, 300 P.3d 376 (2013).

The burden is on the agency to establish that their response was appropriate under the strict requirements of the PRA. **The reviewing Court must take into account the strong mandate of the PRA that free and open examination of public records is in the public interest.** *Neighborhood Alliance v. Spokane County*, 172 Wn.2d 702, ¶18, 261 P.3d 119 (2011)(emphasis added).

De novo review by this Court is the proper standard of review.

REQUIREMENTS OF CHAPTER 42.56 RCW (PRA)

The Washington Public Records Act (PRA), is a strongly worded mandate of the people demanding that members of the public be given **timely and prompt access to the "publics" records**[10] in order for the people to remain in control over the instruments they created.[11] In order to fully protect the interest of the public through monitoring of the government created by the people for the people, our Courts must strictly

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[10] RCW 42.56.080 ; RCW 42.56.100 ; RCW 42.56.520

[11] RCW 42.56.030.

adhere to the PRA's directive that release of the "public's" records be liberal and exemptions narrow (RCW 42.56.030; *Cowles Publ'g Co. v. Spokane Police Dep't*, 139 Wn.2d 472, 476, 987 P.2d 620 (1999); *Sargent v. Seattle Police Dep 't*, 179 Wn.2d 376, 385, 314 P.3d 1093 (2013)). Our Courts are required to resolve conflicts between the PRA and any other Act(s), in favor of the provisions of the PRA Chapter 42.56 RCW. RCW 42.56.030; *O'Neill v. City of Shoreline*, 145 Wn. App. 913, ¶58, 187 P.3d 822 (2008).

Under the strongly worded mandate of the PRA, our Courts are obligated to take into account that the PRA requires strict compliance. *Zink v. City of Mesa*, 140 Wn. App. 328, ¶20, 166 P.3d 738 (2007). The PRA requires all public agencies in Washington State to provide access to the public records owned, used, created or maintained by that specific public agency unless a specific exemption applies to the requested records even if disclosure of the record causes inconvenience.[12] The burden of proof that the agency is acting reasonably is on the agency.

> The PRA's disclosure provisions must be liberally construed and its exemptions narrowly construed. RCW 42.56.030. **The burden of proof is on the agency to establish that any refusal to permit** public inspection and **copying is in**

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[12] RCW 42.56.030.

> **accordance with a statute** that exempts or prohibits disclosure in whole or in part. RCW 42.56.550(1). Administrative inconvenience or difficulty does not excuse strict compliance with the PRA. Zink v. City of Mesa, 140 Wn. App. 328, 337, 166 P.3d 738 (2007).

Rental Hous. Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, ¶23, 199 P.3d 393 (2009). Benton County has not met its burden of proof that it is not required to provide electronic copies of public records in response to a request for reproduction of public records in electronic format or that it has the right to outsource the reproduction of public records to a private vendor; delaying release and increasing the cost of public access to the "public's records."

A. Cost and Format of Copies Required to be Disclosed Using Agency Resources

Our legislature mandated under the PRA that:

a. Public agencies cannot charge to locate and make the "public's records" available for public access; including redaction of the requested records.[13]

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[13] RCW 42.56.120.

b. Once the records have been located, redacted (if authorized), and assembled, an agency cannot charge for the inspection of said records.[14]

c. Agencies must provide access to agency facilities to make copies.[15]

d. Agencies cannot charge for staff time unless that staff time is directly related to copying the records.[16]

e. An agency **may charge a reasonable amount for copy charge** which shall not exceed the amount necessary to reimburse the agency for the **cost to copy records**.[17]

f. Agency facilities **shall** be made available to any person for the copying of public records.[18]

g. An agency may charge a reasonable fee for providing copies of public records and **for the use by any person of agency equipment**.[19]

B. Trial Court Decision - Use of Agency Resources for Copies

The trial court found the PRA does not require a public agency, in this case Benton County, to provide copies of public records, held only in paper copy or electronic format needing redaction, in electronic format using

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[14] RCW 42.56.120.

[15] RCW 42.56.120.

[16] RCW 42.56.070(7)(b).

[17] RCW 42.56.120.

[18] RCW 42.56.080.

[19] RCW 42.56.080.

agencies resources (pay someone)(CP 220-221: Declaration 3 and 4). Rather, the trial court found that under the PRA, an agency can outsource reproduction of public records in electronic format to an outside private vendor (CP 220: Declaration 1 and 2) and charge up to twenty-five cents per page copy fee or the vendor fee, whichever is less. As discussed above this is an erroneous interpretation of the statutory requirements under the strict requirements of the PRA. *Zink v. City of Mesa*, 140 Wn. App. 328, ¶20, 166 P.3d 738 (2007).

C. The PRA Mandates Agencies Provide Copies

The PRA, obligates an agency to provide agency equipment to reproduce copies of requested public records. Specifically, the PRA mandates that "facilities must be made available to any person for the copying of public records" (RCW 42.56.080). The PRA also provides a means for agencies to recover "reasonable costs" for recovery of the use of the agency equipment. "[A] reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment to copy public records..." (RCW 42.56.120). Clearly missing from these two statutes is the word "photocopy(ies)." In fact, neither statute is specific to what types of format "copies" of public records must be in to trigger the requirement that "copies" be produced by an agency. Nor do they mention that electronic copies are not required. Rather

agencies are mandated to allow any person, including staff, to use agency facilities to make copies.

> Our purpose when interpreting a statute is to determine and enforce the intent of the legislature. City of Spokane v. Spokane County, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). Where the meaning of statutory language is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. Id. **In construing the PRA, we look at the act in its entirety in order to enforce the law's overall purpose.** See Ockerman v. King County Dep't of Developmental & Envtl. Servs., 102 Wn. App. 212, 217, 6 P.3d 1214 (2000). Our review is de novo. RCW 42.56.550(3).

Rental Hous. Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, ¶25, 199 P.3d 393 (2009)(emphasis added). Neither RCW 42.56.080 nor 42.56.120 uses any language indicating that outsourcing the reproduction of records into a particular format is authorized. Rather both statutes clearly and unambiguously state that the agency must make "agency facilities" available for making "copies" of public records.

In order to find and conclude that the PRA does not require an agency to perform scanning and copying with agency resources the trial court had to add language to the PRA.[20] In order to find and conclude that the PRA

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[20] Nothing in any of the trial court's decisions cites to a particular statutes under the PRA authorizing the court to enter Declaratory Judgment. Rather the trial court simply finds that the "PRA," in its totality, does not require agencies to provide electronic copies in

allows an agency to outsource reproduction of public records and charge private vendor fee, the trial court had to add language to the PRA. To find that the agency is not obligated to duplicate their efforts and create new electronic documents form electronic records that must be redacted the trial court had to add language to the PRA. Courts are not allowed to add language to statutes.

> Legislative intent is primarily revealed by the statutory language. Duke v. Boyd, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). Where the Legislature omits language from a statute, intentionally or inadvertently, **this court <u>will not</u> read into the statute the language that it believes was omitted.** Jenkins v. Bellingham Mun. Court, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981).

State v. Moses, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002)(emphasis added). Electronic copies are copies of public records. Benton County has approximately 40 scanners available in the Sheriff's and Prosecutor's Department as well as electronic redaction equipment. Producing electronic copies costs Benton County less than producing hard paper copies. *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, ¶44, 300 P.3d 376 (2013).

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response to a request for public records held in paper only format or which need redaction and that an agency has the right to use an outside vendor and charge the requester.

D. RCW 42.56.070(7) Requires Agencies Reproduce Public Records.

Further support of legislative intent that public agencies are required to use agency resources, including equipment and staff, to make copies of public records available in electronic format is found in RCW 42.56.070(7)(a)(b).

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

RCW 42.56.070(7). In interpreting statutes the Court must derive meaning and the legislature intend from the words provided.

> Our goal in statutory interpretation is to effectuate the legislature's intent. In re Parentage of J.M.K., 155 Wn.2d 374, 387, 119 P.3d 840 (2005). When the meaning of a statute is plain, we give effect to that plain meaning as an expression of legislative intent. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). **Plain meaning is discerned from viewing the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole.** Campbell & Gwinn, 146 Wn.2d at 11.

Burns v. City of Seattle, 161 Wn.2d 129, ¶14, 164 P.3d 475 (2007)(emphasis added). RCW 42.56.070(7) is plain and unambiguous. The legislative intent under the PRA was to allow agencies to be reimbursed for "copy costs" if the agency established a statement of the actual costs, if any, based on justifiable factors that explain how those costs were determined. Further, RCW 42.56.070(7)(a) is specific to "photocopies" of public records and unambiguously states that:

> **In determining the actual per page cost for providing photocopies of public records**, an agency may include all costs **directly incident to copying** such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. **In determining other actual costs for providing photocopies of public records** ...

(*Id.*)(emphasis added). Whereas RCW 42.56.070(7)(b) is specific to "other costs" for providing "copies" other than "photocopies" and unambiguously states that

> **In determining** the actual per page cost or **other costs** for providing **copies** of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records.

(*Id.*)(emphasis added). RCW 42.56.070(7)(a) uses the word "photocopies" when referring to costs. RCW 42.56.070(7)(b) uses the word "copies"

when referring to costs. Clearly our legislature intended agency staff to make "copies" **other than** "photocopies" and provide them to the public. Otherwise RCW 42.56.070(7)(b) would be superfluous.

> Another well-settled principle of statutory construction is that "**each word of a statute is to be accorded meaning.**" State ex rel. Schillberg v. Barnett , 79 Wn.2d 578 , 584, 488 P.2d 255 (1971). " '[T]he drafters of legislation . . . are presumed to have used **no superfluous words** and we must accord meaning, if possible, to every word in a statute.' " In re Recall of Pearsall-Stipek , 141 Wn.2d 756 , 767, 10 P.3d 1034 (2000) (quoting Greenwood v. Dep't of Motor Vehicles , 13 Wn. App. 624 , 628, 536 P.2d 644 (1975)). "[W]e may not delete language from an unambiguous statute: ' "**Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.**" ' " State v. J.P. , 149 Wn.2d 444 , 450, 69 P.3d 318 (2003) (quoting Davis v. Dep't of Licensing , 137 Wn.2d 957 , 963, 977 P.2d 554 (1999) (quoting Whatcom County v. City of Bellingham , 128 Wn.2d 537 , 546, 909 P.2d 1303 (1996))).

State v. Roggenkamp, 153 Wn.2d 614, ¶16, 106 P.3d 196 (2005). The Legislative intent under the PRA is that agencies use agency facilities and/or provide access to agency facilities, to any person, including staff, in order to fulfill requests for copies of public records in various formats including electronic copies.

> It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, **it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public.**

RCW 43.41A.115. This legislative intent is in keeping with Federal requirements under the Freedom of Information Act (FIOA) which requires the disclosure of electronic information in an electronic form.

> In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

The Freedom of Information Act 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 30485 U.S.C. $ 552(a)(3)(B). Clearly Benton County is not entitled to Declaratory Judgment declaring that agencies do not need to reproduce copies of public records, other than photocopies, using agency resources and can outsource reproduction and copying of records into an electronic format to outside private vendors.

Even our State Attorney General has opinioned that electronic access to public records is required, cheaper, more efficient and scanning a record is analogous to making a paper copy. WAC 44.14.05002(2)(c)(1).

> **The Public Records Act does not distinguish between paper and electronic records**. Instead, the act explicitly includes electronic records within its coverage. The definition of "public record" includes a "writing," which in turn includes "existing data compilations from which information may be obtained or translated." RCW 42.17.020(48)... **Providing electronic records can be cheaper and easier for an agency than paper records**. Furthermore, RCW 43.105.250 provides: "It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, **it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public**." **In general, an agency should provide electronic records in an electronic format if requested in that format**. Technical feasibility is the touchstone for providing electronic records. An agency should provide reasonably locatable electronic public records in either their original generally commercially available format (such as an Acrobat PDF® file) or, if the records are not in a generally commercially available format, the agency should provide them in a reasonably translatable electronic format if possible.

WAC 44.14.05001. Although AG's rules under the Washington Administrative Code (WAC) are not binding on agencies, they are persuasive authority that our Courts recognize as a useful guidance in determining whether an agency's duty to provide the fullest assistance under RCW 42.56.070(7)(b), 42.56.080, 42.56.100, 42.56.120 and 42.56.520 includes providing electronic documents.

E. Benton County's Codes Do Not Allow for Use of Private Vendor

Our Legislature has mandated that agencies establish rules and regulations in harmony with the intent of the PRA to provide the "public's records" as expeditiously as possible while still protecting the "public's records" from disorganization and to prevent interference with other essential functions of the agency.[21] Such rules and regulations shall be reasonably crafted to provide for the fullest assistance to inquirers and the timeliest possible action on requests. Agency rules must be in agreement with with the intent of the PRA to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency.[22]

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[21] RCW 42.56.100.

[22] RCW 42.56.100.

In 2006 Benton County adopted rules as required by RCW 42.56.100 under Benton County Code 5.14.120 (CP 117-118). Benton County's rules clearly states that **an outside vendor may be used if the requested copies cannot be copied or duplicated with the County's equipment** (CP 118: BCC 5.14.120(c)).

Benton County has sixty-four (64) printers, twenty-six (26) scanners, four (4) scanner/copiers, three (3) scanners/copiers/faxes, four (4) fax machines and seventeen (17) licenses to fax electronic documents from a computer in the Sheriff's Department (CP 190-191; Interrogatory 5). Additionally, Benton County Prosecutor's Office has two (2) scanners, three (3) facsimile machines, eight (8) printers, three (3) fax/scanner/printer devices, one (1) copier/printer and one (1) license to fax electronic documents from a computer; excluding the Division of Child Support (CP 191-192: Interrogatory 6).

Fifty-nine (59) employees have the ability to redact electronic documents electronically (CP 193: Interrogatory 8). All but one of these copy, scan, fax machines is available to the person responding to Ms. Zink's request (CP 192-193: Interrogatory 7). However, the Public Records Officer responding to Ms. Zink's request has not been provided with the resources to electronically redact electronic documents nor was she instructed to do so (CP 193-194:Interrogatory 9). Benton County refused to

describe the steps needed to provide electronic documents in response to a request for electronic copies (CP 194-195: Interrogatories 10 and 11).

Benton County has previously scanned public records into an electronic format in response to a request for public records (CP 195-196: Interrogatory 12; CP 197-198: Interrogatory 15) and has never before sent public records to an outside vendor to convert paper copies to electronic copies in responding to a public record request (CP 197: Interrogatory 14; CP 198: Interrogatory 16).

Benton County is faxing the requested records to Ms. Zink using one or more of the over 100 pieces of equipment in the Benton County Sheriff's and Prosecutor's offices identified as being available to the Public Records Officer responding to Ms. Zink's request (CP 209). Clearly Benton County has the equipment, facilities and staff available to provide the requested copies in electronic format and their reasons for seeking an outside vendor to outsource the reproduction of the requested records is not in keeping with the PRA mandates or Benton County's rules for responding to requests for electronic copies of public records. Rather Benton County's refusal to follow the PRA, their County Code and seeking judicial intervention is designed to delay and increase costs to the requester. The opposite of Legislative mandates under the PRA.

REQUIREMENTS OF CHAPTER 7.24 RCW

Washington's Uniform Declaratory Judgments Act (UDJA), set forth in Chapter 7.24 RCW specifically pertains to "**a person whose rights are affected by a statue.**"

> A person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

RCW 7.24.020. A justiciable controversy is defined by our Supreme Court as:

1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement;
2) between parties having genuine and opposing interests;
3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic; and
4) a judicial determination of which will be final and conclusive.

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). Our Supreme Court has mandated that for a trial court to find that a party has personal standing to seek a declaratory judgment under the Uniform

Declaratory Judgments Act (UDJA), chapter 7.24 the party must prove that they are:

1. within the zone of interest protected by statute and
2. suffer an injury in fact, economic or otherwise.

Both tests must be met by the party seeking standing. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, ¶17, 157 P.3d 847 (2007).

In this cause of action the trial court did not identify any statute providing for the relief provided (RP (October 10, 2014) 23:10-25:7; 53:4-54:23). Rather the trial determined that RCW 7.24 is a standalone statute allowing for Declaratory Judgment (RP (October 10, 2014) 23:18-24:7) simply stating, in written findings and conclusions, that Benton County is within a zone of interest and would suffer an actual injury without identifying any relevant zone of interest protected by statute:

1. The record evidences an existing dispute between the parties regarding the County's rights and obligations under the Public Records Act (PRA)(CP 213: FOF 1);
2. Such dispute is not hypothetical and can be determined by declaratory judgment from this Court (CP 213: FOF 1);

3. The County has a direct and substantial interest in the outcome of this dispute and the Court's ruling on the requested declarations (CP 214: FOF 2);
4. There is an existing dispute between the parties regarding County's authority and obligations under the PRA (CP 217: FOF/COL 1);
5. The dispute between the parties is not hypothetical and can be determined by declaratory judgment issued by this Court (CP 117: FOF/COL 1); and
6. A justiciable controversy exists, and this Court's jurisdiction under RCW 7.24 has properly been invoked (CP 217; FOF/COL 2).

A. No Zone of Interest Was Identified

The UDJA requires that a rule, law, code, statute or constitutional issue be identified with specificity.

> The first part of the test asks whether the interest the complainant seeks to protect is "'arguably **within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.**'" Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (quoting Ass'n of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 152-53, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970)).
>
> The focus of the **"zone of interest" test is whether the statute was designed to protect the interests of the plaintiff.**

Fire Protection District No.5 v. City of Moses Lake, 145 Wn.2d 702,713, 42 P.3d 394 (2002). It is not enough for the trial court to simply state that a justifiable controversy exists without identifying a specific dispute. In its findings in support of its conclusions of law, the trial court must identify what justiciable controversy exists or how Benton County is within the "zone of interest" by identifying and citing to a specific statute, municipal code, or some other legal precedence as well as the injury the party requesting Declaratory Judgment will suffer. The trial court did neither of these two things. Rather the trial court made a vague finding and conclusion that the PRA, in its entirety, allows for Declaratory Judgment. This is error and an abuse of discretion. The trial courts Declaratory Judgment must be reversed.

B. RCW 42.56.550 -No Provision for Declaratory Judgment Action

Benton County relies on "Chapter 42.56 RCW as the statute allowing Declaratory Relief in this cause of action. Benton County has not provided any citation to legal authority pursuant to Chapter 42.56 RCW providing standing and they are not within the zone of interest protected by the PRA. Benton County, is not the person whose rights are affected by Benton County's municipal ordinance or the PRA. Benton County has no standing pursuant to UDJA to bring an action in Benton Court for declaratory relief

and the trial court has no jurisdiction to enter a Declaratory Judgment that Benton County does not have to follow the strict mandates of the PRA.

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

RCW 42.56.550(1)(emphasis added). This statute is specific to a requester (any person) being denied by an agency and does not an "agency."

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

RCW 42.56.550(2)(emphasis added). This statute is specific to a requester (any person) and does not include an "agency." Benton County has not been denied or delayed public records and is therefore not a person being

denied or delayed by Benton County municipal codes. Benton County has not provided any legal authority of interest in a statute allowing for their request for Declaratory Judgment under the UDJA.

C. The PRA Requires Agencies to Produce Copies in All Formats

The public records act is a strongly worded mandate for the release of multiple types of public records in multiple types of formats.

> 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. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

RCW 42.56.010(3)

> "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or

> symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

RCW 42.56.010(4). As previously discussed RCW 42.56.070(7)(a)(b) requires agencies to provide copies of various types of public records and not just "photocopies." For instance, RCW 42.56.010(4) defines a "writing" as letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

If agencies are only required to provide "photocopies," RCW 42.56.080 (**Public records shall be available for inspection and copying**) would be superfluous under the PRA since the agency would have no obligation to provide films, tapes, discs, drums, diskettes, sound records or video records in response to public record requests. Further as previously discussed RCW 42.56.080 and 42.56.120 require and agency to provide copy equipment and RCW 42.56.070(7)(b) specifically provides for recovery of use of

agency equipment for copying if the requirements of RCW 42.56.070(7) are met. The trial courts findings of fact and conclusions of law are not substantiated by any actual facts, evidence or statutory law.

1) To provide Ms. Zink with electronic versions of responsive documents that it possesses in paper form only or that it possesses in electronic format that must be redacted, the Prosecutor's Public Records Officer would need to create additional public records (CP 218: FOF/COL 7);
2) The PRA does not require that agencies perform copying or scanning with agency personnel, and it allows agencies to recover the actual cost of the charges services imposed by a vendor (CP 218: FOF/COL 8);
3) The PRA does not obligate agencies to duplicate their efforts and create new electronic documents from electronic records that must be redacted (CP 218: FOF/COL 9);
4) The PRA does not obligate agencies to create new electronic records from records it holds in paper only form (CP 218: FOF/COL 218 10); and
5) Benton County is entitled, as a matter of law, to the Declaratory Relief it seeks (CP 218: FOF/COL 11).

In this cause of action Benton County has not identified any statute entitling them to Declaratory Relief and they are not the party or person whose rights are affected by the Benton County municipal codes as required for UDJA under Chapter 7.24 RCW. Benton County failed to

establish standing in this cause of action. The trial court failed to meet the first requirement of the UJDA as established by our Supreme Court and the Declaratory Relief issued by the trial court must be reversed and dismissed for lack of jurisdiction. It is not enough for a trial court to make vague finding and conclusions in support of Declaratory Judgments. Without more, a meaningful review by an upper Court cannot be had. The trial court's decision is error and an abuse of discretion and must be reversed.

D. Benton County Has Not Shown Any Injury

Our Supreme Court has determined that the requestor of declaratory relief **must suffer an injury in fact**, economic or otherwise in order to have standing to bring judicial action for declaratory relief.

> To establish harm under the UDJA, a party must present a justiciable controversy based on allegations of harm personal to the party that are substantial rather than speculative or abstract. Walker v. Munro, 124 Wn.2d 402, 411, 879 P.2d 920 (1994). This statutory right is clarified by the common law doctrine of standing, which prohibits a litigant from raising another's legal right. "The kernel of the standing doctrine is that **one who is not adversely affected by a statute may not question its validity.**" Id. at 419.

Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004)(emphasis added).

> **The "injury in fact" test focuses on whether a plaintiff has suffered an actual injury.** It is axiomatic that parties whose financial interests are affected by an action have suffered injury. Seattle Sch. Dist. No. 1 v. State, 90 Wn.2d 476, 493, 585 P.2d 71 (1978) (holding that a school district has standing when legislation involves "actual financial constraints"); see also Am. States Ins. Co. v. Breesnee 49 Wn. App. 642, 645-46, 745 P.2d 518 (1987) (holding that injured party's uninsured motorist carrier had standing in declaratory judgment action between responsible party and his liability insurer).

Fire Protection District No.5 v. City of Moses Lake, 145 Wn.2d 702,713-714, 42 P.3d 394 (2002). By way of injury the trial court simply found Benton County has a direct and substantial interest in the outcome of this dispute because Ms. Zink's request is overbroad[23] (RP (October 10, 2014) 24:8-25:7), an existing dispute between the parties under the PRA exists (CP 217: FOF/COL 1) that is not hypothetical and can be determined by declaratory judgment issued by a trial court (CP 117: FOF/COL 1). Benton County failed to establish standing in this cause of action. The trial court failed to meet the second requirement of the UJDA as established by our Supreme Court and the Declaratory Relief issued by the trial court must be reversed and dismissed for lack of jurisdiction. It is not enough for a trial

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[23] Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. RCW 42.56.080.

court to make vague finding and conclusions in support of their decisions concerning Declaratory Judgment. Without more, a meaningful review by an upper Court cannot be had. The trial courts Declaratory Judgment must be reversed.

COSTS

Appellant Zink requests this Court award her fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, Zink respectfully request this Court to award fees and costs for this appeal in her favor. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

PUBLICATION

Appellant Zink respectfully requests this Court to publish its decision on this matter. If this court determines the trial court did not error in entering Declaratory Judgment, the issues addressed herein affect agency responses to requests for electronic access to public records and are of great public importance. The decision made by this Court affects a public agencies duty to make electronic copies of public records, copy charges, outsourcing to a private vendor rather than using agency equipment,

increasing response time and costs. The issues addressed in this cause of action concern issues of:

1. Whether RCW 42.56.080[24] and RCW 42.56.120[25] requires use of agency facilities, including scanning equipment:
2. Whether RCW 42.56.070(7)(a)[26] and (b)[27] use of staff to make copies of public records;
3. Whether an agency has the duty under the PRA to provide redacted records in electronic format using agency resources;
4. Whether the PRA authorizes and agency to use of an outside vender from redacted or paper only copies;
5. Whether use of an outside vender to provide electronic copies violates the strict mandates of the PRA: Records must be promptly made available upon request, using agency equipment and staff and charges associated only with copying the requested records; and

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[24] Agency facilities shall be made available to any person for the copying of public records... RCW 42.56.080.

[25] A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment... to copy public records, which charges shall not exceed the amount necessary to reimburse the agency... for its actual costs directly incident to such copying.

[26] [A]n agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. RCW 42.56.070(7)(a).

[27] In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. RCW 42.56.070(7)(b).

6. Whether Chapter 7.24 RCW is a standalone statute allowing a Superior Court to enter Declaratory Judgment or whether other legal authority is needed.

All of these issues are of great public importance and publication will help provide direction to other courts concerning the application of the UDJA and the PRA.

CONCLUSION

The strongly worded mandate of the PRA requires all agencies to respond to requests for public record by making copies of public records in various formats and not simply by photocopy. Providing records in electronic format is not only required but generally costs less as no paper or ink are needed. While this may not have always been the case, new technology in electronic copy equipment (scanners), data storage and electronic redaction software has made providing electronic copies of public records far cheaper, faster and more economical. Benton County has not met its burden of proof that to provide the requested copies in the requested format would cause inconvenience or hardship to Benton County.

Benton County has no standing under the UDJA (RCW 7.24.020) to bring suit against Ms. Zink. Benton County is the agency denying or delaying a request by refusing to provide copies of the requested records in

the requested format. Benton County is not the person who was denied or delayed copies of public records. As a non-affected party, Benton County, has no standing and cannot request relief from unclear statutes or its own municipal codes. Benton County has no interest protected by statute and has not suffered an injury in fact. There is no justiciable controversy based on allegations of harm personal to the party that are substantial rather than speculative or abstract. The trial court erred in finding Benton County met the mandatory requirements as established by our Supreme Court for Declaratory Relief by this Court.

The trial court has no jurisdiction or legal authority pursuant to Chapter 7.24 RCW to make a Declaratory Judgment decision in a cause of action.

For all the reasons stated herein, Respondent respectfully ask this Court to reverse the trial court Declaratory Judgment and Dismiss Benton County's claim for relief.

RESPECTFULLY SUBMITTED this 6th day of May 2015

By Donna L Zink

Donna Zink
Pro se

CERTIFICATE OF MAILING

I declare that on the 6th day of May, 2015, I did personally deliver, a true and correct hard copy of Appellant's "Opening Brief" and the transcribed verbatim report of the proceedings held on October 10, 2014, concerning the Orders and Declaratory Judgment entered by the Honorable Judge Runge and at issue in cause #329127 Division III to the following address:

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Dated this 6th day of May, 2015

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