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No. 75815-2-I

IN THE COURT OF APPEALS, DIVISION I

OF THE STATE OF WASHINGTON

RICHARD LEE, Plaintiff/Appellant,

v.

CITY OF SEATTLE, COURTNEY LOVE COBAIN, et all,

Respondents

and

COURTNEY LOVE COBAIN and FRANCES BEAN COBAIN,

Cross-Claimants

v.

CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT,

Cross-Claim Defendants.

PETITION FOR REVIEW BY

WASHINGTON STATE SUPREME COURT

BY APPELLANT RICHARD LEE

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NO. 75815-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RICHARD LEE, Appellant, v. CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT, COURTNEY LOVE COBAIN, and FRANCES BEAN COBAIN Respondents. and CCOURTNEY LOVE COBAIN and FRANCES BEAN COBAIN Cross-Claimants v. CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT, Cross-Claim Defendants.	APPELLANT RICHARD LEE'S PETITION FOR REVIEW BY WASHINGTON STATE SUPREME COURT

I. IDENTITY OF THE PETITIONER

Richard Lee, appellant below, hereby petitions for review of the Court of Appeals decision identified in Part II.

II. CITATION TO COURT OF APPEALS DECISION

Appellant seeks review of the unpublished opinion issued by the Court of Appeals Division I in the case of *Richard Lee v. Seattle Police Department et al*

(May 14,, 2018) (2018 Court of Appeals Division I, 75815-I) (App. A hereto). The Court of Appeals denied Appellant's motion for publication on June 8, 2018.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err in terminating review of this case on the basis that Lee's error(s) pertaining to federal law, i.e., the 14th Amendment and substantial due process, which Lee says were "purely accidental," because he really sought to gain tactical advantage, even though he is a *pro se* litigant? Should Lee's error(s) be overlooked under RAP 1.2(a) and this case decided on the merits?
2. Should Lee's cause be defeated in a case where dramatic descriptions of graphic, gory, and gruesome photographs are taken at face value, despite strong evidence that this has been misrepresented, as the photos actually show a decedent who did not die of a shotgun wound, which has also been misrepresented by government officials for over 24 years?
3. Should the trial court's granting of summary judgment be upheld, despite issue(s) of material fact that should be seen as potentially wholly determinative in a trial setting? Should a case of this importance be dismissed in this way, without a single witness being called?
4. RCW 42.56 Washington Public Records Act cases are supposed to be decided on a basis of public interest, not private interest, so did the court(s) err in allowing dramatic claims of psychological stress by two individuals to overcome the pressing concern of the public's right to know how police conduct homicide investigations, especially with strong indications that

they have committed fraud in this case? Did these courts ignore the special status of these individuals as general purpose public figures, who cannot demand privacy considerations where none should exist?

5. Are the courts relying too heavily on *Marsh*, *Favish* and *Rochin* because of the obvious subject matter similarity of photographs of dead bodies, without adequately considering the many distinct differences in this case?

IV. STATEMENT OF THE CASE

This case is about the rights of the citizens of Washington to have governmental police documents released in a violent death case which has been closed but controversial for over 24 years, essentially since the day the body of the decedent was discovered in a greenhouse room above the garage of his Seattle home in April of 1994. This death case has been a matter of intense and worldwide public interest and debate from the very beginning, as the decedent was Kurt Cobain, a famous musician and controversial public figure, as is his widow, Courtney Love Cobain, who stoked public interest with a recorded speech played at his very public memorial at Seattle Center two days after his body's discovery, seemingly blaming Kurt Cobain for the immorality of his death by repeatedly calling him an "asshole" and a "fucker" as she read the majority of his purported suicide note of more than 500 words to a crowd of thousands. Cobain's death and the memorial event was of course a major news story throughout the United States and the world. The appellant Richard Lee is a veteran journalist who began his professional career in the early 1980s with the weekly newspaper the Chicago Reader. Lee attended the memorial event and

aired his first local cable television program on this subject three days later, titling it Was Kurt Cobain Murdered?

In 1994 Lee worked with a Seattle attorney to win release of documents he had not received through his own efforts through Seattle Police Department on the Kurt Cobain death investigation. At that time it was known that the SPD had rolls of 35mm which were supposed to have many images of the crime scene or "death scene" but which were never chemically developed. That lawyer abruptly and without explanation quit the cause in early 1995, although her firm subsequently went on to represent Courtney Love Cobain in another matter. Lee briefly pursued another suit in the late 1990s to win release of the photos, but withdrew upon consideration that victory was nearly impossible to conceive, primarily because silver nitrate film is easy to compromise if a party wishes the contents never to be developed.

In March of 2014, the SPD developed the film and made 37 frames available to the media, which were a subject of worldwide news, including speculation that the photos supported the theories of murder and/ or police misconduct. Lee began his PRA requests and lawsuit filings. The City Attorney's defense was soon joined by the Cobains, Kurt Cobain's widow and daughter as cross-claimants, and eventually this was dismissed in its entirety in 2016 in King County Superior Court under summary judgment motions. Lee then appealed to the Court of Appeals, which ruled to terminate review on May 14, 2018. Lee now seeks review and redress at the Supreme Court.

V. ARGUMENTS WHY REVIEW SHOULD BE ACCEPTED

This Court may grant review and consider a Court of Appeals opinion if it involves a significant question of law under the Constitutions of the State of Washington or of the United States, or if it involves an issue of substantial public interest, or if the decision conflicts with other decisions of this Court or the Court of Appeals. RAP 13.4(b)(1)-(4).

A. Appellant Lee's Accidental Omission of the 14th Amendment and Substantial Due Process From This Washington Case

The Court of Appeals affirmation of the denial of Lee's claims in this case raises fundamental issues about the vitality of our state's Public Records Act in an era of entrenched attitudes of government officials and self-serving tactics of media corporations. Our state legislature this year gained scorn by suddenly and without floor debate or public hearing passing Senate Bill 6617 which exempted the legislature itself from the PRA. Mary Perry, twice referred to in the decision affirming, is the City of Seattle-Seattle Police Department (hereinafter "COS-SPD") director of transparency and privacy, and an editor of the Washington State Bar Association's Handbook on Public Disclosure, who in recent years advocated successfully for the release of a live-action surveillance video of a student at Seattle Pacific University being shot with a shotgun by murderer Aaron Ybarra over the objections of the students-victims, yet she has been a declarant and a leader in blocking of documents release in Lee's case. *Does v. King County, 192 Wn. App. 10, 366 P.3d 936 (2015).* It has become obvious that government and private sector media lawyers are now involved in many legal actions to manage the application of the PRA in ways never foreseen by legislative intent, in this case of this law through a ballot initiative from 1972.

Central to the Court of Appeals affirmation terminating review is the issue of Lee's failure to list the component of the trial court's decision incorporating the 14th Amendment and substantial due process. In explaining his position to the Court of Appeals in this failure, Lee stated that in recent years he has obtained a two-year Associate of Technical Arts degree in paralegal studies in an American Bar Association-approved program at a Washington state college and provided a transcript showing his graduating with a perfect 4.0 GPA, to show that he has basic competency to conduct his suit. EX. 2018-April #31. His self-representation been necessary, Lee has explained, because despite the possibility of substantial statutory awards in this case, he was unable to find a lawyer to handle any part of the matter, apparently because of Lee's unpopularity with commercial news media, with whom he has been a critic and a competitor for attention over many years, and Lee's general unpopularity with those involved in politics and policing, i.e., lawyers in general. Obviously, a big part of the derailing of Lee's efforts to bring this PRA case to trial has been the assertion of the adversarial parties and then the affirming court that Lee's failure to specifically address the 14th Amendment issue(s) in his brief's assignments of error has been the rejection of Lee's apologetic explanation that this was "purely accidental."

In an odd tone, the affirming court wrote that "Lee...extolled the virtues" of his paralegal training and previous experience as a *pro se* litigant and defendant as if this was somehow proof that Lee's misstep in the assignments of error was very deliberate; as the court wrote, "Lee assumed the tactically advantageous

position of being able to respond to the Cobain's presentation on appeal without rebuttal." This assumes that the highly expert team(s) of the Seattle City Attorney as lawyers from COS-SPD, the Michael Hunsinger firm employed by the Cobains, and amicus party Washington State Association of Municipal Attorneys would all remain unaware of the opportunity to cry foul and bring us to arguing this point today. Given what has transpired, it is only reasonable to assume that the responding parties saw this as their lucky tactical win, although to take advantage they had to argue, among other things, that this represents Lee rejecting federal law supremacy, which Lee has repeatedly denied.

The Cobains' Response Brief contains a refutation of what Lee has responded already was a purely accidental omission of the factor of the due process clause of the Fourteenth Amendment, with the Cobains reiterating a unfounded claim that Lee's 'failure to address the trial court's due process holding was intentional." (Cobains Brief, p. 23). Lee's explanation for his mistake in this appeal was that this lawsuit is being heard in Washington State by our state's courts, on a matter under our state's PRA. and that the *Marsh* case was oddly removed from present circumstances because it dealt with a retired prosecutor's "retained" photos published of a murdered child was so starkly different from disclosure of documents under our PRA in this entirely formal court procedure. Lee's ostensibly reasonable perception was that the *Marsh* case was being addressed by inference, by Lee dealing head-on the statutory and common law factors genuinely and immediately present in this Washington PRA case in the Washington courts. As the Cobains state in their brief, "the PRA is in no way

inconsistent with *Marsh*" (Cobains Brief, p. 35) and neither the Cobains, COS-SPD nor the trial judge made any indication that the *Marsh* Ninth Circuit decision was essential in this case in offering some special degree of protection for privacy not found in our PRA, which is subordinate to U.S. Constitutional standards. *Marsh v. County of San Diego*, 680 F.3d 1148 (Ninth Cir. 2012).

B. The role of *State v. Olson* and RAP 1.2(a) on How Technical Violation of the Rules Should Normally be Overlooked and the Case Should be Decided on the Merits.

Central to the Court's consideration of this appeal is the case of *State v. Olson*, 126 Wn.2d 315 (1995) 893 P.2d 629. This is the primary Washington Supreme Court case for consideration of the application of RAP 1.2(a), which states that

> It is clear from the language of RAP 1.2(a), and the cases decided by this court, that an appellate court may exercise its discretion to consider cases and issues on their merits. This is true despite one or more technical flaws in an appellant's compliance with the Rules of Appellate Procedure. This discretion, moreover, should normally be exercised unless there are compelling reasons not to do so. In a case where the nature of the appeal is clear and the relevant issues are argued in the body of the brief and citations are supplied so that the court is not greatly inconvenienced and the respondent is not prejudiced, there is no compelling reason for the appellate court not to exercise its discretion to consider the merits of the case or issue.
>
> RAP 1.2(a) states:
>
> These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).
>
> The clear language of this rule supports the conclusion of the Court of Appeals and compels us to find that a technical violation of the rules, such as that in this case, should normally be overlooked and the case should

be decided on the merits. This result is particularly warranted where the violation is minor and results in no prejudice to the other party and no more than a minimal inconvenience to the appellate court. (*Olson*, 126 Wn.2d 315 (1995) 893 P.2d 629).

C. The Three G's: Graphic, Gory and Gruesome, the Undefined Terms That Signal an Exemption Which Does Not Exist for a Shotgun Wound Which Does Not Exist

The most basic tenant of due process is that citizens must have notice and an opportunity to oppose government actions that harm them. *Mathews v. Eldridge*, 424 U.S. 318, 348, 96 S.Ct. 893, 47 L.Ed.2d 16 (1976). Although the COS-SPD has made passing reference to notifying the Cobains, this vague claim seems designed to provide some qualification that COS-SPD is not some great offender of the due process rights of the Cobains in the release of the first set of the 35mm crime scene photos.. The often repeated COS-SPD claims that the additional 55 photos must be suppressed from release because they are "gruesome" and "graphic" and "gory" have been accompanied by no descriptive details whatsoever, so that Lee, the public, and even the trial judge, who refused the offer by COS-SPD to view the photos *in camera*, have been dealing with these various arguments blindly, except for presumptions that can be assumed based on those 37 35mm photos that were initially released in March of 2014. If COS-SPD had conferred with the Cobains on the details of the images that they released, this certainly has not been stated, although Lee has pressed for such information at many times. To all appearances, if any notice was given to the Cobains prior to the release, it was non-specific as to the special content of the photos. Consider the content of the 37 photos that were disclosed, showing

Cobain's hand and arm with a medical bracelet from a recent hospital stay (EX. 2018-April # 9), his foot next to a box for shotgun shells, several photos of what the police claimed was his heroin shooting kit in a cigar box, and no fewer than 10 photos of Cobain's presumed suicide note *in situ*. Without any details as to how such notice was given or stated, it is clear that a *Marsh*-based complaint about lack of due process should be directed at COS-SPD, not Lee, who is a private party, not a governmental one. Lee makes this statement in a spirit of irony and instruction. What level of pre-release collaboration if any between COS-SPD and the Cobains occurred will likely never be known.

All of these already-released disturbing images are what we should reasonably expect could cause the anxiety and harm that the Cobains asserted in their emotional declarations, so we must ask where was the line drawn as to what was to be released with no notice or non-specific notice in these crime scene photographs? The answer that is obvious is that the key standard applied was that photos would not be released showing Cobain's head or any area near the head. As he explained rather dramatically in oral argument this year, Lee's discovery in 1994 of telephoto-lens video showing the top of Cobain's head intact and bloodless (EX. 2018-April # 11) soon led to unpublicized claims to Lee by the top personnel at the King County Medical Examiner that Cobain suffered "no exit wound" and that "all of the shot stayed inside his skull." This impossible wound scenario was finally made quasi-official in the much-publicized 2014 COS-SPD report by Detective Mike Ciesynski, who wrote,

> "Some theorists have suggested that a 20-gauge shotgun would have caused more than the penetrating wounds sustained by victim. This is a

> completely false assumption. Studies conducted have shown that wounds sustained by victim were consistent with the load and gauge of the recovered weapon." EX. 2018-April # 2.

The problem with this conclusion is that Cobain's death certificate has his official cause of death as "Contact perforating shotgun wound to head (mouth)." EX. 2018-April # 1. "Perforating" means that there was an exit wound, and is the definitional opposite of Ciesynski's reported "penetrating" wound.

What this should make clear to any reasonable person is that the failure of COS-SPD to specifically refute at trial or upon appeal Lee's claims of a bloodless or near-bloodless crime scene smack of overt fraud in court, with alarming but non-specific claims of "gory," graphic" and "gruesome" details conveying a deliberately false impression about the content of the photos.

D. Summary Judgment and at Least One Material Fact that Needs To Be Resolved

The Court of Appeals reviews a trial court's decision on summary judgment de novo. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 497, 210 P.3d 308 (2009). Summary judgment is appropriate only if the supporting materials, viewed in the light most favorable to the nonmoving party, demonstrate that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Owen v. Burlington N. & Santa Fe R.R. Co.*,153 Wn.2d 780, 787, 108 P.3d 1220 (2005). "Once the moving party has met this burden, however, the burden shifts to the nonmovingparty to set forth specific facts showing that there is a genuine issue for trial." *Sisters of Providence v. Snohomish County*, 57 Wn. App. 848, 850, 790 P.2d 656 (1990). "The nonmoving party cannot simply rest upon the allegations

of his pleadings; he must affirmatively present the factual evidence upon which he relies." *Sisters of Providence*, 57 Wn. App. at 850.

Any reasonable person, including a judge and/or jury should see the contradiction between long-lens video evidence demonstrating an unbloodied head of Cobain, the reporting of an apparently impossible "no exit wound" scenario by both Lee and Detective Ciesynski and the claims of COS-SPD in this case of a special quasi-categorical nature to these 55 photos because they are graphic, gory and gruesome. This should be a definitive example of a matter to be resolved at trial, as it is obviously potentially wholly determinative of its outcome.

E. Privacy and Public Figures: Do Bold Claims of Psychological Distress Trump Established Law on Privacy Expectations?

Building upon the unsubstantiated and bold claims of emotional distress by the Cobains, the affirming court shows itself considering solely the assertions of the cross-claimants. They write:

> At issue here are photographs that show the dead body of Mr. Cobain. But the photographs are more than an oddity showcasing the tragic end of a celebrated musician—to those who knew Mr. Cobain, the photographs show the lifeless body of a son, a father, a husband, or a friend. As the Cobain's declarations establish, the disclosure of these photographs would allow the entire world to peer into one of the most private and distressing events of the Cobains' lives. Once released, the photographs would become ammunition for those who wish to taunt and antagonize the Cobains and their friends.

It is certainly not clear where the court may have gained the perception that Lee or anyone else was interested in the release of the photographs as anything other than evidence demonstrating offenses such as police corruption and/or incompetence in this case, and the extrapolation that Lee or anyone else is

seeking "ammunition" to "taunt and antagonize the Cobains and their friends" is not supported by the Cobains' declarations the affirming court quoted at length or anything else in evidence in this case.

In the assertion that "these photographs would allow the entire world to peer into one of the most private and distressing events of the Cobains' lives," the court is being obtuse to the weighty evidence that Lee adduced in oral argument and in his briefs that the Cobains, who commit outlandish and controversial acts in public on a regular basis, are considered public figures of the most extreme variety, so much so that they have essentially relinquished norms of rights to privacy that protect the majority of the population.

Ironically Courtney Love Cobain's most prominent acting role was in 1996, in The People vs. Larry Flynt, a movie based largely on a U.S. Supreme Court case establishing the rule of law that public figures cannot recover from the tort of intentional infliction of emotional distress unless malice is proven, which is relevant to the role of the public figures like the Cobains in this matter, in that public figures must endure emotional stresses without recourse, absent malice. *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 S. Ct. 876, 99 L. Ed. 2d 41, 1988 U.S.

Referencing the court's commentary presuming to understand the Cobains' feelings about their relation, it should be noted that the Cobains' wealth that has been estimated at about $300 million is essentially entirely due to the labor of Kurt Cobain, and the Cobains' post-mortem efforts to maximally exploit his memory in any way possible. As Lee explained in oral argument and

elsewhere, this is especially obvious in Kurt Cobain: Montage of Heck, a feature film documentary in 2015 created with Frances Bean Cobain as an Executive Producer, billed as "The Most Intimate Rock Doc[umentary] Ever" on its product packaging. With no objective proof such a crime ever occurred, the film purports to know that Kurt Cobain was guilty of the felony of raping a developmentally disabled girl as a teenager, which gave him the reputation of being "the retard fucker," as the film explains. One of Kurt Cobain's oldest friends, who knew teenaged Kurt Cobain at that time, musician Buzz Osborne, strenuously objected to the film's rape allegation as completely untrue in published accounts. Frances Bean Cobain was 18 months old at the time of her father's death and Courtney Love Cobain was married to him for only 25 months, but their owning of his estate has been highly profitable for nearly 25 years, and the court was incorrect in ignoring the reality that business concerns of this magnitude are likely far more a part of the Cobains' private interests than their extravagant and unsupported psychological self-evaluations.

The entire world began "peering" into the Cobain death scene on the day his body was discovered in a greenhouse room easily visible from the public street and filmed by television reporters, and the following day the Seattle Times published a famous photograph of part of Cobain's unbloodied body *in situ* which was then seen around the world, as were the 37 photographs COS-SPD released in 2014.

The concept of privacy codified in the PRA requires a reasonable expectation that the matter at issue is "private." Events in places where large

numbers of people congregate are not private. This determination does not turn on whether the location is a public or private place. For example, disclosure of a conduct of police officers at a bachelor party at a private club was not private because it occurred in front of 40 people. *Spokane Police Guild,* 112 Wn.2d at 38; *Harris v. City a/Seattle*, 2003 WL 1045718, at *5 (W.D. Wash. Mar. 3, 2003) (no intrusion in recording at private casino; "any person ... would expect to be filmed and observed by the establishment's security") (Nevada law); *cf State v. Clark*, 129 Wn.2d 211,225-26,916 P.2d 384 (1996) (whether conversation is "private" depends in part on location and "potential presence of a third party"). Here, the Cobain death events took place in a part of a private property that was very visually available to many members of the news media who could witness and photograph the scene very much the like the suppressed scene photographs, and in the very elaborately organized show business event that took place at Seattle Center two days later. These are not places a reasonable person would expect privacy.

F. *Marsh, Favish,* and *Rochin*: Subject Matter Matches, But This Is a Very Different Case

The Court of Appeals decision affirming makes no reference to supposed balancing tests that have been a substantial part of the responding parties' arguments, likely because the court has seen that the square peg of rather hypothetical balancing does not fit the round hole of this case, where the presumed delicate sensibilities of the Cobains are held to be paramount. And yet without mentioning balancing, the court has thrown the case over to the interests of the Cobains and COS-SPD, as if the public's interest in this matter has little or

no value whatsoever, when in fact the determining factor should have been how to best serve the public interest through proper application of the PRA. As the affirming court wrote:

> Pursuant to the analysis set forth in *Marsh*, the trial court correctly concluded that the release of the death-scene photographs would shock the conscious (*sic*) and offend the community's sense of fair play and decency, violating the Cobains' substantive due process rights under the Fourteenth Amendment. Permanently enjoining the City from disclosing those photographs is a reasonable way to prevent such a violation. There was no error in the trial court's ruling.

In their drawing on *Marsh*:

> To violate substantive due process, the alleged conduct must "shock[ ] the conscience" and "offend the community's sense of fair play and decency." *Rochin v. California*, 342 U.S. 165, 172-73, 72 S. Ct. 205, 96 L. Ed. 183 (1952). Given that burial rites "have been respected in almost all civilizations from time immemorial" and "are a sign of the respect a society shows for the deceased and for the surviving family members," the *Favish* Court reasoned that unwarranted public exploitation of death images degrades the respect accorded to families in their time of grief. [*Nat'l Archives & Records Admin. v. Favish*, 541 U.S. [157,] 167-68, [124 S. Ct. 1570 [,158 L. Ed. 2d 319 (2004)]. Mutilation of a deceased family member's body, desecration of the burial site and public display of death images are the kind of conduct that is likely to cause the family profound grief and therefore "shocks the conscience" and "offend[s] the community's sense of fair play and decency." *Rochin*, 342 U.S. at 172-73.
>
> Marsh claims that when she learned that Coulter sent her son's autopsy photograph to the press, she was "horrified; and suffered severe emotional distress, fearing the day that she would go on the Internet and find her son's hideous autopsy photos displayed there." Marsh's fear is not unreasonable given the viral nature of the Internet, where she might easily stumble upon photographs of her dead son on news websites, blogs or social media websites. This intrusion into the grief of a mother over her dead son—without any legitimate governmental purpose—"shocks the conscience" and therefore violates Marsh's substantive due process right.

Marsh, 680 F.3d at 1154-55 (footnote omitted) (some alterations in original).

The subject-matter match of these cases involving photos of dead bodies cannot be denied, but the very substantive differences in the circumstances have been ignored by the court—Kurt Cobain was not a child, the intent to keep these crime scene photographs concealed has been championed by government officials, not sneakily circumvented as in *Marsh*, the community's sense of fair play and decency is far more likely to shocked by the police conduct in this case than by a single photo or many photos of Cobain's head intact, which would visually demonstrate a perversion of justice and fraud, and any intrusion into a relative's privacy here is not "without any legitimate government purpose," indeed the pursuit of justice is entirely legitimate and something the relatives should favor over personal fear of being offended by a photo Kurt Cobain's intact head and unbloodied body.

At trial and in the affirming court, Lee did his best to forcefully present a very powerful response to any assertions that the standards set by *Favish* with its foundation of the inadequacy of "bare allegations" to force release of dead body crime scene photos, i.e., in orally reading verbatim this interview segment by former Seattle Police Chief Norm Stamper in a 2015 feature film documentary titled Soaked in Bleach:

> **We should in fact have taken steps** to study patterns involved in the behavior of key individuals who had a motive to see Kurt Cobain dead...**If in fact Kurt Cobain was murdered**, as opposed to having committed suicide, and it was possible to learn that, **shame on us for not doing that.** That was in fact our responsibility...**If I were the chief today, I would reopen this investigation.** (emphasis added).

For Stamper, who was Seattle's chief of police when Cobain died in 1994 through 2000, this is a major shift from assertions he made to Lee in those years, and undoubtedly equates to a confession to the investigation being inadequate or worse. At this time, to all appearances, the major stumbling block to forcing the truth to come out in this entire affair is the lack of ocular proof of the government's own offenses, meaning a photograph or photographs giving physical substance to the absurdity of the quasi-official story that Cobain died of an absolutely impossible shotgun wound, one which is supposed to have left his head and face essentially unaltered.

VI. CONCLUSION

Richard Lee can attest that despite his nearly quarter-century of effort to bring justice in this matter, very little has changed in terms of the culture of the Seattle Police Department, and apparently the legal system that surrounds and protects it. The week following the discovery of Kurt Cobain's body on Friday, April 8, 1994, SPD media personnel were attempting to squash his inquiries with dismissive comments about Cobain being old news, despite his death being the cover story on Newsweek magazine. And so it has been for these past 24 years, Lee contending with a police department in this matter that seems to comprehend little about the nature of homicide cases, but does understand their own culture of sometimes extreme secrecy and compulsive self-interest. There is no statute of limitations on murder charges. A naïve party might reasonably assume that the Seattle government handles a matter of homicide with all due care and diligence, but to my expert knowledge that is very far from the truth. I

would expect that COS-SPD will retain the 55 suppressed crime scene photos only until 2020 under a six-year retention protocol, although since the photographic exposures were created in 1994, they may feel free to destroy them even sooner, under an interpretation or deliberate misinterpretation of RCW 40.14.060. In any case, March of 2020 is less than two years away, and Kurt Cobain's murderers may continue to live lives of wealth and privilege for decades to come. The simple fact that the Seattle Police Department has not re-opened this homicide case in the last 24 years does not mean that it will not do so in the next 50. Within the last 45 days, on May 25, a lawsuit was filed in Los Angeles County Superior Court, Case BC 707927, by Isaiah James Silva, the ex-husband of Frances Bean Cobain, arguing that Courtney Love Cobain and persons she hired must be found civilly liable for the attempted murder of Silva on June 3, 2016. Central to Silva's claims in more than 300 pages already filed with the court are statements by Kurt Cobain's natural mother Wendy O'Connor that Courtney Love Cobain acknowledged to O'Connor that she killed Kurt Cobain, and that O'Connor's daughter Brianne would be "next" to die if O'Connor did not "shut up" about Kurt Cobain's death. *Silva v. Love et al*, Complaint, p. 34. What should be obvious is that a successful prosecution for Kurt Cobain's murder is still genuinely possible. A greater respect for Lee's arguments in this matter, and the cause of justice, beginning with a path to release of the suppressed photographs and documents is obviously what is required.

Lee requests the relief of a remand to trial in Superior Court, or if the Court deems this not appropriate, we request any relief in this case that the Court deems appropriate, which of course does not terminate review.

Signed this day, July 9, 2018

Richard Lee,
Represented pro se
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CERTIFICATE OF SERVICE

I hereby affirm that a copy of this Petition for Review will be sent via email today to the usual email accounts for Mr. Michael K. Ryan of the Seattle City Attorney, Mr. Michael Hunsinger, and the WSAMA attorney Daniel Heid at his Auburn, Washington address.

Richard Lee

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RICHARD LEE, Appellant, v. CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT, COURTNEY LOVE COBAIN, and FRANCES BEAN COBAIN, Respondents, and COURTNEY LOVE COBAIN and FRANCES BEAN COBAIN, Cross-Claimants, v. CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT, Cross-Claim Defendants.	DIVISION ONE No. 75815-2-I UNPUBLISHED OPINION FILED: May 14, 2018

DWYER, J. — Richard Lee appeals from the trial court's order granting summary judgment in favor of the City of Seattle and the Seattle Police Department (collectively the City). On appeal, Lee contends that the trial court erred by concluding that the photographs and documents that he requested were exempt from disclosure. Also at issue is the trial court's order granting summary

judgment in favor of cross-claimants Courtney Love Cobain and Frances Bean Cobain (the Cobains) and permanently enjoining the City from disclosing, disseminating, releasing, or distributing any death-scene photographs not previously disclosed. We affirm the trial court's orders.

I

Kurt Cobain, the lead singer of the band "Nirvana," was discovered dead on April 8, 1994. The City investigated Mr. Cobain's death, took numerous photographs of his body, and concluded that the cause of death was a self-inflicted gunshot wound.

Richard Lee is a local conspiracy theorist who believes that Mr. Cobain was murdered. Lee visited Mr. Cobain's residence on the day that his body was discovered and subsequently began creating news and documentary material for his public access television program. Lee aired his first broadcast concerning Mr. Cobain's death five days after the discovery of his body. Since then, Lee has devoted hundreds of hours to covering what he believes to be the murder of Mr. Cobain. Lee has made numerous requests to the City for documents related to the death of Mr. Cobain.

In 2014, the City asked cold-case Detective Michael Ciesynski to review the investigative file on Mr. Cobain's death. Ciesynski located four undeveloped rolls of film in the police file and subsequently had them developed.[1] Most of these photographs contained death-scene images of Mr. Cobain's body.

[1] Ciesynski stated in his declaration that it is not unusual to find undeveloped film in old case files, particularly when the case did not lead to criminal charges.

Following his review, Ciesynski concluded that the determination of suicide was correct.

On March 20, 2014, Lee submitted a Public Records Act[2] (PRA) request, seeking the entirety of the Cobain investigative file. The City provided two installments of records to Lee. It first furnished him with 37 photographs from the investigative file and later provided him with the remaining documents in the file. The City also sent Lee an exemption log that explained which documents or portions of documents the City had withheld from production and the reasons for exemption or redaction.

Lee sued the City on March 31, 2014. That lawsuit was dismissed on procedural grounds on July 31, 2015. That same day, Lee filed a new PRA request for "ANY AND ALL DOCUMENTS RELATED TO the March, 2014 effort to 'reopen' or 'examine' [ ] the Kurt D. Cobain death case, including of course, ALL OF THE PHOTOGRAPHIC EVIDENCE in this case." The City responded by providing Lee with the same documents that it had provided pursuant to the March 20, 2014 request, as well as a copy of the exemption log.[3]

On April 15, 2016, the Cobains were granted intervention in this suit. The City and the Cobains moved for summary judgment on the question of whether the death-scene photographs should be disclosed. The City sought a ruling that the death-scene images were exempt from disclosure pursuant to the PRA, RCW 42.56.240(1).[4] The Cobains sought to permanently enjoin the City from releasing

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[2] Ch. 42.56 RCW.

[3] On March 16, 2016, the City released five additional photographs that were taken in June 2015 and placed in the investigative file in March 2016.

[4] That statute exempts from public inspection:

the death-scene images pursuant to their privacy rights under Washington common law and the Fourteenth Amendment to the United States Constitution.

The trial court granted both motions. The trial court ruled that the disclosure of the death-scene photographs would violate the Cobains' substantive due process rights under the Fourteenth Amendment. The trial court also ruled that the death-scene photographs were exempt under the PRA.[5] The trial court also granted the City's subsequent motion for summary judgment, concluding that the other documents withheld or redacted by the City were categorically exempt from disclosure. Lee appeals.

II

As a preliminary matter, it is prudent to discuss the import of the trial court's due process holding.

A

Pursuant to the Rules of Appellate Procedure (RAP), an appellant must designate in the notice of appeal the decision or part of decision that the party wants reviewed. RAP 5.3(a)(3). A party's appellate briefing must include a "separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error," as well as "argument in support of the issues presented for review, together with citations to

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Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

[5] The trial court incorporated its oral ruling into its written orders.

legal authority and references to relevant parts of the record." RAP 10.3(a)(4), (6).

A party's failure to assign error to an issue, by itself, does not necessarily result in our refusal to consider that issue. State v. Olson, 126 Wn.2d 315, 320, 893 P.2d 629 (1995). Indeed, "RAP 1.2(a) makes clear that technical violation of the rules will not ordinarily bar appellate review, where justice is to be served by such review . . . where the nature of the challenge is perfectly clear, and the challenged finding is set forth in the appellate brief." Daughtry v. Jet Aeration Co., 91 Wn.2d 704, 710, 592 P.2d 631 (1979).

However, "a complete failure of the appellant to raise the issue in any way at all—neither in the assignments of error, in the argument portion of the brief, nor in the requested relief" may entirely preclude appellate court consideration of the issue. Olson, 126 Wn.2d at 320-21. Our Supreme Court has noted that this narrow rule

> makes perfect sense because in the situation where the issue is not raised at all, the court is unable to properly consider the issue prior to the hearing and is given no information on which to decide the issue following the hearing. More importantly, the other party is unable to present argument on the issue or otherwise respond and thereby potentially suffers great prejudice.

Olson, 126 Wn.2d at 321-22; see Ang v. Martin, 154 Wn.2d 477, 487, 114 P.3d 637 (2005) (appellant's "incidental allusion" to an issue not otherwise discussed or analyzed in the briefing was insufficient to warrant resolution).

Here, Lee did not appeal from the trial court's order granting summary judgment in favor of the Cobains and enjoining the City from disclosing the death-scene photographs. That order is the only order addressing the Cobains'

substantive due process rights under the Fourteenth Amendment. Lee did not assign error to the trial court's due process holding in his appellate brief. Neither did Lee mention the trial court's due process holding in his statements of issues pertaining to his assignments of error. Finally, Lee neither discussed the trial court's due process holding in the argument section of his opening brief, nor did he request relief from the trial court's ruling.

In his reply brief, Lee asserts that the omission of any mention of the trial court's due process holding was "purely accidental." However, in his reply to the Cobains' motion to dismiss, Lee argued that "the references to the due process clause of the 14th Amendment are a particularly weak aspect of the defendants' arguments." Lee also extoled the virtues of his "Associate of Technical Arts degree in the ABA-approved Paralegal Studies program" where he "graduated with a cumulative 4.0 GPA, the highest attainable grade point average," and noted that he has "many years in dealing with courts as a *pro se* litigant and defendant." In light of these assertions, it is questionable that Lee's failure to appeal from, assign error to, analyze, or request relief from the trial court's due process holding was "purely accidental."

In any event, because Lee entirely failed to appeal from or analyze the trial court's due process holding, the Cobains were unable to respond to his arguments on the issue. This prejudiced them as respondents. See Olson, 126 Wn.2d at 321. Moreover, because it was the Cobains who first brought the due process holding to our attention, Lee assumed the tactically advantageous

position of being able to respond to the Cobains' presentation on appeal without rebuttal.

Because Lee has failed to appeal from the trial court's order, assign error to the court's ruling, analyze or otherwise discuss the ruling, or request relief from the ruling, he forfeits his right to review of the issue and the trial court's order.[6]

B

Lee's failure to appeal from, assign error to, analyze, or otherwise request relief from the trial court's due process ruling provides the basis for affirmance of that trial court order. Nevertheless, because of the near quarter-century of tenacity that Lee has displayed in pursuing his theory that Mr. Cobain was murdered, we believe it will suit the parties' interests for us to expound upon the wisdom and propriety of the trial court's order.

We review a trial court's decision on summary judgment de novo. Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 497, 210 P.3d 308 (2009). Summary judgment is appropriate only if the supporting materials, viewed in the light most favorable to the nonmoving party, demonstrate that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); Owen v. Burlington N. & Santa Fe R.R. Co., 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). "Once the moving party has met this burden, however, the burden shifts to the nonmoving

[6] We reach the same conclusion with regard to Lee's assertion that the trial court erred by "failing to address in its written ruling/order five police photographs not a part of the crime scene set, to which Lee had stated a statutory claim of $135,000." Lee addresses this contention for the first time in his reply brief but does not assign error to any order or otherwise discuss or analyze his contention. Indeed, the only mention of this statutory claim of $135,000 comes from the statement of issues section of his consolidated reply brief. Lee forfeited review of this issue.

party to set forth specific facts showing that there is a genuine issue for trial." Sisters of Providence v. Snohomish County, 57 Wn. App. 848, 850, 790 P.2d 656 (1990). "The nonmoving party cannot simply rest upon the allegations of his pleadings; he must affirmatively present the factual evidence upon which he relies." Sisters of Providence, 57 Wn. App. at 850.

"Trial courts have broad discretionary power to fashion injunctive relief to fit the particular circumstances of the case before it." Hoover v. Warner, 189 Wn. App. 509, 528, 358 P.3d 1174 (2015). "'[O]ne who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.'" Kucera v. Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (alteration in original) (internal quotation marks omitted) (quoting Tyler Pipe Indus., Inc. v. Dep't of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)).

In Marsh v. County of San Diego, the federal circuit court considered, as a matter of first impression, whether "the common law right to non-interference with a family's remembrance of a decedent is so ingrained in our traditions that it is constitutionally protected." 680 F.3d 1148, 1154 (9th Cir. 2012). The court recognized that such a right was protected under the Fourteenth Amendment.

> The long-standing tradition of respecting family members' privacy in death images partakes of both types of privacy interests protected by the Fourteenth Amendment. First, the publication of death images interferes with "the individual interest in avoiding disclosure of personal matters. . . ." Whalen v. Roe, 429 U.S. [589, 599,] 97 S. Ct. 869[, 51 L. Ed. 2d 64 (1977)]. Few things are more personal

> than the graphic details of a close family member's tragic death. Images of the body usually reveal a great deal about the manner of death and the decedent's suffering during his final moments—all matters of private grief not generally shared with the world at large.
>
> Second, a parent's right to control a deceased child's remains and death images flows from the well-established substantive due process right to family integrity. See Rosenbaum v. Washoe County, 663 F.3d 1071, 1079 (9th Cir. 2011) ("The substantive due process right to family integrity or to familial association is well established."). The interest of parents "in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests. . . ." Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). A parent's right to choose how to care for a child in life reasonably extends to decisions dealing with death, such as whether to have an autopsy, how to dispose of the remains, whether to have a memorial service and whether to publish an obituary. Therefore, we find that the Constitution protects a parent's right to control the physical remains, memory and images of a deceased child against unwarranted public exploitation by the government.

Marsh, 680 F.3d at 1154.

The court then turned to substantive due process. At issue was whether Marsh's substantive due process rights were violated when San Diego Deputy District Attorney Jay Coulter released to the press death-scene photographs of Marsh's son. Marsh, 680 F.3d at 1152. The court concluded that this disclosure violated Marsh's substantive due process rights.

> To violate substantive due process, the alleged conduct must "shock[ ] the conscience" and "offend the community's sense of fair play and decency." Rochin v. California, 342 U.S. 165, 172–73, 72 S. Ct. 205, 96 L. Ed. 183 (1952). Given that burial rites "have been respected in almost all civilizations from time immemorial" and "are a sign of the respect a society shows for the deceased and for the surviving family members," the Favish Court reasoned that unwarranted public exploitation of death images degrades the respect accorded to families in their time of grief. [Nat'l Archives & Records Admin. v.]Favish, 541 U.S. [157,] 167–68, [124 S. Ct. 1570 [,158 L. Ed. 2d 319 (2004)]. Mutilation of a deceased family member's body, desecration of the burial site and public display of death images are the kind of conduct that is likely

> to cause the family profound grief and therefore "shocks the conscience" and "offend[s] the community's sense of fair play and decency." Rochin, 342 U.S. at 172–73.
>
> Marsh claims that when she learned that Coulter sent her son's autopsy photograph to the press, she was "horrified; and suffered severe emotional distress, fearing the day that she would go on the Internet and find her son's hideous autopsy photos displayed there." Marsh's fear is not unreasonable given the viral nature of the Internet, where she might easily stumble upon photographs of her dead son on news websites, blogs or social media websites. This intrusion into the grief of a mother over her dead son—without any legitimate governmental purpose—"shocks the conscience" and therefore violates Marsh's substantive due process right.

Marsh, 680 F.3d at 1154-55 (footnote omitted) (some alterations in original).

Here, the Cobains contend that the release of the death-scene photographs of Mr. Cobain would violate their substantive due process rights pursuant to the analysis set forth in Marsh. The Cobains assert that they would personally suffer if the death-scene photographs were released to the public.

Courtney Love Cobain stated in her declaration:

> I understand that the Plaintiff seeks the public release of death-scene photos of Kurt that show his entire lifeless body, as well as the damage done by the shotgun blast to his head. I have never seen these graphic and disturbing images, nor do I ever want to. . . . Certainly, public disclosure would reopen all my old wounds, and cause me and my family permanent—indeed, endless and needless—pain and suffering, and would be a gross violation of our privacy interests.
>
> . . . Inevitably, these images will wind up on the Internet, where they would be permanently circulated. By virtue of the fact that Kurt is my late husband, they will also likely end up in search results about myself. I would unavoidably come across them, and I would never be able to erase those haunting images from my mind. I cannot even imagine the enormity of the trauma and mental scarring this would cause me, not to mention many others.

Frances Bean Cobain stated in her declaration:

> I once saw mock photos depicting my father's body. That experience irreparably scarred me. I cried for days afterward. Those horrible images still haunt me. I cannot imagine how terrible it would be knowing that the photographs that Mr. Lee seeks were public, and that I or any of my loved ones, including my father's mother and sisters, might inadvertently see them. Release and publication of the photographs would shock me and exacerbate the posttraumatic stress that I have suffered since childhood.

At issue here are photographs that show the dead body of Mr. Cobain. But the photographs are more than an oddity showcasing the tragic end of a celebrated musician—to those who knew Mr. Cobain, the photographs show the lifeless body of a son, a father, a husband, or a friend. As the Cobains' declarations establish, the disclosure of these photographs would allow the entire world to peer into one of the most private and distressing events of the Cobains' lives. Once released, the photographs would become ammunition for those who wish to taunt and antagonize the Cobains and their friends.

Pursuant to the analysis set forth in Marsh, the trial court correctly concluded that the release of the death-scene photographs would shock the conscious and offend the community's sense of fair play and decency, violating the Cobains' substantive due process rights under the Fourteenth Amendment. Permanently enjoining the City from disclosing those photographs is a reasonable way to prevent such a violation. There was no error in the trial court's ruling.

III

Lee contends that the trial court erred by granting summary judgment in favor of the City. This is so, he asserts, because none of the documents that he requested are exempt from disclosure under the PRA.

We review de novo agency determinations challenged under the PRA. RCW 42.56.550(3); Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 428, 327 P.3d 600 (2013). The agency carries the burden of establishing that an exemption applies under the PRA. RCW 42.56.550(1); Resident Action Council, 177 Wn.2d at 428. "A public records case may be decided based on affidavits alone." Forbes v. City of Gold Bar, 171 Wn. App. 857, 867, 288 P.3d 384 (2012). "Purely speculative claims about the existence and discoverability of other documents will not overcome an agency affidavit, which is accorded a presumption of good faith." Forbes, 171 Wn. App. at 867 (citing Trentadue v. Federal Bureau of Investigation, 572 F.3d 794, 808 (10th Cir. 2009)).

The PRA requires disclosure of "all public records" unless an exemption applies. RCW 42.56.070(1). A "public record" is "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form of characteristics." RCW 42.56.010(3). "The PRA's mandate for broad disclosure is not absolute. The PRA contains numerous exemptions that protect certain information or records from disclosure, and the PRA also incorporates any 'other statute' that prohibits disclosure of information or records." Resident Action Council, 177 Wn.2d at 432 (citing RCW 42.56.070, .230-.480, .600-.610). "The PRA's exemptions are provided solely to protect relevant privacy rights or vital governmental interests that sometimes outweigh the PRA's broad policy in favor of disclosing public records." Resident Action Council, 177 Wn.2d at 432. Importantly, "the basic

purpose and policy of [the PRA] is to allow public scrutiny of government, rather than to promote scrutiny of particular individuals who are unrelated to any governmental operation." In re Rosier, 105 Wn.2d 606, 611, 717 P.2d 1353 (1986).

A

Lee first contends that the trial court erred by ruling that the death-scene photographs are exempt from disclosure under the PRA. We disagree.

The PRA requires the disclosure of public records "unless the record falls within the specific exemptions of . . . [an]other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). The Fourteenth Amendment's privacy protections are necessarily a part of the PRA's "other statute" exemption. White v. Clark County, 188 Wn. App. 622, 631-32, 354 P.3d 38 (2015) (holding that the PRA's "other statute" exemption is derived from a combination of the privacy protections afforded by the Washington Constitution and various other statutes and regulations and noting that "[i]f the identity of a voter could be determined by a review of certain ballots, article VI, section 6 would preclude production of those ballots"); see also Yakima v. Yakima Herald-Republic, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) ("'other laws' includes the United States Constitution"); see also Freedom Found. v. Gregoire, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013) ("the PRA must give way to constitutional mandates").

As discussed, disclosure of the death-scene photographs would violate the Cobains' substantive due process rights under the Fourteenth Amendment.

Marsh, 680 F.3d at 1154-55. Accordingly, the death-scene photographs are exempt from disclosure pursuant to the PRA's "other statute" provision. RCW 42.56.070(1). There was no error.

B

Lee next contends that the trial court erred by granting summary judgment in favor of the City with regard to the other exempt or redacted documents that were withheld by the City. These documents include Mr. Cobain's autopsy report in its entirety, two pages of a nine page drug influence evaluation, redaction of certain documents that show witness identifying information, redaction of certain documents that contain Social Security numbers and credit card information, redaction of certain documents that contain nonconviction data and jail records, and redaction of certain documents relating to juvenile records and telephone numbers. Each is addressed in turn.

Autopsy Report

The trial court ruled that Mr. Cobain's autopsy report was exempt from disclosure pursuant to RCW 68.50.105(1). That statute provides:

> Reports and records of autopsies or postmortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, the department of labor and industries in cases in which it has an interest under RCW 68.50.103, or the secretary of the department of social and health services or his or her designee in cases being reviewed under RCW 74.13.640.

RCW 68.50.105(1). This statute is an "other statute" incorporated into the PRA. RCW 42.56.070(1). Accordingly, autopsy reports are categorically exempt from disclosure. See Comaroto v. Pierce County Med. Exam'r's Office, 111 Wn. App. 69, 74, 43 P.3d 539 (2002) (holding that a suicide note was a postmortem report pursuant to RCW 68.50.105(1) and therefore exempt from disclosure).

Lee recognizes that the autopsy report in question "would seem to be the definitive example of an exemption which is clearly established under another statute," but nevertheless refuses to concede that the exemption is appropriate under the circumstances of this case. Lee asserts variously that "the entire statute could be the subject of a constitutional challenge," "many questions could be raised about the suppression of these documents in full," "such records . . . are routinely displayed as evidence in court proceedings," and that "the City has claimed exemption without any description of the contents of the report."

An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). We will generally not consider claims unsupported by citation to authority, references to the record, or meaningful analysis. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Pro se litigants are held to the same standards as attorneys and must comply with all procedural rules on appeal. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

Autopsy reports are categorically exempt from disclosure under the PRA. Although Lee contends that the circumstances here warrant disclosure, he fails

to cite to relevant authority or otherwise provide meaningful analysis in support of his assertions. There was no error.

Drug Influence Evaluation

The trial court ruled that the drug influence evaluation was exempt from disclosure pursuant to RCW 70.02.020, former RCW 70.96A.150,[7] and RCW 42.56.240(1). Mary Perry, the director of transparency and privacy for the City, submitted a declaration stating that the redacted portions of the drug influence evaluation in question were "not prepared by SPD, do not mention SPD, and refer and relate[] solely to Ms. Courtney Love-Cobain, Mr. Cobain's widow. More specifically, these two pages discuss medical treatment issues, including issues regarding possible drug use and treatment."

Pursuant to RCW 70.02.020, "a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization." "Health care information" is "any information . . . that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care." RCW 70.02.010(16). RCW 70.02.020 is an "other statute" incorporated into the PRA. RCW 42.56.070(1). Accordingly, health care information is exempt from disclosure under the PRA.

[7] RCW 70.96A.150 was repealed effective April 1, 2016, nearly a year after the City invoked the exemption.

Lee contends that the requested information is not exempt from disclosure because the City is not a "health care provider." While this may be so, RCW 70.02.020 is incorporated into the PRA through RCW 42.56.360(2), which provides that "Chapter 70.02 RCW applies to public inspection and copying of health care information of patients." Prison Legal News, Inc. v. Dep't of Corr., 154 Wn.2d 628, 644, 115 P.3d 316 (2005) (discussing former RCW 42.17.312, which is identical to RCW 42.56.360(2)). Accordingly, "RCW 70.02.020 prohibits disclosure of 'health care information' without the patient's written authorization." Prison Legal News, 154 Wn.2d at 644.

The redaction of the drug influence evaluation was also justified by former RCW 70.96A.150. Former RCW 70.96A.150 provided that "registration and other records of treatment programs shall remain confidential." There was no error.

Witness Identifying Information

The trial court ruled that the redaction of certain witness identifying information was authorized by RCW 42.56.240(2). That statute provides, in pertinent part, that the following investigative information is exempt from public inspection:

> Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. *If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern.*

RCW 42.56.240(2) (emphasis added).

Here, certain witnesses requested that their identity not be disclosed at the time that they provided information to police during the 1995 investigation of Mr. Cobain's death. Mary Perry's declaration states that the names redacted by the City are the names of the people who requested that their identity not be disclosed in 1995.

Lee is correct that, other than the City's declaration, there is nothing in the record establishing that the names redacted by the City in response to Lee's request are the same names that were redacted by request in 1995. But speculation does not overcome the presumption of good faith afforded to an agency affidavit. Forbes, 171 Wn. App. at 867. The City provided contemporaneous documentation showing that certain witnesses requested that their identity not be disclosed at the time that they provided information to the City. Accordingly, those names are exempt from disclosure. There was no error.

Other Redactions

The trial court ruled that redaction of Social Security and credit card numbers was authorized by RCW 42.56.230(5). The trial court ruled that the redaction of nonconviction data and jail records was authorized by RCW 10.97.080 and RCW 70.48.100(2). Finally, the trial court ruled that redactions of Mr. Cobain's juvenile records and the telephone number of an SPD officer were authorized by chapter 13.50 RCW, RCW 42.56.240(1), and RCW 42.56.250(4).

RCW 42.56.230 (5) exempts from disclosure "[c]redit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information . . . including social security numbers." RCW 10.97.080

prohibits the disclosure of "any nonconviction data except for the person who is the subject of the record." RCW 70.48.100(2) requires that "the records of a person confined in jail shall be held in confidence." RCW 13.50.050(3) provides that "[a]ll records other than the official juvenile court file are confidential." Finally, RCW 42.56.250(3) exempts from disclosure "residential telephone numbers, personal wireless telephone numbers . . . of employees or volunteers of a public agency."

Lee recognizes that all of this information is categorically exempt from disclosure. Lee's response is that, because Mr. Cobain is dead, he is not a "person" and that there is nothing preventing the City from disclosing the personal information of dead people.

An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). Lee provides no authority for his assertion that the categorical exemptions here apply only to living persons. There was no error.

Affirmed.

We concur: