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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ARTHUR WEST,

Respondent,

v.

STEVE VERMILLION AND CITY OF PUYALLUP,

Petitioners.

REPLY BRIEF OF PETITIONER CITY OF PUYALLUP

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I. INTRODUCTION

The Respondent sidesteps the central question in this appeal: Do e-mail messages solely maintained in a City Council member's personal e-mail account meet the statutory definition of "public record" when those e-mails: (1) are individual communications between that Council member and his constituents, and/or are related to election and campaign issues; (2) have not been maintained by a public agency; and (3) were not publicly cited, considered, or used by the City Council in its decision-making?

Rather than dealing with these issues, the Appellant assumes the e-mails are "the public's business"[1] and argues a series of broad propositions with which the City does not necessarily disagree. Public officials *don't* have a right to conduct "government business" in secret.[2] Transparency *is* essential to good government.[3] Where the City disagrees with the Respondent is in his assertion that e-mails in Council member Vermillion's sole possession automatically meet the definition of "public

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[1] Rather than address the question of whether Council member Vermillion's e-mails are public records, Respondent merely assumes they are public records. *See* Brief of Respondent at 31 ("Defendant Vermillion voluntarily and deliberately conducted the people's business via his ostensibly 'private' e-mail address . . .").

[2] Brief of Respondent at 23-24.

[3] *Worthington v. Westnet*, 182 Wn.2d 500, 506, 341 P.3d 995 (2015) ("The [Act's] language 'reflects the belief that the sound governance of a free society demands that the public have full access to information concerning the workings of government.'")

record" if they "relate" in any manner to the City or to Vermillion's activities as a Council member.

Council member Vermillion's Declaration establishes that he considers the e-mails he has maintained in his sole possession as his "personal papers."[4] He articulated a desire to preserve "trust with [his] constituents" by protecting the confidentiality of e-mails that were "meant only for [him]."[5] He declared that whenever he receives an e-mail requiring action from the *agency*, he forwards that e-mail to the City servers, thereby making it a public record.[6] What he doesn't forward, and what has accordingly never been reviewed or retained by any public agency, are e-mails that were either related to election or campaign issues, or were intended for his eyes only.

In essence, the Respondent argues that under the PRA's broad mandate for disclosure, an elected legislator can *never* correspond with a constituent on a "your eyes only" basis. But Council member Vermillion is one elected representative in a seven member assembly.[7] As a lone Council

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[4] CP 70.

[5] CP 69, 70.

[6] CP 70.

[7] For this reason, Council member Vermillion is not similarly situated to Pierce County Prosecutor Mark Lindquist, whose text messages are currently the center of a public records debate. *Nissen v. Pierce County*, Supreme Court of Washington Case No. 90875-3.

member, he has no power to bind the City to any course of action except as part of a Council majority;[8] his constituents have the right to associate with him privately for political purposes;[9] and he is prohibited from using agency resources, including e-mail, for any communications related to a ballot measure, election, or campaign.[10] Compelling disclosure of *all* of his e-mails that "are related to City business"[11] would chill First Amendment rights and hinder a vital facet of representative democracy: a citizen's ability to communicate "off the record" with an elected official.

II. REPLY TO RESPONDENT'S STATEMENT OF THE CASE

The Respondent's Statement of the Case is inaccurate in many respects. First, Respondent's assertion that the City's technology policy precludes a Council member from using personal e-mail[12] is controverted by

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[8] *See, e.g.*, RCW 35A.12.120 (requiring Council majority vote for passage of any ordinance, franchise or license, or payment of money); 4 EUGENE MCQUILLIN, MUNICIPAL CORPORATIONS § 13.01, at 803 (3d ed. 2002) ("A public corporation may act only as a body, properly convened and functioning as such; separate individual action of its members is ineffectual."); *In re Recall of Davis*, 164 Wn.2d 361, 369, 193 P.3d 98 (2008).

[9] *Nixon v. Administrator of Gen. Serv.*, 433 U.S. 425, 465-67, 97 S. Ct. 2777, 53 L. Ed.2d 867 (1977); *Eugster v. City of Spokane*, 121 Wn. App. 799, 807, 91 P.3d 117 (2004) (correspondence between a citizen and an elected official may be protected by Freedom of Association) (recall of port commissioner based on her unauthorized signing of agreement without commissions vote).

[10] RCW 42.17A.555.

[11] Brief of Respondent at p. 38 ("If an e-mail is related to City business, then it must be disclosed.")

[12] *See* Brief of Respondent at 13 ("Clearly, defendant Vermillion had no reasonable expectation of privacy in communications received in response to an email address published on a website seeking public comments on City business, especially in light of the

the record. The City's technology policy applies only to employees, not Council members.[13] Respondent did not assign error to or cross-appeal the trial court's express finding to this effect.

Second, at no time did the City ever "refuse to comply" with the trial court's order to produce e-mails Council member Vermillion had forwarded to the City for action by staff.[14] The trial court "ordered" the City to produce the forwarded e-mails *after* the City assured the Court that it was going to provide those e-mails to the Respondent.[15] The only reason the City had not produced the e-mails already was because the Respondent's original request, as he amended it shortly after submittal, did not ask for them.[16] The City concedes that e-mails concerning agency business that a Council member forwards to staff for follow-up are public records. Accordingly, the City readily agreed to produce the forwarded e-mails after the Appellant modified his request.[17] This appeal concerns an entirely

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explicit City policies prohibiting such conduct."), 21 (accusing Council member of "violating the City's Social Media Policy").

[13] CP 25; 184.

[14] Brief of Respondent at 20.

[15] CP 199-200.

[16] CP 197-199 (explaining how Respondent amended his request to remove request for correspondence *from* Council member Vermillion's personal e-mail account).

[17] CP 200.

different set of e-mails: the Council member's individual communications, maintained exclusively in his personal e-mail account, which were never forwarded to any public agency.

The trial court never considered, or even saw, the e-mails the City subsequently produced to the Appellant.[18] An appellate court cannot consider evidence that was not presented at the trial court level.[19] Regardless, these e-mails are not relevant to the limited issue ruled on by the superior court and certified for immediate review.[20] The trial court made it clear that any issues related to the subsequently-produced emails can be addressed on remand however this Court rules.[21]

III. REPLY TO RESPONDENT'S ARGUMENTS

A. Council member/constituent communications are constitutionally protected and essential to representative democracy.

The City argued at length that the First Amendment's protection of the right to associate would be infringed if the PRA were interpreted so

[18] CP 200 (giving City 10 days from trial court's final ruling on the case to produce the forwarded e-mails).

[19] *Grobe v. Valley Garbage Serv.*, 87 Wn.2d 217, 228-29, 551 P.2d 748 (1976) (citing *State v. Wilson*, 75 Wn.2d 329, 332, 450 P.2d 971 (1969); *see also* RAP 10.3(a)(8); *In re Dependency of K.S.C.*, 137 Wn.2d 918, 932, 976 P.2d 113, (1999) ("Portions of a brief which contain factual material not submitted to or considered by the trial court should be stricken").

[20] CP 38.

[21] CP 197-99.

broadly as to compel disclosure of off-the-record political communications;[22] yet, Respondent's 46-page Brief *never mentions the First Amendment once*. The trial court expressed doubt that Council members and constituents have the right to correspond in private,[23] but the Constitution *does* protect this right.[24] As this Court recently ruled, Freedom of Association even protects the correspondence of a drug dealer from unwarranted examination.[25]

Protecting the confidentiality of political association is vital to a functioning representative democracy. As this Court has stated:

> The public disclosure act, RCW 42.17, requires that contribution of funds to candidates for public office be reported to a commission where the reports are kept on file for all to examine. Thus, the public may judge whether those upon whom it confers office impartially perform the duties of the office or unduly favor those interests contributing to their campaigns. *As for ex parte contacts between the legislator and his constituents advocating specific legislation, it is an integral part of representative government at every level.* It is a daily if not an hourly occurrence across the land. Absent a charge of

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[22] *See* City's Opening Brief at pp. 11-25.

[23] CP 154 ("How does a constituent writing a public official related to a public matter enjoy any reasonable expectation of privacy in that communication?").

[24] *See, e.g.*, *Eugster*, 121 Wn. App. at 807.

[25] *State v. Hinton*, 179 Wn.2d 862, 877, 319 P.3d 9 (2014) (noting that possibility of government surveillance has an unacceptable "chilling effect" on First Amendment freedoms).

> corruption, the court should not intrude upon the legislative process.[26]

While citizens have every right to know what government agencies are up to, they also have a right to influence their elected legislators without the entire agency or the general public knowing about it.[27] Respondent predicts that bribery, corruption, and governing in "secret cabals and conclaves," would erupt if e-mails between individual elected officials and their constituents are not treated as public records.[28] But in prior decisions this Court has not automatically equated Council-member/constituent discussions with corruption.

B. Respondent never establishes how the Council member's e-mails meet the definition of "public record."

The Respondent never satisfactorily addresses how e-mails in a single Council member's personal possession meet the statutory definition of "public record."[29] There is ample room for this Court to find that the e-mails do not meet that definition. For one thing, all of Council member

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[26] *Westside Hilltop Survival Com. v. King Cty.*, 96 Wn.2d 171, 179, 634 P.2d 862 (1981) (emphasis added).

[27] *Eugster*, 121 Wn. App. at 807.

[28] Brief of Respondent at 8.

[29] *See* RCW 42.56.010(3) (defining public record as any "writing" "relating to the conduct of government or the exercise of any governmental or proprietary function" "created," "owned," "used," or "retained" by any agency).

Vermillion's e-mails that are related to campaigns, elections, and ballot measures cannot be public records because he is statutorily prohibited from using any agency resources to exchange such e-mails.[30] In addition, Council member Vermillion's individual e-mails with constituents were not "prepared, owned, or retained" by an "agency." An individual Council member is not an "agency."[31] An individual Council member has no ability to bind the City to any course of action except by voting as a member of a Council majority.[32]

Finally, the Respondent does not establish how e-mails that have remained in Council member Vermillion's sole possession were "used" by the City. On this point, the Court's prior decisions in *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010), and *Concerned Ratepayers Ass'n v. Pub. Util. Dist.*, 138 Wn.2d 950, 959, 983 P.2d 635 (1999), are distinguishable. In *O'Neill*, the Council member's e-mail with a constituent became the subject of a records request after the Council member discussed

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[30] RCW 42.17A.555; CP 69-70 (Vermillion's sworn declaration that he has used personal e-mail account for his own campaigns and those of others).

[31] RCW 42.56.010(2) (defining agency to include state and local units of government).

[32] *See supra* note 8; RCW 42.30.060 (requiring "action" of governing body to occur in open public meeting).

that e-mail in an open public meeting.[33] By contrast, here there is no evidence that Council member Vermillion ever discussed at a Council meeting any of the e-mails in his exclusive possession.

In *Concerned Ratepayers*, records the PUD produced to the requester referenced a document bearing the identifier "IPS 10380," but IPS 10380 itself was not produced.[34] IPS 10380 was a set of specifications for a turbine generator that had been reviewed by agency staff and was relevant to the agency's ultimate decisions.[35] On these facts, this Court determined that the PUD had "used" the specifications for the turbine generator.[36] By contrast, here no evidence suggests that any of the e-mails in Council member Vermillion's personal e-mail account were referenced in any other public records; sent to or discussed with agency staff; discussed at a public meeting; or in any way bear any nexus with the City's decision-making process.

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[33] *O'Neill*, 170 Wn.2d at 141 ("At a public meeting of the Shoreline City Council on September 18, Fimia said that she had been sent a copy of an e-mail allegedly sent by 'a Ms. Hettrick and a Ms. O'Neill' accusing the Council of improper conduct.").

[34] *Concerned Ratepayers*, 138 Wn.2d at 953.

[35] *Id.* at 956 ("While our engineering department, the Utilities consulting engineers and Cogentrix engineers have seen and carefully evaluated most if not all of the technical data in the possession of GE regarding the turbine . . .").

[36] *Id.* at 961 ("Use of the IPS 10380 was not limited to a mere reference in a manual, but the PUD's consideration of the technical specifications was clearly instrumental to the process of building the power plant.")

Respondent might contend that if a particular document was relevant to *Vermillion*'s decision-making process, then it is necessarily relevant to the *City*'s decision-making process. Such a proposition is not supported by this Court's prior decisions, and in any case it would create a slippery slope.

Elected legislators may read and consider any number of materials prior to a discussion or vote at the Council level.[37] Treating a single Council member's consideration of a document as "use" by the agency would open a proverbial can of worms. If, hypothetically, the City Council were voting on environmental legislation, and a particular member's vote was influenced by a scientific article she had read that morning, would that scientific article be considered a "public record"? What about constituent e-mails a Council member reads but does not consider influential, one way or the other, on any matter of agency action? Is the mere fact the Council member read the unhelpful e-mail a "nexus with agency decision-making"? How would a

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[37] *See Teter v. Clark County*, 104 Wn.2d 227, 235, 704 P.2d 1171 (1985) ("A legislative determination will be sustained if the court can reasonably conceive of any state of facts to justify that determination."); *see also Smith v. Skagit County*, 75 Wn.2d 715, 740-41, 453 P.2d 832 (1969) ("Unlike a judicial hearing where issues of fact should be resolved from the evidence only without regard to the private views of the judges, a legislative hearing may reach a decision in part from the legislator's personal predilections or preconceptions. Indeed, the election of legislators is often based on their announced views and attitudes on public questions.")

Court determine, on a case by case basis, which constituent e-mails a Council member "used" to make a decision and which were entirely irrelevant to his or her decision? Must local legislators be subjected to invasive inquiries as to why they voted the way they did on each matter of city business and what materials influenced, or did not influence, their personal thought process?

These problematic questions need not be answered if the Court applies the PRA's definition of "public record" in a common sense manner that is consistent with its prior decisions. Any "writings" that are in the possession of the agency, discussed at a public meetings, or otherwise put on the table in the course of agency action (including discussion), are fair game as public records; however, e-mails of individual elected officials that remain "for their eyes only" are not.

C. Respondent fails to explain how the City might "compel" a Council member to produce e-mails from a personal account.

The Respondent offers the unsupported proposition that the City has a "duty to compel" Council member Vermillion to produce the requested documents.[38] The Respondent does not explain what law enables a government agency to "compel" a duly-elected Council member to

[38] Brief of Respondent at 13.

surrender his personal property. Personal computers and e-mail accounts are personal effects protected by the Fourth Amendment to the U.S. Constitution and Art. 1 § 7 of the Washington constitution.[39] No state law or statutory process authorizes a warrant for seizure of e-mails from an elected official's personal e-mail account, absent a criminal charge.[40] In *O'Neill*, the five-member majority assumed the Council member would consent to a search of her e-mail account.[41]

Moreover, this case has dangerous facts on which to assign agencies a "duty to compel." Requiring the surrender of heretofore confidential e-mails between Council members and constituents could have negative ramifications that undermine the PRA's goal of "good government." Whenever their elected officials happened not to be getting along—an all-too-frequent occurrence in the world of politics—public agencies would be in an untenable position. Rival legislators could use the PRA to snoop into each other's discussions with constituents, with the agency having to

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[39] *State v. Hinton*, 179 Wn.2d 862, 877, 319 P.3d 9 (2014).

[40] *See City of Seattle v. McCready*, 123 Wn.2d 260, 272, 868 P.2d 134 (1994); *Seymour v. State*, 152 Wn. App. 156, 167, 216 P.3d 1039 (2009).

[41] The four-member dissent believed the City had no obligation to infringe the Council member's constitutional rights. *O'Neill*, 170 Wn.2d at 155 (Alexander, J., dissenting) ("In my opinion the home computer hard drive is not subject to search or inspection by the City without permission of the employee.")

"compel" its elected officials to turn over their correspondence.[42] The end result: a political wrestling match with the agency as the referee, the constituents pulled into the mud, the taxpayers footing the bill, and no one the wiser about what *the agency* is doing.

In lieu of tasking agencies with a constitutionally-problematic "duty to compel," the Court may be tempted by a "simple" solution: require exclusive use of agency-issued e-mail for all communications related to the agency or to a Council member's activities—no exceptions.[43] However, this "solution" ignores the problem: elected Council members have a Constitutional right to associate with constituents.[44] Yet, once an e-mail is on an agency server, its release will be sought on the argument that the

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[42] This is not just a hypothetical scenario. In a case currently pending in Skamania County, the wife of a sitting PUD Commissioner filed a request for all PUD-related e-mails from the public *and personal* e-mail accounts of her husband's fellow Commissioner and political rival, Clyde Leach, including Leach's communications with Esch's opponent in the last election. *Esch v. Skamania County PUD*, Skamania County Superior Court Case No. 13-2-00109-0.

[43] *See* Brief of Respondent at p. 28 ("In this context is also significant to realize that had Puyallup City Council Member Vermillion really wished to secure his 'privacy interests' he could have done so by the simple expedient of conducting all city business at his city address.") *See also* WAC 44-14-03001(3) (AGO model rule on use of personal computers for agency business). Because of the First Amendment issue, the AGO's model rule for retention of records created or stored on personal computers or personal e-mail accounts would be a bad fit if sweepingly applied to e-mails between elected officials and constituents.

[44] *Nixon*, 433 U.S. at 465-67; *Eugster*, 121 Wn. App. at 807.

agency has "retained" it.[45] Compelling a "no exceptions" use of agency servers would chill the exercise of First Amendment rights, because disclosure would always be a possibility.[46]

D. The Respondent fails to establish "silent withholding" or a basis for *in camera* review.

Respondent accuses the City of committing "silent withholding" by not producing an exemption log identifying each e-mail in Council member Vermillion's personal e-mail account and claiming an exemption.[47] The trial court, too, suggested that an exemption log should have been produced.[48] However, the PRA only confers the obligation to disclose *public records.* Because Council member Vermillion's personal political e-mails do not meet the definition of public record, no exemption log needed to be produced.[49] Put another way, it is essential to address the question of

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[45] *See* Nissen's Answer to Petition for Review at pp. 12-13, *Nissen v. Pierce County et al.*, Washington State Supreme Court of Washington Case No. 87187-6 (filed November 5, 2014) ("[T]he agency actually possessed the unredacted billing records at a time a PRA request for them was issued. Thus the agency itself 'retained' the records . . .").

[46] *Hinton*, 179 Wn.2d at 877.

[47] Brief of Respondent at pp. 31-32.

[48] CP 158.

[49] *City of Federal Way v. Koenig*, 167 Wn.2d 341, 357 n. 3, 217 P.3d 1172 (2009) ("The PRA requires any agency withholding a public record to identify the specific exemption authorizing the withholding and how it relates to the record-essentially a log of withheld documents. RCW 42.56.210(3). Because the withheld documents are not public records under the PRA, they are not subject to the log requirement.").

whether Council member Vermillion's e-mails are, in fact, public records before determining whether "silent withholding" has occurred.

The same analysis applies to *in camera* review. This Court has recognized the propriety of *in camera* review to determine whether public records are exempt from disclosure.[50] Documents that do not meet the definition of "public record"—by virtue of the fact that they have never been maintained by any agency—are not subject to *in camera* review.[51] Moreover, unlike the typical straight-forward task of determining whether a particular exemption applies to a particular record, in this case the trial court would have to examine a Council member's entire personal e-mail account *in camera* to see if it contains any public records. This would be an unwieldy exercise, to say the least. At a minimum, the trial court would have to sort through the entire account and remove the "political" e-mails the Council member was prohibited by law from receiving or sending via agency e-mail.[52] And unless it were found that *every* e-mail was a public record simply by

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[50] RCW 42.56.550; *Limstrom v. Ladenburg*, 136 Wn.2d 595, 963 P.2d 869 (1998) ("The only way that a court can accurately determine what portions, if any, of the file are exempt from disclosure is by an in camera review of the files").

[51] *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 866, 288 P.3d 384 (2012) (trial court did not abuse discretion by not conducting in camera review of e-mails that did not qualify as public records).

[52] *See* RCW 42.17A.555.

virtue of the Council member having sent or received it (a proposition not supported by this Court's prior decisions), the e-mails would have to be reviewed, one-by-one, to see if they bear any "nexus" with agency decision-making.[53] The City is at a loss to explain how a trial court would possibly make such decisions.

E. Respondent's dire predictions of governmental depravity are unlikely to materialize under Washington law.

The Respondent dramatically predicts the end of good government if Council member Vermillion is not forced to disclose his confidential communications. In doing so, Respondent dismisses Washington State's other open government laws as mere "printed words on paper."[54] Contrary to this cavalier depiction, our State has a bevy of other important laws that exist to promote citizen awareness and governmental accountability. Transparency and the free flow of information do not rest entirely on the shoulders of the PRA.

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[53] *Concerned Ratepayers*, 138 Wn.2d at 953. In *Concerned Ratepayers*, the turbine specifications in question were repeatedly referenced in the agency's records, thereby demonstrating a nexus. Similarly, in *O'Neill*, a Council member's e-mail was publicly discussed at a Council meeting. *O'Neill*, 170 Wn.2d at 141. The Respondent's request, by contrast, is a fishing expedition into a Council member's personal e-mail account on the off-chance that the account contains any public records. Such a request turns *O'Neill* and *Concerned Ratepayers* upside-down.

[54] Brief of Respondent at p. 7.

The Open Public Meetings Act ("OPMA"), Chap. 42.30 RCW, requires that all meetings of a governing body be open to the public, prohibits "action" from being taken except at a public meeting, and prohibits voting by secret ballot.[55] The OPMA provides the hedge against governing in "secret conclaves and cabals."[56]

The Appearance of Fairness Doctrine, codified at Chap. 42.36 RCW, requires a Council member to disclose, on the record, any *ex parte* contacts with specially-interested parties when the Council is acting in a quasi-judicial, as opposed to a legislative, capacity.[57] Appearance of Fairness provides the hedge against self-dealing in land development applications.[58]

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[55] RCW 42.30.030; 42.30.060.

[56] Brief of Respondent at p. 8.

[57] RCW 42.36.060. The Appearance of Fairness doctrine demonstrates the Legislature's ability to carve out a narrowly-tailored disclosure requirement when necessary to prevent a specific harm—lack of fairness in quasi-judicial land use decisions—without treading on the discretion of local legislators or their ability to communicate. RCW 42.36.010; 42.36.030 (limiting doctrine to "quasi-judicial land use decisions" of a public agency and expressly excluding legislative decisions); *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 245, 821 P.2d 1204 (1992) ("If the actions before us are legislative in nature, great deference must be afforded them. It is not our role to substitute our judgment for that of duly elected officials. Moreover, the separation of powers doctrine is implicated in this determination.") The purpose of the disclosure requirement is merely to allow an opportunity to rebut the substance of ex parte communications, not to prohibit the discussions from occurring. RCW 42.36.060. The PRA, by contrast, is a sweeping mandate for disclosure of all public records which, if interpreted to apply to Council member Vermillion's e-mails, would not be "narrowly tailored" and would chill First Amendment rights.

[58] Brief of Respondent at p. 8 ("Municipal politicians of every stripe would be free to . . . communicate covertly with those bringing development applications or quasi-judicial appeals before the selfsame government entity.")

The Fair Campaign Practices Act, Chap. 42.17A RCW ("FCPA"), requires disclosure of campaign contributions and contributors.[59] The FCPA provides the hedge against politicians "solicit[ing] political contributions in the same secret communications they conducted with their constituents to transact the business of their government entity."[60]

Bribery, of course is a crime.[61] A search warrant is available to uncover evidence of a crime.[62] The laws against bribery hedge against the corrupt influences Respondent believes will materialize if Council member/constituent e-mails remain confidential.[63]

The City wholeheartedly agrees that, when evidence of a violation of civil or criminal laws arises, discovery into whether such a violation has occurred should be permitted, either pursuant to the civil rules or via a criminal search warrant. But interpreting the PRA as an all-purpose tool to conduct a fishing expedition into the personal property of elected officials—just because some elected official, somewhere, might be acting in a corrupt or inappropriate manner—is not what the drafters of the PRA intended.

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[59] RCW 42.17A.240(2).

[60] Brief of Respondent at p. 8.

[61] RCW 9A.68.010.

[62] RCW 10.79.035.

[63] Brief of Respondent at p. 41 ("bribes could be secretly tendered . . .").

IV. CONCLUSION

The Respondent's brief never confronts the essential question here: Should the PRA definition of "public record" be construed so broadly, and at the same time so simplistically, as to encompass a City Council member's private correspondence? The City submits that the answer to this question is no.

The PRA definition includes only "writings" relating to the "conduct of government or the performance of any governmental or proprietary function" that are "prepared, owned, used, or retained" by an agency. Materials maintained exclusively in the personal account of a Council member, which no "agency" prepared, owned, used, or retained, do not meet this definition. In this manner, the PRA's definition of "public record" can be harmonized with the constitutional right of an elected official to communicate freely with constituents.

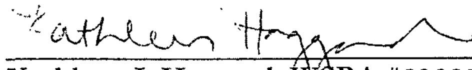
Adopting such a common sense ruling would not cause all the state and local agencies to erupt into chaos and depraved corruption, as Respondent's briefing suggests. Rather, such a common sense ruling would wholly maintain the public's right to know what *public agencies* are up to. Washington's other open government laws provide assurances against

bribery, self-dealing in land use decisions, secret ballots, campaign finance violations, and other abuses.

For the foregoing reasons, the City of Puyallup requests reversal of the trial court's ruling and a finding that records sought by the Plaintiff do not meet the statutory definition of "public record."

RESPECTFULLY SUBMITTED this 27th day of May, 2015.

PORTER FOSTER RORICK LLP



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent the REPLY BRIEF OF PETITIONER CITY OF PUYALLUP to the following:

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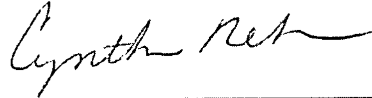
Dated this 27th day May, 2015.



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Attached for filing is the **REPLY BRIEF OF PETITIONER CITY OF PUYALLUP.**

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