

Court of Appeals No. 72413-4-1  
King County Superior Court No. 14-2-04220-5 SEA

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**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I**

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ALYNE FORTGANG,

*Appellant/Plaintiff,*

v.

WOODLAND PARK ZOOLOGICAL SOCIETY a/k/a WOODLAND  
PARK ZOO

*Respondent/Defendant.*

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**OPENING BRIEF OF APPELLANT**

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## **I. ASSIGNMENT OF ERROR**

1. The trial court erred in its conclusion that the Zoo is not subject to the PRA. Specifically, the court erred its application of the four-factor “functional equivalent” balancing test set forth in *Telford* to the undisputed facts relating to the Zoo’s performance of a government function and receipt of substantial government funding.

## **II. INTRODUCTION**

Appellant Alyne Fortgang (“Fortgang”) filed this suit to hold Appellee Woodland Park Zoo a/k/a/ Woodland Park Zoological Society (“Zoo”) accountable to the taxpayers of the City of Seattle (“City”) and King County under the Washington State Public Records Act, RCW 42.56 *et seq.* (“PRA”). On cross motions for summary judgment, the trial court erroneously concluded as a matter of law that the Zoo is not the functional equivalent of a state or local agency and need not disclose records under the PRA. The court reached this conclusion notwithstanding the Zoo’s receipt of \$108,621,045.00 in taxpayer money since 2002, its reliance on in-kind contributions of use of City parkland, buildings, and animals, and a symbiotic relationship between the Zoo and the City characterized by extensive oversight and control over the Zoo that the City exercises for the express purpose of ensuring “public accountability.” RCW 35.64.010(5).

Fortgang submits that the trial court reached its conclusion by applying an unduly narrow construction of the PRA that is at odds with the broad purpose of the statute and the controlling case on the application of the PRA to entities such as the Zoo: *Telford v. Thurston County Bd. of Comm'rs*, 95 Wash.App. 149, 974 P.2d 886, *review denied*, 138 Wash.2d 1015, 989 P.2d 1143 (1999) ("*Telford*").

Fortgang respectfully requests that this Court reverse the trial court's ruling and hold that the Zoo is the functional equivalent of a state or local agency and therefore subject to the PRA's strong mandate for broad disclosure of public records.

### III. STATEMENT OF THE CASE

#### A. **Fortgang's PRA Request for Documents Relating to the Zoo's Use of Taxpayer Dollars and Public Statements by the Zoo's Agents, and the Zoo's Refusal to Provide the Requested Documents.**

Appellant Fortgang is a single woman and a resident of the City of Seattle, in King County, in the state of Washington. (CP 1, 21.) Ms. Fortgang pays taxes and fees to the City of Seattle, which are used in part to fund the Zoo. *Id.*

On November 6, 2013, Fortgang submitted a public records request to the Zoo that asked eight specific questions relating to the ongoing public controversy about the Zoo's treatment of elephants housed

at the Zoo. (CP 24-25.) Four of these questions are of particular relevance to this appeal, as follows:

- Fortgang’s Request No. 4 stated “Please make available for inspection and copying all records and/or logs that reflect the beginning and ending time of each day that each elephant keeper worked January 1, 2012 – December 31, 2012.” (CP 25.)  
Fortgang noted that this request followed a prior request for “records that reflect when the elephant keepers staff the barn” to which the Zoo had responded that it had no records “that reflect when the elephant keepers staff the barn.” (*Id.*)
- Fortgang’s Request No. 5 referred to a public statement by the Zoo’s Deputy Director Bruce Bohmke that the Zoo had spent at least \$480,000 fighting criticism of the Zoo’s elephant program and requested that the Zoo produce “the detailed documentation including but not limited to contracts, agreements, invoices, letters, emails, reports or memos between anyone employed by WPZ or acting as its agent and third parties relied upon to arrive at that figure. In addition, please provide copies of all internal records that were relies upon to calculate that portion of the total \$480,000 attributable to internal WPZ expenses, including but not limited to salaries and other overhead expenses.” (CP 25.)



- Fortgang’s Request No. 7 requested that the Zoo produce “the complete Contract, memorandum of understanding, written agreement or similar instrument between Woodland Park Zoological Society and [public affairs consulting firm] Cocker Fennessey entered into for Cocker Fennessey’s services related to the Task Force and Elephant Expert Panel.” (CP 25.)
- Fortgang’s Request No. 8 referred to a KING 5 News report about the controversy surrounding the elephants in which Zoo Board of Directors Chair Nancy Pellegrino responded to criticism by asserting that the results of “our polling and surveying . . . in the last year” showed support for the Zoo, and requested that the Zoo produce “the survey and polling questions to which she was referring. Please provide, too, all written documents related to the survey and poll, including but not limited to all internal documents disclosing the purpose and intent behind taking a survey or poll, its methodology and implementation, discussion and analysis of the survey and poll results, the raw data collected and statistical assumptions applied to the raw data, and any documents containing or reasonably related to discussions and decisions about the use, including but not limited to release to the public of the poll and survey results, of the survey and poll data collected.” (CP 25.)

On November 13, 2013, the Zoo contacted Fortgang in writing acknowledging receipt of the public records request and promising a response by December 20, 2013. (CP 26.) The Zoo sent this letter within five business days of receipt of Fortgang's public records request, which is the response time mandated by RCW 42.56.520. (*Id.*)

The Zoo responded to the substance of Fortgang's requests on December 20, 2013. (CP 27-29.) The Zoo stated that it is "a private company" and is "only required to disclose animal records" but was "responding to your questions despite any legal obligation to do so." (CP 27.)

The Zoo's response addressed each of Fortgang's eight specific requests. (CP 27.) In four cases, the Zoo provided limited substantive responses and/or produced responsive documents. (*Id.*) But the Zoo declined to produce the documents requested in Fortgang's Request Nos. 4, 5, 7 and 8, stating in each case that the requested documents are "not subject to a public disclosure request." (*Id.*)

Fortgang initiated this lawsuit to obtain the requested documents on March 12, 2014. (CP 1.)

**B. The City's History of Zoo Operation and the Current Operating Agreement Providing the Zoo with Millions of Dollars in Taxpayer Funds Each Year to Carry Out its Operations Under the City's Supervision and Control.**

From 1899 through 2003, the City operated the Zoo as part of the City Parks Department and Zoo employees were City employees. (CP 33-35.) Thus, from the enactment of the PRA through 2002, the Zoo's records would have been subject to public disclosure because the Zoo was wholly owned and operated by the City.

On March 13, 2000, the Washington Legislature enacted Senate Bill 6858, codified at RCW 35.64.010(1), which enabled certain cities to "contract for the overall management and operation of a zoo or aquarium facilities by a non-profit organization or other public organization." Washington Votes, 2000 Reg. Sess. S.B. 6858. RCW 35.64.010 contains no language exempting contracted City functions from the PRA. However, it does provide that "the city shall provide for the oversight of the managing and operating entity to ensure public accountability of the entity...." RCW 35.64.010(5).

In November of 2000, while it was still fully operating the Zoo, the "City placed the Neighborhood Parks, Green Spaces, Trails and Zoo levy lid lift" on the ballot, and the "citizens of the City approved" the measure,

which “provides increased funding for the City’s parks and recreation programs, including the Zoo[.]” (CP 34.)

On or about December 17, 2001 pursuant to a 9-1 vote of the City Council, the City – acting through its Department of Parks and Recreation – entered into a twenty-year contract with the Woodland Park Zoological Society (the “Operating Agreement” or “Agreement”). (CP 33-74.)

Under the Operating Agreement, the Woodland Park Zoological Society assumed responsibility to “administer, plan, manage and operate the Zoo” and received free use of the 92 acres of City-owned land and buildings within a public park for that purpose. (CP 34.) The land over which the Woodland Park Zoological Society exercises control includes the Woodland Park Rose Garden and two neighborhood parks, “one at 50th and Phinney, and the other at 59th and Phinney” except for upkeep of the children’s’ play area in the park at 59th and Phinney. (CP 41.) Thus, the Zoo manages and operates all of “Upper” Woodland Park, except the playground, in Woodland Park west of Aurora Ave (Highway 99).

The Agreement is silent as to the application of the PRA. However, Section 31.1 of the Agreement provides that the Zoo “shall comply and conform with all laws and all governmental regulations, rules and orders that may from time to time be put into effect relating to, controlling or limiting the use and operation of the Zoo.” (CP 62.)

Under the Operating Agreement, the City continues to substantially fund the Zoo. Each year the City distributes up to two million five hundred thousand dollars (\$2,500,000) of revenue collected pursuant to the City-sponsored 2000 “Neighborhood Parks, Green Spaces, Trails and Zoo” levy to the Zoo. (CP 37, 44.) This represents “all of the proceeds from the Zoo portion of the Levy[.]” (*Id.*) The Zoo has the option of terminating the Operating Agreement if these taxpayer funds ever cease to be available to the Zoo. (CP 45.)

The City also funds the Zoo’s annual operations through an annual allocation from the City’s General Fund. (CP 42.) That allocation started at five million dollars (\$5,000,000) in the first year of the Agreement and (subject to financial emergency contingencies) escalates each year by 70% of the increase in the applicable Consumer Price Index. (*Id.*) The City also provides the Zoo with an annual maintenance payment of five hundred thousand dollars (\$500,000).<sup>1</sup> (CP 43.) The City has also provided the Zoo with six million four hundred thousand dollars (\$6,400,000) in major maintenance payments. (CP 44.)

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<sup>1</sup> Over the first five years of the Agreement the payment was divided between in-kind services and cash, and has been a full cash payment since the fifth year of the Agreement. (CP 43.)

In total, since the Operating Agreement was executed, **over one hundred millions dollars (\$100,000,000)** of City and County taxpayer money has been diverted to the Zoo.

In addition to these annual *en masse* blocks of public funds, the City funds the Zoo in other ways. For example, the Zoo can “apply for grants in [the City’s] name for which the [Zoo] might not otherwise be eligible subject to prior approval by the Superintendent of Parks or if the Superintendent instructs, the City Council.” (CP 43.) In sum, both annual, dependable publicly-funded support, and the City’s provision of free land, buildings and animals, is indispensable to the Zoo’s very existence.

The Operating Agreement also gives the City extensive oversight and control over the Zoo. The City retains “ownership of the Zoo property and facilities, consistent with the City Charter, and . . . control of the property through the conditions outlined” in the Operating Agreement. (CP 35.) With limited exceptions, the City also owns “all appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed” at the Zoo during the term of the Operating Agreement. (CP 48.) Further to this point, the City may “if lawful, access its authority to use alternative public works contracting procedures pursuant to Chapter

39.10 RCW and any amendments thereto for construction of any appropriate Zoo-related facilities by WPZS[.]” (CP 48.)

The Operating Agreement forbids the Zoo from using the approximately 90 acres of City land it occupies for any purpose other than “operation of a public zoological gardens and related and incidental purposes and programs[.]” (CP 41.) The Zoo must provide a formal annual report and to present an annual plan and monthly reports to the superintendent of the City’s Department of Parks and Recreation, quarterly supplementary reports to the City’s Board of Park Commissioners, and annual reports to the City’s Parks and Green Spaces Levy Oversight Committee. (CP 54.) The Zoo must provide the public with an opportunity to review and comment on the Annual Report and further agrees to respond to such comments in a supplementary report to the City. (CP 55.)

The Operating Agreement requires the Zoo to conduct an annual independent audit and to “deliver to the Superintendent an original, signed copy of each such annual audit[.]” (CP 54.) The Zoo must also submit to audits by the City and the State Auditor of “all revenues, grants and fees, all City funds, except for private fundraising activities and private donor information, received by [the Zoo] during the current and preceding year, including Zoo operations and management.” (CP 55.) In addition, the

superintendent of the City's Department of Parks may, upon request, inspect the Zoo records regarding the veterinary management and treatment of Zoo animals in order to ensure that Zoo animals are receiving proper care and treatment. (CP 54.)

The City also controls the membership of three positions on the Zoo's Board. The City's Superintendent of the City's Department of Parks and Recreation, the Mayor and the "City Council committee that generally oversees parks functions" are all *ex officio* members of the Zoo's Board and each of them has "the authority to appoint persons to one citizen position" Board. (CP 55.)

The City also maintains control over certain aspects of the Zoo's daily operations. For example, the Zoo's policies governing acquisition and disposition of the animals are subject to City Council approval. (CP 49.) The City Council must also approve any increase in the Zoo's admission fees that exceeds "the rate of inflation being experienced by the Zoo[.]" (CP 47.) The City also retains control over naming rights for the Zoo and its related facilities. (CP 49.)

#### **IV. ARGUMENT**

##### **A. Standard of Review**

The standard of review on summary judgment is well settled. Review is *de novo*; the appellate court engages in the same inquiry as the



trial court. *Benjamin v. Washington State Bar Ass'n*, 138 Wn.2d 506, 515, 980 P.2d 742 (1999). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *LaPlante v. State*, 85 Wash.2d 154, 158, 531 P.2d 299 (1975); CR 56 (c).

**B. The PRA is a Strongly-Worded Mandate for Broad Disclosure of Public Records that Must be Liberally Construed to Promote Accountability and Open Government.**

The PRA was enacted through Initiative 276 in 1972 to provide the people of this State with “full access to information concerning the conduct of government on every level.” *Telford*, 95 Wash. App. at 158, n.12, quoting former RCW 42.17.010. The PRA declares that it must be “liberally construed” to promote the public policy of open government: “The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.” RCW 42.56.030.

The PRA further states that courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.

RCW 42.56.550(3); *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wash. App. 688, 695, 937 P.2d 1176 (1997) (noting that the purpose of the PRA is to provide full access to nonexempt public records); *Fisher Broadcasting-Seattle TV LLC v. City of Seattle*, 180 Wash.2d 515, 326 P.3d 688, 692 (2014) (“The agency refusing to release records bears the burden of showing secrecy is lawful.”); *Hearst Corp. v. Hoppe*, 90 Wash.2d 123, 130, 580 P.2d 246 (1978) (“The statutory scheme establishes a positive duty to disclose public records unless they fall within the specific exemptions.”).

The PRA “requires all state and local agencies to disclose any public record upon request, unless the record falls within certain very specific exemptions.” *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wash.2d 243, 250, 884 P.2d 592 (1994).<sup>2</sup> RCW 42.17.020(1) defines agency to include all state agencies and all local agencies. Some non-government agencies which nonetheless perform governmental or quasi-governmental functions can be considered an “agency” if they meet a four-part test as outlined by the Court of Appeals in *Telford*. See 2002 Att’y Gen. Op. No. 2.

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<sup>2</sup> In *PAWS*, the Supreme Court interpreted and applied former chapter 42.17 RCW, the public disclosure act (PDA). Effective July 1, 2006, the PDA was renamed the PRA and was recodified as chapter 425 of the RCW. LAWS OF 2005, ch. 274, §§ 102-03.

**C. Although the Zoo is not Formally Classified as an “Agency,” it is the Functional Equivalent of an Agency and is therefore Subject to the PRA.**

The PRA’s disclosure requirements apply to “agencies,” which are defined to include, among other things, “every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.” RCW 42.56.010, 42.56.070. It is well settled that the “statutory meaning of ‘agency’ depends on the context in which it is used, not merely the entity’s label.”

*Spokane Research & Defense Fund v. West Central Community Development Association*, 133 Wash. App. 602, 607, 137 P.3d 120 (2006).

In *Telford*, the court recognized that a *per se* rule excluding nominally private entities from the PRA would be inconsistent with the statute’s broad mandate for transparency, and adopted a four-part test used by other courts in similar contexts to determine whether a particular entity that has “some public and some private attributes . . . is the functional equivalent of a public agency for a given purpose.” *Telford*, 95 Wash. App. at 161. The factors a court must consider under *Telford* are: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or

regulation; and (4) whether the entity was created by the government.

*Id.* at 162.

It is not necessary for all four factors to be satisfied. Rather, the criteria on balance should suggest that the entity in question is the functional equivalent of a state or local agency in the context of the PRA's broad and "strongly worded mandate" for "full access to information concerning the conduct of government on every level." *Id.* at 158, 162. In this case, the criteria on balance tilt sharply in favor of finding that the Zoo is subject to the PRA.

**1. The Millions of Dollars in Taxpayer Funds, Free Land and Other Operational Support the Zoo Receives Each Year Require a Finding that the Zoo is Subject the PRA.**

The most significant *Telford* factor in this case is government funding. As the *Telford* court recognized, "when a block of public funds is diverted en masse, the public must have access to records of the spending organization to determine how the funds were spent." 95 Wash. App. at 164, quoting *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161, 165 (1991) (emphasis added). In *Telford*, the court emphasized that the government funding factor favored application of the PRA because the two nominally private

organizations at issue received a substantial portion of their general operations funding from county expense funds. *Id.* at 164.

The facts here are on all fours with the facts in *Telford*, and the context in which this case arose underscores why this factor is the most significant in this Court's analysis. As in *Telford*, the Zoo receives *en masse* blocks of millions of dollars in public funds each year to support its annual operating expenses. *Telford*, 95 Wash. App. at 164. The people of Seattle are entitled to access to the Zoo's records "to determine how the funds" are being spent. *Id.*

The facts of this case underscore the error in the trial court's ruling that the Zoo need not comply with the PRA. Fortgang requested documents that relate directly to the Zoo's use of public funds and City park land and buildings (which the Zoo uses for free) in connection with an issue of substantial public interest and controversy. Moreover, three of the four requests related directly to the Zoo's use of taxpayer funds to finance the Zoo's public relations campaign to defend its treatment of the elephants. Request No. 5 asked the Zoo to disclose how it spent nearly half a million dollars fighting criticism of the Zoo's elephant program. Request No. 7 asked the Zoo disclose the terms on which it hired the public relations consulting firm that has helped the Zoo address the elephant controversy. Request No. 8 asked the Zoo to disclose the details

of public “polling and surveying” that the Zoo paid a third party to conduct and on which the Zoo’s Board Chair specifically relied during a televised news interview about the elephant controversy.

The PRA was intended specifically to ensure that the taxpayers whose money was used to finance this public relations campaign have “full access to information” of the type requested by Fortgang so that they can “determine how the” *en masse* blocks of public funds the City diverts to the Zoo each year are being spent. *Telford*, 95 Wash. App. at 158, 164. Under the trial court’s ruling, the Zoo – and every other nominally private entity that steps into the shoes of a state or local government and relies on taxpayer money to operate – could defeat the core purpose of the PRA by using taxpayer dollars to gather information for a public relations campaign and then deny the taxpayers access to the very information their tax dollars purchased (and the terms on which it was purchased). Such an outcome is not tenable under the letter or spirit of the PRA, or under the plain reasoning of *Telford*.

**2. The Level of Control the City Exercises Over the Zoo Strongly Favors Reversal of the Trial Court’s Ruling.**

In addition to financing the Zoo, the City also exercises more than enough control over the Zoo’s operations for this factor to weigh strongly in favor of finding that the trial court’s ruling was erroneous. The only

Washington case to discuss this *Telford* factor in any detail is *Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wash. App. 185, 181 P.3d 881 (2008), in which the court ruled that a private animal shelter operating under a contract with the cities of Richland, Pasco and Kennewick was the functional equivalent of a city agency. *Id.* at 188. Applying the *Telford* factors, the court in that case found that the government control factor weighed in favor of finding that the shelter was the functional equivalent of a public agency because: 1) the shelter's contract with the cities prohibited it from using its facilities for any purpose other than the animal control services specified in the contract; 2) the shelter's administration of euthanasia services was subject to city approval; and 3) the shelter was required to keep records and "submit monthly reports" to the city. *Id.* at 195.

Factually, this case is stronger than *Clarke*. As in *Clarke*, the Zoo's contract with the City prohibits the Zoo from using the City parkland where it operates for any purpose other than "operation of a public zoological gardens and related and incidental purposes and programs[.]" (CP 41.) Also as in *Clarke*, the Zoo's policies governing acquisition and disposition of animals must comply with policies approved by the City. (CP 49.) Finally, as in *Clarke*, the Zoo must also maintain records and provide regular reports to the City. (CP 54.)

Indeed, the reporting requirements in this case go far beyond the monthly reports required in *Clarke*. Here, in addition to monthly reports the Zoo: 1) must also provide formal annual reports and annual plans and quarterly supplementary reports; 2) must allow public review of the annual reports and respond to public comments; 3) must conduct an annual independent audit that is presented to the City; 4) must submit to audits by the City and State Auditor; and 5) must permit the City to inspect veterinary records to ensure that Zoo animals are receiving care and treatment that the City deems acceptable. (CP 55-56.)

This case also features additional elements of government control that were not present in *Clarke*. Of particular note, the City controls the membership of three positions on the Zoo's Board. (CP 55.) Additionally, the City must approve certain increases in the Zoo's admission fees and also retains control over naming rights for the Zoo and its related facilities. (CP 47, 49.)

These facts demonstrate substantially more government control than was present in *Clarke*. They also contrast sharply with the facts in *Spokane Research & Defense Fund*, in which the court found that the PRA did not apply to a private organization that was not subject to government audits, operated with "no outside government control," and was able to locate anywhere. 133 Wash. App. at 608-09. Thus, this factor weighs



heavily in favor of finding that the Zoo is the functional equivalent of a public agency.

**3. Operation of Parks and Recreation Facilities is a Quintessential Government Function.**

The “government function” factor also favors application of the PRA in this case. Courts have long recognized that the operation of parks and recreational facilities is a quintessential government function. *See, e.g., City of Seattle v. State*, 59 Wash.2d 150, 153, 367 P. 2d 123 (1961) (finding, in case involving taxability of certain activities in parks in Seattle, that “One of the manifest purposes of a municipal corporation is to provide recreational facilities for the residents in the community.”); *Okeson v. City of Seattle*, 150 Wash.2d 540, 550, 78 P.3d 1279 (2003) (“the principal test . . . is whether the act performed is for the common good of all, a governmental function, or whether it is for the special benefit or profit of the corporate entity, proprietary function.”). Indeed, the City operated the Zoo for more than one hundred years. Moreover, the Operating Agreement itself concedes that voters approved the levy which funds the Zoo’s operations (including management of the rose garden park and two neighborhood parks) to provide “increased funding for the City’s parks and recreation programs, including the Zoo[.]” (CP 34) (emphasis added).

Although Washington courts have not considered application of this *Telford* factor in a context similar to this case, there is no doubt that operation of nearly 100 acres of City park land – including a zoological facility that the City operated for over a century and three other public parks – is a sufficiently governmental function to warrant application of the PRA’s strongly-worded mandate for transparency and requirement that the people have “full access to information concerning the conduct of government on every level.” *Telford*, 95 Wash. App. at 158, n.12, quoting former RCW 42.17.010.

**4. The City’s History of Operating the Zoo Causes the Final *Telford* Factor to Favor Applying the PRA.**

The final *Telford* factor considers the origin of the entity at issue. 95 Wash. App. at 165. The more the government was involved in creating the entity, the more this factor favors application of the PRA. This case presents a unique set of facts in that the City operated the Zoo for more than a century before entering into the Operating Agreement with the Woodland Park Zoological Society. As noted above the Operating Agreement even emphasizes that approximately one year before outsourcing operation of the Zoo, the “City placed the Neighborhood Parks, Green Spaces, Trails and Zoo levy lid lift” on the ballot to provide

“increased funding for the City’s parks and recreation programs, including the Zoo[.]” (CP 34) (emphasis added).

Under these circumstances, the final *Telford* factor weighs in favor of applying the PRA. Although the City did not create the Woodland Park Zoological Society, the Zoo itself “originated as a public park” which the Society now operates under the City’s supervision and control. (CP 34.) The City’s long history of operating the Zoo – along with other facts such as the ongoing presence of three City-appointed members on the Zoo’s Board of Directors – supports a finding that this factor also favors application of the PRA.

**5. On Balance, the Zoo is the Functional Equivalent of a Local Agency in the Context of the PRA’s “Strongly Worded Mandate” for “Full Access to Information Concerning the Conduct of Government on Every Level.”**

Considering all four *Telford* factors in the context of this case, there is no doubt that the Zoo is the functional equivalent of a local agency for purposes of requiring the transparency mandated by the PRA. After more than a century of operating the Zoo, the City placed a levy on the ballot for the express purpose of funding “the City’s parks and recreation programs, including the Zoo.” (CP 34.) A year after the levy passed, the City outsourced the operation of the Zoo and adjacent public parks to the Woodland Park Zoological Society but continues to own the land and

buildings operated by the Society. (CP 34.) The Society has stepped into the City's shoes to operate not only the Zoo, but also public parks. (CP 41.)

The City diverts millions of dollars in taxpayer money to the Zoo every year in *en masse* allocations for the Zoo's general operations. (CP 37, 42, 43-44.) The City has also financed the Zoo through in-kind services, free use of nearly 100 acres of City park land and access to grants and alternative contracting arrangements to which the Zoo would not have access but for the City's involvement. (CP 34.)

The City has maintained strict oversight and control over the Zoo. The City restricts the uses to which the park land used by the Zoo can be put. (CP 34.) City officials control the membership of three positions on the Zoo's Board. (CP 55.) The City requires the Zoo to submit monthly, quarterly and annual reports – as well as solicit public comment on the annual report and respond to such comments in a supplemental report. (CP 54.) The City also retains the right to inspect the Zoo's records to oversee the care provided to the animals. (*Id.*) The City requires the Zoo to perform annual independent audits and retains the authority to require the Zoo to submit to additional audits by the City or State Auditor. (CP 55.) The City maintains control over the Zoo's policies for acquiring and disposing of animals as well as other policies including naming rights

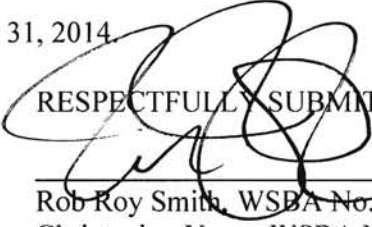
and certain admissions increases. (CP 47, 49.) These facts, taken together, go far beyond the level of government involvement that was sufficient for the PRA to apply in *Clarke*.

Moreover, the specific facts of this case highlight the error in the trial court's ruling that the Zoo need not comply with the PRA. Fortgang's requests to the Zoo focused on a matter of significant public controversy – the Zoo's treatment of its elephants. In particular, she asked the Zoo to be transparent about how it spent the nearly half-million dollars it invested in a public relations campaign publicly defending its position in that controversy; to disclose the terms on which it hired a public relations firm to assist in that effort; and to disclose the details of public polling that the Chair of the Zoo's Board cited in defense of the Zoo during a televised news interview. (CP 25.) As a recipient of millions of dollars in taxpayer funds operating public facilities under the strict supervision and control of the City, the Zoo has no credible argument under Washington's "strongly worded mandate" for "full access to information concerning the conduct of government on every level" that it can invest its resources in a public relations campaign and then stonewall the people of Seattle when they request specific information as to "how the funds were spent." *Telford*, 95 Wash. App. at 158, 162, 164. The trial court's ruling was clear error and should be reversed.

**V. CONCLUSION**

For the foregoing reasons, Fortgang respectfully requests that the Court: (1) reverse the trial court's ruling that the Zoo is not subject to the PRA; (2) declare that the Zoo is the functional equivalent of a state or local agency and is subject to the PRA; and (3) remand this case for further proceedings in accordance with the Court's ruling.

DATED December 31, 2014.

  
RESPECTFULLY SUBMITTED,

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**PROOF OF SERVICE**

I certify that on December 31, 2014, I caused to have served an original  
and one copy upon the Clerk of the Court of the Court of Appeals –  
Division I, and one true and correct copy upon Gregory J. Wong and  
Paul J. Lawrence of the following **OPENING BRIEF OF APPELLANT**  
by the method(s) indicated below:

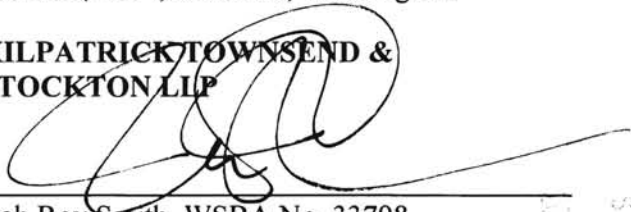
Gregory J. Wong                              X        Hand-Delivery  
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DATED this   31st   day of December, 2014, at Seattle, Washington.

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