No. 33783-9

Court of Appeals
Division Three
of the State of Washington

Kevin Anderson,

Appellant,

v.

Walla Walla Police Department,

Respondent.

Brief of Respondent
Walla Walla Police Department

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3. Counter-statement of the Case

Kevin Anderson has not assigned error to any of the factual findings made by the trial court in this matter.

Kevin Anderson sent a request to the Walla Walla Police Department (WWPD) dated March 26, 2014 asking for "[a]ny records related to myself (Kevin Allen Anderson, DOB: January 27, 1974)." CP 163, ¶ 2.2. At the time he made the request, Mr. Anderson was serving a criminal sentence in a state correctional facility. CP 163, ¶ 2.3.

The WWPD maintains a computerized records catalogue which consists of identifying and other retrieval information that has been derived from police reports and other records and input into a searchable database. Authorized users of the database can search it by entering queries. Records management software compares the query information to the database and creates a records index of underlying records that possibly match. CP 163, ¶ 2.1.

Mr. Anderson's records request was processed by police records clerk, Dana Hood, on March 31, 2014. Ms. Hood checked the records management system using the information provided by Mr. Anderson, found no police report records listed for him, and reasonably concluded that the WWPD had no records responsive to Kevin Anderson's March 26 request.

The records management system indicated the existence of a court order that had been issued by the Walla Walla District Court in a matter in which Kevin Anderson was a defendant. Ms. Hood therefore disclosed its existence to Mr. Anderson and referred him to the issuing court, because she knew based on past experience that it was the only place that was sure to have an accurate and current copy of the order. CP 163, ¶ 2.4.

Ms. Hood handwrote a response on Mr. Anderson's March 26 letter and sent it back to him on March 31, 2014, stating:

> Kevin,
>
> We have no Walla Walla Police report records on file for you. However, a current order of protection is on file. Copies can be obtained by/ through Walla Walla District Court.

Ms. Hood reasonably believed that her March 31 response fulfilled Mr. Anderson's March 26 request and provided helpful information to him about the court order. CP 163-64, ¶ 2.5.

At the time Ms. Hood responded to the March 26, 2014 records request, Mr. Anderson had already obtained copies of the order and other court records from the Walla Walla District Court. CP 164, ¶ 2.6. The WWPD received no follow up inquiry from Mr. Anderson, and it only became aware that he was dissatisfied with its March 31, 2014 records response upon his filing and service of the summons and complaint in the

above-entitled action on February 17, 2015. CP 164, ¶ 2.7.

After being served with the summons and complaint in the above-entitled action, the WWPD checked its records and found that the department did not, at that time, possess a copy of the Walla Walla District Court order referenced in the earlier March 31, 2014 records response. Upon finding that it did not possess a copy of the order, the WWPD obtained a complete copy of the court file for the proceeding from which the order was issued and provided it to Mr. Anderson through counsel on March 10, 2015 in an effort to further assist him. CP 164, ¶ 2.8.

Respondent respectfully submits that the aforementioned unchallenged factual findings are considered verities on appeal. *State v. Campbell*, 166 Wn.App. 464, 469, 272 P.3d 859 (2011).

4. Argument

A. Standard of review.

A trial court's decision on agency actions under the Public Records Act are subject to de novo review. RCW 42.56.550(3). "Where an appellant does not assign error to a trial court's factual findings, we consider those findings verities." *Francis v. Dep't of Corr.*, 178 Wn.App. 42, 52, 313 P.3d 457 (2013). See *Yousoufian v. Office of Ron Sims,* 168 Wn.2d 444, 450, 229 P.3d 735 (2010). When an appellant does not assign error to trial court

findings, the appellate court must accept those findings as true facts but only review de novo the trial court conclusion that those facts established. *Francis v. Dep't of Corr.*, 178 Wn.App. 42 at 52.

B. The March 31, 2014 records response does not constitute a denial.

This case is about an agency trying in earnest to fulfill a public records request. Contrary to Appellant's position, the Walla Walla Police Department submits that it reasonably interpreted and responded to Mr. Anderson's request and this case is not about the Walla Walla Police Department denying Mr. Anderson public records but rather perpetuating litigation. CP 32-33.

It appears that Kevin Anderson only had limited and distant contact with the Walla Walla area. Mr. Anderson has been incarcerated since December 16, 2010 for a Spokane County felony conviction. CP 28, ¶ 3; CP 34-59. His ex-wife moved to Walla Walla and petitioned the Walla Walla District Court on May 17, 2012 for an anti-harassment protection order. CP 66-69. The District Court granted a temporary protection order and directed the court clerk on May 17, 2012 to forward a copy to the WWPD to enter it into the state's computer-based criminal intelligence system. CP 65. The WWPD input identification and other retrieval information taken from the

order into its computerized records management system. CP 19-20, ¶¶ 3-4.

When the Walla Walla Police Department received Mr. Anderson's records request approximately two years later, records clerk Dana Hood who processed the letter understood it to be a request for police department records about him. Records clerk Dana Hood typed information provided by Mr. Anderson's letter into the records management system and found no police report records listed. CP 23, ¶ 4; CP 26. If any records had existed, they would have been listed in the computer generated index under Mr. Anderson's name. CP 19-20, ¶¶ 3-4. The records clerk therefore concluded that the police department had no records responsive to Mr. Anderson's request. CP 23 ¶ 4. Her understanding is documented in her handwritten reply to Mr. Anderson that "[w]e have no Walla Walla Police report records on file for you." CP 25. An agency is not required to create a nonexistent record. *Sperr v. City of Spokane,* 123 Wn.App. 132, 136-37, 96 P.3d 1012 (2004); *Smith v. Okanogan County,* 100 Wn.App. 7, 13-14, 994 P.2d 857 (2000).

The index generated by the records management system listed only the May 17, 2012 District Court protection order under Mr. Anderson's name. CP 26. Ms. Hood therefore disclosed its existence in her response to Mr. Anderson and referred him to the District Court, because she knew from past

experience that it was the only place sure to possess an accurate copy and thought she was being helpful to Mr. Anderson. CP 23, ¶ 5. In *Limstrom v. Ladenburg*, 136 Wn.2d 595, 605 n.3, 936 P.2d 869 (1998), the Washington Supreme Court explained: "On its face the Act does not require, and we do not interpret it to require, an agency to go outside its own records and resources to try to identify or locate the record requested." *See also Kissinger v. Reporters Committee*, 445 U.S. 136, 151-54, 100 S.Ct. 960, 968-70, 63 L.Ed.2d 267 (1980).

The Walla Walla Police Department cannot now determine whether it possessed a copy of the Walla Walla District Court order referenced in the March 31, 2014 records response on that date. By the time Mr. Anderson filed this lawsuit on February 17, 2015, too much time had lapsed for the clerk who fulfilled his request to accurately remember whether she checked for a physical copy. CP 23, ¶ 5. The WWPD can only attest that it did not have a copy when it re-checked its physical records. CP 20-21, ¶ 5.

RCW 42.56.550(1) provides a right of action only to a person who has "been ***denied*** an opportunity to inspect or copy a public record by an agency." (emphasis added). The Superior Court properly held that Mr. Anderson was not denied an opportunity to inspect or copy a public record. CP 164 ¶ 3.2. The Division II Court of Appeals explained in *Hobbs v. State*

Auditor's Office, 183 Wn.App. 925, 936, ¶ 22, 335 P.3d 1004 (2014):

> Under RCW 42.56.550(1), the superior court may hear a motion to show cause when a person has "been denied an opportunity to inspect or copy a public record by an agency." Therefore, being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA. Although the statute does not specifically define "denial" of a public record, considering the PRA as a whole, we conclude that a denial of public records occurs when it reasonably appears that an agency will not or will no longer provide responsive records.

Contrary to what Mr. Anderson argues in his Appellate Brief at pages 10-11, the WWPD's records response cannot reasonably be interpreted as a "'denial' of a public record" under RCW 42.56.550(1) or as "refusing, in whole or in part, inspection of any public record" under RCW 42.56.210(3). Nowhere does the response say that the request is "denied," that inspection is "refused," that records were being "withheld" or otherwise indicate that the WWPD was unwilling to help Mr. Anderson. On the contrary, the records clerk tried to be helpful to Mr. Anderson by referring him to the Walla Walla District Court to make sure he got exactly what he was looking for. CP 163-64, ¶ 2.4-2.5; CP 23, ¶ 5.

The Walla Walla Police Department received no follow up request from Mr. Anderson, nor correspondence indicating his dissatisfaction with the response. The WWPD only became aware that Mr. Anderson was dissatisfied with its response almost a year later when it was served with the

"gotcha" lawsuit alleging that the WWPD breached its duties under Washington's Public Records Act by not producing a copy of the District Court order, or, alternatively holding it without claiming a disclosure exemption. CP 164, ¶ 2.7; CP 1-4. The WWPD again, checked its records and found it possessed no records relating to Mr. Anderson. CP 32. Its records did not contain a copy of the District Court order referenced in its March 21, 2014 records response. CP 20 ¶ 5. However, because it appeared that Mr. Anderson was intent on obtaining a copy of the District Court order, the City therefore obtained a copy of the entire court file from the Walla Walla District Court, and sent it to Mr. Anderson's attorney on March 10, 2015. CP 32. It found out during this effort, that Mr. Anderson already possessed a copy of the District Court order since at least 2012. CP 32, 61, 78-79. Mr. Anderson's response through counsel to the City's ongoing intent to assist shows that he is not looking for records but is instead just opportunistically looking for PRA violations. CP 33. This response further confirmed that the lawsuit filed by Mr. Anderson has nothing to do with him having been denied an opportunity to inspect or copy a record, but rather to perpetuate litigation.

Mr. Anderson dedicates a portion of his Appellate Brief to argue that the WWPD had the order for protection at the time of his request. *See*

Appellate Brief at page 9-10. We also know from the Superior Court Dismissal Order that Mr. Anderson was found to have already possessed a copy of that order before his request was made. CP 164, ¶ 2.6. Mr. Anderson makes the unsupported reaching conclusion that if the WWPD had the order for protection, and didn't produce it, it therefore denied the public records request. *See* Appellate Brief at pages 9-10. This is not the question before this Court. Regardless of whether or not the WWPD had a copy of the order for protection, the question for this Court is if the WWPD *denied* the request. CP 163-64, ¶2.4-2.5. The WWPD again submits that it did not deny the request. Nothing in the WWPD's response can be reasonably interpreted as a "'denial' of a public record" under RCW 42.56.550(1) or as "refusing, in whole or in part, inspection of any public record" under RCW 42.56.210(3), and this court must affirm the trial court ruling.

Should this Court determine that the WWPD did not meet its obligations under the Public Records Act, Respondent respectfully requests that any remand of this case back to the Superior Court must include an instruction that the WWPD did not act in bad faith and hold that Mr. Anderson is not entitled to any daily penalties because he was serving a criminal sentence at the time of the records request. CP 163, ¶ 2.3, CP 28-29. Mr. Anderson does not challenge the finding that he was incarcerated in a

state correctional facility at the time of the request and admits to it in his Appellant's Brief. *See* Appellant's Brief at page 1, ¶ (C)(2); CP 28,

RCW 42.56.565(1) provides in part:

> A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

The bad faith standard was recently clarified by this Court in *Faulkner v. Dep't of Corr.*, 183 Wn.App. 93, 103-04, 322 P.3d 1136 (2014), *review denied* 182 Wn.2d 1004 (2015):

> In the PRA context, bad faith incorporates a higher level of culpability than simple or casual negligence. We hold that to establish bad faith, an inmate must demonstrate a wanton or willful act or omission by the agency. "Wanton" is defined as "[u]reasonably or maliciously risking harm while being utterly indifferent to the consequences." BLACK'S LAW DICTIONARY 1719-720 (9th ed. 2009). Further, "'[w]anton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not.'"

The WWPD affirms that none of the actions taken by the police records clerk constituted wanton or willful conduct. Rather, the Superior Court judge, found that the WWPD records clerk was "reasonab[le]", "helpful," and "responsive." CP 163-4, ¶¶ 2.4, 2.5 and 3.1. The Superior

Court further concluded that "[t]he actions taken by the Walla Walla Police Department . . . were prompt and meant to provide reasonable access" and "cannot reasonably be interpreted in context as a refusal to provide responsive records to Kevin Anderson or as an indication that it would provide no further assistance to him." CP 164, ¶ 3.1.

The WWPD submits that its records clerk was prompt and responsive. Mr. Anderson's request was responded to three days after the request was received. CP 25. The clerk was helpful to Mr. Anderson by disclosing the existence of a protection order and directing him to the best place to obtain a current copy of that order. CP 25. Mr. Anderson assigns no error to these findings and they must be accepted by this Court as verities. *Francis v. Dep't of Corr.*, 178 Wn.App. 42, at 52. The WWPD respectfully submits that its response to the records request did not constitute a denial of an opportunity to inspect or copy a public record. CP 164, ¶ 3.2.

C. Appellant's March 26, 2014 letter cannot reasonably be read as a request for an index of records.

Mr. Anderson's public records request asked for "Any records related to myself (Kevin Allen Anderson, DOB: January 27, 1974)." CP 163 ¶ 2.2, CP 25. The Public Records Act places responsibilities on both the agency and on the requestor. "The public records process can function properly only

when both parties perform their respective responsibilities." WAC 44-14-04001. The primary requirement for a request is that it asks for an "identifiable public records." RCW 42.56.080; "[A] proper request under the [PRA] must identify with reasonably clarity those documents that are desired." *Wright v. DSHS,* 176 Wn.App 585, 309 P.3d 662 (2013), *citing, Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004); *See also, Wood v. Lowe*, 102 Wn.App. 872, 878, 10 P.3d 494 (2000). The standard for an "identifiable record" is whether an agency employee could reasonably identify the records from the description the requestor gives. *Beal v. City of Seattle,* 150 Wn.App 865, 873, 209 P.3d 872 (2009), *See also, Bonamy v. City of Seattle,* 92 Wn.App. 403, 451, 960 P.2d 447 (1998). The Public Records Act does not "require agencies to be mind readers" and a "public agency cannot be expected to disclose records that have not yet been requested. To hold otherwise would place public agencies in an untenable position." *Bonamy v. City of Seattle,* 92 Wn.App at 451.

This case is similar to that of *Wright v. DSHS.* In that case, requestor Amber Wright made a public records request to the Department of Social and Health Services (DSHS), for "any and all documents relating to Amber Wright." *Wright v. DSHS,* 176 Wn.App. 585, 594 309 P.3d 662 (2013). When DSHS did not provide the DSHS protocols and manual, Ms. Wright

sued DSHS claiming its failure to disclose these documents was a PRA violation. The Division II Court of Appeals, ruling in favor of DSHS held that a request for "any and all documents relating to Amber Wright did not include the DSHS protocols and manual with 'reasonable clarity'" and DSHS's non-disclosure of "these documents was not a PRA violation." *Wright v. DSHS,* 176 Wn.App. 585 at 593-94.

Here, Mr. Anderson's request was nearly identical to Ms. Wright's. Mr. Anderson asked for "any records relating to myself." CP 163 ¶ 2.2. He did not describe with "reasonable clarity" that he wanted the records clerk to produce an index or list of records relating to himself. CP 25. Because Mr. Anderson asked for "records" the WWPD records clerk looked for "records" and finding none "reasonably concluded that the Walla Walla Police Department had no records responsive to Mr. Anderson's request." CP 23, ¶ 4.

In response to Mr. Anderson's pre-hearing discovery requests, the WWPD produced to Mr. Anderson, through his attorney, a copy of the "records index" which resulted from the records clerk searching its records management system database. CP 163, ¶ 2.4; CP 23, ¶ 4. Mr. Anderson's identification information (his name) was entered into fields which checks for matching entries. This records index is also referred to as "Jacket

Activity" and essentially provides in index form a list of any records related to Mr. Anderson. CP 161.

The Public Records Act requires agencies to maintain and make available for public inspection and copying all documents. RCW 42.56.070(1). It also requires agencies to "maintain and make available for public inspection and copying a current index providing identifying information" as to public records. RCW 42.56.070(3). The Walla Walla Police Department maintains an index of its records. Its records management system (RMS) software is a central database that manages and catalogues all police department records through the creation of indexes. The RMS system allows for the quick and accurate access to police report records by authorized users and allows for the search of records by typing queries into search fields. This system operates like a computerized library catalogue. The information in it consists of certain identification and other retrieval information derived from various records that might be used by the WWPD. Some are reports generated by police officers. Identification and retrieval information is taken from those reports and typed into the RMS. Some are court orders for which identification and retrieval information is similarly taken and typed into the RMS system. All of the identification and retrieval information contained in the RMS is obtained from the records to be

cataloged and manually entered by records support clerks. The RMS software allows authorized users to search for records by typing queries into search fields. Once information is entered into a field, the RMS software looks for matching information in the computer and generates a list of possible matches. A search can be narrowed by a user supplying information into multiple fields. The RMS determines whether a record exists for which identification information has been previously entered, and it generates a records "index" as required in RCW 42.56.070(3). CP 19-20, ¶ 3.

Mr. Anderson now claims that the WWPD failed to produce the records index and therefore has violated the Public Records Act. The WWPD disagrees with Mr. Anderson's claimed violation. It is obvious from reading the face of the March 26, 2014 request that Mr. Anderson did not request an "*index*" or "list of records" "related to myself," rather, he requested "*records* relating to myself." (emphasis added) CP 163, ¶2.2; CP 25. As stated above, the PRA requires that record requests be written with "reasonable clarity" in which the agency can "reasonably identify" what record is being requested. *Wright v. DSHS,* 176 Wn.App. at 593; *Beal v. City of Seattle*, at 873, Furthermore, it does not "require agencies to be mind readers" and a "public agency cannot be expected to disclose records that have not yet been requested." *Bonamy v. City of Seattle,* 92 Wa.App. 403, 451, 960 P.2d 447

(1998). Now, for Mr. Anderson to claim he was not provided a document that he did not request places the WWPD in an "untenable position" described by the *Bonomy* court. *Id.*

The WWPD records clerk did not believe Mr. Anderson was asking for an index. Had Mr. Anderson asked for an "index" or "list of records" relating to himself, the records clerk would have understood exactly what he was asking for and would have provided it to him. No reasonable person could have read Mr. Anderson's request and interpreted it as a request for an "index" or "list of records". Mr. Anderson cannot now claim that he was denied access to something he did not ask for, and a reasonable person would not have been able to read his mind and assume that when he ask for "records", he *really* meant an "index" of records too.

D. Appellant is not entitled to attorney fees

RCW 42.56.550(4) allows for the award of attorney's fees if a requesting party is denied the right to inspect or copy a requested public record. Mr. Anderson was not denied the right to inspect or copy a requested record he is therefore not entitled to such fees.

5. Conclusion

The Superior Court properly held that the Walla Walla Police Department records response cannot be reasonably interpreted in context as

a refusal to provide responsive records or as an indication that it would provide no further assistance to Mr. Anderson. The WWPD's response was prompt and meant to provide access to responsive records. The WWPD's response to Mr. Anderson's records request does not constitute a denial of an opportunity to inspect or copy a public record. Therefore, the WWPD respectfully requests that this Court affirm the order of dismissal. CP 162-65.

DATED December 21, 2015

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6. Certificate of Service

I certify (or declare) under penalty of perjury under the laws of the State of Washington that I mailed a copy of the foregoing Brief of Respondent Walla Walla Police Department to Christopher Taylor, Attorney for Kevin Anderson, at FT Law, P.S., 402 Legion Way SE, Ste. 101, Olympia, WA 98501, postage prepaid on the date stated below:

December 21, 2015 Walla Walla, WA
(Date and Place)

(Signature)

7. Appendix

42.56.070 Documents and indexes to be made public. (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so

would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of

the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of

chapter 34.05 RCW, the Administrative Procedure Act.

RCW 42.56.080 Facilities for copying—Availability of public records. Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

RCW 42.56.210 Certain personal and other records exempt. (1) Except for information described in *RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

42.56.565 Inspection or copying by persons serving criminal sentences - Injunction. (1) A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state,

local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

(2) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(3) In deciding whether to enjoin a request under subsection (2) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(4) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court

orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

(5) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.