

FILED  
Court of Appeals  
Division II  
State of Washington  
4/10/2019 8:00 AM

No. 51487-7-II

---

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

---

**ARTHUR WEST,  
appellant,**

**Vs.**

**THE CITY OF TACOMA,  
respondent**

---

Review of decisions entered by  
the Honorable Judge Nelson

---

**APPELLANT WEST'S  
RESPONSE BRIEF**

---

Arthur West  
120 State Ave. NE # 1497  
Olympia, Washington, 98501

**I. TABLE OF CONTENTS**

I. Table of Contents.....2

II. Table of Authorities.....3

III. Summary of Argument.....4

**I. PLAINTIFF WEST'S COMPLAINT AND THE SUMMARY JUDGMENT PLEADINGS BOTH REFERENCED SILENT WITHHOLDING, THE 74 PAGES OF RESPONSIVE EMAILS, AND THE CHRISTOPHER RECORDS, WHICH WERE ALSO ALL EXTENSIVELY ARGUED AT THE MAY 24 SUMMARY JUDGMENT HEARING.....6**

**II. THE CITY CONTINUES TO BASELESSLY ASSERT THAT STIPULATIONS WERE MADE THAT WERE NOT IN FACT MADE, IN YET ANOTHER CASE BEFORE THIS COURT.....11**

**III. THE FAILURE OF THE TRIAL COURT TO ORDER DISCLOSURE OF AND/OR RULE UPON THE SILENT WITHHOLDING OF ALL IMPROPERLY WITHHELD RECORDS CAN NOT POSSIBLY BE CONSTRUED AS “HARMLESS ERROR”.....12**

**IV. THE CITY HAS WAIVED ITS GRAVAMEN “REASONABLE SEARCH” DEFENSE BY PLEADING “THIS IS NOT A CASE WHERE THE CITY IS ARGUING THAT IT FAILED TO PRODUCE A RECORD DESPITE A REASONABLE AND ADEQUATE SEARCH”.....13**

**V. THE TRIAL COURT IMPROPERLY GRANTED THE CITY A DE FACTO EX PARTE DO-OVER OF THE CR 56 HEARING, APPARENTLY ALLOWING THE CITY TO IMPROPERLY RENEGE ON ITS OWN ARGUMENTS AND PLEADINGS.....14**

**VI. THE TRIAL COURT ABUSED IT'S DISCRETION BY FAILING TO IMPARTIALLY APPLY THE YOUSOUFIAN FACTORS TO THE ACTUAL FACTS AND CIRCUMSTANCES OF THE CASE TO SET A PENALTY WITH ACTUAL DETERRENT EFFECT.....15**

**VII. THE TRIAL COURT ERRED IN FAILING TO COMPEL DISCLOSURE OF INFORMATION OF QUINTESSENTIALLY COMPELLING INTEREST TO THE PUBLIC CONCERNING THE CITY'S STINGRAY CELLPHONE INTERCEPT TECHNOLOGY.....17**

## II. TABLE OF AUTHORITIES

<i>Ameriquest Mort. CO. v. Office of the Attorney Gen.</i> , 177 Wn.2d 467, 492, 300 P.3d 799 (2013).....	
<i>Coggle v. Snow</i> , 56 Wn. App. 499 (1990).....	
Erie County Sheriff’s Office, 47 Misc.3d 1201(A), 2015 N.Y. Slip Op. 50353(U).....	
<i>Fischer v. Washington State Department of Corrections</i> , 160 Wn. App. 722, 728, 254 P.3d 824.....	
<i>Mackay v. Acorn Custom Cabinetry, Inc.</i> , 127 Wn.2d 302, 311, 898 P.2d 284, (1995).....	
<i>Prison Legal News</i> , 154 Wn.2d at 640.....	
<i>State v. Golladay</i> , 78 Wn.2d 121, 139, 470 P.2d 191 (1970)).....	
<i>State v. Wanrow</i> , 88 Wn.2d 221, 237, 559 P.2d 548 (1977).....	
<i>The Fair v. Kohler Die &amp; Specialty Co.</i> , 228 U.S. 22,25 (1913) .....	

### LAWS AND RULES

RCW 42.56.130(1).....	
CR 56.....	

### ARTICLES

Cardozo, <i>The Nature of the Judicial Process</i> , 141 (1921).....	
5 Am.Jur.2d <i>Appellate Review</i> § 542 (2013).....	

## INTRODUCTION

This case involves an August 28, 2014, request to the city of Tacoma for records related to their stingray cellphone emulator and intercept technology. (CP 3-4)

In response to this request the city substantially redacted a Non Disclosure Agreement (NDA) and provided two privilege logs identifying (1) the NDA and (2) Stingray purchase Orders, estimates and Invoices. (CP at 10-13)

The issue of the improper withholding of the NDA was resolved in a final Order of the court finding bad faith and imposing a \$100 per diem penalty.

Subsequently the Stingray purchase Orders, estimates and Invoices were ruled by Judge Nelson to be exempt under the Investigative Records Exemption.

However, as West detailed in his Summary Judgment pleadings, the city silently withheld 4 other groups of records, including:

(1) responsive records withheld from West but disclosed to third party ACLU plaintiffs under “Christopher” Bates Stamp Nos. 721, 723-4, 725, 727 and 728. (CP at 518-527)

(2) 74 pages of responsive communications “concerning any agreements, policies, procedures, or understandings related to the acquisition, use, or operation of stingray technology”. (CP at 247-361)

that were at first silently withheld but which were subsequently produced by the city on December 22 of 2015

(3) a Harris Company Quotation of 8-12-14 and a Port Security Grant upgrade of 2014, (CP at ) and

(4) a number of responsive stingray related records appearing on the 2015 privilege log (CP at 638-652) and later described in the Judge Nelson's Order of October 13, 2017 (CP at 628-632) which the Court ruled were unlawfully withheld, but which were not disclosed to West or filed in the case until October 19, 2017, when West moved for reconsideration. (CP at 624-652), and for which an erroneous calculation of penalty days was made by the Court.

The pleadings and record of this case demonstrate that the Court erred in failing to rule that the Stingray purchase Orders, estimates and Invoices, and the records described in No. 1-3 above were unlawfully withheld, and that the egregiously abused its discretion in failing to award reasonable penalties under Yousoufian based upon the actual number of days the records it did declare were unlawfully withheld, instead arbitrarily substituting an incorrect number of days that did not reflect the number of days the records were withheld.

The Court also abused its discretion by ruling upon the category 4 records when they had not been disclosed to the plaintiff or reviewed either in camera or in open court, and in applying a de minimus \$10 per

diem penalty for only a single record when the city had previously been found to have acted in bad faith in withholding stingray records, and when an objective assessment of the Yousoufian factors based upon actual examination of the withheld records and the correct amount of time they had been withheld would have resulted in a substantially larger penalty.

Substantively, the Court also erred in expanding the ‘effective law enforcement exemption to justify the concealment of Stingray purchase Orders, Estimates and Invoices.

**I. PLAINTIFF WEST'S COMPLAINT AND THE SUMMARY JUDGMENT PLEADINGS BOTH REFERENCED SILENT WITHHOLDING, THE 74 PAGES OF RESPONSIVE EMAILS AND THE CHRISTOPHER RECORDS WHICH WERE ALSO ALL EXTENSIVELY ARGUED AT THE MAY 24 SUMMARY JUDGMENT HEARING**

The city makes a number of manifestly false representations in it's characterization of the plaintiff's claims in regard to the city's silent withholding of the 74 pages of Emails: that the issue was not raised in the pleadings or briefed, that the records were not produced by the city, that silent withholding was not an element of plaintiff's complaint, and that the 74 pages of withheld records were somehow, inexplicably, “part of another case”.

Contrary to the false representations that characterize the city's reply brief, the complaint specifically asserted a cause of action for silent

withholding, the “Christopher records” and the 74 pages of responsive Emails disclosed by the city on December 22 were clearly identified by the plaintiff in his summary Judgment filings, these claims were acknowledged by the defendants in their filings<sup>1</sup>

In the Declaration filed in support of West's Motion for Summary Judgment it was clearly stated that:

Although defendants provided a partial redacted response...many of the communications and records responsive to the original request were not produced until December of 2015, when the City responded to a second records request and included records concerning stingray related policies, procedures, or understandings, a log of use of the stingrays, and several responsive “new” records it identified in its exemption log that, although they were in existence in 2014, were not provided in response to West's 2014 request.

The City further failed to disclose or identify “Any records concerning any agreements, policies, procedures, or understandings related to the acquisition, use, or operation of stingray technology.” The City's August 27 communications referenced in their 2015 exemption log, (apparently) **and many of the Email communications disclosed by the City in December of 2015 were responsive to this request.** (emphasis supplied)

On March 6, in reply to the city's Motion, Plaintiff filed a declaration appending and identifying the selfsame 74 pages of silently withheld responsive records.

---

<sup>1</sup> See Defendant's Motion for summary Judgment at Page 12, section D. entitled “**The City disclosed records responsive to the plaintiff's 2014 request and did not silently withhold documents that were later produced in response to west's 2015 request.**” declaration of Travis at page 5, lines 3-5, “I understand that Mr. West believes that some of the documents disclosed in response to his 2015 request(15-947) should have been disclosed in response to his 2014 request.”

Further, and without objection by the city, West argued in regard to the 74 pages of silently withheld records at length at the hearing of May 24, 2017 (See Transcript of May 24<sup>th</sup>, 2017, page 14 line 13 through Page 17, line 6), as follows:

The second category we'll consider today is what I would term the claims the City has not reasonably disputed. This includes two basic groups of records: The silently withheld pre-August 28 e-mail communications, the 74 pages that were appended to the declaration, and -- a declaration of March 6th; and the attorney/client communications that are appended as Exhibits 3 and 4 of Plaintiff's reply in support of the motion of March 13.

Again, the plaintiff clearly identified in his CR 56 motion at Page 2, Lines 9 through 11, that his August 28th, 2014, request included the following language: Any records concerning any agreements, policies, procedures, or understandings related to the acquisition, use, or operation of Stingray technology. It's hard to imagine how a request might be fashioned to more broadly encompass any records related to any agreements, policies, procedures, or understandings related to the use, acquisition, or operation of the technology.

Despite the City's creative use of what I would term the these-aren't-the-droids-you're-looking-for defense, it's readily apparent that all, virtually all, of the 74 pages of records appended to the March 6th, 2017, declaration were properly responsive to the August 28, 2014, request, and were silently and improperly withheld by the City until their belated release in response to a later request after the present suit was filed.

And again, nowhere in Defendant's replies do they credibly deny that either the pre-August 28th records or the silently withheld attorney/client communications concern any agreements, policies, procedures, or understandings related to the acquisition, use, or operation of the Stingray technology. In fact, where Mr. Smith on Page 5, Line 14 through 15 of his declaration, attempts to justify the withholding, he misrepresents the request of seeking records concerning only the acquisition, use, and operation of the technology, leaving out the entire first half of the request.

This is akin to representing lightning to be the same as a

lightning bug and fails to refute plaintiff's request, as written, sought information concerning any agreements policies, procedures, or understandings related to the technology.

Mr. Smith does not credibly dispute he failed to respond to the request as it was actually written, nor does he explain how he did not find his own e-mail communications of 5/18 and 5/19 on August 27, 2014, entitled, "Cell phone procedures responsive to Plaintiff's requests for records relating to procedures." No reasonable search -- and this request was one day after the communications in question.

No reasonable search could possibly fail to locate communications for the day before the request, bearing the same descriptive word expressly included in the records request. And Defendant's representations to the contrary simply lack veracity. And again, a copy of two of these records is included in -- on the back of the sign boards.

Despite the defendant's creative arguments, the 74 pages of August 28 communications, pre-August 28 communications, and the silently withheld attorney/client records that were subsequently disclosed to the ACLU and which bear the designation "Christopher" are indisputably related to or concerning agreements, policies, procedures, or understanding related to the acquisition, use, or operation of the Stingray devices. The defendants have not reasonably and credibly denied these circumstances, and judgment should issue on these claims as well.

Significantly, and completely in variance to the representations of counsel in their reply brief, the transcript of the Hearing of May 24 at page 40-41 shows counsel asserting the reasonable search defense, alleging that the disputed emails were not uncovered in a reasonable search.

As the Transcript of the May 24, 2017 hearing demonstrates, the gravamen of both the City's defense and the court's actual ruling on the responsive email communications and other records was the reasonable

search argument. As counsel herself stated on May 24:

MS. ELOFSON “And when he (Mike Smith) helped other people gather their documents, he told them “Limit it to acquisition, use, operation” And they did.” (See counsel Elofson, speaking on page 42, lines 2-4 of the Transcript of May 24, 2017.

As the Superior Court stated to counsel, in adopting this novel and completely unprecedented subjective and amorphous standard...

THE COURT: “So you say the standard is reasonable. They have to do (sic) reasonable interpretation.” See Transcript of May 24, Page 40, line 13- page 41 line 24

The complete disconnect between counsel's representations in their recent Reply Brief and what actually took place in the Trial Court underscores the underlying strategy of the city in this case, to make so many contradictory claims that the court becomes irremediably confused. From the record, it is clear that counsel succeeded in producing this level of confusion in the trial court, which substantially contributed to it's abuse of discretion in failing to rule on the issues properly before it and conducting a manifestly erroneous penalty calculation.

## **II. THE CITY CONTINUES TO BASELESSLY ASSERT THAT STIPULATIONS WERE MADE THAT WERE NOT IN FACT MADE, IN YET ANOTHER CASE BEFORE THIS COURT**

Counsel also deliberately misrepresents material facts by asserting that a waiver was executed by plaintiff not to argue certain matters at

Summary Judgment. This is scurrilous, and a manifestly untrue fabrication unworthy of a respected member of the bar, and is unfortunately, characteristic of the city of tacoma's tactics, since it made a similar specious waiver argument in the PSE ILNG records case.

While it is true that the issues initially argued before Judge Cuthbertson in the consolidated COP-West cases were limited to those argued by COP, West subsequently filed a Motion for Summary Judgment that explicitly raised the silent withholding issue in regard to the (pre August 28, 2014) records produced on and identified by the city on December 22, 2015, the “Christopher” records and the privilege log records.

As such, since the city did not file their own motion until a week later, there can be no credible argument that any agreement to waive these issues existed, as they were explicitly raised by plaintiff in his Summary Judgment Motion.

Again, counsel's continuing pattern of glaring misrepresentation of material facts appears to be advanced in bad faith in an attempt to confuse and distract the court in the same manner that it confused and distracted the trial court.

### **III. THE FAILURE OF THE TRIAL COURT TO ORDER DISCLOSURE OF AND/OR RULE UPON THE SILENT WITHHOLDING OF ALL IMPROPERLY WITHHELD RECORDS CAN NOT POSSIBLY BE CONSTRUED AS “HARMLESS ERROR”**

Next, the city attempts to allege that the failure of the trial court to comprehend which records it was ruling upon and its conducting a penalty calculation based upon the wrong number of days and before the records it deemed to have been withheld had been disclosed to plaintiff or were available for its review review in open court, and it's failure to rule properly as to all of the records improperly withheld was “harmless error”.

This is another preposterous proposition in that:

An error is harmless, and will not lead to reversal, (only) if it is “trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.” Mackay v. Acorn Custom Cabinetry, Inc., 127 Wn.2d 302, 311, 898 P.2d 284, (1995) citing State v. Wanrow, 88 Wn.2d 221, 237, 559 P.2d 548 (1977) (quoting State v. Golladay, 78 Wn.2d 121, 139, 470 P.2d 191 (1970)).

Had the court recognized that the records it was ruling on had not yet been disclosed, it would have had to have adjusted the penalty days to reflect this, and further, had it ruled upon or ordered disclosure of other records which had been withheld for differing or greater periods of time, this would likely have resulted not only in disclosure of additional records, but in a substantially different penalty calculation.

As such, the city's “harmless error” defense is unavailing and can be seen as just another attempt to justify the unjustifiable

**IV. THE CITY HAS WAIVED ITS GRAVAMEN “REASONABLE SEARCH” DEFENSE BY PLEADING “THIS IS NOT A CASE WHERE THE CITY IS ARGUING THAT IT FAILED TO PRODUCE A RECORD DESPITE A REASONABLE AND ADEQUATE SEARCH”**

Even more astounding is the City's actions in completely abandoning on appeal the reasonable search defense that it relied upon so heavily in the Summary Judgment hearing.

As the Transcript of the May 24, 2017 hearing demonstrates, the gravamen of both the City's defense and the court's ruling on the responsive email communications and other records was the reasonable search argument. As counsel herself stated on May 24:

**MS. ELOFSON** “And when he helped other people gather their documents, he told them “Limit it to acquisition, use, operation” And they did.” (See counsel Elofson, speaking on page 42, lines 2-4 of the Transcript of May 24, 2017.

Further, the Superior Court stated to counsel, in adopting this novel and completely unprecedented subjective and amorphous standard...

**THE COURT:** “So you say the standard is reasonable. They have to do (sic) reasonable interpretation.” See Transcript of May 24, Page 40, line 13- page 41 line 24

Yet despite relying heavily upon the alleged reasonable search, the City now, incomprehensibly, in its reply brief on appeal, argues on page 5-9 that the reasonable search defense is inapplicable to this case, because:

**“This is not a case where the city is arguing that it failed to produce a record despite a reasonable and adequate search.” City reply Brief at**

**Page 6, lines 5-7)**

This effects an abandonment of the gravamen of the city's defense at the Summary Judgment hearing that the city conducted a reasonable search (See generally 5 Am.Jur.2d Appellate Review § 542 (2013)), and, perhaps more significantly underscores the procedurally unprecedented “Do-over” the court granted the city to evade the egregious deficiencies of their arguments and assertions at the summary judgment hearing.

**V. THE TRIAL COURT IMPROPERLY GRANTED THE CITY A DE FACTO EX PARTE DO-OVER OF THE CR 56 HEARING, AND ALLOWED THE CITY TO RENEGE ON ITS ARGUMENTS AND PLEADINGS**

It is basic hornbook law that the plaintiff is master of his complaint<sup>2</sup>. Thus, plaintiff West, not the Court, was the sole party to determine what issues he argued within the context of the pleadings of the case.

To the extent the trial court may not have ruled on the basis of the issues raised on summary judgment, and instead granted the city a do-over allowing it to advance arguments not made in the CR 56 hearing, it violated this basic principle, as well as the explicit language of CR 56 and the basic principle of due process of law, egregiously abusing it's discretion in the process.

Having been presented with specific argument on summary

---

<sup>2</sup> See 14B CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3702, at 46 (3d ed. 1998) (“[P]laintiff is the master of his or her claim;..”); see also *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22,25 (1913)

judgment, the court, in refusing to rule on the issues argued therein, made a mockery of the interests of judicial efficiency in PRA proceedings expounded by this court in *West v. Gregoire*, and further violated basic due process of law.

**VI. THE TRIAL COURT ABUSED IT'S DISCRETION BY FAILING TO IMPARTIALLY APPLY THE YOUSOUFIAN FACTORS TO THE ACTUAL FACTS AND CIRCUMSTANCES OF THE CASE TO SET A PENALTY WITH ACTUAL DETERRENT EFFECT**

As division I of the court of appeals has recognized:

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. *Cogle v. Snow*, 56 Wn. App. 499 (1990), quoting from Cardozo, *The Nature of the Judicial Process*, 141 (1921);

As even the most superficial comparison to the Award in *Banks* (which was 3 orders of magnitude greater than that assessed herein, for the withholding of essentially the same records) reveals, the minimal award assessed in this case was the result of a failure to compel disclosure of all of the unlawfully withheld records, and an abuse of discretion by the court in failing to set a penalty with actual deterrent effect.

If the defendant City of Tacoma's mere redaction of one six page document, (the Non-Disclosure Agreement) justified a maximum per diem penalty of \$100, the city's subsequent silent withholding of 14 discreet records necessary to understand how the NDA was applied deserved no

lesser penalty.

The Trial Court abused its discretion by refusing to take into consideration of the previous ruling of Judge Cuthbertson in this case as well as the Yousoufian factors and the facts and circumstances of this case that similarly strongly supported a maximum penalty based upon discrete groups of withheld records.

Since the Court, having previously ruled correctly upon the City's withholding of the NDA and the Court having applied the Yousoufian factors and found that a maximum penalty was authorized for the City's improper redaction of one 6 page document (the NDA), it is simply not reasonable to suggest that the far more egregious withholding and subsequent unreasonable assertion of attorney client privilege in relation to over a dozen records necessary to understand how the NDA was applied should be subject to a far lesser penalty.

In this case, the minimal penalty set by the court, far from having a deterrent effect only encouraged the City of Tacoma and other similar agencies to continue to silently withhold records to obstruct the policy of the PRA, as demonstrated by the city's continuing egregious violations of the Public's right to know.

The Court also abused its discretion in failing to account for the actual number of Days records were withheld. See *Koenig v. Des Moines*, 158 Wn.2d 173 (2006), (court lacked discretion to reduce penalty days)

**VII. THE COURT ERRED IN FAILING TO COMPEL DISCLOSURE OF INFORMATION OF QUINTESSENTIALLY COMPELLING INTEREST TO THE PUBLIC CONCERNING THE CITY'S STINGRAY CELLPHONE INTERCEPT TECHNOLOGY**

Now, finally, we come to the one valid and credibly contested issue in this case: Does the specific intelligence clause of the effective law enforcement exemption in the Washington State PRA apply to the official public records regarding the Stingray purchases, the invoices, quotes, estimates and purchase orders.

This presents a rather novel issue in Washington Law that has not yet been directly addressed. However, Washington courts have unanimously narrowly construed the “essential to effective law enforcement” element of the PRA in favor of disclosure. *Prison Legal News*, 154 Wn.2d at 640. Moreover, evidence of an alleged threat to effective law enforcement must be “truly persuasive” to the court. *Ameriquist Mort. CO. v. Office of the Attorney Gen.*, 177 Wn.2d 467, 492, 300 P.3d 799 (2013). In light of the narrow scope of the exemption set forth in Sheehan and *Prison Legal News*, and the heavy burden in *Ameriquist*, and the clear weight of precedent, the specific intelligence slash effective law enforcement exemption should not be seen to apply to at the very least, the invoices, estimates and purchase orders.

Another compelling reason why the claimed exemption should not apply lies in the definition of what effective law enforcement is in the

context of the sovereign rights of citizens who are not subject to heightened scrutiny and lesser rights as criminal defendants or convicted felons in a pervasively regulated prison setting are.

Now the respondents have argued, and Appellant West does not dispute, that in the context of discovery in a criminal case in Arizona, or in the specific context of supervising dangerous convicted felons in prison, the effective law enforcement exemption may be applied to suppress surveillance technology employed for certain specific purposes.

Fischer, Gronquist, Haines Marchell all involve supervision of convicted felons in prison. The excerpt of the AG's Brief in Haines appended as Exhibit 2 to plaintiff's March 13 filing demonstrates the context of such supervision when it states that "DOC is tasked with being in control of a population that is 100% criminal in composition and is accustomed to evading detection and exploiting the absence of authority, monitoring, and accountability."

The Criminal cases the United States has cited, primarily Rigmaiden, also underscore the limitations of discovery in a criminal case and the Courts ability to suppress information in the context of discovery in a criminal prosecution.

But appellant West would suggest that, in contrast to the prison environment, in regard to the supervision of dangerous felons in custody, in the very different context of what we would like to believe is the free

world, the State's legitimate authority to mandate suppression of information as well as to determine behind closed doors what type of intrusive secret surveillance is essential to effective law enforcement pose very different legal issues.

Division I of the Court of Appeals recognized this in a recent case involving Seattle Pacific university holding...

Finally, the University relies on *Fischer v. Washington State Department of Corrections*, 160 Wn. App. 722, 728, 254 P.3d 824 (2011), in which nondisclosure of prison surveillance videos was found "essential to effective law enforcement."

This was so because concealing the security system was "critical to its effectiveness in the specific setting of a prison." *Fischer*, 160 Wn. App. at 728 (emphasis added). The University fails to explain why the rationale in *Fischer* should be extended to the facts in this matter.

Unlike convicted felons or defendants in criminal proceedings, honest law abiding citizens in a democratic republic of sovereign states have constitutional and penumbral rights to be free from big brother watching over their every move and conducting intrusive searches in violation of the 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendments, to say nothing of the penumbral personal privacy rights first recognized in *Griswold v. Connecticut* and the greater rights of Citizens of the State of Washington under Article 1 section 7.

It must also be recognized that effective law enforcement in a democratic republic can only be understood to be law enforcement in

accord with the laws, constitution and the civil rights of its law abiding citizens. In Washington that would include Article 1 section 7, and 10 as well as the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendments.

No one would debate whether the NKVD or the Geheime Staatspolizei were “effective” in enforcing the laws of the Soviet Union or the Third Reich. What an efficient law abiding culture we might have if our police and law enforcement operatives could be as effective as those in Stalinist Russia or Großdeutschland!

But in America, the term “Effective Law Enforcement” does not mean that government is free to trample with impunity upon our precious liberties with hobnailed boots, secretly monitor its citizens or, (as described by Solzhenitsyn in *One Day in the Life*), lock them in the Gulag for decades for thought crimes like telling jokes about the Supreme Commander’s mustache.

. This Court should rule in accord with the State Courts in Martinez and Erie which found that effective law enforcement does not justify concealing from the citizenry the basic nature of the technology that the government employs to surveil them with.

Done April 10, 2019.

*s/Arthur West*  
ARTHUR WEST

**CERTIFICATE OF SERVICE**

I, Arthur West, certify that Appellant West's Response Brief was electronically served on counsel of record for the City of Tacoma at their email address on April 10, 2019.

s/Arthur West  
ARTHUR WEST

**ARTHURS WEST - FILING PRO SE**

**April 10, 2019 - 7:39 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51487-7  
**Appellate Court Case Title:** Arthur West, Appellant v. City of Tacoma, Respondent  
**Superior Court Case Number:** 15-2-12683-6

**The following documents have been uploaded:**

- 514877\_Briefs\_20190410073219D2433012\_6188.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was STINGRAY APRIL 10 BRIEF.pdf*

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

- margaret.elfson@ci.tacoma.wa.us

**Comments:**

---

Sender Name: ArthurS West - Email: westarthur@aol.com  
Address:  
129n Statev Ave NE No. 1497  
Olympia, WA, 98501  
Phone: (360) 593-4588

**Note: The Filing Id is 20190410073219D2433012**