NO. 942773

COURT OF APPEALS, NO. 76012-2-I
(Transferred from 48186-3-II, which was consolidated with
No. 48311-4-II, 48326-2-II and 48372-6-II.)

THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER COOK, KEVIN EVANS, JOSEPH JONES and
CHRISTOPHER ROBINSON,

Plaintiffs/Respondents

v.

DEPARTMENT OF CORRECTIONS,

Defendant/Petitioner

PETITION FOR REVIEW

MICHAEL C. KAHRS
Attorney For Petitioner
5215 Ballard Ave. NW
Seattle, WA 98107
mike@kahrslawfirm.com
(206) 264-0643

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A. IDENTITY OF PETITIONER

The Respondents, Christopher Cook, Kevin Evans, Joseph Jones and Christopher Robinson herein petitions this Court for review of the decision by the Court of Appeals, Division I, designed in Appendix A of this Petition, as set forth below.

B. COURT OF APPEALS DECISION

The Court of Appeals, Division I, reversed the trial court's ruling granting the Respondents penalties and attorneys fees and costs pursuant to the Public Records Act ("PRA"). In its opinion, attached as Appendix A, the appellate court rejected imposing "harsh" penalties on the Department for its failure to conduct a search for possibly responsive documents it referenced in its policy governing requests for phone logs.

C. ISSUES PRESENTED FOR REVIEW

1. Does an agency act in bad faith if it fails to conduct a reasonable search for documents it knows were possibly used or maintained by the agency?

2. Is the nature of the record determinative of an agency's bad faith when it fails to conduct a reasonable search?

D. STATEMENT OF THE CASE

The Department of Corrections (Department) developed a policy on how employees would handle requests for phone logs. Newsbrief 13-01 was

developed to provide guidance to its staff when phone logs were requested. This document stated that any response to requests for phone logs should state that

> [t]he Department's phone system is run and maintained by an outside vendor and the phone call records you request are not public records created, used or maintained by the department; therefore, the records are not disclosable under the Public Records Act, RCW 42.56.

Cook, CP 34; Evans, CP 36; Jones, CP 40; Robinson, CP 224. There was an additional note in Newsbrief 13-01 that stated the following:

> Please note, that records pulled from the [Global Tel Link] GTL system for use in agency business (i.e. as an exhibit attached to an investigation) may be subject to disclosure and in this case would need to be pulled and provided in response to any public records request and reviewed for potential release.

Id., p. 7 (emphasis in the original). Cook, CP 34; Evans, CP 36; Jones, CP 40; and Robinson, CP 224. In its responses to Requesters's phone log requests, the Department stated without a search that they were not public records. Cook, CP 45; Evans, CP 47; Jones, CP 51; and Robinson, CP 34.

In its show cause motions and responses, the Department conceded the requested records would be public records and if they existed, they should have been produced. Cook, CP 148; Evans, CP 14; Jones, CP 17; and Robinson, CP 196. The Department failed to conduct any search for responsive records arguing instead that the onus was on the requester to raise

the issue. Evans, CP 248; Jones, CP 523-24; and Robinson, CP 317. After making this argument, the trial court issued letter opinions granting the three pro se requesters penalties. Evans, CP 241-49; Jones, CP 514-25; and Robinson, CP 309-18. The trial court signed an order granting the represented requester penalties. Cook; CP 147-49.

In these opinions, the trial court accepted the concession of the Department and then addressed the issue of bad faith. It accepted that Newbrief 13-01, in setting policy, was wrong but objectively reasonable. Cook, CP 148; Evans, CP 244-47; Jones, CP 520-23; and Robinson, CP 313-16. However, the trial court found that because the Department failed to "perform any search of its own records or take any steps to determine whether the records . . . came within the exception set forth in its own policy, "bad faith was established and penalties were due." Evans, CP 247-49; Jones, CP 523-24; and Robinson, CP 316-18. *See also* Cook, CP 148. It granted the requesters penalties of $25 per day. Cook, CP 148; Evans, CP 249; Jones, CP 524-25; Robinson, CP 318.

In its decision, Division I made explicit reference to a situation not involving any of the Respondents where the inmate requester was a member of a security threat group and the phone records belonged to a confidential informant. Opinion, p. 2. Rather than treating this "internal guideline" as informing employees of the Department of where a reasonably conducted

search should look for responsive documents, Division I relied on its informal language to find that the language did not contain "any implied policy to search investigation files or to disclose the substance of the internal note." *Id.*, p. 8.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

There are four sets of criteria upon which this Court relies when it considers whether or not to accept review. RAP 13.4(b). It requires one of the following:

> (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 a published 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.

RAP 13.4(b).

It is appropriate for this Court to accept review because the decision of Division I conflicts with decisions of both levels of appellate courts and there are issues of substantial public interest which would provide guidance to agencies tasked with responding to record requests.

1. THIS COURT SHOULD ACCEPT REVIEW TO CLARIFY HOW AGENCIES SHOULD PROCESS PRA REQUESTS FOR DOCUMENTS GENERATED BY THIRD PARTY VENDERS TO THE AGENCIES CLIENTS THAT ARE NOT AUTOMATICALLY PUBLIC RECORDS.

The Court of Appeals opinion rejected penalties because it claimed the Department's actions were not wilful nor wanton and were harsh. Opinion,. This rejection was based on the Department's original good faith belief that the records were not public records. And yet, just because an agency makes a good faith determination that a particular record is not normally a public record pursuant to RCW 42.56.010, it must still conduct a reasonable search for records when it knows those records may have been subsequently used by the agency. This is because a document, even if in the possession of a third party, may become a public record if it is related to governmental functions used or retained by the agency. RCW 42.56.010(3); *see Concerned Rate-payers Ass'n v. Public Utility Dist. No. 1 of Clark County*, 138 Wn.2d 950, 983 P.2d 635 (1999).

The Department knew that it was possible the records requested had been used by a branch of the agency. This possibility was referenced in NewBrief 13-01 where the reader was drawn to the underlined emphasis on the words "Please Note" which talked about this very real possibility. Under the rational of Division I, any agency which determines that a record is not

originally a public record and knows the record is occasionally used for governmental purposes but does not conduct a search based upon this knowledge should never be penalized.

Division I's decision is in conflict with this Court's decision in *Concerned Ratepayers*. In *Concerned Ratepayers*, this Court determined that an obscure document that was not in the possession of the agency was still a public record because it had been used within the meaning of the PRA. This was because the agency had reviewed the document. *Id.* at 959. By not finding a violation for the Department's failure to search, it is cutting the legs out of under *Concerned Ratepayers*. The next time a requester sues an agency for its failure to search for third party documents it used, the agency will argue it did not have a policy governing disclosure and thus it is not required to pay any penalties.

Furthermore, it provides an incentive for an agency not to search. If the Department had discovered the phone logs were used for any governmental purpose, they would be subject to the PRA and they would have to be provided or an exemption claimed. Without having looked, the Department could never know whether or not the record was used and whether or not the document was responsive to the Respondents' requests and it avoids any indelicate questions.

This decision also conflicts with Division II's decision on what constitutes bad faith. *See Francis v. Dept. of Corrections*, 178 Wn. App. 42, 313 P.3d 457 (2013) (review denied, 180 Wn.2d 1016, 327 P.3d 55 (2014)). In *Francis*, the Department spent a total of 15 minutes looking for a responsive document. *Id.* at 50. After the *Francis* court considered prior PRA cases on bad faith, non-PRA Washington cases on bad faith and cases involving the Federal Freedom of Information Act, it found that "actions short of intentional wrongdoing in performing a record search may establish bad faith." *Id.* at 59. It then ruled that " agency will be liable, though, if it fails to carry out a record search consistently with its proper policies and within the broad canopy of reasonableness." *Id.* at 63. Needless to say, this is precisely what Division II found when it determined that the 15 minute search was, for all intents and purposes, no search. *Id.* at 64.

Here, the Department didn't even conduct a 15 minute search. It conducted no search even though the plain language of Newsbrief 13-01 clearly warned the departmental employee responding to a request for phone logs that there may exist responsive records and spelled out exactly what these records would be. The decision of Division I conflicts with holding of *Francis*, a case that this Court refused to accept for review.

This is also a matter of public interest. Issues of public interest involve situations where not only the interest of the parties before this Court are affected but many others not before this Court may also be affected. *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005). In the PRA context, this Court provides guidance to the many agencies needing advice as to how to respond to common situations. The facts of this case are repeatable for the many agencies who have third party venders providing services to their clients. Accepting this case for review would assist agencies in determining their obligation to conduct a reasonable search for responsive records when they have possibly used the documents in question in the course of governmental business.

2. THIS COURT SHOULD ACCEPT REVIEW TO DEFINE WHAT TYPE OF POLICY A TRIAL COURT MAY RELY UPON WHEN EVALUATING POSSIBLE AGENCY PENALTIES.

The lower courts which have considered bad faith with inmate requesters have said that an unreasonable search "does not necessarily constitute bad faith." *Faulkner v. Dept. of Corrections*, 183 Wn. App. 93, 102, 332 P.3d 1136 (2014) (citing *Francis*, 178 Wn. App. At 63 n. 5.). What assures a bad faith finding is where"the agency fails to conduct a search that is both reasonable and consistent with its policies." *Id.* (quoting *Francis*, 178 Wn. App. At 63 n. 5.). Division I reversed the award of penalties because it

found that the language in Newsbrief 13-01, which cautioned there may indeed be responsive records, was only "an internal guideline." Opinion, p. 8. Indeed, the court found that "[w]e do not discern any implied policy to search investigation files or to disclose the substance of the internal note." *Id.* It permitted the Department to ignore the "note" in Newsbrief 13-01 because the court did "not discern any implied policy " and it "did not jeopardize the sovereignty of the people or government accountability." *Id.*

The Department obviously developed Newbrief 13-01 to assist its employees in responding to requests for phone records. In all four responses to the requests, the employees of the Department made the same canned response. A policy has been defined as "[a] standard course of action that has been officially established by an organization, business, political party, etc." Black's Law Dictionary, p. 981 (10th ed. 2015). In its consideration, the trial court explicitly addressed the policy contained in Newsbrief 13-01.

> The general rule was that phone records did not typically qualify as public records, the exception to that general rule was that, if the records had been used for a government purpose, then they would qualify as a public record. The policy as a whole is reasonable, but its reasonableness depends on application of both parts of the policy, the general rule and its exception.

Evans, CP 247. The trial court treated the Newsbrief 13-01 as one policy with a general rule and an exception. Division I treated Newsbrief 13-01 with

one general rule with the note immediately following the rule that was not even an implied policy. Policy notes or comments are considered part of a policy. For example, comments to the various Restatements are cited for their authority. *See Segura v. Cabrera*, 179 Wn. App. 630, 635, 319 P.3d 98 (2014) (citing to Restatement (Second) of Torts, various comments and a special note). Division I's opinion is in conflict with the prior cases governing bad faith for inmate requesters pursuant to RCW 42.56.565(1).

It is I the public interest to clarify what is considered a policy in the PRA context to assist agencies in their responses to document requests. Although not limited to this especially certainly applies to inmate litigation. *See Adams v. Dept. of Corrections*, 189 Wn. App. 925, 361 P.3d 749 (2015) (An agency using a policy to deny records based on a legally indefensible exemption is acting in bad faith.). But it also applies in the non-inmate context when a lower court applies the *Yousoufian* mitigating and aggravating factors to calculate penalties. *Yousoufian v. King County*, 168 Wn.2d 444, 467-68, 229 P.3d 735 (2010).

An agency's policy may affect the penalty amount in various ways. In these cases, the existence of an established policy resulted in the trial court awarding penalties when it was not followed. The existence of a policy could be used by a trial court to determine the extent of noncompliance with the

PRA, its public importance, training or the reasonableness of the explanation for noncompliance.

It is sound public policy to provide context and definition to how an agency's policy is to be interpreted when considering its response to a PRA request. For the reasons expressed, this Court should accept review to provide guidance to agencies developing PRA policies.

F. CONCLUSION

For the reasons stated above, the Respondents respectfully asks this Court to acknowledge the case conflicts and significant issues of public interest by accepting review. He also asks for reasonable attorney fees and costs pursuant to RAP 18.1.

DATED this 8th day of March, 2017.

Respectfully submitted,

KAHRS LAW FIRM, P.S.

MICHAEL C. KAHRS, WSBA #27085
Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of the foregoing document on the Respondent in this case:

Timothy Feulner
Criminal Division
Attorney General's Office
P.O. Box 40116
Olympia, WA 98504-0116

[X] VIA U.S. MAIL
[ ] VIA HAND DELIVERY
[ ] VIA FACSIMILE
[ ] VIA ELECTRONIC MAIL

Michael Kahrs — 3/8/17 Date

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CHRISTOPHER COOK, KEVIN EVANS, JOSEPH JONES, CHRISTOPHER S. ROBINSON, Respondents, v. WASHINGTON STATE DEPARTMENT OF CORRECTIONS, Appellant.	No. 76012-2-I UNPUBLISHED OPINON FILED: February 6, 2017

VERELLEN, C.J. — An inmate requesting public records is entitled to penalties only if the public agency acts in bad faith.[1] Bad faith requires a wanton or willful act or omission with utter indifference to the consequences.[2] Considering all of the circumstances, the act or omission must be unreasonable and warrant harsh punishment.[3]

The Department of Corrections (the Department) appeals four Thurston County Superior Court orders awarding monetary penalties to inmates who requested phone logs under the Public Records Act (PRA), chapter 42.56 RCW. After initially denying

[1] Faulkner v. Wash. Dep't of Corr., 183 Wn. App. 93, 102, 332 P.3d 1136 (2014) (quoting RCW 42.56.565(1)).

[2] Id. at 103-04.

[3] Id. at 105-06.

those requests based upon its then-existing policy that phone logs were not public records, the Department revised its policy and provided the requested phone logs. On de novo review, we conclude the Department did not act willfully or wantonly with utter indifference to the consequences. Considering all of the circumstances, harsh penalties are not warranted. We reverse.

FACTS

The Department contracts with a private company, Global Tel-Link (GTL), to run its inmate phone system and maintain records, including phone logs. Prior to 2013, the Department provided phone logs in response to public record requests by obtaining the logs from GTL. In 2013, the Department became aware of a security incident in which an inmate at one of its facilities requested another inmate's phone logs through public disclosure. The inmate requester was a member of a security threat group and the inmate whose call logs were requested was a confidential informant.

In view of the security issues raised by the 2013 incident, and other concerns, the Department determined that inmate phone logs maintained and possessed by GTL were not public records. In June 2013, the Department issued Newsbrief 13-01 to provide guidance to its staff about processing public record requests for phone logs. Newsbrief 13-01 stated:

> The Department contracts with Global Tel Link (GTL) to manage and provide inmate phone services. Records maintained within the GTL system are not agency public records and therefore not subject to disclosure. They do not need to be gathered and retained in response to a public records request.
>
> If you receive a request from any requester for a copy of inmate telephone logs or inmate telephone audio recordings the following language should be used in your response.

> *"The Department's phone system is run and maintained by an outside vendor and the phone call records you request are not public records created, used or maintained by the department; therefore, the records are not disclosable under the Public Records Act, RCW 42.56."*
>
> Please note, that records pulled from the GTL system for use in agency business (i.e. as an exhibit attached to an investigation) may be subject to disclosure and in this case would need to be pulled and provided in response to any public records request and reviewed for potential release.
>
> If you have questions regarding disclosure of inmate phone system records in response to a public records request, please contact the Agency Public Records Officer.[4]

Christopher Cook, Joseph Jones, Kevin Evans, and Christopher Robinson, inmates housed at Coyote Ridge Corrections Center, requested phone logs. Using the language in Newsbrief 13-01, the Department timely notified them that phone logs are not public records because the phone system is run and maintained by an outside vendor.

Cook, Evans, Jones, and Robinson filed lawsuits in Thurston County Superior Court challenging the Department's denial of their public record requests and seeking monetary penalties. Soon after a Franklin County Superior Court judge ruled in unrelated litigation that inmate phone logs are public records, the Department revised its position and made the requested phone logs available to Cook, Evans, Jones, and Robinson.

The Department opposed any penalties, arguing it initially denied the requests because, consistent with Newsbrief 13-01, it reasonably believed the phone logs were not public records.

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[4] Cook Clerk's Papers (CP) at 34; Evans CP at 36; Jones CP at 40; Robinson CP at 224.

In its letter opinions for Evans, Jones, and Robinson, the trial court ruled the Department's approach appeared to "have been based on a good faith understanding of the law, including awareness of all three elements in the definition of public records."[5] The court also concluded the Department's policy was "objectively reasonable."[6] But in its letter opinion, the trial court concluded the Department failed to perform a search in accordance with or to fully disclose an exception contained in its policy:

> As discussed above, the Department's approach described in its Newsbrief embodied a general rule and an exception to that general rule. The general rule was that phone records did not typically qualify as public records, the exception to that general rule was that, if the records had been used for a government purpose, then they would qualify as a public record. The policy as a whole is reasonable, but its reasonableness depends on application of both parts of the policy, the general rule and its exception.
>
> In implementing its approach, however, the Department did not inform the requesters of the exception. Instead, the response provided by the Department simply explained that phone records were not public records because they were maintained by an outside vendor and they were not created, used or maintained by the Department. This explanation was not complete in that it did not reference that such records would be public records if they were used for a governmental purpose.
>
> The Department also did not perform any search of its own records or take any steps to determine whether the records of [Evans, Jones, and Robinson] came within the exception set forth in its own policy.[7]

The court found bad faith based on:

> (1) the inadequacy and incompleteness of the Department's explanation to [Evans, Jones, and Robinson] for not providing the records and (2) the Department's failure to perform any search to determine whether the records [Evans, Jones, and Robinson] sought came within the policy's exception before sending its letter to [Evans, Jones, and Robinson]. See Francis v. Dep't of Corrs, 178 Wn. App. 42, 63 n.5 (2013) (bad faith

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[5] Evans CP at 247; Jones CP at 523; Robinson CP at 316.

[6] Cook CP at 148; Evans CP at 247; Jones CP at 522; Robinson CP at 316.

[7] Evans CP at 248; Jones CP at 523-24; Robinson CP at 317.

> present under RCW 42.65.565(1) if agency fails to conduct a search that is both reasonable and consistent with its policies taking into account the facts and circumstances of the request).[8]

In Cook's case, the court ruled the policy was objectively reasonable, but

> [the Department's] act of failing to describe the terms of that policy to Plaintiff Cook in its response, together with its failure to conduct an adequate search for responsive records in accordance with that policy, did constitute bad faith.[9]

The court concluded Cook, Jones, Evans, and Robinson were each entitled to a monetary penalty of $25 per day between the date the Department received the request and the date the Department made the records available.[10] The trial court denied the Department's motions for reconsideration.[11]

The Department appeals.

ANALYSIS

We review a challenge to agency action under the PRA de novo.[12] This court sits in the same position as the trial court when the record consists only of affidavits, memoranda of law, and other documentary evidence.[13] Specifically, review of a determination of agency bad faith toward inmates is a mixed question of law and fact.[14]

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[8] Evans CP at 248-49; Jones CP at 524; Robinson CP at 318.

[9] Cook CP at 148.

[10] Cook CP at 147-49 (totaling $8,775); Evans CP at 249 (totaling $5,875); Jones CP at 524-25 (totaling $7,025); Robinson CP at 318 (totaling $6,925).

[11] The Department moved for reconsideration under CR 59(a)(7) and (9).

[12] City of Federal Way v. Koenig, 167 Wn.2d 341, 344, 217 P.3d 1172 (2009).

[13] Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 252, 884 P.2d 592 (1995).

[14] Faulkner, 183 Wn. App. at 101-02 (quoting Francis v. Dep't of Corr., 178 Wn. App. 42, 51-52, 313 P.3d 457 (2013)).

"When underlying facts are uncontested, we apply de novo review to determine if the facts amount to bad faith."[15]

An inmate is entitled to penalties under the PRA upon showing the agency acted in bad faith.[16] To establish bad faith, an inmate must establish "a wanton or willful act or omission by the agency."[17] In this setting, "'[w]anton' is defined as '[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences.'"[18] Bad faith is not a mere violation of the PRA; it is associated with the most culpable acts by an agency.[19]

The legislature adopted this bad faith standard in 2011 "as a measure to curb abuses by inmates who use the PRA to gain automatic penalty provisions when an agency fails to produce eligible records."[20] The legislature "'intended to afford prisoners an effective records search, while insulating agencies from penalties as long as they did not act in bad faith.'"[21] "By incorporating the bad faith requirement, the legislature allows monetary penalties for inmates only when the agency's conduct defeats the

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[15] Id. at 102.

[16] Id. (quoting RCW 42.56.565(1)).

[17] Id. at 103.

[18] Id. at 103-04 ("Further, 'wanton 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.'" (quoting BLACK'S LAW DICTIONARY 1720 (9th ed. 2009))).

[19] Id. at 105.

[20] Id. (citing S.B. 5025, 62d Leg., Reg. Sess. (Wash. 2011)).

[21] Id. at 106 (quoting Francis, 178 Wn. App. at 60).

purpose of the PRA and deserves harsh punishment."[22] "The general purpose of the PRA is to ensure sovereignty of the people and government accountability by providing full access to information concerning government conduct."[23]

"The failure to conduct a reasonable search or the failure to follow policies in a search does not necessarily constitute bad faith."[24] But an agency is subject to penalties if it fails to perform a search consistent with its own policy "'within the broad canopy of reasonableness.'"[25] Reasonableness is determined by examining all the circumstances of the case.[26]

The Department argues no penalties are warranted. We agree.

The plain meaning of Newsbrief 13-01 is that phone logs are not public records, and the response to a request for phone logs should be that

> [t]he Department's phone system is run and maintained by an outside vendor and the phone call records you request are not public records created, used or maintained by the department; therefore, the records are not disclosable under the Public Records Act, RCW 42.56.[27]

The parties dispute the meaning of the additional note in Newsbrief 13-01:

> Please note, that records pulled from the GTL system for use in agency business (i.e. as an exhibit attached to an investigation) may be subject to disclosure and in this case would need to be pulled and provided in response to any public records request and reviewed for potential release.[28]

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[22] Id.

[23] Id.

[24] Id. at 102 (citing Francis, 178 Wn. App. at 63 n.5).

[25] Id. (quoting Francis, 178 Wn. App. at 63).

[26] Francis, 178 Wn. App. at 63 n.5)

[27] Cook CP at 34; Evans CP at 36; Jones CP at 40; Robinson CP at 224.

[28] Cook CP at 34; Evans CP at 36; Jones CP at 40; Robinson CP at 224.

On its face, this note is an internal guideline informing staff that exhibits to investigations are not the subject of Newsbrief 13-01.[29] The note is narrow in scope, "(i.e. [that is] exhibits attached to an investigation)" and tentative in nature, "may be subject to disclosure." We do not discern any implied policy to search investigation files or to disclose the substance of the internal note.

The Department consistently applied the plain meaning of Newsbrief 13-01 and gave the requesters the specific response dictated by the policy. When the Department reconsidered its policy and concluded phone logs were public records, it promptly made the requested phone logs available. Merely because the Department could have offered more information does not mean that its conduct was willful or wanton. The Department reasonably complied with its then-existing objectively reasonable belief that phone logs were not public records. It reasonably construed Newsbrief 13-01 as limited to the policy that phone logs are not public records. Under these circumstances, the failure to search or disclose to inmates that exhibits to investigations may be public records did not jeopardize the sovereignty of the people or government accountability. We conclude the Department did not act in bad faith and the "harsh punishment" of monetary penalties is not warranted.

RCW 42.56.550(4) provides, "Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record . . . shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action." Based on the Department's concessions that the inmate phone logs are

[29] We do not rely on any of the declarations offered by the Department on its motion for reconsideration.

public records, the Department acknowledges remand is appropriate to determine reasonable costs and attorney fees.

Accordingly, we reverse and remand to the trial court to revise its award of costs and attorney fees to the inmate requesters consistent with this opinion.

WE CONCUR:

COX, J.