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STATE OF WASHINGTON
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No. 99136-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 52739-1-II)

BRIAN CORTLAND,

Petitioner,

vs.

LEWIS COUNTY,

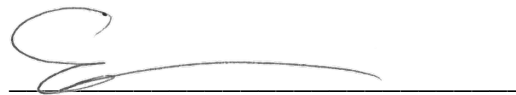
Respondent.

LEWIS COUNTY'S ANSWER TO PETITION FOR REVIEW

Petition from the Washington Court of Appeals, Division II

JONATHAN MEYER
Lewis County Prosecuting Attorney

By:



Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
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I. IDENTITY OF RESPONDING PARTY

Respondent Lewis County, by and through Deputy Prosecuting Attorney Eric Eisenberg, answers the petition for review.

II. RELIEF REQUESTED

The Court should deny review in this matter. The Court of Appeals opinion is not in conflict with prior decisions, and the petition does not raise an issue that the Supreme Court should determine.

III. GROUNDS FOR MOTION

RAP 13.4(d) allows a party to answer a petition for review.

IV. FACTS

Mr. Cortland petitions for review from the Court of Appeals decision reversing the trial court in this matter. *Cortland v. Lewis Cty.*, 14 Wn. App.2d 249, 250-51, ___ P.3d ___ (2020).¹

In late 2016, Mr. Cortland submitted a Public Records Act (PRA) request to Lewis County. Lewis County provided records in installments and, by July 2017, had provided close to 4000 records. *Id.* at 251-52. Lewis County contacted Mr. Cortland in August and October 2017 concerning his next installment of records, noting that it would provide a cost estimate under a new law imposing fees for public records. *Id.*

¹ The opinion is included in the Appendix as Attachment 1.

Mr. Cortland sued shortly after Lewis County's October communication, alleging that he had not heard from Lewis County since August and had been denied access to records. *Id.* at 253. Lewis County denied the allegations and continued to search for and provide records to Mr. Cortland, offering another installment about a month after the suit was filed. *Id.* When Mr. Cortland declined to pay for these records, Lewis County informed him that if he did not claim and pay for the installment within 30 days, he would abandon his request. Mr. Cortland failed to pay or respond after 30 days, and Lewis County closed his request, ceasing its search for records. *Id.*

In a merits order, the trial court concluded that, although Lewis County was providing records without stoppage at the time of the suit, it violated the PRA by failing to prove the adequacy of its search while the search was ongoing. *Id.* at 253-55. The trial court declined to reconsider even though Lewis County had continued its ongoing response up until the point Mr. Cortland abandoned the request. *Id.* The court ordered Lewis County to re-perform the search. *Id.* at 256. Having lost on the merits and being bound by the order, Lewis County re-searched and supplied more records to Mr. Cortland. *Id.*

Lewis County then offered to stipulate to a penalties analysis to speed entry of final judgment, expressing its desire to preserve its

right to appeal and claim that the merits order was erroneous. *Id.*; see also CP at 348-49.² Mr. Cortland disputed that such a procedure was lawful, which the parties discussed at length. CP at 329-30, 337-44, 347. Lewis County noted its preservation of its right to appeal at the time of the final deal, *id.* at 329-30, which resulted in a stipulation, agreed motion, and penalties order, *id.* at 314-23.³ The stipulation was predicated on the trial courts' merits order being binding, *id.* at 317, and the agreed motion and penalties order each reflected that the parties disputed whether the stipulation affected any right to appeal, *id.* at 314-15, 322-23.³

Both parties presented the agreed motion and order to the trial court. *Cortland*, 14 Wn. App.2d at 256. Lewis County made a record of its desire to preserve its right to appeal:

I think it is important for Lewis County to make one additional thing on the record. You'll see from the written documents the parties dispute what effect, if any, this proposed agreed order would have on either party's rights to appeal, and I just thought it was worth pointing out that there is a dispute over that. There isn't any specific agreement on that.

....

[I]n candor to the court, Lewis County wishes to preserve its right to appeal potentially the underlying

² The email chain representing CP pages 324 through 352 is included in the Appendix as Attachment 2. It shows the negotiations leading to the stipulation.

³ The agreed motion and stipulation are included in the Appendix as Attachment 3. The final agreed order is included as Attachment 4.

merits ruling and does not believe that stipulating to the penalty that follows from that merits ruling, while that ruling is binding on Lewis County because this court made it, would waive its right to appeal the underlying merits ruling. And so it wished to reflect that the parties don't have any agreement on that in the order to avoid waiver.

Id. at 256-57. Mr. Cortland disputed Lewis County's right to appeal. The trial court acknowledged the dispute and signed the stipulated order. *Id.* at 257.

Lewis County appealed, challenging the trial court's merits ruling that it violated the PRA and the ensuing penalties, costs, and fees imposed. *Id.* The parties litigated whether appeal was permissible, with Mr. Cortland asserting that the stipulation and agreed order waived or invited any error. *Id.* at 250.

Reciting the procedural history described herein, the Court of Appeals held that Lewis County had preserved its right to appeal the merits ruling on which it litigated and lost. *See id.* at 256-57 & n.4. It then reversed the trial court's merits ruling, holding that Lewis County had proved an adequate search: its search for and production of records was ongoing at the time of Mr. Cortland's suit and thereafter until he abandoned the request. *Id.* at 250, 259. As a result, Mr. Cortland suffered no denial of access and had no PRA

cause of action; moreover, Lewis County had no duty to prove the adequacy of its search while the search was ongoing. *Id.*

Lewis County moved for publication of the opinion, which the Court of Appeals granted. Order Granting Motion to Publish Opinion, No. 52379-1-II (Sept. 29, 2020). Mr. Cortland, pro se, sought timely review in this Court.⁴

V. ARGUMENT

The Court should deny review. The opinion below is consistent with prior law and addresses only statutory issues. It does not call for Supreme Court review because it is correct on fairly specific facts, and because Mr. Cortland did not seek review of the PRA issues in the case, diminishing its usefulness for precedential decisionmaking.

1. *Legal Standard*

The Court will accept review of a case only if the decision below conflicts with a prior decision of the Supreme Court or Court of Appeals, raises a significant question of constitutional law, or raises an issue of substantial public interest that this Court should determine. RAP 13.4.

⁴ Mr. Cortland was represented in the Court of Appeals by Attorney Joseph Thomas, who withdrew shortly before the Petition for Review was filed. The Petition for Review mirrors Mr. Thomas's prior briefing and argument; he likely prepared the petition for Mr. Cortland as a courtesy before withdrawing.

2. *The Decision Below Does Not Conflict With Prior Law.*

Mr. Cortland claims that the decision below conflicts with prior decisions treating stipulated judgments as the end of the controversy. He is mistaken. In the cases he cites, the stipulating parties made no record preserving a right to appeal a portion of the case. See *Wash. Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 90-91, 316 P.2d 126 (1957); *Winton Motor Carriage Co. v. Blomberg*, 84 Wash. 451, 453-55 & 457-58, 147 P. 21 (1915); *Calibrate Prop. Mgmt., LLC v. Nhye*, No. 73796-1-I, 2016 Wash. App. LEXIS 2686, at *2-4 (Ct. App. Nov. 7, 2016) (unpublished). Here, in contrast, the record shows that Lewis County, having litigated and lost on a preliminary issue, stipulated to effects of that ruling to speed final judgment for appeal. *Cortland*, 14 Wn. App.2d at 253-57 & n.4.

The Court of Appeals' different result follows from this different record, distinguishing rather than conflicting with the prior decisions. The prior cases only hold the stipulated judgment to "end all controversy between the parties[] *within the scope of the judgment.*" *Wash. Asphalt Co.*, 51 Wn.2d at 91 (emphasis added). Because the judgment here explicitly noted the possibility of appeal, permitting the appeal in this matter did not conflict with the prior decisions. Indeed, the law Mr. Cortland cites notes that settlements are to be interpreted

as contracts. *Condon v. Condon*, 177 Wn.2d 150, 162 (2013). Here, the contract and the negotiations showed that the parties left the issue of appeal in dispute for another day, CP at 314-23, 329-30, 337-44, 347-49; they did not settle it with the stipulation, thus allowing for appeal.

Permitting an appeal from such agreements is consistent with a second line of cases allowing appeal from stipulated facts bench trials. A criminal defendant who loses a pretrial motion may stipulate to the admissibility and sufficiency of facts under the terms of the order he or she believes is incorrect. He or she is then convicted and sentenced, and can appeal the conviction and underlying order. See, e.g., *State v. Brown*, 166 Wn. App. 99, 101-02, 269 P.3d 359 (2012), *State v. McCarty*, 152 Wn. App. 351, 356-58, 215 P.3d 1036 (2009); *State v. Bale*, No. 44709-6-II, 2015 Wash. App. LEXIS 3, at *12 (Ct. App. Jan. 6, 2015) (unpublished). This approach is not uncommon. The Court of Appeals' use of it was consistent with prior law, and This Court should deny review.

3. *The Issues At Stake Are Statutory, Not Constitutional.*

The Court of Appeals decision addressed the Public Records Act and CR 2A stipulations. Mr. Cortland raises only the latter, citing

statutes and case law concerning stipulated judgments. Because no constitutional claims are at issue, the Court should deny review.

4. *This Case Does Not Call For Supreme Court Review.*

The decision below does not call for review in this Court because it is correctly decided on fairly specific facts, and because Mr. Cortland undercut the case's precedent-setting value by failing to petition on any of the PRA issues.

As raised in the petition for review, the only issue is the effect of the stipulated judgment on appeal. The record below quite extensively preserved Lewis County's right to appeal, and the Court of Appeals' decision to allow the appeal was correct on these specific facts (as set forth above). This Court can simply let the decision stand—it need not take up the matter to reiterate this conclusion.

If this Court were to consider the Court of Appeals' PRA holdings a matter of substantial public interest, the Court of Appeals' decision is again correct. When an agency provides records in ongoing installments, it has not "denied access" to the records, and a PRA suit is premature. See *John Doe v. Benton Cty.*, 200 Wn. App. 781, 788-89, 403 P.3d 861 (2017); *Rufin v. City of Seattle*, 199 Wn. App. 348, 357-58, 398 P.3d 1237 (2017); *Hobbs v. Wash. State Auditor's Office*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014);

Andrews v. Wash. State Patrol, 183 Wn. App. 644, 651-52, 334 P.3d 94 (2014). Lewis County was providing installments to Mr. Cortland until he declined to claim and pay for an installment, relieving Lewis County of the duty to finish its search and production of records. RCW 42.56.120(4) (“If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.”); accord WAC 44-14-04005(1) (2nd paragraph). So, the Court of Appeals correctly concluded on the specific record herein that Lewis County had not violated the PRA. The Court need not duplicate the work of the Court of Appeals to articulate this point.

Even if it wished to do so, the Court would need to stretch its normal practice to reach the PRA issues. Mr. Cortland sought review only of the stipulation’s effect on appeal. Ordinarily, the Court will review only the issues raised by the petitioner. RAP 13.7(b). Mr. Cortland’s narrowing of the issues in play in the Supreme Court undercuts the value of this case for precedential decisionmaking. Because the decision below is correct, has relatively unique facts, and is only halfway raised in the petition, the case is not one the Supreme Court should determine. The Court should deny review.

VI. CONCLUSION

The Court should deny review. The opinion below is consistent with prior law, addresses no constitutional issues, and does not call for Supreme Court review. It is correctly decided on specific facts, and Mr. Cortland undermined its import by neglecting to seek review on the PRA issues.

RESPECTFULLY submitted this 18 day of November, 2020.

JONATHAN MEYER
Lewis County Prosecuting Attorney

by: 
ERIC EISENBERG, WSBA #42315
Attorney for Plaintiff

Appendix

Attachment 1

Decision Below
***Cortland v. Lewis Cty.*, 14 Wn. App.2d**
249, ___ P.3d ___ (2020)

Cortland v. Lewis County

Court of Appeals of Washington, Division Two

July 21, 2020, Filed

No. 52739-1-II

Reporter

14 Wn. App. 2d 249 *; 473 P.3d 272 **; 2020 Wash. App. LEXIS 2063 ***

Opinion by: Lisa Sutton

BRIAN CORTLAND, *Respondent*, v. LEWIS COUNTY, *Appellant*.

Opinion

Notice: Order Granting Motion to Publish September 29, 2020.

Subsequent History: Reported at Cortland v. Lewis County, 2020 Wash. App. LEXIS 2132 (Wash. Ct. App., July 21, 2020)

Prior History: [***1] Appeal from Thurston Superior Court. Docket No: 17-2-06152-0. Judge signing: Honorable John C Skinder. Judgment or order under review. Date filed: 11/16/2018.

Cortland v. Lewis County, 12 Wn. App. 2d 1008, 2020 Wash. App. LEXIS 329 (Feb. 4, 2020)

Counsel: Jonathan L. Meyer, *Prosecuting Attorney*, and Eric W. Eisenberg, *Deputy*, for appellant.

Joseph Thomas, for respondent.

Judges: Authored by Lisa Sutton. Concurring: Rich Melnick, Anne Crusier.

[*250] [**273]

¶1 SUTTON, A.C.J. — Lewis County appeals the superior court's order finding Brian Cortland to be the prevailing party in a Public Records Act (PRA)¹ lawsuit. Preliminarily, Cortland argues that Lewis County does not have standing because it is not an aggrieved party under RAP 3.1 because it stipulated to the PRA violation when it signed a CR 2A stipulation, waived any issue, and invited any error. Lewis County argues that it is aggrieved by the superior court's ruling and has standing, and that it agreed to a CR 2A [*251] stipulation on PRA penalties only, and thus, it did not waive its right to appeal or invite error. Cortland argues that Lewis County violated the PRA by withholding 18 records from production, claiming an invalid exemption under GR 31.1, and failing to conduct an adequate search. Cortland also argues that he is entitled to an [***2] award of appellate attorney fees and costs under RCW 42.56.550(4).

¶2 We hold that Lewis County did not deny Cortland access to a public record and, thus, Cortland has no PRA cause of action. The PRA does not require an agency to [**274] prove to the requestor the adequacy of its search while the search is ongoing, and Lewis County proved the search was adequate up until the point where Cortland abandoned his PRA request. We also hold that Cortland is not entitled to an award of appellate attorney fees and costs under the PRA as he is not the prevailing party. We reverse the merits order and judgment in favor of Cortland and remand with an order for the superior court to enter a merits order and judgment in favor of Lewis County, and we deny Cortland's request for an award of appellate attorney fees and costs.

FACTS

¹Ch. 42.56 RCW.

be sending him a cost estimate by December 7.

I. PRA REQUEST AND LEWIS COUNTY'S RESPONSES AND INSTALLMENTS

¶3 Cortland's current November 2016 PRA request to Lewis County sought “[a]ny and all records from Chief Civil Deputy Prosecuting Attorney Glenn Carter that Mr. Carter created and/or maintained that concern judicial records, either under the common law, *Nast v. Michels*, or Washington State Court Rule GR 31.1.” Clerk's Papers (CP) at 15. The county records center responded to [***3] Cortland on November 23, informing him that his request was going to be forwarded to the relevant department. Casey Mauermann, Lewis County Prosecuting Attorney's Office's public records officer, acknowledged the request in an e-mail to Cortland on November 30, 2016. Mauermann asked for [*252] clarification as to the time frame for the requested records and estimated a response by January 4, 2017, but she later extended the ready date to February 3. She also advised Cortland that the records would be provided in installments.

¶4 Lewis County produced three initial installments of records under GR 31.1 because the records were judicial records. Cortland received the first installment of 101 records on February 3. He received the second installment of 100 records on March 7. He received the third installment of 106 records on June 27.

¶5 By the time of the fourth installment, two other people had made PRA requests identical to Cortland's. Lewis County concluded that during the ongoing litigation between Cortland and the county regarding his PRA request, Carter and his office had “used, created, and maintained” material that “concerned” judicial records in its own capacity as the prosecutor's office, not merely [***4] as a custodian of the records for the Superior Court. Thus, these amassed records were no longer GR 31.1 judicial records, but were county records subject to the PRA. As a result, the county decided to produce all such records under the PRA to the two new requestors, and to provide a copy to Cortland. Lewis County produced these records, over 3,600 in total, to Cortland in his fourth installment under the PRA.

¶6 Mauermann e-mailed Cortland on August 2, 2017, to inform him that the fourth installment to his records request was available, and that she would be continuing to search for responsive records and would send him the next installment by October 2. Mauermann then e-mailed Cortland on October 12 to inform him that a new law² imposed fees for copying and providing PRA records, and advised him that she would

[*253] II. PRA LAWSUIT

¶7 On October 13, 2017, Cortland served Lewis County with a PRA summons and complaint, but he did not file the complaint with the court until November 17. In his complaint, Cortland alleged that he received no communication from Lewis County after August 2, 2017, that the county had denied him access to public records, and that [***5] it failed to conduct an adequate search, and thus, it violated the PRA. Lewis County denied the allegations.

¶8 After the suit was filed, Lewis County continued to search for responsive records and communicate with Cortland. On December 10, Mauermann e-mailed Cortland to inform him that a fifth installment was ready for copying and inspection. She provided him an estimated cost, which he never paid. Cortland exchanged e-mails with Mauermann until December 12. When he did not claim the fifth [***275] installment of records, Mauermann notified Cortland that failure to pay or respond within 30 days would constitute an abandonment. Because Cortland failed to pay or respond within the 30 days, Mauermann concluded that he abandoned his request, closed the PRA file, and stopped providing responsive records.

III. PRA LAWSUIT—MERITS HEARING AND ORDER

¶9 Cortland and Lewis County disputed whether the county improperly claimed an exemption under GR 31.1 for the first three installments, whether the county conducted an adequate search and proved it did so, and whether compliance with GR 31.1 satisfies the PRA.

¶10 After a merits hearing, the superior court ruled that in regard to the first three installments, Lewis County produced [***6] the records in an incorrect form under GR 31.1 records rather than producing them under the PRA, and Lewis County had a duty to prove that its search was adequate under the PRA and failed to do so.

¶11 [*254] The court found that Lewis County continued to search for and produce records after Cortland filed the lawsuit. The court also concluded that the duty to search is not satisfied even if the requestor abandons the PRA request, and thus, it ordered the county to conduct a re-search for responsive records. The court stated, however, that Lewis County's production was ongoing, and that it had provided a substantial number of records up until that point:

Lewis County clearly provided a large number of records. Lewis County was continuing to provide records. I don't find that there had been a stoppage of the

²LAWS OF 2017, ch. 304 (effective July 23, 2017).

flow of records, but the difficulty is, and I think [Cortland's attorney] has made this point, it's difficult for [Cortland] to know what Lewis County is doing. It makes it difficult for [Cortland] to know what was being searched, where it was searched, what is being provided, what isn't provided, whether the disclosure of records is exempted. Lewis County is simply provided records, but without any [***7] way for [Cortland] to know all these things that a requestor's entitled to know.

Verbatim Report of Proceedings (VRP) (June 1, 2018) at 4-5.

¶12 The court entered the following relevant finding of fact at issue: “The record is absent of an affidavit or declaration detailing the search Lewis County made for the Public Records Act request at issue in this lawsuit.” CP at 266. The court entered the following relevant conclusions of law at issue and entered an order on the merits:

13. As a matter of law Lewis County improperly withheld records because it failed to meet its mandatory burden of proof identifying it performed a sincere and adequate search under the Public Records Act, causing a violation of the right to inspect and copy, RCW 42.56.550(1). “An adequate search is a prerequisite to an adequate response, so an inadequate search is a violation of the PRA because it precludes an adequate response.” A failure to properly respond is a denial under the Public Records Act.

14. First, as a matter of law Plaintiff Brian Cortland is the prevailing party on the issue of the denial of the right to inspect [*255] and copy records because Lewis County did not meet its mandatory burden of proof, beyond a material doubt, that Lewis County demonstrated it made an adequate search for records [***8] pursuant to the Public Records Act. An inadequate search “constitutes an improper withholding” violating the right to inspect and copy records.

15. Second, as a matter of law Plaintiff Brian Cortland is the prevailing party on the issue of the denial of the right to inspect and copy records because Lewis County's cobbled together attempt to demonstrate the adequacy of the search made it impossible for [Cortland] to determine what records he would receive or not receive under the Public Records Act. This is a denial of adequate response, which is a violation of the right to inspect and copy under the Public Records Act.

16. As to the prevailing party on the issue of being denied the right to copy and inspect records pursuant to RCW 42.56.550(1), Plaintiff Brian Cortland shall [***276] be awarded: all costs, reasonable attorney's fees, and a statutory penalty

... .

18. After this Court has made a determination that Lewis County has fulfilled its mandatory burden of demonstrating, beyond a material doubt, that it has search[ed] for and identified the responsive records to Mr. Cortland's request at issue in this lawsuit, the parties jointly or this Court will set the date for the Penalty Hearing.

CP at 267-69 (citations and internal quotation [***9] marks omitted).

¶13 Lewis County moved for reconsideration, arguing that the court's rulings were inconsistent because at the hearing, the court orally ruled that Lewis County was producing records to Cortland at the time Cortland filed the lawsuit, and the court then ruled in its written order that Lewis County failed to prove the adequacy of its search. Lewis County argued that it did not have a duty to prove the adequacy of its search since its production of records in installments was still ongoing. The court denied the motion.

¶14 Lewis County performed the re-search as ordered by the court and produced more records to Cortland. Based on [*256] the court's ruling, Lewis County offered to sign a CR 2A stipulation to PRA penalties in order to “speed the entry of a final order.”³ CP at 349. Lewis County made it clear that it did not agree with the court's ruling on the underlying merits:

Lewis County proposes to stipulate to the penalty analysis above for purposes of speeding entry of a final order in this matter. This is not an offer of settlement, for Lewis County wishes to maintain its ability to claim that the judge's order on the merits was erroneous. It is instead a stipulation designed to speed [***10] you to a final judgment.

CP at 350. The parties did not agree on whether Lewis County could appeal the merits order if it entered into the CR 2A stipulation regarding PRA penalties. They filed an agreed motion for entry of the final order and judgment. In the motion, the parties state,

The parties ask the Court to enter a final order consistent with this stipulation. ... Please note that the parties dispute whether the attached stipulation affects any right to appeal this matter.

CP at 315. The stipulation provided that it was predicated on the superior court's merits order being binding.

¶15 At the hearing, Lewis County brought to the court's

³The 18 records that Lewis County stipulated to withholding were judicial records Lewis County found in the re-search that it had not produced in the original three installments.

attention the parties' disagreement over whether it was waiving its right to appeal, and it made it clear to the court that it was preserving its right to appeal.

I think it's important for Lewis County to make one additional thing on the record. You'll see from the written documents the parties dispute what effect, if any, this proposed agreed order would have on either party's rights to appeal, and I just thought it was worth pointing out that there is a dispute over that. There isn't any specific agreement on that.

...

[*257] [I]n candor to the court, Lewis County wishes to [***11] preserve its right to appeal potentially the underlying merits ruling and does not believe that stipulating to the penalty that follows from that merits ruling, while that ruling is binding on Lewis County because this court made it, would waive its right to appeal the underlying merits ruling. And so it wished to reflect that the parties don't have any agreement on that in the order to avoid waiver.

VRP (Nov. 16, 2018) at 5-6. Cortland argued that Lewis County would be inviting error if it appealed the order. The court understood the disagreement, and it signed the stipulation. The final order stated that “[t]he parties disputed whether the stipulation effects any right to appeal.” CP at 323.

¶16 Lewis County appeals the order on the merits hearing, the order denying its motion for reconsideration, and the final order and judgment.

[**277] ANALYSIS⁴

[1] ¶17 “The PRA is a strongly worded mandate for broad disclosure of public records.” *Neigh. All. of Spokane County v. Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011). The PRA “stands for the proposition that[] ‘full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.’” *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (plurality opinion) (quoting former RCW 42.17.010(11) (1975)). And when evaluating a claim within the framework of the [***12]

PRA, a court must “take into account the policy of this chapter that free and open examination of public records is in the [*258] public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550(3).

[2, 3] ¶18 RCW 42.56.070(1) directs government agencies to disclose public records upon request unless a specific exemption in the PRA or another statute applies that exempts or prohibits disclosure of specific information or records. *Ameriquist Mortg. Co. v. Office of Att’y Gen.*, 177 Wn.2d 467, 485-86, 300 P.3d 799 (2013). Consistent with the PRA’s purpose, RCW 42.56.030 expressly requires that the PRA be “liberally construed and its exemptions narrowly construed ... to assure that the public interest will be fully protected.”

[4, 5] ¶19 Denial of the right to inspect or copy a public record is a prerequisite to a PRA action. RCW 42.56.550(1). Denial of public records occurs “when it reasonably appears that an agency will not or will no longer provide responsive records.” *Hobbs v. Wash. State Auditor’s Office*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014). The superior court may hear a motion to show cause when a person has “been denied an opportunity to inspect or copy a public record by an agency.” RCW 42.56.550(1). “Therefore, being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA.” *Hobbs*, 183 Wn. App. at 936. When an agency produces records in [***13] installments, the agency does not deny access to the records until it finishes producing all responsive records. *Hobbs*, 183 Wn. App. at 936. “If a requestor fails to claim or review the records or an installment after the expiration of thirty days, an agency is authorized to stop assembling the remainder of the records or making copies.” WAC 44-14-04005(1); RCW 42.56.120(4).

[6, 7] ¶20 The court may decide a PRA action on affidavits alone. RCW 42.56.550(3); *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 153-54, 240 P.3d 1149 (2010). Agency actions under the PRA are reviewed de novo. *Neigh. All.*, 172 Wn.2d at 715.

[*259]

¶21 Cortland served the complaint only one day after Mauermann e-mailed him to inform him of the new estimated fees he would have to pay under the new law. Cortland filed the complaint with the superior court the next month, at which time the county was still amassing over 3,600 responsive records to provide to Cortland. Once Lewis County informed Cortland that the fifth installment was ready and he would receive it once he paid the fee, Cortland expressed his discontent with the fee and the handling of the requested records, and did not claim the records from the fifth

⁴Cortland argues that Lewis County’s “inconsistent act of signing the CR 2A Stipulated Statutory Penalty agreement ... waived the argument that it did not violate[] the Public Records Act.” Br. of Resp’t at 11. He also argues that Lewis County failed to preserve error and invited error. The parties stipulated to the penalties, but Lewis County properly preserved its right to appeal the underlying merits.

installment. Lewis County notified him that if he did not pay or respond within 30 days, it would consider his request abandoned. When Cortland failed to pay or respond, the county closed its [***14] file and stopped producing responsive records.

¶22 Until this point, Lewis County did not deny Cortland's access to records because it did not reasonably appear that Lewis County would no longer provide responsive records. And it never denied Cortland's access to a public record because it continued to make available records for copying and inspection, [**278] including preparing a final fifth installment of records, until Cortland abandoned his PRA request. Because there was no denial of access, there was no final agency action under RCW 42.56.550(1), and thus, we hold that Cortland had no PRA cause of action. Therefore, the superior court erred by ruling that Cortland was the prevailing party on the merits.⁵

CONCLUSION

¶23 We reverse the superior court's merits order and judgment in favor of Cortland and remand with an order for [*260] the court to enter a merits order and judgment in favor of Lewis County, and deny Cortland's request for an award of appellate attorney fees and costs.

MELNICK and CRUSER, JJ., concur.

References

Annotated Revised Code of Washington by LexisNexis

End of Document

⁵“If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review ... the party must request the fees or expenses as provided in this rule.” RAP 18.1(a). RCW 42.56.550(4) allows a prevailing party in a PRA action to receive an award of attorney fees and costs. Because Cortland is not the prevailing party, we deny Cortland's request for an award of appellate attorney fees and costs.

Attachment 2

**Negotiations Leading to Stipulation
CP pages 324 through 352**

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

BRIAN CORTLAND,
Plaintiff,
v.
LEWIS COUNTY,
Defendant.

NO. 17-2-06152-34

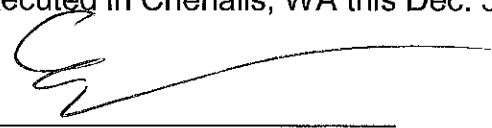
**DECLARATION OF ERIC EISENBERG
[AUTHENTICATING NEGOTIATIONS
LEADING TO AGREED MOTION FOR FINAL
ORDER]**

COMES NOW Defendant's counsel and submits the following declaration:

I, Eric Eisenberg, swear under penalty of perjury under the Laws of the State of Washington as follows:

The attached documents are a true copy of counsel's emailed negotiations, which led to the parties' submission of an agreed motion and final order imposing penalties in compliance with the Court's prior merits ruling in this matter.

Executed in Chehalis, WA this Dec. 3, 2018,



Eric Eisenberg, WSBA #42315

From: joe@joethomas.org
To: [Eric Eisenberg](mailto:Eric.Eisenberg@lewiscountywa.gov)
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days
Date: Friday, November 2, 2018 8:56:09 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Eric,

That is fine. I think we both have to be at Court next Friday anyway for a hearing on case number 18-2-05284-34.

Thank you.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Friday, November 2, 2018 8:45 AM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Hey Joe,

I didn't get up there this morning; I will do it next Friday.

Best,

Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Thursday, November 1, 2018 6:44 PM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

I am sorry I did not see that you asked me for my thoughts. You can present it either this Friday if you still can or on November 09, 2018. Either is fine with me and whatever fits better into your schedule. Sorry for not seeing that you asked me for my thoughts earlier.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Thursday, November 1, 2018 5:55 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Hi Joe,

I was not able to get the meeting rescheduled and I did not hear from you, so I will plan to present the agreed motion and order on Friday, Nov. 9.

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: Eric Eisenberg

Sent: Wednesday, October 31, 2018 10:01 AM

To: 'joe@joethomas.org' <joe@joethomas.org>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Well, I was planning to try it this Friday (Nov 2), but I was just asked to attend a meeting on Friday morning. I am seeing if I can get the meeting rescheduled. If so, I will do it this Friday. If not, I would have to do it next Friday. Thoughts?

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [mailto:joe@joethomas.org]

Sent: Wednesday, October 31, 2018 9:57 AM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

That is fine if you want to present it and file it. When do you think you will be able to do that?

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Wednesday, October 31, 2018 8:27 AM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

I would prefer to do it, if you don't mind. I am closer to the courthouse, anyway. Also, I will then have the opportunity to get a conformed copy right away, which makes it faster for us to satisfy the judgment.

Best,

Eric Eisenberg
**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Tuesday, October 30, 2018 5:27 PM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

Attached are sign copies of the CR 2A Agreement and the Agreed Motion for Entry of Judgment. Since both of these documents are signed they are ready to file with the Court.

Do you want me to present them to Judge Skinder and file them with the Court? I am happy to present the documents to Judge Skinder and to file them.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Tuesday, October 30, 2018 4:22 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

I consulted with the BOCC about the terms of the stipulation. My clients chose to sign the stipulation using the reasoning below. I have attached the stipulation for you, signed and dated today. I have also attached an updated version of the proposed agreed motion by which we could seek to have the Court turn the stipulation into a final order and judgment for you. (It is updated as to my declaration, the stipulation, and the proposed order.) Please review them to let me know what you think.

As you have said, "This CR 2A agreement is about the amount of records, number of days, and the statutory penalty as identified in the subject line of this email. This CR 2A agreement has nothing to do with appeals and the language you want to add is about appeals." And as I have said, we agreed on all of the material terms concerning the penalties analysis under the court's presently binding

merits order, but we did not agree on the stipulation's effect as to Lewis County's right to appeal the merits order. Lewis County believes that it has preserved its right to claim the order is in error on appeal, and Mr. Cortland either takes no position on that or disagrees. Based on that understanding of what has been agreed and not agreed, my clients chose to sign the stipulation. Lewis County asserts and will continue to assert that it has not waived its right to claim the merits order was in error on appeal.

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Friday, October 26, 2018 12:39 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

Thank you for sending me an electronic copy. I have reviewed the electronic copies and my clients agree to this version. Please let me know next week if your clients agree to that wording.

Have a nice weekend.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Friday, October 26, 2018 11:25 AM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Hi Joe,

Apropos of our in-person conversation today, attached please find the track changes and clean copy versions of the agreement with sentence 1 changed to indicate that the merits order previously entered on Aug 3, 2018. This is the copy I will bring to the BOCC on Tuesday.

You had not that much time in court to look at it; please have a look if you want to make sure it is all the same as before except that first sentence, and that the first sentence is acceptable. Have a nice weekend.

Best,

Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Thursday, October 25, 2018 2:19 PM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

My client is done negotiating about this. Either Lewis County enter into a CR 2A agreement to the agreed upon language (like was contracted) or we will move forward with this lawsuit to the adequacy of the privilege log before getting to the penalty. There is a lot of work to do and if Lewis

County is going to back out of the contract then we must move and prosecute this case. Please let me know what Lewis County will do as soon as you can.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Thursday, October 25, 2018 1:17 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

“Working cooperatively” does imply some level of cooperation . . . is there any language that you would approve of in the agreement that indicates that the agreement is neutral on the issue of appeal? I am already offering to compromise Lewis County’s position by agreeing to neutral language on this point, given the several times I pointed out our desire to make the agreement reflect an affirmative absence of waiver. Silence on this point is not neutral, because the distinction between a stipulation and a settlement is not obvious. You yourself read the offer initially as a settlement offer---that’s exactly why something on this point is needed.

Best,

Eric Eisenberg
**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Thursday, October 25, 2018 12:11 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

Mr. Cortland does not agree to your proposal of adding in the following language into the CR 2A agreement: "This stipulation does not bear upon whether any party may assign error to the Court's merits order in this matter." This CR 2A agreement is about the amount of records, number of days, and the statutory penalty as identified in the subject line of this email. This CR 2A agreement has nothing to do with appeals and the language you want to add is about appeals. To remedy the grammatical problem that you identified we can just remove the words "That order presently being binding" from what is presently paragraph number 2.

We agree on the rest of the CR 2A agreement. We should sign what we agree upon and submit the CR 2A agreement. After the CR 2A agreement is entered then Lewis County can then evaluate its legal options. Continuing to argue about the single paragraph in dispute is costly and time consuming.

I hope Lewis County wants to work cooperatively and sign a CR 2A agreement containing the language that both parties currently agree upon.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Thursday, October 25, 2018 9:40 AM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Alright, I thought that was the answer to point 1, but I wanted to be sure. It appears to me that we reached a clear agreement on all of the terms of the stipulation except its effect on Lewis County's appeal (on which point we each have different views about whether it was in the contract). Here is my proposal/path related to going forward with the deal.

I recall to your attention this statement from below: "It is not for Mr. Cortland to say that Lewis County has not waived its right to appeal. Furthermore, that was never a part of the contract. As you know Mr. Cortland cannot give Lewis County legal advice. At this time, Mr. Cortland is not taking a stance on whether Lewis County waived its right to appeal."

Because you do not believe that Lewis County's right to appeal was addressed in our contract and indicated that you are not taking a stance on whether Lewis County waives its right to appeal by entering the stipulation, I propose that we clarify that point in the contract. Attached, I take the version of the stipulation that you accepted and insert the following sentence at the top: "This stipulation does not bear upon whether any party may assign error to the Court's merits order in this matter." If you want to add something to this sentence about applicable law, I am open to that too.

One incidental benefit of adding this sentence is that the next point says "That order presently being binding," but with the deletion of the material you made that intro doesn't make a ton of sense. Now there will be an antecedent for the phrase "that order".

I have attached a track-changes version and a clean copy PDF. Please let me know what you think about this proposal.

Best,

Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Wednesday, October 24, 2018 3:27 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

My client's position is encapsulated in the proposed CR 2A agreement – it is attached to this email for your convenience. It appears that we agree to the substance except for that my client does not agree to Lewis County reserving it to appeal in the CR 2A agreement. These are the same terms that Mr. Cortland accepted via email on October 17, 2018 at 4: 31 PM. Please let me know when you will be able to take this back to your client in an executive session.

Insofar as the privilege log, it appears that communications involving Lewis County Superior Court Judges James Lawler and Richard Brosey are not privileged and must be disclosed under the FOIA/PRA case law. That appears to be twelve documents. There may be other documents in question, but since Lewis County listed so many documents in its privilege log, it will take more time to determine if other documents were wrongfully withheld.

Very truly yours,

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Sent: Wednesday, October 24, 2018 10:47 AM

To: 'joe@joethomas.org' <joe@joethomas.org>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

Two points, as I am continuing to attempt to finalize our deal instead of abandon it. First, please state for me what you believe the substance of the agreement is, as you and your client perceive it, so I can see if there is any way to continue to pursue this agreement consistent with your view. (I have an idea about this already, but I don't want to put any words in your clients mouth; I just want to make sure I get your position on the agreement without interference from me.) With your statement of this information, I will try to figure out a way to make the deal work for Lewis County

within what it perceived its offer to be while honoring your view of it. If I figure something out I will propose it to you for your consideration.

Second point: You have indicated a problem with the privilege log, but I do not know which entries of the log you dispute as unlawful. Please tell me which items you believe are unlawful so that I can consult with my client about any proposed action to address it.

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Tuesday, October 23, 2018 5:28 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

If Lewis County is going to break our contractual agreement then we need to address the problems with Lewis County's privilege log. It appears that Lewis County is claiming that some documents are privileged which are not. Please let me know this week how you would like to address otherwise I will draw up a motion for the Court to decide.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Sent: Tuesday, October 23, 2018 1:32 PM

To: 'joe@joethomas.org' <joe@joethomas.org>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

I am not asking for your legal advice---I am asking for your client's position on an issue in the litigation, just like any other issue in the litigation we might negotiate. But, I guess I have gotten my answer: you do not believe that Lewis County's ability to appeal was part of the deal, and from your language I understand you to be saying that you think Lewis County waives its right to appeal by entering the stipulation. If I am mistaken about your position, please feel free to correct me.

Given that position, there was no contract. I have explained to you and cited specific examples in our email correspondence as to how Lewis County's offer included a preservation of its right to claim on appeal that the merits ruling was in error. I know from speaking with my clients that it was a key piece of the offer for them---that is why I brought it up three times. You "accepted" that offer, but now you are telling me that you did not understand a portion of it. Therefore, we had no meeting of the minds and no contract. (And that is generously speaking. I think it likely that we had a contract including Lewis County's preservation of its right to appeal, but that your side is backing out of it.) I will consult my client about where to go from here, but it will not be before Thursday of this week. The soonest I will be able to see them again is Tuesday one week from today.

Because you have suggested that I am unilaterally breaking our written contract, I wish to point out that Lewis County stands by and has always stood by its original offer to stipulate to a penalties analysis to speed the entry of a final order in this matter, reserving its right to appeal the underlying merits order. The stipulation would be to 18 records times 231 days times \$5 per day equals \$20,790, which would be reflected in a final order and judgment, with costs and attorney fees to be determined later in the normal course, and (to make it crystal clear) with an indication that Lewis County does not waive its right to appeal the merits order by so stipulating. I continue to be willing to work with you reduce such a stipulation to writing and present it to the court as part of an agreed motion for entry of a final order and judgment.

To the end, you have suggested that it is not possible for a party to stipulate to something unfavorable in a final order yet preserve its right to appeal an underlying legal determination motivating that order: "I am not aware of instance where a judge wrote in an order that a party was stipulating to something, but were also reserving their right to appeal. Lewis County's right to appeal lies in the state statutes and state court rules, not in a stipulated agreement. The stipulation does not preserve Lewis County's right to appeal and preserving Lewis County's right to appeal is not something both parties can contract to."

Actually, it is not uncommon for this to happen. I have seen it most often in criminal appeals in which a defendant loses a pretrial motion of some kind that he (or she) wishes to appeal. The parties then do a “stipulated facts bench trial” in which the defendant stipulates to the admission and sufficiency of evidence under the terms of the order he claims is incorrect, the judge finds him guilty and sentences him, and then he appeals the conviction and underlying order. See, e.g., *State v. Brown*, 166 Wn. App. 99, 101-02, 269 P.3d 359, 360 (2012), *State v. McCarty*, 152 Wn. App. 351, 356-58, 215 P.3d 1036 (2009); *State v. Bale*, No. 44709-6-II, 2015 Wash. App. LEXIS 3, at *12 (Ct. App. Jan. 6, 2015) (unpublished opinion).

So, if you are thinking that Lewis County is trying to play some sort of trick on you or to get something that it is within the normal practice of law, please reconsider. Stipulating to something to get to a final order for purposes of facilitating an appeal is perfectly doable.

Best,

Eric Eisenberg
**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Tuesday, October 23, 2018 8:13 AM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

It is not for Mr. Cortland to say that Lewis County has not waived its right to appeal. Furthermore, that was never apart of the contract. As you know Mr. Cortland cannot give Lewis County legal advice. At this time, Mr. Cortland is not taking a stance on whether Lewis County waived its right to appeal.

It sounds like from your last email that you are not even going back to your clients and they are the ones that made the original offer. Are you going back to your clients to discuss our contractual agreement or will you unilaterally break the contract? If Lewis County breaks this written contractual agreement it will be unfortunate because Judge Skinder has encouraged us to work together several times during these lawsuits.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Monday, October 22, 2018 5:52 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

I am not asking Mr. Cortland to confer any rights upon Lewis County by contract, as opposed to statute and court rules. I am asking that the contract reflect that Lewis County did not waive such rights by agreeing to the contract terms. I am concerned from your language that you will take the position that Lewis County is waiving its right to appeal via this stipulation, which it took pains not to do.

With regard to whether this was in the contract, I respectfully ask that you re-read the email chain below. Lewis County made you an offer to stipulate, which it explicitly noted was not a settlement offer, and in the offer I communicated Lewis County's reservation of its right to claim that the merits ruling was in error. You counteroffered with a settlement offer and an acceptance of Lewis County's offer to stipulate. I rejected your counteroffer and indicated that we stood by our offer to stipulate (which you had accepted), "preserving [our] right to claim that Judge Skinder's merits order was incorrect on the law."

There is nothing parol about it. . . these are the only communications we have had regarding this offer/acceptance, and so they form the substance of the agreement. We only offered to stipulate subject to our right to claim on appeal that the merits ruling was incorrect. You could not "accept" some of the terms of this offer but not others. I am sorry if the terms of the offer were not clear to you, but I tried to point this out specifically to make you aware of it. I even offered to clarify if you did not understand what I meant, which you did not take me up on.

In the hopes that we will work this out, I am continuing to press ahead with county folk about

entering this agreed motion or something like it predicated on our stipulation. As I see it, so long as your client agrees that Lewis County may pursue its appeal even under the terms of our agreement, then we are just quibbling over the details, we can work them out, and all will go forward. If, however, your client's position is that this stipulation precludes Lewis County's appeal challenging the underlying merits hearing, then I do not believe we have a contract because you accepted something that we did not offer. Please let me know if it is the latter. You invited me to consult my client by Thursday, but without knowing your understanding of this issue I don't know what to ask them.

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Monday, October 22, 2018 5:23 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

We are talking about the same thing which is a stipulated CR 2A agreement in place of an adversarial penalty hearing.

It appears that you are confused. Our agreement never included preserving Lewis County's right to appeal. As I said in my previous email the right to appeal is governed by state statutes and state court rules. Lewis County's right to appeal is not something that Mr. Cortland can contract to.

Lewis County's reservation of its right to appeal was never apart of our CR 2A contracted agreement. As I stated in my previous email, I sent Lewis County the terms that Mr. Cortland agreed to and you accepted. What you are referring to is parol evidence and that is not admissible to prove the intent of the contract.

If you feel like you must present this to your clients, then please go ahead and do so by Thursday of this week. If not, my client will explore his legal rights surrounding our written agreement.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Monday, October 22, 2018 5:05 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

Here is what I thought we would turn the stipulation into. Please have a look.

I consulted with my clients about finishing up this case this morning and have authority to do so along the lines we have discussed. But, when I spoke to them, it was predicated on the idea that we would expressly be able to preserve our right to appeal the underlying merits order. If your client thinks that was not part of the deal, notwithstanding me having said it three times during the negotiations, please let me know and I will consult with my clients again about what they want to do.

Best,

Eric Eisenberg
**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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returning it to the sender and deleting this copy from your system. Thank you for your cooperation.

From: Eric Eisenberg
Sent: Monday, October 22, 2018 4:13 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

I think I understand the nature of the confusion now: I was not expecting you to submit this CR 2A stipulation to Judge Skinder as the final order in the case. I was expecting us to present an agreed motion for entry of a final order and judgment, attaching this stipulation as an exhibit to the motion. Thus, I was expecting this stipulation to capture our negotiated resolution, including what Lewis County was preserving in the way of appeal, even if not every aspect of the resolution would need to be stated verbatim in the order.

Let me draft up an example of what I was talking about so you can see if it would meet your client's concerns. I will do it right now.

Best,

Eric Eisenberg
**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Monday, October 22, 2018 3:40 PM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

This CR 2A agreement is meant to be in lieu of a penalty order. I am not aware of instance where a judge wrote in an order that a party was stipulating to something, but were also reserving their right to appeal. Lewis County's right to appeal lies in the state statutes and state court rules, not in a stipulated agreement. The stipulation does not preserve Lewis County's right to appeal and

preserving Lewis County's right to appeal is not something both parties can contract to.

Lewis County made my client a contractual offer, per CR 2A. My client accepted that offer before it was withdrawn. Each party gave valuable consideration in the bargained for agreement. When accepting the offer, I even quotes the mirror image of the language in the offer to ensure that both parties knew what was being agreed to. You told me to then write it up and have it by Friday, so you could take it to your clients in an executive session.

You are adding a material clause to the contract. That is not acceptable. That is not what we agreed upon.

I reiterate Eric, you are the one who agreed to my client's acceptance and told me to draw it up.

Please sign the CR 2A agreement, like we agreed to and we can present it on Friday to Judge Skinder.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Monday, October 22, 2018 3:17 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Hi Joe,

I don't understand. In the email I sent to you, I included the following information at the beginning: "As you know, Lewis County does not believe the judge's ruling that Lewis County violated the PRA in this matter was correct. But, this offer attempts to follow that order and its logic in an effort to narrow the areas of dispute, which will speed the entry of a final order in this matter."

At the end inserted the following information: "Lewis County proposes to stipulate to the penalty analysis above for purposes of speeding entry of a final order in this matter. This is not an offer of

settlement, for Lewis County wishes to maintain its ability to claim that the judge's order on the merits was erroneous. It is instead a stipulation designed to speed you to a final judgment."

Then in response to your two emails, one of which indicated a settlement offer and the other of which accepted the terms of our stipulation, I commented: "Lewis County does not accept your counteroffer of settlement. However, Lewis County stands by its proposed stipulation to the final penalties order, preserving its right to claim that Judge Skinder's merits order was incorrect on the law."

All I want to do is reflect this fact in the stipulation. It is very important to my client. What about the formulation in paragraph 1 do you object to? Let's iron this out.

Best,

Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Monday, October 22, 2018 2:37 PM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

Mr. Cortland agrees to all of the edits, except for the addition of paragraph 1. Attached is the proposed order to what Mr. Cortland agrees to. Please sign it and return it to me and we can present it to Judge Skinder on Friday.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101

Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Friday, October 19, 2018 4:02 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

Okay, I got back from court and am returning to this. I think this is good, but would like to insert some changes to make it very clear what we are preserving our right to do. I am sure you can sense my concern about unintentional waiver. Please have a look and give me your thoughts. If we agree I am ready to meet with the BOCC on Monday to get it signed off.

Best,

Eric Eisenberg
**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: Eric Eisenberg
Sent: Thursday, October 18, 2018 4:47 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

Thank you for drafting it; I have not gone through it in detail yet, but will do so and get back to you tomorrow. In the meantime, I have gotten on the agenda for Monday. I will ask you about any

proposed changes tomorrow so that I can put the final version to them on Monday.

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Thursday, October 18, 2018 3:08 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Dear Eric,

Attached is the stipulated penalty agreement. Please let me know if you have any changes that you would like to make. I hope you can present this to your client on Monday.

Very truly yours,

joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Sent: Wednesday, October 17, 2018 6:09 PM

To: 'joe@joethomas.org' <joe@joethomas.org>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Joe,

Hello, I am just getting this. Thank you for accepting the proposed stipulation and for working on the materials. Because you wrote me two emails, one listed as a settlement offer and one listed as terms of a final order, I wish to clarify that it is not technically a settlement. Lewis County does not accept your counteroffer of settlement. However, Lewis County stands by its proposed stipulation to the final penalties order, preserving its right to claim that Judge Skinder's merits order was incorrect on the law.

This distinction is kind of arcane, but I trust from your second email that you understood the distinction shortly after sending your first email, which is why you clarified. If I have confused you with this email, please let me know and I will clarify tomorrow.

(I have also pasted the second email into this email chain so that it is clear I am responding to both emails.) Got to go home!

Best,

Eric Eisenberg

**Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241**



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]

Sent: Wednesday, October 17, 2018 4:31 PM

To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>

Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

Mr. Cortland accepts Lewis County's terms of the order which will be presented to Judge Skinder as a final judgment.

The terms of the order that Mr. Cortland agrees to stipulated to are as follows:

"18 records times 231 days is 4158. Lewis County proposes that, in a case in which it was producing records at the time of the lawsuit and only stopped produced records because, rightly or wrongly, it perceived your client to have abandoned the request, a \$5 per day penalty is reasonable. The resulting penalty would be \$20,790.

Lewis County also appreciates that you will be entitled to costs and a reasonable attorney fee as a result of the court's order."

Since we are in agreement as to the terms (Mr. Cortland accepts Lewis County's offer) I am going to go ahead and start drafting the order that will be presented judgment, per your approval.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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Dear Eric,

***** ER 408 – Settlement Offer**

I spoke with my client about your email. Mr. Cortland is making a settlement offer to Lewis County based upon the numbers you suggested.

For the settlement offer, Mr. Cortland will stipulate to the records falling within 18 groups and the number of days the records have been withheld is 231 days. Then 18 groups multiplied by 231 days would result in a number of 4,158. The penalty would be \$5 per day. The resulting penalty would be \$20,790. The \$20,790 penalty would be in addition to all costs and reasonable attorney's fees.

Mr. Cortland believes this is a fair settlement that would save all parties time, money and resources.

If Lewis County agrees to this settlement offer, we can draw up the formal paperwork immediately.

Please let me know as soon as possible if Lewis County accepts this settlement offer.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

From: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Sent: Tuesday, October 16, 2018 6:02 PM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Hello Joe,

I met with the BOCC today again, and they authorized me to propose the following. As you know, Lewis County does not believe the judge's ruling that Lewis County violated the PRA in this matter was correct. But, this offer attempts to follow that order and its logic in an effort to narrow the areas of dispute, which will speed the entry of a final order in this matter.

I reviewed the materials from the re-search and the materials from the original search. Some of the re-search materials were those that Lewis County either had produced or specifically was producing during its response in this matter---they were part of the original search. Because of this, Lewis County did not "deny" those particular materials and its search was not inadequate as to those materials.

Setting those materials aside, in looking through materials that were not (yet) within the scope of the original search, they appear to fall into 18 subject matter themes or groups. For example, one subject matter theme or group would be documents related to responding to a court records request from a man named Christensen. Another subject matter theme would be documents related to responding to a request from a man named Tracy, etc. Lewis County proposes that the records be thematically grouped into 18 records based on these 18 subject matters.

The request in this matter was denied on Jan. 19, 2018 when Lewis County took final action closing the request. This is based on the back and forth in which Lewis County offered Mr. Cortland records, he declined to pay for them, and Lewis County said that if he did not pay by Jan. 19, 2018 it would close the request.

Lewis County submitted its documentation of the completion of the search on Sept. 7, 2018. You previously argued to me that we needed Casey Mauermann's certification of the search, but she is not required to undertake the search. See WAC 44-14-02002 ("The public records officer is not required to personally fulfill requests for public records. A request can be fulfilled by an agency employee other than the public records officer."). Also, I think you were predicating this on the belief that Ms. Mauermann was wholly uninvolved with the re-search based on the wording of her Sept. 7 declaration. But, we spoke and I clarified that the sentence about her involvement in the original search was meant only to show her familiarity with the subject matter. Her description of what she did and how she discussed locations for searching are about this re-search, not the original search. Thus, Lewis County believes the proper end date for the search is Sept. 7, 2018.

Jan. 19, 2018 to Sept. 7, 2018 is 231 days.

18 records times 231 days is 4158. Lewis County proposes that, in a case in which it was producing records at the time of the lawsuit and only stopped produced records because, rightly or wrongly, it perceived your client to have abandoned the request, a \$5 per day penalty is reasonable. The resulting penalty would be \$20,790.

Lewis County also appreciates that you will be entitled to costs and a reasonable attorney fee as a result of the court's order.

Lewis County proposes to stipulate to the penalty analysis above for purposes of speeding entry of a final order in this matter. This is not an offer of settlement, for Lewis County wishes to maintain its ability to claim that the judge's order on the merits was erroneous. It is instead a stipulation designed to speed you to a final judgment.

Please review this matter with your client. This proposal is open until 5PM on Monday, October 22, but my clients are open to reasonably extending the time if you contact us to that end by Friday. (I need the notice by Friday to get it on an OPMA agenda for Monday.)

Best,

Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241



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From: Eric Eisenberg
Sent: Tuesday, October 16, 2018 9:24 AM
To: 'joe@joethomas.org' <joe@joethomas.org>
Subject: RE: 17-2-06152-34 - Stipulating to the amount of records and number of days

Hi Joe,

You are remembering correctly. I met with the BOCC about this while you were gone and had a follow up meeting with them on Monday of last week to get a decision, but missed it because I was sick. I am meeting with them today so we can discuss it, and then will hopefully be able to give you something concrete.

Best,

Eric Eisenberg
Chief Civil Deputy Prosecuting Attorney
Lewis County Prosecutor's Office
345 W. Main Street, Second Floor
Chehalis, WA 98532-1900
(360) 740-1241



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From: joe@joethomas.org [<mailto:joe@joethomas.org>]
Sent: Monday, October 15, 2018 5:47 PM
To: Eric Eisenberg <Eric.Eisenberg@lewiscountywa.gov>
Subject: 17-2-06152-34 - Stipulating to the amount of records and number of days

Eric,

Before I left on my trip, I believe we had a telephone conversation where I asked you if Lewis County would be interested in stipulating to the amount of records wrongfully withheld and the number of days the records were withheld. If my memory serves me correctly, you said that you would think about it and get back to me. I am just following-up on that conversation to see if Lewis County is interested in stipulating to the number of records and the number of days.

I believe it would be in both parties interests to stipulate to the number of records and number of days, if we can come to terms. There are a large amount of records at issue in this case and I think if we can come to a mutual agreement it would save both parties time and money, rather than arguing about it.

Also, I believe there are at least a couple of problems with the privilege log that Mr. Cortland indicated that he will challenge before the penalty hearing, if a stipulated agreement cannot be reached. Issues concerning the sufficiency of the redaction log go to whether there is a continued wrongful withholding by Lewis County that would need to be decided before the penalty hearing.

Please let me know if Lewis County will make an offer on the number of records wrongfully withheld and the number of days.

Very truly yours,

Joe

Joseph Thomas
Law Office of Joseph Thomas PLLC
14625 SE. 176th ST., Apt. # N101
Renton, Washington 98058
Phone: (206) 390-8848
Website: <http://JoeThomas.org>

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Attachment 3

**Agreed Motion and Stipulation
CP pages 314 through 321**



2018 NOV 16 AM 10:48

Linda Myhre Enlow
Thurston County Clerk

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**IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

BRIAN CORTLAND;

Plaintiff,

v.

LEWIS COUNTY,


Defendant.

No 17-2-06152-34

**AGREED MOTION FOR FINAL
ORDER AND ENTRY OF
JUDGMENT**

COME NOW both parties by agreement and ask the Court to enter a final order in this matter setting penalties as well as judgment in favor of Mr. Cortland.

Dated this ^{Nov. 16} ~~Oct. 31~~, 2018,


Eric Eisenberg, WSBA #42315
Chief Civil Dep. Pros. Attorney
For Defendant Lewis County


Joseph Thomas, WSBA # 49532
For Plaintiff Brian Cortland

DECLARATION OF COUNSEL

The undersigned attorney swears under penalty of perjury under the laws of the State of Washington that the following is true:

AGREED MOTION FOR FINAL ORDER AND ENTRY OF JUDGMENT

1

LEWIS COUNTY PROSECUTING ATTORNEY'S
OFFICE, CIVIL DIVISION
345 W. Main Street, 2nd Floor
Chehalis, WA 98532
360-740-1240 (Voice) 360-740-1497 (Fax)

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Following the Court's merits ruling in this matter and production of records pursuant thereto, the parties have stipulated to a proposed penalties analysis. Please see the attached stipulation, which reflects the parties' agreement and is attached as Exhibit 1. The parties ask the Court to enter a final order consistent with this stipulation. A proposed form of order is attached as Exhibit 2.

Please note that the parties dispute whether the attached stipulation affects any right to appeal this matter.

Executed in Chehalis, WA on ^{Nov. 16}~~Oct. 31~~, 2018,

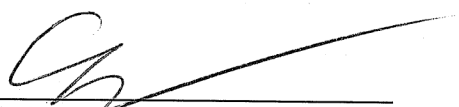

Eric Eisenberg, WSBA #42315

Exhibit 1

CR 2A Stipulation

EXPEDITE
No hearing set
Hearing is set
Date: _____
Time: _____
Judge/Calendar: _____

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

<p>Brian Cortland</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Lewis County, A Municipal Corporation</p> <p style="text-align: center;">Defendant.</p>	<p>CR2A STIPULATED STATUTORY PENALTY PURSUANT TO RCW 42.56.550(4)</p> <p>Case number: 17-2-06152-34</p> <p>Date: October 20, 2018</p>
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The parties to this above entitled cause of action hereby stipulate as follows, pursuant to Civil Rule 2A:

1. The Court entered its merits order in this matter on Aug 3, 2018.
2. That order presently being binding, both parties stipulate to the following statutory penalty, pursuant to RCW 42.56.550(4).
3. Eighteen (18) separate subject matter records were wrongfully withheld from Plaintiff by the Defendant for two hundred and thirty-one (231) days.

pg. 1

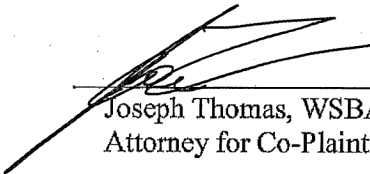
CR 2A Stipulated Statutory Penalty Pursuant to RCW 42.56.550(4)

Joseph Thomas
WSBA # 49532
Law Office of Joseph Thomas PLLC
14625 SE. 176th St. Apt. N101
Renton, Washington 98058
(206) 390-8848

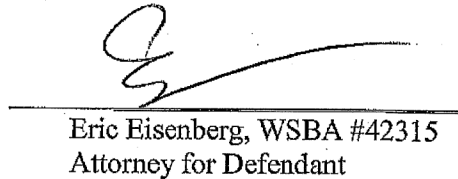
4. The per record per day penalty is five dollars (\$5). The entire per day penalty is ninety dollars (\$90).
5. The entire per day penalty of ninety dollars multiplied by two hundred and thirty-one days results in a total penalty of \$20,790. Judgment shall enter for Plaintiff for the total penalty of \$20,790.
6. The total penalty does not include all costs and reasonable attorney's fees, which will be determined at a later date.

Respectfully submitted this October 20, 2018.

Presented by:



Joseph Thomas, WSBA # 49532
Attorney for Co-Plaintiffs



Eric Eisenberg, WSBA #42315
Attorney for Defendant

Exhibit 2

Proposed Final Order and Judgment

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

BRIAN CORTLAND;

Plaintiff,

v.

LEWIS COUNTY,

Defendant.

NO. 17-2-06152-34

**[PROPOSED]
FINAL ORDER AND JUDGMENT**

JUDGMENT SUMMARY

A.	Judgment Creditor	BRIAN CORTLAND
B.	Judgment Debtor	LEWIS COUNTY
C.	Total Judgment Amount	\$20,790.00
D.	Principal judgment amount	\$20,790.00
E.	Interest to date of Judgment	NONE
F.	Attorney's fees	TBD
G.	Costs	TBD
H.	Other recovery amount	NONE
I.	Principal judgment shall bear interest at	12% per annum
J.	Attorney for Judgment Creditor	JOSEPH THOMAS
K.	Attorney for Judgment Debtor	ERIC EISENBERG

FINAL ORDER

- 1.1. This Court ruled on the merits in this matter that Lewis County violated the Public Records Act by failing to carry its burden to show that it performed an adequate search in response to Plaintiff's records request.
- 1.2. Lewis County re-performed the search pursuant to this Court's order.

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- 1.3. Thereafter, the parties stipulated to the following penalties analysis:
- 1.4. Eighteen (18) separate subject matter records were wrongfully withheld from Plaintiff by the Defendant for two hundred and thirty-one (231) days.
- 1.5. The per record per day penalty is five dollars (\$5). The entire per day penalty is ninety dollars (\$90).
- 1.6. The entire per day penalty of ninety dollars multiplied by two hundred and thirty-one days results in a total penalty of \$20,790. Judgment shall enter for Plaintiff for the total penalty of \$20,790.
- 1.7. The total penalty does not include all costs and reasonable attorney's fees, which will be determined at a later date.
- 1.8. The parties disputed whether the stipulation effects any right to appeal.
- 1.9. The Court has considered the above stipulation in light of the nature of this case, the record and file herein, and the *Yousoufian* factors governing imposition of penalties under the PRA.
- 1.10. Having done so, the Court adopts the parties' penalty analysis as reasonable and appropriate.
- 1.11. Judgment hereby enters for the Plaintiff in the amount of \$20,790.
- 1.12. This amount does not include costs and a reasonable attorney fee. Plaintiff shall seek such costs and attorney fee in the normal course.

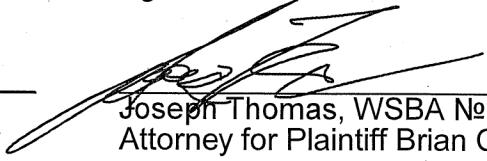
ORDERED ON _____, 2018,

Hon. John Skinder
Thurston County Superior Court Judge

Presented By:

Agreed:

Eric Eisenberg, WSBA № 42315
Chief Civil Deputy Prosecuting Attorney
for Defendant Lewis County



Joseph Thomas, WSBA № 49532
Attorney for Plaintiff Brian Cortland

Attachment 4

**Agreed Final Order
CP pages 322 through 323**



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FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2018 NOV 16 AM 10:48
Linda Myhre Enlow
Thurston County Clerk

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

BRIAN CORTLAND;

Plaintiff,

v.

LEWIS COUNTY,

Defendant.

NO. 17-2-06152-34

EX PARTE

~~PROPOSED~~
FINAL ORDER AND JUDGMENT

JUDGMENT SUMMARY

A.	Judgment Creditor	BRIAN CORTLAND
B.	Judgment Debtor	LEWIS COUNTY
C.	Total Judgment Amount	\$20,790.00
D.	Principal judgment amount	\$20,790.00
E.	Interest to date of Judgment	NONE
F.	Attorney's fees	TBD
G.	Costs	TBD
H.	Other recovery amount	NONE
I.	Principal judgment shall bear interest at	12% per annum
J.	Attorney for Judgment Creditor	JOSEPH THOMAS
K.	Attorney for Judgment Debtor	ERIC EISENBERG

FINAL ORDER

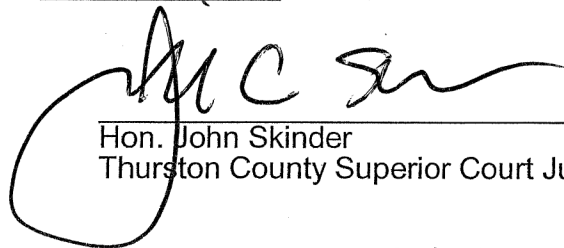
- 1.1. This Court ruled on the merits in this matter that Lewis County violated the Public Records Act by failing to carry its burden to show that it performed an adequate search in response to Plaintiff's records request.
- 1.2. Lewis County re-performed the search pursuant to this Court's order.

~~PROPOSED~~ FINAL ORDER AND JUDGMENT

LEWIS COUNTY PROSECUTING ATTORNEY'S
OFFICE, CIVIL DIVISION
345 W. Main Street, 2nd Floor
Chehalis, WA 98532
360-740-1240 (Voice) 360-740-1497 (Fax)

- 1 1.3. Thereafter, the parties stipulated to the following penalties analysis:
2 1.4. Eighteen (18) separate subject matter records were wrongfully withheld
3 from Plaintiff by the Defendant for two hundred and thirty-one (231) days.
4 1.5. The per record per day penalty is five dollars (\$5). The entire per day
5 penalty is ninety dollars (\$90).
6 1.6. The entire per day penalty of ninety dollars multiplied by two hundred and
7 thirty-one days results in a total penalty of \$20,790. Judgment shall enter
8 for Plaintiff for the total penalty of \$20,790.
9 1.7. The total penalty does not include all costs and reasonable attorney's
10 fees, which will be determined at a later date.
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12 1.9. The Court has considered the above stipulation in light of the nature of this case,
13 the record and file herein, and the *Yousoufian* factors governing imposition of
14 penalties under the PRA.
15 1.10. Having done so, the Court adopts the parties' penalty analysis as reasonable
16 and appropriate.
17 1.11. Judgment hereby enters for the Plaintiff in the amount of \$20,790.
18 1.12. This amount does not include costs and a reasonable attorney fee. Plaintiff shall
19 seek such costs and attorney fee in the normal course.

20 ORDERED ON Nov. 16, 2018,


21 

JOHN C. SKINDER

Hon. John Skinder
Thurston County Superior Court Judge

22 Presented By:

Agreed:

23 
24 Eric Eisenberg, WSBA No 42315
25 Chief Civil Deputy Prosecuting Attorney
for Defendant Lewis County


Joseph Thomas, WSBA No 49532
Attorney for Plaintiff Brian Cortland

26 ~~PROPOSED~~ FINAL ORDER AND
JUDGMENT

Page 2 of 2

LEWIS COUNTY PROSECUTING ATTORNEY'S
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Chehalis, WA 98532
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LEWIS CTY PROSECUTING ATTY'S OFFICE

November 18, 2020 - 4:40 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99136-7
Appellate Court Case Title: Brian Cortland v. Lewis County
Superior Court Case Number: 17-2-06152-0

The following documents have been uploaded:

- 991367_Answer_Reply_20201118163815SC216430_2175.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 20201118 LC Answer to Pet for Review.pdf

A copy of the uploaded files will be sent to:

- Fightpubliccorruption@yahoo.com
- lori.cole@lewiscountywa.gov
- natalie.dunlap@lewiscountywa.gov

Comments:

Lewis County's Answer to Brian Cortland's pro se Petition for Review

Sender Name: Eric Eisenberg - Email: eric.eisenberg@lewiscountywa.gov

Address:

345 W MAIN ST FL 2
CHEHALIS, WA, 98532-4802
Phone: 360-740-1240

Note: The Filing Id is 20201118163815SC216430