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WASHINGTON COURT OF APPEALS  
DIVISION II

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CHARLES WOLFE,

*Appellant / Cross-Respondent,*

v.

WASHINGTON DEPARTMENT OF TRANSPORTATION,

*Respondent / Cross-Appellant.*

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BRIEF OF APPELLANT

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## I. INTRODUCTION

Charles Wolfe appeals from the findings, conclusions and judgment in his case against the Washington State Department of Transportation (WSDOT) for violations of the Public Records Act, Chap. 42.56. RCW (“PRA”).

The trial court erroneously found that WSDOT had provided Wolfe with numerous boxes of responsive records during in-person reviews at the WSDOT Kelso office in 2008. This finding was entirely based on a single self-serving declaration that directly contradicts WSDOT’s own contemporaneous documentation. That erroneous finding should be reversed under RCW 42.56.550(3).

The trial court also ruled, with respect to the disputed boxes of records, that Wolfe’s PRA claims were barred by the statute of limitations in RCW 42.56.550(6). That ruling was error because the statute of limitations was equitably tolled under *Belenski v. Jefferson County*, 186 Wn.2d 452, 454-455, 378 P.3d 176 (2016).

## II ASSIGNMENTS OF ERROR

**Assignment of Error No 1:** The trial court erred in issuing its oral ruling on May 1, 2015, that, except for three specific records, (i) Wolfe’s claims were barred by the statute of limitations, RCW

42.56.550(6), and (ii) WSDOT presented “sufficient evidence” that all other requested records were made available to Wolfe in 2008. CP 3270.<sup>1</sup>

**Assignment of Error No 2:** The trial court erred in denying Wolfe’s motion for reconsideration of its oral ruling on May 1, 2015. CP 2138.

**Assignment of Error No 3:** The trial court erred in issuing the *Findings of Fact, Conclusions of Law, Order, Judgment* (CP 3228-3297), and Judgment Against Defendant [WSDOT] (CP 3226-3227), both dated August 25, 2017.

**Issues Pertaining to Assignment of Error:**

A. Whether the trial court erred in finding that WSDOT had carried its burden to prove that all records requested by Wolfe (other than three specific records) were made available to Wolfe in 2008.

B. Whether the trial court erred in ruling that Wolfe’s PRA claims (except for three specific records) were barred by the statute of limitations, RCW 42.56.550(6).

C. Whether the trial court erred in denying Wolfe any portion of the attorney fees incurred by attorney Allen Miller.

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<sup>1</sup> The trial court’s oral ruling on May 1, 2015, was never reduced to writing. CP 2096, 3229.

D. Whether the trial court erred in denying Wolfe's request for sanctions against WSDOT.

E. Whether Wolfe is entitled to additional attorney fees on appeal under RCW 42.56.550(4).

### **III. STATEMENT OF THE CASE**

#### **A. History of Wolfe PRA requests and litigation with WSDOT**

Appellant Wolfe owns river-front property along the Naselle River in Pacific County. The property is immediately downstream from the Naselle River Bridge, where SR 4 crosses the river (hereafter "SR 4 Bridge"). CP 1735.

After purchasing the property and constructing a home, Wolfe became concerned that construction of the new SR 4 Bridge in 1986 changed the course of the river, causing flooding and erosion on the property. CP 1735-1739. Wolfe was also concerned about whether the Washington Department of Transportation (WSDOT) had constructed the new bridge in 1986 without proper permits or in violation of various environmental laws. *Id.*

In May 2008, Wolfe made the first of several PRA requests to WSDOT. Wolfe requested all of the plans, specifications, permits, certifications and hydrologic analyses for the SR 4 Bridge. CP 1761-62. WSDOT assigned this PRA request number "PDR-08-0455." CP 1919.

WSDOT sent three installments of records (May 15, June 2, June 30). CP 1919. These records amounted to 101 pieces of paper. CP 1744. WSDOT closed PDR-08-0445 on June 30, 2008. CP 1938.

None of the records produced by WSDOT were responsive to Wolfe's request. When Wolfe complained, WSDOT arranged for Wolfe to inspect WSDOT's records in the Kelso WSDOT office. CP 1744, 1764-65. Before driving to Kelso for the first inspection appointment (on July 17, 2008), Wolfe clarified that he was looking for all of WSDOT's records about the SR 4 Bridge, wherever those records might be:

...I would also like to review all WSDOT files related to the bridge that have NOT been sent to the archives. I am willing to go wherever those files are physically located.

Specifically, are there any bridge related files in your Raymond, Kelso, Vancouver, or Olympia offices? I am particularly interested in any files at the Olympia Hydrogeology and the Olympia Hydraulics Section offices.

Likewise, I am interested in any files that relate to any work that WSDOT has done on the bridge or within 500 feet, both upstream and downstream, of the bridge since 1986

CP 1764.

Wolfe reviewed WSDOT records in Kelso on July 17, 2008, and again on August 12, 2008. CP 1920-1921. During these reviews WSDOT made only **six specific files** of SR4 records available. CP 1749-1750, 1778-1780; *see* Section III(B) (below). Wolfe identified a few documents that he wanted copied, and then WSDOT closed PDR-08-0445 on August

13, 2008. CP 1745, 1939. Wolfe did not find the specific records he had requested during his reviews in Kelso in July and August of 2008. CP 1746.

On September 19, 2008 Wolfe sent a lengthy letter to an attorney for WSDOT (Brown), disagreeing with WSDOT's conclusions about the cause of the erosion. CP 1767-68. Wolfe asked WSDOT to supply technical references to support its opinions. Wolfe also requested additional documents relating to the SR 4 Bridge, including any hydraulic analysis performed by WSDOT, any downstream analysis report, plans, specifications and drawings for the bridge prior to a public meeting in 1984, and any plans, specifications and drawings for the old bridge and the 1986 replacement. CP 1769. Wolfe explained, with citations to various statutes and regulations, that such records must have existed. *Id.*

WSDOT acknowledge Wolfe's new PRA request on September 25, 2008, assigning this request number PDR-08-0856. CP 1772-73.

Unknown to Wolfe at the time, on October 14, 2008, WSDOT's Public Disclosure Coordinator, Whaley, sent Wolfe's request to various WSDOT employees in an effort to locate responsive records. On October 15, 2008, Bart Gernhart replied by email that the Kelso office had "nine boxes of information" relating to the bridge. CP 1581-1584. Gernhart suggested gathering all the WSDOT records about the bridge in the Kelso

office and then giving Wolfe another opportunity to inspect the records. *Id.* But the invitation to inspect all these records was never made.

By letter dated October 17, 2008, WSDOT told Wolfe that “all of the files in the Department’s possession are located in the Kelso Engineering Office.” CP 1864. By email October 30, 2008, WSDOT told Wolfe that the information he was asking for was still in the Kelso engineering office, and asked Wolfe to schedule a review. CP 1986. Wolfe responded by specifically asking which records were available. *Id.* WSDOT responded by clarifying that there was only small amount of documents available. *Id.* The following day Wolfe responded by email, explaining that he had talked to Denys Tak and that he already had received the records from WSDOT. CP 1985. Tak responded to Wolfe’s email to document the very small amount of additional records that WSDOT had located. *Id.* WSDOT closed PDR-08-0856 on November 3, 2008. CP 1868.

In June 2010, Wolfe brought suit against WSDOT in Pacific County, claiming both damage to Wolfe’s property as well as violations of the PRA. CP 244-254, 1793.

In July 2011, WSDOT moved to dismiss Wolfe’s tort claims in the Pacific County case. CP 2948-2962. WSDOT argued, *inter alia*, that the case should be dismissed because more than 10 years had elapsed between

WSDOT's 1986 construction of the new bridge and Wolfe's claim filed in 2010. WSDOT's motion was explicitly based on WSDOT's representation—now known to be *false*— that WSDOT had not worked on the bridge since 1986. CP 2950, 1946-1947.

On August 19, 2011 the Pacific County Superior Court dismissed Wolfe's tort claims. CP 1988. The Pacific County court also dismissed Wolfe's PRA claims without prejudice, based on WSDOT's assertion that the responsive records were not located in Pacific County. CP 1752.

In August 2011, a technical expert hired by Wolfe discovered physical evidence that WSDOT has placed large rock rip rap around the bridge, and that this rip rap was not shown on the 1986 plans. CP 1752. In September 2011, Wolfe made another PRA request for documents relating to the rip rap. CP 1754, 1948. In response to this PRA request, on December 2, 2011 WSDOT finally produced records relating to WSDOT's 1998 Hydraulic Project Approval (HPA) for the SR 4 Bridge. CP 1950-1954, 3230.

Wolfe filed the current PRA case in Thurston County on May 22, 2012. CP 7-10.

After Wolfe filed the current lawsuit, and in response to outstanding PRA requests, WSDOT again invited Wolfe to inspect what WSDOT said was all of the responsive records for the SR 4 Bridge.

Wolfe reviewed records in Kelso on June 18, 2012. **Wolfe examined six whole boxes of responsive records (and 1 CD), none of which had been made available in 2008.** CP 2938.

Upon discovering the large number of records that WSDOT had failed to produce in response to Wolfe's 2008 PRA requests, on November 8, 2012, Wolfe moved to amend his complaint to encompass the additional PRA violations he had discovered. CP 29. Wolfe's motion was granted, and the amended complaint was filed November 16, 2012. CP 185-298.

Wolfe also engaged in discovery. In response, WSDOT moved the court to stay Wolfe's discovery requests so that the court could rule on WSDOT's motion to dismiss, based on the statute of limitations. On December 7, 2012, the court denied WSDOT's motion but gave WSDOT additional time to respond. CP 1263-65, 2648.

Despite claiming that it did not know about the 1998 HPA until the Fall of 2011, CP 1308, 1525-26, WSDOT never sought to correct its false factual statements, in the Pacific County case, that WSDOT had not done work on the SR 4 Bridge after 1986. On the contrary, WSDOT opposed Wolfe's attempts to correct the record. CP 2982. In October 2012, at oral argument on appeal from the dismissal of Wolfe's tort claims, WSDOT's attorney was asked if any work had been done since 1986 and answered "no," which was false. CP 1753. On January 29, 2013, the Court of

Appeals (Division II) issued its opinion affirming the dismissal of Wolfe's tort claims. CP 1792-1799.

After the denial of WSDOT's motion to stay discovery, WSDOT finally made *thirteen (13) boxes* of records available for Wolfe's inspection, which occurred on February 26, 2013. CP 1751, 2648-49. These boxes of records included the design report for the 1985 bridge reconstruction plus WSDOT's review of that design. These records were responsive to Wolfe's first PRA requests in 2008, but they were not produced by WSDOT until February 2013. CP 1751, 2649.

Wolfe eventually determined that WSDOT had 1956 individual records dealing with the design, engineering, construction and maintenance of the SR 4 Bridge, consisting of 13,882 pages of records (a stack over six feet high). CP 1751. Back in 2008, when WSDOT produced only six individual files, WSDOT had produced less than one percent of the responsive records that actually existed. CP 1751.

In March 2013, Wolfe moved for partial summary judgment. CP 1272. WSDOT filed a motion to dismiss Wolfe's claims under the statute of limitations. CP 2667-2682. After a hearing on March 8, 2013, the trial court denied both parties motions. CP 1686-87.

On February 20, 2015, the trial court issued an order to show cause, and set a hearing on May 1, 2015. CP 1693-96. No witnesses were

called at the hearing, which was based on declarations and the arguments of the parties. CP 2025, 3228.

At the hearing WSDOT admitted that it had failed to produce the 1998 HPA documents until after Wolfe's September 2011 PRA request. But WSDOT argued that it had made a reasonable search for those records and should not be liable for failing to produce those records. CP 1931-33, 1947. The trial court disagreed, observing that these records were "what Mr. Wolfe was looking for all along," and that these records should have been discovered by WSDOT. CP 3269. The trial court also rejected WSDOT's argument that Wolfe's PRA claims for these specific records were barred by the statute of limitations.<sup>2</sup>

With respect to whether WSDOT had provided whole boxes of responsive records for Wolfe's review in 2008 the parties submitted conflicting evidence. WSDOT relied on a single conclusory declaration that all responsive records had been provided. Wolfe testified that these records were not provided. Wolfe also demonstrated that WSDOT's declaration conflicted with WSDOT's own contemporaneous records. *See* section III(B) (below).

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<sup>2</sup> The basis for the trial court's rulings on the statute of limitations are not clear. The case law on RCW 42.56.550(6) was developing as this case was litigated in the trial court. See section IV(B). WSDOT filed a cross appeal on September 25, 2017, presumably to appeal the trial court's ruling on that issue.

The court held that the statute of limitations barred Wolfe's remaining claims. The court also found "that the State has presented sufficient evidence" that all the other records requested by Wolfe were present when Wolfe reviewed documents in Kelso in 2008. CP 3270. This finding, which directly contradicts the available documentary evidence, was error. *See* next section.

The court's oral rulings on May 1, 2015, were eventually reduced to written orders on August 25, 2017. *See* section III(C) (below).

**B. Evidence that WSDOT failed to produce entire boxes of responsive records in July and August of 2008**

The key issue of fact in this case is whether WSDOT failed to produce entire boxes of responsive records for Wolfe's inspection in July and August of 2008. CP 3230, 3270. WSDOT produced no contemporaneous records to support its claim that numerous boxes of responsive documents had been made available to Wolfe in 2008. Instead, WSDOT relied on a declaration that provided no explanation (or documentation) of how the WSDOT employee (Denys Tak) could have remembered which specific files or boxes of documents had been provided to a particular PRA requester almost five years earlier. *See* CP 1516-1521. Nonetheless, the trial court accepted this declaration at face value and held

that WSDOT has proven that all the boxes of responsive records had been made available to Wolfe in 2008. CP 3230, 3270.

The declaration submitted by WSDOT directly contradicted WSDOT's own contemporaneous documentation. In the trial court, Wolfe presented two separate WSDOT documents that clearly showed that WSDOT's declaration was wrong, and that WSDOT failed to produce entire boxes of responsive records in July and August of 2008. WSDOT never even attempted to explain why its self-serving declaration was directly contrary to WSDOT's own documents.

**1. The WSDOT Spreadsheet**

On October 9, 2012, in response to another PRA request, Wolfe obtained a spreadsheet from WSDOT showing the specific dates on which Tak had requested specific files and specific boxes of files from WSDOT's archives. CP 1552. On November 29, 2012, WSDOT's PRA officer, Cynthia Whaley, emailed a color-coded version of the same spreadsheet to Bart Gernhart and Denys Tak. CP 1777-1780. Wolfe subsequently obtained a copy of that email and the color-coded spreadsheet. Several different versions of the spreadsheet (hereafter

“WSDOT Spreadsheet”) are found in the record, but the data in each version is the same.<sup>3</sup> See Appendix A.

The WSDOT Spreadsheet clearly shows that (i) WSDOT sent only specific *individual files* of SR 4/6 documents to Kelso in 2008, and (i) WSDOT did not send *whole boxes* of SR 4/6 documents to Kelso until April 2012:

- On June 10, 2008 Denys Tak requested one specific file from each of five (5) WSDOT boxes (3480919, E870910640MM116, E891012980ER520, E910808790A3123, and E910808790A3124)

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<sup>3</sup> The original WSDOT Spreadsheet was a Microsoft Excel file (Denys Tak Requests color coded.xlsx, an attachment to the November 29, 2012 Whaley email). CP 1777. The version of the spreadsheet sent by Cynthia Whaley on November 29, 2012, was color coded to identify different groups of records. A black and white copy of that color-coded spreadsheet is at CP 1778-1780. As originally formatted the spreadsheet extended across three pages. CP 1748. In the original color-coded version of the spreadsheet, five (5) rows (4, 5, 7, 8 and 11) were shaded pink, to indicate that these five (5) rows related to the five specific files (not whole boxes) that were requested by Denys Tak on June 10, 2008, and sent to Kelso on June 11-12, 2008. That shading now appears as grey in CP 1778-1780. Rows 1-3, 6, 8-9 and 12 were shaded yellow, to indicate that these records provided in 2008 related to the SR 101 bridge (the wrong bridge). That shading is identified in Wolfe’s March 20, 2015 declaration as “very light grey, almost white,” but that shading is not visible in the clerk’s papers at all. CP 1750. Finally, the last five rows (13-17) were shaded green, to indicate that these five boxes of records relating to the SR 4/6 bridge were requested by Tak on April 4, 2012, and sent to Kelso the following day. *Id.*

Wolfe’s declaration in support of his motion for partial summary judgment (February 8, 2013) included a version of the spreadsheet that was re-formatted to fit on one page. CP 300, 309. Wolfe’s reply declaration (March 4, 2013) included another version of the same spreadsheet. CP 1552, 1566. Wolfe submitted a black and white copy of the three-page color-coded version (created by Whaley) as an exhibit to his March 20, 2015 declaration for the show cause hearing. CP 1748-1750, 1777-1780. A cursory review of these different versions of the spreadsheet confirms that the data in all versions is the same. WSDOT has not argued otherwise.

and those files were sent to Kelso on June 11-12, 2008. (A sixth file from box 9185 was sent to Kelso on July 21, 2008).

- On April 4 2012, Denys Tak requested the entire five boxes from which individual files had been pulled in 2008, and those five entire boxes (3480919, E870910640MM116, E891012980ER520, E910808790A3123, and E910808790A3124) were sent to Kelso on April 5, 2012. Those five boxes were *not* in Kelso in 2008, only individual files, as shown in the WSDOT spreadsheet.

CP 1778-1780; Appendix A. The WSDOT Spreadsheet confirmed that Wolfe was correct; WSDOT had *not* made entire boxes of responsive records available to him in Kelso in 2008, only a few selected files. The WSDOT Spreadsheet directly contradicted the declaration of Denys Tak, which erroneously asserted that these boxes of records had been made available in 2008. CP 1943.

In support of his February 8, 2013 motion for partial summary judgment Wolfe explained that the WSDOT Spreadsheet documented whether whole boxes, or just specific files, had been provided in 2008. CP 300. Two weeks later WSDOT filed the declaration of Denys Tak (February 25, 2013) which stated that, contrary to Wolfe's testimony and WSDOT's own spreadsheet, three whole boxes of SR 4/6 records (E910808790A3123, E910808790A3124, and E891012980ER520) were

provided to Wolfe in July 2008. CP 1521. Tak's declaration did not discuss the WSDOT Spreadsheet or any other contemporaneous WSDOT documentation. Nor did WSDOT explain how Tak could have remembered specific 15-digit box numbers from four years earlier. CP 1516-1521. Neither Tak's declaration nor WSDOT's response even attempted to explain why Tak's declaration conflicted with the WSDOT Spreadsheet. The issue was not resolved in 2013 as both parties motions were denied. CP 1687-1688.

In March 2015 Wolfe filed his brief and supporting declarations for the show cause hearing on May 1, 2015. Wolfe again submitted the WSDOT Spreadsheet, explaining in detail how the Spreadsheet proved that (i) WSDOT sent only selected individual files to Kelso in 2008, and (ii) WSDOT did not send the entire boxes to Kelso until April 2012. CP 1748-1750, 1777-1780. In response, WSDOT relied on the same February 2013 Tak declaration, which directly contradicted the WSDOT Spreadsheet. CP 1940-1945. WSDOT did not submit a declaration from its PRA officer (Whaley) or anyone else to explain why Tak's declaration conflicted with the WSDOT Spreadsheet. WSDOT's show cause brief made no attempt to explain why Tak's conclusory declaration conflicted with the WSDOT Spreadsheet. CP 1917-1936. Wolfe's reply again

explained that WSDOT unsupported claims contradicted the WSDOT Spreadsheet. CP 2001-2002.

At the oral argument on May 1, 2015, WSDOT's attorney downplayed the WSDOT Spreadsheet, created by its own PRA officer, as a document prepared by someone who "was not there." CP 3250. WSDOT made no effort to explain how Tak knew which particular box numbers were present four years earlier, or why Tak's alleged memory of what was provided to Wolfe conflicted with the only available documentation. CP 3249-3262. Likewise, in ruling in favor of WSDOT, the trial court did not explain how it had determined that WSDOT's Spreadsheet was wrong and that WSDOT's self-serving, unexplained declarations were correct. CP 3267-3271.

## **2. The October 30-31, 2008 email**

On April 10, 2015, in support of its show cause brief, WSDOT filed a declaration from its new PRA officer, Ashley Holmberg. Holmberg had no personal knowledge of what records were provided to Wolfe, but she authenticated various records from WSDOT's Public Disclosure Office. CP 1854-1916. These records included an email thread dated October 30-31, 2008, in which Wolfe declined to travel to Kelso to inspect a "few items" that Wolfe had already seen before. CP 1865-1866; see Appendix B. WSDOT cited this email in support of an

argument that, in response to PDR 08-856, Wolfe had declined a second opportunity to review all responsive records in Kelso in October 2008. CP 1922.

WSDOT apparently failed to realize that the October 30-31, 2008 email confirmed that Wolfe version of events was correct, and that WSDOT did *not* provide entire boxes of SR 4/6 records to Wolfe in 2008. By email October 30, 2008, Michele Ewaniec told Wolfe that the information he was asking for was still in the Kelso engineering office, and asked Wolfe to schedule another review. CP 1986. Wolfe responded by specifically asking which records were available:

Do you have any more information then what I have already reviewed (the 3 archive boxes?) The information I asked for wasn't found during my first review of that stuff.

*Id.*; Appendix B. Ewaniec responded by clarifying that there was only small amount of documents available:

I spoke with Denys and there are a few items that were sent down from our bridge and environmental office that may or may not be new. There are not a lot of documents, I could make copies and mail them to you if that would be easier?...

*Id.* The following day Wolfe responded to Ewaniec to explain that Wolfe had talked to Denys Tak and that Wolfe already had received the records from WSDOT. CP 1985. Tak responded to the Wolfe's email to

document the very small amount of additional records that WSDOT had located:

Chuck called and asked if I had any new information for him to review. I told him I had the following:

Bridge inspection record

Page showing 1972, 1982, 1993, 2007 photos with meander D

Page showing 1970, 1982, 1993, 2007 photos with radius of curvature and bankfull widths

Page showing Migration detail, pictures with meander A to E

Ecology publication 03-06-27(final draft) A Framework for Delineating Channel Migration Zones...

*Id.*

In his reply for the show cause hearing, Wolfe explained how this email also contradicted what WSDOT was claiming. CP 1978-1979. Wolfe noted that by the time of the show cause hearing he had identified 1956 individual public records, consisting of 13,882 pages of records (representing a stack more than six feet high). CP 2002. The October 30-31, 2008 email thread mentioned only a few pages of documents, and contains no reference to the five full boxes of SR 4/6 records that were responsive to Wolfe's request. That is because, as shown by the WSDOT Spreadsheet, those boxes were *not* sent to Kelso until April 2012. CP 1778-1780.

At the oral argument on May 1, 2015, WSDOT made no attempt to explain why Tak's 2013 declaration directly conflicted with the 2008

email that WSDOT itself had put into the record. CP 3249-3262. Likewise, in ruling in favor of WSDOT, the trial court did not explain how it had determined that the contemporaneous October 2008 email thread was wrong and that WSDOT's self-serving, unexplained declarations were correct. CP 3267-3271.

**C. Additional trial court proceedings**

The trial court's oral ruling on May 1, 2015 was not immediately reduced to a written order. On December 8, 2016, Wolfe moved the trial court to reconsider its oral ruling and find that the boxes of SR 4 documents were not provided to Wolfe in 2008. CP 2096-2097. The court denied reconsideration without comment. CP 2138. Shortly thereafter the trial judge (Tabor) retired. CP 3228.

The trial court set a hearing on fees and penalties on July 14, 2017. CP 2643. Judge Skinder declined to revisit Judge Tabor's oral ruling on May 1, 2015, and adopted his oral ruling into the court's final order. CP 3228. The trial court awarded attorney fees for two of Wolfe's attorneys (Allied, Overstreet), but not for Allen Miller. *See* section IV(C) (below).

The trial court awarded a penalty of \$20 per day for each of the three records relating to the 1998 HPA that WSDOT admitted it had not

produced.<sup>4</sup> CP 3292. Judge Skinder looked at the penalty issue “through the lens of Judge Tabor’s ruling,” and his penalty ruling was entirely based on Tabor’s erroneous determination that WSDOT had provided all the other responsive documents in 2008. CP 3290.

When WSDOT discovered the 1998 HPA documents in the Fall of 2011 it had a duty to correct its false statements to the Pacific County court and to supplement its discovery responses under CR 26(e). It did not do so. CP 2713. Therefore, in addition to penalties under RCW 42.56.550(4) Wolfe asked the trial court to sanction WSDOT for its violations of CR 26(e) and its counsel’s related violation of RPC 3.3 in the Court of Appeals. CP 2731. The trial court denied Wolfe’s request. CP 3230.

#### **IV. ARGUMENT**

##### **A. WSDOT failed to prove that it provided entire boxes of responsive records in 2008.**

The trial court’s finding that WSDOT provided access to full boxes of responsive SR 4 records in 2008 was entirely based on declarations and documents. CP 3230, 3270. Consequently, this Court reviews this key factual finding *de novo*:

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<sup>4</sup> As these records had been withheld for 1305 days, the court awarded a total penalty of \$78,300. CP 3230.

[W]here the record both at trial and on appeal consists entirely of written and graphic material--documents, reports, maps, charts, official data and the like--and the trial court has not seen nor heard testimony requiring it to assess the credibility or competency of witnesses, and to weigh the evidence, nor reconcile conflicting evidence, then on appeal a court of review stands in the same position as the trial court in looking at the facts of the case and should review the record de novo.

*Progressive Animal Welfare Soc’y v. University of Washington (PAWS II)*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). The evidence submitted in a PRA case must be admissible, just like any other civil case. *See Francis v. Dep’t of Corrections*, 178 Wn. App. 42, 62, 313 P.3d 457 (2013) (interpreting bad faith requirement in RCW 42.56.565(1) in light of prisoner’s need for admissible evidence in PRA cases).

WSDOT submitted six declarations at the show cause hearing on May 1, 2015. CP 1918. But only one of those declarants, Denys Tak, even *claimed* to have personal knowledge of which records were actually provided to Wolfe in 2008. The other five declarants had no relevant personal knowledge.<sup>5</sup>

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<sup>5</sup> David Bellinger was tasked by WSDOT to determine what records were in particular boxes in 2015, and he has no personal knowledge of which boxes, if any, were provided to Wolfe in 2008. CP 1812-1817. Ashley Holmberg is WSDOT’s new PRA coordinator (who started in October 2013, and she admits she has no personal knowledge. CP 1854. Kimberly Frinell was WSDOT’s counsel in the trial court who, apart from authenticating a few documents, did not testify at all. CP 1837-1838. Michele Ewaniec testified that she responded to Wolfe’s various requests for copies in 2008, amounting to less than 200 pages, but she had no knowledge of what records or boxes of records had been made available for Wolfe’s inspection. CP 1937-1939, *see* CP 1314-1514. Bart Gernhart only

Tak's declaration asserted that WSDOT had provided three specific numbered boxes of SR 4 records in July 2008. But Tak's declaration was admittedly based on his memory of what records had been provided four years earlier. CP 1517. Tak's declaration did not explain how Tak could have remembered specific 15-digit box numbers from years before. Nor did the declaration discuss the WSDOT Spreadsheet or any other contemporaneous documentation that Tak might have consulted in preparing his declaration. CP 1516-1521.

As explained in Section III(B) (above), Tak's declaration, and therefore WSDOT's entire case, is directly contrary to WSDOT's own records. The WSDOT Spreadsheet clearly shows that the five full boxes of SR 4 records were *not* requested by Tak or sent to the Kelso office until April 2012. CP 1778-1780; Appendix A. In addition, the October 30-31, 2008 email, which was offered as evidence by WSDOT, clearly shows that only a small number of additional records—not entire boxes of records—were made available at that time. CP 1985-1986.

When WSDOT first filed the Tak declaration on February 25, 2013, WSDOT made no attempt to explain why Tak's declaration conflicted with the WSDOT spreadsheet. By the time of the show cause

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testified as the reasons WSDOT failed to locate the 1998 HPA records until the Fall of 2011. CP 1946-1965.

hearing on May 1, 2015, WSDOT had more than two years to explain why Tak's declaration conflicted with the WSDOT Spreadsheet. But WSDOT simply filed the exact same 2013 Tak declaration again. CP 1918.

WSDOT has the burden of proof. RCW 42.56.550(1). Presumably, if WSDOT had any plausible explanation for the conflict between Tak's declaration and the contemporaneous documentation then WSDOT would have put that explanation in the record. But WSDOT has failed to do so.

WSDOT's "evidence" is simply not credible. No agency, particularly a large agency like WSDOT, can comply with its obligations under the PRA without carefully documenting what records have been provided to a requestor in response to a PRA request. That is why agencies like WSDOT are required to appoint PRA officers and to adopt and enforce rules to provide fullest assistance to requestors in response to PRA requests. RCW 42.56.100, -.580.

At the show cause hearing (May 1, 2015) WSDOT complained about WSDOT employees being expected to remember what happened in 2008. CP 3255. **But WSDOT should not have been relying on memory at all.** WSDOT should have kept proper records of what was provided to Wolfe, and filed those records in court to resolve any later disputes. *See* WAC 44-14-04004(6) (noting that an agency should have a

process to document which records were provided to a requestor, either by keeping a numbered copy or by making an index or list of files).

WSDOT clearly understands the importance of record-keeping in PRA cases. In fact, WSDOT touted its PRA record-keeping system as a mitigating factor in the award of penalties:

WSDOT's honest attempt derives from its formalized document retention system. That system worked well by providing Wolfe the opportunity to review tens of thousands of records, some thirty years old, which may have been responsive to his request.

CP 3131. But when the time came for WSDOT to carry its burden of proof under RCW 42.56.550(1), WSDOT did *not* rely on its alleged "formalized document retention system." WSDOT relied on faded memory alone. CP 1517. And when Wolfe demonstrated that WSDOT's own documents contradicted WSDOT's self-serving memory of events, WSDOT simply ignored that evidence.

On the other hand, the documentary evidence that WSDOT did *not* provide these boxes in 2008 is entirely consistent with Wolfe's testimony that he was never given access to those boxes until after this case was filed. CP 1751. That evidence is consistent with Wolfe's dogged pursuit of the SR 4 Bridge records through years of PRA requests and litigation. Unlike Mr. Tak, who had (and has) no skin in the game, Wolfe spent huge amounts of his own time and tens of thousands of dollars trying to obtain

records that WSDOT had no incentive to produce. Even in the absence of any contemporaneous documentation it makes no sense whatsoever for WSDOT to claim, or for any court to find, that Wolfe had been shown multiple boxes of responsive records back in 2008. Given the obvious conflict between WSDOT's own records and its self-serving Tak declaration, and WSDOT's failure to explain that conflict in the trial court, Tak's declaration must be rejected.

WSDOT has failed to carry its burden of proof under RCW 42.56.550(1). The court should reverse the trial court's erroneous finding, and hold that WSDOT failed to produce the boxes of responsive SR 4 records in 2008.

**B. The statute of limitations was equitably tolled under *Belenski v. Jefferson County* (2016).**

It is undisputed that the 1998 Hydraulic Project Approval (HPA) was responsive to Wolfe's 2008 PRA requests, and that WSDOT failed to produce this record until December 2, 2011. CP 3230. It is also undisputed that Wolfe filed this case in May 2012, more than a year after WSDOT closed his 2008 PRA requests, but less than six months after the 1998 HPA was finally produced. CP 7-10. Although the trial court erroneously found otherwise (see Section A), the evidence shows that the

vast majority of responsive records were not produced by WSDOT until after this case was filed. *See* Section IV(A) (above).

The PRA has a one-year statute of limitations. RCW 42.56.550(6) provides:

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

Because this action was filed more than one year after WSDOT closed Wolfe's PRA requests in 2008, the statute of limitation bars Wolfe's claims unless some exception or equitable doctrine applies.

It is unclear how the trial court determined that the statute of limitations did not apply to the 1998 HPA, produced on December 2, 2011, but did apply to the voluminous records produced after the case was filed. CP 3267-3271. The one-year statute of limitations was enacted in 2005<sup>6</sup>, and the case law was developing at the same time this case was being litigated. In the trial court, Wolfe argued, *inter alia*, that the statute of limitations did not run on records that had been silently withheld and/or that the "discovery rule" should be applied in PRA cases. CP 1994-2000. However, because this Court's review is *de novo*, RCW 42.56.550(3), it does not matter how the trial court applied the statute of limitations.

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<sup>6</sup> Laws of 2005, ch. 483, § 5.

On September 1, 2016, more than a year after the show cause hearing on May 1, 2015, the Supreme Court issued its decision in *Belenski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016). This case settled the issue of when or whether the one-year statute of limitation would apply:

We hold that the one year statute of limitations in the PRA applies to Belenski's claim and that this limitations period usually begins to run on an agency's final, definitive response to a records request. However, we remand this case for the trial court to determine whether equitable tolling should toll the statute of limitations.

*Belenski*, 186 Wn.2d at 454-455. This holding was based on the Court's recognition that the statute of limitations must not give agencies an incentive to withhold records:

Belenski and amici raise legitimate concerns that allowing the statute of limitations to run based on an agency's dishonest response could incentivize agencies to intentionally withhold information and then avoid liability due to the expiration of the statute of limitations. On one hand, we recognize that such an incentive could be contrary to the broad disclosure mandates of the PRA and may be fundamentally unfair in certain circumstances; on the other hand, certain facts in this specific case indicate that Belenski knew the County possessed IAL data, yet he inexplicably waited over two years before filing his claim. In light of these issues, we remand this case to the trial court to resolve any factual disputes and to determine whether the doctrine of equitable tolling applies to toll the statute of limitations in this case.

*Belenski*, 186 Wn.2d at 461-62.

In this case, although WSDOT had completely failed to produce the requested records, it definitively closed Wolfe's PRA requests in 2008. Therefore, the issue before this Court is whether equitable tolling applies to prevent WSDOT from asserting the statute of limitations as a defense.

Courts will apply equitable tolling when justice requires. In general, equitable tolling requires (i) bad faith, deception or false assurances by the defendant, and (ii) the exercise of reasonable diligence by the plaintiff. *Millay v. Cam*, 135 Wn.2d 193, 206, 955 P.2d 791 (1998) (holding that equitable tolling may apply to a statutory redemption period when the redemptioner in possession submits a grossly exaggerated statement of the sum required to redeem). Both elements are easily established in this case.

First, as noted in *Belenski*, WSDOT had a clear incentive to withhold the records that would have shown that WSDOT worked on the SR 4 Bridge as recently as 1998. WSDOT not only failed to produce these records, but affirmatively relied on their failure to produce these records to argue that Wolfe's claims were barred by a 10-year statute of limitations. CP 2950-2951. Even after WSDOT claimed to have discovered the 1998 Bridge work in the Fall of 2011, WSDOT never corrected the factual record in the Pacific County case, and continued to

misstate the facts during the appeal. CP 1753, 2982. This is exactly the situation in which justice requires the application of equitable tolling.

Second, Wolfe exercised reasonable diligence. The record reveals the extraordinary efforts made by Wolfe to locate the records that he needed for his investigation and litigation relating to the SR 4 Bridge as the possible cause of the erosion of his property. Wolfe filed the current case less than six months after WSDOT finally produced the 1998 HPA records, and most of the responsive records were produced after the case was filed, as a result of discovery. Again, this is exactly the situation in which justice requires the application of equitable tolling.

The Court should reverse the trial court's determination that the statute of limitations applies, and hold that the statute of limitations was equitably tolled. The Court should then remand this matter to the trial court for a new determination of the amount of penalties to award under RCW 42.56.550(4). The existing penalty award of only \$20 per day was based on the trial court's erroneous finding that all but three responsive records had been provided to Wolfe. CP 3290-3292. A correct finding that WSDOT failed to produce most of the responsive records until after being sued clearly requires a higher penalty amount. That determination should be remanded to the trial court.

**C. The trial court erred in denying any attorney fees for Allen Miller.**

In his motion for attorney fees, Wolfe included a request for \$52,231.48 in legal fees incurred by Allen Miller, who represented Wolfe in the prior Pacific County case. CP 2718, 3007. This request was based on Wolfe’s estimate that half the attorney work in the Pacific County case was incurred on PRA issues (the other half on tort claims). CP 2941. WSDOT was a party to the Pacific County case, and it had detailed knowledge of the litigation in that case. Consequently, WSDOT could have challenged Wolfe’s estimate or provided its own estimate. But it did not.

WSDOT made two arguments against awarding fees for Miller. First, WSDOT argued that the court should not award attorney fees for either Miller or Greg Overstreet, asserting that Miller and Overstreet “did not work on this case.” CP 3135. The trial court rejected this argument, *sub silentio*, awarding the requested fees for Overstreet.<sup>7</sup> CP 3286.

More importantly, WSDOT’s underlying assumption—that attorney fees can only be awarded in the particular case that actually results in the disclosure of records—is incorrect. In *Spokane Research &*

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<sup>7</sup> In fact, attorney Overstreet had done attorney work in this case. Overstreet started working on this matter in September 2011, as a partner in Allied Law Group, right after the Pacific County case was dismissed in August 2011. CP 3030. Overstreet filed this case in May 2012 through the Overstreet Law Firm. *See* CP 11

*Defense Fund v. City of Spokane*, 155 Wn.2d 89 117 P.3d 1117 (2005), the actual disclosure of records was the result of litigation with a different requester, but the court allowed another requester-litigant with pending claims for the same records to recover attorney fees. 155 Wn.2d at 102-103. The question that WSDOT should have raised (but did not) was whether Miller's fees were reasonably necessary for Wolfe to prevail in this case. WSDOT's argument overlooked the fact that the Pacific County case was dismissed *without prejudice* after Miller had done substantial work on the PRA claims. WSDOT's argument carelessly assumed that none of the work done by Allen Miller was reasonably necessary for Wolfe to subsequently prevail in this case.

Second, WSDOT argued, based on the assumption that WSDOT had only withheld three records, that Wolfe had "failed to present sufficient proof of fees and costs associated with only the three records in question." CP 3134. WSDOT argued, in the alternative, that Wolfe should be awarded only 5% of his attorney fees (less than \$3000). CP 3135. This figure was not based on any reasonable attempt by WSDOT to determine what portion of Wolfe's fees were necessarily incurred, but on WSDOT's calculation that Wolfe had prevailed on only 3 of 58 claimed violations. *Id.* The trial court rejected the absurdly low fee award recommended by WSDOT.

The trial court denied Wolfe any of Miller's fees, ruling that the court could not "differentiate what [Miller's] billing consisted of based upon [Miller's billing records]." CP 3286. But WSDOT was a party to the Pacific County case, and WSDOT never challenged Wolfe's estimate that 50% of Miller's fees in that case were incurred in pursuit of the PRA claims. Instead, WSDOT argued that the billing records were insufficient because they did not allocate fees to the particular three records that WSDOT had produced. CP 3134.

If Wolfe had understood WSDOT's objection to be directed at the general inadequacy of Miller's billing records then Wolfe could have obtained additional billing detail from Miller and provided that information to the trial court. Wolfe should not be denied over \$50,000 in fees he actually incurred where WSDOT did not assert the same legal basis on which the trial court denied Wolfe's request. This Court should remand this matter to the trial court to determine the reasonableness of Miller's attorney fees and the extent to which those fees led to Wolfe prevailing in this case.

**D. The trial court erred in denying sanctions against WSDOT.**

Upon discovering records of the 1998 HPA in the Fall of 2011, WSDOT had a duty to correct its false statements to the Pacific County court and to supplement its discovery responses under CR 26(e). Failure

to correct a false statement, even if true when it was first made, is in substance a knowing concealment, per CR 26(e)(2)(B), depending on the circumstances. It is undisputed that WSDOT did not seek to correct the record or supplement its discovery responses. It is also undisputed that, at the oral argument in October 2012, WSDOT's attorney answered "no" to a direct question about whether WSDOT had done any work on the SR 4 Bridge since 1986. CP 1753.

The trial court denied Wolfe's request, stating "I do not believe I have sufficient facts before me." CP 3293. That ruling was error because there are no disputed facts. Indeed, WSDOT never argued that these violations did not occur, only that WSDOT, or its attorneys, should not be sanctioned for them. CP 3135.

WSDOT argued, without citation to the record, that Wolfe had made a bar complaint which was dismissed. CP 3135. The alleged dismissal of a bar complaint does not prove that the violations did not happen or that WSDOT itself, or its attorneys, should not be sanctioned.

WSDOT also argued that WSDOT's counsel in the appeal from Pacific County had never appeared before "this Court in this lawsuit." This argument does not explain why WSDOT itself should not be sanctioned in this case. WSDOT essentially argues that it could have been sanctioned in the Pacific County action, where WSDOT got away with

misrepresenting the facts, but not in this case where its misrepresentation was discovered and called to its attention.

The trial court's erroneous determination that it lacked sufficient facts was error. The court should remand this issue to the trial court for further proceedings.

**E. Wolfe should be awarded additional attorney fees on appeal.**

If this Court rules in Wolfe's favor on any PRA issue then Wolfe is the prevailing party on such issues, and entitled to an additional award of attorney fees on appeal under RCW 42.56.550(4). *Sanders v. State*, 169 Wn.2d 827, 869-870, 240 P.3d 120 (2010). Pursuant to RAP 18.1, appellant Wolfe requests an award of his reasonable attorney fees on appeal.

**V. CONCLUSION**

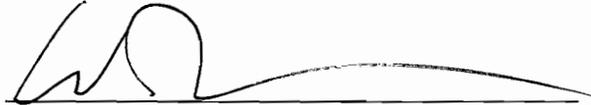
For all these reasons the Court should reverse the trial court's erroneous finding that WSDOT provided the boxes of responsive records in 2008, its ruling that Wolfe's claims are barred by the statute of limitations, the denial of fees for attorney Miller and the ruling on sanctions. The Court should award Wolfe additional attorney fees for this appeal and remand this case to the trial court for further proceedings.

## **VI. APPENDICES**

- Appendix A** WSDOT Spreadsheet (CP 309, 1566, 1749, 1777-1780)
- Appendix B** October 30-31, 2008 email (CP 1865-1866)

RESPECTFULLY SUBMITTED this 22nd day of January, 2018.

By:



William John Crittenden, WSBA No. 22033

WILLIAM JOHN CRITTENDEN

Attorney at Law

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Seattle, Washington 98125-5401

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Attorney for Appellant Wolfe

Certificate of Service

I, the undersigned, certify that on the 22nd day of January, 2018, I caused a true and correct copy of this pleading to be served, by the method(s) indicated below, to the following person(s):

By email (PDF) to:

David D. Palay, Jr., AAG:

TPC EF Mailbox

Melissa Calahan, Legal Assistant:

[DavidP4@atg.wa.gov](mailto:DavidP4@atg.wa.gov)

[TPCef@atg.wa.gov](mailto:TPCef@atg.wa.gov)

[MelissaE1@atg.wa.gov](mailto:MelissaE1@atg.wa.gov)



William John Crittenden, WSBA No. 22033

Requester Name	RequesterOffice	RequesterPhone
Denys Tak	Engineering Office Kelso - Southwest Region	360-442-1346

DateofRequest	BoxNumber	AdminComments	BarCode/AccessionNo
06/02/2008			E8509073000MM86
06/02/2008			E890506080A2855
06/02/2008			E890506080A2856
06/10/2008			E910808790A3123
06/10/2008			E910808790A3124
06/02/2008			E870910660ER395
06/10/2008			E891012980ER520
06/10/2008		2012	E870910640MM116
06/02/2008	SIO24		3480915
06/02/2008			E90081144A2855A
06/10/2008			3480919
07/21/2008		BR CALCS SAME DAY PULL/ SENT 2 BKS TO KELSO OFFICE	9185
04/04/2012			3480919
			E870910640MM116
		2008	E891012980ER520
		2008	E910808790A3124
		2008	E910808790A3123

DatetoOffice	numberboxrequested	Whole Box or File?	FileName Requested
06/03/2008	1	Whole Box	
06/03/2008	1	Whole Box	
06/03/2008	1	Whole Box	
06/12/2008	1	File	SIO 28 CONTRACT #3040 ONLY
06/11/2008	1	File	SIO 28 CONTRACT #3040 ONLY
06/04/2008	1	Whole Box	
06/12/2008	1	File	CONTRACT 3040 FINAL RECORDS ONLY
06/12/2008	1	File	SALMON CR & NASELLE RIVER BR, DESIGN ONLY
06/03/2008	1	Whole Box	
06/03/2008	1	Whole Box	
06/12/2008	1	File	SIO 28 CONTRACT # 3040 ONLY
07/21/2008	1	File	NASELLE RIVER BRIDGE SR 4 C-3040
04/05/2012	5	Whole Box	
04/05/2012		Whole Box	

DateofRequest	Requester Name	AdminComments	irCode/AccessionI	DatetoOffice	Whole Box or File?
06/02/2008	Denys Tak		E8509073000MM	06/03/2008	Whole Box
06/02/2008	Denys Tak		E890506080A285	06/03/2008	Whole Box
06/02/2008	Denys Tak		E890506080A285	06/03/2008	Whole Box
06/10/2008	Denys Tak		E910808790A312	06/12/2008	File
06/10/2008	Denys Tak		E910808790A312	06/11/2008	File
06/02/2008	Denys Tak		E870910660ER39	06/04/2008	Whole Box
06/10/2008	Denys Tak		E891012980ER52	06/12/2008	File
06/10/2008	Denys Tak		E870910640MM1	06/12/2008	File
06/02/2008	Denys Tak		3480915	06/03/2008	Whole Box
06/02/2008	Denys Tak		E90081144A2855	06/03/2008	Whole Box
06/10/2008	Denys Tak		3480919	06/12/2008	File
<b>07/21/2008</b>	<b>Denys Tak</b>	<b>BR CALCS SAME DAY PULL/ SENT 2 BKS TO KELSO OFFICE</b>	<b>9185</b>	<b>07/21/2008</b>	<b>File</b>
04/04/2012	Denys Tak		3480919	04/05/2012	Whole Box
			E870910640MM1	04/05/2012	Whole Box
			E891012980ER52	04/05/2012	Whole Box
			E910808790A312	04/05/2012	Whole Box
			E910808790A312	04/05/2012	Whole Box

1 boxes below were requested by Denys Tak so I have omitted the requester name, requester  
 2 office and requester phone columns. Also, since the color coding cannot be shown on this  
 3 black and white document, I have inserted the title for the color coding before each category.

Box Number	Admin Comments	BarCode /Accession No	Date To Office	# of Boxes Req.	Whole Box or File?	File Name Requested	Date of Request
Highway 101 Bridge Documents:							
		E8509073000MM86	06/03/08	1	Whole Box		06/2/08
		E890506080A2855	06/03/08	1	Whole Box		06/02/08
		E890506080A2856	06/03/08	1	Whole Box		06/02/08
Highway 4/6 Bridge Documents:							
		E910808790A3123	06/12/08	1	File	SIO 28 CONTRACT #3040 ONLY	06/10/08
		E910808790A3124	06/11/08	1	File	SIO 28 CONTRACT #3040 ONLY	06/10/08
Highway 101 Bridge Documents:							
		E870910660ER395	06/04/08	1	Whole Box		06/02/08
Highway 4/6 Bridge Documents:							
		E891012980ER520	06/12/08	1	File	CONTRACT 3040 FINAL RECORDS ONLY	06/10/08
		E870910640MM116	06/12/08	1	File	SALMON CR & NASELLE RIVER BRIDGE, DESIGN ONLY	06/10/08
Highway 101 Bridge Documents:							
		3480915	06/03/08	1	Whole Box		06/02/08
		E90081144A2855A	06/03/08	1	Whole Box		06/02/08
Highway 4/6 Bridge Documents:							
		3480919	06/12/08	1	File	SIO 28 CONTRACT #3040 ONLY	06/10/08
Highway 101 Bridge Documents:							
	BR CALCS SAME DAY PULL	9185	07/21/08	1	File	NASELLE RIVER BRIDGE SR 4 C-3040	07/21/08
Highway 4/6 Bridge Documents (entire boxes pulled this time):							
		3480919	04/05/12	1	Whole Box		04/04/12
		E870910640MM116	04/05/12	1	Whole Box		04/04/12
		E891012980ER520	04/05/12	1	Whole Box		04/04/12
		E910808790A3124	04/05/12	1	Whole Box		04/04/12
		E910808790A3123	04/05/12	1	Whole Box		04/04/12

2<sup>nd</sup> WOLFE DECLARATION - 15

**ALLIED**  
 LAW GROUP  
 P.O. Box 33744  
 Seattle, WA 98133  
 (206) 443-0200

**From:** Whaley, Cynthia  
**Sent time:** Thursday, November 29, 2012 2:52:16 PM  
**To:** Gemhart, Bart; Tak, Denys  
**Subject:** PDR 12-1327 details needed  
**Attachments:** Denys Tak Requests color coded.xlsx Wolfe PDR box index.docx.docx  
FW\_Public\_Records\_request\_for\_Naselle\_River\_Bridge\_PDR\_(1).pdf.pdf

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Hi there,

I am working on the last portion Chuck's request PDR 12-1370, and I need to iron out a few remaining details...

In the attachments above Chuck provided me with an email from Bart, where he mentions there are 9 boxes. I need to know if you can identify those exact boxes.

Also, in order to be sure we have done all of our research, I need a list of all the boxes/files Chuck has reviewed and the dates and/or PDR #s he viewed them on. Also note if he actually viewed them or if he only had the opportunity to view but declined to view them. if he has never seen a box/file, please also note that.

I have attached a color-coded report of which box numbers pertain to which bridge for convenience.

Thank you!

***Cynthia Whaley***

*WSDOT HQ Public Disclosure Coordinator*

*Records and Information Services Office*

*PO Box 47410*

*Olympia, WA 98503*

*(360)705-7481 [whaley@wsdot.wa.gov](mailto:whaley@wsdot.wa.gov)*

*(Working Hours = M-F: 7am to 4:30pm. Every other Friday off)*

BoxNumber	AdminComments	BarCode/AccessionNo	Date to Office
		E8509073000MM86	06/03/2008
		E890506080A2855	06/03/2008
		E890506080A2856	06/03/2008
		E910808790A3123	06/12/2008
		E910808790A3124	06/11/2008
		E870910660ER395	06/04/2008
		E891012980ER520	06/12/2008
		E870910640MM116	06/12/2008
SIO24		3480915	06/03/2008
		E90081144A2855A	06/03/2008
		3480919	06/12/2008
	BR CALCS SAME DAY PULL,	9185	07/21/2008
		3480919	04/05/2012
		E870910640MM116	04/05/2012
		E891012980ER520	04/05/2012
		E910808790A3124	04/05/2012
		E910808790A3123	04/05/2012

Hwy 4/6 Bridge

Hwy 101 Bridge  
 9185 are the bridge calcs. I have on my desk in 2 folde

Duplicates Hwy 4/6 Bridge for 2012

numberboxrequested	Whole Box or File?	FileName Requested
	1 Whole Box	
	1 Whole Box	
	1 Whole Box	
	1 File	SIO 28 CONTRACT #3040 ONLY
	1 File	SIO 28 CONTRACT #3040 ONLY
	1 Whole Box	
	1 File	CONTRACT 3040 FINAL RECORDS ONLY
	1 File	SALMON CR & NASELLE RIVER BR. DESIGN ONLY
	1 Whole Box	
	1 Whole Box	
	1 File	SIO 28 CONTRACT # 3040 ONLY
	1 File	NASELLE RIVER BRIDGE SR 4 C-3040
	5 Whole Box	
	Whole Box	
	Whole Box	
	Whole Box	
	Whole Box	
	Whole Box	

ITS

DateofRequest	Requester Name	RequesterOffice	RequesterPhone
06/02/2008	Denys Tak	Engineering Office Kelso -	!360-442-1346
06/02/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
06/02/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
06/10/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
06/10/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
06/02/2008	Denys Tak	Engineering Office Kelso -	!360-442-1346
06/10/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
06/10/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
06/02/2008	Denys Tak	Engineering Office Kelso -	!360-442-1346
06/02/2008	Denys Tak	Engineering Office Kelso -	!360-442-1346
06/10/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
07/21/2008	Denys Tak	Engineer office Kelso - Sou	360-442-1346
04/04/2012	Denys Tak	Engineer Office - Kelso	360-442-1346

**Orozco, Tiffany (ATG)**

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**From:** Ewaniec, Michelle  
**Sent:** Friday, October 31, 2008 12:24 PM  
**To:** Whaley, Cynthia  
**Subject:** FW: Review Meeting

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**From:** Tak, Denys  
**Sent:** Friday, October 31, 2008 10:59 AM  
**To:** Gernhart, Bart; Brown, Bryce  
**Cc:** Ewaniec, Michelle  
**Subject:** FW: Review Meeting

October 31, 2008  
10:30 AM

RE: Phone conversation with Chuck Wolfe

Chuck called and asked if I had any new information for him to review. I told him I had the following;

Bridge inspection record  
Page showing 1972, 1982, 1993, 2007 photos with meander D  
Page showing 1970, 1982, 1993, 2007 photos with radius of curvature and bankfull widths  
Page showing Migration detail, pictures with meander A to E  
Ecology publication 03-06-27(final draft) A Framework for Delineating Channel Migration Zones

Chuck said twice that he already had these information from the original request. I told him that this is the first time I have seen these information and asked if he was sure that he has seen it. He told me he did not see any reason for him to come in to review this information.

Chuck also said that he has hired a geomorphologist/hydrologist and will soon contact Bryce Brown to set up a meeting. I asked him to channel all communication thru Mr. Brown.

**Denys S. Tak, P.E.**

Area Engineer  
WSDOT- SW Region MS 5  
2400 Talley Way  
Kelso, WA 98626  
360.442-1346  
[takd@wsdot.wa.gov](mailto:takd@wsdot.wa.gov)

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**From:** Chuck & Jan [<mailto:JanChuck@WWest.net>]  
**Sent:** Friday, October 31, 2008 10:38 AM  
**To:** Ewaniec, Michelle  
**Cc:** Tak, Denys  
**Subject:** Re: Review Meeting

Michelle,

I just talked with Denys and the new stuff he has I already received from WSDOT in the first letter I received from Bryce Brown. So there will be no need for you to copy the stuff, or for me to visit the Kelso office.

Chuck

----- Original Message -----

**From:** Ewaniec, Michelle  
**To:** Jan Wolfe  
**Sent:** Thursday, October 30, 2008 3:47 PM  
**Subject:** RE: Review Meeting

I spoke with Denys and there are a few items that were sent down from our bridge and environmental office that may or may not be new. There are not a lot of documents, I could make copies and mail them to you if that would be easier? Please let me know what you would like to do?

Thanks,

Michelle

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**From:** Jan Wolfe [<mailto:JanChuck@WWest.net>]  
**Sent:** Thursday, October 30, 2008 1:08 PM  
**To:** Ewaniec, Michelle  
**Subject:** Re: Review Meeting

Do you have any more information then what I have already reviewed (the 3 archive boxes?) The information I asked for wasn't found during my first review of that stuff.

Chuck

----- Original Message -----

**From:** Ewaniec, Michelle  
**To:** Chuck & Jan ; Tak, Denys  
**Sent:** Thursday, October 30, 2008 12:18 PM  
**Subject:** Review Meeting

Hello Chuck,

You should have received a letter from the Attorney General's Office regarding your Public Records Request, which indicated the information you were asking for is still located in the Kelso Engineering Office where you previously reviewed documents.

If you are interested in reviewing the documents, please supply 3 or 4 dates and times that would work for you and I will coordinate with Denys Tak on arranging a time.

Please get back to me as soon as you can about dates and times.

Thank you,

Michelle Ewaniec  
Office of Human Resources  
Southwest Region  
360-905-2224

**WILLIAM JOHN CRITTENDEN**

**January 22, 2018 - 6:15 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50894-0  
**Appellate Court Case Title:** Charles Wolfe, App./Cross-Respondent v. Dept. of Transportation, Res./Cross-Appellant  
**Superior Court Case Number:** 12-2-01059-2

**The following documents have been uploaded:**

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