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NO. 97293-1

SUPREME COURT OF THE STATE OF WASHINGTON

F. ROBERT STRAHM,
Petitioner,

v.

SNOHOMISH COUNTY,
Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Snohomish County made public records available to F. Robert Strahm in accordance with the Public Records Act by providing him a link to records on the County's website and by directing him to the County Auditor to obtain recorded documents. The Court of Appeals' unpublished decision in this case correctly determined that the County's actions complied with the PRA. The Court of Appeals' decision is consistent with Washington law. Therefore, review by this Court is not warranted under RAP 13.4(b), and Mr. Strahm's Petition should be denied.

II. RESTATEMENT OF THE ISSUES

For the reasons outlined below, this matter does not warrant the Court's discretionary review. However, if the Court were to grant review, the issues presented would be:

1. Does an agency comply with the PRA when it provides a link to commonly requested records in a generally commercially available format?
2. Does an agency comply with the PRA when it refers a requestor to the County Auditor to obtain recorded documents?

III. RESTATEMENT OF THE CASE

On April 26, 2016, Mr. Strahm submitted a public records request. The County assigned it a tracking number, K008293.¹ CP 297, 301. This request sought the following:

- I. Electronic records of the council approved budget, including without limitation, actual expenditures, for the years 2013, 2014, 2015.
- II. Electronic records of the county property inventory pursuant to SCC 4.46.120 and RCW 36.32.210, for the years 2013, 2014, 2015.

...

Please provide the records in DBF format on CD for pick-up.

Id.

The County responded to Mr. Strahm's request on May 2, 2016, four business days after receiving his request. CP 297, 303. The County's response included a referral to the Snohomish County website where records responsive to item I of his request could be located. CP 297-98, 303. This letter also informed Mr. Strahm that he would receive further communication from the County regarding his request on or before June 3, 2016. *Id.* This correspondence also informed Mr. Strahm that if records

¹ Mr. Strahm originally challenged the County's response to two other public records requests. He does not seek this Court's review of the County's response or the Court of Appeals' decision regarding those requests.

existed electronically, they would be provided to him in “native format” if they did not require redaction. *Id.*

On May 3, 2016, Mr. Strahm responded to this letter asking that if records were to be produced in “native format” that they be translated into “DBF format.” CP 298, 306.

After searching in locations reasonably likely to contain responsive records, the County determined that all records responsive to item 1 of Mr. Strahm’s request were located on the County’s website. CP 298.

The Snohomish County Council formally adopts the County’s annual budget. *See* <https://snohomishcountywa.gov/367/Budget-Division>, CP 313. Council-approved budgets are posted on the County’s website, once adopted, and are maintained in .pdf format. *Id.* Although Mr. Strahm requested these budgets be produced in “.dbf” format, that is not the format in which the County maintains the adopted budgets in the ordinary course of business. *Id.*

After searching in locations reasonably likely to contain responsive records, the County determined that all records responsive to item 2 of Mr. Strahm’s request were maintained by the County as recorded documents in the County Auditor’s Office, pursuant to the requirements of RCW 36.32.210. CP 298. RCW 36.32.210 requires counties to “file with the auditor of the county a full and complete inventory of all capitalized assets.”

In Snohomish County, unofficial copies of recorded documents are available for viewing online. *Id.* If copies are requested, the Auditor charges a research fee and copy fees pursuant to RCW 36.18.010. *Id.* Records responsive to request K008293 were not provided in native format in light of their availability online and their status as recorded documents. *Id.*

On June 3, 2016, 38 days after Mr. Strahm's request K008293 was received, the County responded and provided him with the information necessary to complete his request. CP 298, 309. In response to item 1, the County referred him to the Council-approved budget and the monthly and quarterly budget versus actuals available on the County's website. *Id.* The County then provided a link to that website. *Id.* In response to item 2, the County informed him that all annual county property inventory acquisitions and dispositions are recorded with the County Auditor's Office, pursuant to RCW 36.32.210. CP 298-99, 309. The County then provided Mr. Strahm with the recording numbers of the inventory documents he was seeking and informed him he would need to request those records directly from the Auditor and pay the applicable fees under RCW 36.18.010. *Id.* Mr. Strahm did not object to the production of records responsive to his request in this manner. CP 299. Mr. Strahm's request was then closed. *Id.*

On May 15, 2017, Mr. Strahm filed a complaint for violations of the PRA. CP 3. The County prevailed on summary judgment. CP 253-54. Mr.

Strahm appealed. In its opinion, the Court of Appeals concluded that the County's responses complied with the PRA and the Attorney General's Model Rules in that the County provided an internet link to requested records and referred Mr. Strahm to the County Auditor. The Court of Appeals opinion is unpublished.

IV. REASONS FOR DENYING THE PETITION

A. The Court of Appeals Correctly Ruled the County Complied with the PRA by Providing an Internet Link to the Requested Records.

The Court of Appeals properly affirmed the trial court's decision that providing a link to records available online in a generally commercially available format complied with the PRA. The County reviewed the request and conducted its search for the specific records requested by Mr. Strahm. The County concluded that, because Mr. Strahm requested the "Council approved" budget in item 1 of his request, the record was available online in electronic format. The council-approved budget is a .pdf document that is made available online as a "commonly requested record."

The PRA permits an agency to provide a link to the agency's website where the specifically requested records are available. RCW 42.56.520. Both the legislature and the Attorney General's Model Rules encourage this

practice.² The Court of Appeals correctly concluded that the County was not obligated to translate the records into an alternative electronic format. See WAC 44-14-05001 (“An agency should provide reasonably locatable electronic public records in either their original generally commercially available format (such as an Adobe Acrobat PDF® file) or, if the records are not in a generally commercially available format, the agency should provide them in a reasonably translatable electronic format if possible.”). Mr. Strahm’s arguments to the contrary are misplaced. The Court of Appeals’ decision was in accordance with the law and correctly ruled that the County complied with the PRA and the Model Rules. Such a decision does not warrant this Court’s review.

B. The Court of Appeals Properly Ruled that the County Complied with the PRA by Directing Mr. Strahm to the County Auditor.

Item 2 of Mr. Strahm’s request sought “[e]lectronic records of the County property inventory pursuant to SCC 4.46.120 and RCW 36.32.210, for the years 2013, 2014, 2015.” RCW 36.32.210 requires counties to “file

² See legislative finding Laws of 2010, ch. 69 § 1: (“The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online.”), and WAC 44-14-03004 (“An agency could fulfill its obligation to provide “access” to a public record by providing a requestor with a link to an agency web site containing an electronic copy of that record. RCW 42.56.520. Agencies are encouraged to do so, and requestors are encouraged to access records posted online in order to preserve taxpayer resources.”)

with the auditor of the county a full and complete inventory of all capitalized assets.” The County complies with this statute and filed the inventory with the County Auditor.

Mr. Strahm’s request invoked RCW 36.32.210 and specifically requested records that the County is required to file with the Auditor. To respond to this portion of Mr. Strahm’s request, the County referred him to the Auditor’s Office to acquire those recorded documents. The PRA does not supersede other statutory provisions governing fees for copying public records. RCW 42.56.130.

The Court of Appeals also correctly determined that the County was not obligated to provide him these records in a different format, which is consistent with other published decisions. *See, e.g., Benton County v. Zink*, 191 Wn. App. 269, 281, 361 P.3d 801 (2015). The Court of Appeals properly ruled that the County complied with the PRA by referring Mr. Strahm to the Auditor’s Office to obtain recorded documents in accordance with the fee schedule in RCW 36.18.010. This case does not warrant this Court’s review.

C. Review is not Warranted under RAP 13.4(b)(4).

Finally, this case does not involve an issue of substantial public interest. The Court of Appeals decision in this case is unpublished and cannot be cited as binding precedent. GR 14.1(a). This Court recently


determined a case involved a matter of substantial public interest worthy of review when the published Court of Appeals decision “wholly reinvented the traditional duties of a Court of Appeals division,” and “risk[ed] perpetuating incorrect decisions of law, insulating them from this court’s review on the basis of divisional conflicts as contemplated by RAP 13.4(b)(2).” *In re Personal Restraint of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091 (2017). This case does not implicate these important considerations. This Court should decline to accept review.

V. CONCLUSION

For all of the reasons above, this Court should deny Mr. Strahm’s petition for review.

Respectfully submitted on July ^{15th}, 2019.

ADAM CORNELL
Snohomish County Prosecuting Attorney

By:  #36641
FOR ALEX J. WITENBERG, WSBA #50356
Deputy Prosecuting Attorney
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DECLARATION OF SERVICE

I, Nicole Magill, hereby certify that on the 1st day of July, 2019, I served a true and correct copy of the foregoing Answer to Petition for Review upon the person/persons listed herein by the following means:

F. Robert Strahm 1712 Pacific Ave., Suite 105 Everett, WA 98201	<input checked="" type="checkbox"/> Electronic Filing/Eservice <input checked="" type="checkbox"/> U.S. Mail
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 1st day of July, 2019.



Nicole Magill, Legal Assistant

SNOHOMISH COUNTY PROSECUTING ATTORNEY - MUNI

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