

FILED
COURT OF APPEALS
DIVISION II

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

STATE OF WASHINGTON
BY DM
DEPUTY

Michael W. Williams,
Petitioner

No. COA No. 50079-5-II

v.

REPLY BRIEF OF PETITIONER

Dept. Of Corrections,
Respondant.

I. ARGUMENT

Petitioner, Michael W. Williams places before this Court issues questioning if the rule of law actually applies to the agencies of the State of Washington. Especially in light of this being a Public Records Act, ("PRA"), action being reviewed. Such appeals are de novo as a matter of right. Bainbridge Island Police Guild, 172 Wn2d at 407; Neighborhood Alliance, 172 Wn2d at 715. The respondent is correct with regard to the appellate court being able to affirm the superior court's decision on any grounds supported by the record. Gronquist, 177 WnApp at 396 n.8. However, to do so would be the very antithesis of the purpose of our Public Records Act, especially in situations such as the one at hand where the public is deserving of being able to look into the court's process and receive further explanation and

clarification of finer points of the Act. This is because the PRA's primary purpose is to foster governmental transparency and accountability by making public records available to Washington citizens. John Doe A v. Wash. State Patrol, 185 Wn2d 363, 371 (2015)(citing City of Lkw. v. Koenig, 182 Wn2d at 93). Especially in cases such as this where Judge Lanese in his oral ruling kept repeating that coming to a ruling was difficult and it could have gone either way with regard to both issues. (See Exhibit 1). This leads us to the following issues for review by this Court.

1. Did The DOC Violate The PRA
By Using It's Estimate Of Time
To Delay Production Of Records?

Our Supreme Court has provided direction and guidance on this issue in Wades Eastside Gun Shop, 185 Wn2d at 289. There our high Court said that "[w]hile agencies may provide a reasonable estimate of when they will produce the requested records, they cannot use that estimated date as an excuse to withhold records." This is a statement of legal principle that describes process not duration and is not time contingent. The Court went on to find violation of the PRA by the Dept. of L&I on the basis of using the estimated date to delay production. Then using the divorcing the violation and timeframe the Supreme Court looked to duration and only for purposes of setting daily penalties. See Id.

The Undisputed Facts
Regarding Delayed Production

1 The DOC's Public Records Unit received a PRA request from plaintiff Williams asking for a copy of the J-Pay contract. The request was assigned to Public Records Specialist Mara Rivera who sent plaintiff a 5-day response on 3/22/2016 providing an estimate of 33 business days to disclose on or before May 6, 2016. (See Appellate Opening Brief Pg.1).

2. Simultaneously, Specialist Rivera made a request to the DOC's Contracts Unit to obtain the J-Pay Contract. (Appellate Opening Brief Pg.1).

3. Within hours the Contracts Unit produced the J-Pay contract placing it in Specialist Rivera's hands on 3/22/2016 (See Appellate Opening Brief Pg.1).

4. Specialist Rivera then took no action on the request until 5/4/2016 when she took approx. 1/2-hour to redact the contract. (See Appellate Opening Brief Pgs.1-2).

5. After redacting the contract on 5/4/2016 Specialist Rivera failed to disclose the contract until the very last day of the estimated date on 5/6/2016 (See Appellate Opening Brief Pg.2).

6. The Respondant makes claims that its workload was the cause of the delay and justifies Ms. Rivera's sitting on the J-Pay contract from 3/22/2016 until 5/4/2016 to redact and the additional two days to disclose on 5/6/2016.

7 The only evidence demonstrating workload are affidavits/declarations that assert the Public Records Unit receives 32 new requests per day in 2015, and that Specialist Rivera was assigned 60 new requests during the pendency of Plaintiff s request which is aprox. two (2) new requests per day. (Appellate Response Pg.7).

8. At no point during the briefing for the original trial or during its Appellate Response Brief did the Respondant provide evidence as to Specialist Rivera's existing workload or documentation as to her daily work activities making the Respondant's declarations conclusory and not properly considered by the trial or appellate courts. (See Exhibit 1).

9 The DOC has a computer tracking system in which the Public Disclosure Specialists are required to log their daily work activities for each request on accounting for activity and time used. However, Respondant has never provided these records to the court to demonstrate actual workload and activities beyond the aprox. two (2) new request per day. (See Exhibit 1).

10. The Respondant has not challenged that Plaintiff has reviewed the DOC's PRA training and has detailed knowledge of the DOC PRA procedures as outlined in that training. Nor has it challenged that the Specialists at the Public Records Unit do not do the actual search for records but assign the search to others (like the Contracts Unit) to conduct the search, then prepare the records for release to the public. (See Exhibit 1).

11. Judge Lanese mistakenly focused on the duration of the violation and not the violation itself. (See Exhibit 1).

Dealing With the Strawmen

1. Respondant makes a point of the fact that Plaintiff did not object to the estimated time needed to respond to the request. (Appellate Response Pg.7). However, it is an irrelevant point given the estimate of time might have been reasonable had Specialist Rivera not received the J-Pay Contract from the Contracts Unit in a few hours after the request on 3/22/2016. It is also not relevant because plaintiff could not have known the facts of the violation until discovery produced the records.

2. The workload claims of Respondant (Appellate Response Pg.6) are also a misdirection because only new requests assigned

to Specialist Rivera are asserted. Given plaintiff's knowledge gleaned during multiple PRA litigations and the documentation provided during discovery and presented to the trial court these two new requests account for approx. 1-hour or less of Ms Rivera's work day. (See Exhibit 1). The remaining 7-plus hours/day Ms Rivera spent at the taxpayer's expense remain unaccounted for by the Respondant and this court should not impute work activity that has not been demonstrated by the computer-generated log sheets.

As Applied To Undue Delay

Our system incorporates the rule of law and gradates level of violation. (See Appellate Opening Pg.6). Thus, violation is not duration (time) dependant only action dependant. "[T]he 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 eviserate the remedial provisions altogether." Cedar Grove Composting, 188 WnApp at 714. See also Neighborhood Alliance, 172 Wn2d at 726-27. "[T]he harm occurs when the record is wrongfully withheld which usually occurs at the time of repose or disclosure." (citations omitted); Cedar Grove Composting, 188 WnApp at 713-14 "subsequent events do not effect the wrongfullness of the agency's initial action." Thus,

even the state of the law and our Supreme Court's decision in Wade's Eastside Gun Shop, 172 Wn2d at 289, "[Agency s] cannot use that estimated date as an excuse to withhold records."

Given the facts of the case and the Respondant's failure to account for Ms. Rivera's workday this court should find that the DOC violated the PRA under RCW 42.56.550(2) by using its estimate of time to disclose in order to delay production of requested records it had on the very first day and only took 1/2-hour to redact.

2. Did They Respondant Violate The PRA
By Withholding Public Records
By Redaction Without Proper Explanation

"The PRA is a strongly-worded mandate for broad disclosure of public records. Hearst v. Hoppe, 90 Wn2d 123 127, 580 P.2d 246 (1978). It requires that '[e]ach agency... , shall make available for inspection and copying all public records, unless the record falls within the specific exemptions of this chapter, or other statute which exempts or prohibits disclosure of specific information or records.' RCW 42.56 070(1). RCW 42.56.210(3) states, 'Agency responses refusing, in whole or in part, inspection of any 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.'

The PRA's disclosure provisions must be liberally construed and its exemptions narrowly construed, RCW 42.56 030. The burden of proof is on the agency to establish that any refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or part. RCW 42.56 550(1). Administrative inconvenience or difficulty does not excuse strict compliance with the pRA. *Zink v. City of Mesa*, 140 WnApp 328, 337, 166 P.3d 738 (2007). "Rental Hous. Ass'n of Publet Sound v. City of Des Moines, 165 Wn2d 525 535, 199 P.3d 393 (2008).

So, it is very clear that an agency has a duty when withholding records to; (1) provide a statutory exemption and (2) provide a brief explanation of how the exemption applies to the specific records withheld. Both must be done regardless of administrative inconvenience, difficulty or embarrassment to the agency involved. Furthermore, has repeatedly reaffirmed and expanded on this principle. See e.g., City of Lakewood v. Koenig, 182 Wn2d 87, 94-95 343 P.3d 335 (2014) saying:

"When an agency withholds or redacts records, its response '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.' RCW 42.56 210(3); see PAWS II, 125 Wn2d at 270. The purpose of the requirement is to inform the requester why the documents are being withheld and provide for meaningful judicial review of agency action. See PAWS II, 125 Wn2d at 270; *Sanders v. State*, 169 Wn2d 827, 846, 240 P 3d 120 (2010)(noting that [c]laimed exemptions cannot be vetted if they are unexplained').

The plain language of RCW 42.56.210(3) and our cases interpreting it are clear that an agency must identify with particularity the specific record or information being withheld and the specific exemption authorizing the withholding. *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn2d 525 537-38 1999 P.3d 393 (2009)(emphasis added)(quoting PAWS II, 125 Wn2d at 271); see also PAWS II, 125 Wn2d at 271. n.18. In *Rental Housing* for example, we concluded the city did not 'specifically describ[e] each withheld document and the basis for withholding the document.' 165 Wn2d at 529, 541. Additionally the agency must provide sufficient explanatory information for requestors to determine whether the exemptions are properly invoked. *Rental Hous.*, 165 Wn2d at 539 (quoting WAC 44-14-04004(4)(b)(ii); see also *Sanders*, 169 Wn2d at 846 .

The level of detail necessary for a requestor to determine whether an exception is properly invoked will depend on both the nature of the exemption and the nature of the document or information. 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 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 *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 records was relevant.)."

Are Explanation Required
For Non-Categorical Exemptions
Or Are They Not?

Unlike RCW 42.56.230(5) exempting debit card number in all circumstances and requiring no explanation, the DOC's claims of exemption under RCW 42.56.240(1); 42.56.420(2); and RCW 42.56.270(11), are not categorical. Since they are not categorical they require by their very nature an explanation. This very failure to explain how the exemption applies to the redacted records demonstrates the portions of the records were improperly withheld in and of itself.

Furthermore, in looking at Appendix 2.01 and Appendix 2.01.1 (Appellate Opening Brief Pgs.21-23) and the differences in redaction between the two identical provisions demonstrate violation on its face. While the DOC claims under redaction a comparison shows illegitimate not under redaction. This detailed explanation of withholdings is not "granular" as the DOC asserts in its Response. It is however required under RCW 42.56.201(3) and constitutes the rule of law under the PRA so to hold government accountable. Something that courts in this instance should apply and set aside their systematic deference to the agency given the nature of the case and find improper withholding under RCW 42.,56.550(1).

II. CONCLUSION

1 The Appellate Court should find violation of the PRA

under RCW 42.56.550(2) for the DOC's failure to provide plaintiff its fullest assistance when it used its estimate of time to disclose to unreasonably delay disclosure of the J-Pay contract.

2. The Appellate Court should find violation of the PRA under RCW 42.56 550(1) because the DOC improperly withheld portions of the J-Pay Contract without providing the required explanation of how the claimed exemption applies to the redacted records as the PRA requires and uphold the rule of law.

3. The Appellate Court should declare plaintiff Williams the substantive winner and award him all costs and fees he incurred in pursuing this action and appeal.

4. The Appellate Court should issue an order directing the DOC to provide plaintiff Williams with a brie explanation of how the exemptions apply to the withheld records.

5. The Appellate Court should remand this action back to the trial court for a hearing on the issue of daily penalties.

Dated this 2nd day of September, 2017 at the Coyote Ridge Corrections Center, Connell, Washington.

Respectfully Submitted,



Michael W. Williams DOC #882945
Petitioner Pro se

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DECLARATION OF MAILING

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GR 3.1 COA No. 50079-5-II

STATE OF WASHINGTON 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

Attorney General of Washington
PO Box 40116
Olympia, WA 98504-0116
attn: Hon. AG. Mike Pardo

Court of Appeals Div. 2
950 Broadway #300
Tacoma, WA 98402-4454
(check return required)

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. Reply Brief of Petitioner
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 3rd day of September, 20 17, at Connell WA.

Signature [Handwritten Signature]