

No. 49857-0-II

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

---

ARTHUR WEST,

Appellant/Petitioner

v.

CITY OF PUYALLUP,

Respondent.

---

BRIEF OF RESPONDENT CITY OF PUYALLUP

---

Joseph N. Beck, WSBA #26789  
Shawn Arthur, WSBA #34139  
Puyallup City Attorney's Office  
333 South Meridian, 4<sup>th</sup> Floor  
Puyallup, WA 98371  
253-841-5598

*Attorneys for City of Puyallup*

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 3

A. The Superior Court did not Commit Error by Granting the  
Summary Judgment Motion..... 3

    1. The Nissen and Vermillion Cases Establish That the Friends of  
    Julie Door Facebook Page is Not a Public Record ..... 3

    2. Judge Culpepper made an Informed and Legally Sound Ruling  
    ..... 10

B. Failing to Adopt a Bright Line Rule Does Not Create a Cause of  
Action to be Addressed by This Court..... 13

C. The City Conducted a Reasonable Search..... 15

D. Classifying the Friends of Julie Door Facebook Page as a Public  
Record Would Lead to an Absurd Result ..... 19

E. The Public Policy of Informed Citizens Has Been Satisfied ..... 20

III. CONCLUSION..... 21

## Table of Authorities

### Cases

<i>ACLU v. Blaine Sch. Dist. No. 503</i> , 86 Wn. App. 688, 696, 937 P.2d 1176 (1997).....	18
<i>Belenski v. Jefferson Cty.</i> , 187 Wn. App 724, 733, 350 P.3d 689 (2015).....	19
<i>Bonamy v. City of Seattle</i> , 92 Wn. App. 403, 409, 960 P.2d 447 (1998).....	18
<i>Burt v. Dep't of Corrs.</i> , 141 Wn. App. 573, 580, 170 P.3d 608 (2007), review granted, 164 Wn.2d 1001, 190 P.3d 54, rev'd, 168 Wn.2d 828, 231 P.3d 191, corrected, reconsideration denied .....	18
<i>Butler v. City of Hallandale Beach</i> , 68 So.3d 278 (2011) .....	14
<i>Cannon v. Dep't of Licensing</i> , 147 Wn.2d 41, 57, 50 P.3d 627 (2002)....	20
<i>Concerned Ratepayers Ass'n v. Pub. Util. Dist. No. 1 of *882 Clark County</i> , 138 Wn.2d 950, 960, 983 P.2d 635 (1999) .....	3, 6, 7
<i>Dragonslayer, Inc. v. Wash. State Gambling Comm'n</i> , 139 Wn. App. 433, 444, 161 P.3d 428 (2007).....	4, 19
<i>Kozol v. Dep't of Corrs.</i> , 192 Wn. App. 1, 9, 366 P.3d 933 (2015) .....	17
<i>Life Designs Ranch, Inc. v. Sommer</i> , 191 Wn. App. 320, 336, 364 P.3d 129 (2015).....	5
<i>Neighborhood All. of Spokane Cty. v. Cty. of Spokane</i> , 172 Wn.2d 702, 719-720, 261 P.3d 119 (2011) .....	16
<i>Nissen v. Pierce Cty.</i> , 183 Wn.2d 863, 889, 357 P.3d 45 (2015) .....	passim
<i>Prante v. Kent Sch. Dist. No. 415</i> , 27 Wn. App. 375, 385, 618 P.2d 521 (1980).....	13
<i>Smith v. Okanogan Cty.</i> , 100 Wn. App. 7, 12, 240 P.3d 120 (2010).....	3, 4
<i>State v. Williams</i> , 132 Wn.2d 248, 254, 937 P.2d 1052 (1997).....	10, 11

<i>Thompson v. State, Dep't of Licensing</i> , 138 Wn.2d 783, 800, 982 P.2d 601 (1999).....	11
<i>U.S. ex. Rel. Klein v. Omeros Corp.</i> , 897 F.Supp.2d 1058, 1074 (W.D. Wash. 2012).....	5
<i>West v. Dep't of Licensing</i> , 182 Wn. App. 500, 506, 331 P.3d 72 (2014).....	18
<i>West v. Vermillion</i> , 196 Wn. App. 627, 384 P.3d 634 (2016) .....	passim
<b>Statutes</b>	
Chapter 35A.13 RCW.....	8
Open Public Meetings Act.....	7
Public Records Act .....	passim
RCW 2.08.160 .....	10
RCW 35A.11.....	8
RCW 35A.11.020.....	8, 9
RCW 35A.13.080.....	8, 9
RCW 35A.13.130.....	9
RCW 42.17A.550.....	19, 20
RCW 42.30.020 .....	7
RCW 42.56.010(3).....	4, 6
RCW 42.56.070 .....	18
RCW 42.56.30 .....	20
Washington State Fair Campaign Practices Act .....	3, 15, 20
<b>Other Authorities</b>	
In the matter of: Melanie Stambaugh, OAH Docket No. 008318, LEB 2016 – No. 8 and No. 13 .....	6

**Regulations**  
Puyallup Municipal Code 1.08.010 ..... 8

## I. INTRODUCTION

The central question in this case is this: Does an elected official forfeit their rights as a private citizen and thereby turn any writing they create into a public record? Specifically, this appeal concerns a private Facebook page that is open and available to the public and is owned by Julie Door, a council member, who uses it for campaign purposes and to communicate general information that she believes is of interest to her “friends” and that is publicly and equally available to all people. Among other things the Facebook page contains hyperlinks and information regarding events in the City but it does not provide insight, thoughts, or information regarding the conduct of government that is unique to the position of a council member.

Federal and state law does not limit the rights of those elected into office. An elected official maintains all the constitutional rights that every citizen is afforded at birth. These rights include speech (both verbal and social media), association, and privacy to name a few. A council member can still have friends, correspond with family, and be part of the community without triggering the Public Records Act (PRA). The Court should recognize that the transformation of a writing into a public record only occurs when a council member is doing something specific to their

role as a council member such as deliberating or hearing testimony as part of a quorum of council members, passing budgets, passing ordinances, and any other activity where they are empowered by the law to act in their official capacity. In a social media setting where the webpage is not used, owned, or retained by the City, the only way data on the page can be considered a public record is if it were being produced in the scope of employment. In other words, the correct question is whether the elected official is taking some action or position that a non-elected person (a private citizen) could not take. The postings on the Friends of Julie Door Facebook page are nothing more than hyperlinks and general information that may or may not involve the City therefore, per *Nissen*<sup>1</sup>, the writings fail to meet the definition of a public record.

Although the content may touch on issues involving the City, that does not automatically transform a communication into a public record. The ruling in *Nissen* established a new element to the definition of “public record” requiring that the record must be created or received by the employee acting within the scope of employment. This new test protects the privacy rights of employees as it excludes personal records of the employee even if the writing touches on an employee’s duties within the City. Further, there must be some nexus between the agency and the

---

<sup>1</sup> *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 889, 357 P.3d 45 (2015).

agency's decision-making process for a writing to be considered a public record<sup>2</sup>, none of which is present in the case at hand.

Additionally, the Washington State Fair Campaign Practices Act (WSFCPA) does not allow elected officials to use agency resources for political activities. When an elected official uses resources that are completely separate from the City to comply with the WSFCPA those resources should not be considered a public record.

Because Judge Culpepper appropriately ruled that the Facebook page was not prepared, owned, used, or retained by the City, respondent respectfully requests that the Court uphold the trial court's summary judgment ruling and dismiss this appeal.

## II. ARGUMENT

### A. The Superior Court did not Commit Error by Granting the Summary Judgment Motion

#### 1. The *Nissen and Vermillion* Cases Establish That the Friends of Julie Door Facebook Page is Not a Public Record

The PRA applies only to public records. *Smith v. Okanogan Cty.*, 100 Wn. App. 7, 12, 240 P.3d 120 (2010). A "public record" includes any writing containing information relating to the conduct of government or

---

<sup>2</sup> See *Concerned Ratepayers Ass'n v. Pub. Util. Dist. No. 1 of \*882 Clark County*, 138 Wn.2d 950, 960, 983 P.2d 635 (1999).

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). The definition of public record contains three elements: (1) any writing; (2) containing information relating to the conduct of government or the performance of any governmental or proprietary function; (3) prepared, owned, used, or retained by any state or local agency. *Smith*, 100 Wn. App at 12. “All three elements of this three-prong test must be satisfied for a record to be a public record.” *Dragonslayer, Inc. v. Wash. State Gambling Comm’n*, 139 Wn. App. 433, 444, 161 P.3d 428 (2007). In *Nissen*, the Supreme Court added to this analysis by holding that text messages sent and received by a public employee in the scope of employment are public records. *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 889, 357 P.3d 45 (2015). For information to be a public record, an employee must prepare, own, use, or retain it *within the scope of employment*. *Id.* at 878. An employee’s communication is “within the scope of employment” only when the job requires it, the employer directs it, or it furthers the employer’s interests. *Id.* Records maintained in a personal capacity will not qualify as public records, even if they refer to, comment on, or mention public duties. *Id.* at 863, n.8. The decision in *West v. Vermillion*, 196 Wn. App 627, 384 P.3d 634

(2016), relies nearly exclusively on the decision in *Nissen*, therefore this analysis will focus on the *Nissen* decision.

The appellant argues that two types of postings on the Friends of Julie Door Facebook page are public records: (1) City Council Agendas, and (2) land use proposals before the City. The appellant's argument is misleading regarding both issues.

First, the information presented does not establish that a city council agenda was "posted" to the Facebook page. CP at 77-100. The Friends of Julie Door Facebook page did provide a hyperlink to the agenda, but an agenda was not published on the Facebook page. A hyperlink is not a publication of the contents of the materials referred to. *Life Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 336, 364 P.3d 129 (2015), citing *U.S. ex. Rel. Klein v. Omeros Corp.*, 897 F.Supp.2d 1058, 1074 (W.D. Wash. 2012). A hyperlink is more like a reference than a separate publication, thus the publishing of a hyperlink does not create a new record. *Id.* at 336.

Recently, this distinction has been highlighted in the disciplinary proceedings of State Representative Melanie Stambaugh. Representative Stambaugh was fined \$5,000 for posting state-funded photos and videos to a Facebook page she used during her campaign. The Board ruled that "legislators may link to legislatively produced material from a campaign

website, they may not post or embed that material. To comply with the ethics act, the viewer must leave the campaign site in order view material produced using legislative resources.”<sup>3</sup> Thus, a hyperlink is merely a vessel to guide a user to where a document is located. Considering that the hyperlink requires leaving the Facebook page to access the information at issue, the hyperlink is not a public record.

Second, the information on land use proposals does not qualify as a public record as the land use proposal in question is located exclusively in Pierce County, the land use proposal will not come before the Puyallup City Council, and the Puyallup City Council has no authority or decision-making powers regarding the project. CP at 230-231. The content from the Facebook page was never referenced by the City, its officials or employees at City meetings, or cited in support of any agency action. CP at 218-219. The definition of a “public record” requires a connection to the “conduct of government or the performance of any governmental or propriety function.” RCW 42.56.010(3). *Concerned Ratepayers* defines what it means to “use” a record. The critical inquiry is whether the information bears a nexus with the City’s decision-making process.

---

<sup>3</sup> See In the matter of: Melanie Stambaugh, OAH Docket No. 008318, LEB 2016 – No. 8 and No. 13. See also [http://mediad.publicbroadcasting.net/p/northwestnews/files/201702/stambaugh\\_ethics\\_board.pdf](http://mediad.publicbroadcasting.net/p/northwestnews/files/201702/stambaugh_ethics_board.pdf)

*Concerned Ratepayers Ass'n v. Pub. Util. Dist. No. 1 of Clark Cty.*, 138 Wn.2d 950, 960, 983 P.2d 635 (1999). If an agency “evaluate[s], review[s], or refer[s]’ to a record in the course of its business, the agency “uses” the record within the meaning of the PRA.” *Id.* at 962. This analysis was adopted by the Court in *Nissen* requiring that the information have some nexus to the agency’s decision-making process. *Nissen*, 183 Wn.2d at 881-882. The Friends of Julie Door Facebook page was not created nor used by anyone acting in the role of a City employee and was never referenced at public meetings nor cited in conjunction with agency action, it does not relate to the “conduct of government or the performance of any governmental or propriety function” and fails to meet the “use” definition as established in the *Concerned Ratepayers* case. *Concerned Ratepayers Ass'n*, 138 Wn.2d at 960. Councilmember Door, acting alone, is prohibited by law from acting on behalf of the city so her decision to post information was not an act that she took on behalf of the City.<sup>4</sup> Thus, given her lack of decision-making authority over property located outside of the City of Puyallup and the fact that this matter will not be ruled on or decided by the city council, the information on the Facebook page cannot “further the employers interest.”

---

<sup>4</sup> The Open Public Meetings Act only allows a council majority to take action on behalf of a city. A council member acting alone cannot take action on behalf of a city. *See* RCW 42.30.020.

In order to determine if a writing is a public record a determination must be made establishing that the writing was in the scope of employment. The first question in the scope of employment test is<sup>5</sup>, was the Facebook page required as part of the duties of a City Council Member? *Nissen* 183 Wn.2d at 878. Councilmember Door, as an individual, is not required to do anything regarding the City. Each councilmember in a code city acts in conjunction with other council members as the legislative body. RCW 35A.11.020. The City established that the Friends of Julie Door Facebook page was a campaign page that was started before Councilmember Door was elected to office. CP at 219. Nothing in RCW 35A.11 requires a council member to establish a Facebook page as a condition of being elected.

The second question is, did the employer direct the creation of the Facebook page? *Nissen*, 183 Wn.2d at 878. The City of Puyallup is a noncharter code city governed under Chapter 35A.13 RCW employing the council-manager plan of government. Puyallup Municipal Code 1.08.010. Under the council-manager plan of government the city manager has general supervisory duties over administrative affairs of the City. RCW 35A.13.080. The city manager serves at the pleasure of the majority of the

---

<sup>5</sup> The City does not concede that Councilmember Door is an employee. Councilmember Door cannot, standing alone, act on behalf of the City as a quorum of council members is required to take action regarding City business.

city council. RCW 35A.13.130. The city manager carries out duties as determined by the city council. RCW 35A.13.080. A council member cannot be directed by the “employer” to do anything as the city manager’s authority is limited to non-elected individuals within the city. *Id.* Further, a council member cannot be directed by another member of the council to establish a Facebook page. RCW 35A.11.020. Therefore, it is not possible to direct a council member to establish a Facebook page as a condition of their elected position. Again, Councilmember Door’s declaration makes it clear that she created the Friends of Julie Door Facebook page for her own purposes and was not directed by anyone to do so. CP at 218-219.

The final question is, did the Facebook page further the employer’s interest? *Nissen*, 183 Wn.2d at 878. This prong does not apply. The appellant states that the posting of “City Council Agendas” or “information on land use proposals before the city...constitute activities within the scope of the duties of a City Council Member and concern City business.” App. Br. at 13. As discussed above, the council agendas appellant refers to were merely hyperlinks and the land use proposal is located entirely outside of the City of Puyallup. Therefore, the information referenced by the appellant did not further the employer’s interest and is not a public record.

## **2. Judge Culpepper made an Informed and Legally Sound Ruling**

The appellant argues that the court was required to follow the decision of Pierce County Superior Court Judge Stanley Rumbaugh in a prior case involving appellant and former Puyallup city council member Steve Vermillion. But the ruling by Judge Rumbaugh in that case did not bind Judge Culpepper in this case. A Superior Court judge may be bound by a decision in the same case, but would not be bound by a decision in a different case. RCW 2.08.160. Further, the facts<sup>6</sup> of the *Vermillion* case are different than the facts presented here. Therefore, the appellant's reliance on the precedential impact of Judge Rumbaugh's ruling is misplaced.

Next, the appellant contends that it was reversible error for the trial court to refuse to recognize the collateral estoppel effect of the trial court's ruling in *Vermillion*. To support this claim he cites to *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997). The issue in *Williams* revolved around a claim that the decision in a civil hearing foreclosed

---

<sup>6</sup> *Vermillion* dealt with private correspondence that has never been released and resides on a private email server. The case at bar deals with writings that are available to be viewed by anyone and have been relied on by the appellant in his briefing. Further, the Friends of Julie Door Facebook page includes hyperlinks which were not present in the *Vermillion* matter.

prosecution in a criminal case. “Collateral estoppel ordinarily applies to a ruling made in a criminal trial when the same facts and law are considered in a subsequent administrative proceeding.” *Thompson v. State, Dep’t of Licensing*, 138 Wn.2d 783, 800, 982 P.2d 601 (1999). The facts in *Williams* are much different than those we are facing here. *Williams* does discuss the doctrine of collateral estoppel<sup>7</sup> which requires “[t]he party asserting collateral estoppel bears the burden of proof, and four elements must be met: (1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and (4) application of the doctrine must not work an injustice.” *Id.* At 800. Even if the doctrine of collateral estoppel did apply, the appellant could not meet the burden of this test as the case at bar is not criminal, the issues are not identical, and the *Vermillion* court could not determine if the e-mails were public records and returned the case back to the Superior Court where it remains open and pending, thereby failing to satisfy the final judgment on the merits requirement.

---

<sup>7</sup> The City does not believe that the collateral estoppel claim is properly asserted in this case, however, to address the argument forwarded by appellant it will be discussed above.

Finally, the appellant asserts that Judge Culpepper was unfamiliar with the *Nissen* and *Vermillion* cases, however, this assertion is incorrect as the respondent cited to the *Nissen* case throughout its summary judgement briefing including how the court included “within the scope of employment” to the definition of public record. See CP at 9-10. Judge Culpepper referred to the briefing at various points during the summary judgment hearing, showing that he had reviewed the materials including the respondent’s arguments regarding *Nissen*. The parties also cited to *Nissen* during oral argument. Ironically, appellant failed to cite, mention, discuss, or even touch on the *Nissen* decision in his briefs submitted to the trial court. The appellant requested reconsideration of the summary judgment ruling, which the court was not obligated to allow, and again failed to cite to the *Nissen* decision in his briefing. Having a second chance to educate the court on cases appellant felt were relevant, (i.e. *Nissen*) the appellant again chose not to brief the issue. This is not surprising as *Nissen* adds little support to the appellant’s argument that *Nissen* transforms the Friends of Julie Door Facebook page into a public record.

**B. Failing to Adopt a Bright Line Rule Does Not Create a Cause of Action to be Addressed by This Court**

Judge Culpepper summed up the issue of a “bright line rule” quite well when he stated, “your wanting a bright line rule that any Facebook maintained by a person who’s an elected official, if they refer to a public agency, is there for public, I think that’s a real stretch and probably a terrible idea as well.” Sept. 9, 2016 at 23. The appellant himself admits in his briefing that there is limited case law about the subject of social media and public disclosure, and even with this limited guidance, his expectation was for Judge Culpepper to create a bright line rule.

The appellant relies on a Florida Attorney General opinion to support his argument. In Washington State, an attorney general opinion is not binding on a court. *Prante v. Kent Sch. Dist. No. 415*, 27 Wn. App. 375, 385, 618 P.2d 521 (1980). The Florida Attorney General opinion was undoubtedly not based on the Washington Public Records Act. Considering that an opinion issued by the Washington State Attorney General that is based on Washington law is not binding on a court, the appellant has provided no reason why the Florida Attorney General opinion should be given any precedential value.

Ironically, Florida has not created a bright line rule as suggested by the appellant. The Florida Attorney General opinion cited by the appellant

was published in 2008. In 2011, a Florida court ruled that an e-mail sent by the mayor of Hallandale Beach, Florida to friends and supporters containing three articles that she had written for the South Florida Sun Times regarding Hallandale Beach which included a transcript of the 2009 State of the City Address; a transcript of Part Two of the State of the City Address; and an article about tax questions raised at prior commission meetings were not public records. *See Butler v. City of Hallandale Beach*, 68 So.3d 278 (2011). The court noted that the City did not have any part in the mayor's decision to "write articles for the Times. The City played no role in identifying the topics about which Cooper [the mayor] chose to write and exercised no control over the content of the articles. The City played no role in Cooper's decision to distribute or not to distribute her Times articles, or the means by which she chose to do so . . . The email was not made pursuant to law or in connection with the transaction of official business by the City, or Cooper in her capacity as Mayor." *Id.* at 281. Thus, the court held that these were not public records. *Id.* These facts are similar to the Friends of Julie Door Facebook page. The City of Puyallup played no role regarding the content or distribution of the Facebook page. The Facebook page was not required by law or for the transaction of official business. Thus, Florida law actually supports the fact that the Friends of Julie Door Facebook page is not a public record.

The rigid requirement that the appellant proposes would be difficult to apply in a blanket fashion regardless as technology and the PRA continue to evolve. A bright line rule would create a standard that any information remotely related to a government entity on an elected official's Facebook page is a public record regardless of content or capacity in which the elected official is acting. This would further be unworkable because a campaign site would relate to the city but, as discussed below, the WSFCPA does not allow government resources to be used for a political campaign negating them from being a public record and eliminating the ability to create a bright line rule. The appellant has failed to establish how a bright line rule is in line with *Nissen* or *Vermillion*. Additionally, the appellant cites to no case law or statute that requires a Superior Court Judge to create a "bright line rule" nor any authority that allows the Appellate Court to act in the absence of such a creation.

### **C. The City Conducted a Reasonable Search**

The appellant contends that the City "has not asserted any form of reasonable search defense." App. Br. at 16. This assertion by the appellant is incorrect. In the City's briefing for summary judgment an entire section was devoted to this issue. See CP at 14-16. In determining if an agency performed an adequate search the "inquiry is not whether

responsive documents do in fact exist, but whether the search itself was adequate.” *Neighborhood All. of Spokane Cty. v. Cty. of Spokane*, 172 Wn.2d 702, 719-720, 261 P.3d 119 (2011). The search must be reasonably calculated to uncover all relevant documents. *Id.* at 720. “What will be considered reasonable will depend on the facts of each case.” *Id.* A reasonably calculated search is adequate to comply with the PRA. *Id.* (*Neighborhood Alliance* also cites to federal law for the proposition that “a search need not be perfect, only adequate”). Adequacy of search issues in a PRA claim can be resolved on a motion for summary judgment. *Id.* at 720-721. “[T]he agency bears the burden beyond a material doubt, of showing its search was adequate.” *Id.* at 721. The agency may rely on “reasonably detailed, nonconclusory affidavits submitted in good faith” which should include the “search terms and the type of search performed, and they should establish that all places likely to contain responsive material were searched.” *Id.*

The appellant’s request asked for records “sent to or received at Council Member Door’s ‘Friends of Julie Door’ Facebook site, 2014-2016, or any such records in the possession of the City.” CP at 4. The appellant’s request was limited to public records associated with the Friends of Julie Door Facebook page. “To satisfy the agency’s burden to

show it conducted an adequate search for records, we permit employees<sup>8</sup> in good faith to submit ‘reasonably detailed, nonconclusory affidavits’ attesting to the nature and extent of their search.” *Nissen*, 183 Wn.2d at 885. A search of the messages sent or received by the City was performed using the phrase “Friends of Julie Door.” CP at 215-217. The body of the messages sent to or received by the City was searched for the phrase “Friends of Julie Door.” CP at 215-217. The results of this search produced one document which was provided to the appellant. CP 215-217. Also, the private messaging feature on the “Friends of Julie Door” Facebook page was searched which revealed only one message inviting Councilmember Door to a Christmas concert. CP at 218-219. If a search is performed in all the places a record should have been, nothing more is required of the agency. *Kozol v. Dep’t of Corrs.*, 192 Wn. App. 1, 9, 366 P.3d 933 (2015). Thus, the appellant’s contention that the City did not perform a reasonable search is not correct.<sup>9</sup>

The PRA requires each agency to make available all public records unless the record falls within a PRA exemption or other statutory

---

<sup>8</sup> The City does not concede that Councilmember Door is an employee, although the holding in *Nissen* regarding the use of declarations should be applied by analogy to this set of facts.

<sup>9</sup> The appellant contends that the City has “adopted a policy of disclosing council members’ city related social media postings.” App. Brief at 16. The appellant has not provided any evidence regarding this statement and the City disputes that such policy exists.

exemption. *West v. Dep't of Licensing*, 182 Wn. App. 500, 506, 331 P.3d 72 (2014). Agencies comply with the PRA when records are made accessible to the public. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998). Public documents are presumed viewable by the public. *Burt v. Dep't of Corrs.*, 141 Wn. App. 573, 580, 170 P.3d 608 (2007), *review granted*, 164 Wn.2d 1001, 190 P.3d 54, *rev'd*, 168 Wn.2d 828, 231 P.3d 191, *corrected, reconsideration denied*; RCW 42.56.070. Access is the underlying theme of the act. *ACLU v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 696, 937 P.2d 1176 (1997). Although the City does not concede that the information contained on the Friends of Julie Door Facebook page are public records, the Facebook page is open to the public and has been since its inception. CP at 218-219. The PRA, as appellant points out, is designed to make sure that citizens have access to government information. Ironically, the Friends of Julie Door Facebook page is open to all and provides information on how to access government information.

The personal messaging function was the only feature on the Friends of Julie Door Facebook page not visible to the public. CP at 218-219. Councilmember Door conducted a search of the personal messaging feature associated with the Friends of Julie Door Facebook page and the only message was an invitation to attend a Christmas concert. CP at 218-

219. Clearly this does not qualify as a public record because it does not contain information related to the conduct of government or the performance of governmental or proprietary function, nor was it prepared, owned, used, or retained by the City and therefore not subject to the PRA. *Dragonslayer*, 139 Wn. App at 444; *See also Belenski v. Jefferson Cty.*, 187 Wn. App 724, 733, 350 P.3d 689 (2015) (“Whether a document is a “public record” is a critical determination for the PRA’s purposes because the Act applies only to public records.”).

**D. Classifying the Friends of Julie Door Facebook Page as a Public Record Would Lead to an Absurd Result**

As discussed in Councilmember Door’s declaration, the Friends of Julie Door Facebook page is a campaign site and by definition did not allow her to act in the role of employee. See CP at 218-219.

Councilmember Door is not permitted to aid her campaign with public resources. RCW 42.17A.550.<sup>10</sup> As the Friends of Julie Door Facebook page was established prior to Councilmember Door being elected and is clearly used for campaign purposes, it cannot be prepared, owned, used, or retained within the scope of employment.

---

<sup>10</sup> Public funds shall not be used to finance political campaigns.

The WSFCPA does not allow elected officials to use agency resources for political activities. RCW 42.17A.550.<sup>11</sup> Treating a politician's Facebook page as a public record would lead to an absurd result. *Cannon v. Dep't of Licensing*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002). The law must be harmonized to avoid absurd results. *Id.* at 57. The WSFCPA strictly prohibits an elected official from using public resources for political purposes. When, as here, an elected official uses resources that are completely separate from the City to comply with the WSFCPA, those resources should not be a public record. Classifying them as such would lead to an absurd result.<sup>12</sup>

**E. The Public Policy of Informed Citizens Has Been Satisfied**

This case presents the unique scenario in which the requester has full access to all the records he is requesting yet the requestor still seeks judicial action. The PRA creates a public policy that provides for the right of the people to remain informed. RCW 42.56.30. This public policy does not allow for citizens to use the PRA as a source of employment. The City strongly contends that the writings on the Friends of Julie Door Facebook page are not public records. However, the appellant, as well as

---

<sup>11</sup> "No elective official...may use or authorize the use of any of the facilities of a public office or agency...for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition."

<sup>12</sup> The Friends of Julie Door Facebook page is open to the public but this section illustrates why information on a political webpage should not be deemed a public record.

anyone else, has had access to the content of the Facebook page. This litigation is about profit not the people's right to remain informed as the Friends of Julie Door Facebook page has been available for viewing by the public since its inception. CP at 218-219. As a campaign page, it is in the best interest of the council member to allow all citizens access to the information listed on the Facebook page. This request specifically targets the Friends of Julie Door Facebook Page. The request does not target information that can only be accessed by the City. It is undisputed that the appellant, and anyone else, has access to this Facebook page. The appellant illustrates this point when the very documents he relies on for his arguments were obtained based on his open access to the Friends of Julie Door Facebook page. Thus, public policy and the protections the PRA provides have been met and the ruling of the trial court should be upheld.

### **III. CONCLUSION**

For the reasons described above, the City respectfully requests that the Court affirm the trial court's order granting summary judgment in favor of the City.

RESPECTFULLY SUBMITTED this 30 day of June, 2017.

CITY OF PUYALLUP

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal line extending to the right.

---

Joseph N. Beck, WSBA #26789  
Shawn Arthur, WSBA #34139  
Attorneys for City of Puyallup

# CITY OF PUYALLUP - LEGAL DEPARTMENT

June 30, 2017 - 12:42 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49857-0  
**Appellate Court Case Title:** Arthur West, Appellant v City of Puyallup, Respondent  
**Superior Court Case Number:** 16-2-08084-2

### The following documents have been uploaded:

- 6-498570\_Affidavit\_Declaration\_20170630123901D2876407\_8296.pdf  
This File Contains:  
Affidavit/Declaration - Service  
*The Original File Name was COA Decl of Service.pdf*
- 6-498570\_Briefs\_20170630123901D2876407\_5784.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Puyallup COA Brief.pdf*

### A copy of the uploaded files will be sent to:

- czimmerman@ci.puyallup.wa.us
- jbeck@ci.puyallup.wa.us
- sarthur@ci.puyallup.wa.us

### Comments:

---

Sender Name: Chandra Zimmerman - Email: czimmerman@ci.puyallup.wa.us

**Filing on Behalf of:** Shawn Arthur - Email: sarthur@ci.puyallup.wa.us (Alternate Email: )

Address:  
333 South Meridian  
4th Floor  
Puyallup, WA, 98374  
Phone: (253) 841-5598

**Note: The Filing Id is 20170630123901D2876407**