

FILED
Court of Appeals
Division II
State of Washington
10/21/2020 10:35 AM

FILED
SUPREME COURT
STATE OF WASHINGTON
10/22/2020
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 99136-7

(Court of Appeals No. 52739-1-II)

SUPREME COURT OF THE STATE OF WASHINGTON

Brian Cortland,

Respondent,

v.

Lewis County,

Appellant.

RESPONDENT'S PETITION FOR REVIEW

Brian Cortland, pro se
320 SE Sheridan Road
Sheridan, OR 97378
310-721-2470
Fightpubliccorruption@yahoo.co
m

TABLE OF CONTENTS

I. IDENTITY OF THE PETITIONER.....	1
II. COURT OF APPEALS DECISION.....	1
III. ISSUES PRESENTED FOR REVIEW	3
IV. STATEMENT OF THE CASE	3
V. ARGUMENT.....	5
A. This Court Should Grant Review Under RAP 13.1(b)(1), (2), (and (4) Because the Division II’s Published Decision Contradicts Longstanding Authority of Both the Supreme Court and Appellate Courts Regarding the Certainty and Finality of CR 2A Agreements	6
VI. CONCLUSION.....	13

TABLE OF AUTHORITIES

CASES

<i>Condon v. Condon</i> , 177 Wn.2d 150 (2013).....	3, 8
<i>Double H v. Washington Dept. of Ecology</i> , 166 Wn.App. 707, 713 (2012)	10
<i>Haller v. Wallis</i> , 89 Wn.2d 539 (1978).....	8
<i>Rush v. Blackburn</i> , 361 P. 3d 217, 222 (Wash. Ct. App. 2015)	11
<i>Snyder v. Tompkins</i> , 20 Wn. App. 167 (1978).....	8
<i>Wash. Asphalt Co. v. Harold Kaeser Co.</i> , 51 Wn.2d 89 (1957).....	1, 3, 8
<i>West v. Thurston County</i> , 144 Wn.App. 573 (2008).....	10
<i>Winton Motor Carriage Co. v. Blomberg</i> , 84 Wash. 451 (1915)	2, 8
<i>Yousoufian v. Office of Ron Sims</i> , 152 Wn.2d 421, 433 (Wash. 2004)	10

STATUTES

Chapter 42.56 RCW	1
RCW 2.44.010	7-8
RCW 42.56.550	9-12

COURT RULES

CR 2A	<i>passim</i>
RAP 13.4.....	3, 5, 6, 13

I. IDENTITY OF THE PETITIONER

Petitioner Brian Cortland asks this Court to accept review of the Division II Court of Appeals published decision, designated part 2 of the Appendix herein.

II. COURT OF APPEALS DECISION

Mr. Cortland asks this Court to review the Division II Court of Appeals published opinion in *Cortland v. Lewis County*, ___ Wn. App. ___ (2020), ruling that Lewis County did not violate the Public Records Act, Chapter 42.56 RCW, because it was still producing records in installments to Mr. Cortland when he failed to make a payment and Lewis County subsequently closed out his request. In making this ruling, the Court of Appeals failed to analyze a CR 2A settlement agreement entered into in the trial court, where Lewis County stipulated to wrongfully withholding 18 separate subject matter records from Mr. Cortland for 231 days under the Public Records Act.

Mr. Cortland submits this ruling contradicts previous rulings of the Washington Supreme Court and appellate courts, holding that Washington courts do not review matters that are stipulated to in CR 2A because settlement agreements are final and ends the controversy between the parties. *Wash. Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91 (1957) (holding “A judgment by consent or stipulation of the parties is construed

as a contract between them embodying the terms of the judgment. It excuses all prior errors and operates to end all controversy between the parties, within the scope of the judgment.”); *Winton Motor Carriage Co. v. Blomberg*, 84 Wash. 451, 457 (1915).

The complaint was filed in the Thurston County Superior Court by Mr. Cortland which claimed that Lewis County violated the Public Records Act by denying his statutory right to copy and inspect records. The trial court ordered both parties to brief the merits of whether Lewis County violated the Public Records Act by wrongfully withholding records from Mr. Cortland. On August 03, 2018, the trial court ruled that Lewis County violated the Public Records Act by denying Mr. Cortland the right to copy and inspect records because Lewis County failed to perform an adequate search as required under the Public Records Act. On October 30, 2018, both Plaintiff Brian Cortland and Defendant Lewis County entered into a CR 2A where Lewis county admitted to wrongfully withholding 18 separate subject matter records from Mr. Cortland for 231 days. On November 16, 2018, in open court, the trial court judge signed and entered a Final Order and Judgment incorporating the material terms from the CR 2A. The trial court awarded Mr. Cortland the stipulated statutory penalty fee from the CR 2A and all costs and reasonable attorneys fees.

This Court should accept review because the published decision from the court of appeals conflicts with the legal standard for reviewing issues that are stipulated to in a CR 2A found in *Wash. Asphalt* and *Winston Motor* because settlement agreements “excuse[] all prior errors and operates to end all controversy between the parties, within the scope of the judgment.” *Wash. Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91 (1957). This contrary ruling from court of appeals merits review under RAP 13.4(b)(1) and (2), and presents issues of substantial and recurring public interest meriting review under RAP 13.4(b)(4). This Court should reaffirm the principle “[t]he purpose of CR 2A is to give certainty and finality to settlements.” *Condon v. Condon*, 177 Wn.2d 150, 157 (2013).

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals improperly substitute its own judgment when it set aside the CR 2A settlement agreement in which the parties stipulated that Lewis County wrongfully withheld 18 separate subject matter records from Mr. Cortland under the Public Records Act?

IV. STATEMENT OF THE CASE

On August 03, 2018, the trial court entered a written order on the merits of the case finding Lewis County in violation of the Public Records Act for wrongful withholding of records. CP 263-69. The order stated a

penalty hearing would be scheduled after Lewis County certified it performed an adequate search pursuant to the adequate search requirements of the Public Records Act. CP 268-69.

On August 13, 2018, Lewis County timely moved the court for reconsideration of the written order on the merits finding Lewis County in violation of the Public Records Act. CP 270-85.

On September 12, 2018, the trial court denied Lewis County's motion for reconsideration and upheld the written order on the merits finding Lewis County violated the Public Records Act. CP 300.

On October 30, 2018, both Plaintiff Brian Cortland and Defendant Lewis County entered into a CR 2A settlement agreement. CP 317-18. The title of the CR 2A agreement is for a "Stipulated Statutory Penalty Pursuant to RCW 42.56.550(4)." CP 317. The CR 2A expressly states the "merits order in this matter... presently being binding, both parties stipulate to the following statutory penalty, pursuant to RCW 42.56.550(4)." *Id.* The terms of the CR 2A identifies that both parties stipulated that Lewis County wrongfully withheld eighteen (18) documents from Mr. Cortland for a period of two hundred and thirty-one (231) days. *Id.* Additionally, both parties agreed that Lewis County would pay Mr. Cortland a "per record per day penalty" of five (\$5) dollars amounting to a total of twenty thousand and seven hundred and ninety

(\$20,790) dollars. CP 318.

On November 16, 2018, in open court, the trial court judge signed and entered a Final Order and Judgment. CP 322-23. The Final Order and Judgment was signed by both Lewis County's attorney of record and Mr. Cortland's attorney of record. CP 323; 3 VRP 6. The bottom left-hand corner of the Final Order and Judgment identifies it was presented by Lewis County's attorney of record and agreed to by Mr. Cortland's attorney of record. *Id.* The Final Order and Judgment incorporates the terms from the CR 2A, including that eighteen (18) records were wrongfully withheld by Lewis County for a period of two hundred and thirty-one (231) days. CP 323. Before signing and entering the Final Order and Judgment the trial court asked the attorneys for both parties in open court "there any reason I shouldn't enter this final order and judgment that you both have signed?" 3 VRP 6. The record is absent of either Lewis County's attorney or Mr. Cortland's attorney objecting to the Final Order and Judgment. 3 VRP 6-7. The Judgment was entered for twenty thousand and seven hundred and ninety (\$20,790) dollars, the same amount as stipulated in the CR 2A. CP 322; *c.f.* CP 318.

V. ARGUMENT

This Court should grant review under RAP 13.4(b)(1), (2), and (4) to correct the court of appeals substitution of its own judgment when it set

aside the CR 2A settlement agreement in which the parties stipulated that Lewis County wrongfully withheld 18 separate subject matter records from Mr. Cortland under the Public Records Act.

The published decision from the Court of Appeals mentioned in passing the CR 2A but failed to analyze it. Instead, it substituted its own judgment when bypassed and turned a blind eye to the CR 2A by holding that Lewis County did not violate the Public Records Act because it did not wrongfully withhold documents from Mr. Cortland.

A. This Court Should Grant Review Under RAP 13.1(b)(1), (2), (and (4) Because the Division II's Published Decision Contradicts Longstanding Authority of Both the Supreme Court and Appellate Courts Regarding the Certainty and Finality of CR 2A Agreements

In its published Opinion in which it ruled that Lewis County did not violate the Public Records Act by wrongfully withholding documents from Mr. Cortland, the Court of Appeals does not analyze the material terms within the four corners of the CR 2A settlement agreement. In doing so, the Court of Appeals substituted its own judgment in place of the CR 2A where the parties stipulated that Lewis County wrongfully withheld 18 separate subject matter records from Mr. Cortland under the Public Records Act. The failure of the Court of Appeals to analyze the CR 2A is to contrary to well-established law because the Court ruled on an issue contained within the CR 2A, without analyzing the material terms

the parties stipulated to within the CR 2A settlement. Consequently, the Court reached an absurd result by ruling contrary to the agreed terms of the CR 2A.

There are two primary legal authorities in Washington State that bind parties to their settlement agreements, when made in legal proceedings – court rule CR 2A and RCW 2.44.010.

The plain language of the court rule CR 2A provides:

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 2A.

Touching upon the substance of the CR 2A, state law gives an attorney the authority:

To bind his or her client in any of the proceedings in an action or special proceeding by his or her agreement duly made, or entered upon the minutes of the court; but **the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney.**

RCW 2.44.010(1) (emphasis added).

As this Court has said, “[t]he purpose of CR 2A is to give certainty and finality to settlements.” *Condon v. Condon*, 177 Wn.2d 150, 157 (2013); *Haller v. Wallis*, 89 Wn.2d 539, 544 (1978) (“[t]he law favors settlements, and consequently it must also favor their finality”). The CR 2A becomes final when it is entered into open court. CR 2A; RCW 2.44.010.¹ The only reasons why a court will review a CR 2A is if the settlement agreement was obtained by “fraud or overreaching.” *Snyder v. Tompkins*, 20 Wn. App. 167, 173 (1978). The public policy behind the courts general refusal to review issues contained in a CR 2A agreement is because it “excuses all prior errors and operates to end all controversy between the parties, within the scope of the judgment.” *Wash. Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91 (1957); *Winton Motor Carriage Co. v. Blomberg*, 84 Wash. 451, 457 (1915).

In this present case, it is undisputed that both parties through their attorneys of record entered into a CR 2A settlement agreement in open court. The material terms of the CR 2A are: 1. Lewis County wrongfully withheld 18 separate subject matter records from Mr. Cortland for 231 days; 2. Lewis County will pay \$20,790 for the wrongful withholding to

¹ The plain language of both CR 2A and RCW 2.44.010 expressly state the agreements must be entered into in “open court.”

Mr. Cortland; 3. The money is paid to Mr. Cortland for a violation of the Public Records Act, pursuant to RCW 42.56.550(4). CP 316-17.

The trial court then relied upon that CR 2A agreement when deciding what terms to put in the final order and judgment, as the Final Order and Judgment is almost identical to the CR 2A. The Final Order and Judgment expressly states that: 1. Lewis County wrongfully withheld 18 separate subject matter records from Mr. Cortland for 231 days; 2. Judgment is entered for Mr. Cortland in the amount of \$20,790 because of the wrongful withholding; 3. The statutory penalty was imposed against Lewis County and to be paid to Mr. Cortland for a violation of the Public Records Act. CP 322-323. Before signing and entering the Final Order and Judgment the trial court asked the attorneys for both parties in open court “there any reason I shouldn't enter this final order and judgment that you both have signed?” 3 VRP 6. Neither party objected to the trial court judge entering the final order and judgment. 3 VRP 6-7.

Looking within the four corners of the CR 2A it is clear the parties intended to stipulate to that Lewis County violated the Public Records Act because the stipulation was made pursuant to RCW 42.56.550(4) and included the number of documents wrongfully withheld, the number of days the documents were withheld, and the statutory penalty fee for the wrongful withholding. There is no dispute that a statutory penalty is

mandatory for a violation of the Public Records Act. RCW 42.56.550(4); *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 433 (Wash. 2004) (agreeing with the *Sheehan* court that penalties are mandatory for a violation of the Public Records Act); *West v. Thurston County*, 144 Wn.App. 573, 581 (2008) (explaining “[p]enalties for late disclosure are mandatory” under RCW 42.56.550(4)”). The plain language of the RCW 42.56.550(4) is clear that a wrongful withholding of documents is a violation of the Public Records Act. *See e.g. Double H v. Washington Dept. of Ecology*, 166 Wn.App. 707, 713 (2012) (stating “a penalty is mandatory when a requesting party is improperly denied access to a public record under the PRA”). Lewis County and its attorney of record knew it was admitting a violation of the Public Records Act when it stipulated in the CR 2A to: 1. Wrongfully withholding 18 separate records; 2. For 231 days; and 3. To pay a statutory penalty of \$20,790 to Mr. Cortland.

It appears the Court of Appeals erroneously decided the 18 wrongfully withheld records identified in the CR 2A are somehow judicial records. Without explanation, the Court of Appeals stated in a footnote, in the published decision, that: “[t]he 18 records that Lewis County stipulated to withholding were judicial records Lewis County found in the re-search that it had not produced in the original three installments.” *Cortland v. Lewis County*, ___ Wn. App. ___, ___ n. 6 (2020). But this is

an erroneous conclusion without any substantiation from the terms within the four corners of the CR 2A. The plain language of the CR 2A states the agreement stipulated to a statutory penalty “pursuant to RCW 42.56.550(4).” CP 316. RCW 42.56.550(4) is the penalty provision of the Public Records Act, in which penalties are mandatory for a violation of the statute. The four corners of the CR 2A agreement is absent of any indicia the records are judicial records. The term ‘judicial records’ does not appear within in the CR 2A. There is nothing within the four corners of the CR 2A to reasonably construe the records are judicial records. The plain language of the CR 2A states that “eighteen (18) separate subject matter records were wrongfully withheld” with no indication to where the records were retrieved from. CP 316. Furthermore, the published decision is absent of any factual finding that the 18 wrongfully withheld records were somehow judicial. Without any substantial evidence to the contrary, the trial court’s finding the records were subject to the Public Records Act is a verity upon appeal. *Rush v. Blackburn*, 361 P. 3d 217, 222 (Wash. Ct. App. 2015) (stating “[u]nchallenged findings of fact are verities on appeal” and “[u]nchallenged conclusions of law become the law of the case”). Lewis County made the strategic decision not to challenge the CR 2A or any of the substance of the CR 2A on appeal.

Consequently, as a matter of law, since the CR 2A was entered into open court, it ended all controversy as to whether Lewis County violated the Public Records Act by wrongfully withholding records from Mr. Cortland, since it was made pursuant to RCW 42.56.550(4). By Lewis County's own admission in the CR 2A settlement agreement, it unequivocally violated the law by wrongfully withholding 18 separate subject matter records.

The published decision from the Court of Appeals is contrary to the material terms within the four corners of the CR 2A. This is because the Court of Appeals substituted its own judgment in holding that Lewis County did not wrongfully withhold documents from Mr. Cortland under the Public Records Act, when the CR 2A unquestionably states that Lewis County wrongfully withheld documents under the Public Records Act from Mr. Cortland.

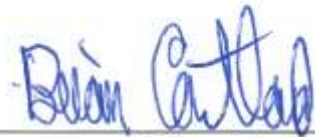
If this Court does not accept review of this case and fail to reverse the published opinion from the Court of Appeals, CR 2A agreements will no-longer be certain and final, which will undermine more than 100 years of published precedent in Washington State. This arbitrary and capricious published opinion from the Court of Appeals will clog up the courts and waste the resources of litigants and the judiciary because the court rule

will be permissive instead of mandatory, increasing litigation as to whether there is a settlement or not.

VI. CONCLUSION

For the reasons set forth above, Petitioner Brian Cortland respectfully request that this Court grant review, pursuant to RAP13.4(b)(1), (2) and (4), to review the Court of Appeals holding that Lewis County did not violate the Public Records Act by wrongfully withholding documents from Mr. Cortland.

Respectfully submitted this 20 day of October 2020.



Brian Cortland

Certificate of Service

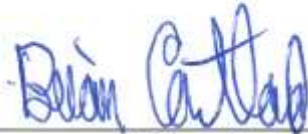
I declare under penalty of perjury under the laws of the State of Washington that on the date specified below, I caused to be served a copy of the following documents via email through the Court of Appeals electronic portal:

- Respondent's Petition for Review

To the following:

Mr. Eric Eisenberg
Lewis County Prosecuting Attorney
345 W. Main Street
Chehalis WA 98532
Eric.Eisenberg@lewiscountywa.gov

Dated this 20 day of October 2020.



Brian Cortland

Appendix

1.	Order Granting Motion to Publish Opinion September 29, 2020, from the Court of Appeals of the State of Washington, Division II.
2.	[Formerly Unpublished] Opinion, July 21, 2020, from the Court of Appeals of the State of Washington, Division II
3.	Final Order and Judgement, November 16, 2018, from the Thurston County Superior Court of the State of Washington
4.	CR 2A Settlement Agreement, November 16, 2018, from the Thurston County Superior Court of the State of Washington
5.	Volume 3 of the Verbatim Report of Proceedings, November 16, 2018, from the Thurston County Superior Court of the State of Washington

Appendix 1

**Order Granting Motion to Publish Opinion September 29, 2020, from the
Court of Appeals of the State of Washington, Division II.**

September 29, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BRIAN CORTLAND,

Respondent,

v.

LEWIS COUNTY, a municipal corporation,

Appellant.

No. 52739-1-II

**ORDER GRANTING
MOTION TO PUBLISH OPINION**

The Appellant filed a motion to publish the opinion filed in this matter on July 21, 2020.

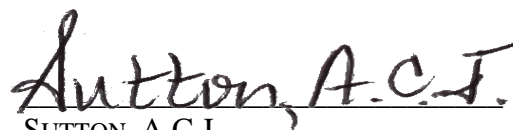
After consideration, it is hereby

ORDERED that the final paragraph, which reads as follows, shall be deleted: “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 pursuant to RCW 2.06.040, it is so ordered.” It is further

ORDERED that this opinion is now published.

PANEL: Jj. SUTTON, MELNICK, CRUSER

FOR THE COURT:


SUTTON, A.C.J.

July 21, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BRIAN CORTLAND,

Respondent,

v.

LEWIS COUNTY, a Municipal Corporation,

Appellant.

No. 52739-1-II

UNPUBLISHED OPINION

SUTTON A.C.J. — Lewis County appeals the superior court’s order finding Brian Cortland to be the prevailing party in a Public Records Act (PRA)¹ lawsuit. Preliminarily, Cortland argues that Lewis County does not have standing because it is not an aggrieved party under RAP 3.1 because it stipulated to the PRA violation when it signed a CR 2A stipulation, waived any issue, and invited any error. Lewis County argues that it is aggrieved by the superior court’s ruling and has standing, and that it agreed to a CR 2A stipulation on PRA penalties only, and thus, it did not waive its right to appeal or invite error. Cortland argues that Lewis County violated the PRA by withholding 18 records from production, claiming an invalid exemption under GR 31.1, and failing to conduct an adequate search. Cortland also argues that he is entitled to an award of appellate attorney fees and costs under RCW 42.56.550(4).

¹Ch. 42.56 RCW.

We hold that Lewis County did not deny Cortland access to a public record, and thus, Cortland has no PRA cause of action. The PRA does not require an agency to prove to the requestor the adequacy of its search while the search is ongoing, and Lewis County proved the search was adequate up until the point where Cortland abandoned his PRA request. We also hold that Cortland is not entitled to an award of appellate attorney fees and costs under the PRA as he is not the prevailing party. We reverse the merits order and judgment in favor of Cortland and remand with an order for the superior court to enter a merits order and judgment in favor of Lewis County, and we deny Cortland's request for an award of appellate attorney fees and costs.

FACTS

I. PRA REQUEST AND LEWIS COUNTY'S RESPONSES AND INSTALLMENTS

Cortland's current November 2016 PRA request to Lewis County sought "[a]ny and all records from Chief Civil Deputy Prosecuting Attorney Glenn Carter that Mr. Carter created and/or maintained that concern judicial records, either under the common law, *Nast v. Michels*, or Washington State Court Rule GR 31.1." Clerk's Papers (CP) at 15. The county records center responded to Cortland on November 23, informing him that his request was going to be forwarded to the relevant department. Casey Mauermann, Lewis County Prosecuting Attorney's Office's public records officer, acknowledged the request in an email to Cortland on November 30, 2016. Mauermann asked for clarification as to the time frame for the requested records and estimated a response by January 4, 2017, but she later extended the ready date to February 3. She also advised Cortland that the records would be provided in installments.

Lewis County produced three initial installments of records under GR 31.1 because the records were judicial records. Cortland received the first installment of 101 records on February

3. He received the second installment of 100 records on March 7. He received the third installment of 106 records on June 27.

By the time of the fourth installment, two other people had made PRA requests identical to Cortland's. Lewis County concluded that during the ongoing litigation between Cortland and the county regarding his PRA request, Carter and his office had "used, created, and maintained" material that "concerned" judicial records in its own capacity as the prosecutor's office, not merely as a custodian of the records for the Superior Court. Thus, these amassed records were no longer GR 31.1 judicial records, but were county records subject to the PRA. As a result, the county decided to produce all such records under the PRA to the two new requestors, and to provide a copy to Cortland. Lewis County produced these records, over 3600 in total, to Cortland in his fourth installment under the PRA.

Mauermann emailed Cortland on August 2, 2017, to inform him that the fourth installment to his records request was available, and that she would be continuing to search for responsive records and would send him the next installment by October 2. Mauermann then emailed Cortland on October 12 to inform him that a new law² imposed fees for copying and providing PRA records, and advised him that she would be sending him a cost estimate by December 7.

II. PRA LAWSUIT

On October 13, 2017, Cortland served Lewis County with a PRA summons and complaint, but he did not file the complaint with the court until November 17. In his complaint, Cortland alleged that he received no communication from Lewis County after August 2, 2017, that the

² LAWS OF 2017, ch. 304 (effective July 23, 2017).

county had denied him access to public records, and that it failed to conduct an adequate search, and thus, it violated the PRA. Lewis County denied the allegations.

After the suit was filed, Lewis County continued to search for responsive records and communicate with Cortland. On December 10, Mauermann emailed Cortland to inform him that a fifth installment was ready for copying and inspection. She provided him an estimated cost, which he never paid. Cortland exchanged emails with Mauermann until December 12. When he did not claim the fifth installment of records, Mauermann notified Cortland that failure to pay or respond within 30 days would constitute an abandonment. Because Cortland failed to pay or respond within the 30 days, Mauermann concluded that he abandoned his request, closed the PRA file, and stopped providing responsive records.

III. PRA LAWSUIT—MERITS HEARING AND ORDER

Cortland and Lewis County disputed whether the county improperly claimed an exemption under GR 31.1 for the first three installments, whether the county conducted an adequate search and proved it did so, and whether compliance with GR 31.1 satisfies the PRA.

After a merits hearing, the superior court ruled that in regard to the first three installments, Lewis County produced the records in an incorrect form under GR 31.1 records rather than producing them under the PRA, and Lewis County had a duty to prove that its search was adequate under the PRA and failed to do so.

The court found that Lewis County continued to search for and produce records after Cortland filed the lawsuit. The court also concluded that the duty to search is not satisfied even if the requestor abandons the PRA request, and thus, it ordered the county to conduct a re-search for

responsive records. The court stated, however, that Lewis County's production was ongoing, and that it had provided a substantial number of records up until that point:

Lewis County clearly provided a large number of records. Lewis County was continuing to provide records. I don't find that there had been a stoppage of the flow of records, but the difficulty is, and I think [Cortland's attorney] has made this point, it's difficult for [Cortland] to know what Lewis County is doing. It makes it difficult for [Cortland] to know what was being searched, where it was searched, what is being provided, what isn't provided, whether the disclosure of records is exempted. Lewis County is simply provided records, but without any way for [Cortland] to know all these things that a requestor's entitled to know.

Verbatim Report of Proceedings (VRP) (June 1, 2018) at 4-5.

The court entered the following relevant finding of fact at issue: "The record is absent of an affidavit or declaration detailing the search Lewis County made for the Public Records Act request at issue in this lawsuit." CP at 266. The court entered the following relevant conclusions of law at issue and entered an order on the merits:

13. As a matter of law Lewis County improperly withheld records because it failed to meet its mandatory burden of proof identifying it performed a sincere and adequate search under the Public Records Act, causing a violation of the right to inspect and copy, RCW 42.56.550(1). "An adequate search is a prerequisite to an adequate response, so an inadequate search is a violation of the PRA because it precludes an adequate response." A failure to properly respond is a denial under the Public Records Act.

14. First, as a matter of law Plaintiff Brian Cortland is the prevailing party on the issue of the denial of the right to inspect and copy records because Lewis County did not meet its mandatory burden of proof, beyond a material doubt, that Lewis County demonstrated it made an adequate search for records pursuant to the Public Records Act. An inadequate search "constitutes an improper withholding" violating the right to inspect and copy records.

15. Second, as a matter of law Plaintiff Brian Cortland is the prevailing party on the issue of the denial of the right to inspect and copy records because Lewis County's cobbled together attempt to demonstrate the adequacy of the search made it impossible for [Cortland] to determine what records he would receive or not

receive under the Public Records Act. This is a denial of adequate response, which is a violation of the right to inspect and copy under the Public Records Act.

16. As to the prevailing party on the issue of being denied the right to copy and inspect records pursuant to RCW 42.56.550(1), Plaintiff Brian Cortland shall be awarded: all costs, reasonable attorney's fees, and a statutory penalty

....

18. After this Court has made a determination that Lewis County has fulfilled its mandatory burden of demonstrating, beyond a material doubt, that it has search[ed] for and identified the responsive records to Mr. Cortland's request at issue in this lawsuit, the parties jointly or this Court will set the date for the Penalty Hearing.

CP at 267-69 (internal quotation marks and citations omitted).

Lewis County moved for reconsideration, arguing that the court's rulings were inconsistent because at the hearing, the court orally ruled that Lewis County was producing records to Cortland at the time Cortland filed the lawsuit, and the court then ruled in its written order that Lewis County failed to prove the adequacy of its search. Lewis County argued that it did not have a duty to prove the adequacy of its search since its production of records in installments was still ongoing. The court denied the motion.

Lewis County performed the re-search as ordered by the court and produced more records to Cortland. Based on the court's ruling, Lewis County offered to sign a CR 2A stipulation to PRA penalties in order to "speed the entry of a final order."³ CP at 349. Lewis County made it clear that it did not agree with the court's ruling on the underlying merits:

Lewis County proposes to stipulate to the penalty analysis above for purposes of speeding entry of a final order in this matter. This is not an offer of settlement, for Lewis County wishes to maintain its ability to claim that the judge's

³ The 18 records that Lewis County stipulated to withholding were judicial records Lewis County found in the re-search that it had not produced in the original three installments

order on the merits was erroneous. It is instead a stipulation designed to speed you to a final judgment.

CP at 350. The parties did not agree on whether Lewis County could appeal the merits order if it entered into the CR 2A stipulation regarding PRA penalties. They filed an agreed motion for entry of the final order and judgment. In the motion, the parties state,

The parties ask the Court to enter a final order consistent with this stipulation. . . . Please note that the parties dispute whether the attached stipulation affects any right to appeal this matter.

CP at 315. The stipulation provided that it was predicated on the superior court's merits order being binding.

At the hearing, Lewis County brought to the court's attention the parties' disagreement over whether it was waiving its right to appeal, and it made it clear to the court that it was preserving its right to appeal.

I think it's important for Lewis County to make one additional thing on the record. You'll see from the written documents the parties dispute what effect, if any, this proposed agreed order would have on either party's rights to appeal, and I just thought it was worth pointing out that there is a dispute over that. There isn't any specific agreement on that.

....

[I]n candor to the court, Lewis County wishes to preserve its right to appeal potentially the underlying merits ruling and does not believe that stipulating to the penalty that follows from that merits ruling, while that ruling is binding on Lewis County because this court made it, would waive its right to appeal the underlying merits ruling. And so it wished to reflect that the parties don't have any agreement on that in the order to avoid waiver.

VRP (Nov. 16, 2018) at 5-6. Cortland argued that Lewis County would be inviting error if it appealed the order. The court understood the disagreement, and it signed the stipulation. The final

order stated that “[t]he parties disputed whether the stipulation effects any right to appeal.” CP at 323.

Lewis County appeals the order on the merits hearing, the order denying its motion for reconsideration, and the final order and judgment.

ANALYSIS⁴

“The PRA is a strongly worded mandate for broad disclosure of public records.” *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011). The PRA “stands for the proposition that[] *full access* to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.” *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). And when evaluating a claim within the framework of the PRA, a court must “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).

RCW 42.56.070(1) directs government agencies to disclose public records upon request unless a specific exemption in the PRA or another statute applies that exempts or prohibits disclosure of specific information or records. *Ameriquest Mortgage Co. v. Office of Attorney General of Wash.*, 177 Wn.2d 467, 485-86, 300 P.3d 799 (2013). Consistent with the PRA’s

⁴ Cortland argues that Lewis County’s “inconsistent act of signing the CR 2A Stipulated Statutory Penalty agreement . . . waived the argument that it did not violate[] the Public Records Act.” Br. of Resp’t at 11. He also argues that Lewis County failed to preserve error and invited error. The parties stipulated to the penalties, but Lewis County properly preserved its right to appeal the underlying merits.

purpose, 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.”

Denial of the right to inspect or copy a public record is a prerequisite to a PRA action. RCW 42.56.550(1). Denial of public records occurs “when it reasonably appears that an agency will not or will no longer provide responsive records.” *Hobbs v. State Auditor’s Office*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014). The superior court may hear a motion to show cause when a person has “been denied an opportunity to inspect or copy a public record by an agency.” RCW 42.56.550(1). “Therefore, being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA.” *Hobbs*, 183 Wn. App. at 937. When an agency produces records in installments, the agency does not deny access to the records until it finishes producing all responsive records. *Hobbs*, 183 Wn. App. at 936. “If a requestor fails to claim or review the records or an installment after the expiration of thirty days, an agency is authorized to stop assembling the remainder of the records or making copies.” WAC 44-14-04005(1); RCW 42.56.120(4).

The court may decide a PRA action on affidavits alone. RCW 42.56.550(3); *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 153-54, 240 P.3d 1149 (2010). Agency actions under the PRA are reviewed de novo. *Neigh. All.*, 172 Wn.2d at 715.

Cortland served the complaint only one day after Mauermann emailed him to inform him of the new estimated fees he would have to pay under the new law. Cortland filed the complaint with the superior court the next month, at which time the county was still amassing over 3600 responsive records to provide to Cortland. Once Lewis County informed Cortland that the fifth installment was ready and he would receive it once he paid the fee, Cortland expressed his

discontent with the fee and the handling of the requested records, and did not claim the records from the fifth installment. Lewis County notified him that if he did not pay or respond within 30 days, it would consider his request abandoned. When Cortland failed to pay or respond, the county closed its file and stopped producing responsive records.

Until this point, Lewis County did not deny Cortland's access to records because it did not reasonably appear that Lewis County would no longer provide responsive records. And it never denied Cortland's access to a public record because it continued to make available records for copying and inspection, including preparing a final fifth installment of records, until Cortland abandoned his PRA request. Because there was no denial of access, there was no final agency action under RCW 42.56.550(1), and thus, we hold that Cortland had no PRA cause of action. Therefore, the superior court erred by ruling that Cortland was the prevailing party on the merits.⁵

CONCLUSION

We reverse the superior court's merits order and judgment in favor of Cortland and remand with an order for the court to enter a merits order and judgment in favor of Lewis County, and deny Cortland's request for an award of appellate attorney fees and costs.

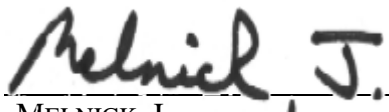
⁵ "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review . . . the party must request the fees or expenses as provided in this rule." RAP 18.1(a). RCW 42.56.550(4) allows a prevailing party in a PRA action to receive an award of attorney fees and costs. Because Cortland is not the prevailing party, we deny Cortland's request for an award of appellate attorney fees and costs.

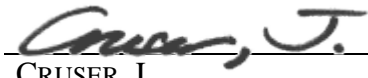
No. 52739-1-II

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.


SUTTON, A.C.J.

We concur:


MELNICK, J.


CRUSER, J.

Appendix 2

**[Formerly Unpublished] Opinion, July 21, 2020, from the Court of Appeals of
the State of Washington, Division II**

July 21, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BRIAN CORTLAND,

Respondent,

v.

LEWIS COUNTY, a Municipal Corporation,

Appellant.

No. 52739-1-II

UNPUBLISHED OPINION

SUTTON A.C.J. — Lewis County appeals the superior court’s order finding Brian Cortland to be the prevailing party in a Public Records Act (PRA)¹ lawsuit. Preliminarily, Cortland argues that Lewis County does not have standing because it is not an aggrieved party under RAP 3.1 because it stipulated to the PRA violation when it signed a CR 2A stipulation, waived any issue, and invited any error. Lewis County argues that it is aggrieved by the superior court’s ruling and has standing, and that it agreed to a CR 2A stipulation on PRA penalties only, and thus, it did not waive its right to appeal or invite error. Cortland argues that Lewis County violated the PRA by withholding 18 records from production, claiming an invalid exemption under GR 31.1, and failing to conduct an adequate search. Cortland also argues that he is entitled to an award of appellate attorney fees and costs under RCW 42.56.550(4).

¹Ch. 42.56 RCW.

We hold that Lewis County did not deny Cortland access to a public record, and thus, Cortland has no PRA cause of action. The PRA does not require an agency to prove to the requestor the adequacy of its search while the search is ongoing, and Lewis County proved the search was adequate up until the point where Cortland abandoned his PRA request. We also hold that Cortland is not entitled to an award of appellate attorney fees and costs under the PRA as he is not the prevailing party. We reverse the merits order and judgment in favor of Cortland and remand with an order for the superior court to enter a merits order and judgment in favor of Lewis County, and we deny Cortland's request for an award of appellate attorney fees and costs.

FACTS

I. PRA REQUEST AND LEWIS COUNTY'S RESPONSES AND INSTALLMENTS

Cortland's current November 2016 PRA request to Lewis County sought "[a]ny and all records from Chief Civil Deputy Prosecuting Attorney Glenn Carter that Mr. Carter created and/or maintained that concern judicial records, either under the common law, *Nast v. Michels*, or Washington State Court Rule GR 31.1." Clerk's Papers (CP) at 15. The county records center responded to Cortland on November 23, informing him that his request was going to be forwarded to the relevant department. Casey Mauermann, Lewis County Prosecuting Attorney's Office's public records officer, acknowledged the request in an email to Cortland on November 30, 2016. Mauermann asked for clarification as to the time frame for the requested records and estimated a response by January 4, 2017, but she later extended the ready date to February 3. She also advised Cortland that the records would be provided in installments.

Lewis County produced three initial installments of records under GR 31.1 because the records were judicial records. Cortland received the first installment of 101 records on February

3. He received the second installment of 100 records on March 7. He received the third installment of 106 records on June 27.

By the time of the fourth installment, two other people had made PRA requests identical to Cortland's. Lewis County concluded that during the ongoing litigation between Cortland and the county regarding his PRA request, Carter and his office had "used, created, and maintained" material that "concerned" judicial records in its own capacity as the prosecutor's office, not merely as a custodian of the records for the Superior Court. Thus, these amassed records were no longer GR 31.1 judicial records, but were county records subject to the PRA. As a result, the county decided to produce all such records under the PRA to the two new requestors, and to provide a copy to Cortland. Lewis County produced these records, over 3600 in total, to Cortland in his fourth installment under the PRA.

Mauermann emailed Cortland on August 2, 2017, to inform him that the fourth installment to his records request was available, and that she would be continuing to search for responsive records and would send him the next installment by October 2. Mauermann then emailed Cortland on October 12 to inform him that a new law² imposed fees for copying and providing PRA records, and advised him that she would be sending him a cost estimate by December 7.

II. PRA LAWSUIT

On October 13, 2017, Cortland served Lewis County with a PRA summons and complaint, but he did not file the complaint with the court until November 17. In his complaint, Cortland alleged that he received no communication from Lewis County after August 2, 2017, that the

² LAWS OF 2017, ch. 304 (effective July 23, 2017).

county had denied him access to public records, and that it failed to conduct an adequate search, and thus, it violated the PRA. Lewis County denied the allegations.

After the suit was filed, Lewis County continued to search for responsive records and communicate with Cortland. On December 10, Mauermann emailed Cortland to inform him that a fifth installment was ready for copying and inspection. She provided him an estimated cost, which he never paid. Cortland exchanged emails with Mauermann until December 12. When he did not claim the fifth installment of records, Mauermann notified Cortland that failure to pay or respond within 30 days would constitute an abandonment. Because Cortland failed to pay or respond within the 30 days, Mauermann concluded that he abandoned his request, closed the PRA file, and stopped providing responsive records.

III. PRA LAWSUIT—MERITS HEARING AND ORDER

Cortland and Lewis County disputed whether the county improperly claimed an exemption under GR 31.1 for the first three installments, whether the county conducted an adequate search and proved it did so, and whether compliance with GR 31.1 satisfies the PRA.

After a merits hearing, the superior court ruled that in regard to the first three installments, Lewis County produced the records in an incorrect form under GR 31.1 records rather than producing them under the PRA, and Lewis County had a duty to prove that its search was adequate under the PRA and failed to do so.

The court found that Lewis County continued to search for and produce records after Cortland filed the lawsuit. The court also concluded that the duty to search is not satisfied even if the requestor abandons the PRA request, and thus, it ordered the county to conduct a re-search for

responsive records. The court stated, however, that Lewis County's production was ongoing, and that it had provided a substantial number of records up until that point:

Lewis County clearly provided a large number of records. Lewis County was continuing to provide records. I don't find that there had been a stoppage of the flow of records, but the difficulty is, and I think [Cortland's attorney] has made this point, it's difficult for [Cortland] to know what Lewis County is doing. It makes it difficult for [Cortland] to know what was being searched, where it was searched, what is being provided, what isn't provided, whether the disclosure of records is exempted. Lewis County is simply provided records, but without any way for [Cortland] to know all these things that a requestor's entitled to know.

Verbatim Report of Proceedings (VRP) (June 1, 2018) at 4-5.

The court entered the following relevant finding of fact at issue: "The record is absent of an affidavit or declaration detailing the search Lewis County made for the Public Records Act request at issue in this lawsuit." CP at 266. The court entered the following relevant conclusions of law at issue and entered an order on the merits:

13. As a matter of law Lewis County improperly withheld records because it failed to meet its mandatory burden of proof identifying it performed a sincere and adequate search under the Public Records Act, causing a violation of the right to inspect and copy, RCW 42.56.550(1). "An adequate search is a prerequisite to an adequate response, so an inadequate search is a violation of the PRA because it precludes an adequate response." A failure to properly respond is a denial under the Public Records Act.

14. First, as a matter of law Plaintiff Brian Cortland is the prevailing party on the issue of the denial of the right to inspect and copy records because Lewis County did not meet its mandatory burden of proof, beyond a material doubt, that Lewis County demonstrated it made an adequate search for records pursuant to the Public Records Act. An inadequate search "constitutes an improper withholding" violating the right to inspect and copy records.

15. Second, as a matter of law Plaintiff Brian Cortland is the prevailing party on the issue of the denial of the right to inspect and copy records because Lewis County's cobbled together attempt to demonstrate the adequacy of the search made it impossible for [Cortland] to determine what records he would receive or not

receive under the Public Records Act. This is a denial of adequate response, which is a violation of the right to inspect and copy under the Public Records Act.

16. As to the prevailing party on the issue of being denied the right to copy and inspect records pursuant to RCW 42.56.550(1), Plaintiff Brian Cortland shall be awarded: all costs, reasonable attorney's fees, and a statutory penalty

....

18. After this Court has made a determination that Lewis County has fulfilled its mandatory burden of demonstrating, beyond a material doubt, that it has search[ed] for and identified the responsive records to Mr. Cortland's request at issue in this lawsuit, the parties jointly or this Court will set the date for the Penalty Hearing.

CP at 267-69 (internal quotation marks and citations omitted).

Lewis County moved for reconsideration, arguing that the court's rulings were inconsistent because at the hearing, the court orally ruled that Lewis County was producing records to Cortland at the time Cortland filed the lawsuit, and the court then ruled in its written order that Lewis County failed to prove the adequacy of its search. Lewis County argued that it did not have a duty to prove the adequacy of its search since its production of records in installments was still ongoing. The court denied the motion.

Lewis County performed the re-search as ordered by the court and produced more records to Cortland. Based on the court's ruling, Lewis County offered to sign a CR 2A stipulation to PRA penalties in order to "speed the entry of a final order."³ CP at 349. Lewis County made it clear that it did not agree with the court's ruling on the underlying merits:

Lewis County proposes to stipulate to the penalty analysis above for purposes of speeding entry of a final order in this matter. This is not an offer of settlement, for Lewis County wishes to maintain its ability to claim that the judge's

³ The 18 records that Lewis County stipulated to withholding were judicial records Lewis County found in the re-search that it had not produced in the original three installments

order on the merits was erroneous. It is instead a stipulation designed to speed you to a final judgment.

CP at 350. The parties did not agree on whether Lewis County could appeal the merits order if it entered into the CR 2A stipulation regarding PRA penalties. They filed an agreed motion for entry of the final order and judgment. In the motion, the parties state,

The parties ask the Court to enter a final order consistent with this stipulation. . . . Please note that the parties dispute whether the attached stipulation affects any right to appeal this matter.

CP at 315. The stipulation provided that it was predicated on the superior court's merits order being binding.

At the hearing, Lewis County brought to the court's attention the parties' disagreement over whether it was waiving its right to appeal, and it made it clear to the court that it was preserving its right to appeal.

I think it's important for Lewis County to make one additional thing on the record. You'll see from the written documents the parties dispute what effect, if any, this proposed agreed order would have on either party's rights to appeal, and I just thought it was worth pointing out that there is a dispute over that. There isn't any specific agreement on that.

....

[I]n candor to the court, Lewis County wishes to preserve its right to appeal potentially the underlying merits ruling and does not believe that stipulating to the penalty that follows from that merits ruling, while that ruling is binding on Lewis County because this court made it, would waive its right to appeal the underlying merits ruling. And so it wished to reflect that the parties don't have any agreement on that in the order to avoid waiver.

VRP (Nov. 16, 2018) at 5-6. Cortland argued that Lewis County would be inviting error if it appealed the order. The court understood the disagreement, and it signed the stipulation. The final

order stated that “[t]he parties disputed whether the stipulation effects any right to appeal.” CP at 323.

Lewis County appeals the order on the merits hearing, the order denying its motion for reconsideration, and the final order and judgment.

ANALYSIS⁴

“The PRA is a strongly worded mandate for broad disclosure of public records.” *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011). The PRA “stands for the proposition that[] *full access* to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.” *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). And when evaluating a claim within the framework of the PRA, a court must “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).

RCW 42.56.070(1) directs government agencies to disclose public records upon request unless a specific exemption in the PRA or another statute applies that exempts or prohibits disclosure of specific information or records. *Ameriquest Mortgage Co. v. Office of Attorney General of Wash.*, 177 Wn.2d 467, 485-86, 300 P.3d 799 (2013). Consistent with the PRA’s

⁴ Cortland argues that Lewis County’s “inconsistent act of signing the CR 2A Stipulated Statutory Penalty agreement . . . waived the argument that it did not violate[] the Public Records Act.” Br. of Resp’t at 11. He also argues that Lewis County failed to preserve error and invited error. The parties stipulated to the penalties, but Lewis County properly preserved its right to appeal the underlying merits.

purpose, 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.”

Denial of the right to inspect or copy a public record is a prerequisite to a PRA action. RCW 42.56.550(1). Denial of public records occurs “when it reasonably appears that an agency will not or will no longer provide responsive records.” *Hobbs v. State Auditor’s Office*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014). The superior court may hear a motion to show cause when a person has “been denied an opportunity to inspect or copy a public record by an agency.” RCW 42.56.550(1). “Therefore, being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA.” *Hobbs*, 183 Wn. App. at 937. When an agency produces records in installments, the agency does not deny access to the records until it finishes producing all responsive records. *Hobbs*, 183 Wn. App. at 936. “If a requestor fails to claim or review the records or an installment after the expiration of thirty days, an agency is authorized to stop assembling the remainder of the records or making copies.” WAC 44-14-04005(1); RCW 42.56.120(4).

The court may decide a PRA action on affidavits alone. RCW 42.56.550(3); *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 153-54, 240 P.3d 1149 (2010). Agency actions under the PRA are reviewed de novo. *Neigh. All.*, 172 Wn.2d at 715.

Cortland served the complaint only one day after Mauermann emailed him to inform him of the new estimated fees he would have to pay under the new law. Cortland filed the complaint with the superior court the next month, at which time the county was still amassing over 3600 responsive records to provide to Cortland. Once Lewis County informed Cortland that the fifth installment was ready and he would receive it once he paid the fee, Cortland expressed his

discontent with the fee and the handling of the requested records, and did not claim the records from the fifth installment. Lewis County notified him that if he did not pay or respond within 30 days, it would consider his request abandoned. When Cortland failed to pay or respond, the county closed its file and stopped producing responsive records.

Until this point, Lewis County did not deny Cortland's access to records because it did not reasonably appear that Lewis County would no longer provide responsive records. And it never denied Cortland's access to a public record because it continued to make available records for copying and inspection, including preparing a final fifth installment of records, until Cortland abandoned his PRA request. Because there was no denial of access, there was no final agency action under RCW 42.56.550(1), and thus, we hold that Cortland had no PRA cause of action. Therefore, the superior court erred by ruling that Cortland was the prevailing party on the merits.⁵

CONCLUSION

We reverse the superior court's merits order and judgment in favor of Cortland and remand with an order for the court to enter a merits order and judgment in favor of Lewis County, and deny Cortland's request for an award of appellate attorney fees and costs.

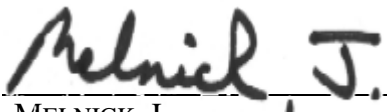
⁵ "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review . . . the party must request the fees or expenses as provided in this rule." RAP 18.1(a). RCW 42.56.550(4) allows a prevailing party in a PRA action to receive an award of attorney fees and costs. Because Cortland is not the prevailing party, we deny Cortland's request for an award of appellate attorney fees and costs.

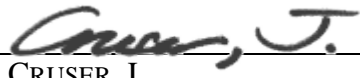
No. 52739-1-II

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.


SUTTON, A.C.J.

We concur:


MELNICK, J.


CRUSER, J.

Appendix 3

**Final Order and Judgement, November 16, 2018, from the Thurston County
Superior Court of the State of Washington**



2
FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2018 NOV 16 AM 10:48
Linda Myhre Enlow
Thurston County Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

BRIAN CORTLAND;
Plaintiff,

v.

LEWIS COUNTY,
Defendant.

NO. 17-2-06152-34

EX PARTE

~~PROPOSED~~
FINAL ORDER AND JUDGMENT

JUDGMENT SUMMARY

A.	Judgment Creditor	BRIAN CORTLAND
B.	Judgment Debtor	LEWIS COUNTY
C.	Total Judgment Amount	\$20,790.00
D.	Principal judgment amount	\$20,790.00
E.	Interest to date of Judgment	NONE
F.	Attorney's fees	TBD
G.	Costs	TBD
H.	Other recovery amount	NONE
I.	Principal judgment shall bear interest at	12% per annum
J.	Attorney for Judgment Creditor	JOSEPH THOMAS
K.	Attorney for Judgment Debtor	ERIC EISENBERG

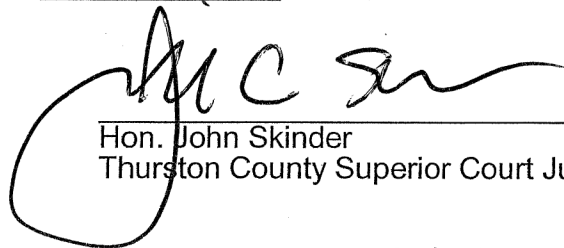
FINAL ORDER

- 1.1. This Court ruled on the merits in this matter that Lewis County violated the Public Records Act by failing to carry its burden to show that it performed an adequate search in response to Plaintiff's records request.
- 1.2. Lewis County re-performed the search pursuant to this Court's order.

~~PROPOSED~~ FINAL ORDER AND
JUDGMENT

- 1 1.3. Thereafter, the parties stipulated to the following penalties analysis:
2 1.4. Eighteen (18) separate subject matter records were wrongfully withheld
3 from Plaintiff by the Defendant for two hundred and thirty-one (231) days.
4 1.5. The per record per day penalty is five dollars (\$5). The entire per day
5 penalty is ninety dollars (\$90).
6 1.6. The entire per day penalty of ninety dollars multiplied by two hundred and
7 thirty-one days results in a total penalty of \$20,790. Judgment shall enter
8 for Plaintiff for the total penalty of \$20,790.
9 1.7. The total penalty does not include all costs and reasonable attorney's
10 fees, which will be determined at a later date.
11 1.8. The parties disputed whether the stipulation effects any right to appeal.
12 1.9. The Court has considered the above stipulation in light of the nature of this case,
13 the record and file herein, and the *Yousoufian* factors governing imposition of
14 penalties under the PRA.
15 1.10. Having done so, the Court adopts the parties' penalty analysis as reasonable
16 and appropriate.
17 1.11. Judgment hereby enters for the Plaintiff in the amount of \$20,790.
18 1.12. This amount does not include costs and a reasonable attorney fee. Plaintiff shall
19 seek such costs and attorney fee in the normal course.

20 ORDERED ON Nov. 16, 2018,


21 

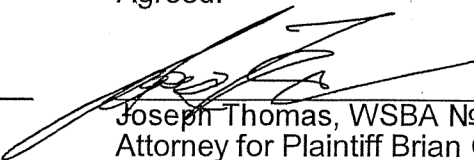
JOHN C. SKINDER

Hon. John Skinder
Thurston County Superior Court Judge

22 Presented By:

Agreed:

23 
24 Eric Eisenberg, WSBA No 42315
25 Chief Civil Deputy Prosecuting Attorney
for Defendant Lewis County


Joseph Thomas, WSBA No 49532
Attorney for Plaintiff Brian Cortland

26 ~~PROPOSED~~ FINAL ORDER AND
JUDGMENT

Page 2 of 2

LEWIS COUNTY PROSECUTING ATTORNEY'S
OFFICE, CIVIL DIVISION
345 W. Main Street, 2nd Floor
Chehalis, WA 98532
360-740-1240 (Voice) 360-740-1497 (Fax)

Appendix 4

**CR 2A Settlement Agreement, November 16, 2018, from the Thurston County
Superior Court of the State of Washington**

EXPEDITE
No hearing set
Hearing is set Date: _____ Time: _____ Judge/Calendar: _____

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

<p>Brian Cortland</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Lewis County, A Municipal Corporation</p> <p style="text-align: center;">Defendant.</p>	<p>CR2A STIPULATED STATUTORY PENALTY PURSUANT TO RCW 42.56.550(4)</p> <p>Case number: 17-2-06152-34</p> <p>Date: October 30, 2018</p>
--	---

The parties to this above entitled cause of action hereby stipulate as follows, pursuant to Civil Rule 2A:

1. The Court entered its merits order in this matter on Aug 3, 2018.
2. That order presently being binding, both parties stipulate to the following statutory penalty, pursuant to RCW 42.56.550(4).
3. Eighteen (18) separate subject matter records were wrongfully withheld from Plaintiff by the Defendant for two hundred and thirty-one (231) days.

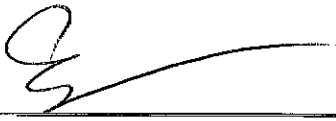
4. The per record per day penalty is five dollars (\$5). The entire per day penalty is ninety dollars (\$90).
5. The entire per day penalty of ninety dollars multiplied by two hundred and thirty-one days results in a total penalty of \$20,790. Judgment shall enter for Plaintiff for the total penalty of \$20,790.
6. The total penalty does not include all costs and reasonable attorney's fees, which will be determined at a later date.

Respectfully submitted this October ~~20~~, 2018.

Presented by:



Joseph Thomas, WSBA # 49532
Attorney for Co-Plaintiffs



Eric Eisenberg, WSBA #42315
Attorney for Defendant

Appendix 5

**Volume 3 of the Verbatim Report of Proceedings, November 16, 2018, from
the Thurston County Superior Court of the State of Washington**

A P P E A R A N C E S

For the Plaintiff: Joseph Thomas
Attorney at Law
14625 SE 176th St, Apt N101
Renton, WA 98508

For the Respondent: Eric Eisenberg
Lewis County Chief Civil Deputy Attorney
345 W. Main St., 2nd Floor
Chehalis, WA 98532

1 THE COURT: Good morning. Please be seated.

2 Well, this is the court's nine a.m. calendar, and I
3 apologize for being a couple of minutes late. I had to meet
4 with our court commissioner on a matter.

5 Are there any *ex parte* or agreed orders? Mr. Eisenberg,
6 hello.

7 MR. EISENBERG: Good morning. How are you?

8 THE COURT: Good. Thank you.

9 MR. EISENBERG: Good morning. On Brian Cortland
10 versus Lewis County cause number 17-2-6152-34, the parties
11 have reached an agreed motion for final order and entry of
12 judgment and a proposed order on penalties in this case,
13 and we were hoping that Your Honor would consider it and
14 would agree and sign that penalties order.

15 THE COURT: Well, I want to take a look at that, but
16 let me come back to it since I know your matter -- you have
17 another matter on the calendar with the same parties.

18 MR. EISENBERG: Thank you.

19 THE COURT: You're welcome.

20 *****

21

22 THE COURT: That means that this morning's calendar
23 will conclude even though I see both attorneys on the
24 Cortland, Green, Lewis County matter are present. They
25 might have something else, but after that, the court will

1 be in recess until the 1:30 RALJ hearing in State of
2 Washington v. Andrew Tombs.

3 Did the parties have something?

4 MR. EISENBERG: We had that agreed order that we
5 were hoping you would entertain on penalties in the prior
6 Cortland case.

7 THE COURT: I appreciate that. I set that aside
8 because I wanted to be able to take a look. Was that the
9 final order and judgment in the agreed motion for final
10 order and entry of judgment?

11 MR. THOMAS: It's just stipulating to the -- Your
12 Honor, I apologize. It's just stipulating to the order,
13 and I think -- I don't want to speak for Mr. Eisenberg, but
14 I think that we probably have to create one more order for
15 this court for the final order.

16 MR. EISENBERG: That order doesn't address costs and
17 attorney fees. Is that what you mean by that?

18 MR. THOMAS: That can be. I would agree with that.
19 If this court wants to use it as an order except for costs
20 and attorney fees, I'm fine with that.

21 THE COURT: And so let's just go on the record since
22 I have you both here. This is Brian Cortland versus Lewis
23 County, 17-2-6152-34. And what the parties handed up was
24 an agreed motion for final order and entry of judgment.
25 That document has an exhibit with a CR 2(a) stipulated

1 statutory penalty pursuant to RCW 42.56.550(4) that there
2 is a total penalty that has been stipulated to by the
3 parties that does not include all costs and reasonable
4 attorney fees which would be determined at a later date,
5 but that that judgment shall enter for the plaintiff for
6 the total penalty of \$20,790. Also there was an exhibit
7 which was the proposed final order, and then there was a
8 separate document, the final order and judgment which
9 contains that amount of the \$20,790.

10 Is there any additional record the parties wanted to
11 make?

12 MR. THOMAS: No, Your Honor.

13 MR. EISENBERG: I think it's important for Lewis
14 County to make one additional thing on the record. You'll
15 see from the written documents the parties dispute what
16 effect, if any, this proposed agreed order would have on
17 either party's rights to appeal, and I just thought it was
18 worth pointing out that there is a dispute over that.
19 There isn't any specific agreement on that. Thank you.

20 THE COURT: I see. And you're referring to in the
21 final order and judgment paragraph 1.8 which states the
22 parties disputed whether the stipulation affects any right
23 to appeal?

24 MR. EISENBERG: Yes, sir.

25 THE COURT: Is there anything that either party's

1 asking the court to do regarding that?

2 MR. EISENBERG: No, sir. Lewis County -- I mean, in
3 candor to the court, Lewis County wishes to preserve its
4 right to appeal potentially the underlying merits ruling
5 and does not believe that stipulating to the penalty that
6 follows from that merits ruling, while that ruling is
7 binding on Lewis County because this court made it, would
8 waive its right to appeal the underlying merits ruling.
9 And so it wished to reflect that the parties don't have any
10 agreement on that in the order to avoid waiver.

11 THE COURT: And so the proposed order and judgment
12 simply reflects the parties are disputing whether the
13 stipulation has any effect.

14 MR. THOMAS: Yes, Your Honor. Plaintiffs' position
15 is that Lewis County would be inviting error because they
16 stipulated to how many records were wrongfully withheld
17 under the Public Records Act so how can they say on one the
18 one hand we're stipulating to -- (reporter interrupts.) So
19 it would be inviting the error because on one hand how can
20 Lewis County say --

21 THE COURT: And Mr. Thomas, I actually fully
22 understand what you both are saying, but is there any
23 reason I shouldn't enter this final order and judgment that
24 you both have signed?

25 MR. THOMAS: We would be happy if you signed it.

1 THE COURT: I will sign it. And I have done so.

2 MR. EISENBERG: Thank you very much, Your Honor. I
3 appreciate it.

4 THE COURT: Thank you all. Have a good weekend.

5 MR. THOMAS: You too.

6 THE COURT: Court's in recess.

7 (A recess was taken.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

BRIANC CORTLAND - FILING PRO SE

October 21, 2020 - 10:35 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52739-1
Appellate Court Case Title: Brian Cortland, Respondent v Lewis County, Appellant
Superior Court Case Number: 17-2-06152-0

The following documents have been uploaded:

- 527391_Petition_for_Review_20201021102941D2986284_6172.pdf
This File Contains:
Petition for Review
The Original File Name was 2020.10.19 Cortland Petition for review.pdf

A copy of the uploaded files will be sent to:

- appeals@lewiscountywa.gov
- eric.eisenberg@lewiscountywa.gov
- fightpublic@yahoo.com
- lori.cole@lewiscountywa.gov
- stage777farout@yahoo.com

Comments:

Sender Name: BrianC Cortland - Email: fightpubliccorruption@yahoo.com

Address:
320 S.E.Sheridan Road
Sheridan, OR, 97378
Phone: (310) 721-2470

Note: The Filing Id is 20201021102941D2986284