

No. 45577-3-II

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

BELO MANAGEMENT SERVICES, INC, a Delaware Corporation;
KIRO-TV, INC., a Delaware Corporation; TRIBUNE BROADCASTING
SEATTLE, LLC, a Delaware Limited Liability Corporation; and CLICK!
NETWORK, a Department of Tacoma Public Utilities Division of the
CITY OF TACOMA,

Respondents,

v.

TACOMA NEWS, INC.,

Appellant.

AMICUS CURIAE BRIEF OF ALLIED DAILY NEWSPAPERS OF
WASHINGTON AND WASHINGTON NEWSPAPER PUBLISHERS
ASSOCIATION IN SUPPORT OF APPELLANT

Michele Earl-Hubbard, WSBA #26454
Allied Law Group
P.O. Box 33744
Seattle, WA 98133
Phone (206) 801-7510
Fax: (206) 428-7169

ALLIED
LAW GROUP

Attorneys for Amici Curiae

TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF AMICUS..... 1

II. STATEMENT OF FACTS 1

III. ARGUMENT AND AUTHORITY..... 1

A. THIS COURT’S RECENT ROBBINS GELLAR V. GRESHAM
DECISION MUST GUIDE THE DECISION HERE. 2

B. DECISION TO GRANT AN INJUNCTION IS REVIEWED DE
NOVO..... 7

C. THE TRIAL COURT ERRED WHEN IT REFUSED TO
PERFORM IN CAMERA REVIEW..... 8

D. REQUESTOR SHOULD BE AWARDED FEES AND COSTS IN
PRA CASE WHEN GOVERNMENT OPPOSES RELEASE AS IT
DID HERE..... 10

E. MORE IS AT STAKE HERE THAN JUST THE IMPACT ON
THESE PARTIES..... 19

IV. CONCLUSION..... 20

TABLE OF AUTHORITIES

Federal Cases

<u>Racal–Milgo Gov't Sys. v. Small Bus. Admin.</u> , 559 F.Supp. 4 (D.D.C.1981).....	7
--	---

State Cases

<u>Bainbridge Island Police Guild v. City of Puyallup</u> , 172 Wn.2d 398, 259 P.3d 190 (2011).....	18
---	----

<u>City of Lakewood v. Koenig</u> , 176 Wn. App. 397, 309 P.3d 610 (2013); review granted, 179 Wn.2d 1022, 320 P.3d 719 (2014).....	13
---	----

<u>Confederated Tribes v. Johnson</u> , 135 Wn.2d 734, 958 P.2d 260 (1998),.....	18
--	----

<u>Delong v. Parmelee</u> , 164 Wn. App. 781, 267 P.3d 410 (2011).....	12
---	----

<u>Doe I. v. State Patrol</u> , 80 Wn. App. 296, 908 P.3d 914 (1996) ..	13, 14, 15
--	------------

<u>Freedom Foundation v. Gregoire</u> , 178 Wn.2d 686, 310 P.3d 1252 (2013).....	9
--	---

<u>Kitsap County Prosecuting Attorney's Guild v. Kitsap County</u> , 156 Wn. App. 110, 231 P.3d 219 (2010).....	16, 17
---	--------

<u>Neighborhood Alliance of Spokane County v. County of Spokane</u> , 172 Wn.2d 702, 261 P.3d 119 (2011).....	13
---	----

<u>Robbins Gellar v. Gresham</u> , --P.3d--, 2014 WL 839895 (Wn.App. Div. 2 Mar. 4, 2014).....	passim
--	--------

<u>Sanders v. State</u> , 169 Wn.2d 827, 240 P.3d 120 (2010)	10, 13, 15
---	------------

<u>Soter v. Cowles Publishing</u> , 162 Wn.2d 716, 174 P.3d 60 (2007). ..	17, 18
--	--------

<u>Spokane Research and Defense Fund v. City of Spokane</u> , 155 Wn.2d 89, 117 P.3d 1117 (2005).....	15
---	----

Yakima County v. Yakima Herald Republic, 170 Wn.2d 775,
246 P.3d 768 (2011)..... 13, 18

Yousoufian v. Ron Sims, 152 Wn.2d 436, 98 P.3d 463 (2004)..... 15

State Statutes

RCW 19.108.010 3

RCW 42.56.030 20

RCW 42.56.270(1)..... 3, 4

RCW 42.56.270(11)..... 3, 5

RCW 42.56.550(4)..... 10, 14

Other Authorities

Black’s Law Dictionary 12

Merriam-Webster Dictionary 12

I. IDENTITY AND INTEREST OF AMICUS

Amici curiae are Allied Daily Newspapers of Washington and the Washington Newspaper Publishers Association, collectively “Amici”. The identity of Amici are further described in the accompanying Motion to File Amici Curiae Brief.

This case deals with the standards of review to be applied by an appellate court when reviewing a decision to grant an injunction under the Public Records Act (“PRA”) or to refuse to perform an in camera review of the documents and what information in a contract with the government can be shielded as a trade secret. This Court’s decision will directly impact the Amici, who are frequent users of the PRA to inform their readers. Amici have a legitimate interest in assuring the Court is adequately informed about the issues and impact its decision will have on all record requestors, and future record requests for government contracts, not only on these parties and these records.

II. STATEMENT OF FACTS

Amici adopts the statement of facts of Appellant Tacoma News, Inc. (hereinafter “TNT”).

III. ARGUMENT AND AUTHORITY

Amici address the standard of review to be used by an appellate court when reviewing a grant of a PRA injunction and the choice not to

perform in camera review, the broader question of the exemption status for these particular records and the standard to be employed for injunctions, and finally the rights of requestors to awards from the government when the government acted as the agency did in this instance. For the reasons set forth below, this Court should overturn the injunction granted by the trial court, order the records released, and order the agency to pay the TNT its attorney's fees, costs and a statutory penalty in an amount to be determined by the trial court.

A. This Court's Recent Robbins Gellar v. Gresham Decision Must Guide the Decision Here.

On March 4, 2014, of this year, just over two months ago, this Court issued a published decision on very similar grounds and arguments as those involved here. The case, Robbins Gellar v. Gresham, --P.3d--, 2014 WL 839895 (Wn.App. Div. 2 Mar. 4, 2014), was an injunction case like this one where a company that does business with a Washington governmental agency sought a Public Record Act ("PRA") injunction blocking disclosure of records the company had given the government that it contended were proprietary and trade secret information. Id. at * 1-2. The company was a law firm that had responded to a request for proposals and qualifications from the Attorney General's Office ("AGO") from law firms seeking to provide securities litigation and portfolio monitoring

services to the Washington State Investment Board (“WSIB”). **Id.** Robbins was one of several applicants and was selected to enter into a Master Service Agreement with the State for future litigations. **Id.** at *1. It also entered into executed fee agreements with the State for specific litigation services. **Id.** at *12 n.3.

The law firm sought and obtained an injunction in the trial court blocking release of its past and proposed fee agreements with WSIB and numerous details of its submission to the AGO. The injunction was granted based on RCW 42.56.270(1), 19.108.010(4), and 42.56.270(11)(a)-(b) as “proprietary data and trade secrets essential to Robbins Geller’s methods of conducting business and the services the Firm offers its clients.” **Id.** at *2. The executed fee agreements were eventually deemed not exempt and ordered released. **Id.** at *12 n.3. The appeal before this Court addressed the law firm’s claims that its approach to pricing and details in its proposal related to its clients and insurance limits were trade secrets and proprietary.

In its ruling, this Court stated:

Robbins Geller asserts that its approach to evaluating and setting potential fees is unique, the firm’s fee proposals are specific to each client and case, and the proposals require substantial time and effort to formulate. Robbins Geller also argues that release of the protected information could give its competitors an unfair advantage by allowing them to mimic its fee proposal and insurance coverage to make themselves more

attractive to clients and to use the information to outbid Robbins Geller for future work. **Gresham and the amici argue that a pricing schedule is not a protectable idea under trade secrets law.** The records before us includes evidence that securities law firms often use a sliding scale of fees based on the recovery amount and the stage of the litigation's resolution and that many firms have significant malpractice coverage. . . **[W]e reject Robbins Geller's conclusory assertions of uniqueness and competitor unfair advantage as to its fee and insurance information and conclude that this information has not been shown to constitute trade secrets.**

Id. at *5 (emphasis added). This Court similarly rejected trade secret protection for the client reference list finding that is prepared for circulation outside the firm, and it rejected trade secret protection for any clients on lists that had already been disclosed. **Id.** at *5-6.

This Court further rejected application of the other cited exemptions. It found an inadequate showing of "public loss" as required by RCW 42.56.270(1) finding claims by the government and firm that the best providers might choose not to do business with the government an insufficient showing. **Id.** at *8-9.

Robbins Geller had the burden to prove that disclosure would cause public loss. Because its assertion of public loss is merely conjecture and it does not to Gresham's specific contradictions, we hold that Robbins failed to prove the requisite public loss.

Id. at *9.

It rejected RCW 42.56.270(11), noting that the pricing and rates mentioned in (c) was limited to vendors of the department of social and health services, and finding Robbins Geller had not proven (a) or (b).

Robbins Geller argues that the way it determines its pricing and insurance is part of its method of doing business. But Robbins Geller has not demonstrated that the protected information contains its “methods” rather than the end result. ... even if the fee and insurance information could be considered methods of conducting business, Robbins Geller has not shown that its methods are unique. ... many of Robbins Geller’s competitors use a sliding scale of fees depending on the recovery amount and the stage of the litigation. Although the amount of insurance and amount of fees will vary by law firm, the method of conducting business is not unique.

Id. at *10. This Court also rejected the firm’s claim that the information was “data unique to product or service of the vendor” and thus not exempt under RCW 42.56.270(11)(b).

In order to be unique to Robbins Geller’s services, the data must reveal some unique aspect about the services. ... it’s pricing approach of its legal services is not information unique to its services.

Id. at *10.

In this case, the broadcasters argue that their contracts with a government agency contain trade secrets and are exempt because the pricing and terms included could be used by competitors or other customers in future negotiations. As in **Robbins Geller** the broadcasters have not proven public loss and their declarations must be seen as

conclusory and speculative. They have further not shown the pricing information and other contract terms are unique to the services or these vendors. All of these vendors sell the programming rights. All of these vendors charge a fee. The amounts of the fees no doubt vary from vendor to vendor but that alone does not make them unique to the services or the price a trade secret.

These vendors have shared the details of these contracts with a third party, a government agency, and they have not and cannot show that what the government pays for services is secret and all the other details that have been enjoined are exempt.

This case is about government contracts and documents related to those contracts where the parties knew the government agency was subject to the PRA. Entities such as these could choose not to engage in business with government-run cable television systems, and should that occur privately-run entities will surely fill the void. Entities such as these could choose to include different terms in contracts with government entities, as many vendors do, and explain to their other customers that the governmental pricing, whether higher or lower, is limited to those rare instances where they contract with the government and that those prices and terms are not available to other entities. But what they cannot do, and certainly cannot do based on the record here, is contract with the

government and demand that the price the public will pay be kept a secret from the taxpayers. **Racal–Milgo Gov't Sys. v. Small Bus. Admin.**, 559 F.Supp. 4, 6 (D.D.C.1981) (holding “[d]isclosure of prices charged the government is a cost of doing business with the government,” and thus releasable; stating that “[i]t is unlikely that companies will stop competing for Government contracts if the prices contracted for are disclosed”). The public gets to know the details so it can decide for itself if the bargain struck was a good one or a poor one, or merely to see if it agrees with the choices the government has made on its behalf.

B. Decision to Grant an Injunction is Reviewed De Novo.

In **Robbins Gellar**, this Court addressed the standard for review to be used by the appellate court when reviewing an injunction entered under the PRA at the request of a non-governmental third party Plaintiff based on claims of proprietary and trade secret grounds. As this Court said just two months ago, “[W]e review injunctions issued under the PRA de novo.” **Id.** at *3. This Court was correct then, and it is still correct now, on this point. That holding abides by the two decades of case law discussed in the Reply Brief of the TNT confirming judicial action, not just “agency” action, is reviewed de novo in PRA cases. See TNT Reply Br. at 1-4.

Appellate courts are charged to enforce the PRA whether agencies or those with whom agencies do business are the ones to oppose release, and

appellate courts must not defer to the initial findings of trial judges on matters such as injunctions when the record consists, as it does here, entirely of documentary evidence. Id. at * 3.

C. The Trial Court Erred When It Refused to Perform In Camera Review.

Similarly, an appellate court must review de novo a trial court decision not to perform an in camera review of allegedly exempt records prior to deeming them exempt and not under the more deferential standard of abuse of discretion. A party alleging records should be enjoined has the burden of proving the records are exempt and also meet the test of RCW 42.56.540. For a trial court to determine that a record falls within an exemption, the trial court must examine the record and see for itself what it entails, what it does not entail, and determine if the specific exemption has been proven. In Robbins Geller, this Court examined the records in camera as did the trial court since a court cannot assess whether information is unique or a trade secret if a court cannot see the items sought to be withheld. This trial court in this case reviewed only redacted records and declined to review unredacted records in camera relying instead of the declarations of the parties seeking the injunctions for a description of the contents. This is troubling and problematic especially given the broad nature of the redactions, sometimes entire pages worth of

information rather than discrete redactions for numbers (see CBS Resp. Br. at 10-11) and the Fisher Communications redactions that include some unknown form of compensation from the City other than money (CP 534-36, TNT Reply Br. at 23). A trial court cannot legitimately determine if an exemption is met without reviewing complete records. When a court chooses not to review the records, an appellate court must review that decision de novo. Trial courts must review records in camera before they can declare records to be exempt. If a trial determines based on the briefing that no cited exemption could apply to the records at issue, a trial court could appropriately determine a review of the records was unnecessary. But a trial court can never rule records¹ meet the test of an exemption without actually reviewing them unredacted.

The decision whether or not to perform an in camera review is an essential step to enforcement of the PRA, and allowing a court not to review records before determining if they fall within an exemption invites error, frustrates the rights of requestors, and will lead to needless frustrated appellate reviews. This Court should take this opportunity to state clearly that an in camera review is required before a record can be deemed exempt, and that an unredacted copy of such record should be

¹ The sole exception are records of the Governor withheld after an adequate showing of executive privilege and prior to a showing of need by the requestor. **Freedom Foundation v. Gregoire**, 178 Wn.2d 686, 310 P.3d 1252 (2013).

lodged for purposes of appellate review if the record is deemed exempt and not produced. Judges must not accept the word of declarants and parties and defer to their claims about a record's contents. While the proper standard for review of a refusal to perform an in camera review must be **de novo**, it is also an abuse of discretion for a judge not to conduct an in camera review when the records are being withheld in their entirety and when any portion of the records involves some analysis of whether a test of an exemption has been met. All exemptions would seem to require such examination.

D. Requestor Should be Awarded Fees and Costs in PRA Case when Government Opposes Release as It did Here.

Whether to award attorney's fees and costs in a PRA case is a legal issue reviewed **de novo**. **Sanders v. State**, 169 Wn.2d 827, 866, 240 P.3d 120 (2010). RCW 42.56.550(4) states:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

If the TNT prevails in any respect it will have "prevailed" in an "action in the courts seeking the right to inspect or copy any public record

or the right to receive a response to a public record request within a reasonable amount of time...” It was sued below. It appeared and defended and moved for access to records. While the TNT was sued by third parties and not the government, the government, as its co-defendant, nonetheless requested and received an injunction precluding release of records “related to” the contracts – broadly expanding the scope of any injunction – until the broadcasters contested to release. RP at 182.

Although the agency determined the records were not exempt, it nonetheless filed a brief and declaration in support of the third parties’ requests for an injunction, and asked the trial court not to release the documents “[f]rom a purely business perspective.” CP 158. The agency further described disclosure to the public as “intentional interference” claiming “it would be reckless and should be avoided if at all possible.” CP 160. The agency’s general manager further supported the broadcasters. CP 166.

The agency argued for and obtained injunction of records far beyond the contracts themselves, and the agency has argued for injunction and trade secret protection of records related to the contract.

Should the requestor prevail in this litigation it will have prevailed not only against the third parties but also against its government who did

not aid it in its quest for access and in fact worked against the requestor in favor of the third parties.

“Against” is defined as “adverse to,” “contrary,” “in conflict with” or “opposed to” by Black’s Law Dictionary and as “in opposition or hostility to,” “contrary to” and “in competition with” by the Merriam-Webster Dictionary.

Here, the agency assisted the broadcasters in securing an injunction against the TNT. It argued for an injunction and against release.

In **Delong v. Parmelee**, 164 Wn. App. 781, 787, 267 P.3d 410 (2011), this Court stated:

Although we have previously stated that disclosure is a prerequisite for an award of attorney’s fees under RCW 42.56.550(4), we qualify that statement here. . . Under the first sentence of this provision, costs and attorneys fees may be awarded for vindicating “the right to inspect or copy” or “the right to receive a response.” . . . By contrast, penalties are authorized only for improper denials of the “right to inspect or copy” as specified in the second sentence of RCW 42.56.550(4).

A requestor “prevails” against an agency and is entitled to at least an award of fees and costs from the agency when an agency performs an inadequate search for responsive records. **Neighborhood Alliance of Spokane County v. County of Spokane**, 172 Wn.2d 702, 724-25, 261 P.3d 119 (2011). A requestor prevails against an agency and is entitled to an award of fees and costs from the agency when it is denied an adequate

response, including a statement of exemptions and an explanation how the exemptions apply to the records. **Sanders**, 169 Wn.2d at 848, 860; **Yakima County v. Yakima Herald Republic**, 170 Wn.2d 775, 809, 246 P.3d 768 (2011); **see also City of Lakewood v. Koenig**, 176 Wn. App. 397, 401-403, 309 P.3d 610 (2013); review granted, 179 Wn.2d 1022, 320 P.3d 719 (2014).

Further, an agency that favors the interests of a third party over the interests of the requestor also violates the PRA and is subject to an award of fees and costs as well as potentially penalties.

In **Doe I. v. State Patrol**, 80 Wn. App. 296, 908 P.3d 914 (1996), an alleged rape victim requested through the PRA a copy of an investigation of her alleged rape. The AAG for the State Patrol notified the suspect's attorney saying the agency would release the report "unless you client has initiated an action on or before February 26." 80 Wn. App. at 299. The AAG copied the requestor on this communication. On February 25, one day before the deadline, the AAG agreed to extend the deadline by one week agreeing to "maintain the status quo until a full hearing." **Id.** The suspect filed suit and the State Patrol at all times argued for release of records and against exemption. When the requestor succeeded in having the exemptions defeated, she sought fees, costs and penalties

from the agency based on the PRA provision now found at RCW 42.56.550(4). The State Patrol argued it was merely “a stakeholder” and that it, too, had “prevailed” since it had argued for disclosure and against exemption. **Id.** at 301-304. The trial court and appellate court disagreed. The Court stated:

The Act’s disclosure provisions must be liberally construed, and its exemptions narrowly construed...Courts are to take into account the Act’s policy that “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others...The agency bears the burden of proving that refusing to disclose “is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.”..Agencies have a duty to provide “the fullest assistance to inquirers and the most timely possible action on requests for information.”...Finally, agencies “shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request” except under very limited circumstances....

Id. at 300 (internal citations omitted). The Court rejected State Patrol’s claim it was authorized to delay as it did to notify the suspect, finding State Patrol “preferred the rights of [the suspect] over the rights of [the requestor] during the period before the action was filed.” **Id.** at 303. The record was released to the suspect but not the requestor and the AAG delayed turning over the report until the suspect could seek an injunction. **Id.** Thus, “[t]he state patrol did not give [the requestor] the ‘fullest assistance’ required by the statute.” **Id.** at 304. The Court held the agency

further violated the PRA by failing to respond promptly to the request. **Id.** The Court awarded fees, costs and penalties to the requestor from the agency from five days from the date of the request until the records were produced backing out periods during the litigation when the requestor acquiesced in delays. **Id.** The **Doe I** opinion is abrogated in part with respect to the backing out of penalty days, having been abrogated on this holding by the **Yousoufian v. Ron Sims** decision (**Yousoufian I**, 152 Wn.2d 436, 98 P.3d 463 (2004)), which held a trial court could not deduct penalty days. The **Spokane Research and Defense Fund v. City of Spokane**, 155 Wn.2d 89, 103-104, 117 P.3d 1117 (2005) (“**SRDF**”), further required that penalties must start as of the date of the request and not five days thereafter. The decision and its premise is otherwise valid and binding precedent. **See Sanders**, 169 Wn.2d at 849-50:

[T]he appropriate inquiry is whether the records are exempt from disclosure. If they are exempt, the agency’s withholding of them was lawful and its subsequent production of them irrelevant. If they are nonexempt, the agency wrongfully withheld the records and the appropriate penalty applies for the numbers of days the record was wrongfully withheld—in other words, until the record was produced. This interpretation of the PRA provides an incentive for agencies to produce records for which claims of exemption may fail in an effort to reduce their exposure to potential penalties.

See also **SRDF**, 155 Wn.2d at 103-104:

[N]owhere in the PDA is prevailing party status conditioned on causing disclosure . . . , We will not read into the statute what is not there. See **PAWS I**, 114 Wash.2d at 688, 790 P.2d 604.

Rather, the “prevailing” relates to the legal question of whether the records should have been disclosed on request. Subsequent events do not affect the wrongfulness of the agency's initial action to withhold the records if the records were wrongfully withheld at that time. Penalties may be properly assessed for the time between the request and the disclosure, even if the disclosure occurs for reasons unrelated to the lawsuit. “[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit ... would undercut the policy behind the act.” COGS, 59 Wash.App. at 862, 801 P.2d 1009.

In **Kitsap County Prosecuting Attorney’s Guild v. Kitsap**

County, 156 Wn. App. 110, 231 P.3d 219 (2010), this Court prevented an agency from avoiding PRA liability in a strikingly similar fact pattern to that here. A daily newspaper had sought release of records that included city of residence of employees, and the agency promptly notified the employees giving them less than a month from the date of the request to respond. More than 200 employees filed objections. Two days later, several employee guilds filed lawsuits against the agency seeking to block disclosure. The newspaper intervened and cross-sued the agency. The agency presented itself as a mere “stakeholder” but responded to the guilds’ motions stating merely it “has no objection to [the Guilds’] Motion ...” **Id.** at 116-17. The sole difference for that agency is the trial court declined to grant the injunction despite the agency’s lack of objection. This Court stated: “the County may not refuse to honor a public records request pending a court decision without violating the PRA . . . the County

failed to provide the requested information in an attempt to avoid paying fees and fines until the trial court ruled on the legality disclosure. This is not acceptable under the PRA.” **Id.** at 120. This Court declared the agency liable for fees, costs and penalties for every day from date of request until records were produced.

Again, the **Kitsap County** case involved a request with immediate notice to employees and lawsuits filed one month and a day after the request. The agency did not assert exemptions—it merely stated its lack of objection to the injunction. Nonetheless, this Court, in very strong terms, stated the need to impose an award of attorney’s fees and costs and penalties against the agency for the period it withheld records from date of request until date of production. **Id.** at 118-123.

Here, the agency gave the broadcasters time to file their lawsuit, voluntarily withholding production for that time. Then in the trial court the agency actually argued for an injunction and nondisclosure. The agency should not be allowed to point to that injunction as a defense for its voluntary withholding prior to its issuance, nor should it be able to escape liability based on an order it supported and helped secure. **Soter v. Cowles Publishing**, 162 Wn.2d 716, 756-57, 174 P.3d 60 (2007).

In **Soter**, the State Supreme Court recognized that an agency that itself sought an injunction blocking release would still be obligated to pay

fees, costs and penalties in the event the order it obtained was overturned. 162 Wn.2d at 756-57. It was immaterial whether the agency filed the declaratory judgment or injunction action seeking guidance or because it contended the records were exempt. **Id.**; **see also Yakima County**, 170 Wn.2d at 809; **City of Lakewood**, 176 Wn. App. at 401-403. No different result should be allowed when an agency courts a third party to secure the order, supports and does not object to that order, and then the order is ultimately overturned. This is not a case of an agency actively opposing exemptions and fighting for release of records to the requestors but whose hands were tied by a court order, like **Confederated Tribes v. Johnson**, 135 Wn.2d 734, 958 P.2d 260 (1998), or **Bainbridge Island Police Guild v. City of Puyallup**, 172 Wn.2d 398, 259 P.3d 190 (2011). Rather it is a case like **Kitsap County** where an agency was aligned with the third party, voluntarily delayed release to assist that third party, and supported injunction. This Court declared the newspaper in **Kitsap County** to prevail “against” the agency and to be entitled to fees, costs and penalties. In **Soter** if the order the entity had obtained had been overturned, the requestor there would have prevailed against the agency. In **Yakima County** the requestor prevailed against the agency in the face of the agency’s claimed declaratory judgment action allegedly seeking the Court’s guidance whether sealing orders for court records barred

production of records outside of court files. In **Doe I** the requestor prevailed against the agency for its lack of fullest assistance, its favoring of the subject's interests over that of the requestor's and for a lack of a prompt response. And in **City of Lakewood** the requestor prevailed against the agency when it failed to explain how exemptions applied to the requested records. A requestor must similarly be said to prevail "against" an agency that supports entry of a court order, states it does not object to its entrance, and provides support for its issuance when that order is overturned on appeal and the exemption arguments overturned. The agency here further denied its fullest assistance to the TNT and favored the interests of the broadcasters over the interests of the TNT. Should the injunction be overturned, the Court should award the TNT its fees, costs and statutory penalties from the agency.

E. More is at Stake Here than Just the Impact on These Parties.

This appeal will no doubt decide whether or not the TNT obtains these records and an award of attorney's fees and costs stemming from this case. This Court will also answer questions that will have far reaching impact on every requestor in this state going forward including amici and their members. This Court in crafting those answers should be guided by the mandate of the PRA as stated in RCW 42.56.030:

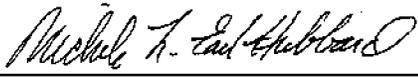
The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

IV. CONCLUSION

For the foregoing reasons, the Court should overturn the decision of the trial court, order the records released, and award the requestor its fees, costs and a statutory penalty to be determined by the trial court.

RESPECTFULLY SUBMITTED this 30th day of May, 2014.

Allied Law Group LLC

By: 
Michele Earl-Hubbard. WSBA #26454
Attorneys for Amici Curiae
P.O. Box 33744
Seattle, WA 98133
(206) 801-7510 (Phone)
(206) 428-7169 (Fax)



CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on May 30, 2014, I delivered a copy of the foregoing Amici Curiae Brief Of Allied Daily Newspapers Of Washington and Washington Newspaper Publishers Association via email pursuant to agreement to:

Counsel for Belo, KIRO-TV and Tribune Broadcasting:

Duane Swinton and Steven Dixson
Witherspoon Kelley
422 West Riverside Ave., Suite 1100
Spokane, WA 99201-0300
dms@witherspoonkelley.com
sjd@witherspoonkelley.com

Counsel for City of Tacoma, d/b/a Click! Network:

Ward D. Groves
Office of the City Attorney
Department of Public Utilities
3628 S. 35th St.
P.O. Box 11007
Tacoma, WA 98411
wgroves@ci.tacoma.wa.us

Counsel for CBS Corporation:

Jamie D. Allen and J. Zachary Lell
Ogden Murphy Wallace PLLC
901 Fifth Ave., Suite 3500
Seattle, WA 98164-2008
jallen@omwlaw.com
zell@omwlaw.com

Counsel for Fisher Communications:

Judith A. Endejan
Garvey Schubert Barer
1191 2nd Ave., Suite 1800
Seattle, WA 98101-2939
jendejan@gsblaw.com

Counsel for Tacoma News, Inc.

James Beck and William Holt
Gordon Thomas Honeywell
1201 Pacific Ave., Suite 2100
Tacoma, WA 98102
jbeck@gth-law.com
BHolt@gth-law.com

Dated this 30th day of May 2014 at Seattle, Washington



Michele Earl-Hubbard

ALLIED LAW GROUP LLC

May 30, 2014 - 3:34 PM

Transmittal Letter

Document Uploaded: 455773-Amicus Brief.pdf

Case Name: Belo Management Services et al v. Tacoma News, Inc.

Court of Appeals Case Number: 45577-3

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Amicus

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Michel Earl-hubbard - Email: info@alliedlawgroup.com

A copy of this document has been emailed to the following addresses:

info@alliedlawgroup.com
dms@witherspoonkelley.com
sjd@witherspoonkelley.com
jallen@omwlaw.com
zllell@omwlaw.com
wgroves@ci.tacoma.wa.us
jendejan@gsblaw.com

jbeck@gth-law.com