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ASSIGNMENT OF ERROR

1. The trial court erred in granting summary judgment.

2. The trial court erred in denying Appellant's motion to settle the record.

3. The trial court erred in finding as fact that "the Plaintiff did not make deposition transcripts part of the record . . ."

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does a superior court clerk possess the authority to refuse to file deposition transcripts delivered to her for use in opposition to a summary judgment motion? (Assignment of Error 2 & 3).

2. Whether the superior court erred in refusing to order the clerk to file deposition transcripts presented to her and called to the court's attention in opposition to a summary judgment motion, thereby blocking the transmittal of those transcripts to this Court for appellate review? (Assignment of Error 2 & 3).

3. Did the superior court commit reversible error by failing to consider any of the pleadings, memoranda, and evidence called to its attention in opposition to summary judgment? (Assignment of Error 1).

4. Does the Public Records Act require the award of costs to a requester when an agency redacts information from a public record without citing a statute authorizing the redactions and providing an explanation of how the statute applies to the information withheld? (Assignment of Error 1).

5. Whether the Public Records Act requires the award of costs and penalties to a requester when an agency fails to respond to his request within five business days? (Assignment of Error 1).

6. Can RCW 82.32.330 provide an independent basis to exempt public records from disclosure when the Public Records Act's exemptions incorporates that statute into its provisions and adds additional elements thereto? (Assignment of Error 1).

7. Can RCW 50.13.020 provide an independent basis to exempt public records when the Public Records Act's exemptions incorporates that statute into its provisions and adds additional elements thereto? (Assignment of Error 1).

8. Whether a statute applicable only to tax returns filed with the Department of Revenue, RCW

82.32.330, exempts information contained in a Master License Application maintained by the Department of Licensing from public disclosure, especially when RCW 82.32.330(3)(1) declares that tax records maintained by agencies other than the Department of Revenue are disclosable under the Public Records Act? (Assignment of Error 1).

9. Does RCW 51.16.070 exempt information contained in a Master License Application of a sole proprietorship from disclosure under the Public Records Act when the statute expressly excludes sole proprietorship records from its provisions? (Assignment of Error 1).

10. Can a statute applicable only to records maintained or obtained by the Employment Security Department, RCW 50.13.020, exempt information contained in a Master License Application of a sole proprietorship maintained by the Department of Licensing from disclosure under the Public Records Act, especially when the statute expressly excludes sole proprietor records from its provisions? (Assignment of Error 1).

STATEMENT OF THE CASE

1. **Substantive facts.** On July 20, 2009, Appellant Derek E. Gronquist mailed a Public Records Act request to Respondent Department of Licensing (Department or DOL) seeking the business license application of a sole proprietorship named "Maureen's House Cleaning". Clerk's Paper (CP) 186. DOL received the request on July 21, 2009. CP 115. On July 31, 2009, DOL Master License Service (MLS) Administrative Assistant Maria Moore processed Mr. Gronquist request. CP 197. Ms. Moore located the record in the MLS database, retrieved the record from microfilm, and redacted 19 categories of information from the record. CP 190-194 & 197. The redacted Master License Application was then mailed to Mr. Gronquist. *Ids.* Ms. Moore failed to cite any statute authorizing the redactions or provide any explanation why information was withheld. CP 188.

After the Department was served with this lawsuit, the Senior Administrator for DOL's Business and Professions Division, Ms. Nancy Skewis, wrote to Mr. Gronquist claiming that "we inadvertently left out the explanation concerning the statutory basis for the redaction of portions of the record . . .", and asserted:

Master Business Applications contain some information that is exempt from public disclosure pursuant to the statutes governing the agencies on whose behalf the information is collected. The statutory basis for the exemptions is found at RCW 50.13.020 (Employment Security), RCW 51.16.070 (Department of Labor and Industries) and RCW 82.32.330 (Department of Revenue). It was pursuant to the requirement of these statutes that portions of the Master Business Application for Maureen's House Cleaning were redacted.

CP 122.

2. **Procedural facts.** Mr. Gronquist filed a pro se complaint in the Thurston County Superior Court on March 9, 2010, alleging that DOL's conduct violated the Public Records Act. CP 5-7. DOL filed an answer on April 5, 2010. CP 8-11.

On October 21, 2010, Mr. Gronquist filed a motion to show cause. CP 12-33. In support of that motion, Mr. Gronquist presented five sealed deposition transcripts to the Clerk for filing. Cf. CP 17 § IV. The Clerk, however, refused to file those transcripts. CP 215-216 & 218. The superior court failed to consider the motion to show cause as scheduled. Following repeated discovery violations by the Department, Mr. Gronquist filed a motion for sanctions on November 4, 2010. CP 34-109. The superior court refused to consider that motion.

On November 19, 2010, the Department filed a motion for summary judgment. CP 123-130. Mr. Gronquist filed his response opposing summary judgment on December 1, 2010. CP 139-141. On December 21, 2010, superior court judge Paula Casey ordered DOL to submit an unredacted copy of the Master License Application for Maureen's House Cleaning for **in camera** review. CP 142. On January 7, 2011, DOL submitted the Master License Application for **in camera** review, along with additional briefing. CP 142-159. On January 13, 2011, judge Casey sent the parties a letter stating she had determined that information redacted from the Master License Application was exempt from public disclosure. CP 160-161. Judge Casey's letter stated that the only record she had reviewed to reach her conclusion was the unredacted copy of the Master License Application. *Id.* A formal order granting summary judgment to DOL was entered on February 18, 2011. CP 163-164. That order stated that the only materials the court reviewed was "copies of documents that were provided to Plaintiff Mr. Gronquist with redactions." CP 163. A timely notice of appeal was filed March 18, 2011. CP 162-164.

On March 24, 2011, this Court's Clerk sent the parties a letter stating:

This office has received the Notice of Appeal and Order Granting Summary Judgment for the above referenced notice of appeal. We note that the order **does not comply** with RAP 9.12, which requires such orders to specify the documents and other evidence called to the attention of the trial court in considering summary judgment. Counsel should obtain an order in compliance with RAP 9.12 by Mr. Gronquist within thirty (30) [d]ays [sic] of the date of this letter.

On May 3, 2011, the Department submitted a proposed Supplemental Order Granting Department's Motion for Summary Judgment to the superior court. CP 167-168. Presentment of that order was scheduled for May 20, 2011. CP 165. Without notice to Mr. Gronquist, the superior court signed and filed DOL's proposed order on May 6, 2011. CP 167. Mr. Gronquist's proposed order and Memorandum in Support of Amended Order Granting Defendant's Motion for Summary Judgment detailing the law, facts, and exact materials that were called to the trial court's attention were, once again, ignored by the superior court. CP 171-180. The order signed by the trial court said, once again, that the only materials the court considered prior to granting summary judgment were "Two copies of a Master Business Application for "Maureen's

Housecleaning". One copy was provided to Plaintiff Mr. Gronquist with redactions. Another copy of the same document was lodged with the court for confidential in camera review . . ." CP 167.

On May 17, 2011, Mr. Gronquist filed a Designation of Clerk's Papers directing the clerk to transfer five volumes of sealed deposition transcripts to this Court for appellate review. CP 3. The superior court clerk refused to transmit the depositions, claiming they "are not part of the court file[] [sic]." Clerk's Papers Index at 3. On August 30, 2011, Mr. Gronquist filed a Motion to Compel in this Court requesting an order directing the clerk to transmit the depositions. Motion to Compel at 1. On September 7, 2011, Commissioner Schmidt denied the motion to compel, holding:

As to the depositions, they are not on file with the clerk's office. Mr. Gronquist must seek relief in the trial court, directing its clerk to file the depositions, before they can be part of the record in this court.

On September 25, 2011, Mr. Gronquist filed a Motion to Settle the Record requesting the superior court to direct its clerk to file the depositions and transmit them to this Court. CP 210-220. On October 14, 2011, the superior court

denied the motion to settle the record. CP 221-222. A timely supplemental notice of appeal from that order was filed November 2, 2011. CP 223-225.

ARGUMENT

The Public Records Act (PRA or Act) 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); Cf. RCW 42.56. et seq. The PRA requires state agencies to disclose any non-exempt record upon request. RCW 42.56.070. When an agency fails to timely respond to a public records request, or refuses to permit inspection of a public record, the requester may maintain an action to compel disclosure and penalize the agency. RCW 42.56.550.

The court conducts *de novo* review of the agency's actions "tak[ing] into account the policy of [the PRA] that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to the public official or others." RCW 42.56.550(3). The Act mandates that its provisions "be liberally construed and its exemptions narrowly construed to promote this

public policy." RCW 42.56.030.

The burden of proof rests upon the agency to establish that its withholding is based upon a statute exempting or prohibiting disclosure of specific records or information. RCW 42.56.550(1). Where, as here, the superior court record consists of only written material, appellate review is **de novo**. Progressive Animal Welfare Society (PAWS) v. University of Washington, 125 Wn.2d 243, 251, 884 P.2d 592 (1994); Lindeman v. Kelso School Dist. No. 458, 162 Wn.2d 196, 200-201, 172 P.3d 329 (2007). Appellate review of the grant of summary judgment is also **de novo**, and the court must construe all facts and all reasonable inferences therefrom in the light most favorable to Mr. Gronquist. Sanders v. State, 169 Wn.2d 827, 844-845, 240 P.3d 120 (2010).

I. THE SUPERIOR COURT CLERK VIOLATED HER DUTY TO FILE DEPOSITION TRANSCRIPTS SUPPORTING MR. GRONQUIST'S OPPOSITION TO SUMMARY JUDGMENT, AND THE TRIAL COURT HAS OBSTRUCTED MEANINGFUL APPELLATE REVIEW BY BLOCKING TRANSMITTAL OF THE TRANSCRIPTS TO THIS COURT

The superior court clerk did not possess authority to refuse to file Mr. Gronquist's deposition transcripts. RCW 2.32.050 commands:

it is the duty . . . of each county clerk for each of the courts for which he is clerk -

. . .

(4) To file all papers delivered to him for that purpose in any action or proceeding in the court as directed by court rule or statute.

(Emphasis added).

The deposition transcripts Mr. Gronquist delivered to the Thurston County Clerk were for use in this action, and were heavily relied upon as critical and dispositive evidence in opposition to the Department's motion for summary judgment. See CP 139-141; and CP 14-16, 17 § IV, 19-21, 23-25, 27-32 & 136.

CR 5(i) expressly authorizes the "filing" of deposition transcripts "for use" in a summary judgment proceeding. CR 5(i); see also CR 56(c) (requiring courts to consider deposition transcripts in summary judgment proceedings). CR 78(d) required the superior court clerk to "forthwith endorse the date of the filing upon the [deposition] envelope, and shall enter the same upon the case history docket."

The superior court clerk categorically refused to file the deposition transcripts presented by Mr. Gronquist in opposition to the Department's motion

for summary judgment. CP 212, 215 & 218. The Clerk's alleged basis for this action was articulated in a letter from her Executive Assistant, claiming:

Depositions cannot be filed unless they have been published in open court and signed by the judge. CR 32(a) states, "At the trial or upon the hearing of a motion . . ."
You may, at the time of your hearing, request the judge to publish the deposition. If the judge grants your request, the deposition will be filed into the court file. It cannot, however, be filed until such time.

CP 218 (emphasis in original).

The Clerk's position is incorrect. As noted above, CR 5(i), CR 32(a), and CR 56(c) authorize the filing and use of deposition transcripts in summary judgment proceedings. RCW 2.32.050 and CR 78(d) required the clerk to file deposition transcripts when presented for that purpose. Neither those rules, statute, nor any other authority requires a judicial decree "publishing" deposition transcripts as a condition precedent to their filing. As Professor Tegland has emphasized:

[The rules] eliminates any notion of "publishing" a deposition, and says nothing about confidentiality. To the contrary, the rules contemplate that when a deposition is tendered [for] fil[ing], the clerk will simply place it in the same public file containing the pleadings and related documents.

Karl B. Tegland, Washington Practice, Washington

Handbook on Civil Procedure, § 46.3, p. 402 (2010-2011 ed).

The Thurston County Clerk clearly violated her mandatory duties by blocking the filing of deposition transcripts Mr. Gronquist tendered and relied upon in opposition to summary judgment. Mr. Gronquist believed that the testimony contained in those transcripts were critical -- if not dispositive -- to his case. CP 15-16, 20-21 & 27-32. They should have been considered by the trial court prior to any ruling upon the summary judgment motion.

The Clerk's conduct is exasperated by the actions of the trial court. The trial court decided the summary judgment motion by way of a memorandum letter opinion, CP 160-161, depriving Mr. Gronquist of an opportunity to request the court to order the filing of the transcripts. After filing a Notice of Appeal, Mr. Gronquist directed the superior court clerk to transmit the deposition transcripts to this court to facilitate its **de novo** review of this matter. See Designation of Clerk's Papers at 3. The Clerk refused to transmit the transcripts, claiming they "are not part of the court file [sic]." Clerk's Papers

Index at 3. Mr. Gronquist then moved this Court for an order directing the Clerk to transmit the deposition transcripts for appellate review.

Motion to Compel at 1. On September 7, 2011, this Court's Commissioner entered a notation ruling stating:

As to the depositions, they are not on file with the clerk's office. Mr. Gronquist must seek relief in the trial court, directing its clerk to file the depositions, before they can be part of the record in this court.

Following the Commissioner's directive, Mr. Gronquist filed a motion requesting the superior court to order its clerk to file the deposition transcripts and transmit them to this Court. CP 210-220. The superior court denied Mr. Gronquist's motion, holding:

the Plaintiff did not make deposition transcripts part of the record - so the depositions were not considered by the Court.

CP 221 (emphasis in original).

That ruling is erroneous and deprives Mr. Gronquist of his right to meaningful appellate review of the trial court's grant of summary judgment. First and foremost: the trial court's finding that Mr. Gronquist "did not make [the] deposition transcripts part of the record . . ." is

clearly erroneous. The sole party responsible for obstructing the depositions from being a part of the superior court record was the Clerk. Mr. Gronquist did everything he could (as a pro se prisoner) to file the depositions, and was arbitrarily and capriciously denied by the unlawful actions of the Clerk's office.

The trial court's order is also erroneous as a matter of law. In Mithoug v. Apollo Radio, 128 Wn.2d 460, 909 P.2d 291 (1996), a trial court granted summary judgment to the defendant, stating in a supplemental order that it had not considered several depositions called to its attention. Upon appeal of that ruling, the Court of Appeals granted a defense motion to strike all references to the depositions, and limited its review to only the evidence the superior court said it had considered. Mithoug, 128 Wn.2d at 461. The Supreme Court reversed that order, holding that appellate review is not limited to the evidence expressly considered by the trial court. Rather, appellate courts are required to consider "all documents . . . called to the attention of the trial court":

The plaintiffs should be afforded the opportunity to file briefs in the court of appeals with appropriate references to the full trial court record - all documents which they and the defendants called to the attention of the trial court.

Mithoug, 128 Wn.2d at 462 (emphasis added).

The depositions in this case were repeatedly and emphatically "called to the attention" of the trial court. CP 14-16, 17 § IV, 19-21, 23-25, 27-32, 36-46, 136 & 139-141. The depositions must, therefore, be made part of the record in this Court, and Mr. Gronquist must be allowed to exercise his right to file briefs with appropriate references to the deposition transcripts. At a minimum, the trial court's Order Denying Plaintiff's Motion to Settle the Record should be reversed, and new briefing permitted. As discussed in the next section, a more appropriate remedy is to reverse the grant of summary judgment, and remand this case to a different judge with instructions to consider all of Mr. Gronquist's evidence.

II. THE TRIAL COURT VIOLATED DUTIES IMPOSED
BY STATUTE AND COURT RULE BY GRANTING
SUMMARY JUDGMENT TO THE DEPARTMENT
WITHOUT REVIEWING THE ENTIRE RECORD
OR REVIEWING THE AGENCY'S ACTIONS DE
NOVO

It is a long standing and well known rule that summary judgment is only appropriate if the "pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Am. Safety Cas. Ins. v. City of Olympia, 133 Wn.App. 649, 656, 137 P.3d 865 (Div. II 2006). To reach such a determination, courts are required to consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party[:]

The court should grant the motion only if, from all the evidence, reasonable person's could reach but one conclusion.

Id. (Emphasis added).

This standard is heightened in actions prosecuted **pro se**:

because [the Plaintiff] is pro se, we must consider as evidence in his opposition to summary judgment all of [Plaintiff's] contentions offered in motions and pleadings, where such contentions are based on personal knowledge and set forth facts that would be admissible in evidence . . .

Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004)
(emphasis added).

In this case, the trial court failed to review or even consider any of the pleadings, memoranda, and evidence submitted by Mr. Gronquist. CP 160-161, 163-164, 174-180 & 167-168. The only thing the trial court reviewed prior to granting summary judgment was the Master License Application at issue in this case. Ids. This arbitrary and capricious form of cursory review does not comply with the rigorous standard of review required by CR 56, and gives rise to a strong presumption of bias.

The error was not harmless. The evidence and memoranda submitted by Mr. Gronquist was damning, critical, and dispositive. That evidence and memoranda included: (1) the Department's admission that no statute exempts information contained in Master License Applications from public disclosure; (2) an internal e-mail discussion indicating that Nancy Skewis knew the statutes she cited did not apply to the information redacted from the Master License Application; (3) a Departmental policy stating that government created records like Master License Applications are not "employing unit records" under RCW 51.16.070; (4) a Department

policy clearly stating that the business' physical location, business telephone number, business e-mail, business owners personal address, business owners personal phone number, and the percent of ownership (information redacted from the Master License Application at issue) are disclosable; and (5) clearly articulated argument supported by law showing that the information redacted from the Master License Application is not exempt from disclosure and that the Department has failed to meet its burden of proving that any statute applied to exempt the information. CP 15-16, 18-25, 53-54, 60-65, 137-138 & 208.

The trial court's egregious conduct does not stop with the failure to review all of the materials submitted in this case. The trial court was required by statute to review all of the agency's actions *de novo*. RCW 42.56.550(3). By limiting review to a single document, the trial court failed to discharge its mandatory duties under the Act.

Once again, that error is not harmless. The trial court completely failed to address the agency's untimely response (section IV below), the sufficiency of it's post-lawsuit response (section

III below), and whether any statute actually exempted the redacted information (section V below).

Mr. Gronquist requests this Court to strongly condemn such unlawful and biased conduct from the superior court. When a trial court completely fails to review a case fairly and in accordance with the applicable rules and laws, the only remedy can be to declare the trial court judge biased, reverse her on all grounds, and remand the case back for a full and fair hearing before a different judge. Mr. Gronquist requests such relief in this case.

III. THE PUBLIC RECORDS ACT REQUIRED THE TRIAL COURT TO AWARD MR. GRONQUIST HIS COSTS FOR THE DEPARTMENT'S FAILURE TO INCLUDE A STATEMENT OF THE EXEMPTION AUTHORIZING THE REDACTIONS AND A BRIEF EXPLANATION OF HOW THE EXEMPTION APPLIES

RCW 42.56.210(3) commands:

Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

DOL freely admits that it redacted information from the requested Master License Application without providing a statement of the specific

exemption authorizing the withholding or any explanation why information was redacted. CP 9 ¶ 7, 111, 124 & 143. The trial court acknowledged that

In this case, the Department produced materials for the requestor with redactions. At the time of production, there was no accompanying brief explanation of the reason for the redactions. No request for an explanation was made. When this lawsuit was filed identifying the requestor's issue, the Department provided an explanation for the redactions.

CP 160.

Despite making the above referenced finding, the court held that DOL's conduct did not violate the PRA, refused to award Mr. Gronquist costs, and granted summary judgment to the Department. CP 161, 163-164, 171-173 & 167-168. This was err. PAWS, 125 Wn.2d at 270-271 (condemning such conduct as a "silent withholding" "clearly and emphatically prohibit[ed] by the PRA.") (Emphasis added); Citizens v. Department of Corrections, 117 Wn.2d 411, 431, 72 P.3d 206 (Div. II 2003) (holding that DOC "clearly violated" PRA by withholding records without citing an exemption). DOL's omission clearly violates the PRA.

This violation should have resulted in the award of costs to Mr. Gronquist. RCW 42.56.550(4)

declares:

Any person who prevails against an agency in any action in the courts seeking the right to . . . **receive a response** to a public records request within a reasonable amount of time **shall be awarded all costs**, including reasonable attorney fees, incurred in connection with such legal action.

(Emphasis added).

In Sanders v. State, 169 Wn.2d 827, 860, 240 P.3d 120 (2010), the Supreme Court recognized that RCW 42.56.550(4)'s cost-award requirement is triggered when an agency withholds information without providing the explanation required by RCW 42.56.210(3). As no such explanation was provided in this case, Mr. Gronquist should have been awarded his costs.

It must be emphasized that the Department has **never** provided a RCW 42.56.210(3) compliant explanation. DOL initially failed to provide any statement of the statute authorizing the redactions or an explanation of how a statute applied to the information redacted. CP 9. After this lawsuit was filed, DOL did provide a letter citing several statutes to justify the redactions. CP 121.

Ms. Skewis' post-lawsuit letter, however, is insufficient. Ever since PAWS, the Supreme Court has interpreted RCW 42.56.210(3) to require

agencies to provide detailed Privilege Log's linking each redaction "with particularity" to the statute asserted to justify it. See Rental Association v. City of Des Moines, 165 Wn.2d 525, 537-538, 199 P.3d 393 (2009) (citing PAWS, 125 Wn.2d at 270-271). DOL not only failed to provide such a link, but was unable to throughout the discovery process, responding to Gronquist's motion to show cause, or in moving for summary judgment. CP 41-43 & 110-130. It was not until January 7, 2011 -- almost 18 months after receiving Mr. Gronquist's PRA request -- that DOL finally identified which statute purportedly applied to each redaction made to the Master License Application. CP 145. While not required for the award of costs under RCW 42.56.550(4), this lawsuit was clearly necessary to compel DOL to provide the link between claimed exemption and each redaction made to the Master License Application.

The provision of such a link seven days before a decision was made in this case neither immunized DOL from the award of costs nor rendered its conduct compliant with RCW 42.56.210(3). That statute requires not only the above referenced link, but also "a brief explanation how the

exemption applies to the [information] withheld." (Emphasis added). The Department has never provided **any** explanation how the asserted statutes operate to exempt the information withheld. See CP 110-132; 142-159; 188; 195. This defect violates RCW 42.56.210(3) and entitles Mr. Gronquist to the award of costs under RCW 42.56.550(4).

IV. THE PUBLIC RECORDS ACT REQUIRED THE TRIAL COURT TO AWARD MR. GRONQUIST COSTS AND PENALTIES FOR THE DEPARTMENT'S FAILURE TO RESPOND TO HIS PUBLIC RECORDS REQUEST WITHIN FIVE BUSINESS DAYS

The Department admits that it received Mr. Gronquist's public records request on July 21, 2009, and did not respond to it until July 31, 2009. CP 115. The time between July 21, 2009, and July 31, 2009, represents eight business days.

RCW 42.56.520 commands:

Within five business days of receiving a public records request, an agency . . . must respond by either (1) providing the record; (2) acknowledging that the agency, . . . has received the request and providing a reasonable estimate of the time the agency, . . . will require to respond to the request; or (3) denying the public record request.

When an agency fails to respond to a public records request within five business days, its conduct constitutes an unlawful withholding of public records requiring the award of costs and

penalties under RCW 42.56.550(4). Doe I. v. Washington State Patrol, 80 Wn.App. 296, 303-304, 908 P.2d 914 (1996).

Because DOL failed to timely respond to Mr. Gronquist's public records request, the trial court's refusal to award costs and penalties, and grant of summary judgment to the Department, was error.

V. THE INFORMATION REDACTED FROM THE MASTER LICENSE APPLICATION IS NOT EXEMPT FROM PUBLIC DISCLOSURE

Exemptions to disclosure of public records are narrowly construed. RCW 42.56.030. To determine if an exemption applies, the court must review the unredacted record *in camera*. De Long v. Parmellee, 157 Wn.App. 119, 160-162, 236 P.3d 936 (Div. II 2010).

A. No Statute Specifically Applies to the Record or Information Withheld.

The dispute before the Court concerns information redacted from a Master License Application created by, filed with, and maintained at the Department of Licensing. See 149-152.

The PRA's list of exemptions contains sections concerning licensing, license applications, and the Department of Licensing - **none of which apply to**

business license applications. RCW 42.56.240(4), .250, .270(15), .340, .430(3), & .450. The Master License Application at issue unambiguously states that its purpose is to open a business and register a trade name. CP 149. The statutes governing business licenses and trade names contain no exemptions to public disclosure. RCW 19.02 & 19.80. These facts are dispositive, and should have resulted in an order compelling disclosure.

B. RCW 82.32.330 and RCW 50.13.020 are Not 'Other' Statutes Exempting Disclosure.

A single DOL employee has claimed that the information redacted from the Master License Application is exempt under statutes applicable to the Departments of Revenue, Labor and Industries, and Employment Security. CP 122. Two of those statutes, RCW 82.32.330 and RCW 50.13.020, do not apply independently of the PRA.

RCW 42.56.070 authorizes 'other' statutes (those not contained in the PRA) to exempt "specific information or records." The other statute must not conflict with the PRA. If it does, the PRA controls. PAWS, 125 Wn.2d at 261-262; O'Neill v. City of Shoreline, 170 Wn.2d 138, 149, ___ P.3d ___ (2010).

RCW 42.56.230(3) incorporates RCW 82.32.330 into the PRA and adds additional elements thereto. RCW 42.56.410 incorporates RCW 50.13.020 into the PRA and adds additional elements thereto. Because RCW 82.32.330 and RCW 50.13.020 are incorporated into the PRA, the trial court erred in utilizing them as independent exemptions.

C. The Redacted Information is Not Exempt.

1. RCW 42.56.230(3). RCW 42.56.230(3)

exempts:

Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW . . . 82.32.330, . . . or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer[.]¹

The Supreme Court has held that Master License Applications have no connection with the assessment or collection of taxes:

¹ The Department has never claimed that disclosure would violate a taxpayer's right of privacy or result in an unfair competitive advantage. Cf. CP 8-11, 110-130 & 142-159. Therefore, the only issues before the Court are whether the information in the Master License Application was "required" "in connection with the assessment or collection of any tax", and, if so, whether disclosure is prohibited by RCW 82.32.330.

the annual business license application is exactly that - a license application, not a [tax] return. It is designed to license a company to engage in business, not to provide financial information for taxation purposes. Second, although the license application may request some financial data, they do not require the provisions of sufficient financial data to allow for a computation of the appropriate tax.

Ford Motor Co. v. City of Seattle, 160 Wn.2d 32, 55-56, 156 P.3d 185 (2007) (emphasis added).

In addition to having no connection to the assessment or collection of any tax, the Department has completely failed to even identify - **much less than prove** - what redacted information was "required" for the assessment or collection of a tax. All the Department has claimed is that the redactions were made "pursuant to Revenue statutes 82.32.330(1)(k)." CP 145. Such a statement completely fails to meet the PRA's rigorous burden of proof. See RCW 42.56.550(1).

Even if we assume for the sake of argument that the information redacted from the Master License Application was required for the assessment or collection of a tax, the redacted information must still be prohibited from disclosure by RCW 82.32.330.

RCW 82.32.330(2) states that tax "[r]eturns and tax information shall be confidential and

privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information." (Emphasis added).

The Department claims that it redacted the following information from the Master License Application under RCW 82.32.330:

1. Whether the business is inside the city limits of Seattle;
2. The business telephone number;
3. The business e-mail address;
4. The business owner's home phone number;
5. The business owner's home address;
6. The business owner's date of birth;
7. The applicant's percent of business ownership;
8. The business' estimated gross annual income;
9. The type of business activities conducted;
10. The principle products or services provided by the business;
11. Whether the applicant bought, leased, or acquired all or part of an existing business;
12. Whether the applicant purchased or leased any fixtures or equipment which she had not paid

sales or use tax;

13. The applicant's bank's name; and

14. Whether the business plans on having employees.

CP 150-151.

Under the statutory definition of "tax information" articulated by RCW 82.32.330(1)(c)² and 82.32.330(1)(e),³ the only information that could arguably apply would be the applicant's home address and telephone number. The other 12 pieces of information are not even remotely embraced by

² RCW 82.32.330(1)(c) defines "tax information", in relevant part, as: (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source; . . . and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section.

³ RCW 82.32.330(1)(e) defines "taxpayer identity" as: "the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer."

RCW 82.32.330(1)(c) and should have been disclosed.

Whether RCW 82.32.330(1)(c) applies to two redactions, or all of them, is immaterial. This is because RCW 82.32.330(3)(1) authorizes the "[d]isclosure [of] such return or tax information that is also maintained by another Washington state . . . agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW . . ."

Because the information was maintained by the Department of Licensing (rather than the Department of Revenue), and was requested under the PRA (RCW 42.56), it is disclosable under RCW 82.32.330(3)(1) regardless of how the information is characterized. The trial court clearly erred in refusing to compel disclosure.

2. RCW 51.16.070. The Department has never identified which, if any, of the redactions were made pursuant to RCW 51.16.070. The most it has ever claimed is that "[i]nformation about any employees is redacted pursuant to RCW 51.16.070 the Labor and Industries statute . . ." CP 145. Such a statement clearly fails to meet the PRA's burden of proof. RCW 42.56.550(1). The assertion also overlooks one critical fact: the Master License

Application was filed by a sole proprietor business
-- it has no employees.

RCW Chapter 51, titled "Industrial Insurance",
"governs all aspects of a worker's remedy against
his or her employer for injuries sustained in the
course of employment." RAFN Co. v. Department of
Labor & Industries, 104 Wn.App. 947, 949, 17 P.3d
711 (2001). Sole proprietor's are excluded from
Chapter 51 RCW. RCW 51.12.020(5).

Maureen's House Cleaning is a sole proprietor.
CP 150 § 3(a). The business declined optional
industrial insurance coverage for its owner. CP
152 § 4(f). RCW 51.16.070 only exempts
"[i]nformation obtained from employing unit records
under the provisions of [] title [51] . . ."
Because sole proprietors are excluded from Chapter
51 RCW, no information contained in the Master
License Application at issue is within the reach of
RCW 51.16.070.

Nor is the Master License Application an
"employing unit record". "Employing unit"

means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or . . . had in its employ or in its "employment" one or more individuals performing services in this state.

RCW 50.04.090 (emphasis added).

Maureen's House Cleaning is neither an employer nor employing unit. As such, its Master License Application is not an "employing unit record" that information can be exempted under RCW 51.16.070. The trial court clearly erred in holding that unidentified information is exempt under that statute.

3. RCW 42.56.410 and RCW 50.13.020. The Department has claimed that the applicant's marital status and Social Security Number⁴ were redacted under RCW 50.13.020.⁵ CP 145. RCW 42.56.410 provides:

Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter.

(Emphasis added); see also RCW 50.13.010 declaring that RCW 50.13.020 only applies to records "held

by" the Department of Employment Security).

Master License Applications are maintained by the Department of Licensing. CP 197. Because the Master License Application is not maintained by the Employment Security Department, neither RCW 42.56.410 nor RCW 50.13.020 exempt its contents from disclosure.

Regardless of what agency maintains the record, RCW 50.13.020 simply does not apply to the information contained in the Master License Application for Maureen's House Cleaning. Sole proprietors are excluded from the Employment Security Act. RCW 50.04.145(3); Language Connect v. Employment Security Dept., 148 Wn.App. 575, 581, 205 P.3d 924 (2009) (threshold test to determine if Act applies is whether the business has persons in

⁴Mr. Gronquist has never challenged the redaction of the applicant's social security number. CP 20 n.3. That number is exempt under RCW 42.56.230(4) despite the Department's failure to cite and explain that exemption.

⁵RCW Chapter 50 is the Employment Security Act. Its purpose "is to mitigate the negative effects of involuntary unemployment on the individual and society." Penick v. Employment Security Dept., 82 Wn.App. 30, 36, 917 P.2d 136 (Div. II 1996). This purpose was advanced through the creation of an unemployment insurance system. Id.

its 'employ') (citing Penick, 82 Wn.App. at 38-39). Because Maureen's House Cleaning is a sole proprietor, RCW 50.13.020 does not apply to information contained in its Master License Application.

RCW 50.13.020 has no connection to information unrelated to unemployment insurance.

The statute exempts:

Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility . . .

RCW 50.13.020.

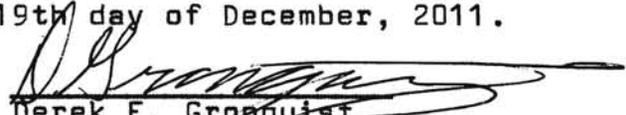
How this statute could even hypothetically apply the the marital status (a matter of state regulation and public record under any definition) from the Master License Application of a sole proprietorship has never been explained. As such, the Department has not meet its burden of proving that this exemption applies, and the trial court erred in granting summary judgment.

CONCLUSION

For the foregoing reasons Mr. Gronquist requests this Court to reverse the trial court's grant of summary judgment to the Department, and

remand this case for entry of an order compelling disclosure and awarding costs and penalties. Mr. Gronquist also requests the award of costs incurred on appeal.

Submitted this 19th day of December, 2011.



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COURT OF APPEALS
DIVISION II

DECLARATION OF SERVICE

11 DEC 21 AM 11:39

STATE OF WASHINGTON
BY [Signature]
DEPUTY

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day I deposited a properly addressed envelope in the internal mail system of the Monroe Correctional Complex, and made arrangements for postage, containing: Amended Opening Brief.

Said envelope(s) was addressed to:

Susan L. Pierini
Assistant Attorney General
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Dated this 19th day of December, 2011.

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