

FILED
COURT OF APPEALS
DIVISION II

10 APR 15 AM 9:32

STATE OF WASHINGTON

BY Ch
CLERK

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.

BRIEF OF RESPONDENT

ROBERT M. MCKENNA
Attorney General

JEAN E. MEYN, WSBA #15990
Assistant Attorney General
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. COUNTER STATEMENT OF THE ISSUES1

III. COUNTER STATEMENT OF THE CASE2

IV. ARGUMENT6

 A. Standard Of Review6

 B. Litigation Under The PRA Was Unnecessary Because
 The Department Had Made The Requested Records
 Available Prior To Mr. McKee Filing His Three Lawsuits8

 C. The Superior Court Properly Applied RCW 42.56.550(6)
 In Determining That Mr. McKee’s Claims Were Barred
 By The One Year Statute Of Limitations11

 D. The Trial Court’s Denial Of Mr. McKee’s Motion To
 Disqualify The Attorney General Is Not Properly Before
 The Court For Review19

V. CONCLUSION20

VI. CERTIFICATE OF SERVICE.....21

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	7
<i>Atchison v. Great Western Malting Co.</i> , 161 Wn.2d 372, 166 P.3d 662 (2007).....	13, 14, 15
<i>Bennett v. Dalton</i> , 120 Wn. App. 74, 84 P.2d 265 (2004).....	15
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	7
<i>Crisman v. Crisman</i> , 85 Wn. App. 15, 931 P.2d 163 (1997).....	14
<i>Dodson v. Continental Can Co.</i> , 159 Wn. 589, 294 P. 265 (1930).....	14
<i>Elliott v. Dep't of Labor and Indus.</i> , 151 Wn App 442, 213 P3d 44 (2009).....	16
<i>Hearst Corp. v. Hoppe</i> , 90 Wn.2d 123, 580 P.2d 246 (1978).....	8
<i>Huff v. Roach</i> , 125 Wn. App. 724, 106 P.3d 268 (2005).....	13, 15
<i>Janicki Logging & Construction Co. v. Schwabe, Williamson & Wyatt</i> , 109 Wn. App. 655, 37 P.3d 309 (2001).....	13, 15
<i>Jones v. Jacobsen</i> , 45 Wn.2d 265, 273 P.2d 979 (1954).....	13
<i>Livingston v. Cedeno</i> , 135 Wn. App. 976, 146 P.3d 1220 (2006), <i>affirmed</i> , 186 P.3d 1055 (2008).....	19

<i>Lujan v. National Wildlife Federation</i> , 497 U.S. 871 (1990).....	7
<i>Margetan v. Superior Chair Craft Co.</i> , 92 Wn App, 240, 963 P.2d 907 (1998).....	12
<i>Progressive Animal Welfare Soc’y v. Univ. of Wash.</i> , 125 Wn.2d 243, 884 P.2d 592 (1994) (PAWS II)	6, 18
<i>Reading Co. v. Koons</i> , 271 U.S. 58, 46 S. Ct. 405, 70 L. Ed. 835 (1926).....	13
<i>Rental Housing Association v. City of Des Moines</i> , 165 Wn2d 525, 199 P.3d 393 (2009).....	18
<i>Sappenfield v. Department</i> , 127 Wn App 83, 110 P.3d 808 (2005).....	11
<i>Spokane Research v. City Of Spokane</i> , 155 Wn.2d 89, 117 P.3d 1117 (2005).....	8
<i>Weatherbee v. Gustafson</i> , 64 Wn. App. 128, 822 P.2d 1257 (1992).....	6
<i>Young v. Key Pharmaceutical, Inc.</i> , 112 Wn.2d 216, 770 P.2d 182 (1989).....	7
<i>Yousoufian v. Sims</i> , 2010 WL 1225083 at *11 ¶ 48 (Wash. Mar. 25, 2010).....	18

Statutes

RCW 36.18.020	11
RCW 36.18.060	11
RCW 4.16.170	11
RCW 42.56 (Public Records Act).....	passim
RCW 42.56. 120	1, 8

RCW 42.56.070	1, 8, 18
RCW 42.56.080	18
RCW 42.56.100	11
RCW 42.56.520	14
RCW 42.56.550	passim

Rules

Civil Rule 3	11
Civil Rule 5	11
General Rule 3.1	12
RAP 2.2	19
RAP 2.3	19

Regulations

WAC 137-08-100	10
WAC 137-08-110	9
WAC 137-08-140(1)	15

I. INTRODUCTION

On March 2, 2007, the Washington Department of Corrections (Department) made available all the records responsive to Mr. McKee's public records requests with no claim of exemption and assessed reasonable costs for copying and shipping, pursuant to RCW 42.56.070(8) and .120. Instead of paying that cost (\$62.25) or sending a representative to inspect the requested records, Mr. McKee waited until March 4, 2008, and filed the three complaints consolidated in this appeal. The trial court granted the Department's Motion for Summary Judgment, ruling the complaints were time-barred under the Public Records Act's (PRA) one-year statute of limitations. Litigation was not necessary for Mr. McKee to obtain the public records he requested, and the order of dismissal should be upheld.

II. COUNTER STATEMENT OF THE ISSUES

A. Should a cause of action be sustained in which the public records were made available, but the requestor just chose not to pay the reasonable copying and shipping costs and instead initiated litigation to compel disclosure?

B. Did the superior court err when it dismissed Mr. McKee's Public Records Act action as time-barred under the one year statute of limitations?

III. COUNTER STATEMENT OF THE CASE

Appellant, Jeffrey R. McKee, is a prisoner who has been in the custody of the Department since July 15, 2005. Clerk's Papers (CP) 298. On March 31, 2006, he was transferred to the Eloy Detention Center in Arizona, a private facility of the Corrections Corporation of America (CCA) under contract with the Department. *Id.* On July 17, 2006, Mr. McKee was transferred to another CCA facility, the Florence Correctional Center (Florence CC) in Arizona. CP 313, lines 3-6. He was transferred back to a Washington state prison on January 3, 2007. *Id.*

Mr. McKee filed grievances against Florence CC prison staff in Arizona and subsequently made three public records requests to the Department for the Florence CC records by letters dated October 9, 2006.¹ Each letter was almost identical except for the grievance number. CP 340, 344, 346; *see also* Appendix A. These three requests ultimately were the basis of Mr. McKee's three superior court complaints. CP 421-41, 586-606, 613-33. Within two days of receiving the requests, Lyn Francis, a Department Public Disclosure Coordinator, responded to all three letters by referring Mr. McKee to Florence CC because the records he requested were located at Florence CC in Arizona and none at the Department. CP 348; *see also* Appendix B.

¹ The letters were received in the Public Disclosure Unit on October 16, 2006. CP 340, 344, 346.

The contract between the Department and CCA distinguishes procedures for grievances against the Florence CC (a CCA facility) and its staff from other contract provisions by providing they be processed under CCA procedures, not Department procedures. CP 527, § 4.12.1. Likewise, the Washington State Department offenders were to use the CCA procedures. *Id.* In addition, the specific grievance records would remain at the Arizona prison and only a monthly summary was required to be transmitted to the Department. CP 527-28, § 4.12.2.

During the same time period, the Department was providing records responsive to Mr. McKee's other public records requests, including those regarding other types of records relating to his incarceration at Florence CC. For example, in a letter dated November 14, 2006, Lyn Francis, indicated that she would provide responsive records regarding a decision made by the Department counselor on site at Florence CC, a letter Mr. McKee sent to a Department Superintendent in Washington and to Governor Gregoire, and an infraction hearing² at Florence CC. CP 354-55; *see also* Appendix C.

By January 25, 2007, because Mr. McKee appeared to be having difficulty obtaining the records maintained by Florence CC, the same Public Disclosure Coordinator offered to act as a liaison with Florence CC

² If an infraction resulted in a loss of good time, the Department would use that information in adjusting the calculation of his release date.

to help him obtain the Florence CC records. CP 360-61; *see also* Appendix D. On February 12, 2007³, the Department received a letter from Mr. McKee with payment of \$32.75 for five records from prior public disclosure requests and the following response to the January 25, 2007, Department letter:

. . . yes I do wish to receive (sic) all previous requests for public records relayed to the Florence Correction Center (FCC). Do to the untimeliness (sic) of the response to the previous requests I request you waive the copy and postage fees.

CP 363; *see also* Appendix E. The Department then worked to obtain the requested records from Florence CC.

On March 2, 2007, the Department made all records available that were responsive to the three grievance requests. CP 365-66; *see also* Appendix F. By letter dated March 2, 2007, the Department responded to numerous requests by Mr. McKee, listing these three as one item, the seventh in a list designated by bullets. *Id.* Most of the requests had responsive records and the Department informed Mr. McKee that copying and shipping costs for the 291 pages was \$62.25. *Id.*

In March, Mr. McKee sent the Department two letters in response to the Department's letter of March 2, 2007. In a letter dated March 7, 2007, he stated that he wanted only some of the records produced on

³ The letter is dated February 1, 2007.

March 2, which did not include the three grievances at issue in this appeal. CP 368. By this letter, he asked the Department to “adjust the cost” accordingly; and, the Department complied by letter dated March 28, 2007, informing Mr. McKee that the adjusted total of 51 pages plus shipping costs was \$12.27. *Id.*, CP 370; *see also* Appendix G.

The second letter responding to the Department’s March 2, 2007 letter was dated March 30, 2007. CP 372. In this letter, he asked that the records be sent “free of charg (sic) to avoide (sic) a costly PDA law suite (sic)” or that the Department let him know the cost for each separate request. *Id.* The Department responded by letter dated April 3, 2007, that it would not waive the costs for copies and shipping. CP 374; *see also* Appendix H.

A year later, on March 2, 2008, Mr. McKee signed the three separate superior court complaints.⁴ CP 422, 587, 614. Each one was identical except for the grievance number. *Id.* The earliest date that Mr. McKee could have placed the complaints into the legal mail system at Stafford Creek Corrections Center was March 4, 2008. CP 397-98 and 405; *see also* CP 554 ¶ 4.10. All three complaints were accepted and filed by the Clerk of Thurston County Superior Court on March 12 and 13, 2008. CP 421, 586, 613.

⁴ Thurston County Superior Court Cause Nos 08-2-00527-2, 08-2-00528-1, and 08-2-00529-9, were consolidated under No. 08-2-00527-2. CP 450.

Following a hearing on June 16, 2009, Thurston County Superior Court dismissed the consolidated complaints under No. 08-2-00527-2, as time-barred by the statute of limitations. CP 583-84. In the same Order, the court granted Defendant's Motion for Summary Judgment, denied Defendant's Motion for Sanctions, and denied Plaintiff's Cross-Motion for Summary Judgment. *Id.* Mr. McKee filed a timely notice of appeal of the Order.

IV. ARGUMENT

A. Standard Of Review

Judicial review of all agency actions under the PRA is de novo. RCW 42.56.550(3). De novo review is also appropriate in cases decided by summary judgment in the trial court. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994) (PAWS II). If material facts are in dispute, the appropriate remedy for an appellate court is a remand. *Id.*

A motion for summary judgment should be granted where "there is no genuine issue of material fact or if reasonable minds could reach only one conclusion on that issue based upon the evidence in the light most favorable to the nonmoving party." *Weatherbee v. Gustafson*, 64 Wn. App. 128, 131, 822 P.2d 1257 (1992) (citing *Sea-Pac Co. v. United Food & Comm'l Workers Local Union 44*, 103 Wn.2d 800, 802, 699 P.2d 217

(1985)); *see* CR 56. As the moving party, defendants bear the initial burden, however, a “moving defendant may meet the initial burden by ‘showing’ . . . that there is an absence of evidence to support the nonmoving party’s case.” *Young v. Key Pharmaceutical, Inc.*, 112 Wn.2d 216, 225 n.1, 770 P.2d 182 (1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)) (internal quotation marks omitted).

To determine if summary judgment is appropriate, the court must consider whether a particular fact is material and whether there is a genuine dispute as to that fact left to be resolved. These considerations must be made in light of the appropriate standard of proof. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Factual disputes that do not affect the outcome of the suit under governing law will not be considered. *Id.* Where there is a complete failure of proof concerning an essential element of the non-moving party’s case, all other facts are rendered immaterial, and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *see also Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990) (holding that failure to “make a sufficient showing of an essential element” of one’s case requires dismissal).

B. Litigation Under The PRA Was Unnecessary Because The Department Had Made The Requested Records Available Prior To Mr. McKee Filing His Three Lawsuits

The PRA “is a strongly worded mandate for broad disclosure of public records.” *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). To support that mandate, the PRA provides two grounds for obtaining judicial review: (1) a motion for an order to show cause why the agency denied the requestor an opportunity to inspect or refused to make copies of responsive records, RCW 42.56.550(1); and (2) a motion for an order to show cause why the agency has made “a reasonable estimate of the time that the agency requires to respond to a public records request,” RCW 42.56.550(2).⁵ The legislature’s specific focus on the reason for delay and the basis for denying public records shows the purpose of a judicial remedy is to compel timely disclosure of public records that have not been disclosed; the PRA does not provide for actions where, as here, records already have been made available to the requester as required under the PRA.

On March 2, 2007, the Department made Mr. McKee’s records available with no denial or claim of exemption. CP 365-66; *see also* Appendix F. As authorized in RCW 42.56.070(8) and .120, the

⁵ A litigant is not limited to motions to show cause in an action to obtain judicial review under the PRA; once filed, a PRA action may proceed as a normal civil action. *Spokane Research v. City Of Spokane*, 155 Wn.2d 89, 105, 117 P.3d 1117 (2005).

Department assessed a cost of \$62.25 for these three records requests, along with several other requests of Mr. McKee's. *See* Appendix F; *see also* WAC 137-08-110. From that date forward, the Department stood ready to provide the copies of the requested records once it received payment for the cost of doing so. Indeed, in September 2008 - six months after he had filed his lawsuits - when Mr. McKee finally did pay for the records, it was for the very records that the Department had made available to him on March 2, 2007.⁶ CP 176 ¶ 9. Those were the records he requested, those were the records that were timely made available to him, and those were the records he finally paid for and received.

The Department acted within its statutory authority, and consistent with agency policy, when it had declined Mr. McKee's prior request to waive the costs of providing the requested copies. When Mr. McKee asked for a subset of the records, stating that he no longer needed all the requested records, the Department accommodated him by providing the cost for the identified subset (\$12.27). CP 370. These were included in

⁶ In January 2008, the Department had assigned a public disclosure specialist, Cynthia Hood, to coordinate Mr. McKee's pending and future public disclosure requests. CP 183; *see also* CP 540. She sent him a letter on January 25, 2008, outlining all of his requests for which the Department had made records available. CP 183-86. It was not until June 23, 2008, that Mr. McKee inquired of the cost of the records and Ms. Hood responded the next day with the costs of \$97.65. CP 189, 191. On September 5, 2008, the Department received Mr. McKee's payment for numerous public records previously made available. CP 195, 198-99. On September 9, 2008, Ms. Hood placed the records in the mail to Mr. McKee. CP 195-96; and, on September 11, 2008, she sent a clarifying letter. *See* Appendices I and J.

the records he put off paying for from March 2, 2007 until September 5, 2008.

On March 4, 2008, Mr. McKee filed three lawsuits alleging that the Department had denied his public records requests because it would not itemize the costs for the several requests produced on March 2, 2007. See Appendix F. On that basis, he refused to pay \$62.25 for his records and chose to commence litigation.⁷ There is no legal authority for his use of nonpayment as a basis for a cause of action under the PRA.

Not only did Mr. McKee refuse to pay the reasonable costs allowed by the PRA, but he also did not ask if a representative could inspect the 291 pages of responsive records. If he truly wanted to prioritize which records to pay for from the multiple requests, he could have pursued this option under the PRA. While the rules of the Department do not permit an inmate to inspect the responsive records, they do provide for a representative to inspect on the inmate's behalf. WAC 137-08-100. This procedure was upheld in *Sappenfield v. Department* when an inmate contested the restriction as

⁷ Beginning in October 2006, it appears that Mr. McKee was more interested in manufacturing pitfalls and traps for the Department to obtain penalties under the PRA than he was in obtaining particular records. He filed separate requests for essentially the same records. Within a few weeks he was already threatening lawsuits if the records were not provided free. CP 352. Having filed separate requests, he then claimed separate penalty calculations for each request (demanding \$100 per day for each of the three requests). CP 32, lines 10 and 25. He then claimed a separate violation for the Department's failure to allow him to purchase records individually (for which he also demands \$100 per day for each of the three requests). *Id.*, lines. 20-25. He demands a total penalty in excess of \$311,000.

contrary to the Department him providing him the “fullest assistance.” 127 Wn App 83, 87-90, 110 P.3d 808 (2005); RCW 42.56.100, formerly RCW 42.17.290. In its decision to uphold the dismissal of the complaint, the court held that, in the absence of his request, the Department was not obligated to offer Mr. Sappenfield the option of inspection by a representative. *Id* at 89.

On March 2, 2007, the Department met its PRA obligation to produce the requested public records. Mr. McKee’s refusal to pay \$62.25 for copying and shipping of the records, or to send a representative to inspect, does not create a violation of the PRA by the Department and should be dismissed.

C. The Superior Court Properly Applied RCW 42.56.550(6) In Determining That Mr. McKee’s Claims Were Barred By The One Year Statute Of Limitations

Civil Rule (CR) 3(a) states that an action shall not be deemed commenced for tolling any statute of limitations except as provided by RCW 4.16.170, which provides that the action is deemed commenced when the complaint is filed or summons is served, whichever comes first. The complaint must be filed with the clerk of the court who may refuse to accept a filing if it is inconsistent with the rules of practice. CR 5(e). The court rule matches the Clerk’s statutory duties. RCW 36.18.020(2)(b); RCW 36.18.060. Reasons for refusal include not providing the filing fee

or the absence of an approved waiver of the filing fee.⁸ *Margetan v. Superior Chair Craft Co.*, 92 Wn App, 240, 246, 963 P.2d 907, 910 (1998).

The PRA requires plaintiffs to file any action within one year of the date of an agency's "claim of exemption or last production of a record on a partial or installment basis." RCW 42.56.550(6). As a statute of limitations, RCW 42.56.550(6) acts to eliminate a plaintiff's right to maintain a cause of action, as it relates to specific records requests, beyond the time period specified within the statute.

In this case it is undisputed that Mr. McKee filed his public records complaints through the legal mail system on March 4, 2008, and served the complaints on April 23, 2008; thus the action is deemed commenced and the statute of limitations tolled as of March 4, 2008. *See* CP 397-98, 405, 554 ¶ 4.10, 442-43, 607-08, and 634-35. Without the benefit of General Rule (GR) 3.1, the 'mailbox rule' for inmates, the complaints would have been considered filed on March 12 and 13, 2008, when the Clerk accepted them for filing, following the court's waiver of the filing

⁸ In the trial court, Mr. McKee argued that the statute of limitations was tolled when he attempted to file one or more of the complaints in October, 2007, but blamed the Clerk and the Court. CP 28, lines 9-14. On October 19, 2007, Judge Tabor refused to waive the filing fee, ordering as follows: "[t]he court finds the facts set forth in the 'Public Records Complaint' are not sufficient to support this matter being filed by the petitioner in forma pauperis." CP 161. This argument has no authority to support it and is contradicted by *Margetan*.

fees.⁹ CP 421, 586, 613. Thurston County Superior Court granted the Department's Motion for Summary Judgment, thereby finding that Mr. McKee had initiated his actions one day after the one year statute of limitations, which had ended on March 3, 2008.¹⁰ CP 583-85.

Washington courts have long held that statutes of limitations begin to run against a cause of action on the date the plaintiff first becomes entitled to seek relief in the courts. *E.g.*, *Jones v. Jacobsen*, 45 Wn.2d 265, 269, 273 P.2d 979 (1954); *Huff v. Roach*, 125 Wn. App. 724, 729, 106 P.3d 268 (2005). Both the United States Supreme Court and the Washington Supreme Court recognize that statutes of limitations are intended to provide finality. *Reading Co. v. Koons*, 271 U.S. 58, 63, 46 S. Ct. 405, 70 L. Ed. 835 (1926); *Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 382, 166 P.3d 662 (2007). *See also Janicki Logging & Construction Co. v. Schwabe, Williamson & Wyatt*, 109 Wn. App. 655, 662, 37 P.3d 309 (2001). The "obvious" purpose of such statutes is to set

⁹ In 2006, General Rule 3.1 was adopted to address the timing of filing and service of court papers by inmates confined in institutions. 15A Washington Practice, Ch. 2, § 60.5. The rule provides that if an inmate files a document in any proceeding, it is deemed timely filed if deposited in the institution's internal mail system within the time permitted for filing. GR 3.1(a). The rule is modeled on the federal mailbox rule adopted by the United States Supreme Court and subsequently codified at Fed. R. App. P. 4(c). *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379, 2380, 101 L. Ed. 2d 245, 266 (1988). The rule was adopted following the state Supreme Court analysis that Washington did not have a mailbox rule like the federal one. *In re Carlstad*, 150 Wn. 2d 583, 592-93, 80 P. 3d 587, 594 (2003). Consequently, the filing date for Mr. McKee's complaints is March 4, 2008 and not March 12 or 13, 2008.

¹⁰ Since March 2, 2008, falls on a Sunday, according to CR 6, the last day is Monday, March 3, 2008.

a definite limitation upon the time available to bring an action, without consideration of the otherwise underlying merit. *Dodson v. Continental Can Co.*, 159 Wn. 589, 596, 294 P. 265 (1930) (quoting *Reading Co.*, 271 U.S. 58); *see also Atchison*, 161 Wn.2d at 382. Statutes of limitations exist “to shield defendants and the judicial system from stale claims;” plaintiffs are not permitted to “sleep on their rights” because of the risk that “evidence may be lost and witnesses’ memories may fade.” *Crisman v. Crisman*, 85 Wn. App. 15, 19, 931 P.2d 163 (1997).

As demonstrated in the prior sections of this response, Mr. McKee remained dormant in any pursuit of his rights for judicial review, attempting to stretch his filing deadline out as far as possible to increase his financial gain from possible penalties. Unfortunately for him, he waited too long.

The statute of limitations began to run on March 2, 2007, when the Department notified Mr. McKee that the records were available upon payment of the copying charge. The Department met its obligation under the PRA when it made *all* the records available on March 2, 2007.

Mr. McKee attempts to characterize one of his letters as an agency appeal under RCW 42.56.520. Appellant’s Opening Brief, pp 16-19. The March 30, 2007 letter to which he refers is addressed to Lyn Francis, Public Disclosure Coordinator; in it, he complains about Rose Marquis’

March 2, 2007 letter and asks for the records to “be sent free of charg (sic) to avoide (sic) a costly PDA law suite (sic).” CP 374. Ms. Marquis did not deny him the records on March 2, 2007, rather she made them available to him.¹¹ Consequently, Mr. McKee had no denial of records to appeal.

Statutes of limitations are strictly applied, and courts are reluctant to find an exception unless one is clearly articulated by the legislature. *E.g., Huff v. Roach*, 125 Wn. App. at 732; *Bennett v. Dalton*, 120 Wn. App. 74, 85-86, 84 P.2d 265 (2004); *Janicki*, 109 Wn. App. at 662. Washington courts have also consistently rejected interpretations that would allow a party to manipulate the date an action accrues or the tolling of a statute of limitations. *E.g., Atchison*, 161 Wn.2d at 381-82 (choice of personal representative should not be allowed to govern accrual of wrongful death action); *Huff*, 125 Wn. App. at 732 (rejecting an interpretation that would allow manipulation of accrual of legal malpractice claims). This is

¹¹ Even if the records had been denied, at no time did Mr. McKee follow procedures to pursue an agency appeal; instead, he is making this up during litigation. He cites the correct Department rule and then ignores it. Appellant’s Opening Brief, p 18. WAC 137-08-140(1) provides as follows: “If the person requesting disclosure disagrees with the decision of a public disclosure coordinator denying disclosure of a public record, such person may petition the department’s public disclosure officer for review of the decision denying disclosure. The form used by the public disclosure coordinator to deny disclosure of a public record shall clearly indicate this right of review.” Unlike the denial form provided by Ms. Hood with the denial of two pages on September 9, 2008, he was never provided a denial form by Ms. Francis and never submitted an appeal to the Public Disclosure Manager, Denise Vaughn, as required by the rule. *Cf* Appendices F and I.

particularly true in cases governed by explicit statutory directives such as the PRA and not by the common law. *See Elliott v. Dep't of Labor and Indus.*, 151 Wn App 442, 447, 213 P3d 44 (2009) (declining to apply the discovery rule to modify the accrual date of an industrial insurance claim where the plain language of the statute specified that a claim had to be brought within one year of the injury/accident).

Mr. McKee's attempt to manipulate the tolling of the statute of limitations lies not only in his profit motive, but in his argument that the tolling occurred six months after he filed his Complaints. *See* Appellant's Opening Brief, pp 19-20. Fifteen months after the Department had made the copies available to him, Mr. McKee decided to pay for them. On September 5, 2008, the Department received payment from Mr. McKee for records previously made available to him, including those at issue in this appeal. CP 216 ¶ 7 and 233; *see also* CP 229 ¶ 2 and CP 231. While he is correct in asserting that two pages were withheld under a statutory exemption, he misrepresents that the withheld pages related to his requests at issue in this appeal. Indeed, on September 11, 2008, the Department made it clear that none of the records responsive to his three October 9, 2006, requests had been withheld as exempt.¹² CP 198-99; *see also*

¹² In her letter of September 9, 2008, Ms. Hood erred in referring to the records made available on March 2, 2007, as related to Public Disclosure Unit (PDU)-1194. The March 2, 2007 response letter did not have a PDU number assigned to it.

Appendix J. CP 238; *see also* CP 224. Ms. Hood clarified that the *non-exempt* records copied and mailed to him included the Florence CC grievance records: “[d]ocuments related to the denial of grievances 06-0479W, 06-500W, and 06-1501W.” *Id.*; *see also* CP 422, 587, 614. Hence, his misrepresentation is contradicted by the record and should be disregarded.¹³

His argument, however, does demonstrate a type of manipulation of the finality of the statute of limitations. Basically, Mr. McKee is putting forth an argument that, after the Department makes records available to him, he can extend the tolling of the statute of limitations at his sole discretion by refusing to pay for the records and refusing to send a representative to inspect the records.

In the same vein, after he waited fifteen months to pay for the previously produced records, he argued “silent withholding”: that the Department did not produce all the Florence CC records responsive to his October 9, 2006 requests. As a matter of law, this argument should not be considered since the statute of limitations tolled on March 4, 2008. That

¹³ In the trial court, Mr. McKee argued that the statute of limitations did not accrue until September 2008, since that was the last production. CP 28 ¶ 2.b. This argument also fails; the records he paid for and received in September 2008, were the very same records that were made available on March 2, 2007 – his decision to pay for them fifteen months later did not change the date of accrual for statute of limitation. This trial court argument demonstrates yet one more way the Mr. McKee is attempting to manipulate the statute of limitations.

decision would also be consistent with the primary tenets of finality and fairness to defendants under the law on statutes of limitations. However, if the Court should find merit in this argument, remand would be the proper remedy since the trial court ruled on summary judgment and the Department disputed the material facts. *Supra at PAWS II*; CP 171, lines 2-3 and CP 172, lines 3-4. Similarly, if the Court of Appeals believes there was a PRA violation, the calculation of penalties also should be left to the sound discretion of the trial court. *See Yousoufian v. Sims*, 2010 WL 1225083 at *11 ¶ 48 (Wash. Mar. 25, 2010).

In this case, the Department made records available under the PRA on March 2, 2007, in accordance with RCW 42.56.070(1) and RCW 42.56.080.¹⁴ CP 365-66. The date for calculating when the statute of limitations began to run was when the documents were made available for inspection and copying. At that time, the Department had discharged its

¹⁴ It is the Department's position that the proper date for calculating when the statute of limitations begins to run is when a requestor is notified that documents are available, as determined by the date of the notice or letter. Mr. McKee agrees that this was the ruling of the trial court. *McKee's Appellant brief at 15, paragraph 1*. At such time, the agency has discharged its obligation to make records available for inspection and copying under RCWs 42.56.070(1) and .080, and it is then up to the requestor to arrange for payment of the records or to schedule at time for inspection. An agency does not control when or even if a requestor arranges to inspect or pay for and take copies of records that have been produced. Using the date of the notice is consistent with the strong principle of finality behind statutes of limitations as it is a date certain. While the Supreme Court has only interpreted the PRA statute of limitations in relation to a claim of exemption, the court referenced the date of the letter containing the claim of exemption as the "trigger" for the one-year statute of limitations under RCW 42.56.550(6). *Rental Housing Association v. City of Des Moines*, 165 Wn2d 525, 541, 199 P.3d 393 (2009).

obligation under the PRA, and it was then up to Mr. McKee to arrange payment and take the records or to schedule a time for inspection by a representative. He did neither. The Department's obligation under the PRA is to make records available and not to guarantee actual receipt or inspection. *Livingston v. Cedeno*, 135 Wn. App. 976, 980-81, 146 P.3d 1220 (2006), *affirmed*, 186 P.3d 1055 (2008). The trial court's dismissal of the claims as time barred by the statute of limitations should be upheld.

D. The Trial Court's Denial Of Mr. McKee's Motion To Disqualify The Attorney General Is Not Properly Before The Court For Review

The trial court's rulings on the Motion to Disqualify Attorney General/Assistant Attorney General and the Motion for Reconsideration to Disqualify Attorney General/Assistant Attorney General are not reviewable under RAP 2.2. Mr. McKee has not attempted to make any showing that would justify discretionary review under RAP 2.3. Moreover, Mr. McKee is advancing a wasteful and frivolous contention that he has raised unsuccessfully in at least nine PRA cases so far - that the Attorney General must be removed as counsel for any state agency. CP 558-59. His motion has been denied in each of those cases, and one court has even taken steps to limit his "recreational litigation."¹⁵ This Court

¹⁵ Mr. McKee appears undaunted by repeatedly losing the motion (as did his fellow inmate and Declarant, Mathew Silva, in four cases) or by being sanctioned over \$2,000 in Grays Harbor Superior Court in February, 2009. CP 560-61, 571, 573. Grays

therefore should decline to review those rulings of the trial court in this case.

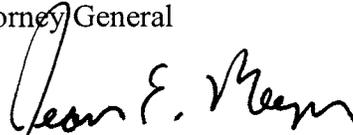
If the Court should consider review, the Department urges that it uphold the ruling of Thurston County Superior Court Judge Hirsch.

V. CONCLUSION

For the foregoing reasons, the trial court's dismissal of Mr. McKee's three public records complaints should be upheld.

RESPECTFULLY SUBMITTED this 14th day of April, 2010.

ROBERT M. MCKENNA
Attorney General



JEAN E. MEYN, WSBA #15990
Assistant Attorney General
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445

Harbor Superior Court also issued orders barring Mr. McKee from filing any matters unless he had the permission of the court, as follows: "Plaintiff, Jeffrey R. McKee is abusing the process of Grays Harbor County Superior Court. Mr. McKee is engaging in 'recreational litigation' for the purposes of his own entertainment and amusement. His litigation activities are frivolous and abusive and abuse the resources of this Court, impacting other litigants who have good-faith litigation pending." CP 576 and 578.

VI. CERTIFICATE OF SERVICE

I certify that on the date below I served a copy of the foregoing document on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

FILED
COURT OF APPEALS
10 APR 15 AM 9:33
STATE OF WASHINGTON
BY [Signature]
CLERK

TO:

JEFFREY R MCKEE, DOC #882819
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049
AIRWAY HEIGHTS WA 99001-2049

EXECUTED this 14th day of April, 2010, at Olympia,
Washington.

[Signature]
JUDY LONBORG
Legal Assistant

APPENDICES

APPENDIX A

HQPO47

Jeffrey R McKee 882819
FLORENCE CORRECTION CENTER
PO. BOX 6900
FLORENCE AZ 85232

OCTOBER 9, 2006

WASHINGTON STATE D.O.C.
PO. BOX 41100
OLYMPIA, WA 98504

RECEIVED
OCT 16 2006
Public Disclosure Unit

RECEIVED
OCT 17 2006

Prisons Administrator

Re: PUBLIC RECORDS CLERK

By this letter, I AM REQUESTING ANY AND ALL RECORDS THAT WERE CONSIDERED BY AUDREY RODRIGUEZ GRIEVANCE COORDINATOR, WARDEN S. ROGERS ANY CCA/FCC STAFF AND OR WASHINGTON DOC PERSONNEL IN THEIR DECISION OF GRIEVANCE NO. 06-0479W TO RENDER THEIR DECISION INCLUDING BUT NOT LIMITED TO INVESTIGATIONS, e-MAILS, NOTES, RECORDS, VIDEOS, ACTS OR OMISSIONS.

Thank you FOR RESPONDING WITHIN THE TERMS AND TIME FRAMES OF THE PUBLIC DISCLOSURE ACT.

Sincerely
Jeff McKee
Jeffrey McKee

APPENDIX A

CP 340

HQP047

Jeffrey R. McKee 882819
FLORENCE CORRECTION CENTER
PO BOX 6900
FLORENCE AZ 85232

OCTOBER 9, 2006

WASHINGTON STATE DOC
PO BOX 41100
OLYMPIA, WA 98504

Re: PUBLIC RECORDS CLERK:

RECEIVED

OCT 16 2006

Public Disclosure Unit

RECEIVED

OCT 17 2006

Prisons Administrator

By This Letter, I AM REQUESTING ANY AND ALL RECORDS THAT WERE CONSIDERED BY AUDREY RODRIGUEZ GRIEVANCE COORDINATOR, WARDEN S. RODGERS AND ANY C.C.A/FCC STAFF AND/OR DOC PERSONNEL IN MY GRIEVANCE NO. 06-0501W TO RENDER THEIR DECISION INCLUDING BUT NOT LIMITED TO INVESTIGATIONS, E-MAILS, NOTES, RECORDS, VIDEOS, ACTS OR OMISSIONS.

THANK YOU FOR RESPONDING WITHIN THE TERMS AND TIMEFRAMES OF THE PUBLIC DISCLOSURE ACT.

Sincerely
Jeff McKee

Jeffrey McKee

HQP047

Jeffrey R. McKee 882819
FLORENCE CORRECTION CENTER
PO. BOX 6900
FLORENCE AZ 85232

OCTOBER 9, 2006

RECEIVED

OCT 16 2006

Public Disclosure Unit

WASHINGTON STATE DOC
PO. BOX 41100
OLYMPIA, WA 98504

RECEIVED

OCT 17 2006

Prisons Administrator

Re: PUBLIC RECORDS CLERK:

By This Letter, I Am Requesting Any And All Records That Were Considered By Audrey Rodriguez Grievance coordinator, Warden S. ROGERS AND ANY CCA/FCC STAFF AND/OR DOC PERSONNEL IN THEIR DECISION OF Grievance NO. 06-0500W TO RENDER THEIR DECISION INCLUDING BUT NOT LIMITED TO EMAILS, NOTES, COMMUNICATIONS, VIDEO, ACTS OR OMISSIONS

Thank you FOR RESPONDING WITHIN THE TERMS AND TIMEFRAMES OF THE PUBLIC DISCLOSURE ACT.

Sincerely



Jeffrey McKee

APPENDIX B



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

stand ✓

October 18, 2006

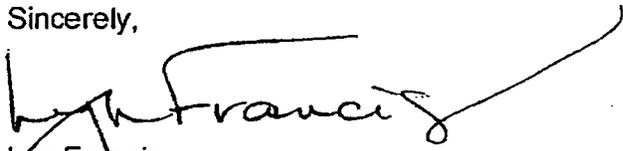
Mr. Jeffrey McKee, DOC #882819
Florence Correction Center
PO Box 6900
Florence, AZ 85232

Dear Mr. McKee:

I am in receipt of your three letters dated October 9, 2006, where you request records relating to grievance numbers 06-0479W, 06-0500W, and 06-0501W. The Washington State Department of Corrections does not have grievance numbers like the three you have listed, thus, it appears you are requesting Florence Correction Center grievance information. If this is the case, you will need to contact Florence Correction Center, as we do not have access to any of their grievance records.

If you are requesting Washington State Department of Corrections grievance information, please provide me with the numbers and/or subject of those grievances. Our grievance numbering system begins with two digits, representing the year the grievance was filed in, followed by five digits. For example, if you filed a grievance in 2006, the number would be 06-XXXXX.

Sincerely,



Lyn Francis
Public Disclosure Coordinator

"Working Together for SAFE Communities"



APPENDIX B

CP 348

APPENDIX C



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 - Olympia, Washington 98504-1100

November 14, 2006

Mr. Jeffrey McKee, DOC #882819
Florence Correction Center
PO Box 6900
Florence, AZ 85232

Dear Mr. McKee:

I have received the seven letters you recently mailed to me. I will address each one in this response.

Regarding both your November 2 letters where in one you request, "...every and all documents including E-mails, notes, letters, tapes/videos and any thing that Washington Contract Manager J.C. Miller used to make his decision to approve the grievance restriction placed on myself dated October 11, 2006 here at the Florence Correction Center" and in the other letter, "...all and every document including E-mails, notes, verbal conversations, tapes and/or video leading to the decision by Washington Contract Manager J. C Miller to approve the grievance restriction placed on myself dated October 11, 2006 here at the Florence Correction Center." It is my understanding that Mr. Miller spoke with you regarding this question since your request. In addition, there is one page available that pertains to this request. The Department charges twenty cents a copy, plus postage. Charges for this document would be \$0.20, plus \$0.39 postage, for a total fee of \$0.59. Upon receipt of payment in the form of check or money order made payable to the Department of Corrections in the amount of \$0.59, I will forward the requested document to you. If you choose not to pursue this public disclosure request within thirty (30) days, this request will be closed.

Your November 1 letter states in part, "I am unclear as to who has jurisdiction over me?...I have ben haveing problems with retaliation here for filing grievances. I have problems getting responses to requests i have sent to FCC staff and departments. How can i go about getting the information i have requested to solve these issues?" Please contact your counselor for answers to these questions.

In one of your November 6 letters you request, "...all the documents/records including E-mail, notes, audio/video tapes that was used in the determination by Audray Rodriguez and acting Warden Sam Rogers in the emergancy grievance i filed for the return of my legal documents on October 11, 2006 here at the Florence Correction Center. The original public disclosure request was mailed on October 18, 2006 but was never responded to." I am assuming you are referring to what sounds like a similar request i did receive from you dated October 18, 2006, where you requested, "...any and all records including the tape recorded statement of Jeffrey McKee #882819 on October 17, 2006 from 12:23 PM to 1:31
"Working Together for SAFE Communities"

Mr. Jeffrey McKee
November 14, 2006
Page 2

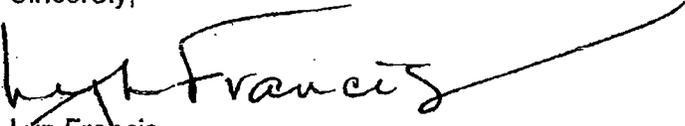
PM in front of segregation unit BA201 recorded by C/O Robinson and C/O Polipo, and all records obtained in the emergency grievance for the return of my legal documents from Ms. Vardugo..." The response I sent you dated October 27, 2006 for that public disclosure request is the same for this November 6 request; you will need to contact the Florence Correction Center for this request.

To respond to your second November 6 letter where you state, "By this letter I am again requesting the documents including E-mail, notes, witness statements, and audio/video that was presented at my infraction hearing #7761-06W conducted on 9/23/06 at 7:50 pm by Captin Willey and the appel that was denied by Acting Warden Sam Rogers here at the Florence Correction Center. This request was originaly sent on October 15, 2006 but was never responded to." I have not previously received a request from you for documents relative to your infraction hearing #7761-06W, thus, I will treat this as a new request. I will need an additional five (5) business days to gather responsive documents; you can expect me to respond to this request with additional information on or before November 21, 2006.

In regards to your November 8 letter where you request, "...all and any records documentation...relating to the grievance complaint letter I mailed to James Thatcher Wa. D.O.C superintendent and Governor Christine Gregoir from the Florence Correction Center on October 10, 2006." This is a new public disclosure request. I will need an additional five (5) business days to gather responsive documents; you can expect me to respond to this request with additional information on or before November 21, 2006

In closing, to address your October 31 letter, thank you for expressing your concerns. You state you are, "...respectfully requesting that you reconsider and provide the records..." I interpret this statement to be in regards to your previous five public disclosure requests, three dated October 9, one dated October 18, and one dated October 26, where you requested records related to your FCC/CCA grievance numbers 06-0501W, 06-0479W, 06-0500W, and records related to the emergency grievance for the return of your legal documents. My original responses to you still stand; I do not have the records to provide; you must get the grievance records you have requested from the Florence Correction Center. My responses to your previous public disclosure requests have been provided to you within the Public Disclosure Act timeframes, therefore, there will be no waiver of any fees, of which you requested in this letter. You state there isn't a procedure to request public records there, however, there is a procedure for prisoners to request and obtain public records. To address your concern that central files are not made available there, you will find that they are. I trust you will find your counselor to be extremely helpful in assisting with public disclosure questions and any other questions you may have.

Sincerely,


Lyn Francis
Public Disclosure Coordinator

APPENDIX D



WASHINGTON
DEPARTMENT OF
CORRECTIONS
1000 Washington 98504-1100

Due
~~Feb 3~~ / Jan
2/5 / 15 mins
Feb 15
min

Jan
1/2 hr

January 25, 2007

2/8

M
W
P
E

30 min

2819
Center, E110

2/26

15 min

3/21
30 min

...
received a
response yet.
2/8/07

Dear Mr. McKee:

Upon further investigation, it has been confirmed nal Center does not have specifically designated staff who handle public disclosure requests, therefore, I am willing to act as liaison to obtain FCC documents for you, and provide them to you. According to my records, you have previously requested the following FCC documents:

- Copies of Correction Corporation of America/Florence Correction Center's policy numbers 18-100, 16-1, 15-1, 14-4, 14-3, 14-6, 16-100, 16-1, 2-5, 15-2 and 10-100.
- Documents related to legal documents that were withheld by Law Librarian Nita Luna and shown to Case Manager JC Miller at the Florence Correction Center.
- Records that were considered by Captain Willey, Acting Warden S. Rogers and Infraction Review Officer Audray Rodriguez in the infraction hearing and appeal of 7761-06W.
- Documents, including the original grievance you handed to C/M Gary Howerton on August 4, 2006 for the 18-day delay in delivering your legal mail to you.
- Documents pertaining to the grievance you filed for Audray Rodriguez' violation of policy 14-5.4 handed to C/M Walker on October 26, 2006, at FCC.
- The computer printout from the Florence Correction Center concerning the dates, times and status of all grievances you have filed at FCC from July 17, 2006 to the present (dated November 10, 2006).

"Working Together for SAFE Communities"

APPENDIX D

CP 360



Mr. Jeffrey McKee, DOC #882819

January 25, 2007

Page 2

- Documents related to the decision to deny grievances Y06-0479W, 06-0500W and 06-0501W by Grievance Coordinator Audray Rodriguez and Acting Warden Sam Rogers at FCC.
- Documents related to the decision and appeal of your emergency grievance for the return of your legal documents, handed to C/O Garcia on 10/11/06 at 8:30 AM in the segregation unit of FCC.
- Documents that were used in the determination by Audray Rodriguez and Acting Warden Sam Rogers in the emergency grievance you filed for the return of your legal documents on October 11, 2006, at FCC.
- Documents, including the tape recorded statement of Jeffrey McKee on October 17, 2006, from 12:23 PM to 1:31 PM in front of segregation unit BA201 recorded by C/O Robinson and C/O Polipo, related to the emergency grievance for the return of your legal documents from Ms. Vardugo.

Please advise if you are still interested in receiving any or all of these documents.

Sincerely,



Lyn Francis
Public Disclosure Coordinator

APPENDIX E

JEFFREY R. MCKEE
DOC. 882819
WASHINGTON CORRECTIONS CENTER
PO. BOX 900 R2-E6L
SHELTON, WA 98584

RECEIVED

FEBURARY 1, 2007

FEB 12 2007

Lyn Francis
Public disclosure Coordinator
PO. BOX 41100
Olympia, WA 98504-100

Public Disclosure Unit

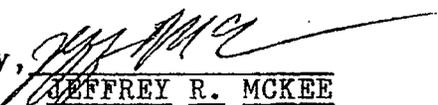
RE: Public disclosure request

Dear Mrs. Francis,
Enclosed is A check for the public disclosure requests,
1) Silva letter to Gregoir 3.47
2) Documents related to the transfer from Clallam bay WA. to Eloy
Detention Center 11.47
3) Documents related to my transfer from F.C.C to W.C.C 7.79
4) All documents related to grievances from December 2005 to
December 2006 9.23
5) The copy of your mail log .79
For A total of \$32.75

In response to your January 25, 2007 letter yes I do wish to
receive all previous requests for public records related to the
Florence Correction Center (FCC). Do to the untimeliness of the
response to the previous requests I request you waive the copy
and postage fees.

I believe there where a few more requests that wher previously
denied but at this time FCC or WCC is withholding all my legal
files.

Thank you for your prompt response to this important matter.

Sincerely, 
JEFFREY R. MCKEE

APPENDIX E

CP 363

APPENDIX F



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

March 2, 2007

Mr. Jeffrey McKee, DOC #882819
Stafford Creek Corrections Center
191 Constantine Way GB27U
Aberdeen, WA 98520

Dear Mr. McKee:

I am writing regarding the documents you requested for public disclosure of documents related to

- Corrections Corporation of America (CCA), Florence Correction Center (FCC) policies: 18-100, 16-1, 15-1, 14-4, 14-3, 14-6, 16-100, 16-1, 2-5, 15-2, and 10-100.
- Documents related to legal documents that were withheld by Law Librarian Nita Luna and shown to Case Manager JC Miller at FCC (**there are none**).
- Records that were considered by Captain Willey, Acting Warden S. Rogers, and Infraction Review Officer Audray Rodriguez in the infraction hearing and appeal of #7761-06W.
- Documents, including the original grievance you handed to C/M Gary Howerton on August 2, 2006 for the 18-day delay in delivering your legal mail to you.
- Documents pertaining to the grievance you filed for Audray Rodriguez' violation of policy 14-5.4 handed to C/M Walker on October 26, 2006, at FCC.
- The computer printout from FCC concerning the dates, times, and status of all grievances you have filed at FCC from July 17, 2006 to present (November 10, 2006).
- Documents related to the decision to deny grievances Y06-0479W, 06-0500W, and 06-1501W by Grievance Coordinator Audray Rodriguez and Acting Warden Sam Rogers at FCC.
- Documents related to the decision and appeal of your emergency grievance for the return of your legal documents, handed to C/O Garcia on 10/11/06 at 8:30 a.m. in the segregation unit of FCC.
- Documents that were used by Audray Rodriguez and Acting Warden Sam Rogers in the emergency grievance you filed for the return of your legal documents on 10/11/06 at FCC.

"Working Together for SAFE Communities"

- Documents, including the tape recorded statement of Jeffrey McKee on 10/17/06, from 12:23 p.m. to 1:30 p.m. in front of segregation unit BA201 recorded by C/O Robinson and C/O Polipo, related to the emergency grievance for the return of your legal documents from Ms. Vardugo. **There are no documents or recordings of these statements.**

A total of 291 pages have been gathered responsive to your request. The Department's copy fee cost is \$0.20 per page, plus postage. Total copy fee related to your request is \$58.20, plus \$4.05 postage.

Upon receipt of payment in the form of check or money order made payable to the Department of Corrections in the amount of \$62.25, I will forward the requested documents to you. I had recently sent you a letter requesting \$0.59 for documents related to the infraction hearing of inmate Dirk Van Velzen. If you would like to combine these costs in one check, that is fine.

Sincerely,



Rose E. Marquis
Administrative Assistant

APPENDIX G



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 · Olympia, Washington 98504-1100

March 28, 2007

Mr. Jeffrey McKee, DOC #882819
Stafford Creek Corrections Center
191 Constantine Way GB27U
Aberdeen, WA 98520

Dear Mr. McKee:

I am writing regarding the documents you requested for public disclosure of documents related to 1) Documents pertaining to the grievance you filed for Audray Rodriguez' violation of policy 14-5.4 handed to C/M Walker on October 26, 2006, at FCC; 2) Documents related to the decision and appeal of your emergency grievance for the return of your legal documents, handed to C/O Garcia on 10/11/06 at 8:30 a.m. in the segregation unit of FCC; 3) Documents that were used by Audray Rodriguez and Acting Warden Sam Rogers in the emergency grievance you filed for the return of your legal documents on 10/11/06 at FCC.

As you no longer want the remainder of the documents gathered, the above total 51 pages. The charges for copies of the 51 pages is \$10.20, plus \$2.07 postage, totals \$12.27. Upon receipt of payment in the form of check or money order made payable to the Department of Corrections in the amount of \$12.27, I will forward the requested documents to you.

Regarding Infraction 7959.06, I contacted Mr. Lucas at the facility in Florence, AZ. He informed me that typically minor infractions are not tracked unless they are associated with a 657 major or for having too many minor infractions. A 203 infraction is a minor and only kept in the unit slough files while the offender is housed at the facility. Therefore, he has no copies of the infraction or subsequent investigation.

I have copied the hearing of 7905.06 onto a cassette tape. The cost for it was included in a previous response dated February 13, 2007. I quoted \$0.42 for a CD, however it is \$0.50 for a cassette tape. If payment for this request is currently being processed, I will waive the difference.

Sincerely,

A handwritten signature in cursive script that reads "Rose E. Marquis".

Rose E. Marquis
Administrative Assistant

"Working Together for SAFE Communities"



APPENDIX G
CP 370

APPENDIX H

JEFFREY R. MCKEE
DOC# 882819
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY GB27U
ABERDEEN, WA. 98520

MARCH 30, 2007

Lyn Francis
Publi Disclosure Coordinator
P.O. BOX 41100
Olympia, wa. 98504-1100

RE: Ongoing PDA requests

Dear Mrs. Francis,

Your Administrative Assistant Rose E. Marquis has responded to several of the PDA requests I have ben making since early October 2006 about Florence Correction Center (FCC) records.

In her March 2, 2007 letter to me she has listed documents gathered from 10 previous requests.

Since the requests have gone way further than the time allowed under the PDA I would request at this time that these documents be sent free of charg to avoide a costly PDA law suite.

If this is not granted I would respectfully request that you let me know the number of documents and cost of shipping for each request so I may purchase these documents in order of importance.

Thank you for your time and effort in resolving this issue.

Sincerely,


JEFFREY R. MCKEE

APPENDIX H
CP 372

APPENDIX I



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

September 9, 2008

Mr. Jeffrey McKee, # 882819
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. McKee:

Thank you for your payment of \$97.65 to cover costs associated with the disclosure of records in response to PDU-1194, PDU-1210, PDU-1215, PDU-1216, PDU-1317, PDU-1325, PDU-1578, PDU-1589, PDU-1607, PDU-1869, PDU-2202, and PDU-2312.

In regard to PDU-1194, there was a mistake made in counting records. The count was given as 291 when it was actually 284; and 2 of those pages are exempt from disclosure. (A denial form is included with the copies.) Therefore, the total number of pages being disclosed is 282. The difference between the number originally quoted (291) and the number being disclosed (282) is 9 pages. The copy fee for 9 pages, or \$1.80, will be returned to the name/address on the check received, as well as excess postage of \$.40, for a total refund of \$2.20. The refund will be issued from our Business Office within 5 to 10 business days.

The following records are transmitted with this letter:

PDU-1194 -	282 pages	PDU-1210 -	4 pages
PDU-1215 -	1 page	PDU-1216 -	31 pages
PDU-1317 -	10 pages	PDU-1325 -	23 pages
PDU-1578 -	1 page	PDU-1589 -	7 pages
PDU-1607 -	11 pages	PDU-1869 -	29 pages
PDU-2202 -	28 pages	PDU-2312 -	18 pages

These records are provided to you in accordance with the Public Records Act. By making them available to you, the Department is not responsible for your use of the

"Working Together for SAFE Communities"

APPENDIX I

CP 195

Mr. Jeffrey McKee, # 882819

September 9, 2008

Page 2

information or for any claims or liabilities that may result from your use or further dissemination.

Sincerely,



Cynthia Hood, Public Disclosure Specialist
Public Disclosure Unit
Department of Corrections

CH

cc: Files – PDU-1194, PDU-1210, PDU-1215, PDU-1216, PDU-1317, PDU-1325, PDU-1578, PDU-1589, PDU-1607, PDU-1869, PDU-2202, PDU-2312

APPENDIX J



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

September 11, 2008

Mr. Jeffrey McKee, # 882819
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. McKee:

I am writing to correct an error in my previous letters to you dated June 24, 2008, and September 9, 2008, regarding PDU-1194. In these letters, I misidentified PDU-1194 as the disclosure request for which Ms. Rose Marquis requested payment in her letter to you dated March 2, 2007. **PDU-1194 actually relates to the investigation at FCC initiated by Mr. Gary Bohon.**

In Ms. Marquis' letter to you dated March 2, 2007, she requested payment for 291 records responsive to a number of different disclosure requests. In my letter dated September 9, 2008, I corrected the page count to 284 and the non-exempt records (282) were transmitted to you along with that letter. These records included:

- CCA/FCC policies 18-100, 16-1, 15-1, 14-4, 14-3, 14-6, 16-100, 16-1, 2-5, 15-2, and 10-100;
- Records considered by Capt. Willey, Warden Rogers, and Infraction Review Officer Audray Rodriguez in the infraction hearing and appeal of #7761-06W;
- Grievance documents you handed to C/M Gary Howerton for the 18-day delay in delivering legal mail;
- Grievance documents you filed for Audray Rodriguez' violation of policy 14-5.4;
- Computer printout showing dates, times, and status of grievances filed at FCC;
- Documents related to the denial of grievances 06-0479W, 06-0500W, and 06-1501W;
- Documents related to the decision & appeal of your emergency grievance for return of legal documents;
- Documents that were used by Audray Rodriguez and Warden Rogers in the emergency grievance you filed for the return of your legal documents

" Working Together for SAFE Communities "

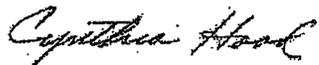


APPENDIX J
CP 198

Mr. Jeffrey McKee
September 11, 2008
Page 2

Mr. McKee, I apologize for my error of identifying PDU-1194 as the public disclosure request associated with Ms. Marquis' letter of March 2, 2007.

Sincerely,



Cynthia Hood, Public Disclosure Specialist
Public Disclosure Unit
Department of Corrections

CH

cc: File - PDU-1194