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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

Michael W. Williams,
Petitioner,

v.

Dept. of Corrections,
Respondant.

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION TWO

COA No. 50079-5-II

OPENING BRIEF OF PETITIONER

I. INTRODUCTION/
STATEMENT OF THE CASE

Petitioner, Michael W. Williams made a PRA request to the Dept. of Corrections Public Disclosure Unit, ("PDU"), seeking a copy of the contract the DOC had entered into with J-Pay.

The DOC's PDU made a 5-day response to Petitioner on 3/22/2016. In it they said they needed 33 business days, (45 calendar days), to disclose the requested J-Pay contract on or before May 6, 2016. The record shows that the Public Disclosure Specialist assigned to the request, Mara Rivera, ordered a copy of the J-Pay contract on 3/22/2016 from the DOC's Contracts Dept. and received it back in a few short hours on the same day. The records also shows that Ms Rivera then took no action to disclose the requested records but used the estimate of time to delay production. On May 4, 2016 she took approx. 1/2-hour to redact the

contract and finally disclosed it on the last day of the estimated time, (May 6).

Petitioner Williams upon request from the DOC immediately paid for the disclosed contract from his inmate account. The Defendant then sent Mr Williams a redacted copy of the contract with an exemption log. None of the exemptions claimed by the DOC were "categorical" or "blanket" exemptions. In identifying the exemptions taken the DOC only provided a numerical identifier as a "placemaker" within the contract to reference to the exemption log. However, on the exemption log the DOC provided a generic category of exemption and made a reference to a statutory exemption. However, the DOC failed to include a brief statement linking the redaction and the claimed exemption and allowing Mr Williams the ability to determine if the claimed exemption was properly taken and the redacted provisions lawfully withheld or improperly denied to him.

Petitioner Williams forwarded several issues for resolution by the trial court. The first being if the estimate of time was unreasonable and in violation of RCW 42.56.550(2). The Second being if the requested records were wrongfully denied him in part via redaction in violation of RCW 42.56.550(1), and that the DOC failed to provide a proper brief explanation as required by RCW 42.56.210(3); 42.56.520 allowing him to determine if the

redactions were properly taken. Thirdly, plaintiff requested an award of costs on the basis of violation of the Act. Fourthly, he requested resolution of the issue of bad faith and an award of daily penalties pursuant to RCW 42.56.565(1); RCW 42.56.550(4). Finally, petitioner asked that the court award declaratory and injunctive relief compelling the DOC to adopt rules, policies and practices with regard to the explanation of exemptions it claims.

On 1/27/2017 the Thurston County Superior Court held a show cause hearing on the issues. Petitioner Michael W. Williams attended from the CRCC by telephonic appearance. The Defendant was represented by Asst. Attorney General Marko Pavela, who attended in person. The trial court issued an order of dismissal which petitioner Williams now seeks review by the Washington Court of Appeals.

II. ASSIGNMENTS OF ERROR

2.1 The trial court erred in not making a finding that the DOC violated RCW 42.56.550(2) when the facts of the case demonstrate the requested records was immediately available, only 1/2-hour was required to prepare the records for disclosure, the DOC's agent used the estimate of time to delay production, and the DOC failed to show that circumstances required the delay.

2.2 The trial court erred in not finding that the DOC violated RCW 42.56.550(1) by improperly withholding records in-part via redaction and failing to provide a proper brief explanation of how the claimed exemptions apply to the specific records as required by RCW 42.56.210(3); 42.56.520; and DOC Policy 280.510(III)(A)(4).

2.3 The Trial Court erred in not finding violation of the PRA and awarding Petitioner Williams the recovery of all costs and fees he incurred in pursuing this action.

2.4 The Trial Court erred in not finding the DOC acted in bad faith and awarding Petitioner Williams daily penalties under RCW 42.546.565(1); 42.56.550(4).

2.5 The trial Court erred in not granting Petitioner Williams Declaratory and Injunctive relief in this action.

III. ARGUMENT

A. Appellate Review Of PRA Actions Is De Novo

See e.g., Bainbridge Island Police Guild v. City of Puyallup, 172 Wn2d 398, 407, 259 P.3d 190 (2011),

"Judicial review under the PRA is de novo. RCW 42.56.550(3); Spokane County Police Guild v. Liquor Control Bd., 112 Wn2d 30, 34-35, 769 P.2d 283 (1989). Where the record consists of only affidavits, memorandum of law, and other documentary evidence, and where the trial court has not seen or heard testimony regarding it to assess the witnesses' credibility or competency, we are not bound by the trial court's factual findings and stand in the same position as the trial court. Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn2d 243, 252-53, 884 P.2d 592 (1994)(PAWS))."

See also Bollenski v. Jefferson County, 187 WnApp 724, 732, 350 P.3d 689 (2015); SEIU Healthcare 775 NW v. Dept. of Social & Health Svcs., 193 WnApp 377, 391, 377 P.3d 214 (2016).

B. An Agency Can Violate
The PRA In Multiple Ways!

The contours of the PRA establish two distinct types of violation within the plain text of the statute. See e.g., Andrews v. Washington State Patrol, 183 WnApp 644, 651, 334 P.3d 94 (2014), review denied, 182 Wn2d 1011 (2015),

The PRA provides a cause of action for two types of violation: (1) when a agency receiving a request wrongfully denies an opportunity to inspect or copy a public record, or (2) when an agency has not made a reasonable estimate of the time required to respond to the request. RCW 42.56.550(1),(2)."

Our Supreme Court has also indicated that there may also be

implicit violations of the PRA. See Neighborhood Alliance of Spokane County v. County Of Spokane, 172 Wn2d 702 724, 261 P.3d 261 (2011)(referencing Sanders v. State, 169 Wn2d 827 (2010)).

Violation Of The Act Happens
At The Time The Agency
Improperly Delays Or Denies Records

See e.g., Neighborhood Alliance, 172 Wn2d at 726-27 (2011) ("[T]he harm occurs when the record is wrongfully withheld, which usually occurs at the time of response or disclosure. Spokane Research, 155 Wn2d at 103 n.10."). See also e.g., Cedar Grove Composting, Inc. v. City of Marysville, 188 WnApp 695 713-14 (2015)("In Neighborhood Alliance..., the court held that '[s]ubsequent events do not effect the wrongfulness of the agency's initial action.'). This is similar enough to the analysis of harm under the federal De Minimus Doctrine to receive direction from it. See e.g., Hessel v. O'Hearn, 977 F2d 299, 303 (1992),

"A small definite loss is different from small indefinite one. The law does not excuse crimes or torts merely because the harm inflicted is small. You are not entitled to kill a person because he has one minute to live, or to steal a penny from a Rockefeller. The size of the loss is relevant sometimes to jurisdiction, often to punishment, and always to damages, but rarely ever to the existence of a legal wrong."

In the PRA context our courts have said: "[T]hat the remedial provisions of the PRA are triggered when an agency fails to properly disclose or produce records and any intervening disclosure only serves to stop the clock on daily penalties rather than to eviscerate the remedial provisions altogether." Cedar Grove Composting, 188 WnApp at 714 (citing Neighborhood Alliance, 172 Wn2d at 727).

(1) Did The DDC Violate The PRA
Via An Unreasonable Estimate Of Time
To Provide Requested Records?

The Appellate Court needs to apply the foregoing to the following undisputed facts:

1. On 3/10/16 Plaintiff Michael W. Williams made a request for a copy of "the contract that the DDC has entered into with J-Pay covering the period of 2014-2015." (See Opening Brief Exhibit 2; Response, Exhibit 1 ¶ 9, Attachment A).

2. On 3/22/16, Public Disclosure Specialist Mara Rivera of the DDC's Public Disclosure Unit made an arguably timely 5-day response letter to Mr Williams. She assigned it the tracking number of PDU-41055 and declared that "I will respond further as to the status of your request within 33 business days, on or before May 6, 2016." (See Opening Brief Exhibit 2; Response Exhibit 1 ¶ 10, Attachment B). This amounted to 45 calendar days.

3. Specialist Rivera also requested J-Pay contract from the DOC's Contracts Department on 3/22/16 and received it within hours. (See Opening Brief pg.9; Exhibit 4, DEFS 54).

4 Ms Rivera then sat on the J-Pay contract until the end of the estimated time to produce the record when she took approx. 1/2-hour to redact the document and disclosed it on 5/6/16. (See Opening Brief, Exhibit 4 DEFS 53-54).

AS APPLIED

Fortunately we have analogous caselaw to look to for direction. Our Supreme Court described the relevant underlying principle of law regarding this type of violation in Wade's Eastside Gun Shop v. Dept. of L&I, 185 Wn2d 270, 289, 372 P.3d 97 (2016), saying:

"In this case, L&I explained in its original response to the Seattle Times that it did not believe it would be able to produce the requested records until the investigation closed likely by August 9, 2013. CP at 54. However, it was unreasonable for L&I to adhere to August 9, as its deadline after the investigations closed at various times between March and June 2013. See id at 812. Such a delay is contrary to the letter and spirit of the PRA. While agencies may provide a reasonable estimate of when they produce the requested records, See Ockerman v. King County Dept. of Developmental & Env'tl. Svcs., 102 WnApp 212, 6 P 3d 1214 (2000), they cannot use that estimated date as an excuse to withhold records that are no longer exempt from disclosure."

Whether an estimate of time to produce documents is reasonable under the PRA must take into consideration an agency's other obligations under the Act. See e.g., Resident Action Council v. Seattle Hous. Auth., 177 Wn2d 417, 432, 327 P.3d 600 (2012)("[A]gency[] rules and regulation also must 'provide for the fullest assistance to inquirers and the most timely possible action on requests for information.' [RCW 42.56.100]; see also RCW 42.56.520 (agency must respond promptly but can notify requester it needs a reasonable amount of time to determine appropriate further response.))"

The Determination Of Reasonableness
Is Fact Specific Not Contingent
On Duration Of Time

See e.g., Wade's Eastside Gun Shop, 185 Wn2d at 289,

"Under the PRA, agencies may need additional time to respond to a request because of 'the need to... locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.' RCW 42.56.520."

See also Andrews, 183 WnApp at 651-52 (citing RCW 42.56.520; WAC 44-14-04003(6); and collecting cases regarding agencies needing additional time). "The burden [is] on the agency to show that the estimate it provided is reasonable." RCW 42.56.550(2); Adams v. Dept. of Corr., 189 WnApp 925, 952, 361 P.3d 749 (2015).

If the agency does not prove that their estimate of time to produce the requested records was "reasonable", the PRA was violated. This is because an unreasonable estimate of time denies the requester the records for a period of time. "The PRA 'treats a failure to properly respond as a denial.' Seter v. Cowles Publ'g Co., 162 Wn2d 716, 750... (2004)(citing RCW 42.56.550(2),(4) (formerly RCW 42.17 340))." Neighborhood Alliance, 172 Wn2d 721. Petitioner Williams believes the DOC provided him an unreasonable estimate of time to produce the requested records which renders the response by definition a denial for purposes of the PRA because the estimate's unreasonableness is not contingent on the time involved in the delay but the fact that the DOC used the estimate to delay production of the records which were currently available. See e.g. Wade's Eastside Gun Shop, 185 Wn2d at 289.

In the case at hand it is self-evident that it was unreasonable to require 45 calander days to perform 30-minutes worth of redactions. Especially since the DOC did not have to locate, assemble the information requested or perform any notification causing further delay. Neither are the DOC's public disclosure staff in any way shape or form overworked. The staff at the PDU recieve aprox. two (2) new requestes per work day which they then coordinate the records searches by assigning out to others to find the records. (See Exhibit 1). They are also

processing slightly more than 1/2 the amount of records requests that they did prior to the bad faith requirement of RCW 42.56.565(1) being instituted. (See Exhibit 1).

In short the only reasonable and logical conclusion is that in this case, the DOC used its estimated time to disclose to delay production of records. Now, this Court should take direction from our Supreme Court's ruling in Wade's Eastside Gun Shop, 185 Wn2d at 289 and find that the DOC violated RCW 42.56.550(2).

(2) Did The DOC Violate RCW 42.56.550(1)
By Denying Portions Of The Records?

When an agency wrongfully withholds records in whole or in part it violates the PRA. See e.g., Andrews, 183 WnApp at 651 (quoting RCW 42.56.550(1)).

For A Withholding To Be Lawful
The agency Has Affirmative Obligation
It's Required To Comply With

See e.g., Resident Action Council v. Seattle Hous. auth., 177 Wn2d 417, 432, 327 P.3d 600 (2013),

"An agency must explain and justify any withholding, in whole or in part, of any requested public records. RCW 42.56 070(1), 210(3), 520. Silent withholding is prohibited. Rental Hous. Ass'n v. City of Des Moines, 165 Wn2d 525, 537, 199 P.3d 393 (2009); PAWS II, 125 Wn2d at 270.W

Silent withholding has already been defined by the courts. See e.g., Gronquist v. Dept. of Licensing, 175 WnApp 729, 743-44 309 P.3d 538 (2013),

"Our Supreme Court has characterized failure to provide an explanation as 'silent withholding', which occurs when 'an agency retain[s] a record or portion without providing the required link to a specific exemption, and without providing the required explanation of how the exemption applies to the specific record withheld.' PAWS 125 Wn2d at 270...

To comply with the PRA, the agency must provide an explanation that specifically describes how the claimed exemption applies to the withheld information because '[a]llowing the mere identification of a document and the claimed exemption to count as a 'brief explanation' would render [the PRA's] brief explanation clause superfluous.'"

In Rental Hous. Ass'n v. City of Des Moines, 165 Wn2d 525 539 199 P.3d 393 (2009) the court said: "Non-specific claims of exemption such as 'proprietary' or 'privacy' are insufficient."

The Process Involved Is Mandated
By Both Statute & DOC Policy

See e.g., RCW 42.56.070(1), saying in part:

"Each agency, in accordance with published rules, shall make available for public examination and copying all public records, unless the record falls within [a] specific exemption... To the extent required... an agency shall delete... details in a manner consistent with this chapter when it makes available or publishes a record; however, in each case, the justification for the deletion shall be explained fully in writing."

See also e.g., RCW 42.56.210(3) ("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."). This is repeated again in RCW 42.56.520 ("Denials of requests must be accompanied by a written statement of the specific reasons therefore.")

The DDC Adopted These Requirements
In It's Published Public Disclosure Policy

DOC Policy 280 510(III)(A)(4) incorporates the mandates laid out in the PRA by providing a 3-part requirement regarding withholding of records in its published public disclosure policy saying:

"a. The Department can only deny records or portions of records based on an applicable legal exemption, using the Agency Denial Form/Exemption Log. All denial decisions must:

- 1) Cite the statute(s) that allow redaction or withholding of the records, in whole or in part,
- 2) State how the exemption applies to the information withheld, and
- 3) Include the page numbers or location within the responsive document where content was redacted or withheld."

(See Reply Brief pg.7-8; Exhibit B). A failure to do all three steps would meet the definition of a "silent withholding" and constitute a violation of the PRA under RCW 42.56.550(1).

Additionally, "[a]dministrative inconvenience or difficulty does not ensure strict compliance with the PRA." Rental Hous. Ass'n, 165 Wn2d at 535 (citation omitted). See also e.g., Gendler v. Batista, 174 Wn2d 244 252 274 P.3d 346 (2012)("It has long been recognized that administrative inconvenience or difficulty does not excuse strict compliance with public disclosure obligations. Hearst Corp., 90 Wn2d at 131-32; RCW 42.56.550(3).").

And Agencies Cannot Shift The Burden
To Requesters To Figure Out Exemptions

See e.g., Block v. City of Gold Bar, 189 WnApp 262, 283 355 P.3d 266 (2015),

"[T]he agency must not shift the burden to the requester to sift through the statutes cited by the [agency] and parse out possible exemption claims.' Instead, 'the agency must provide sufficient explanatory information for requesters to determine whether the exemptions were properly invoked.' In other word, 'The log should include the type of information that would enable a records requester to make a threshold determination of whether the agency properly claimed the privilege.'

An agency violates the PRA by failing to provide adequate explanation." (footnotes omitted).

The Level Of Detail Necessary
Is Determined By
The Type Of Exemption Claimed

"Categorical" or "blanket" exemptions apply in all situations

and exemptions. In all other instances the agency must provide an explanation. See e.g., City of Lakewood v. Koenig, 182 Wn2d 87, 95-96, 343 P.,3d 335 (2014),

"The majority of exemptions are categorical and exempt 'without limit a particular type of information or record.' Resident Action Council, 177 Wn2d at 434 (citing as an example RCW 42.56 230(5), which exempts 'debit card numbers.'). Thus, when it is clear on the face of a record what type of information has been redacted and that type of information is categorically exempt, citing to a specific statutory provision may be sufficient. But for other exemptions, including the 'other' statute exemptions cited by the city here, additional explanation is necessary to determine whether the exemption is properly invoked. See e.g., Sanders, 169 Wn2d at 846 (finding agency's response insufficient when it claimed the controversy exemption for numerous records without specifying details such as the controversy to which each record was relevant)."

See also Block, 189 WnApp 283 saying, "For example RCW 42.56.230(5) exempts '[c]redit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers' from disclosure. If an agency states that a debit card number has been redacted and cites this provision, no further explanation is necessary." Compared to Rental Hous. Ass'n, 165 Wn2d 539 saying, "Non-specific claims of exemption such as 'proprietary' or 'privacy' are insufficient."

But The DOC Only Made Claims
Of Generic Exemption
Not Categorical Ones!

The first is given the numerical identifier of "20" and called "Security Information." The DOC then makes a generic claim that "these records contain specific information and protocols, the disclosure of which may compromise the safety and/or security of people and/or facility, and have been redacted or withheld in their entirety per the following citations:". They then go on to claim authority under RCW 42.56.240(1) and RCW 42.56.420(2) but, fail to explain how these claims of exemptions apply to the withheld portions of the J-Pay contract.

The DOC also used the generic numerical exemption identifier of "27". The DOC calls this category "Other", and saying: "These records contain proprietary information and are withheld in their entirety." Here, the DOC claims RCW 42.56.270(11) as authority. But again they fail to provide a statement of how this claim of exemption applies to the specific records or portions of records withheld. (See Opening Brief pg.3 and Exhibit 3: Response attachment G).

It should also be noted that Petitioner Williams has a long history of the DOC making false claims of security, including to stop documents coming to him from the courts. (See Exhibit 1).

We Should Then Start With
The Plain Language Of
The Claimed Statutory Exemptions

RCW 42.56.240(1), "Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies..., the nondisclosure of which is essential to effective law enforcement or the protections of any person's right to privacy."

RCW 42.56.420(2), "Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state... correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state... correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety."

RCW 42.56.270(11), "Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for the purchases of the development, acquisition, or implementation of state-purchased health care as defined in RCW 41.05.011."

All of which are not "categorical" in nature but are only "qualified" exemptions which need an explanation of how they apply to the withheld portions of the requested records.

All Of The Claimed Exemptions
Have Qualifiers Which Disqualify Them
From Applying To The Record At Hand

First, RCW 42.56.240(1) requires that the information being withheld to be "specific intelligence information and specific investigative records compiled by... ". That is by definition using the plain language of the statute, and applying standard methods of statutory construction are defined as, investigative records which already exist. Thus given the nature of the requested record being a contract it cannot contain existing investigative records and RCW 42.56.240(1) does not apply.

Second RCW 42.56.420(2)'s qualifiers are by the plain language of the statute, "specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city county, or state adult or juvenile correctional facility..." Again, using standard methods of statutory construction to the plain language of the statute, RCW 42.56.420(2)'s internal qualifiers make it inapplicable to the records at hand.

Thirdly, the qualifiers of RCW 42.56.270(11), are by the plain language of the statute not "categorical". At least if we use standard methods of statutory construction. The statute specifically says, "[p]roprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vender." With zero possible application to section (c) because the record at hand is with DOC and not DSHS.

However, sections (a) and (b) are also not relevant. When we look to federal decisions on software, technology and trade secrets which would be directive here the courts all look to the source code not descriptions to determine if there is a trade secret or proprietary information involved. See e.g., Dart v. Craigslist, 655 F.Supp2d 961, 969 (7th Cir. 2009)(The term word-search function is a neutral and descriptive tool not proprietary information but describes that users can search terms... Roomates.com 521 F.3d at 1167 "). See also e.g., Viacom Int'l Inc., v. YouTube.Inc., 253 FRD 256 (2nd Cir. 2008)(It is the actual search function source code that is a trade secret); Mikkelsen Graphic Eng'g v. Zund Am. Inc., 2011 US Dist. LEXIS 141548 (7th Cir 2011)(Patent infringement is not based on a descriptive function but on the actual source code of the search function).

Agencies Must Redact Portions Of Records
If Doing So Renders Them
Available For Disclosure

See e.g., City of Lakewood v. Koenig, 182 Wn2d 87, 94, 343 P.3d 335 (2014),

"Consistent with its purpose of disclosure the PRA directs that its exemptions must be narrowly construed, RCW 42.56.030, and that 'an agency must produce otherwise exempt records insofar as redactions renders any and all exemptions inapplicable.' Resident Action Council, 177 Wn2d at 433 (citing PAWS II, 125 Wn2d at 261); See RCW 42.56 210(1); .070."

See also e.g., Ameriquist Mortg. Co. v. Office of the Attorney General, 177 Wn2d 467, 487, 300 P.3d 799 (2013). A court may even allow for the inspection and copying of exempt record if it finds 'that the exemption of such records is clearly unnecessary to protect any individual's right to privacy or any vital government function. Ameriquist Mortg., 177 Wn2d at 487 (citing RCW 42.56 210(2)). Additionally, the agency involved must also provide a brief explanation of sufficient explanatory information for the requester to determine whether the exemption was properly invoked as well as to allow for meaningful judicial review. See Koenig, 182 Wn2d at 94-95 (citations omitted).

The Failure To Provide A
Proper Brief Explanation
Constitutes An Improper Response

See e.g., Sanders v. State, 169 Wn2d 827, 848, 240 P.3d 120 (2010),

"The PRA entitles a... party. 'seeking the right to inspect or copy any public record or the right to receive a response to a public records request.' to costs and reasonable attorneys fees. RCW 42.56.550(4)(emphasis added). The brief explanation requirement is one aspect of the 'response[s]' referred to in this provision. See RCW 42.56.210(3). " (footnotes omitted).

Remembering that "[t]he PRA 'treats a failure to properly respond as a denial.'" Neighborhood Alliance, 172 Wn2d at 721 (citations omitted). And that "good faith reliance on an exemption does not preclude imposition of [PRA] penalties." Wade's Eastside Gun Shop, 185 Wn2d at 283 (citations omitted). Petitioner would also ask the Court of Appeals to note in its review of this case that our Supreme Court found the exact same process used in this case by the DOC was unlawful when used by the Attorney General's Office against Justice Sanders in Sanders v. State, 169 Wn2d 827 (2010).

Do The Redactions Taken
Constitute An As Applied Violation
Of The PRA Under RCW 42.56.550(1)

(a) Per Se Violation

A simple comparison of two identical provisions redacts in different ways demonstrates a per se violation of the prohibitions against wrongful withholding under 42.56.550.(1).

We simply need to look at Appendix 2.01 on page 24 of PDU-411055, and Appendix 2.01.1 on page 32 of PDU-41055 (See Opening Brief, Exhibit 3; Response, attachment F).

While Appendix 2.01, "SERVICE" is redacted with a blocked out section using the numerical identifier of "20", which the DOC uses for claims of security information under the authority of RCW 42.56.240(1), and 420(2). However, the same provisions in Appendix 2.01.1 "SERVICE" on pages 32 of PDU-41055, (Opening Brief, Exhibit 3; Response, Attachment F), is redacted differently using the same statutory exemptions claim.

So, the unredacted portion of Appendix 2.01.1, ("Keyword Search function may be edited at any time."), does not qualify for withholding under either RCW 42.56.240(1) or RCW 42.56.420(2), then a clear demonstration of violation of RCW 42.56.550(1) is made with regard to the improperly redacted provision contained in Appendix 2.01 being unlawfully withheld from inspection or copying.

So The Claimed Exemptions
Clearly Do Not Apply

First, the unredacted portion contained in Appendix 2.01.1 demonstrates that the identical provision in Appendix 2.01 that was redacted does not contain either specific intelligence or investigative records. So, the redacted portion of Appendix 2.01 also does not, and cannot qualify as exempt under RCW 42.56.240(1) because that statute's qualifiers are not met

Second a keyword search function is not a threat assessment. Nor does it pertain to escape or emergency plans for an institution. So once again teh claimed authority to exempt and withhold via redaction under RCW 42.56 420(2) does not apply because the record in question does not meet the statute's qualifiers to be exempt in whole or in part.

Since Neither Claimed Exemption Apply
The Redacted Portions Of Appendix 2.01
Constitute An Unlawful Withholding
Under RCW 42.56.550(1)!

Agencies must redact portions of records if doing so renders them available for disclosure. See e.g., City of Lakewood v. Koenig, 182 Wn2d 87, 94, 343 P.3d 335 (2014),

"Consistent with its purpose of disclosure, the PRA directs that its exemptions must be narrowly construed RCW 42.56 030, and that 'an agency must produce otherwise exempt records insofar as redaction renders any and all exemptions in applicable.' Resident Actions Council, 177 Wn2d at 433 (citing PAWS II, 125 Wn2d at 261); See RCW 42 56 210(1); .070."

See also e.g., Ameriquist MOrtg. Co. v. Office of the Attorney General, 177 Wn2d 467 487, 300 P.3d 799 (2013). The agency involved must also provide a brief explanation of sufficient explanatory information for requester to determine whether the exemption was properly invoked, as well as to allow for meaningful judicial review. See Koenig 182 Wn2d at 94-95 (collecting cases).

(b) Because The Response Was Incomplete
Plaintiff's Rights Were Violated.

The Plain language of RCW 42.56.550(4) provides a cause of action on "the right to receive a response." John Doe A v. Wash. State Patrol, 185 Wn2d 363, 386 (2015). In Koenig, 182 Wn2d at 90 our Supreme Court said:

"An agency violates a requestor's right to receive a response when it withholds or redacts public records without articulating a specific applicable exemption and providing a 'brief explanation of how the exemption applies to the record withheld.' RCW 42.56.210(3)."

Now, the DOC having failed to provide a proper "brief explanation" as required by RCW 42.56.210(3); .520, and DOC Policy 280.510(III)(A)(4), the agency violated the Act by its improper response about its redactions. This entitles plaintiff to a recovery of all costs and fee he incurred in pursuing this action under RCW 42.56.550(4). Additionally, because some of the records were wrongfully withheld in this request a daily penalty is necessitated. See Neighborhood Alliance, 172 Wn2d at 724 (citing Sanders, 169 Wn2d at 859-61).

Plaintiff Williams now asks the court to note that the DOC in its Response Brief included as Exhibit 1 a Declaration of the DOC's Head of its Public Records Unit, Denise Vaughn. In this

declaration Ms Vaughn provides what would constitute the required "brief explanation" of the redactions. (See Declaration of Denise Vaughn pgs 5-7). While plaintiff believes that Ms Vaughn's "explanations" are demonstrated to be untrue by the above analysis comparing the identical contractual provisions contained in Appendix 2.01, (redacted) to Appendix 2.01.1 (unredacted), and application of the claimed exemptions. Her belated explanations demonstrate that the DDC is able to provide the required brief explanations when forced to, but there is a difference between ability and desire. The PRA requires a brief explanation even if it is inconvenient or embarrassing to do so. See Sargent, 179 Wn2d at 386-87, citing RCW 42.56.550(3). It should also be noted that this belated explanation does not eviscerated the remedial provisions of the PRA. See Bartz v. Dept. of Corr, 173 WnApp at 539 (citing Neighborhood Alliance 172 Wn2d at 727); Kittap Cnty Pros. Attr'ys Guild v. Kitsap County, 156 WnApp at 118.

C. Mr Williams Is Entitled
To The Recovery Of All Costs
He Incurred In Pursuing This Action

Under RCW 42.56.550(4),

"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 within a reasonable amount of time shall be awarded all costs, including reasonable attorney's fees, incurred in connection with such legal actions."

See also e.g., Resident Action Council v. Seattle Hous. Auth., 177 Wn2d 417, 432 (2012) ("'[A]ny person who prevails against an agency is awarded costs and fees.").

Recovery of Costs Also
Applies To Appellate Actions

See e.g., Sargent v. Seattle Police Dept., 176 Wn2d 376 402 (2013) ("RCW 42.56.550(4) mandates provision of 'all costs' including reasonable attorney fees, incurred in connection with such legal action to the party who prevails against an agency in a PRA claim. the language includes [] fees incurred on appeal.").

And Retroactively Applies To
The Trial Court Action

See e.g., Francis v. Dept. of Corr., 178 Wn2d 42 47 (2013),

"Because the cost-shifting provisions is mandatory, we reverse the trial court's denial of Francis' request for cost and remand for award of the reasonable costs Francis incurred in litigating his claim, both in the trial court and on appeal."

See also Adams v. Dept. of Corr., 189 WnApp 925, 956 (2015) ("RCW 42.56.550(4) provides that all costs and fees shall be awarded to '[a]ny person who prevails' in any action under the PRA. Because Mr Adams has prevailed he is entitled to all costs reasonably

incurred in litigating the appeal."). See also e.g., City of Lakewood v. Koenig, 182 Wn2d 87, 97-98, 343 P.3d 335 (2014),

"The plain language of the PRA provides that costs and reasonable attorneys fees shall be awarded to a requester for vindicating 'the right to receive a response.' RCW 42.56 550(4). In Sanders we rejected the State's argument that the only remedy for the State's insufficient withholding index was to compel an explanation of the exemptions. 169 Wn2d at 847. We found that interpretation of RCW 42.56 550(4) would contravene the PRA's purpose because an agency would have no incentive to explain its exemptions from the outset.' and '[t]his forces requesters to resort to litigation, which allowing the agency to escape sanction of any kind.' Id. (citing Spokane Research & Def. Fund v. City of Spokane, 155 Wn2d 89, 103-04, 117 P.3d 1117 (2005)). We decline to depart from Sanders."

Mr Williams Should Now Be Considered
The Prevailing Party
For Several Reasons

First, because the DOC used its ability to provide an estimate of time to disclose in order to unlawfully delay the production of records. See Wade's Eastside Gun Shop, 185 Wn2d at 289, ("[Agencys] cannot use th[e] estimated date as an excuse to withhold records.").

Second, because Mr Williams has demonstrated that the redactions taken in Appendix 2.01 have been demonstrated to have be unlawfully taken because the plain language of the identical but unredacted provisions of Appendix 2.01.1 and comparing it to

the claimed statutory exemption demonstrates the exemptions do not apply to the redacted materials and constitute an unlawful withholding.

Third because the DOC failed to properly respond by providing Mr Williams with a "brief explanation" in addition to the generic and broad statutory exemption they claimed. Doing so violated DOC Policy 280 510.(III)(A)(4), and the statutory provisions of RCW 42.56.210(3); .520, and constitutes a failure to provide a proper response by not providing the required brief explanation. See Sanders, 169 Wn2d at 848; Neighborhood Alliance, 172 Wn2d at 724-25 n.14 (describing that an improper response entitles a plaintiff to at least the recovery of all costs and fees he incurred in pursuing a PRA action).

D. The DOC Acted In Bad Faith
Entitling Appellant To Penalties

Under RCW 42.56.565(1) prison inmates are not entitled to an award of daily penalties for violation of the PRA unless the agency acted in bad faith. See e.g., Adams v. Dept. of Corr., 189 WnApp 925, 937-38 (2015)(analyzing the bad faith requirement under RCW 42 56 565(1)). However, the Legislature failed to define what bad faith was. The left the courts to have to craft a functional definition in order to rule on PRA action brought by inmates.

The first case to do so was Francis v. Dept. of Corr., 178 WnApp 42, 62-63 (2013),

"The history of RCW 42.56.565(1), its statutory context, and the purposes of the PRA and this particular provision require a broader reading of the term 'bad faith' than the Department proposes. To be more consistent with these sources of authority, we hold that failure to conduct a reasonable search for requested records also supports a finding of 'bad faith' for purposes of awarding PRA penalties to incarcerated requesters. In addition to other species of bad faith, an agency is liable, though, if it fails to carry out a records search consistent with its proper policies and within the broad canopy of reasonableness."

See also Adams, 189 WnApp at 938 (citing Francis 178 WnApp at 63).

Next, Division Three of our Courts of Appeals made several decisions further defining bad faith in the context of the PRA. See e.g., Adams, 189 WnApp at 938-39.

"In Faulkner, this court held that bad faith in the PRA context incorporates a higher level of culpability than simple or casual negligence, and is 'associated with the most culpable acts by an agency.' 183 WnApp at 103-105. Accordingly, to establish bad faith, an inmate 'must demonstrate a willful or wanton act or omission by the agency.' Id. at 103. Citing Black's Law Dictionary 1719-20 (9th Ed. 2009), the court explained that 'wanton' means '[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences.' Id. at 103-04."

The Faulkner court encompassed the Francis decision as to meeting its standard of bad faith stating at Faulkner, 183 WnApp at 105,

"Francis is an example of a wanton act made in bad faith. the agency knew it had a duty to conduct an adequate search for requested records but instead performed a cursory search and delayed disclosure well short of even a generous reading of what is reasonable under the PRA.' Francis, 178 WnApp at 63."

Using This Standard Of Wrongdoing
The DDC Committed
Several Acts Of Bad Faith

First, the DDC knew it had duty under the PRA to provide its fullest assistance and most timely action on requests. In addition it must not use its ability to provide an estimate of time to disclose to delay production. See Wade's Eastside Gun Shop, 185 Wn2d at 289. However, as previous argued the DDC's agent handling this request violated these duties. While sending Mr Williams a timely 5-day response letter and providing an estimate of time to disclose of 33 business days, (45 business days), she obtained the responsive record the same day, within hours of requesting it.

Ms Rivera then made the willful or wanton act or omission of sitting on the request until the very end of the estimated time to disclose. At that time she took 1/2 hour to redact and disclose the responsive record. This delay was done in utter disregard to Mr Williams right to receive the DDC's fullest assistance and most timely action on his request and denied him the records for a period of time. The wrongdoing is further

evidenced by the DOC while claiming workload cause the delay failed to provide documentation of any work activities with any detail beyond Ms Rivera being assigned approximately One (1) new request a day to send out a five-day response and assigned the search to others to effect.

Second, the DOC knew it has a duty under RCW 42.56.210(3); .520 and DOC Policy 280.510(III)(A)(4) to provide a proper response. Because the claimed exemptions that are not categorical it must include a detailed brief explanation of how each claimed statutory exemption applied to the every redacted portion of the responsive records. However, the DOC failed to do so resulting in Mr Williams being denied access to the redacted provisions and the proper response allowing him to determine if the redactions were properly claimed.

This is a willful or wanton act or omission done with utter disregard for Mr Williams rights under the Act to receive a proper response under the PRA. The very wording of DOC Policy 280.510(III)(A)(4) demonstrates that the DOC knows it has a duty to provide a detailed brief explanation by, "(2) State how the exemption applies to the information withheld,". This is to be done in addition to: "(1) Cit[ing] the statute(s) that allow redaction or withholding of the records, in whole or in part,". And "(3) Includ[ing] the page numbers or location within the responsive document where content was redacted or withheld."

The failure to explain is further highlighted by Ms Vaughn being able to provide, albeit falsely a brief explanation in her Declaration attached to the DOC Response Brief. It reasonably shows the failure to explain was because it is not convenient.

Thirdly, The DOC clearly made the willful or wanton act or omission of making false claims of statutory exemption. This has previously be demonstrated by comparing the redacted provisions of Appendix 2.01 to the unredacted but identical provisions of Appendix 2.01.1 and applying the plain language of the exemptions. Ms Rivera knew or should have known the claimed exemptions did not apply to the redacted provisions of Appendix 2.01 and unlawfully denied Mr Williams this portion of the responsive records. She did so with utter disregard for the harm she was doing to his rights under the PRA to receive responsive records. A fact that was compounded previously by using the estimate of time to disclose to unlawfully delay disclosure.

All the above listed willful or wanton acts or omissions individually and in combination were done with utter disregard for Mr Williams' rights under the PRA. So, individually or in combination they constitute bad faith for purposes of RCW 42.56.565(1) and entitle him to an award of appropriate daily penalties under RCW 42.56.550(4).

E. The Court Should Award
High-End Daily Penalties

The court within its sound discretion is authorized to award a penalty amount not to exceed \$100/day under RCW 42.56 550(4). However, our Supreme Court has determined that such penalty may be made on the basis of each request, violation of the act, group of record or even on a per page basis. See Wade's Eastside Gun Shop, 185 Wn2d 270 (2016). In calculating the daily penalty amounts this court should consider the non-exclusive Yousoufian factors.

As Applied To The Case At Hand

1. The DOC used its estimate of time to unlawfully delay disclosure for 45 days denying Plaintiff Williams his right to inspect or copy the record by unreasonable estimate of time to disclose. The DOC then waited until after the request was closed and legal action filed to provide a brief explanation for the partially withheld records as part of its Response Brief.

2. The DOC clearly did not comply with the provisions of the PRA or its own Policy regarding the PRA by failing to provide any brief explanation for the redactions.

3. While the DOC has a stellar training program regarding the PRA it amounts to symbolism over substance. While DOC employees know what is required of them, the Agency and its supervisors fail to enforce its policies and training. This is demonstrated by the DOC repeatedly in multiple actions with the Plaintiff admitting that no DOC employee has ever been sanctioned or had corrective action taken for failing to comply with the PRA, even when non-compliance is intentional.

4. The explanation for non-compliance with the PRA is once again "workload". However, again the DOC demonstrates a workload that would cause private citizens to question why these DOC staff are getting paid because the workload amounts to one (1) new PRA request to each Public Records Specialist per day which they have to provide a 5-day response letter and assign the search to other DOC staff to conduct.

5. This action contains multiple willful or wanton acts or omissions by the DOC all of which were done with utter disregard for plaintiff's rights under the PRA. This includes what can only be described as intentional non-compliance with its obligation to provide a brief explanation for all non-categorical exemptions describing how they apply to any wholly or partially withheld records

6. The DOC demonstrated dishonesty in its claims of statutory exemption as related to the redacted provisions of Appendix 2.01 which were unlawfully withheld, as well as its claims of overwork.

7 The DOC is the State's 2nd largest agency and has both massive resources given it and a history of failing to comply with legal restrictions placed of it and employee misconduct. As such any unlawful conduct by the DOC is of great public importance. Because of the insulation from its general misconduct provided the DOC it only responds to the highest and harshest penalties placed on it

Thus, when looking at the DOC's action in their entirety this Court should award an amount of \$100/day for 45 days for the temporary denial of the right to inspect or copy requested records which occurred due to the agency providing an unreasonable estimate of time to disclose and then using to to deny its fullest assistance and most timely production requirements. The Court should also award \$100/day for the unlawful denial to inspect or copy the unlawfully withheld provisions of Appendix 2.01 and any other wrongfully redacted provisions which as of the date of this filing have still been unlawfully withheld amounting to _____ days and counting.

IV. CONCLUSION

4.1 This Court should find violation of the PRA for the temporary denial of plaintiff's right to inspect or copy requested records via the agency using an unreasonable estimate of time to unlawfully delay disclosure and production.

4.2 The Court should find violation of the PRA for failure to provide a proper response and silent withholding of redacted records because the DOC in violation of RCW 42.56.210(3); 520 and DOC Policy 280.510 failed to provide the required brief explanation of how its claimed statutory exemptions apply to the redacted provisions.

4.3 The Court should find violation of the PRA for the unlawful denial of plaintiff's right to inspect or copy the redacted portion of Appendix 2.01 on the basis on non-applicable statutory exemptions.

4.4 The Court should award plaintiff all costs and fees he incurred in pursuing this action in both the trial court and on appeal.

4.5 The Court should make a finding of bad faith under RCW 42.45.565(1) and award plaintiff daily penalties.

4.6 The daily penalties should include \$100/day for 45 days totaling \$4500 for unlawfully albeit temporarily denying the right to inspect or copy records by unreasonable estimates of them to disclose.

4.7 The court should also award \$100/day for _____ days which the DOC denied plaintiff his right to inspect or copy Appendix 2.01 and other redacted provisions via claims of non-applicable statutory exemptions.

4.7 This Court should issue Declaratory and Injunctive Relief directing the DOC to provide a brief explanation for all non-categorical claims of exemption.

V. OATH & VERIFICATION

I, Michael W. Williams under penalty of perjury under the laws of the State of Washington do hereby declare the foregoing to be true and correct to and best of my knowledge. I also declare this on this day I cause a true copy of this pleading to be sent to the attorney of record for the DOC, Asst. A.G. Marko Pavela in accordance with GR 3.1 by institutional legal mail.

Dated this 28th day of June, 2017 at the Coyote Ridge Corrections
Center city of Connell, Franklin County, Washington

Respectfully Submitted

A handwritten signature in black ink, appearing to read "M. Williams", is written over a solid horizontal line.

Michael W Williams DOC# 882945
Petitioner, Pro se

FILED
COURT OF APPEALS
DIVISION II

DECLARATION OF MAILING

2017 JUL -3 AM 11:39

GR 3.1 COA No. 50079-S-II

STATE OF WASHINGTON U Williams on the below date, placed in the U.S. Mail, postage prepaid, 2 envelope(s) addressed to the below listed individual(s):

BY DEPUTY

Washington Court of Appeal,
Division Two
950 Broadway #300
Tacoma, Wa. 98402-4452

Attorney General of Washington
PO Box 40116
Olympia, Wa. 98504-0116
Attn: Asst A.G. Marko Pavlich
Concator, Decisions

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Opening Brief of Appellant
2. _____
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 28 day of June, 2017, at Connell WA.

Signature 