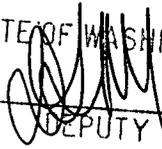


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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

**NO. 47062-4-II**

In the Court of Appeals of the State of Washington  
Division 2

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STEVEN CANHA, Appellant

v.

DEPARTMENT OF CORRECTIONS, Respondent

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**APPELLANT'S REPLY BRIEF**

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A) ISSUES

1. Mr. Canha's Appeal to Department of Corrections re PDU-22455 Does Not Establish Mr. Canha Should Have Discovered Facts to Support Cause of Action under PRA.

2. Department of Corrections' Interpretation of PDU-24889 Implausible.

B) ARGUMENT

**1. Mr. Canha's Appeal to Department of Corrections re PDU-22455 Does Not Establish Mr. Canha Should Have Discovered Facts to Support Cause of Action under PRA.**

“The discovery rule states that a statute of limitations does not begin to run until the plaintiff, using reasonable diligence, would have discovered the cause of action.” *U.S. Oil & Refining Co. v. Dept. of Ecology*, 96 Wn.2d 85, 92 (1981). “Statutes of limitations operate upon the premise that when an adult person has a justifiable grievance, he usually knows it and the law affords him ample opportunity to assert it in the courts.” *Id.* (internal quotation omitted).

“Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court...may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records.” RCW 42.56.550(1). In other words, a cause of action under

the Public Records Act can only be discovered when the person knows or should have known the agency denied him an opportunity to inspect or copy a public record under the Public Records Act.

“The public records act requires the department to release its records to the public.” *Livingston v. Cedeno*, 164 Wn.2d 46, 52 (2008). However, whether the requester receives the records “is a distinct issue.” *Id.* Specifically, when it comes to inmates, if the Department of Corrections “determines” public records “may threaten legitimate penological interests, it may determine those records cannot “be permitted inside the institution” in which the inmate is housed. *Id.* 52-53. An “inmate's status and motivation [cannot be] a factor in the Department [of Corrections'] decision *to release* a document.” *Id.* at 54 (emphasis in original). “But whether a document is allowed inside an institution under the Department's control is a discrete issue, subject to a different statute that requires the Department to take into account legitimate penological interests, including prison security and order.” *Id.* In other words, if the Department of Corrections prevents public records from reaching an inmate pursuant to RCW 72.09.530, that would not qualify as a denial of an opportunity to inspect or copy public records under the Public Records Act.

Here, on or about April 12, 2013, Mr. Canha apparently did “appeal” the Department of Corrections' denial of his request assigned tracking number PDU-22455. CP 59-60. However, although the Department apparently released public records responsive to PDU-22455, Mr. Canha did not actually receive those records. CP 39, 62, 110. Mr. Canha did not receive those records due to a mailroom policy, presumably promulgated pursuant to RCW 72.09.530. CP 110. Although the exact phrasing of Mr. Canha's internal appeal is not contained in the record, a reasonable inference would be that Mr. Canha was appealing the lack of receipt of the records under the mailroom policy, even if the form used mentioned the Public Records Act. And objecting to an application of a mailroom policy does not technically constitute a denial of the opportunity to inspect or copy public records under the PRA.

In any event, without having the records in hand, Mr. Canha would not have had notice of all the elements of the cause of action, and the fact of his appeal does not contradict this. Specifically, had Mr. Canha had the responsive records, he would have been able to ascertain the probable existence of additional responsive records—e.g. the “deposit agreement” specifically mentioned in the “signature card” that was disclosed, or a signed version of the “signature card” that was disclosed. *See* CP 57. Without having had the opportunity to review the records, Mr. Canha

would not have had access to facts sufficient to inform him he was being denied the opportunity to inspect or copy public records under the PRA. And therefore, Mr. Canha did not know, nor should he have known, he had a cause of action under the PRA. Thus, the discovery rule should apply, the trial court's dismissal should be reversed, and this case should be remanded for further proceedings.

## **2. Department of Corrections' Interpretation of PDU-24889**

### **Implausible.**

“Public record' includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” RCW 42.56.010(3).

Here, the Department of Corrections responded to PDU-22455 by mailing six records, consisting of seven pages. CP 51-57. Specifically, the Department mailed two one-page records responsive to PDU-22455: “651accounts.txt” and the “Deposit Account Documentation Signature Card.” CP 56-57. Both of these records were Bates stamped “PDU-22455.” *Id.* The Department also mailed a two-page cover letter dated February 12, 2013. CP 51-52. The Department also mailed an “Agency Denial Form / Exemption Log” dated February 12, 2013, with the form

“Last Updated 4/17/12. CP 53. The Department also mailed a blank “Appeal Form,” “Last Updated 4/17/12.” CP 54. And the Department also mailed the “Exemptions Section” record, “Last Updated 4/17/12.” CP 55. At the time the Department of Corrections responded to PDU-22455, only the first two records would be considered responsive public records. The other four records were generated or utilized by the Department in responding PDU-22455, and were not themselves responsive public records.

However, at the time of Mr. Canha's PDU-24889 request, all six records the Department mailed in response to PDU-22455 were undoubtedly “public records.” Thus, Mr. Canha's PDU-24889 request—wherein he was “seeking to receive the ones that have already been sent” that he did “not receiv[e]” because they were “confiscated by the DOC”—cannot be read as the Department now claims to have read it, i.e. as a request for records responsive to PDU-22455, but only those actually mailed. PDU-24889 could only plausibly be read as either a request for records responsive to PDU-22455 (and, irrelevant to this action, PDU-22386), or for records mailed in response to PDU-22455 (and PDU-22386), but not some narrow hybrid of the two.

C) CONCLUSION

The Department silently withheld records regarding both PDU-22455 and PDU-24889. The trial court should not have granted summary judgment regarding the claim involving PDU-22455 as time-barred because the discovery rule tolled the applicable statute of limitations. Moreover, the trial court should not have granted summary judgment regarding the claim involving PDU-24889 because either (1) if the request was for the previously-mailed records, the Department silently withheld records from that mailing; or (2) if the request was for the originally-responsive records, the Department probably silently withheld records responsive to PDU-22455. For those reasons, Appellant Steven Canha requests the Order Granting Defendant's Motion for Summary Judgment be reversed, and this action be remanded to the trial court for further proceedings.

DATED this 5th day of June, 2015.



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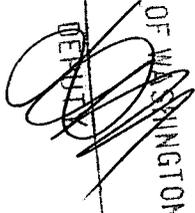
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPELLANT'S  
REPLY BRIEF was delivered this 5th day of June, 2015 to ABC Legal  
Messengers, with appropriate instructions to forward the same to counsel  
for the Respondent as follows:

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