No. 922209



SUPREME COURT
OF THE STATE OF WASHINGTON

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ANNE BLOCK,

Petitioner,

vs.

THE CITY OF GOLD BAR,

Respondent.

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# ANSWER TO PETITION FOR REVIEW

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## I. IDENTITY OF RESPONDENT

Respondent City of Gold Bar ("Gold Bar" or "City") asks this Court to deny review of the decision of Division One of the Court of Appeals designated in Section II of this Answer.

## II. COURT OF APPEALS' DECISION

Division One of the Court of Appeals filed an unpublished opinion on June 22, 2015, unanimously affirming the trial court's order finding that the City had complied with the Public Records Act ("PRA"). The Court of Appeals subsequently published the opinion on August 12, 2015, following a Motion to Publish filed by the Washington State Attorney General's Office. The Court of Appeals determined that the trial court properly applied CR 56, and found that the City complied with the PRA by (a) conducting an adequate search for responsive records, (b) withholding and redacting only documents that fell within one or more of the PRA's specific exemptions, and (c) providing proper exemption logs. A copy of the Court of Appeals' decision is attached as Appendix A to Block's Petition.

## III. ISSUES PRESENTED FOR REVIEW

A. The Court of Appeals' decision is wholly consistent with other decisions of this Court and other decisions of the Court of Appeals. Should review accordingly be denied for failure to

satisfy the review criteria of RAP 13.4(b)(1) and (2)?

1. Should this Court deny review where the Court of Appeals applied this Court's precedent to affirm the trial court's order on summary judgment under CR 56?

2. Whether the City performed an adequate search of places where records were reasonably likely to be found, even though Block obtained records from other sources?

3. Whether the City's exemption logs properly described the records withheld from production or redacted prior to production, and additionally explained the bases for all exemptions?

4. Whether the City established that all records withheld from production and all records redacted prior to production were exempt under either or both the attorney-client and attorney work product privileges?

B. The Court of Appeals' decision is fact-specific and does not involve any issue of substantial public interest that requires determination by this Court. Should review accordingly be denied for failure to satisfy the review criterion of RAP 13.4(b)(4)?

## IV. FACTS RELEVANT TO PETITION

### A. Block's Public Records Requests.

This lawsuit involves the City's responses to two public records requests received from Anne K. Block ("Block"), one on December 8, 2008, and the other on February 13, 2009.

During the period in which the City responded to the public records requests ("PRRs") at issue here, Gold Bar City Hall operated with old computers and outdated technology. The City operated a "Peer-to-Peer" network with no central location for any of its data. Users were required to remember which data was stored on which machine. The City did not own an e-mail server. CP 247. City officials at times accordingly used personal e-mail accounts to conduct City business. CP 246.

In an effort to upgrade its technology, the City retained Michael Meyers of Eastside Computers Inc. ("Meyers") in September 2008. The City asked Meyers to build a server and computers to replace aging equipment and to configure a domain-based network designed to centrally locate all City related documents. CP 247-248.

1. First PRR – December 2008.

In July of 2008, the City of Gold Bar terminated Karl Majerle ("Majerle") from employment with the City. After Majerle filed a tort claim and threatened further litigation, the City hired attorney Eileen Lawrence ("Lawrence") and entered into a written settlement agreement with Majerle. CP 200-201.

On December 8, 2008, months after Majerle's termination, Block submitted the first PRR at issue in this suit (the "December 2008 PRR"). In her request, Block sought:

> . . . ALL documents pertaining to the Karl Majerle alleged theft, which shall include all city investigative files, any settlement agreements made by any City of Gold Bar official, any emails regarding Marjerle [sic], the amount of taxpayers' money used to pay off Karl Majerle, and where the financial resources came from to pay off Karl Majerle. . . .

CP 215. On December 12, 2008, the City sent a "five-day letter"[1] to Block, which provided a response date of January 23, 2009 and explained the basis for the response period. CP 216.

The City Clerk searched for records on the City's server and at City Hall. Then-Mayor Crystal Hill ("Hill") searched through her e-mail account using a variety of search terms. The City also gathered records from attorney Lawrence and from the City's insurance carrier. CP 170-171, 202-204. On January 23, 2009, the City notified Block that, due to snow and flooding emergencies in the area during December of 2008 and January of 2009, additional time was needed to process her request, and provided a revised response date of February 27, 2009. CP 191-192, 203-204, 217.

Block was dissatisfied. On January 24, 2009, Block demanded the records be "hand[ed] over" no later than January 27, 2009. CP 290. On January 26, 2009, the City Clerk spoke with Block by telephone. Block

[1] RCW 42.56.520.

announced that she would sue the Mayor and the City if she did not receive the records by January 27, 2009. CP 291. The City continued to process Block's request in the manner described in the City's letter of January 23, 2009.

On February 13, 2009, after the then-City Attorney reviewed the responsive records and provided her legal advice to the City regarding privileges, exemptions, and redactions properly applicable to the December 2008 PRR, the City sent third-party notification[2] to Majerle advising that the City intended to provide the records to Block unless he obtained an injunction by February 26, 2009. CP 169, 191-192, 204, 218.

Block remained dissatisfied. Predictably, and also on February 13, 2009, Block filed a lawsuit under Snohomish County Cause No. 09-2-02891-3 ("Block I") alleging that the City improperly responded to her November 28, 2008 request for a specified letter (the requested letter has never existed[3]), and to her December 8, 2008 request for the Majerle records. CP 169-170, 191-192, 204.

Block voluntarily dismissed Block I in 2010 after the City moved for summary judgment. CP 308-309.

[2] Third-party notification is expressly authorized in PRA cases under RCW 42.56.540.
[3] CP 185-187.

2. Second PRR – February 2009.

On that very same day (February 13, 2009), Block made yet another public records request, to which the City assigned number GB 021309 ("February 2009 PRR"). The February 2009 PRR sought, in relevant part: (a) All records relating to the City's efforts to respond to Ms. Block's request for public records dated December 8, 2008; (b) All records relating to any notice provided to Karl Majerle regarding Ms. Block's request for public records dated December 8, 2008, and/or any response from Karl Marjerle; and (c) All records responsive to Ms. Block's request for public records dated . . . December 8, 2008. CP 513-515.

On February 18, 2009, the City Attorney provided a response date of February 27, 2009 (the same response date previously provided to Block for her December 2008 PRR). CP 169-170. On February 23, 2009, the City Attorney informed Block's attorney that the records responsive to the December 2008 and February 2009 PPRs would be ready for delivery to Block on February 27, 2009, unless Majerle successfully obtained an injunction. CP 251, 292-294. On February 27, the City provided Block with the records and exemption logs responsive to both PRRs. CP 170.

B. Subsequent Upgrade of City's Technological Capability.

After Meyers built the City's new server, the City installed a full Microsoft Exchange server to control all of the City's e-mail. In January of 2010, and for the first time, the City had the technology to process PRRs in electronic format. CP 248.

The City produced again certain non-exempt Hill e-mails in PST format using the improved computer system and software. Over the next year, additional research revealed improved search functions available in more recent versions of Microsoft Office products. CP 248-249. The improvement to the City's computer system and related search capability was illustrated immediately. For example, using the same search terms after the technology upgrade, a search that had initially produced only fifty e-mails produced approximately nine hundred e-mails. Id.

C. Block Files Suit in Superior Court.

Block filed the instant action in February 2010. After certain discovery in June 2010, deposing the former City Clerk in March 2012, and then receiving a notice of dismissal for want of prosecution in June 2012, Block moved for partial summary judgment on July 9, 2013. CP 590-612, 635-636.

Block's motion also sought *in camera* review of 29 pages of e-mails redacted under the attorney-client privilege, contending that the e-

mails may evidence "the City's efforts to identify, gather, and produce responsive records" and speculating that such communications were not "legal advice." CP 607-611. In her motion, Block affirmatively declined to seek *in camera* review of the records identified on the City's privilege logs and withheld from production on the grounds of attorney-client and work product privileges. CP 604 (fn 3).

The City filed a cross-motion for summary judgment. CP 313-443. On August 23, 2013, the trial court granted Block's motion for *in camera* review of the redacted records, but reserved ruling on the cross-motions for summary judgment until after review of the redacted e-mails. CP 35-37.

On October 2, 2013, the Court granted the City's Cross-Motion for Summary Judgment, and denied Block's Motion for Partial Summary Judgment. The Court's order explicitly noted, "Some of the records [reviewed *in camera*] contain information regarding the search for records responsive to Block's PRRs, but in the context of attorney communications." CP 4-7.

D. Block Appeals to the Court of Appeals.

On Block's appeal, Division One of the Court of Appeals unanimously affirmed the Superior Court's decision in an unpublished opinion filed on June 22, 2015. Block's Appendix A, Decision. The

Court of Appeals subsequently published the opinion on August 12, 2015, following a Motion to Publish filed by the Washington State Attorney General's Office. Block's Appendix B, Order Granting Motion to Publish.

The Court of Appeals first noted that "the trial court properly granted the City's cross-motion for summary judgment. Likewise, the court properly denied Block's motion for partial summary judgment. We affirm." Block's Appendix A, Decision at 2. The Court of Appeals' decision further concludes that (1) the City's search for responsive public records was adequate; (2) the City properly identified exemptions based on the attorney-client and work product privileges; and (3) the City's privilege logs properly allowed Block to make a threshold determination that the exemptions were validly identified.

## V. ARGUMENT FOR DENIAL OF REVIEW

This Court should deny discretionary review. Block's Petition fails to satisfy the criteria for acceptance of review set forth in RAP 13.4(b).

### A. Criteria Governing Acceptance of Discretionary Review.

Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict

with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Block's Petition asserts that the instant Court of Appeals decision is at odds with decisions of this Court and "another decision of the Court of Appeals." To the contrary, the instant decision unremarkably relies on well-established existing Public Records Act ("PRA") case law, and decades of equally noncontroversial case law regarding summary judgment practice and procedure.

Block's Petition in places fails to explain *how* other decisions conflict with the instant decision. In other places, Block's explanations are premised on misstatements or other misunderstanding of the applicable law. Reduced to basics, Block's Petition only restates the legal arguments offered unsuccessfully to both the trial court and the Court of Appeals.

B. The Court of Appeals' Decision Is Consistent with Other Decisions of This Court and of the Court of Appeals.

1. Under Decisions of This Court, CR 56 Remains Wholly Applicable in a PRA Case.

Block states, without citation, that the Court of Appeals' decision

"conflicts with decisions of the Supreme Court, its own decisions, and effectively disables the PRA." Petition at 8.

In her Petition, however, Block does not identify any actual conflict with other Supreme Court decisions on CR 56. "Where contentions raised on appeal are not supported by citation of authority [this Court] will not consider them unless well taken on their face." Griffin v. Dept. of Social and Health Svcs., 91 Wn.2d 616, 630, 590 P.2d 816 (1979) (citing State v. Kroll, 87 Wn.2d 829, 558 P.2d 173 (1976)).

Block fails to explain how or why the Court of Appeals' decision here is in conflict with precedent other than for a brief mention of Block's mistaken belief that "Division One recognized that the trial court improperly applied CR 56 to the summary judgment motions of the parties, but its Opinion shows Division One also improperly shifted the burden to the requestor," and an equally cursory claim of improper burden shifting later in the Petition. Petition at 7-8 and 15.

Not only does this argument misstate Division One's holding (*See* Block's Appendix A, Decision at 4 ("A threshold issue is whether the trial court properly applied CR 56 to the respective summary judgment motion of the parties in this PRA action . . . we hold that it did.")), this argument also directly conflates the Rules of Civil Procedure. The Court of Appeals understandably did not take this case as an opportunity to re-write Civil

Rule 56 and decades of related law.

Here, the Court of Appeals applied and restated, in harmony with the long established Rules of Civil Procedure, the underlying principles of CR 56:

> In a summary judgment motion, the moving party bears the initial burden of showing the absence of a genuine issue of material fact. If the moving party is a defendant and meets this initial showing, then the inquiry shifts to the nonmoving party. If the nonmoving party fails to make a showing sufficient to establish the existence of a genuine issue of material fact, then the trial court should grant the motion. In making this responsive showing, the nonmoving party cannot rely on the allegations made in it pleadings. CR 56(e) requires that the response, "by affidavits or as otherwise provided in [CR56], must set forth specific facts showing that there is a genuine issue for trial."[4]

Block's argument rests on the mistaken premise that the burden of proof always rests with the agency in a PRA action. Nothing in the PRA changes Block's burden on her motion for summary judgment. The Block decision is squarely in line with Supreme Court and Court of Appeals precedent.

"The Rules of Civil Procedure apply in a PRA action." City of Lakewood v. Koenig, 160 Wn. App. 883, 889, 250 P.3d 113 (2011). This

[4] Block's Appendix A, Decision at 2.

specifically includes summary judgment, which "procedure is also a proper method to prosecute PDA [formerly, Public Disclosure Act] claims." Spokane Research and Defense Fund v. City of Spokane, 155 Wn.2d 89, 106, 117 P.3d 1117 (2005). Block herself moved for partial summary judgment as a plaintiff. As a moving party plaintiff, the burden was on her to prove the absence of any genuine issue of material fact.

The City filed a cross-motion for summary judgment. In cross-moving for summary judgment as a defendant here, the City bore that same initial burden. Under long-established law, Gold Bar then fully satisfied its burden simply by challenging the sufficiency of Block's evidence as to any material issue. Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992). Under this long- and well-established law of summary judgment, Gold Bar was not obligated even to present affidavits, deposition testimony, or other evidence to meet its initial summary judgment burden. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), *followed in* Young v. Key Pharms., Inc., 112 Wn.2d 216, 225 & n.1, 770 P.2d 182 (1989).

In response, and as both the trial court and the Court of Appeals found, Block offered no admissible factual evidence – none - that could in any manner create a disputed issue of material fact. Even though the defendant City was not obligated under Las, *supra,* and Celotex, *supra*, to

submit declarations or other factual evidence, it did so -- the declarations and deposition testimony of former Mayors Crystal Hill and Joe Beavers, and former City Clerk Laura Kelly (CP 60-89, 184-196, 197-231, 243-312) provide clear and substantial evidence of the reasonableness of the City's search for records at the time of the PRRs. The City's unrefuted declarations are "accorded a presumption of good faith." Forbes v. Gold Bar, 171 Wn. App. 857, 867, 288 P.3d 384 (2012).

At no point in the Petition does Block present any actual evidence to rebut the City's declarations and deposition testimony. Instead, Block claims on numerous occasions that she "was unable to obtain significant information" about the City's search or that the City "refused to answer discovery" and likens the facts in this matter to the facts in Neighborhood Alliance of Spokane County v. Spokane County, 172 Wn.2d 702, P.3d 119 (2011). Petition at 4. These claims are without merit.

Unlike in Neighborhood Alliance, where the agency actually refused to answer *any* discovery requests or requests for *nonexempt* information, Block did conduct discovery here. The City understandably and permissibly objected to certain deposition questions seeking the *contents* of attorney-client privilege communications. If Block truly believed that the City's objections were improper, she could have filed a motion to compel responses. She did not do so.

Block's argument further ignores the undisputed facts in this record that the City responded to numerous, non-privileged questions regarding the search (*see* CP 71-73, 79-80), and Block also fails to offer any explanation for her failure to depose former Mayor Hill during the three-year period between the filing and dismissal of the underlying Complaint.

Finally, Block's arguments on the burden of proof and her claims that the trial court and Court of Appeals improperly shifted the burden ignore the actual facts in this case. The trial court and Court of Appeals found that the City had, and met, its burden as a public agency and as a moving party on summary judgment. Block's arguments simply fail to recognize or acknowledge the long-standing law of summary judgment relied on by the City, the trial court, and the Court of Appeals – namely, once the City met its burden on summary judgment, the inquiry did in fact properly shift to Block to demonstrate with admissible evidence the existence of an issue of material fact. She did not do so. Young, 112 Wn.2d at 225; *See* Block's Appendix A -- "In sum, the City bore its burden to show that its searches for public records were adequate." Decision at 14; "The City established that the redacted portions of the documents were privileged." Id. at 19; and "[T]he City bore its burden to show that its privilege log . . . was adequate." Id. at 25.

2. Under Decisions of the Court of Appeals, CR 56 Remains Wholly Applicable in a PRA Case.

Block submits this case is appropriate for review under RAP 13.4(b)(2) because "the decision is in conflict with . . . another decision of the Court of Appeals." Petition at 7. Block's Petition fails to cite to any decision of the Court of Appeals. *See* Table of Authorities, Petition at ii. "Where contentions raised on appeal are not supported by citation of authority [this Court] will not consider them unless well taken on their face." Griffin, 91 Wn.2d at 630 (citing State v. Kroll, 87 Wn.2d 829, 558 P.2d 173 (1976)).

Rather than conflicting with other decisions of the Court of Appeals, the instant decision is fully consistent with other decisions of the Court of Appeals. *See* Building Industry Assoc. of Washington ("BIAW") v. McCarthy, 152 Wn. App. 720, 736, 218 P.3d 196 (2009) ("[T]o avoid summary judgment, in answer to the [agency's] affidavits, [public records requestor] had to present the court with 'facts . . . not just mere speculation, not wishes, not thoughts, but facts that would be admissible at trial.'"); (Forbes, 171 Wn. App. at 866 ("The focal point of the judicial inquiry is the agency's search process, not the outcome of its search."); Koenig, 160 Wn. at 889 ("The Rules of Civil Procedure apply in a PRA action."). Block failed to show this decision warrants review under RAP

13.4(b)(2).

3. The City's Search for Records Was Reasonable and Adequate.

Next, Block argues that the instant decision is inconsistent with the holding in Neighborhood Alliance, 172 Wn.2d 702, and analogizes the City's search to the game of Monopoly:

> [T]his court has held that an unreasonable search precludes an adequate response, this Court has never held that a reasonable search alone will establish a response was adequate . . . The Opinion here equates an alleged "reasonable search" showing to a "Get out of jail free card" wherein no other facts need to be examined if an agency alleges its initial search was reasonable.

Petition at 13. Block's argument mischaracterizes both the Court of Appeals' opinion here, and this Court's holding in Neighborhood Alliance. The Block court did *not* hold that a City need only allege that it conducted a reasonable search in order to satisfy its burden without examining supporting facts. Instead, the Block court – *specifically relying on and citing to Neighborhood Alliance* - noted:

> To establish that its search was adequate in a motion for summary judgment, "the agency may rely on reasonably detailed, nonconclusory affidavits submitted in good faith." This evidence should describe the search and "establish that all places likely to contain responsive materials were searched."

> . . .
> Here, the City relied on evidence that it submitted in support of its motion for summary judgment to show that its searches were adequate.[5]

Block's Appendix A, Decision at 7. Rather than creating a "get out of jail free card" as Block purports, the Court of Appeals relied on the declarations and deposition testimony of several City officials as specifically authorized by this Court in Neighborhood Alliance, *supra*.

Again relying on and citing to Neighborhood Alliance, the Block court then continued:

> [T]he focus of the inquiry is not whether responsive documents do in fact exist, but whether the search itself was adequate. The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents. What will be considered reasonable will depend on the facts of each case. When examining the circumstances of a case, then, **the issue of whether the search was reasonably calculated and therefore adequate is separate from whether additional responsive documents exist but are not found.**

Block's Appendix A, Decision at 6-7 (emphasis in original).

[5] Block's Appendix A, Decision at 3.

The City did not simply allege that it had completed an adequate search. Rather, the City provided, and the Court of Appeals relied upon, the numerous affidavits and deposition testimony of City officials showing the lengths to which the City went in searching for responsive documents. The record below establishes that the City had conducted a reasonable search and that it was entitled to summary judgment.

Block states – in bold *and* underline, "**[T]his Court has never held that a reasonable search alone will establish a response was adequate.**" Petition at 13 (emphasis in original). For such a seemingly important statement, the City would expect that Block would follow up by citing to cases in which this Court found that an agency *had* violated the PRA despite completing an adequate search.

But Block cites to none. And reference to Neighborhood Alliance again answers Block's concern. "The focus of the inquiry is not whether responsive documents do in fact exist, but whether the search itself was adequate." 172 Wn. 2d at 719-720.

Block's arguments remain red herrings, and in no manner remedy her failure to rebut with admissible evidence the City's detailed, factual description of its search for records consistent with this Court's direction in Neighborhood Alliance.

4. The City's Exemption Logs Provide More Than Sufficient Information for Block to Make a Threshold Determination That the City Properly Claimed Exemptions.

Block next asserts, and again without citation to authority, a novel proposition that the City's use "of the same cut and paste statement for every one of the withheld or redacted records, typographical errors included" in some manner invalidates the City's privilege logs. Petition at 10. This premise is unsupported by Court of Appeals or Supreme Court precedent. The City understandably used the same explanation for each record withheld or redacted because it claimed the same exemptions for each such record.

The City's exemption logs, prepared separately for the December 2008 PRR and the February 2009 PRR, fully satisfy the applicable standard. Even the most cursory review of the City's detailed exemption logs enabled Block (and her retained counsel) to make the "threshold determination" that Gold Bar "properly claimed the privilege."[6]

Block heavily relies on Sanders v. State, but Sanders offers no help to Block, and the Court of Appeals distinguished that case based on the substantial factual differences at issue. 169 Wn.2d 827, 240 P.3d 120 (2010). *See* Block's Appendix A, Decision at 24 ("The privilege log[s] in this case [do] not resemble the log in Sanders.") In Sanders, the Court

[6] Gronquist v. Dep't of Licensing, 175 Wn. App. 729, 744, 309 P.3d 538 (2013).

reviewed the State's bare exemption log, and understandably concluded that "[a]llowing the mere identification of a document and the claimed exemption to count as a 'brief explanation' would render [the PRA's] brief-explanation clause superfluous." Sanders, 169 Wn.2d at 846.

By contrast, the City's exemption logs here fully comply with the statutory requirements. CP 428-438. The City's logs include detailed descriptions of the documents. For example, "handwritten notes on email pages re Majerle v. City of Gold Bar" and "email/letter from [Lawrence] to [Hill] RE Majerle v. Gold Bar Analysis of conversation with Brian Dale Majerle's Attorney." CP 429-432. The City's logs cite to the statutory exemption and applicable case law, and also include the required "brief explanation" of the exemption – "content is attorney advice to client." CP 433-438. Any further disclosure by the City could have, or would have, disclosed privileged content. Nothing more is necessary in order for a requester to make the required "threshold determination of whether the agency properly claimed the privilege."[7]

The Court of Appeals "carefully examined each of the [exemption log] descriptions," and determined "they all allow a requestor to make a threshold determination whether the claim of exemption is proper." Block's Appendix A, Decision at 23 and 25.

[7] Gronquist, 175 Wn. App. at 744.

5. Two Courts Have Now Found That the Attorney-Client Privilege and Work Product Doctrines Exemptions Apply.

Block states, "[The City] should have provided the trial court with any record where the content of the record bore on the exempt nature of the document." Petition at 16. Block vaguely references Sanders to support this notion by stating, "[r]ecords will rarely be entirely exempt, as cases such as Sanders have illustrated." Id. Block, however, does not include a supporting pin cite, a reference to a holding, or even dicta. Instead, again, Block provides only a blanket assertion, without any supporting authority.

Regarding the "withheld" records, the Court of Appeals found, simply by a "reasonable reading" of the descriptions on the exemption logs, that "[i]t is self-evident that these e-mails fall within the work product doctrine. If there is a legitimate claim they do not, Block has failed to make it." Block's Appendix A, Decision at 18.

Significantly here, the Court of Appeals correctly points out that Block had the opportunity in the lower court to request *in camera* review of the 66 pages of fully withheld documents, as she did with the 29 pages of partially redacted documents from the second request, but she did not do so.[8] This was not an oversight on Block's part – rather, she

[8] Block's Appendix A, Decision at 8-9.

affirmatively declined to seek such *in camera* review. CP 604 (fn 3).[9]

Further, the Court of Appeals and the trial court reviewed the redacted records. Both found that the City established that the redacted portions were privileged. Block points to no evidence to the contrary.

C. No Substantial Public Interest Justifies Review.

Block's Petition claims that this "case presents a unique vehicle to address these important questions . . . [and the] issues raised in this case continue to recur in the trial courts . . . ." Petition at 17. Block cites to no other cases, in the trial courts or otherwise, where these issues have perplexed litigants or judges. The law on summary judgment is clear, and was followed here. The law on the adequacy of a search for public records is clear, and was followed here. The law on the information required to be included in a privilege log is clear, and was also followed here.

This case dealt with a small city's antiquated computer system, thousands of records, and a requester who, in concert with her allies, has made hundreds of overlapping and extensive records requests causing

[9] Block's Motion for Summary Judgment specifically sought *in camera* review of *only* the 29 pages of redacted documents, and not of the 66 pages of fully withheld documents. CP 604 (fn 3), 590. This fact, however, does not stop Block from arguing that "Division One declines to address the withholding in their entirety of the 66 pages of records faulting the requestor, and not the City, for the fact the records were not provided by the City for an in camera review to support the City's claim of exemption." Petition at 10. She again cites to no authority which would require the City to seek *in camera* review prior to withholding records pursuant to the attorney-client and work product privileges.

widespread disruption to the City's operations. The Court of Appeals' decision merely applied well-established law regarding summary judgment in the context of a Public Records Act case to the facts below. No issue of substantial public interest exists to justify review here.

D. Block Did Not Prevail, and Thus She Is Not Entitled to Attorney's Fees.

Block states:

> This Court's precedents make clear that a requestor should be awarded fees and costs when any of the following occur: she was not afforded an adequate response, or an adequate exemption statement, or non-exempt records were not produced to her, or the agency did not perform a reasonable search.

Petition at 18. This is a misapplication of the law to this case. The PRA awards "[a]ny person *who prevails against an agency* . . . all costs, including reasonable attorney fees."[10] Simply stated, Block did not prevail at the trial court level, nor at the appellate level. Accordingly, the Court of Appeals correctly applied the plain statement of the law in denying Block's request for fees.

## VI. CONCLUSION

For all the foregoing reasons, this Court should deny review. The Court of Appeals' decision correctly and plainly applied well-established

[10] RCW 42.56.550(4) (emphasis added).

precedent to affirm on summary judgment a fact-specific case involving the search, review, redaction, and disclosure of public records. The criteria in RAP 13.4(b) have not been met, and Block has not cited to a single case that would justify why review by the Supreme Court is unwarranted. Block's Petition should be denied.

RESPECTFULLY SUBMITTED this 12 day of October, 2015.

KENYON DISEND, PLLC

By _____

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WSBA No. 15802
Ann Marie J. Soto
WSBA No. 42911
Attorneys for Respondents

## DECLARATION OF SERVICE

I, Kathy I. Swoyer, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 12th day of October, 2015, I filed the foregoing Answer to Petition for Review by e-mail with the State Supreme Court Clerk, and served a true copy of the foregoing Answer to Petition for Review on the following individuals using the method of service indicated below:

| | |
|---|---|
| *Attorney for Appellant:*<br><br>Michele Earl-Hubbard<br>Allied Law Group, LLC<br>P. O. Box 33744<br>Seattle, WA 98133 | ☒ First Class, U.S. Mail, Postage Prepaid<br>☐ Legal Messenger<br>☐ Overnight Delivery<br>☐ Facsimile<br>☒ E-Mail:<br>michele@alliedlawgroup.com |
| *Attorney for amicus City of Gold Bar:*<br><br>Jeffrey Myers<br>Law, Lyman Daniel Kamerrer<br>P.O. Box 11880<br>Olympia, WA 98508 | ☒ First Class, U.S. Mail, Postage Prepaid<br>☐ Legal Messenger<br>☐ Overnight Delivery<br>☐ Facsimile<br>☒ E-Mail: jmyers@lldkb.com; |
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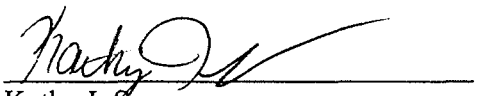
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 12th day of October, 2015, at Issaquah, Washington.



Kathy I. Swoyer

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**To:** Kathy Swoyer
**Cc:** Mike Kenyon; Ann Marie Soto; michele@alliedlawgroup.com; jmyers@lldkb.com; eka@witherspoonkelley.com
**Subject:** RE: Filing in Case No.922209

Received on 10-12-2015

Supreme Court Clerk's Office

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**From:** Kathy Swoyer [mailto:KathyS@kenyondisend.com]
**Sent:** Monday, October 12, 2015 2:37 PM
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**Subject:** Filing in Case No.922209

Dear Sir/Madam:

Please accept for filing the attached Answer to Petition for Review in Supreme Court Case No. 922209, Anne Block v. City of Gold Bar. It includes the Declaration of Service.

This is being filed by Ann Marie Soto, WSBA No. 42911, e-mail address is annmarie@kenyondisend.com, telephone number is 425-392-7090.

Kathy Swoyer

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