

FILED
Court of Appeals
Division II
State of Washington
11/28/2018 4:05 PM
NO. 49726-3-II

96578-1

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925,
Petitioner,

v.

EVERGREEN FREEDOM FOUNDATION, d/b/a FREEDOM
FOUNDATION,
Respondent,

and

STATE OF WASHINGTON DEPARTMENT OF EARLY LEARNING,
Respondent.

PETITION FOR REVIEW BY THE SUPREME COURT

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TABLE OF CONTENTS

I. IDENTIFICATION OF PETITIONER..... 1

II. COURT OF APPEALS DECISION..... 2

III.ISSUES PRESENTED FOR REVIEW 2

1. Does the Court of Appeals’ decision conflict with its earlier decision which found that a ballot initiative took retroactive effect based on voter intent, as determined by the language of the ballot initiative, notwithstanding that the ballot initiative did not explicitly mandate retroactivity? 2

2. Does the Court of Appeals’ decision raise an issue of substantial public interest where it affirmed a lower court order involving the Public Records Act that failed to apply the law in effect at the time of the ruling on a motion for a preliminary injunction? 2

IV.STATEMENT OF THE CASE 2

V. SUMMARY OF ARGUMENT 9

VI.ARGUMENT 10

 A. The Decision Conflicts with a Published Court of Appeals’ Decision..... 10

 B. Interpreting the PRA Consistently to Ensure that the Law Applied Is the Law in Effect at the Time of the Records Potential Release Is an Issue of Substantial Public Interest..... 13

VII. CONCLUSION 15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Caritas Servs., Inc. v. Dep’t of Soc. & Health Servs.</i> , 123 Wn. 2d 391, 869 P.2d 28 (1994).....	15
<i>Dragonslayer, Inc. v. Washington State Gambling Comm’n</i> , 139 Wn. App. 433, 161 P.3d 428 (2007).....	15
<i>John Doe A v. Wash. State Patrol</i> , 185 Wn.2d 363, 374 P.3d 63 (2016), <i>review denied</i> , 189 Wn.2d 1019 (2017).....	14, 15
<i>In re.Pers. Restraint of Flint</i> , 174 Wn.2d 539, 277 P.3d 657 (2012).....	16
<i>Puget Sound Advocates for Ret. Action v. State of Wash. Dep’t of Soc. and Health Servs.</i> , No. 50430-8-II (October 30, 2018) (unpublished).....	14, 16
<i>SEIU Healthcare 775NW v. Dep’t of Soc. and Health Serv.</i> , 193 Wn. App. 377, 377 P.3d 214 (2016).....	4, 5
<i>SEIU Healthcare 775 NW v. State of Wash. Dep’t of Soc. and Health Serv.</i> , 186 Wn. 2d 1016, 380 P.3d 502 (2016)	4
<i>SEIU Local 925 v. State of Wash., Dep’t of Early Learning</i> , No. 49726-3-II (September 18, 2018).....	<i>passim</i>
<i>State v. Rose</i> , 191 Wn. App. 858, 365 P.3d 756 (2015).....	10, 11, 12, 13
Statutes	
Public Records Act	1, 2, 3
RCW 4.24.550(3)(a)	15
RCW 9.35.001(2).....	6

RCW 41.56.028(2)(c)	3
RCW 41.56.030	4, 5, 6
RCW 42.56.640	6
RCW 43.17.410(1).....	5, 6, 14
RCW 74.04	3
RCW 74.04.060	7
WAC 170-290-0003.....	3
WAC 170-290-0130.....	3
Constitutional Provisions	
Const. art. II, § 1(d). I-1501's	5
Other Authority	
I-1501	6

I. IDENTIFICATION OF PETITIONER

Petitioner Service Employees International Union Local 925 (“Local 925” or SEIU 925”) is the Plaintiff and Appellant below. SEIU 925 is the collective bargaining representative of in-home child care providers, who provide child care to families receiving child care subsidies from the State through the Working Connections Child Care (“WCCC”) program.

Local 925 sought a preliminary injunction to prevent Respondent Washington State Department of Early Learning (“DEL”)¹ from disclosing a list of the names, addresses, and email addresses of child care providers to Public Records Act (“PRA”) requestor and respondent Freedom Foundation (“FF”). Thurston County Superior Court Judge Mary Sue Wilson denied the motion for injunctive relief. The Court of Appeals, Division II, affirmed.

¹ As of July 1, 2018 DEL was absorbed by the Washington State Department of Children, Youth, and Families (DCYF). According to its website:

DCYF is the state’s newest agency. It oversees several services previously offered through the state [sic] Department of Social and Health Services and the Department of Early Learning. These include all programs from the Children’s Administration in DSHS such as Child Protective Services’ investigations and Family Assessment Response, licensed foster care, and adoption support. Also included are all DEL services, such as the Early Childhood Education and Assistance Program for preschoolers, Working Connections Child Care, and Home Visiting.

Washington State Department of Children, Youth, and Families, *About Us*, <https://dcyf.wa.gov/about/about-us> (last visited 11.26.2018).

II. COURT OF APPEALS DECISION

SEIU 925 seeks review of *SEIU Local 925 v. State of Wash., Dep't of Early Learning*, No. 49726-3-II (September 18, 2018), in which the Court of Appeals affirmed the Thurston County Superior Court's December 9, 2016 order denying SEIU 925's motion for a preliminary injunction. The court of appeals' decision ("the decision below") is attached in the Appendix at 1-19.

III. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals' decision conflict with its earlier decision which found that a ballot initiative took retroactive effect based on voter intent, as determined by the language of the ballot initiative, notwithstanding that the ballot initiative did not explicitly mandate retroactivity?
2. Does the Court of Appeals' decision raise an issue of substantial public interest where it affirmed a lower court order involving the Public Records Act that failed to apply the law in effect at the time of the ruling on a motion for a preliminary injunction?

IV. STATEMENT OF THE CASE

WCCC, the largest child-care subsidy program in Washington, funds child care to support qualifying low-income working families. CP 276. The WCCC program is largely funded through the federal Temporary Assistance to Needy Families federal "welfare" program

(“TANF”). *Id.* The WCCC subsidy is authorized as a public assistance program pursuant to RCW 74.04. *See* RCW 74.04.004(5) (“Public assistance” or “public assistance programs” means public aid to persons in need including ... working connections child care subsidies.”). The Department of Social and Health Services (“DSHS”) maintains a list of child care providers who provide care to families that receive WCCC subsidies, which includes the names and personal contact information of providers. CP 276. DSHS shares that information with DEL to enable DEL to administer the WCCC program. *Id.*

SEIU 925 represents in-home child care providers, both those who are licensed to care for children in their own homes, and those who are exempt from licensing who are referred to as “family, friend and neighbor” providers (“FFN”). *Id.* at 275. Providers who meet certain criteria can provide non-licensed child care for their family, friends, and neighbors. WAC 170-290-0003 and WAC 170-290-0130 through 0167. SEIU 925 is the exclusive bargaining representative of both licensed and license-exempt providers and is signatory to a contract with the State of Washington that determines, among other things, the manner and rate of subsidy payments to providers throughout the state. RCW 41.56.028(2)(c); CP 275. SEIU 925 collects dues payments from its

members, but providers who do not wish to be members of Local 925 do not pay any dues or fees. CP 275.

FF has for several years used PRA requests to attempt to obtain lists of the names and contact information of child care providers represented by SEIU 925, and individual home care providers (“IPs”) represented by SEIU 775, so that it can contact them as part of an advocacy campaign to persuade them to cease financially supporting their respective unions. CP 21. The Court of Appeals recently noted that FF’s purpose in seeking to obtain these lists “appears to be political”. *SEIU Healthcare 775NW v. Dep’t of Soc. and Health Serv.*, 193 Wn. App. 377, 406, 377 P.3d 214 (2016), *review denied*, 186 Wn. 2d 1016, 380 P.3d 502 (2016) (Referring to request for list of IPs).

On November 4, 2016, DEL notified SEIU 925 that it received a PRA request from FF seeking:

1. The first name, last name, work mailing address, and work email address of all licensed family child care providers, as defined by RCW 41.56.030(7).
2. The first name, last name, work mailing address, and work email address of all license-exempt family child care providers, as defined by RCW 41.56.030(7).

CP 285-86.

FF informed DEL that it intended to use the requested information for the same purpose that it has sought similar lists for several years,

including the list of IPs at issue in *SEIU Healthcare 775NW*: “to inform providers of their constitutional and statutory rights regarding union membership and representation.”² *Id.* DEL notified SEIU 925 that absent a TRO prohibiting the release of the information, DEL intended to release the information by November 22, 2016. *Id.*

On November 8, 2016, Washington voters approved Initiative 1501 (“I-1501”) by a vote of 70.64 percent to 29.63 percent.³ The law became effective on December 8, 2016. Const. art. II, § 1(d). I-1501’s purpose is to “protect the safety and security of seniors and vulnerable individuals”. CP 299. The law contains two independent statutory provisions protecting the names, addresses, and email addresses of family child care providers from disclosure by state agencies. First, RCW 43.17.410(1) prohibits the disclosure of this information by any state agency, including DEL. I-1501 §10; RCW 43.17.410(1). RCW 43.17.410(1) provides, “neither the state nor any of its agencies shall release sensitive personal information of vulnerable individuals or sensitive personal information of in-home caregivers for vulnerable populations, as those terms are defined in RCW 42.56.640.” I-1501 §10;

² In *SEIU Healthcare 775NW*, 193 Wn. App. at 227, this Court noted that FF’s stated purpose for requesting the list of IPs was “to correspond with the individual providers and notify them of their constitutional right to refrain from union membership and fee payments.”

³ See <http://results.vote.wa.gov/results/current/State-Measures-Initiative-Measure-No-1501-concerns-seniors-and-vulnerable-individuals.html> (last visited Nov. 29, 2016).

RCW 43.17.410(1). RCW 42.56.640(2)(b) provides that “sensitive personal information” includes names, addresses, and email addresses in addition to other personally identifying information. I-1501 §8(b); RCW 42.56.640(2)(b). RCW 42.56.640(2)(a) provides that “in-home caregivers for vulnerable populations” includes “family child care providers as defined in RCW 41.56.030.” I-1501 §8(2)(a); RCW 42.56.640(2)(a).

In addition to prohibiting the release of the requested information by any state agency in RCW 43.17.410(1), I-1501 amended the PRA to explicitly exempt such information from disclosure. *See* I-1501 §8(1); RCW 42.56.640(1) (“Sensitive personal information of vulnerable individuals and sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying under this chapter.”).

The initiative states that RCW 43.17.410(1) and RCW 42.56.640(1) promote the public policy of protecting vulnerable populations from identity theft, consumer fraud, and other forms of victimization. CP 299, 304, 306; I-1501§10(1); I-1501§4(2); RCW 9.35.001(2); RCW 43.17.410(1). The initiative further states that the law must be liberally construed to promote this public policy. CP 306; I-1501(12).

SEIU 925 filed a motion for a TRO on November 16, 2016. On November 18, the parties agreed to extend the November 22 deadline until December 9 so that the requested records would not be released prior to a hearing on SEIU 925's motion for a preliminary injunction. CP 311, 317. As a result, the trial court did not rule on SEIU 925's TRO motion.

On December 9, 2016, the Honorable Mary Sue Wilson, Thurston County Superior Court, denied Plaintiff's motion for a preliminary injunction. CP 967-68. Judge Wilson explained her ruling in an oral decision that is incorporated into the trial court's written order. CP 968; Verbatim Report of Proceedings ("VRP").

In a ruling from the bench, Judge Wilson acknowledged reaching a different conclusion "a few weeks ago" in a similar PRA case, finding likelihood that RCW 74.04.060 exempted similar records from disclosure. VRP 42:5-11. With regard to I-1501, the trial court acknowledged that the law prohibited disclosure of the requested records and that it was effective at the time the trial court decided this case. VRP 43:9-17. However, the court concluded that because FF requested the records before the effective date of the initiative, it must determine whether I-1501 applied retroactively. The court acknowledged that an initiative will be applied retroactively where there is an indication that the voters so intended, and that such an indication may be found in "a legislative statement of a strong

public policy that would be served by retroactive application.” VRP 43:18-44:8. Judge Wilson found that the initiative contained a legislative statement of a public policy “to protect seniors and vulnerable individuals from identity theft and other financial crimes by preventing the release of public records that could be used to victimize them.” VRP 44:17-21. However, the trial court concluded that this policy would not be served by applying the law to pending PRA requests and that an average voter would not believe that the initiative was intended to prevent agencies from continuing to release public records that could be used to victimize seniors and vulnerable individuals when it became law. VRP 45:1-11. The trial court reasoned that the initiative did not contain “a statement that it’s important to stop something right now that’s in progress.” VRP 45:1-4. Judge Wilson thus concluded that the law did not prevent state agencies from continuing to release records that contained sensitive personal information of in-home caregivers for vulnerable populations in response to pending PRA requests. *Id.*

Noting that this matter raised two “novel” issues on which there is no appellate authority, the trial court ordered DEL not to release the disputed records until December 19, 2016, in order to give SEIU 925 the opportunity to file this appeal and seek emergency injunctive relief to preserve the fruits of its appeal. VRP 52:13-16, 55:17-23.

On January 25, 2017, Division II Commissioner Eric Schmidt granted SEIU 925's motion for emergency injunctive relief and enjoined the release of the records until this appeal is resolved. Commissioner's Ruling (January 25, 2017).

On September 18, 2018, the Court of Appeals issued the decision below, affirming the Superior Court's order denying Local 925's motion for injunctive relief. *SEIU 925 v. State of Wash, Dept. of Early Learning*, No. 49726-3-II (September 18, 2018) (Appendix at 1-19).

V. SUMMARY OF ARGUMENT

The Court should accept discretionary review of the decision below pursuant to RAP 13.4(b)(2), because the decision conflicts with the Court of Appeals' decision in *State v. Rose*, 191 Wn. App. 858, 365 P.3d 756 (2015), which makes clear that the retroactive application of a ballot initiative can be established by voter intent as determined from the perspective of an average voter examining the initiative's language, and does not require an explicit statement of retroactivity.

Review is also warranted because the decision involves an issue of substantial public interest that should be determined by the Supreme Court pursuant to RAP 13.4(b)(4). At issue, is what law should apply when a court reviews a PRA request – the law in effect at the time of the request, or the law in place at the time of the court's determination, even if an

intervening ballot initiative is not determined to apply retroactively.

VI. ARGUMENT

A. The Decision Conflicts with a Published Court of Appeals' Decision.

Review is warranted under RAP 13.4(b)(2) because the decision is in conflict with a published decision of the Court of Appeals. The decision below conflicts with *State v. Rose*, 191 Wn. App. 858, 365 P.3d 756 (2015). Under the standard outlined therein, the Court of Appeals should have given I-1501 retroactive effect.

State v. Rose established the test for determining whether a voter initiative applies retroactively. The *Rose* court explained that the effect of an initiative depends on the intent of the voters. 191 Wn. App. at 869. In *Rose*, the court found that the ballot initiative's language specifying, "The people intend to stop treating adult marijuana use as a crime and try a new approach", adequately conveyed voters' intent to cease pending marijuana prosecutions against adults. 191 Wn. App. at 868.

The language in I-1501 is similarly definite—"It is the intent of this initiative to protect the safety and security of seniors and vulnerable individuals by prohibiting the release of certain public records that could facilitate identity theft and other financial crimes against seniors and vulnerable individuals." CP 299. Furthermore, the initiative enacted by the state's voters declares, "It is the intent of part three of this initiative to

protect the safety and security of seniors and vulnerable individuals from identify theft and other financial crimes by preventing the release of public records that could be used to victimize them.” CP 304. These two statements fairly convey the voters’ intent to prevent the release of records of those who work with seniors and vulnerable individuals, including information subject to pending PRA requests. Thus, this language is as forceful and clear as the language in *Rose*.

The court below sought to distinguish the situation in *Rose* from the situation before the court, finding that “the language in I-1501 is not as direct as the language in *Rose*,” but ultimately, this distinction is inapt. *SEIU 925 v. State of Wash., Dep’t. of Early Learning*, No. 49726-3-II at *11. While the court below acknowledged “the strong policy language that seniors and vulnerable adults be protected,” the court was not convinced that the language evinced retroactive intent. *Id.* Instead, the court below found, “There is no clear policy statement showing voter intent to prevent the disclosure of provider information in a retroactive manner.” *Id.* As a result of this lack of a definite statement of retroactive intent, the court below held that the language of I-1501 “does not fairly convey the voters’ intent to apply the exemptions retroactively.” *Id.* However, the language at issue in the decision below and in *Rose* is equally prescriptive. In its brief analysis, the court below relied on the

lack of a clear policy statement, but a clear statement mandating retrospective application was not required by *Rose*, and in fact the language at issue in *Rose* contained no explicit statement regarding retroactivity. *See Rose*, 191 Wn. App. at 862-63, 868. Because the court below failed to apply the standard set forth in *Rose*, the decision conflicts with a published decision of the Court of Appeals.

Furthermore, the Court of Appeals neglected to examine the language in the official voters' guide as directed by the *Rose* court. The court in *Rose* found that after examining the initiative language itself, the court should then turn to the language in the voters' guide if the court is not satisfied that the language is clear enough to determine retroactivity. *Rose*, 191 Wn. App. at 869. Here, the court in the decision below declined to examine this language in its opinion after conducting a conclusory analysis of the voter intent expressed in I-1501. The statements in the voters' guide—"We cannot let fraudulent telemarketers and other criminals continue to prey on them. We need the protections offered by I-1501"—further highlight voters' intent that the initiative take retroactive effect. Declaration of Robert Lavitt in Support of SEIU 925's Motion for Expedited Consideration and Emergency Motion for Injunctive Relief Pending Appeal ("Lavitt Dec.") Ex. A at 5 (*Voter's Guide: 2016 General Election, Initiative Measure No. 1501*) (Nov. 8, 2016). In refusing to

examine voters' intent as expressed in the voters' guide, the court below issued an opinion which conflicts with a published decision of the Court of Appeals.

As a result, the Washington Supreme Court should grant review and reverse on the grounds that the Court of Appeals should have found I-1501 operates retroactively in conformity with *Rose*.

B. Interpreting the PRA Consistently to Ensure that the Law Applied Is the Law in Effect at the Time of the Records' Potential Release Is an Issue of Substantial Public Interest.

Review is warranted under RAP 13.4(b)(4) because this matter presents an issue of substantial public interest. The conflict between the decision below and *Puget Sound Advocates for Ret. Action v. State of Wash. Dep't of Soc. and Health Servs.*, No. 50430-8-II, (October 30, 2018) (unpublished) ("*PSARA*") reveals that the issue of whether to apply the law governing at the time of the request or the law at the time the government agency was under the obligation to release the information is an issue of substantial public importance.

PSARA also dealt with I-1501, and in that case, the Court of Appeals held,

[R]egardless of whether I-1501 can be applied retroactively, RCW 43.17.410(1) operates prospectively to prohibit DSHS from releasing individual providers' names and associated birthdates after the effective date of I-1501 *regardless of the date the public records request was filed*.

No. 50430-8-II at *1 (emphasis added). These two appellate decisions rely on two different Washington Supreme Court cases which provide contrary guidance.

In the decision below, the Court of Appeals relied on a footnote in *John Doe A v. Wash. State Patrol*, which stated:

After the records request was made, and prior to oral argument, the legislature amended RCW 4.24.550(3)(a) to add ‘and any individual who requests information regarding a specific offender.’ Laws of 2015, ch. 261, § 1(3). Because this section was not made retroactive, we consider the statute as it existed at the time the request was made. However, the new language would not change our result.

185 Wn.2d 363, 375 n. 2, 374 P.3d 63 (2016), *review denied*, 189 Wn.2d 1019 (2017).

Relying on this dicta, the court below determined that I-1501 was not operating prospectively if the court applied the initiative to a PRA request that was already pending when the initiative took effect.⁴

⁴ To the extent that the discussion of vested rights in the Court of Appeals’ decision below is animating the court’s analysis, the court below comes to the misguided presumption that, “A vested right in public documents is created when a request for the public records is made.” *SEIU 925 v. State of Wash., Dep’t of Early Learning*, No. 49726-3-II at *12. “A vested right entitled to protection under the due process clause: must be something more than a ‘*mere expectation*’ based upon an anticipated continuance of the existing law; *it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another.*” *Caritas Servs., Inc. v. Dep’t of Soc. & Health Servs.*, 123 Wn. 2d 391, 414, 869 P.2d 28, 41 (1994) (quoting *In re Marriage of MacDonald*, 104 Wn.2d 745, 750, 709 P.2d 1196 (1985)) (emphasis in original). Despite reliance by the court below on the statement in *Dragonslayer* that a public records request creates a vested right, this statement should not govern because the *Dragonslayer* court did not engage in a vested rights analysis and instead decided the case based on the legislature having specifically removed the

Reaching the opposite conclusion, the *PSARA* court relied on *In re. Pers. Restraint of Flint*, 174 Wn.2d 539, 547, 277 P.3d 657 (2012) for the proposition that the court should apply the law in operation at the time of the triggering event, which was not when the request was made but rather when the government agency's obligation to release the information became operative. No. 50430-8-II at *4 . Had the Division II panel in *SEIU 925* relied on *In re. Pers. Restraint of Flint*, it would have analyzed the trial court's order based on the law in effect on December 9, 2016 – the day after I-1501 took effect. Presumably, the panel would have reversed the trial court decision and found the requested records exempt from disclosure under the PRA, as amended by I-1501.

The Supreme Court of Washington should grant review to resolve this issue of substantial public importance and decide the issue in conformity with the Supreme Court's decision in *In re. Pers. Restraint of Flint, supra*.

VII. CONCLUSION

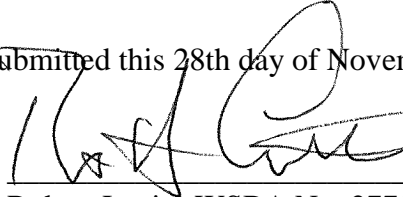
The Supreme Court of Washington should accept review under RAP 13.4(b) for the reasons indicated in Part V in order to address whether I-1501 should be applied to the FF's PRA request, either because I-1501 applies retroactively, or because I-1501 was the law in effect at the

retroactive provision from the bill. *Dragonslayer, Inc. v. Washington State Gambling Comm'n*, 139 Wn. App. 433, 448-49, 161 P.3d 428, 435 (2007).

time the trial court rendered its decision.

Respectfully submitted this 28th day of November, 2018.

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DECLARATION OF SERVICE

I, Genipher Owens, hereby declare under penalty of perjury under the laws of the State of Washington that on November 28, 2018, I caused the foregoing Petition for Review to be filed with the Clerk of the Court via the Washington State Appellate Court's Secure E-Filing Portal and, pursuant to the e-service agreement between the parties, a true and correct copy of the same to be delivered via e-mail to the following:

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SIGNED this 28th day of November, 2018, at Seattle, WA.



Genipher A. Owens, Paralegal

September 18, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 925, a labor organization,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF EARLY LEARNING, a state agency, and
EVERGREEN FREEDOM FOUNDATION,
a non-profit corporation,

Respondents.

No. 49726-3-II

UNPUBLISHED OPINION

WORSWICK, P.J. — Service Employees International Union Local 925 (SEIU 925) appeals an order denying SEIU’s motion for an injunction to prohibit the Washington State Department of Children, Youth, and Families,¹ Department of Early Learning & Child Care (Department) from releasing certain documents requested under the Public Records Act (PRA). The Freedom Foundation (Foundation) requested a list of names and contact information for child care providers in Washington. SEIU 925, the labor union representing the child care providers, filed a motion to enjoin the Department from disclosing the provider’s information.

¹ The Washington State Department of Children, Youth, and Families was formerly known as the Washington State Department of Social and Health Services. The pleadings in this matter reference the Department of Social and Health Services.

The trial court denied SEIU 925's motion and SEIU 925 now appeals, arguing that the exemptions created by RCW 42.56.640² and RCW 43.17.410,³ as established through voter Initiative 1501 (I-1501), apply retroactively, and also that former RCW 74.04.060(4)⁴ exempts records that are to be used for political purposes.

We hold that RCW 42.56.640 and RCW 43.17.410, do not apply retroactively and that former RCW 74.04.060(4) does not exempt the records requested by the Foundation.

Consequently, we affirm.

FACTS

The Department administers a program that allows eligible low-income families to receive a subsidy for child care expenses. Families may choose to utilize either a licensed or a license-exempt care provider.

Licensed family care providers operate independent home businesses and are monitored and licensed by the Department. License-exempt family child care providers are informal care

² RCW 42.56.640 exempts inspection of "sensitive personal information" of certain "vulnerable individuals" and their "in-home caregivers," and defines those terms.

³ RCW 43.17.410 states:

(1) To protect vulnerable individuals and their children from identity crimes and other forms of victimization, neither the state nor any of its agencies shall release sensitive personal information of vulnerable individuals or sensitive personal information of in-home caregivers for vulnerable populations, as those terms are defined in RCW 42.56.640.

⁴ The legislature amended RCW 74.04.060 in 2018 by adding subsection (b) to RCW 74.04.060(1).

providers exempt from licensing requirements and who usually provide care in the children's home or in their own home.⁵

SEIU 925 represents both licensed and license-exempt providers. The providers pay dues to SEIU 925 for union representation.

The Foundation is a nonprofit organization. One of the Foundation's purposes is to educate public employees about their rights to "opt out" of a union. Clerk's Papers (CP) at 24. The Foundation has previously contacted SEIU 925 members regarding their rights.

The Department provides contact information for licensed family child care providers on a Department website. The information includes the names and telephone numbers of the licensed care providers, but the website does not list information for license-exempt providers.

On November 2, 2016, the Foundation submitted a PRA request to the Department seeking contact information for all licensed and license-exempt child care providers. The Foundation sought "the first name, last name, work mailing address, and work email address" of the providers. CP at 909. In its request, the Foundation stated that it would not use the information for commercial purposes, but planned to use the information to inform the providers of their constitutional and statutory rights regarding union membership and representation. The Department informed SEIU 925 that it would release the providers' contact information to the Foundation on November 22 if SEIU 925 did not obtain a court order enjoining the release.

⁵ An exempt provider may provide care in their own home if related to the child.

On November 8, 2016, six days after the Foundation submitted its PRA request, Washington voters approved I-1501.⁶ The initiative's stated intent was to protect the safety and security of seniors and vulnerable individuals by

(1) increasing criminal penalties for identity theft targeting seniors and vulnerable individuals; (2) increasing penalties for consumer fraud targeting seniors and vulnerable individuals; and (3) prohibiting the release of certain public records that could facilitate identity theft and other financial crimes against seniors and vulnerable individuals.

CP at 299.

The initiative also added new provisions to the statutes governing agency administration and to the PRA. One provision, later codified as RCW 43.17.410(1), prohibited state agencies from releasing sensitive personal information of vulnerable individuals or in-home caregivers for vulnerable populations. LAWS OF 2017, ch. 4, § 10. Another provision, later codified as RCW 42.56.640(2), added language to the PRA stating that "sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying." LAWS OF 2017, ch. 4, § 8. The initiative's provisions became effective on December 8, 2016. *See* RCW 43.17.410; *see also* RCW 42.56.640.

On November 16, 2016, SEIU 925 filed a complaint for declaratory and injunctive relief in superior court seeking to enjoin the Department from releasing the records to the Foundation

⁶ *See* <https://results.vote.wa.gov/results/20161108/State-Measures-Initiative-Measure-No-1501-concerns-seniors-and-vulnerable-individuals.html> (last visited Sep. 7, 2018).

under former RCW 74.04.060(4).⁷ SEIU 925 also filed a motion for a temporary restraining order (TRO) to prevent the release of the information. SEIU 925 argued that the Department was precluded from disclosing the records because former RCW 74.04.060(4) prevented the disclosure of lists or names of providers for both commercial as well as political purposes, and also argued that the information qualified for a PRA exemption.

A superior court commissioner heard arguments on SEIU 925's motion for a TRO but did not rule on the motion. Instead, the commissioner asked the Foundation and the Department to refrain from releasing the records on November 22, and to schedule a hearing on SEIU 925's request for a preliminary injunction as soon as possible. The parties agreed.

On December 2, SEIU 925 filed its motion for preliminary injunction and scheduled a hearing for December 9th. SEIU 925 restated many of the arguments it made in its TRO motion and also included additional arguments for injunctive relief. SEIU 925 argued that the information requested by the Foundation was prohibited by the laws established in I-1501, which were to become effective on December 8th, the day before the scheduled hearing on SEIU's preliminary injunction.

⁷ Former RCW 74.04.060(4) provided:

It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature.

In response, the Foundation argued that SEIU 925’s interpretation of former RCW 74.04.060(4) was unconstitutional, that SEIU 925 improperly read 74.04.060(4) out of context from the other sections of the chapter,⁸ and that I-1501 was not retroactive in nature.

The Department responded and asserted that it was not authorized to withhold the records because the Foundation’s use of the records was not for commercial purposes and that it was not authorized to apply the disclosure exemptions established in I-1501 because the Foundation made its record request before the law took effect. The Department also argued the “list or names” referenced in former RCW 74.04.060(4) pertained only to applicants and recipients of public assistance and not to providers. CP at 899.

On December 9, the trial court heard oral argument on SEIU 925’s motion for preliminary injunction. The court denied SEIU’s motion for a preliminary injunction, ruling that

⁸ Other sections of former RCW 74.04.060 provide:

(1)(a) . . . [T]he county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title . . . except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

. . . .

(c) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

. . . .

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

SEIU 925 had not shown there was a likelihood of success on the merits of any of its claims. The court ruled that former RCW 74.04.060(4) did not apply to exempt disclosure of providers' lists or names and that I-1501 did not apply retroactively. The court entered a stay preventing the release of the records pending appeal.

SEIU 925 appeals the trial court's order denying its motion for a preliminary injunction.

ANALYSIS

SEIU 925 argues that the trial court erred by denying its request for injunctive relief where the evidence establishes that SEIU 925 has a clear legal right to the protection of the requested records, where I-1501 applies retroactively, and where former RCW 74.04.060(4) prohibited the Department from disclosing the records. We disagree.

I. STANDARD OF REVIEW

We generally review injunction decisions for an abuse of discretion.⁹ *Blair v. Washington State Univ.*, 108 Wn.2d 558, 564, 740 P.2d 1379 (1987). However, when a trial court's order is based solely on documentary evidence and memoranda of law, our review is de novo. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 612, 963 P.2d 869 (1998). Additionally, we review both statutory interpretation and retroactivity de novo. *See In re Estate of Haviland*, 177 Wn.2d 68, 75, 301 P.3d 31 (2013).

⁹ Generally, orders on preliminary injunctions are reviewed for an abuse of discretion. However, some court decisions interpreting injunction orders under the PRA have held that the proper standard of review for injunctions issued under the PRA is de novo. *See SEIU Healthcare 775NW v. Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, 391, 377 P.3d 214 (2016). Regardless, the underlying review of any decision under the PRA is a question of law when based entirely on documentary evidence. *See Robbins Geller Rudman & Dowd LLP v. Office of Att'y Gen.*, 179 Wn. App. 711, 719-20, 328 P.3d 905 (2014).

Because this case is an injunction decision based entirely on documents and memorandum of law, and involving only questions of law, our review here is de novo.

II. APPLICABILITY OF I-1501

SEIU 925 argues that the trial court was required to apply the provisions of I-1501 to prohibit the Department from disclosing the records because the laws prohibiting disclosure were in effect at the time it rendered its decision denying the preliminary injunction. We disagree.

A. *PRA Principles*

The PRA mandates the broad disclosure of public records. *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 431, 327 P.3d 600 (2013). Under RCW 42.56.070(1), a government agency must disclose public records upon request unless an exemption applies. *Ameriquist Mortg. Co. v. Office of Att’y Gen.*, 177 Wn.2d 467, 485-86, 300 P.3d 799 (2013). RCW 42.56.030 expressly requires that the PRA be “liberally construed and its exemptions narrowly construed . . . to assure that the public interest will be fully protected.” Thus, we liberally construe the PRA in favor of disclosure. *West v. Port of Olympia*, 183 Wn. App. 306, 311, 333 P.3d 488 (2014).

A party other than a government agency attempting to prevent the disclosure of public records under the PRA may seek an injunction. *Ameriquist*, 177 Wn.2d at 487. We review injunctions issued under the PRA de novo. *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 791, 418 P.3d 102 (2018). The party seeking to prevent disclosure bears the burden of establishing that a PRA exemption applies. *Ameriquist*, 177 Wn.2d at 486. If an exemption applies, we can enjoin the release of a public record only if disclosure “would clearly not be in the public interest and would substantially and irreparably damage any person, or . . . vital governmental

functions.” *Lyft*, 190 Wn.2d at 791 (quoting *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009)). The injunction standard requires a showing on both elements. *Lyft*, 190 Wn.2d at 791.

Here, in order to determine whether the trial court properly denied SEIU 925’s request for injunction, we must first examine whether the statutes established through I-1501 apply retroactively or prospectively.

B. *Retroactivity Principles*

Generally, statutory amendments are presumed to operate prospectively. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 507, 198 P.3d 1021 (2009). The presumption of prospective application is overcome only when the legislature explicitly provides for retroactive application or the amendment is curative or remedial. *Densley v. Dep’t of Ret. Sys.*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007). When analyzing whether a voter initiative explicitly provides for retroactivity, the test is whether the initiative “fairly convey[s]” the voters’ intent that the initiative be applied retroactively. *State v. Rose*, 191 Wn. App. 858, 861, 365 P.3d 756, (2015).

If there is no voter intent to apply the initiative retroactively, we next determine whether the statute is curative or remedial. *Densley*, 162 Wn.2d at 223. A curative statute clarifies or makes a technical correction to an ambiguous statute. *Barstad v. Stewart Title Guar. Co., Inc.*, 145 Wn.2d 528, 536-37, 39 P.3d 984 (2002). A remedial statute relates to practices, procedures, or remedies and does not affect a substantive or vested right. *In re Marriage of Hawthorne*, 91 Wn. App. 965, 968, 957 P.2d 1296 (1998).

C. *No Retroactive Application*

1. *No Voter Intent for Retroactivity*

The first question we consider in examining whether the statute applies retroactively is whether I-1501 fairly conveys the voters' intent that the initiative be applied retroactively. To ascertain legislative (or here, voter) intent, we generally look for express language showing retroactive application. *See City of Ferndale v. Friberg*, 107 Wn.2d 602, 605, 732 P.2d 143 (1987). However, legislative intent may also be inferred from other evidence, such as the use of past tense in the language of the statute, or a legislative statement of a strong public policy that would be served by retroactive application. *City of Ferndale*, 107 Wn.2d at 605.

SEIU 925 cites to *State v. Rose*, 191 Wn. App. at 868, and points to the policy language contained in I-1501 to argue that the voters' intent was for the laws to apply retroactively. I-1501 included an overarching intent section which stated that “[i]t is the intent of this initiative to protect the safety and security of seniors and vulnerable individuals by . . . (3) prohibiting the release of certain public records that could facilitate the identity theft of other financial crimes against seniors and vulnerable individuals.” CP at 299. The initiative also contained another section pertaining to the intent of prohibiting the release of public records of caregivers. The section stated that “[s]ensitive personal information about in-home caregivers for vulnerable populations is protected because its release could facilitate identity crimes against seniors, vulnerable individuals, and the other vulnerable populations that these caregivers serve.” CP at 304.

In *State v. Rose*, the court reviewed a voter initiative that decriminalized adult marijuana use. 191 Wn. App. at 868 (quoting I-502, Part 1, Sec. 1). The initiative included a statement of

intent that said, “The people intend to stop treating adult marijuana use as a crime and try a new approach.” *Rose*, 191 Wn. App. at 868. The *Rose* court concluded that this language was sufficient to express an intent of the voters to stop prosecutions, even those in progress, for adult marijuana use. *Rose*, 191 Wn. App. at 869.

Here, the language in I-1501 is not as direct as the language in *Rose*. Despite the strong policy language that seniors and vulnerable adults be protected, I-1501 contains no suggestion that the exemption provisions would apply to PRA requests prior to the effective day of the act. There is no clear policy statement showing voter intent to prevent the disclosure of provider information in a retroactive manner. *See Rose*, 191 Wn. App. at 868.

Because I-1501 does not contain an express statement regarding retroactive application, and because the language otherwise does not fairly convey the voters’ intent to apply the exemptions retroactively, the next question is whether I-1501 is curative or remedial. *See City of Ferndale*, 107 Wn.2d at 602.¹⁰

2. *Not Curative or Remedial*

SEIU 925 does not brief the issue of whether the statutes at issue are remedial or curative in nature and affirmatively states that it “does not rely” on whether the statutes are curative or remedial to support their argument that the statutes apply retroactively. Reply Br. at 23. The

¹⁰ SEIU 925 argues that *City of Ferndale*, 107 Wn.2d at 602, supports its argument that an initiative is retroactive when a strong policy statement exists that would be served by retroactive application. However, the court in *City of Ferndale* considered the initiative in that case to be retroactive when the initiative used past tense language and when the initiative was remedial in nature. Accordingly, *City of Ferndale* is distinguishable from this case as I-1501 uses no past tense language and as shown, is not remedial in nature.

Foundation argues that access to nonexempt public records is a substantive right and that the new statutes “affect” that right and therefore are not curative or remedial. Br. of Resp’t (Foundation) at 34. The Department joins the Foundation and argues that the trial court correctly concluded that the statutes were neither curative nor remedial. We hold that the statutes at issue are not curative or remedial.

A curative amendment clarifies or makes a technical correction to an ambiguous statute. *In re Flint*, 174 Wn.2d 539, 546, 277 P.3d 657 (2012). A remedial change relates to practices, procedures, or remedies without affecting substantive or vested rights. *In re Flint*, 174 Wn.2d at 546. A vested right entitled to protection under the due process clause “must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another.” *Dragonslayer, Inc. v. Washington State Gambling Comm’n*, 139 Wn. App. 433, 449, 161 P.3d 428 (2007) (quoting *Caritas Servs. v. DSHS*, 123 Wn.2d 391, 414, 869 P.2d 28 (1994)). A vested right in public documents is created when a request for the public records is made. *See Dragonslayer*, 139 Wn. App. at 449.

Here, the statutes do not clarify or correct another statute and therefore are not curative. Also, the statutes are not remedial because they affect a vested right. The Foundation requested the records prior to the enactment of the statutes that contain applicable PRA exemptions. Therefore, the Foundation obtained a vested right in the requested records when it made its initial request. *Dragonslayer*, 139 Wn. App. at 449. The application of the new statutes would clearly affect the Foundation’s right to the records, and therefore the new statutes cannot apply retroactively to prohibit the Department from disclosing the records to the Foundation.

Because the statutes have no express provision for retroactivity and are not curative or remedial in nature, the statutes cannot apply retroactively. As such, SEIU 925 has not overcome the presumption that the statutes apply prospectively only.¹¹

D. Law in Effect at Time of Request

SEIU 925 also argues that the trial court erred by failing to apply the law in effect at the time the trial court rendered its decision. SEIU 925 asserts that because the new statutes became effective prior to the day the court rendered its decision, the court was bound to enter the injunction prohibiting the Department from releasing the records. The Department argues that the statutes were not in effect when the Foundation made its request for records, and therefore, the Department is obligated to disclose the information. We agree with the Department.

Generally, a court is to apply the law in effect at the time it renders its decision. *In re Dependency of A.M.M.*, 182 Wn. App. 776, 789, 332 P.3d 500 (2014). However, when a statute affecting the disclosure of records is amended after a party has made a records request and where the statute is not retroactive in nature, the controlling law is the law in existence at the time the request was made. *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363, 375 n. 2, 374 P.3d 63 (2016), *review denied*, 189 Wn.2d 1019 (2017).

Here, the Foundation requested the records prior to enactment of the statutes. As discussed above, the statutes also do not apply retroactively. Accordingly, because the statutes are not retroactive, and because the controlling law in this case is the law in effect at the time that

¹¹ Because we affirm the trial court's determination that the statutes do not operate retroactively here, we do not address the Foundation's argument that the retroactive application of the statutes creates ex post facto problems with the criminal provisions created in I-1501.

the Foundation made its request for the records, the trial court did not err by denying the injunction on this basis.

III. PUBLIC ASSISTANCE STATUTE

SEIU 925 argues that the trial court erred by denying injunctive relief because former RCW 74.04.060(4) prohibited the Department from releasing records of any lists or names if the information is sought for political purpose. We disagree.

1. *Legal Principles*

The PRA establishes an affirmative duty to disclose public records unless the records fall within specific statutory exemptions or prohibitions. *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn.2d 243, 258, 884 P.2d 592 (1994). We first determine whether the requested records are within one of the PRA's exemptions or within some other statute which exempts or prohibits disclosure of specific information or records. *Progressive Animal Welfare Soc.*, 125 Wn.2d at 258. We interpret exceptions to the PRA narrowly. *See* RCW 42.56.030.

Statutory interpretation is a matter of law reviewed de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *Jametsky*, 179 Wn.2d at 762. To determine legislative intent, we first look to the plain language of the statute. *Jametsky*, 179 Wn.2d at 762. We consider the language of the provision in question, the context of the statute in which the provision is found, and related statutes. *In re Adoption of T.A.W.*, 188 Wn. App. 799, 809, 354 P.3d 46 (2015), *aff'd* 186 Wn.2d 828 (2016). When the statute at issue or a related statute includes an applicable statement of purpose, we interpret statutory language in a manner consistent with that stated purpose. *In re Adoption of T.A.W.*, 188 Wn. App. at 809.

To discern the plain meaning of undefined statutory language, we give words their usual and ordinary meaning and we interpret them in the context of the statute. *AllianceOne Receivables Mgmt., Inc. v. Lewis*, 180 Wn.2d 389, 395-96, 325 P.3d 904 (2014). If the plain meaning of a statute is unambiguous, we apply the plain meaning as an expression of legislative intent without considering extrinsic sources. *Jametsky*, 179 Wn.2d at 762. We do not rewrite unambiguous statutory language under the guise of interpretation. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006).

2. *Former RCW 74.04.060(4) Does Not Prevent Disclosure of Provider Information*

Former RCW 74.04.060 provides:

(1)(a) For the protection of *applicants and recipients*, the department, the authority, and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title . . . except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

. . . .

(c) The department shall review methods to improve the protection and confidentiality of information *for recipients of welfare assistance* who have disclosed to the department that they are past or current victims of domestic violence or stalking.

. . . .

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all *recipients* in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

. . . .

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce

in the use of *any lists or names* for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor.

(Emphasis added.)

SEIU 925 argues that former RCW 74.04.060(4) falls within the “other statute” exemption to the PRA and prohibits disclosure of any lists of names if requested for a political purpose, not just the list of names of applicants and recipients of public assistance. SEIU 925 asserts that former RCW 74.040.060(4) is not a subset of other sections of former RCW 74.04.060 but rather a separate provision that addresses a different category of records and that section (4) is not limited only to protecting the lists and names of applicants and recipients of public assistance from disclosure. SEIU 925 also argues that the legislature’s different word choice in former RCW 74.04.060(4) and other subsections of RCW 74.04.060 requires us to interpret the statute to mean that the Department must not disclose lists or names of *any* persons when the lists are sought for political purposes. We disagree.

Former RCW 74.04.060(1)(a) prohibits the Department from disclosing any records of “applicants and recipients” for the protection of those applicants and recipients. Further, under Former RCW 74.04.060(1)(c), the Department is tasked with reviewing methods to “improve the protection and confidentiality of information for “recipients” who have been victims of abuse. Former RCW 74.04.060(2) requires the Department to maintain a report of the names of recipients receiving public assistance.

A plain language interpretation of a statute looks not only to the provision in question, but to other related provisions that illuminate legislative intent. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Former RCW 74.00.060(4), when taken in

context with the related statutes, does not prohibit the disclosure of all lists or names of any individuals when such information is requested for commercial or political purposes. Reading the subsections of former RCW 74.04.060 narrowly, as we must, we see nothing in former RCW 74.04.060 showing that the legislature intended subsection 4 to pertain to any lists or names of any individual. Rather, when read in context with the other portions of the statute, former RCW 74.04.060(4) applies to the lists and names only of recipients or applicants of public assistance when the lists or names are sought for a political purpose.

Former RCW 74.04.060(4) works to establish that information of applicants and recipients is not disclosable for commercial or political uses. Former RCW 74.04.060(4) does not render other sections of chapter 74.04 RCW superfluous but rather adds more protection to the applicant and recipient information. Additionally, adopting SEIU 925's interpretation of former RCW 74.04.060(4) that it exempts provider information from disclosure, would essentially render unnecessary the new exemptions carved out through I-1501.

Because the plain language of former RCW 74.04.060(4) does not prevent disclosure of lists or names of any individuals when they are sought for political purposes, but rather only prevents the disclosure of any lists and names of applicants and recipients of public assistance, SEIU 925's argument fails. Accordingly, we hold that former RCW 74.04.060(4) is not an "other statute" precluding the disclosure of provider information under the PRA.¹²

¹² Because we hold that former RCW 74.04.060(4) does not prohibit disclosure of names of providers, we need not address whether the Foundation sought lists or names of providers for political purposes.

IV. INJUNCTION PROPERLY DENIED

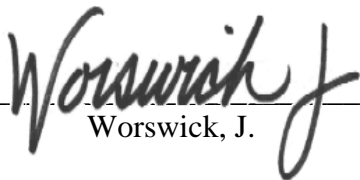
As explained above, in order to obtain a PRA injunction, a party must prove that an exemption applies. *Ameriquest*, 177 Wn.2d at 486. Only if an exemption applies does a court address whether an injunction is appropriate under the statutory requirements: whether disclosure would not be in the public interest and would substantially and irreparably damage a person or vital government functions. *Lyft*, 190 Wn.2d at 791.

Because here, RCW 43.17.410(1) and RCW 42.56.640 do not apply retroactively and former RCW 74.04.060(4) is not an “other statute” exemption under the PRA, no exemption applies to prohibit the Department from releasing the records. Because no exemption applies, we do not reach the question of whether an injunction is appropriate in this case.

CONCLUSION

Because RCW 43.17.410(1) and RCW 42.56.640 do not apply retroactively and because former RCW 74.04.060(4) is not an exemption under the PRA, the trial court did not err in denying SEIU’s request for injunction. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



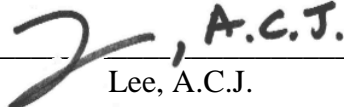
Worswick, J.



Sutton, J.

No. 49726-3-II

Lee, A.C.J. (conurrence) — I concur with the majority’s holding that the exemptions created by RCW 42.56.070(9) and RCW 43.17.410, enacting voter approved Initiative 1501 (I-1501), do not apply retroactively to a public records request made *prior* to the voters approving I-1501. However, I write separately to point out that whether RCW 42.56.070(9) and RCW 43.17.410 apply to a public records request made after Washington voters approved I-1501, but before the enactment of RCW 42.56.070(9) and RCW 43.17.410, is beyond the scope of the issue in this appeal.



Lee, A.C.J.

SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT

November 28, 2018 - 4:05 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49726-3
Appellate Court Case Title: Service Employees International Union Local 925, App. v. Dept. of Early Learning, et al, Respondents
Superior Court Case Number: 16-2-04580-1

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