

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
1/12/2024 1:46 PM  
BY ERIN L. LENNON  
CLERK

No. 1026447

---

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

SAN JUAN COUNTY,

Respondent,

v.

WASHINGTON COALITION FOR OPEN GOVERNMENT,

Appellant

---

**RESPONDENT SAN JUAN COUNTY'S ANSWER TO  
PETITION FOR REVIEW**

---

JEFFREY S. MYERS  
Law, Lyman, Daniel, Kamerrer  
& Bogdanovich, P.S.  
P.O. Box 11880  
Olympia, WA 98508  
(360) 754-3480  
[jmyers@lldkb.com](mailto:jmyers@lldkb.com)  
Attorney for Respondent San  
Juan County

**TABLE OF CONTENTS**

**I. INTRODUCTION.....1**

**II. STATEMENT OF THE CASE.....1**

**III. ISSUES PRESENTED.....9**

**IV. ARGUMENT.....9**

**A. THE COURT OF APPEALS OPINION  
DOES NOT CONFLICT WITH ANY  
SUPREME COURT CASE WARRANTING  
REVIEW UNDER RAP 13.4(b)(1). ....9**

**B. THE COURT OF APPEALS OPINION  
DOES NOT CONFLICT WITH ANY  
PUBLISHED DECISION OF THE COURT  
OF APPEALS WARRANTING REVIEW  
UNDER RAP 13.4(b)(2). ....14**

**C. APPLICATION OF WORK PRODUCT AND  
ATTORNEY-CLIENT PRIVILEGES TO  
REDACT ATTORNEY INVOICES DOES NOT  
PRESENT AN ISSUE OF SUBSTANTIAL  
PUBLIC INTEREST WARRANTING REVIEW  
UNDER RAP 13.4(b)(4). ....20**

**V. CONCLUSION.....26**

**TABLE OF AUTHORITIES**

**Cases:**

*Asotin County v. Eggleston*, 7 Wn.App.2d 143,  
432 P.3d 1235 (2019) .....14-19

*City of Lakewood v. Koenig*, 182 Wn.2d 87,  
343 P.3d 335 (2014) .....25

*Hangartner v. City of Seattle*, 151 Wn.2d 439,  
90 P.3d 26 (2004).....23

*Kilduff v. San Juan County*, 194 Wn.2d 859,  
453 P.3d 719 (2019) .....2

*Kilduff v. San Juan County*, 22 Wn.App. 2d 1015,  
2022 WL 1763722 (2022) .....3

*Kittitas County v. Allphin*, 190 Wn.2d 691,  
416 P.3d 1232 (2018) .....26

*WCOG v. Pierce County*, 7 Wn.App. 2d 1049,  
2019 WL 761585 (2019).....25

*Yakima County v. Yakima Herald-Republic*,  
170 Wn.2d 775, 246 P.3d 768 (2011).....9-13, 20

**Statutes:**

RCW 5.56.060(2) .....23

RCW 42.56.290 .....1, 4, 7, 15, 16, 19, 21, 22

RCW 42.56.550(3) .....21  
RCW 42.56.904.....passim

**Court Rules:**

RAP 13.4(b)(1) .....9, 13  
RAP 13.4(b)(2) .....9, 14, 19  
RAP 13.4(b)(4) .....9, 20, 26

## **I. INTRODUCTION**

Respondent San Juan County opposes petition for review filed by Appellant Washington Coalition for Open Government (“WCOG”) of an unpublished opinion of Division I of the Court of Appeals in this matter issued on November 13, 2023 (“the Opinion”). The decision is a routine application of work product and attorney client privileges to attorney invoices as permitted by the Public Records Act (“PRA”) and RCW 42.56.290 and 42.56.904. After *in camera* review, both the trial court and a unanimous court of appeals determined that the County properly redacted descriptions of work performed. Because this holding does not conflict with a Supreme Court or published opinion of the Court of Appeals, and is not an issue of significant public interest, the Court should deny the petition for review.

## **II. STATEMENT OF THE CASE**

This matter arises from a public records request filed by counsel for WCOG on April 15, 2020 seeking:

All invoices, contracts, correspondence, notes, bids, proposals, records relating to conflicts of interest, meeting minutes, and any other records relating to the County's use of outside counsel in *Kilduff v. San Juan County* (in any court).

CP 7 (emphasis added).

The request related to underlying litigation in *Kilduff v. San Juan County*, which WCOG was an active participant opposing the County's position. In this litigation, this Court held that exhaustion of administrative remedies was not required by the PRA and remanded the case for further consideration by the trial court. *Kilduff v. San Juan County*, 194 Wn.2d 859, 453 P.3d 719 (2019). WCOG filed an amicus brief opposing the County in that appeal.

On January 9, 2020, the Supreme Court remanded the *Kilduff* matter to Skagit County Superior Court for further proceedings and a decision on the merits. 194 Wn.2d at 879. Thus, WCOG's April 15, 2020 PRA request came during the trial court's consideration of issues on remand in the *Kilduff* case. On September 23, 2020, the court ruled that San Juan County did not

violate the PRA and entered findings of fact and conclusions of law on November 18, 2020. Kilduff appealed, again seeking direct review in the Supreme Court.<sup>1</sup>

The county responded to WCOG's PRA request on May 21, 2020 with invoices that were redacted. The redactions were entirely in the descriptions of work performed by the county's outside counsel. Information in other portions of the invoice was not redacted, but was disclosed to WCOG, including: a) the letterhead of the invoice; b) the date; c) the short "matter description" used by the outside counsel; d) the file number, if any, of the outside counsel; e) the dates of service; f) the initials

---

<sup>1</sup> On February 18, 2021, WCOG filed a second amicus brief supporting Kilduff's request for direct review and urged the Court to overturn the trial court's findings of fact. The Supreme Court transferred the case to Division I of the Court of Appeals. After the parties briefed the issues in the second appeal, on October 29, 2021, WCOG filed a third amicus brief again opposing the County's legal position. Nevertheless, the Court of Appeals issued an opinion on May 31, 2022 affirming the trial court's ruling in all respects, including its finding that San Juan County did not violate the PRA. *Kilduff v. San Juan County*, 2022 WL 1763722, 22 Wn.App. 2d 1015 (2022) (unpublished).

or names of person performing the work; g) the amount of time spent on the task; h) the price for that time entry; i) the total price for all entries in the period; and j) other financial details such as age of past due amount, addresses, phone numbers, IRS identification numbers etc.

When the county produced invoices to WCOG, the county identified each redaction with a code that identified that it was exempt under RCW 42.56.290 and RCW 5.60.060(2)(a), the attorney-client privilege statute. The county explained that the redactions covered information relevant to a controversy (the Kilduff case) and were work product and attorney-client privileged records that are not discoverable under the rules of civil discovery.

In October 2020, San Juan County sued in Whatcom County Superior Court for a declaration that it need not provide responsive records in an electronic format not compatible with its tracking system when demanded by the requester. CP 10. WCOG filed a counterclaim alleging that the invoices provided



were improperly redacted. CP 28-29. WCOG's counterclaim sought penalties under the PRA as well as attorney's fees. CP 29. The issues in the County's complaint were resolved when WCOG withdrew its demands for a specific format, but the issue of redaction of the invoices remained.

After responding to WCOG's discovery seeking records including other redacted invoices, the County made discovery requests for attorney invoices from WCOG relevant to this matter. WCOG categorically refused to produce any invoices, in their entirety, citing the work product privilege. CP 207. Thus, WCOG took the position that its invoices are protected work product in their entirety and are not subject to discovery under the rules of pretrial discovery. WCOG, however, argued that the County's invoices are not subject to the same privileges.

The parties filed cross motions for summary judgment. At oral argument on the summary judgment motions, WCOG's counsel conceded that material contained in attorney invoices is "work product" and is not subject to discovery, stating:

MR. CRITTENDEN: Your Honor, as the county has shown, there is a ton of case law from all over the country and from federal courts that say that attorney work product -- attorney invoices are work product and you can't have them. And we relied on that case law in refusing to produce them to the county in response to their discovery requests, in addition to being burdensome and cumbersome.

CP 331-332. VRP, (vol. 1, Feb. 18, 2022) at 36-37. (Emphasis added).

The trial court denied the summary judgment motions until it could make a factual determination as to whether the redacted material was privileged or work product after conducting *in camera* review. CP 317. After conducting *in camera* review of the redacted documents, the court made factual findings that the redacted material was work product protected by privilege. CP 358. The court stated that “the descriptions of the work performed by attorneys on the invoices could be redacted in its entirety and that [San Juan] County was not obligated to go line by line to select portions for more limited redaction.” CP 358-359.

After entering judgment on behalf of the County, the trial court denied WCOG's motion for reconsideration. CP 414. WCOG appealed to Division One of the Court of Appeals, which issued its opinion on November 13, 2023.

Division One conducted de novo review of the record and agreed with the trial court that the redactions made by the County were proper and protected privileged information as allowed by RCW 42.56.290. Opinion at 5. The court rejected WCOG's argument that RCW 42.56.904 required a different result, finding that the County followed the statute by not redacting the invoices "in their entirety" and fully disclosing the financial details of the invoices, finding that the descriptions of work performed were protected by both as work product and attorney-client privileged communications. Opinion at 7-8. In rejecting WCOG's argument, the Court held:

Because the descriptions are privileged under work product and attorney-client privilege and are therefore not subject to pre-trial discovery, they are similarly not subject to the PRA under RCW 42.56.290. WCOG fails to acknowledge that the

PRA exempts non-discoverable information for pending controversies and that it sought such records. Moreover, it ignores that San Juan County did not redact the invoices in their entirety—neither the hours spent nor the amounts billed were redacted from the invoices. RCW 42.56.290 is directly applicable because WCOG sought information that is not discoverable during on-going litigation.

Opinion at 8 (emphasis added).

The Court of Appeals further relied on the plain meaning of RCW 42.56.904 which allows redaction if it would disclose “an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under [the PRA] or other laws.” In its briefing, WCOG urged the Court of Appeals to apply the plain meaning of RCW 42.56.904. Appellant’s Opening Brief at 13-15, 21-23. Having done so, WCOG now disagrees with how the court read that plain language.

### III. ISSUES PRESENTED

1. Whether the Opinion conflicts with a Supreme Court decision warranting review under RAP 13.4(b)(1)?
2. Whether the Opinion conflicts with a published decision of the Court of Appeals warranting review under RAP 13.4(b)(2)?
3. Whether the Opinion applying the work product doctrine and attorney-client privilege after *in camera* review of attorney invoices presents an issue of substantial public interest that should be determined by the Supreme Court under RAP 13.4(b)(4)?

### IV. ARGUMENT

#### **A. THE COURT OF APPEALS OPINION DOES NOT CONFLICT WITH ANY SUPREME COURT CASE WARRANTING REVIEW UNDER RAP 13.4(b)(1).**

WCOG first argues that the court should grant review because it conflicts with this Court's opinion in *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, 246 P.3d 768 (2011). Because that case did not interpret the redaction provisions of RCW 42.56.904, there is no conflict presented by the Court of Appeals opinion at issue here.

*Yakima Herald* involved an issue of whether the PRA applied to a request for invoices from a public defender's expert

in a capital murder case which were requested from the county. The court first determined that the PRA did not apply to invoices held by the court, which is not an agency under the PRA. 170 Wn.2d at 792. In so ruling, the court rejected the Herald's argument that RCW 42.56.904, which clarified that attorney fee invoices are not to be withheld in their entirety under the PRA, would be rendered meaningless unless the PRA applies to these court records. 170 Wn.2d at 796. This argument is similar to the argument rejected by the Court of Appeals in this case. The Court rejected this argument finding that RCW 42.56.904 did not alter the PRA's definition of "agency" which did not include the judiciary. 170 Wn.2d at 798.

Next, *Yakima Herald* agreed that the PRA, and specifically RCW 42.56.904 required production of outside attorney's invoices held by non-court offices of the County, overruling the trial court. 170 Wn.2d at 804-805. In so ruling, the court stated:

Finally, and of particular significance here, RCW 42.56.904 requires the county to produce attorney invoices, if any, which are held outside the court, subject to the limitations of that provision.

*Yakima Herald*, 170 Wn.2d at 806 (emphasis added).

*Yakima Herald* primarily determined that the PRA did not apply to invoices held by the court or judicial entities but did apply to records held by entities outside the court. *Yakima Herald* did not address what the “limitations” of RCW 42.56.904 are or how they would be applied, which is the issue addressed by the Court of Appeals opinion here. Because there is no dispute that the PRA applies to the invoices, *Yakima Herald* does not apply further. The Court of Appeals Opinion does not conflict with this Court’s ruling that invoices held by agencies outside the court must produce them “subject to the limitations of [RCW 42.56.904].”

WCOG contends that there is a conflict with this Court’s ruling in *Yakima Herald* by allowing “blanket redaction” of invoices. PFR at 12. WCOG falsely characterizes both *Yakima*

*Herald* holding and the Court of Appeals Opinion here. The Opinion here noted the fact that San Juan County did not redact the invoices “in their entirety” in multiple places. Opinion at 4, 5, 6, 8. *Yakima Herald* similarly held that invoices held by non-judicial agencies must be produced and cannot be withheld “in their entirety”. 170 Wn.2d at 806, n. 16. *Yakima Herald* did not discuss the permissible scope of redactions or articulate a prohibition on “blanket redactions.”

WCOG cites only *Yakima Herald's* statement that RCW 42.56.904 was adopted “to clarify that discovery rules, as they applied to attorney fees paid by a public agency, do not exempt attorney fee invoices in their entirety under the PRA.” PFR at 11-12, quoting *Yakima Herald*, 170 Wn.2d at 797 (emphasis added). *Yakima Herald* confirms what the Opinion ruled: that the PRA does not exempt attorney invoices “in their entirety.” It did not discuss what redactions were proper, which was the issue in the Opinion.



WCOG's assertion that the Opinion conflicts with *Yakima Herald's* restriction on "blanket redactions," PFR at 12, mischaracterizes and ignores the actual holding of the Opinion which agrees with *Yakima Herald* that invoices may not be withheld "in their entirety". Opinion at 4, 5, 6, 8. *Yakima Herald* never mentions "blanket redactions", much less establishes a prohibition on "blanket redactions". The scope of what may be redacted in invoices was simply not before the Court. Moreover, in this case, the County did not make "blanket redactions" as it fully disclosed all the financial details on the invoices. There is no conflict, as the Opinion follows *Yakima Herald* and addresses issues that this Court was not presented with as to how work product and privilege exemptions should be applied.

*Yakima Herald* found that redacted invoices were subject to the "limitations" of RCW 42.56.904. This case, unlike *Yakima Herald*, considered application of those limitations. The cases do not conflict as they were considered different things. The court should not grant review based on RAP 13.4(b)(1).

**B. THE COURT OF APPEALS OPINION DOES NOT CONFLICT WITH ANY PUBLISHED DECISION OF THE COURT OF APPEALS WARRANTING REVIEW UNDER RAP 13.4(b)(2).**

WCOG next argues that the Opinion conflicts with a published decision of Court of Appeals Division III in *Asotin County v. Eggleston*, 7 Wn.App.2d 143, 432 P.3d 1235 (2019). The issue decided by the Court of Appeals was not the scope of redactions permitted by RCW 42.56.904, but whether a requester who had not filed suit could be a prevailing party for attorney's fee purposes. 7 Wn.App.2d at 146. Eggleston's appeal was to the denial of his motion for attorney's fees., Id. at 149.

*Asotin County* presented three issues for review, which the court stated as:

Three issues are presented: whether a record requester must have filed a complaint or motion for affirmative relief in order to be a prevailing party, whether Mr. Eggleston was the prevailing party, and whether the court abused its discretion in refusing to consider a penalty award.

*Asotin County*, 7 Wn.App.2d at 150.

Even at the trial court level, there is no conflict between the Opinion here and *Asotin County*. *Asotin County* involved an injunction action seeking to enjoin disclosure of invoices in a pending lawsuit in their entirety. *Asotin County*, 7 Wn.App.2d at 147. Alternatively, the County requested the Court (not the County) to redact the records. The trial court first held that the invoices were not entirely exempt, which is consistent with the Opinion here, and denied *Asotin County*'s request for an injunction.

Next, the trial court held that it was improper for *Asotin County* to request that the Court make the redactions, because that burden was placed on the County to propose its redactions, which the court ordered the County to do. *Id.* at 148-149. The trial court then ordered disclosure of the invoices with the redactions proposed by the County pursuant to RCW 42.56.290, which it found appropriate to protect mental impressions, legal advice, theories, or opinions. *Id.* at 149. The trial court did not decide whether more broad redactions would be consistent with

exemptions under the PRA, including RCW 42.56.290, which exempts records not subject to discovery under the civil rules, such as work product and attorney client privileged information.

Specifically relevant here, the *Asotin County* appellate decision addressed whether denial of the requester's motion for attorney's fees was appropriate and did not address the scope of permissible redactions under RCW 42.56.904. *Asotin County* held that the requester prevailed on significant issues, including the requirement that the County, not the Court had the burden to propose redactions. *Asotin County*, 7 Wn.App.2d at 153-154. Because the court denied the requested injunction to entirely withhold the invoices and agreed with the requester on the County's duty to propose redactions, *Asotin County* held that the requester was a prevailing party entitled to attorney's fees. *Id.*, at 155.

In its discussion of what the requester prevailed upon, the court noted that he prevailed in the argument that the County was not entitled to an injunction and was not entitled to treat the

invoices as “entirely exempt.” *Asotin County*, 7 Wn.App.2d at 154. This is the same result is followed by the Opinion here, which also acknowledges that the invoices are not entirely exempt. Opinion at 6. Here, as the Opinion found, San Juan County did not redact the invoices in their entirety, but fully disclosed the amounts billed, the hours worked, the identity of the billing attorneys, the hourly rates charged – the very financial information that RCW 42.56.904 demands to provide accountability for government expenditures when it states:

The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

RCW 42.56.904 (emphasis added).

*Asotin County* also agreed that Eggleston prevailed on the issue that it was the burden of the County to propose good faith redactions before submitting them to the court, not the court's responsibility. *Asotin County*, 7 Wn.App.2d at 154. In this case, San Juan County made good faith redactions that the Court then

reviewed *in camera*, finding that they were proper and that the descriptions of the work performed was exempt under both the work product and attorney client privileges. Opinion at 8.

The Opinion also does not conflict with how the trial court in *Asotin County* applied RCW 42.56.904. The plain language of RCW 42.56.904 contains six clauses where redaction of the descriptions of work performed is allowed, each separated by in the disjunctive term “or”. The language of RCW 42.56.904, as enacted, provides as follows:

It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal

- [1] an attorney's mental impressions,
- [2] actual legal advice,
- [3] theories, **or**
- [4] opinions, **or**
- [5] are otherwise exempt under this act **or**
- [6] other laws, ...

(Emphasis added).

There is no conflict with *Asotin County*, including the trial court's ruling which was not reviewed on appeal. In *Asotin County*, the trial court approved redactions under clauses 1-4 above. The Opinion here relied on the plain language of clauses 5-6 to fully protect descriptions protected by work product under RCW 42.56.290 and the attorney-client privilege, which is an "other statute". Opinion at 8. Since they relied on different parts of RCW 42.56.904, there is no conflict between the Court of Appeals Opinion and the trial court's ruling in *Asotin County*.

WCOG's repeated claim that the Opinion conflicts with *Asotin County v. Eggleston* because it allows "blanket redactions" fails primarily because the Court of Appeals only addressed attorney's fee issues, not the scope of redactions permitted by RCW 42.56.904 under the work product and attorney-client privilege. There is not even a conflict with the trial court's ruling. Because there is no conflict with the Opinion issued in this case, the Court should not grant review based on RAP 13.4(b)(2).

**C. APPLICATION OF WORK PRODUCT AND ATTORNEY-CLIENT PRIVILEGES TO REDACT ATTORNEY INVOICES DOES NOT PRESENT AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST WARRANTING REVIEW UNDER RAP 13.4(b)(4).**

WCOG twice states, without explanation, that the correct interpretation of RCW 42.56.904 is an issue of substantial public interest meriting review under RAP 13.4(b)(4). PFR at 4, 26. WCOG fails to explain why it is an issue of substantial public interest and offers no supporting argument for this conclusory statement.

In this case, no party is contesting whether work product or attorney-client privilege applies to attorney invoices under the PRA. The County agrees with the holding of *Yakima Herald* that its invoices are subject to disclosure, and further agrees that invoices cannot be redacted in their entirety. In order to provide the financial accountability sought by RCW 42.56.904, it is undisputed that the County fully disclosed the amounts expended in the Kilduff litigation in these invoices. It fully disclosed the



hours spent by its attorneys, the identities of attorneys billing for their services and the rates charged by those attorneys.

This case applied well-established legal privileges that preclude discovery of invoices. Indeed, WCOG relied on these same privileges when it refused to produce its own invoices during discovery. This case followed the well established process for trial courts to apply work product and attorney client privilege claimed in records, by conducting an *in camera* review. RCW 42.56.550(3). The Court of Appeals conducted its own de novo review. Opinion at 5. In total, four judges (the trial judge and all three members of the Court of Appeals panel) unanimously agreed that the County properly redacted material protected by work product and attorney-client privileges in the invoices produced to WCOG. They unanimously agreed that the redactions protect material privileged against discovery that is exempt under RCW 42.56.290 and which is therefore “otherwise exempt” under the PRA and “other laws” as set forth in RCW 42.56.904. This is not an issue of significant public interest.

The Court of Appeals Opinion correctly applied the plain language of the PRA in applying both the provisions of the exemption in RCW 42.56.290 and the terms of RCW 42.56.904. The court held that the language plainly allows redaction of material that is “otherwise exempt” under the PRA or “other laws.” Opinion at 10. The Court correctly held that one such “other law” is RCW 42.56.290 which allows redaction of material not discoverable under the civil rules as work product or attorney client privileged. *Id.*

WCOG repeatedly urged court to follow plain meaning of RCW 42.56.904 (at least as it was originally drafted prior to Hunt Amendment which added the phrase “or are otherwise exempt under this act or other laws.” CP . See Opening Brief of Appellant at 14-15, 21-23. However, its argument misstates the statute and misquotes the significant language.

In the petition for review, at 25, WCOG is forced to misquote the statute to reach its desired conclusion. There, WCOG misquotes the final language of RCW 42.56.904, placing

a period after the word "opinions" where the statute continues on to say, "or are otherwise exempt under this act or other laws".<sup>2</sup> WCOG can only reach its desired reading by omitting this statutory language (the Hunt Amendment). This omission allows WCOG to invent a limitation on work product that is not written in the statute. The language, as finally adopted plainly allows redaction for any material "otherwise exempt" under the PRA or "other laws," including all forms of work product or attorney-client privileged communications, which is protected under the attorney-client privilege statute, RCW 5.56.060(2), which has been held by this Court to be an "other law" restricting disclosure. *Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004).

---

<sup>2</sup> Following the hearing on HB 1897 by the House Committee on State Government & Tribal Affairs, Rep. Hunt, a co-sponsor authored an amendment ("the Hunt Amendment") to the original language to add this language to address concerns about not fully addressing privilege and work product exemptions. CP 312. The amended version, SHB 1897, was ultimately passed. Nevertheless, WCOG quotes the language originally proposed, not as amended.

In addition to omitting the key language in its quote on page 25 of the PFR, WCOG also adds language not found in the statute to reach its desired meaning when stating its interpretation of RCW 42.56.904 on page 9 of the PFR. In stating its interpretation of RCW 42.56.904, WCOG adds limiting language "other than privilege and work product" to explain what "other laws" means. PFR at 9. No such limitation is used by the Legislature. The Court correctly disregarded this argument and applied the plain meaning of the statute, in full context with other exemptions in the PRA. The Opinion correctly applied the statute as written according to its plain language in harmony with and giving effect to "all of the relevant statutory language." Opinion at 6.

Because WCOG is forced to twist and distort the plain language of RCW 42.56.904 to reach its interpretation, the Court of Appeals correctly rejected these arguments. The Opinion correctly applies the plain meaning rule and does not err in its

statutory interpretation. Thus, there is no reason to grant review of the Opinion.

Finally, WCOG includes two additional arguments alleging error in approving the County's explanation of its claimed exemption and alleging improper consideration of the identity of the requester. It does not argue that either alleged error is an issue of substantial public interest.

Codes to explain the statutory exemption used to redact documents are commonplace and have been approved by courts, including in an unpublished case involving WCOG. *WCOG v. Pierce County*, 7 Wn.App. 2d 1049, 2019 WL 761585 (2019). The codes explained that the redactions were for work product and ACP. The Opinion properly determined that this meets the requirement of the PRA to provide a "brief explanation" of the redaction. Opinion at 12-13. These explanations are fully consistent with the PRA and *City of Lakewood v. Koenig*, 182 Wn.2d 87, 343 P.3d 335 (2014). It is not an issue of substantial public interest.

Likewise, the consideration of whether disclosure would be to a litigation adversary, like WCOG was in the Kilduff litigation, is relevant to determining if privilege would be waived. *Kittitas County v. Allphin*, 190 Wn.2d 691, 708-710, 416 P.3d 1232 (2018). It was not improper to argue that the purpose of work product is to prevent litigation opponents from discovering that work product. Moreover, the County routinely redacts its invoices, even before they are sent by the Prosecuting Attorney to the County Auditor for payment, in order to safeguard these privileges. CP 227. There was no discrimination based on the identity of the requester. Again, this issue is not of substantial public concern. Review under RAP 13.4(b)(4) is not warranted.

## **V. CONCLUSION**

Because the Court of Appeals Opinion does not conflict with any decision of this Court or of the court of Appeals, and because no issue of substantial public interest is presented, the Court should deny the petition for review.

DATED this 12<sup>th</sup> day of January, 2024.

I certify that this brief contains 4,362 words as determined by computer word count in conformity with RAP 18.17.

LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.

A handwritten signature in black ink, appearing to read "Jeffrey S. Myers", written over a horizontal line.

Jeffrey S. Myers, WSBA# 16390  
Attorney for Respondent San Juan County

**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2024, I served the foregoing with the Clerk of the Court for the Washington State Court of Appeals using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Signature:                   /s/ Lisa Gates                    
Assistant for Jeffrey S. Myers



**LAW LYMAN DANIEL KAMERRER & BOGDANOVICH**

**January 12, 2024 - 1:46 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,644-7  
**Appellate Court Case Title:** San Juan County v. Washington Coalition for Open Government  
**Superior Court Case Number:** 20-2-01095-9

**The following documents have been uploaded:**

- 1026447\_Answer\_Reply\_20240112134347SC716692\_6323.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Answer to Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- bill@billcrittenden.com

**Comments:**

---

Sender Name: Lisa Gates - Email: lisa@lldkb.com

**Filing on Behalf of:** Jeffrey Scott Myers - Email: jmyers@lldkb.com (Alternate Email: lisa@lldkb.com)

Address:  
P.O. Box 11880  
OLYMPIA, WA, 98508  
Phone: (360) 754-3480

**Note: The Filing Id is 20240112134347SC716692**