

NO. 44480-1-II

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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JOHN ANDREWS  
Appellant

v.

WASHINGTON STATE PATROL  
Appellee

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REPLY BRIEF OF APPELLANT

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JOHN ANDREWS, WSBA No. 21387  
BISHOP, CUNNINGHAM & ANDREWS, INC., (P.S.)  
Attorneys at Law  
3330 Kitsap Way  
Box 5060, West Hills Station  
Bremerton, WA 98312  
TELEPHONE (360) 377-7691  
FACSIMILE (360) 377-5484

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## I. ARGUMENT

The majority of Washington State Patrol's (WSP) brief is irrelevant to the issue at hand. WSP largely argues that the total length of time between the request and production of records was reasonable due to the complexity of the request and WSP's pending PRA obligations. The real issue, however, is much simpler. The Court is asked to rule on whether WSP violated the PRA's fullest assistance requirement when it failed to provide documents or otherwise respond with an extension by its established deadlines, and altogether refused to communicate with the requester.

WSP's argument to this issue is essentially that the PRA does not require the agency to respond by its established deadlines or return the requester's phone calls after the agency fails to respond by its deadline. This is a very literal reading of the PRA that is not supported by case law or the policy behind the PRA.

### **A. Case law reflects courts' broad interpretation of the fullest assistance requirement, violations of which do not have to be specified in the PRA.**

In *Mechling v. City of Monroe*, the Division One Court of Appeals recognized that, while agencies have no statutory duty to disclose records electronically under the PRA, they do have a statutory duty to provide the fullest assistance. 152 Wn. App. 830, 849, 222 P.3d 808 (2009). Under this duty, a trial court may require an agency to disclose records electronically if it

is reasonable and feasible to do so. *Id.* In *Am. Civil Liberties Union of Washington v. Blaine School Dist. No. 503*, the court ruled that the city failed to provide the fullest assistance to the requester when it refused to mail the responsive records, and instead made it available at its office. 86 Wn. App. 688, 695, 937 P.2d 1176 (1997).

These cases show that the agency can violate the fullest assistance provision of the PRA even though the PRA does not specifically prohibit the actions of the agency. Practically, the PRA cannot possibly list all actions that would violate the fullest assistance requirement. There would simply be too many to imagine. Violations have to be determined by the facts on a case-by-case basis.

In the case at hand, the Court may find that WSP failed to provide the fullest assistance to Mr. Andrews even though the PRA does not specifically state that the agency must meet its deadlines and must return the requester's phone calls.

**B. Partial compliance or efforts at compliance with the PRA is not sufficient.**

Very recently, in a published opinion, the Division II of the Court of Appeals reversed the trial court's dismissal of a PRA action in *City of Lakewood v. Koenig*, 2013 WL 4746823, No. 42972-1-II, (September 4, 2013). There, the Court held that the city failed to provide a brief explanation

of redactions when it redacted driver's license numbers and merely cited a PRA statute for the redaction. *Id.* at 5. Because the Court found that the city violated the PRA, it awarded costs and attorney's fees to the requester. *Id.* at 6.

This case shows that a partial compliance with the PRA is not sufficient. When WSP estimated an extension of the deadline, after it had already missed the deadline, it does not cure the violation of the PRA. Likewise, when WSP eventually provided responsive records, it did not cure its previous violations of failing to respond by its deadlines and ignoring Mr. Andrews' phone calls.

The *Koenig* case also shows that the degree of the violation is not important—the court awarded attorney's fees and costs without an award of penalties. Here, this case is also likely not one of high penalties, but there was a violation of the PRA nonetheless, and the Court should award costs and attorney's fees.


## II. CONCLUSION

Courts have repeatedly reversed the lower court orders and stressed the importance of the policy behind the PRA. *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 540, 199 P.3d 393 (2009) (court enforced the privilege log requirement to “liberally construe the PRA to effectuate open government”); *O'Neill v. City of Shoreline*, 170 Wn.2d 138,

147, 240 P.3d 1149 (2010) (court held that e-mail metadata is subject to the PRA because a "broad PRA exists to ensure that the public maintains control over their government, and we will not deny our citizenry access to a whole class of possibly important government information").

The WSP's actions are a violation of not only the fullest assistance requirement of the PRA, but also the policy behind the PRA. WSP's repeated failure to respond to Mr. Andrews by its deadlines, and ignoring Mr. Andrews' telephone inquiries regarding the missed deadlines runs contrary to the PRA's policy of broad disclosure of information for a transparent government. The Court should find that WSP violated the PRA's fullest assistance requirement, and award attorney's fees and costs to the Appellant.

DATED this 2<sup>d</sup> day of October, 2013.

  
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JOHN C. ANDREWS, WSBA#21387  
BISHOP, CUNNINGHAM & ANDREWS  
Attorneys for Plaintiff

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WASHINGTON STATE COURT OF APPEALS  
DIVISION II

<p>In re:</p> <p>WASHINGTON STATE PATROL,</p> <p style="text-align: center;">Petitioner/Respondent,</p> <p>vs.</p> <p>JOHN ANDREWS,</p> <p style="text-align: center;">Respondent/Appellant</p>	<p>NO. 44480-1-II</p> <p>DECLARATION OF SERVICE</p>
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The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:


I am Maryann A. Andrews, Legal Assistant to the Plaintiff, in the above-referenced matter declare that on October 2, 2013, I delivered a copy(ies) of the following document:

- Reply Brief of Appellant

To the following parties:

<p>Name: Shelley Anne Williams Assistant Attorney General</p>	<p>VIA: U.S. Mail: 800 Fifth Avenue Suite 2000 Tb-14 Seattle, WA 98104-3188</p> <p>E-mail: shelleyw1@atg.wa.gov</p>
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Signed in Bremerton, Washington this 2<sup>nd</sup> day of October, 2013.

  
Maryann A. Andrews

BISHOP, CUNNINGHAM & ANDREWS, INC., (P.S.)  
Attorneys at Law  
3330 Kitsap Way  
Box 5060, West Hills Station  
Bremerton, WA 98312  
TELEPHONE (360) 377-7691  
FACSIMILE (360) 377-5484



# BISHOP CUNNINGHAM & ANDREWS INC PS

**October 02, 2013 - 3:40 PM**

## Transmittal Letter

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Court of Appeals Case Number: 44480-1

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