

FILED  
COURT OF APPEALS  
1994-1995

10 MAY 21 PM 12:02

STATE OF WASHINGTON

BY C  
CITY

NO. 39713-7-II

---

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

---

JEFFREY R. MCKEE,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent,

---

**REPLY BRIEF OF APPELLANT**

---

JEFFREY R. MCKEE 882819, PRO SE  
AIRWAY HEIGHTS CORRECTIONS CENTER  
PO BOX 2049 KA  
AIRWAY HEIGHTS, WA 99001  
(509) 244-6819

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

    A. Filing suit was necessary because WDOC never notified Mr. McKee the cost to purchase any one specific records request and continue to silently withhold responsive records.....4

    B. The one year statute of limitations does not commence until WDOC identifies all responsive records to Mr. McKees' requests, identifies the exact copying for each individual request and/or presents an exemption log.....6

II. CONCLUSION.....7

III. CERTIFICATE OF SERVICE.....8

**TABEL OF AUTHORITIES**

**CASES**

American Civil Liberties Union of Washington v.  
Blain School District No. 503 (ACLU I),  
86 Wn.App. 342, 44 P.3d 909 (2002).....4

City of Spokane v. Spokane County,  
158 Wa.2d 661, 146 P.3d 893 (2006).....4

Daines v. Spokane County,  
111 Wn.App. 342, 44 P.3d 909 (2002).....4

Hearst Corp. v. Hope,  
90 Wn.2d 123, 580 P.2d 246 (1978).....4

Ockerman v. King County Dep't of Developmental & Env't. Servs.,  
102 Wa.App. 212, 6 P.3d 1214 (2000).....6

Progressive Animal Welfare Society v. University of  
Washington (PAWS II),  
125 Wn.2d 243, 884 P.2d 592 (1994).....4

Rental Housing Association of Puget Sound v. City of Des  
Moines,  
165 Wa.2d 525, 199 P.3d 393 (2009).....6/7

**STATUTES**

RCW 42.56.030.....4

RCW 42.56.070.....4,6

RCW 42.56.080.....5,6

RCW 42.56.100.....1,5,6

RCW 42.56.520.....1,5,6

RCW 42.56.550.....6,7

**DOC POLICY**

280.510.....5/6

## I. INTRODUCTION

The Washington State Department of Corrections (WDOC) was under contract with the Corrections Corporation of America (CCA) Florence Corrections Center (FCC) to house Washington State prisoners. Part of this contract provides that "Offender institutional records regarding WDOC Offenders while at the CCA shall be collected and maintained on-site by the CCA in accordance with WDOC record keeping practices..."

§4.14.1. CP 350 see also Appendix A.

This contract goes on to identify who owns the records created under this contract. Specifically, "All such records, documents, communications and other materials shall be the property of Washington and shall be maintained by the CCA..."

§9.16.2. CP 323 see also Appendix B. The CCA also has to adhere to Washington States' Public Records Act laws, disclosing all public records created to WDOC on demand (§9.12.) CP 321 see also Appendix C.

When Mr. McKee made his three separate records requests for every record the decision makers used to deny the three separate grievances, WDOC was required to locate and produce those records. Defendants originally responded that they had no access to CCA records. CP 348. Mr. McKee immediately notified WDOC of the contract provisions requiring WDOC to produce the responsive records. CP 352 see also Appendix D.

WDOC initially refused to acknowledge these contract provisions and their statutory responsibility to produce the responsive records. CP 355. It was not until almost four months after Mr. McKees' original request did WDOC acknowledge they were responsible for locating and producing the records the decision makers reviewed to deny the three separate grievances. Then, WDOC only asked if Mr. McKee was still interested in obtaining these and several other records he had requested. WDOC did not give any reasonable estimate of when he could expect the responsive records (RCW 42.56.520). CP 360.

On March 2, 2007, five months after Mr. McKees' initial requests, WDOC acknowledged that they had gathered responsive records to the three separate grievances and nine (9) other records requests. WDOC did not identify how many pages or the cost to purchase any single request he had made. Instead WDOC lumped all twelve (12) requests into one response and charged \$62.25 for copying and postage for all the requests. CP 365-66.

Mr. McKee repeatedly requested WDOC identify the exact copying and postage charge for each separate records requests. CP 372, CP 42. WDOC refused to even respond to these requests against RCW 42.56.100, 42.56.520.

After Mr. McKee had filed suit and before summary judgment in this case, WDOC produced the three grievances at issue in this matter. WDOC has still not identified how many pages relate to any one of the three requests. CP 44, CP 50. WDOC did notify Mr. McKee on September 9, 2008, upon production of the documents that two (2) pages of the responsive records were withheld in their entirety as exempt. CP 50. This was the first claim by WDOC that any of the requested records were exempt, although they knew of this fact by, at least, March 2, 2007. CP 365-66.

Mr. McKee had requested "Any and all records that were considered by Audrey Rodriguez Grievance Coordinator, Warden S. Rogers any C.C.A/F.CC [sic] staff and or Washington DOC personal in their decision of grievance No..." CP 340, CP 344, & CP 346. Mr. McKee had clarified his request to WDOC that he was not requesting the grievances themselves but "...all information including notes, E-mail, letters and any other form of correspondence related to the decision to deny the grievances..." CP 179. What Mr. McKee actually received from WDOC was only the grievances themselves. No records the decision makers used to determine the grievances were included, unless these were the two withheld documents claimed as exempt. CP 53-114 (grievance No. 06-0479W), CP 116-31 (grievance No. 06-0500W), CP 133-47 (grievance No. 06-0501W).

**A. Filing suit was necessary because WDOC never notified Mr. McKee the cost to purchase any one specific records request and continue to silently withhold responsive records.**

The PRA "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hope*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The purpose of of the PRA is "to provide full access to non-exempt public records." *American Civil Liberties union of Washington v. Blaine School District No. 503 (ACLU I)*, 86 Wn.App. 688, 695, 937 P.2d 1176 (1997). "Access is the underlying them of the act." *ACLU I*, 86 Wn.App. at 693 The ACT "is a strongly worded mandate for broad disclosure of public records." *Progressive Animal Welfare Society v. University of Washington (PAWS II)*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) "The purpose of the [PRA] is to keep public officials accountable to the people." *Daines v. Spokane County*, 111 Wn.App. 342, 347, 44 P.3d 909 (2002)

"The people of this state do not yeild their sovereignty to the agencies that serve them. The people, in deligating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construde to promote this public policy" RCW 42.56.030

"Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the records falls within the specific exemptions of subsection (6)" RCW 42.56.070(1)

"Public records shall be made available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment bases..." RCW 42.56.080 (emphasis mine)

"Agencies shall adopt and enforce rules and regulations,... consonant with the intent of this chapter to provide full public access to public records,... Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100 (empahsis mine)

"Responses to requests for public records shall be made promptly by agencies,... Within five business days of receiving a public records request, an agency,... must respond by (1) providing the record, (2) acknowledging that the agency,... has received the request and providing a reasonable estimate the agency,... will require to respond to the request; or (3) denying the public record request... denieals of requests must be accompanied by a written statement of the specific reasons therefore... such review shall be deemed complete at the end of the second business day following the denial of inspection and shall constitute final agency action... for the purposes of judicial review. RCW 42.56.520 (emphasis mine)

Mr. McKee specifically requested copies of the records that were considered by the decision makers to deny the three sepreate grievances records. CP 340, CP 344 & CP 346.

Mr. McKee specifically requested WDOC identify the costs to purchase each request individually. CP 372, CP 42. WDOC policy 280.510 spcifically mandates "After compiling records in response to a request, Department staff will notify the

the requestor in writing of the exact copying charges for the requested records (emphasis mine). CP 393 see also Appendix E. WDOC has provided no exemption (RCW 42.56.070(1)) for not identifying the cost to purchase any single record request. This is not making records "promptly available" (RCW 42.56.080) and is not providing the "fullest assistance to" Mr. McKees' inquiry (RCW 42.56.100). Pursuant to RCW 42.56.520 WDOC is mandated to provide a "written statement of the specific reasons" for not identifying the cost to purchase any individual request. Until WDOC identifies the exact copying charge for the individual request, access has not been provided.

- B. **The one year statute of limitations does not commence until WDOC identifies all responsive records to Mr. McKees' requests, identifies the exact copying for each individual request and/or presents an exemption log.**

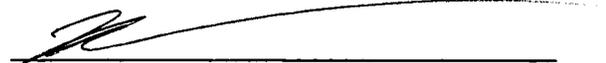
"Our purpose when interpreting a statute is to determine and enforce the intent of the legislature. City of Spokane v. Spokane County, 158 Wa.2d 661, 673, 146 P.3d 893 (2006). Where the meaning of statutory language is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. Id. In construing the PRA, we look at the Act in its entirety in order to enforce the law's overall purpose. See Ockerman v. King County Dep't of Developmental & Env't. Servs., 102 Wa.App. 212, 217, 6 P.3d 1214 (2000). Our review is de novo. RCW 42.56.550(3) (Id. 536) "The key

issues then when is a "claim of exemption" under RCW 42.56.550(6) is effectively made" rental Housing Association of Puget Sound v. City of Des Moines, 165 Wa.2d 525, 199 P.3d 393 (2009). WDOC must claim an exemption or state specifically why they will not identify the number of pages and cost for copying the individual grievance requests.

**II. CONCLUSION**

For the forgoing reasons, the Court should reverse the trail Courts dismissal of this case on summary judgment with directions to re-open discovery as to the responsive records that have not been produced.

DATED this 14th day of May, 2010.

  
\_\_\_\_\_  
Jeffrey R. McKee, appellant pro se  
Airway Heights Corrections Center  
PO BOX 2049 KA  
Airway Heights, Wa 99001  
(509) 244-6819

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

FILED  
COURT OF APPEALS  
10 MAY 21 PM 12:02  
STATE OF WASHINGTON  
BY Cu CLERK

JEFFREY R. MCKEE, )  
 )  
 APPELLANT, ) NO. 39713-7-II  
 )  
 v. ) DECLARATION OF JEFFREY R. MCKEE  
 )  
 )  
 WASHINGTON STATE DEPARTMENT )  
 OF CORRECTIONS, et. al., )  
 )  
 RESPONDENT(S). )  
  
STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF SPOKANE )

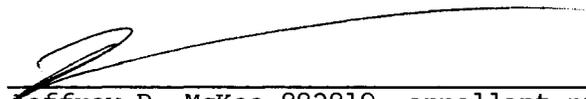
I, Jeffrey R. McKee, under penalty of perjury under the laws of Washington Satte, delcares as follows:

I am the appellant in the above named cause, proceeding pro se. On the date and in the manner indicated below, I caused the Reply Brief of Appellant to be served on:

AAG, Jean E. Meyn  
Attonrey General of Washington  
PO BOX 40116  
Olympia, Wa 98504-0116  
(Attonrey for Respondent)

By the Airway Heights Corrections Center "legal mail" system postage pre-paid (GR 3.1).

EXECUTED this 17<sup>th</sup> day of May 2010.

  
Jeffrey R. McKee 882819, appellant pro se  
Airway Heights corrections Center  
PO BOX 2049 KA  
Airway Heights, Wa 99001  
(509) 244-6819

# **APPENDICES**

4.12.2 Offender inquiries should be handled consistent with CCA procedures. Initial response to inquiries should be made within 3-5 business days.

**Section 4.13 Access to Courts.** The CCA will provide opportunity for meaningful access to federal and Washington State legal materials at the Facility in accordance with security and operating needs. Every attempt should be made by the CCA to provide WDOC Offenders in segregation and protective custody access to the law library collection established pursuant to this section providing their participation is consistent with the safety and security of the Facility. If direct access cannot be provided WDOC Offenders in segregation or protective custody, a process shall be established allowing WDOC Offenders in segregation or protective custody to request reasonable numbers of materials from a law library. The WDOC shall provide Washington State legal materials required to meet constitutional standards via computer and appropriate software. The CCA shall provide a secure and monitored location to house said computer and associated peripherals. The CCA shall provide federal law material; typewriters, including ribbons, and typing paper; notary services; copying services, including copy paper; legal size envelopes; sufficient to meet constitutional standards. Items such as paper and typewriters shall be provided and shall be available free of charge to indigent WDOC Offenders. For the purposes of this provision, indigent offender is defined as one whose trust account balance is \$10.00 or less for the entire previous month. WDOC Offenders need not be afforded access to copy machines, however, the CCA shall provide a copy of specific information, such as a page from a law book, upon request by a WDOC Offender. A common copy fee shall be set by the CCA. CCA shall provide access to law material when staff has scheduled absences, due to vacations, extended leave or training.

**Section 4.14 Offender Records and Progress Reports.**

4.14.1 Offender institutional records regarding WDOC Offenders while at the CCA shall be collected and maintained on-site by the CCA in accordance with WDOC record keeping practices and Operating Requirements governing confidentiality. Upon request, all records, reports, and documents related to WDOC offenders, including employee records, shall be made available immediately to the WDOC Contract Monitor for review. When an offender is transferred from the Facility, the record provided by the WDOC and additional information compiled while the Offender was at the Facility will be forwarded to the WDOC. The record consists of reports, timesheets, staff memos, correspondence, and other documentation relating to behavior of the WDOC Offender.

4.14.2 The CCA shall define a local level of case planning, subject to WDOC review and approval. Case planning information will be included in each WDOC Offender's progress report prepared by the CCA and submitted to WDOC once per year as designated by the WDOC onsite staff. The progress report shall include narrative sections describing the following subjects: programming; serious infraction record; medical; mental health; community support; counselor comments; recommended custody and placement changes; and offender comments. A copy shall be provided to the WDOC Offender and on-site WDOC staff. WDOC Offenders' appeals of the counselor comments/recommendations in the progress report shall be appealed to the WDOC Chief, Classification and Treatment, Office of Correctional Operation, or designee.

**Section 4.15 Transportation & Security.** The CCA will provide security for Offenders assigned to the Facility whether in the Facility or elsewhere. The CCA will provide transportation to and from medical appointments, emergency medical care, and state and federal court appearances within 75 miles of the Facility.

shall be the responsibility of the CCA and failure to comply may result in delay of payment of funds and termination of the Contract. Required reports shall be submitted to the WDOC not later than thirty (30) days following the end of each calendar quarter, or at such time as otherwise specified.

**Section 9.16 Records.** Unless otherwise provided: CCA shall compile and maintain a complete file of each WDOC offender, including all records, communications, and other written materials which pertain to the operation of offender programs or the delivery of services to offenders under this contract, including medical, counseling, classification and disciplinary documents, in individual files. Further, the CCA shall permit the WDOC to audit, inspect, and copy such files and records during the term of this contract to assure compliance with the terms hereof or to verify actual costs. Such files and records will be deemed to be the property of the WDOC and shall be available for inspection by the WDOC and shall be returned to the WDOC upon discharge of a WDOC inmate from CCA's Facility. The CCA may keep copies of said records as may be necessary to resolve any matters that may be pending. Upon resolution of the matter said copied records shall be destroyed by CCA. No files or records in which a WDOC inmate is individually identifiable by name, shall be released to any third party without express, advance authorization of WDOC, except in medical emergencies.

**9.16.1** The CCA shall maintain a complete file of all records, documents, communications and other materials which pertain to the operation of programs or the delivery of services under this Contract. Such materials shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies, services and other costs of whatever nature for which a Contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other the CCA records. The WDOC's access to records pursuant to this provision shall be limited to those documents necessary to monitor contract compliance or to verify specific costs for which CCA sought reimbursement under this contract.

**9.16.2** All such records, documents, communications and other materials shall be the property of Washington and shall be maintained by the CCA, in a central location with a designated custodian, on behalf of Washington, for a period of three (3) years from the date of final payment of this Contract, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualification: If an audit by or on behalf of the federal government has begun but is not completed at the end of the three (3) year period, the materials shall be retained until the resolution of the audit findings.

**9.16.3** The CCA shall permit the WDOC to audit and/or inspect its records during the term of this Contract and for a period of three (3) years following the termination of the Contract to assure compliance with the terms hereof or to verify actual costs.

**Section 9.17 Remedies.** In addition to other specified remedial actions, the Secretary of the WDOC or his designee may exercise the following remedial actions should he find the CCA substantially failed to satisfy or perform the duties and obligations in this Contract and has failed to cure such deficiencies in accordance with Article VIII. Substantial failure to satisfy the duties and obligations shall be defined to mean insufficient, incorrect, improper activities or inaction by the CCA of a continuing non-corrected nature, or of such a gross and blatant disregard as to require such severe action by the Secretary. These remedial actions are as follows:

**9.17.1** Reducing the per diem rate per offender per day by 10% from the monthly invoices. The reduction under this subsection shall be in addition to any other reduction to the per diem rate allowed by this Contract including, but not limited to Sections 4.01 and 4.03. The WDOC shall not exercise this remedy unless the WDOC has first exercised all other applicable remedies, with the exception of termination, and, after a reasonable period of time, the CCA has still failed to

**Section 9.06 Invalidity and Severability.** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. In the event that any provision of this Contract is held invalid, that provision shall be null and void. However, the validity of the remaining provisions of the Contract shall not be affected thereby.

**Section 9.07 Jurisdiction and Venue.** The laws of the State of Washington and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Venue for any legal action related to the performance or interpretation of this Contract shall be in the City of Olympia and County of Thurston, Washington

**Section 9.08 Scope of Agreement.** This Contract and any appendices or exhibits to it incorporate all the agreements, covenants, and understandings between the parties. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract. This Contract shall not be altered, changed, or amended except by mutual consent of the parties in writing.

**Section 9.09 Subcontracting and Assignment.** No subcontract or assignment shall be effective without the prior written consent of the WDOC.

**Section 9.10 Other Arrangements Unaffected.** The parties hereto agree that offenders transferred by the WDOC after the effective date of this Contract shall be deemed transferred to the CCA pursuant to the terms of this Contract unless specified otherwise in writing. Nothing contained in this Contract shall be construed to abrogate or impair any agreement or contract for the confinement, rehabilitation, or treatment of offenders now in effect between the parties to this Contract

**Section 9.11 Notices.** Any notice provided for in this Contract shall be in writing and served by personal delivery, designated WDOC electronic mail system, or United States Mail, postage prepaid, at the addresses listed in Section 4.02, until such time as written notice of change of address is received from either party. Any notice so mailed and any notice served by electronic mail or personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Contract.

**Section 9.12 Compliance with Applicable Laws.** The CCA shall, at all times during the performance of its obligations of this Contract, strictly adhere to all applicable federal laws and regulations, including protection of the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been or may hereafter be established which relate to this Contract, the Washington Public Disclosure Act (RCW 42.17.250 et. seq.) and the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA). The CCA acknowledges that the following laws are included: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the American with Disabilities Act, including Title II, Subtitle A, 24 U.S.C. §§12101, et seq. and all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age and handicap in federally assisted health and human services programs. This assurance is given in consideration of and for the purpose of obtaining any and all federal grants or other federal assistance.

**RECEIVED**

**NOV 13 2006**

**Prisons Administrator**

Jeffrey McKee  
WDOC 882819  
Florence Correctional Center  
P.O. Box 5900  
Florence, AZ 85232

October 31, 2006

Lyn Francis  
Public Disclosure Coordinator  
Washington State Department of Corrections  
P.O. Box 41100  
Olympia, WA 98504-1100

Re: Pending Public Records Requests

Dear Ms. Francis:

I received your letter dated 10/18/06, in which you claim that I would "need to contact the Florence Correction [sic] Center" to obtain public records. By this letter, I am respectfully requesting that you reconsider and provide the records, based on WDOC/CCA contract COC06376 §§ 4.14 and 9.12. These contract provisions require CCA to compile records and to comply with the Public Disclosure Act (PDA), respectively.

For your information, CCA officials are not and have never honored Washington State prisoners' requests for public records at the FCC. Based on your letters, it is my understanding that WDOC officials have not put a procedure in place for Washington prisoners to request and obtain public records. Further, central files are not made available here, contrary to DOC Policy Directive 280.510 (II)(C) and RCW 42.17.250 et seq (i.e. the PDA).

Thank you for addressing these issues promptly and for providing the requested records. At this point, my request would also be that you provide the records without fee, in the interest of responsible fiscal management. It will be much less expensive to waive fees in this instance than to force litigation of a PDA lawsuit. Accordingly, fee waiver will be a better use of tax-payer money.

Sincerely,



Jeffrey McKee

JRM/mgs

c Matthew G. Silva, WDOC 957176  
file

APPENDIX  
ATTACHMENT D

352

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	<p>APPLICABILITY <b>DEPARTMENT WIDE OFFENDER MANUAL</b></p>		
	<p>REVISION DATE 3/13/07</p>	<p>PAGE NUMBER 5 of 7</p>	<p>NUMBER DOC 280.510</p>
	<p>TITLE <b>PUBLIC DISCLOSURE OF RECORDS</b></p>		

- 4) Determine whether any of the records, or any part, are exempt from disclosure.
- 3. Seeking clarification, or
  - 4. Denying the request.
    - a. Documents will not be created to respond to a public disclosure request. If no such document is in existence, none will be provided.
    - b. The Department can only deny records or portions of records due to a legal exemption, using DOC 05-067 Denial of Disclosure of Public Records. All denial decisions must include the following:
      - 1) Statutory Cite(s) that allows redaction or withholding of a record in part or whole,
      - 2) Linkage verbiage stating why the cite applies to the information withheld, and
      - 3) The page numbers that indicate where redactions have been taken.
  - B. After compiling records in response to a request, Department staff will notify the requestor in writing of the exact copying charges for the requested records.
  - C. Copying charges are \$0.20 per page, plus postage reimbursement, as specified in WAC 137-08-110.
    - a. Payment should be requested in the form of a check or money order and must be received before copies are sent.
  - D. No fee will be charged for the inspection of public records or for locating the public records.
  - E. Responses may be provided in electronic format at the Department's discretion, if:
    - 1. No redactions are necessary and the documentation is currently stored electronically, and
    - 2. If electronic release is prudent given available Department resources.
  - F. With the exception of inspected documents and electronic responses, all responses to public records will be mailed to the requestor through the United

Appendix E CP 393