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I. INTRODUCTION

The undisputed record in this case demonstrates the Department of Corrections (Department) complied with the Public Records Act (PRA) by sending inmate Shawn Greenhalgh, in a timely fashion, the most current inmate store list for Stafford Creek Corrections Center (Stafford Creek or SCCC), the record he requested. The superior court record also demonstrates that Mr. Greenhalgh did not file this suit in Grays Harbor County Superior Court until more than one year after he received records, in addition to the inmate store list he requested, from the Department. Mr. Greenhalgh waited more than a year to allege that the Department had complied with his public records request only in part. Consequently, Mr. Greenhalgh's claim is time-barred under RCW 42.56.550(6), and this Court should affirm the superior court's order of dismissal.

II. ISSUES PRESENTED

1. The Department provided Mr. Greenhalgh the most current version of the Stafford Creek Store Order List, as he requested. Does any alleged failure by the Department to provide other lists not requested by Mr. Greenhalgh in his November 10, 2006 request, prevent this Court from determining that the Department complied with Mr. Greenhalgh's PRA request?

2. The Department's last production of records to Mr. Greenhalgh, that he alleges only constituted a partial production of the records he requested, occurred on April 18, 2007, over one year before Mr. Greenhalgh filed his PRA suit. Does this timeline make Mr. Greenhalgh's action untimely under the one year period of limitations for PRA suits under RCW 42.56.550(6)?

III. COUNTER STATEMENT OF THE CASE

A. Substantive Facts

Washington State prisoner Shawn Greenhalgh submitted a PRA request dated November 10, 2006, to Jane McKenzie, the Public Disclosure Coordinator at Monroe Correctional Complex (received November 16, 2006) requesting “[t]he *most current* Inmate Store Price List for the Stafford Creek Corrections Center Inmate *Main Store*.” CP 38 (emphasis added). Mr. Greenhalgh's November 10, 2006 request referenced only a single document. Mr. Greenhalgh did not ask for records listing all property items available for purchase at Stafford Creek. Nor did he request the list of appliances available for purchase. *See* CP 38. On November 21, 2006, Ms. McKenzie responded to Mr. Greenhalgh, acknowledging separate requests by Mr. Greenhalgh for store lists from other institutions, in addition to Stafford Creek, and indicating

his request for the Stafford Creek main store list would be forwarded to Stafford Creek for response. CP 39.

On November 21, 2006, Sheri Izatt, the Public Disclosure Coordinator for Stafford Creek, sent Mr. Greenhalgh a letter by United States Mail, making available on payment, the two-page "Stafford Creek Store Order List," dated November 17, 2006. CP 41. Mr. Greenhalgh responded to Ms. Izatt by letter dated November 28, 2006 (received by Ms. Izatt December 11, 2006), providing payment for the two-page store list. CP 42. On December 11, 2006, Ms. Izatt mailed the two-page store list to Mr. Greenhalgh, sending him the most current list for the main store as of November 21, 2006. CP 43-45. The two-page list was entitled "Stafford Creek Store Order List." Both pages contained 3 columns of items priced mostly under five dollars per item, available for purchase as store items, including personal care items, stationery, food items, soda pop, candy, various snack items, cookies, and miscellaneous items. CP 44-45.

After receiving the item he requested in his November 10, 2006 request, Mr. Greenhalgh mailed Ms. Izatt another letter (dated December 18, 2006 and received December 21, 2006) as a purported follow-up to his November 10, 2006 request, asking for an additional list containing electrical appliances. Ms. Izatt responded by providing

Mr. Greenhalgh, on April 18, 2007, the one-page “Stafford Creek Property Order List,” after requesting and receiving payment for that page. CP 46-52. The Stafford Creek Property Order List is a different document from the Stafford Creek Store Order List. The Property Order List is a single column document listing various property items like moustache scissors, headphones, and televisions. The prices range from \$.71 for a ninety minute audio tape to \$135.75 for a 13” Magnavox Clear Television. CP 52.

B. Procedural Facts

Plaintiff filed his initial Complaint for Violation of the Public Records Act in Grays Harbor County Superior Court on April 23, 2008, five days later than he was allowed to under RCW 42.56.550(6). Mr. Greenhalgh served the Attorney General’s Office on July 9, 2008. Mr. Greenhalgh, through counsel, amended his complaint in July 2008. CP 1-5.

Mr. Greenhalgh moved for summary judgment, contending he should be granted judgment as a matter of law (CP 11-79). The Department filed and served a cross-motion for summary judgment, contending Mr. Greenhalgh’s action was untimely under RCW 42.56.550(6) and that the Department responded to his request by providing him the document he had requested. CP 88-97.

On November 25, 2009, after notifying the parties by letter of his decision, the Grays Harbor County Superior Court granted the Department's cross-motion for summary judgment. The Court determined Mr. Greenhalgh's action was untimely under RCW 42.56.550(6) and that the Department had responded to the request by providing Mr. Greenhalgh the document he requested. Consequently, the Superior Court denied Mr. Greenhalgh's motion for summary judgment and dismissed his action with prejudice. This appeal followed. Supp CP 157; CP 143-47.

IV. 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 on appeal 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); 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 Pharmaceuticals*, 112 Wn.2d 216, 225 n.1, 770 P.2d 182 (1989).

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, 106 S. Ct. 2505, 91 L.Ed.2d 202 (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, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986); *see also Lujan v. National Wildlife Federation*, 497 U.S. 871, 110 S. Ct. 3177, 111 L.Ed.2d 695 (1990) (holding that failure to “make a sufficient showing of an essential element” of one’s case requires dismissal).

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V. ARGUMENT

A. **The Department Provided Mr. Greenhalgh The Item He Requested, The Most Current Main Store List From Stafford Creek; Therefore, This Litigation Should Not Have Been Brought**

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).¹ 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 requestor as required under the PRA.

The PRA strongly encourages release of public records. Under the PRA, public agencies are required to provide inspection or copying of

¹ 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).

public records. RCW 42.56.070. Former RCW 42.56.520² requires an agency to respond to a public records request within five business days of receipt of the request by one of the following: (1) making the records available, (2) providing a reasonable estimate of when the records will be available, or (3) denying release of the records. RCW 42.56.520 (2006). Agencies may request additional time “based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any information requested is exempt and that a denial should be made as to all or part of the request.” *Id.*

On November 21, 2007, the Department made the record requested by Mr. Greenhalgh available with no denial or claim of exemption. CP 41-45. Mr. Greenhalgh requested a specific document, described as the most current inmate store list, for the main store. CP 38. A few days later, he received in response to his request the most current version of a single record entitled the Stafford Creek Store Order List. CP 41-45. Mr. Greenhalgh did not request on November 10, 2006, “records listing all property items available for purchase at SCCC,” or “the list of appliances available for purchase.” *See* CP 38.

² This statute was amended in 2010 to provide reference to an internet document as an additional option. *See* <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202010/6367-S.SL.pdf>.

Mr. Greenhalgh does not establish a violation of the PRA by the exchanges between himself and Ms. Izatt or other Department employees after the Department made available to him his requested record, the Stafford Creek Store Order List. CP 46-52. When Mr. Greenhalgh sent follow-up correspondence to Ms. Izatt asking for an additional list, the Stafford Creek Property Order List containing electrical appliances, Ms. Izatt provided that. CP 51-52.³ The scope of the Department's obligation is established by the request as submitted by the requestor. *See* RCW 42.56.520 (compelling the agency to respond promptly in a manner that is responsive to the request as submitted). The PRA requires agencies to produce only "identifiable public records". RCW 42.56.080. Fullest assistance under RCW 42.56.100 does not require the agency to re-write the request submitted. A record is identifiable if there is a reasonable description enabling the agency to locate the requested records. *Bonamy v. City of Seattle*, 92 Wn.

³ The fact that Mr. Greenhalgh may have desired additional records such as appliances, watches, and other property items available to offenders at Stafford Creek has no bearing on the Department's compliance with the express terms of his request. The lists of additional items available to offenders are not the "inmate store price list for the Stafford Creek Corrections Center inmate main store." If Mr. Greenhalgh sought additional records he need only to have asked, and indeed he did ask and those records were provided. For example, when Mr. Greenhalgh changed and expanded his initial request, when he sought the list of watches available to offenders at Stafford Creek, the Department properly processed that as an entirely new request and made that record available. CP 59.

App. 403, 410, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012, 978 P.2d 1099 (1999).

Under the PRA, the requestor bears the burden of requesting the identifiable record to be produced; otherwise, the agency owes the requestor no obligation under the PRA. Mr. Greenhalgh's institutional knowledge of property items being available for purchase does not change his burden to request the identifiable record he is seeking.⁴ Here, he plainly asked for one record, a record he referenced as the inmate store list, specifically referencing the "Main Store." There is no dispute that Mr. Greenhalgh's requested record was made available to him.

Nor does Mr. Greenhalgh demonstrate non-compliance by the Department under the PRA by referencing another PRA request submitted by another inmate, George Clark. Mr. Clark's request was different than Mr. Greenhalgh's and requested "all inmate store items offered to offenders at SCCC" CP 73. Mr. Clark's request was more expansive than Mr. Greenhalgh's request.⁵ For example, Mr.

⁴ See Opening Brief at 3 ("On December 18, 2006, Mr. Greenhalgh sent a letter asking why various items were not listed that in his experience were almost always available to inmates.") (referencing CP 34-72).

⁵ Mr. Greenhalgh provides no evidence in the record that the watches list received by Mr. Clark in response to his April 9, 2008 request was available at Stafford Creek when Mr. Greenhalgh submitted his request on November 10, 2006, seventeen months earlier. However, this record, if some version of it existed at the time of Mr. Greenhalgh's November 10, 2006 request, is plainly not responsive to Mr.

Greenhalgh's request, despite his admitted prior knowledge regarding property items available for purchase and possession by inmates, specifies the "Main Store" and specifically requests the most current Inmate Store Prices List for the main store. CP 38. If Mr. Greenhalgh desired property items that were approved for purchase from outside vendors, he could have specified that desire in his November 10, 2006 request. He could have asked for lists, rather than a single list. He did not.

The superior court properly dismissed Mr. Greenhalgh's PRA action because the record he requested was promptly made available to him by the Department.

B. The Superior Court Properly Applied The Plain Language Of RCW 42.56.550(6) In Determining That Mr. Greenhalgh's Claim Was Barred By The One Year Statute Of Limitations

Civil Rule 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. CR 5(e).

Mr. Greenhalgh alleges the Department provided only a partial response to his November 10, 2006 PRA request. Supp CP 150-51; CP 3-

Greenhalgh's request as it is a list of items sold by an outside vendor, the Union Supply Catalog, and not the Main Inmate Store. See CP 79.

4. 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). Here, the records were made available on April 18, 2007, when Ms. Izatt made the last record, the Property Order List, available to Mr. Greenhalgh for inspection or copying. On that date, the Department made an additional record available for inspection and copying under RCW 42.56.070(1) and RCW 42.56.080. This was the last production of a record by the Department to Mr. Greenhalgh on April 18, 2007, provided as a response to his follow-up request, once he paid the copying cost. CP 51-52. At the very latest, therefore, Mr. Greenhalgh's cause of action accrued no later than April 18, 2007, when Ms. Izatt mailed to Mr. Greenhalgh the additional document entitled "Stafford Creek Property Order List" in response to Mr. Greenhalgh's March 21, 2007, follow up to his November 10, 2006, request.⁶ CP 46-52.

⁶ While Mr. Greenhalgh's Complaint would be time-barred based on either the date records were made available or the date they were sent upon payment, the proper date for commencing the statute of limitations occurs when a requestor is notified that documents are available. Thereafter, it is incumbent on the requestor to arrange for payment of the records. Otherwise, any litigant with a keen profit motive would be encouraged to stretch both the limitations period and the accompanying potential liability well beyond one year by not making prompt payment for requested records and then claiming a violation months or years later when the records are actually obtained. Such a result would defeat the Legislature's intent under RCW 42.56.550(6), and RCW 42.56.080, and .520 (encouraging prompt disclosure of records).

limitations favoring finality in litigation matters. *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); *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 a definite limitation upon the time available to bring an action, despite the competing contention that an action otherwise has 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).

Washington courts have repeatedly held that statutes of limitations are strictly applied; courts are reluctant to find an exception unless one is clearly articulated by the Legislature. *Huff*, 125 Wn. App. at 732; *Bennett v. Dalton*, 120 Wn. App. 74, 85-86, 84 P.2d 265 (2004). 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. *See, 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 particularly true in cases governed by explicit statutory directives such as the PRA, rather than by the common law. *See, e.g., Elliott v. Dep't of Labor and Indus.*, 151 Wn. App. 442, 447, 213 P.3d 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 or accident).

Despite having admitted filing of this action over one year after the Department's last production, Mr. Greenhalgh argues he should be excused from the statute of limitations for two reasons. First, he argues that the statute of limitations only applies to large productions of public records where installments occur or where exemptions are claimed. Second, he argues the discovery rule should allow him additional time to sue under the PRA provided he do so within one year after another inmate shows him a document he didn't receive from the Department. Both arguments fail.

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1. The statute of limitations applies even though the Department did not claim an exemption to disclosure during a small production of records

Mr. Greenhalgh argues the one-year statute of limitations does not apply to a case like this where the Department provided fewer records than in other cases and where no exemption was claimed by the Department, citing *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009). Opening Brief at 6-7. This argument fails because *Rental Housing* does not apply to this case. In *Rental Housing*, the Supreme Court addressed only the “exemption” prong of RCW 42.56.550(6). See *Rental Housing*, 165 Wn.2d at 537 (“[t]he key issue is when a ‘claim of exemption’ under RCW 42.56.550(6) is effectively made.”). The Court held that a valid claim of exemption for records held in their entirety, sufficient to trigger RCW 42.56.550(6), “should include the sort of ‘identifying information’ a privilege log provides.” *Rental Housing*, 165 Wn.2d at 538.

Rental Housing did not address in any way the accrual of a claim under the PRA based on the “last production” prong of RCW 42.56.550(6), where it is alleged, not that an agency insufficiently claimed an exemption, but that it failed to locate and provide all possible responsive records. The Court’s focus on the privilege log in *Rental Housing* holds no relevance for the “last production” prong, since it is

obviously impossible for an agency to identify in a privilege log records it is unable to locate (or, as here, has not located because they were not requested).

Next, Mr. Greenhalgh erroneously argues that RCW 42.56.550(6) applies only to large PRA productions done in installments. Despite his underlying claim that he only received a partial response from the Department in response to his PRA request, Mr. Greenhalgh somehow argues the Department did not make a last production on a partial basis. Opening Brief at 7-8 (arguing he was given an additional document, the Stafford Creek Property Order List, as a result of “his persistent questioning.”). Because the same phrase appears in another statute, Mr. Greenhalgh argues the words “partial” and “installment” in the phrase “last production on a partial or installment basis” as having a single superfluous meaning: installment production only. Opening Brief at 7 (“The authority for an agency providing records in a partial or installment basis is when those records are part of a larger set of records.”) (referencing RCW 42.56.080).

Mr. Greenhalgh’s argument fails because the two words are separated by the disjunctive “or” and must be read as independently operative and meaningful. *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 479, 745 P.2d 1295 (1987) (“No word is deemed inoperative or

superfluous unless it is the result of an obvious mistake or error.”); *see also Niichel v. Lancaster*, 97 Wn.2d 620, 625-26, 647 P.2d 1021 (1982) (In every case involving statutory construction the court’s objective is to “ascertain the legislative intent, as disclosed by all the terms and provisions of the act in relation to the subject of legislation and by a consideration of the nature of the act, the general object to be accomplished, and the consequences that would result from construing the particular statute in one way or another.”). By his argument, Mr. Greenhalgh effectively rewrites the Legislature’s statute of limitations by erasing the word “partial” from RCW 42.56.550(6). Mr. Greenhalgh argues that, because the phrase “partial or installment basis” appears in RCW 42.56.080, the statute of limitations can only apply to large requests responded to by agencies in installments. However, no language in the limitations statute supports that argument. Mr. Greenhalgh apparently argues that the phrase “partial or installment basis” in RCW 42.56.080 must have the same meaning when used in a different statute with a different purpose, RCW 42.56.550(6). No rule of construction supports that argument either. *See Tegman v. Accident & Med. Inves., Inc.*, 150 Wn.2d 102, 113, 75 P.2d 497 (2003) (holding that words are not presumed to have the same meaning when used in different statutes).

Here, Mr. Greenhalgh alleges the Department made partial production of records; he alleges and attempts to prove he received only part of the total number of responsive records, despite his receipt of the Stafford Creek Store Order List in December 2006, followed by his receipt of the Stafford Creek Property Order List in April 2007. CP 4; Supp CP 150-51. Mr. Greenhalgh alleges in his Complaint and Amended Complaint that the agency failed to locate and assemble all of the documents responsive to the request. CP 4; Supp CP 150-51. The Legislature must have intended this type of situation to fall within the scope of “last production on a . . . partial basis,” because to conclude otherwise would yield unreasonable, illogical and absurd consequences.⁷ Primary among these consequences is that state and local agencies would be discouraged from responding in full to records requests in a single production. Rather, to obtain a limitation period and avoid the risk of excessive penalties associated with ancient claims, a prudent agency would be motivated to produce records in installments regardless of the size of the production or rapid assembly of the full production. While this approach is permitted by the PRA, it would engender additional

⁷ Courts must construe statutes to avoid “unlikely, strange or absurd consequences.” *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994); *see also Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 6, 721 P.2d 1 (1986) (courts should avoid statutory interpretations that “would render an unreasonable and illogical consequence”).

administrative costs and inconvenience requestors by requiring multiple inspections or delaying receipt of copies that might otherwise have been made immediately available.

Another consequence would be the impossibility of agencies being able to defend stale—or even ancient—claims. Under the PRA, an agency has the burden of proof to establish compliance with the Act, no matter how stale or ancient the claim. RCW 42.56.550(1), (2). However, public agencies do not retain all of their records indefinitely; they are authorized to destroy records that have reached the end of their designated retention period. *See generally* RCW 40.14. But if this Court were to accept Mr. Greenhalgh’s argument, such a decision would effectively nullify retention schedules adopted under RCW 40.14, since any agency that failed to permanently retain all public records would be unable to defend itself against a claim filed years later alleging that not all records were located, assembled, and provided. Mr. Greenhalgh’s interpretation of RCW 42.56.550(6) would permit a requestor who receives a single, ostensibly final production of records to sue years, if not decades later, on an allegation that not all records were located, assembled and provided.⁸ The untenable consequence of that interpretation is not that agencies

⁸ RCW 42.56.100 precludes an agency from destroying a record, in compliance with the applicable retention schedule, until a public record request is “resolved.” Without a statute of limitations, a public records request can never be “resolved.”

complying in good faith with RCW 40.14 would lose these suits, but that they would be unable to even attempt a defense.

2. The discovery rule does not apply to a cause of action under the Public Records Act

The clear statutory language of RCW 42.56.550(6) defines precisely when a cause of action accrues under the PRA and the time within which a claim must be filed. While in other causes of action⁹ the Legislature has directed that the statute of limitations may be subject to the discovery rule, under which a cause of action accrues when the plaintiff knew or should have known enough facts existed to support a right to sue, the discovery rule does not apply in every case. *See, e.g., O'Neil v. Estate of Murtha*, 89 Wn. App. 67, 72, 947 P.2d 1252 (1997). Indeed, if it intended for the rule to apply, the Legislature could have codified it in the PRA as recently as 2005 when it amended the statute of limitations to one year, but it did not do so. Rather, the Legislature provided a precise trigger in RCW 42.56.550(6), which is manifestly clear to the public, agencies, and the courts. The statute of limitations begins to run when the agency claims an exemption or the last production of a record, which occurred in this case on April 18, 2007.

⁹ *See, e.g., McLeod v. Northwest Alloys, Inc.*, 90 Wn. App. 30, 35, 969 P.2d 1066 (1998) (Uniform Trade Secrets Act); RCW 4.16.350(3) (medical negligence); and RCW 4.16.080(6) (official misappropriation of funds).

As discussed above, 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, as recently demonstrated by the Court of Appeals' rejection of the discovery rule in industrial insurance cases in *Elliott v. Dep't of Labor and Indus.*, 151 Wn. App. at 447. In *Elliott*, the Court declined to apply the discovery rule to modify the statutory accrual date of a cause of action under the Industrial Insurance Act. *Id.* at 444. Under the Industrial Insurance Act, the claimant must file within one year after the day upon which the injury or accident¹⁰ occurred. *Id.* at 446 (citing RCW 51.28.050). Mr. Elliott argued for application of the discovery rule on the basis that he did not know of his injury related to the accident until he was diagnosed with post-traumatic stress disorder. *Id.* at 444-45.

In declining to apply the discovery rule, the Court in *Elliott* noted that “an industrial insurance claim is ‘governed by explicit statutory directives and not by the common law.’” *Id.* at 447. Because the statute explicitly stated that an injury is indistinguishable from the accident that caused it, the statute of limitation for filing a claim begins to run when

¹⁰ This Court noted that an “injury” as defined by the Industrial Insurance Act is indistinguishable from the accident that caused it, regardless of when the physical effects of the injury become manifest. *Elliott*, 151 Wn. App. at 448.

the accident occurs and not when the worker discovers the injury. *Id.* at 447-48.

Like the Industrial Insurance Act, the PRA is governed by explicit statutory directives and not by the common law. Also like the Industrial Insurance Act, the PRA provides for an explicit legislatively-mandated trigger of the statute of limitations (last production of a record) without regard to whether the requestor later learns that a responsive document was not produced. Just as the Industrial Insurance Act is to be liberally construed in favor of the injured worker, the PRA is to be liberally construed in favor of free and open examination of public records. RCW 42.56.030; RCW 42.56.330(3). However, “when the intent of the Legislature is clear from reading of a statute, there is no room for construction.” *Elliott*, 151 Wn. App. at 450 (quoting *Johnson v. Dep’t of Labor and Indus.*, 33 Wn.2d 399, 402, 205 P.2d 896 (1949)). Applying the same principles identified in *Elliott* and other cases cited above, this Court should hold that the superior court did not err in declining to apply the discovery rule to modify the explicit statutory deadline in RCW 42.56.550(6) governing claim accrual under the PRA.

Finally, Mr. Greenhalgh erroneously argues for application of the discovery rule based on a special relationship between the people and public officials. Opening Brief at 10-15 (citing *Potter v. City of New*

Whatcom, 20 Wn. 589, 56 P. 394 (1899); *Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 543 P.2d 338 (1975); and other cases).¹¹ However, the cases he cites involved specific trust or fiduciary relationships not present in this case. Consistent with the PRA, the Department's relationship with Mr. Greenhalgh can be no different from its relationship with any other records requestor. See RCW 42.56.080 ("Agencies shall not distinguish among persons requesting records. . . ."). The Department complies with the PRA by locating, assembling and making available its records for inspection, but it owes no fiduciary obligation to individual requestors.

The purpose of the PRA is to provide a mechanism by which citizens can obtain information about the functions of government. The penalty and cost provisions in RCW 42.56.550(4) provide a significant incentive to agencies to comply with the strict requirements of the PRA. The one-year statute of limitations in RCW 42.56.550(6) ensures that

¹¹ Mr. Greenhalgh also relies on *U.S. Oil & Refining Company Co. v. Dep't of Ecology*, 96 Wn.2d 85, 633 P.2d 1329 (1981), to support application of the discovery rule under the theory that a requestor must rely on the agency's self reporting to determine a violation. However, such reliance is misplaced. At no time did Mr. Greenhalgh lack "the means and resources to detect wrongs within the applicable limitation period," the concern expressed in *U.S. Oil. Id.* at 93-94. Under the PRA, the process of agency compliance is inherently transparent because the agency must meet statutory obligations to timely respond and correspond with requestors and to make records available. When the agency informs the requestor as to the availability of records, the requestor is entitled to inspection. The requestor may also submit a new request. The requestor may also inquire further as to the adequacy of the response through follow up correspondence, follow up PRA requests, or ultimately to commence an action and utilize the rules of civil discovery if still dissatisfied.

actions are filed timely to serve the goal of prompt public disclosure without resulting in disproportionate individual financial gain at the expense of other citizen taxpayers. In addition, unlike many statutes of limitations that act to prevent a potential litigant from all access to relief, the PRA does not preclude requestors from what they ultimately seek—disclosure of records. A requestor can always make a new request for records he or she believes were not included in the response to his original request. Requiring requestors to file a claim for penalties and costs within one year of production simply prevents a requestor from holding back and seeking higher penalties and provides finality for agencies and certainly for taxpayers regarding liability for potential penalties and costs. A requestor is not deprived of an opportunity to access public records.

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VI. CONCLUSION

For all of the foregoing reasons, the Department respectfully requests that this Court affirm the superior court's dismissal of Mr. Greenhalgh's First Amended Complaint.

RESPECTFULLY SUBMITTED this 5th day of May, 2010.

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