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NO. 1016891-1

**SUPREME COURT OF THE STATE OF WASHINGTON**

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JEREMY CONKLIN, DO, an individual,

Appellant,

v.

UNIVERSITY OF WASHINGTON SCHOOL OF  
MEDICINE, a Washington public educational institution;  
UNIVERSITY OF WASHINGTON MEDICINE, a  
Washington public health system; and UNIVERSITY OF  
WASHINGTON MEDICAL CENTER, a Washington public  
hospital,

Respondents.

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**University of Washington, et al. Response to Petition  
for Discretionary Review**

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## **I. INTRODUCTION**

The Court of Appeals correctly concluded that Respondent University of Washington's responses to Petitioner Jeremy Conklin's Public Records Act (PRA) requests were timely and appropriate, affirming the Superior Court. Conklin presents no issues warranting review.

Conklin's petition does not present a question of substantial public interest. RAP 13.4(b)(4) supports review only in exceptional circumstances, but this case is as ordinary as the numerous other PRA cases where this Court has denied review.

Nor do the decisions from the Superior Court or Court of Appeals depart from precedent or cut new law. To the contrary, both courts correctly applied PRA precedent to the facts here and correctly determined that UW met its PRA obligations with respect to the issues on which Conklin seeks review. The Court should decline review.

## **II. STATEMENT OF THE ISSUES**

Did the Superior Court and Court of Appeals correctly apply the PRA and pertinent precedent to determine that UW appropriately responded to Conklin's PRA requests where those requests were massive, required significant time and effort from many University departments, necessitated logging thousands of pages of documents exempt from disclosure, and were filed seriatim by Conklin and his counsel?

## **III. STATEMENT OF THE CASE**

### **A. Conklin Fails to Secure UW's Highly Competitive Pediatric Heart Surgery Fellowship**

In 2017, Conklin, an osteopathic surgeon (DO), CP 2 ¶ 10, applied to the School of Medicine's highly selective congenital cardiac surgery fellowship, CP 1406 ¶ 11.

The School follows a "rigorous selection process" for the fellowship. *Id.* ¶ 10. It participates in a "match" system operated by the Congenital Cardiac Surgery Fellowship Committee of the Thoracic Surgery Directors Association (TSDA). CP 1405 ¶ 7. Fellows must be certified or eligible for board certification in

congenital cardiac surgery. *Id.* ¶ 8. Both osteopathic physicians (DOs) and allopathic physicians (MDs) can be certified,<sup>1</sup> and both DOs and MDs participate in the match program. *Id.*

Eleven candidates, including Conklin, applied for UW's congenital cardiac surgery fellowship in 2017. CP 1406 ¶ 11. The program invited seven to interview, including a DO. *Id.* Conklin and three MDs were not selected for interviews. *Id.* When Conklin asked why the School did not interview him, Dr. Lester Permut, the program's director, informed Conklin that he was not considered because he was ineligible for board certification in congenital cardiac surgery. CP 1392.

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<sup>1</sup> Allopathic doctors (MDs) use conventional medical tools, while osteopathic doctors (DOs) incorporate additional methods focused on the musculoskeletal system and physical manipulation. *See* University of Washington, *Allopathic and Osteopathic Family Medicine*, [https://depts.washington.edu/fammed/wp-content/uploads/2015/03/2014-Aug.-Allopathic-and-Osteopathic-Family-Medicine-1pager-5\\_0.pdf](https://depts.washington.edu/fammed/wp-content/uploads/2015/03/2014-Aug.-Allopathic-and-Osteopathic-Family-Medicine-1pager-5_0.pdf) (last visited April 5, 2023).



## **B. Conklin Unsuccessfully Sues UW Over His Failed Fellowship Application**

On November 16, 2017, Conklin submitted a request to UW's Office of Public Records and Open Public Meetings (OPR), through his attorney Kristi Favard. *See* CP 344; CP 396

¶ 8. The "First Request" asked for six large categories of documents:

all agreements between UW Medical Center and the Thoracic Surgery Director's Association and/or American Board of Thoracic Surgery;

all Medicare funding information, grants, agreements, etc. ... for residencies and fellowships;

all documents regarding any osteopathic physician application (individual or in general) to any residency or fellowship at UW Medical Center for the past 10 years, including but not limited to applications, correspondence, inter office emails or memos, etc.;

all documents regarding Dr. Jeremy Conklin's application to the UW Medical center for residency/fellowship;

all documents regarding RCW 70.41.235 from 1995 to present;

all documents regarding osteopathic physicians as residents/fellows at UW Medical Center....

CP 396 ¶ 9; CP 405.

In January 2018, Conklin sued UW, several of its departments, Permut, and others in federal court, alleging the denial of his application violated antitrust laws and unlawfully discriminated against him and that UW had violated the PRA. CP 1501.

Conklin never served discovery in his federal lawsuit, instead relying on PRA requests. CP 1269 ¶ 11. He submitted a “Second Request,” again through Favard, to OPR in May 2018, and a “Third Request” on his own on June 15, 2018. CP 345; CP 1441 ¶¶ 48-49; CP 1444 ¶¶ 53-54.

The federal court dismissed Conklin’s lawsuit in November 2018, finding as a matter of law that Conklin lacked any viable antitrust or discrimination claims. CP 1164-73. The parties stipulated to dismiss Conklin’s pendant PRA claim. CP 380. Conklin appealed the dismissal of his other claims, and the Ninth Circuit affirmed on all grounds. *See Conklin v. Univ. of Wash. Med.*, 798 F. App’x 180 (9th Cir. 2020).

**C. UW Devotes Significant Resources to Respond to Conklin’s PRA Requests**

UW has a dedicated system for responding to PRA requests. OPR, which manages the response to all PRA requests, has a staff of nine who coordinate with approximately 50 colleges, schools, and divisions to identify, collect, review, and release records. CP 157 ¶¶ 3-4. OPR handles a high volume of PRA requests. In 2018, for example, “OPR reviewed over 6 million pages of records in response to pending public records requests.” CP 161 ¶ 19. In 2019 and 2020, OPR responded to nearly a thousand requests each year, again covering millions of pages of records. CP 401 ¶ 27. At the time of Conklin’s First Request, OPR had 182 open requests and over 750,000 pages of records awaiting review. CP 158 ¶ 8; CP 396 ¶ 9.

UW acknowledged receipt of Conklin’s requests within five business days and kept him apprised of its estimated response dates as it compiled, reviewed, and released documents. Public Records Compliance Officer Tisa Escobar was principally

responsible for OPR's response. CP 158 ¶ 7; CP 396 ¶ 8. Conklin's First Request was "one of the broadest requests" she had ever managed." CP 158 ¶ 8; CP 396 ¶ 9.

OPR handled the requests as it would any other. *See, e.g.*, CP 392 ¶ 31; CP 397 ¶ 11; CP 401-02 ¶ 28. OPR asked the departments that might have responsive records, including the Medical Center and the School of Medicine, to collect records. CP 396 ¶ 10. Escobar updated Favard with estimates of when records would be released. CP 158-59 ¶ 9; CP 167-72; CP 396-97 ¶ 10; CP 407-12.

Courtney Ng, the School of Medicine's Records Manager and OPR's point of contact, handled the requests for the School. CP 387 ¶ 8. The time it takes Ng to handle a request depends on the volume of records to be reviewed, the request's complexity, the number of other pending requests, and the record holders' other responsibilities. CP 152 ¶ 4. As with any request, Ng's goal was to process Conklin's requests "as quickly and effectively as possible, balancing the essential functions of the

[School of Medicine], including its role in graduate medical education and healthcare delivery in the area.” CP 392 ¶ 31.

Ng received notice of Conklin’s First Request on November 17, 2017, the Friday before Thanksgiving and the day after Favard submitted it, CP 387 ¶ 8. On Monday, November 27, 2017, just after the holiday, Ng notified the School’s Graduate Medical Education Office (GMEO), Department of Surgery, and Business Unit of the request. *Id.* In all, Ng contacted 18 departments within the School likely to have responsive records. CP 153 ¶ 6. GMEO informed Ng that residency and fellowship applications were stored in a third-party system, requiring additional time for their response. CP 387 ¶ 10. Ng informed OPR that the target production date would need to be extended, and OPR updated Favard that it would target an April 27, 2018, response date. CP 387 ¶ 11; CP 407.

The School of Medicine provided OPR a first installment of records on February 8, 2018; a second installment containing 33,354 pages on March 15, 2018; and a third installment of

14,000 pages on April 11, 2018. CP 388 ¶¶ 14, 17. On April 12, 2018, Ng informed OPR that her team had collected 8.6 GB of additional records that needed review, requiring another extension. CP 389 ¶ 18. Escobar informed Favard of the new estimated response date, this time targeting February 15, 2019, given the significant quantity of records. CP 408.

While the School of Medicine and OPR teams worked on the First Request, Favard submitted a second request in May 2018 (Second Request). CP 246-48; CP 398 ¶ 13. This request sought 18 broad categories of documents, including:

Any agreement between UW and Accreditation Council for Graduate Education (ACGME) or any other organization that exclusively requires ACGME accredited training of residents and fellows for any reason.

...

All documents regarding ... excluding osteopathic physicians from any residency or fellowship at UW School of Medicine or discussing eligibility [based on board certification]; and

...

All communications between UW and other ACGME accredited training programs regarding DO applicants as well as accredited training.

CP 246-48. OPR's typical practice in addressing multiple open requests from the same person is "to respond to the requests in the order received in order to balance the rights of all requesters," and it notifies the requester when it processes requests seriatim. CP 159-60 ¶ 12; CP 398 ¶ 13. Escobar followed these practices, responding "in the same manner as [she] would a request that was not the subject of litigation." CP 159-60 ¶ 12; CP 398 ¶ 13.

On June 15, 2018, Conklin submitted the Third Request, for "internal and external communications about Ms. Favard's public records requests." CP 398 ¶ 14; CP 345. UW considers the requester to be the individual who makes the request, even if that individual makes the request on another person's behalf. CP 398 ¶ 14. Because Conklin (not his attorney, Favard) submitted the Third Request, OPR treated the request as from a different requester and "did not place [the Third Request] behind the two requests from Ms. Favard." *Id.* Because of this, and because the

Third Request was narrower than the First Request, UW completed its response to the Third Request (from Conklin) well before the Second Request (from Favard), releasing an exemption log and more than 4,000 pages of records beginning January 7 and ending July 26, 2019. CP 399 ¶ 16.

UW continued to work on responding to Conklin's other requests. OPR released an initial set of records responsive to Conklin's First Request on September 19, 2018. CP 160 ¶ 14; CP 398 ¶ 15. On February 15, 2019, Escobar updated Favard that UW needed more time to respond to the First Request, with a new target response date of December 2, 2019, and explained that OPR would continue to make records available on a rolling basis. CP 410. On June 28, 2019, UW provided a second installment of records responsive to Conklin's First Request. CP 399 ¶ 17. This installment was too large to send by email, so OPR notified Favard that she could view the records in person or pay for copies on a CD. *Id.* OPR never received a response. *Id.*



Meanwhile, in March 2019, Escobar notified Favard of a new response date of January 14, 2020, for Conklin's Second Request. CP 411. Escobar explained Conklin's requests involved "over 105,000 pages," with additional records still being collected. *Id.* She also explained the University would "respond[] to the oldest [request] before moving on to your next subsequent request[s]." *Id.* UW's response to the Second Request thus would follow its response to the First Request.

Conklin submitted his Fourth Request on August 13, 2019, through his new counsel, Aaron Orheim. CP 346. Orheim sought the records identified for release under Conklin's First and Second Requests, including the records made available (but not retrieved by Favard) in response to the First Request. CP 399 ¶¶ 17-18. Escobar handled this request as well and "communicat[ed] with the new requester, Mr. Orheim, about updated estimates of time, and ma[de] interim releases of records." CP 399 ¶ 19.

UW repeatedly told Conklin he could prioritize his requests to expedite review and release of the documents most important to him, which otherwise would be processed along with the scores of obviously exempt documents implicated by Conklin's requests. CP 134-35 ¶¶ 6-8. Conklin declined. *Id.*

**D. Conklin Sues UW Under the PRA**

On June 5, 2019, Conklin filed this lawsuit, alleging violations of the PRA, CP 1-13, asking the Superior Court to (1) order UW “to show cause why they have refused to allow inspection and copying of the [] documents”; (2) order UW “to immediately produce the documents requested”; (3) conduct an *in camera* review of the documents which UW had redacted or withheld as exempt, and (4) award him “the maximum statutory per diem damages,” attorneys’ fees, costs, and interest. CP 12-13 ¶¶ 1-6. Six months later, Conklin moved for an order to show cause why UW had not completed its responses. CP 47. The court denied that motion on January 17, 2020, because the “current record” did not support a PRA violation, given “the

amount of time required to identify and deliver the documents requested by [Conklin].” CP 298-99.

After litigating Conklin’s motion to show cause, UW decided to use a vendor to help finish its response to Conklin’s remaining requests. CP 400 ¶ 21. In March 2020, however, OPR personnel began working remotely because of the COVID-19 pandemic. *Id.* ¶ 22. OPR had to adapt its operations, which slowed the transfer of records responsive to PRA requests. *Id.* ¶¶ 22-23. UW also had to “balance[] its essential functions as a critical part of the healthcare delivery system in the state,” further slowing its PRA responses. *Id.* ¶ 23.

The School of Medicine also faced delays in collecting records. Although the School sent OPR twelve installments of documents in 2018 and 2019, the requests remained outstanding due to the quantity of records awaiting review when Ng took parental leave in October 2019. CP 388-90 ¶¶ 14, 17, 19, 21, 23. The School hired a temporary employee to help with this review during her absence. CP 390 ¶ 24; CP 154 ¶ 10. At that time, the

School faced a “backlog created by a number of very large requests,” “in excess of 180 GB” or **3.6 million** pages. CP 390 ¶ 23. When Ng returned in March 2020, the COVID-19 pandemic disrupted progress on the requests, CP 391 ¶¶ 27-28, and placed heavy demands on the School of Medicine. During this time, the School’s “role in the training of healthcare providers and delivery of healthcare services,” CP 401 ¶ 27, was critical as the state responded to the pandemic.

Although UW (and OPR) believed its response to the First Request was complete with a release of records on June 15, 2020, on October 28, 2020, OPR released additional records from the School of Medicine. CP 400-01 ¶¶ 24-25.

On November 16, 2020, UW sent a final installment of records, closing out Conklin’s Second Request and completing its responses to Conklin. *Id.* ¶ 26.

### **E. The Court Finds for UW After a Trial by Affidavit**

The trial court set the case for trial by affidavit in early 2021. On September 20, 2021, the trial court held UW did not violate the PRA. CP 1486; CP 1483 ¶¶ 1-2.

The court found UW's response times to be reasonable because of (1) "the breadth and number of requests," (2) "the large numbers of wholly or partially exempt records that were laborious to log as required by the PRA," and (3) the fact that "the requests sought records from many different sources, which were required to balance [PRA responses] with their essential functions in the healthcare delivery and medical education systems," including during the COVID-19 pandemic. CP 1458 ¶ 114. The court concluded UW's conduct "did not constitute a 'denial' of records" given its "process of providing updated estimated response times for the PRA Requests, along with its interim releases of records and exemption logs on a rolling basis." CP 1472 ¶ 29.

## F. Division I Affirms the Superior Court

The Court of Appeals, Division I unanimously affirmed the trial court on the question of timeliness—the only issue on which Conklin seeks this Court’s review.<sup>2</sup> The court explained that “[t]he PRA does not require agencies to provide requesters a detailed explanation for their time estimates.” *Conklin v. Univ. of Wash. Sch. of Med.*, 2023 WL 21565, at \*9 (Wash. Ct. App. Jan. 3, 2023) (unpublished) (Op.). Nor does the PRA “bind an agency to its original estimate; an agency is permitted additional time to locate and provide records.” *Id.* When evaluating the reasonableness of a time estimate, a court considers the information available “at the time of the estimate” and does not conduct a “backward-looking evaluation after the fact.” *Id.*

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<sup>2</sup> The Court of Appeals reversed and remanded on a separate issue, not implicated by Conklin’s Petition, regarding the adequacy of UW’s search for agreements between UW and ACGME. UW does not seek this Court’s review of that issue, nor would such review be warranted: There is no issue of substantial public importance and the decision is unlikely to influence other cases, due to its fact-bound nature—as is true of the issue on which Conklin seeks review.

(quoting *Freedom Found. v. Dep't of Soc. & Health Servs.*, 9 Wn. App. 2d 654, 667, 445 P.3d 971 (2019)).

The Court of Appeals considered and rejected Conklin's argument that "'UW's time estimates were not reasonable' as a matter of law based simply on the time it took UW to produce documents." *Id.* To the contrary, "[n]one of the[] cases [on which Conklin relied] declared as a matter of law" any "number of days" as a "threshold of reasonable time estimates for release" "without considering context." *Id.*

The court further explained that "the estimates UW provided were reasonable" based on the breadth of the requests, the "significant quantity of additional records needing review," and the number of exempt documents to be logged. *Id.* at \*10.

#### **IV. ARGUMENT**

The Court should deny review. Conklin does not raise any question of substantial public importance, and the decisions in the Court of Appeals and Superior Court follow precedent in concluding that UW properly responded to Conklin's requests.

**A. Conklin’s Petition Lacks Issues of Substantial Public Importance.**

This lawsuit, a run-of-the-mill PRA case, poses no issues meriting this Court’s review. Conklin invokes RAP 13.4(b)(4), which supports review “only.... [i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” Conklin’s Petition presents no such issue.

*First*, Conklin contends that the importance of “[o]pen government” justifies review, but if that were enough, the Court would *always* review cases implicating the PRA. To the contrary, this Court routinely denies review in PRA cases that, like Conklin’s, necessarily implicate access to public records.<sup>3</sup>

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<sup>3</sup> See, e.g., *Freedom Found. v. DSHS*, 194 Wn.2d 1017, 455 P.3d 133 (2020) (table) (denying review of PRA case); *Zink v. City of Mesa*, 192 Wn.2d 1004, 430 P.3d 251 (2018) (table) (same); *White v. Clark Cnty.*, 185 Wn.2d 1009, 366 P.3d 1245 (2016) (table) (same); *Kozol v. King Cnty.*, 183 Wn.2d 1021, 355 P.3d 1152 (2015) (table) (same); *West v. Gregoire*, 182 Wn.2d 1018, 345 P.3d 784 (2015) (table) (same); *Faulkner v. Dep’t of Corr.*, 182 Wn.2d 1004, 342 P.3d 327 (2015) (table) (same); *Gale v. City of Seattle*, 181 Wn.2d 1004, 332 P.3d 984 (2014) (table) (same); *Gronquist v. Dep’t of Corr.*, 180 Wn.2d 1004, 321 P.3d 1207 (2014) (table) (same); *Bartz v. Dep’t of Corr.*, 177 Wn.2d



This Court even denied review in five of the PRA cases on which Conklin relies for his merits argument. *See Health Pros Nw., Inc. v. State*, 194 Wn.2d 1025, 456 P.3d 396 (2020) (table) (denying review on timeliness of agency’s 12-year response time estimate); *Rufin v. City of Seattle*, 189 Wn.2d 1034, 407 P.3d 1152 (2018) (table) (denying review regarding burdens and attorneys’ fees issues); *Andrews v. Wash. State Patrol*, 182 Wn.2d 1011, 343 P.3d 760 (2015) (table) (denying review on the “flexible approach” under the PRA); *West v. Dep’t of Licensing*, 181 Wn.2d 1027, 339 P.3d 634 (2014) (table) (denying review on interpretation of PRA exemptions); *Forbes v. City of Gold Bar*, 177 Wn.2d 1002, 300 P.3d 415 (2013) (table) (denying review in PRA case). Indeed, two of these cases raised questions about the timeliness of an agency’s production of documents under the PRA—just as Conklin does here. *See Pet. for Review, Health Pros Nw., Inc. v. State*, No. 97775-5, at 3-4 (Wash. Oct.

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1024, 309 P.3d 504 (2013) (table) (same); *Germeau v. Mason Cnty.*, 174 Wn.2d 1010, 281 P.3d 686 (2012) (table) (same).

17, 2019); Pet. for Review, *Andrews v. Washington State Patrol*, No. 90943-1, at 1 (Wash. Oct. 29, 2014). The Court nonetheless denied review, demonstrating that the sort of argument Conklin raises here does not present an issue of substantial public importance.

*Second*, nothing about Conklin’s Petition raises the kind of public-interest question supporting review under RAP 13.4(b)(4). This Court grants review under that rule only in limited circumstances, such as where an appeal implicates an ongoing public issue, especially one of public safety. *See, e.g., In re Williams*, 197 Wn.2d 1001, 484 P.3d 445, 447 (2021) (table) (substantial public interest in “the department’s efforts in responding to th[e] constantly changing threat” of COVID-19 in correctional facilities); *In re Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092 (2017) (table) (granting review where Court of Appeals’ “likely incorrect holdings ... affect public safety by removing an entire class of sex offenders from the registration requirements”). UW’s response to Conklin’s request is

complete, and it does not create or pertain to any ongoing issue—much less one of substantial public interest.

That “the data Dr. Conklin sought would be vital toward educational or lobbying efforts to improve access to training for” DOs, *see* Petition for Review (Pet.) at 19, makes no difference. Undisputedly, Conklin has received all responsive, non-exempt records, and he or anyone else may review them for any purpose. This Court’s review is not necessary to achieve that end—nor to combat the amorphous “[i]ssues of discriminatory hiring” Conklin suggests may be implicated, *see id.* at 20.

Nor does this case present any issues that are likely to recur. This Court sometimes reviews cases under RAP 13.4(b)(4) where the trial court’s decision “has the potential to affect a number of proceedings in the lower courts,” “if review will avoid unnecessary litigation and confusion on a common issue.” *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413, 413-14 (2016) (table) (granting petition with many similar cases pending); *see also State v. Watson*, 155 Wn.2d 574, 577, 122

P.3d 903 (2005) (granting petition as a “prime example of an issue of substantial public interest,” where a decision “has the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where [the applicable] sentence was or is at issue”).

Conklin’s appeal raises only the fact-dependent issue of the reasonableness of UW’s estimates of time for its response to his requests. *See* Pet. at 1. “[W]hether an agency complies with the PRA is a fact specific inquiry and must be decided on a case-by-case basis.” *Andrews v. Wash. State Patrol*, 183 Wn. App. 644, 653, 334 P.3d 94 (2014), *review denied*, 182 Wn.2d 1011, 343 P.3d 760 (2015). The Court’s review of Conklin’s case accordingly would be limited to the facts here and would provide no “sweeping implications” or rules that would provide guidance for any other case. *Watson*, 155 Wn.2d at 578. There is no continuing and substantial public interest “in statutory or regulatory cases that are limited on their facts.” *Hart v. Dep’t of Soc. & Health Servs.*, 111 Wn.2d 445, 449, 759 P.2d 1206

(1988). Discretionary review under RAP 13.4(b)(4) is not warranted.

**B. The Court of Appeals' Decision Follows Precedent on PRA Response Timeliness.**

Conklin also seeks review under RAP 13.4(b)(1) and (2), *see* Pet. at 21-29, but the Court of Appeals' decision is consistent with this Court's precedent and other Court of Appeals decisions. Far from being "an outlier to the point of conflict," Pet. at 21, the decisions below followed the cases Conklin cites.

*First*, as the Court of Appeals noted, "Conklin's reliance on various cases for reasonable response times is not helpful as he ignores the context" of the requests in those cases, none of which "declared as a matter of law that a number of days to respond to a request without considering context sets a threshold of reasonable time estimates for release." Op. at \*9 (discussing *Wade's Eastside Gun Shop, Inc. v. Dep't of Lab. & Indus.*, 185 Wn.2d 270, 289, 372 P.3d 97 (2016); *Rufin v. City of Seattle*, 199 Wn. App. 348, 351, 398 P.3d 1237 (2017), *Hikel v. City of*

*Lynnwood*, 197 Wn. App. 366, 373, 389 P.3d 677 (2016)); *see id.* at \*11 (discussing *Cantu v. Yakima Sch. Dist. No. 7*, 23 Wn. App. 2d 57, 514 P.3d 661 (2022)).

Conklin continues to rely on many of these same cases, and his argument fares no better now. In *Hikel*, 197 Wn. App. at 369, the City “violated the PRA because it did not include *any* reasonable estimate when records would be provided” in its initial response. (Emphasis added). But there is no question UW provided and updated its time estimates. In *Cantu*, Division III affirmed the trial court’s verdict that a school district’s “lack of diligence amounted to a denial” of a request, where the district failed to send a five-day letter, ignored the requester’s inquiries, failed to communicate after having missed its compliance date, provided false information, sent an “empty Google directory” as its records release, and “d[id] not appear [to be] diligently working on any of” the requests with which it claimed to be overwhelmed. *Cantu*, 23 Wn. App. 2d at 94-96. But there is no question UW worked on its response to Conklin’s request

throughout the response period, communicating updates and balancing work on Conklin's requests with work on other requests.

*West v. Department of Licensing*, 182 Wn. App. 500, 331 P.3d 72 (2014), does not help Conklin either. The court there found the agency complied with the PRA by responding in installments over ten months. *West* does not set an outer limit for reasonable estimates of time, and indeed, the court explicitly embraced the agency's iterative response to a "complex and broad" request, much like the approach UW took in this case. *See id.* at 513-14 ("Additional time was necessary to locate and assemble the information requested, to notify third persons or agencies affected..., and to determine whether any of the information requested was exempt.").

*Second*, no court has ever embraced Conklin's position that the PRA mandates a specific time for responding to requests or a certain dedication of resources—or the position of amicus

WCOG, who argues for a *per se* standard for timeliness.<sup>4</sup> Br. of Amicus WCOG at 9. Instead, courts “examine whether the agency’s response was thorough and diligent,” “a fact-specific inquiry.” *Freedom Found.*, 9 Wn. App. 2d at 673. *See also* Op. at \*10 (“While we know of no case that limits what can be considered in determining whether a given estimate is reasonable,” precedent does not hold “that agencies violate the PRA when they do not adjust their budget or staffing to accommodate an overwhelming public records request while actively responding to multiple requests.”).

Nor *should* the Court adopt Conklin’s groundbreaking argument. Agencies vary widely in size, primary purposes, and

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<sup>4</sup> Conklin suggests the Court of Appeals incorrectly found he waived any argument regarding the sufficiency of the resources UW dedicates to its PRA obligations because he did not raise it until his reply brief, *see* Pet. at 28-29 n.9. While Conklin has consistently argued UW should have devoted additional resources to respond to his PRA requests, he did not previously assert that not doing so constitutes a standalone PRA violation. The Court of Appeals addressed Conklin’s argument about resources as it pertains to this case.



resources. *See* RCW 42.56.010 (broadly defining “Agency”). And the PRA directs that agencies fulfill their obligations in a way that “prevent[s] excessive interference with other essential functions.” RCW 42.56.100. In any event, the PRA itself explains that extended time to respond may be necessary. RCW 42.56.520(2) (“Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt....”).

The time to respond to a public records request will vary, for example, by the agency; the nature of request; and the type, quantity, and characteristics of the documents at issue. *See, e.g., Anderson v. Spokane Police Dep’t*, 182 Wn. App. 1025, 2014 WL 3929161, at \*8 (July 17, 2014) (PRA response time “reasonable based upon its resources and amount of work” considering “increasing public demands upon government

employees, with a decreasing public desire to pay for the cost of the demands”) (unpublished) (UW cites this and other unpublished opinions under GR 14.1(a) as nonbinding but persuasive authority.). Courts cannot and should not intercede agencies’ budgetary or resource-management decisions balancing their PRA obligations with other essential functions. And courts never have: by evaluating the reasonableness of an agency’s estimate of time to respond to a request, courts take into account the *anticipated* burden on the agency of completing its response—instead of any backward-looking assessment of how long a response ultimately takes. *Freedom Found.*, 9 Wn. App. 2d at 667. This approach avoids interposing the courts as arbiters over an agency’s management of its competing priorities, a role for which the courts are ill suited.

The rule Conklin proposes would upset decades of settled precedent and contravene the PRA itself. There is no basis for Conklin’s proposed test, and the Court should deny review.

## V. CONCLUSION

For these reasons, the Court should deny review.

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