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WASHINGTON STATE
SUPREME COURT

No. 93418-5

Supreme Court of the State of Washington

Kevin Anderson,

Petitioner,

v.

Walla Walla Police Department,

Respondent.

Answer to Petition for Discretionary Review
Court of Appeals, Division III, No. 33783-9

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3. Identity of respondent.

The Walla Walla Police Department (WWPD) is a department of the City of Walla Walla, a non-chartered code city organized under RCW Title 35A.

4. Counter-statement of the Case.

Kevin Anderson sent a request to the Walla Walla Police Department (WWPD) dated March 26, 2014 asking for "[a]ny records related to myself (Kevin Allen Anderson, DOB: January 27, 1974)." CP 163, ¶ 2.2. At the time he made the request, Mr. Anderson was serving a criminal sentence in a state correctional facility. CP 163, ¶ 2.3.

Mr. Anderson's records request was processed by police records clerk, Dana Hood, on March 31, 2014. Ms. Hood checked the records management system using the information provided by Mr. Anderson, found no police report records listed for him, and reasonably concluded that the WWPD had no records responsive to Kevin Anderson's March 26 request. The records management system indicated the existence of a court order that had been issued by the Walla Walla District Court in a matter in which Kevin Anderson was a defendant. Ms. Hood therefore disclosed its existence to Mr. Anderson and referred him to the issuing court, because she knew based on past experience that it was the only place that was sure to have an accurate

and current copy of the order. CP 163, ¶ 2.4.

Ms. Hood handwrote a response on Mr. Anderson's March 26 letter and sent it back to him on March 31, 2014, stating:

Kevin,

We have no Walla Walla Police report records on file for you. However, a current order of protection is on file. Copies can be obtained by/ through Walla Walla District Court.

Ms. Hood reasonably believed that her March 31 response fulfilled Mr. Anderson's March 26 request and provided helpful information to him about the court order. CP 163-64, ¶ 2.5.

The WWPD received no follow up inquiry from Mr. Anderson, and it only became aware that he was dissatisfied with its March 31, 2014 records response upon his filing and service of the summons and complaint in the above-entitled action on February 17, 2015. CP 164, ¶ 2.7.

After being served with the summons and complaint the WWPD learned that Mr. Anderson had already obtained copies of the order and other court records from the Walla Walla District Court before his March 26 records request. CP 164, ¶ 2.6. Respondent respectfully submits that the aforementioned unchallenged factual findings are considered verities on appeal. *State v. Campbell*, 166 Wn.App. 464, 469, 272 P.3d 859 (2011).

5. Argument

A. RAP 13.4 review criteria.

The issue presented for review by Mr. Anderson does not satisfy the review criteria set forth in RAP 13.4(b) and does not raise any legitimate legal conflict with needs resolution by the Supreme Court. Petitioner cites that the Court of Appeals decision is in conflict with other decisions of the Court of Appeals. RAP 13.4(b)(2). Respondent respectfully disagrees and submits that the Court of Appeals ruling properly balances the law with the facts and "the entire record." *Anderson v. Walla Walla Police Dept.*, No. 337383-9-III, slip op. at 7 (Ct. App. June 30, 2016), and is not in conflict with other decisions of the Court of Appeals.

B. The Walla Walla Police Department did not Deny Access to Public Records.

This case is about an agency trying in earnest to fulfill a public records request. Contrary to Petitioner's position, the Walla Walla Police Department submits that it reasonably interpreted and responded to Mr. Anderson's request and this case is not about the Walla Walla Police Department denying Mr. Anderson public records but rather perpetuating litigation. CP 32-33.

RCW 42.56.550(1) provides a right of action only to a person who

has "been denied an opportunity to inspect or copy a public record by an agency." (emphasis added). *See also Hobbs v. State Auditor's Office*, 183 Wn.App. 925, 936, ¶ 22, 335 P.3d 1004 (2014).

Petitioner claims in its Petition at pg. 5 that "in essence, the Court of Appeals declined to determine whether the Department's response constituted a denial", solely hinging its decision on the WWPD acting in good faith. This assertion misstates the opinion of the court. Simply stated, the Court of Appeals "affirm[ed] the trials court's denial of relief to Kevin Anderson under the Public Records Act" citing that the WWPD's "claim of good faith does not seek affirmative relief, but rather defends against Anderson's requested relief." *Anderson v. Walla Walla Police Dept.*, No. 337383-9-III, slip op. at 1, 7 and 8 (Ct. App. June 30, 2016).

The Court of Appeals correctly held that under the Public Records Act that "[a]gencies are not required to be mind readers" and that "[a]n agency need not produce a document that does not exist," "gather records kept by another agency " nor "speculate" that the WWPD "could have held" a record. *Anderson v. Walla Walla Police Dept.*, No. 337383-9-III, slip op. at 5 and 6, (Ct. App. June 30, 2016). *See also Sperr v. City of Spokane*, 123 Wn.App. 132, 133, 96 P.3d 1012 (2004) and *Bonamy v. City of Seattle*, 92 Wn.App 403, 409, 960 P.2d 447 (1998).

The WWPD's records response was not a denial of a public record under RCW 42.56.550(1) nor as refusing, in whole or in part, inspection of any public record under RCW 42.56.210(3). The Division III, Court of Appeals correctly held that:

After reviewing the entire record, we agree with the trial court that actions taken by the Walla Walla Police Department, on March 31, 2014, were prompt and *meant to provide access to responsive records*. Dana Hood concluded in good faith that the Walla Walla Police Department lacked records responsive to Kevin Anderson's request. Her suggestion to Kevin Anderson that he contact the district court exhibited a desire to be helpful to Anderson rather than to preclude his access to records.

Anderson v. Walla Walla Police Dept., No. 337383-9-III, slip op. at 7 (Ct. App. June 30, 2016) (emphasis added). Mr. Anderson was not denied access to public records.

C. Petitioner is not entitled to attorney fees.

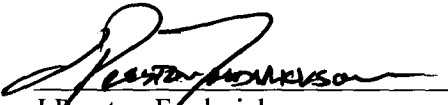
RCW 42.56.550(4) allows for the award of attorney's fees if a requesting party is denied the right to inspect or copy a requested public record. Mr. Anderson was not denied the right to inspect or copy a requested record he is therefore not entitled to such fees.

6. Conclusion.

The Division III, Court of Appeals properly held that the Walla Walla Police Department records response cannot be reasonably interpreted in

context as a refusal to provide responsive records or as an indication that it would provide no further assistance to Mr. Anderson. Petitioner has failed to raise any legitimate legal conflict which needs resolution by the Supreme Court. Therefore, the WWPD respectfully requests that this court deny discretionary review of the Court of Appeals Decision affirming the trial court's order of dismissal. CP 162-65.

DATED August 18, 2016

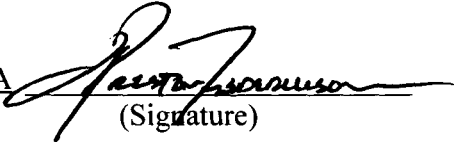


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7. Certificate of Service

I certify (or declare) under penalty of perjury under the laws of the State of Washington that I mailed a copy of the foregoing Answer to Petition for Discretionary Review to Christopher Taylor, Attorney for Kevin Anderson, at C.R. Taylor Law PS, 203 4th Avenue East, Suite 407, Olympia, WA 98501, postage prepaid on the date stated below:

August 18, 2016 Walla Walla, WA
(Date and Place)



(Signature)