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Division II
State of Washington
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No. 52066-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

BRIAN CORTLAND,

Appellant,

v.

LEWIS COUNTY,

Respondent.

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

1. Mr. Cortland is the prevailing party because Lewis County violated the Public Records Act when it failed to respond to Mr. Cortland's Public Records Act requests pursuant to RCW 42.56.520

It is simple. Both parties agree that Lewis County failed to respond to Mr. Cortland's Public Records Act requests under the Public Records Act, pursuant to RCW 42.56.520. When Lewis County failed to respond to Mr. Cortland's Public Records Act requests at issue in this appeal, it denied his requests, and violated the Public Records Act by denying Mr. Cortland a right to copy and inspect records, pursuant to RCW 42.56.550(1). This Court does need not enter into any further analysis to find a violation of the Public Records Act occurred by Lewis County's non-response.

The plain language of the Public Records Act mandates that "[r]esponses to requests for public records shall be made promptly by agencies" and a response must occur "[w]ithin five business days of receiving a public record request." RCW 42.56.520(1).

Washington courts have construed RCW 42.56.520(1) to mean a violation of an agency's prompt response is a violation of the right to inspect and copy under the Public Records Act and results in a denial. This Washington Court of Appeals, Division II, in *West v. Department of Natural Resources*, considered and answered the issue of whether an agency must

respond to a requestor within five business days, as is stated in the plain language of RCW 42.56.520(1). “[D]oes the failure to acknowledge a request for records within five business days constitute a violation of the PRA? The answer is an unequivocal yes.” *West v. State Dept. of Natural Resources*, 258 P. 3d 78, 82 (Wash. Ct. App. 2011). This Division II Court of Appeals explained its holding by reasoning “[t]he PRA could not be clearer on the requirements imposed upon agencies following a request.” *Id.* Consequently, the agency violated the requestor’s right to inspect and copy records under the Public Records Act. This Court of Appeals found a violation of the Public Records Act and remanded the case back to the trial court for consideration of “attorney fee and penalty award.” *Id.*

The holding from the *West* case is consistent with well-established case law from both the Washington State Supreme Court and the Washington State Court of Appeals. The Washington State Supreme Court has ruled “[f]or practical purposes, the law treats a failure to properly respond as a denial.” *Soter v. Cowles Pub. Co.*, 174 P. 3d 60, 78 (Wash. 2007); *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 128 (Wash. 2011). The Washington State Court of Appeals, Division III, has ruled at least three separate times on the issue of whether a violation of an agency’s prompt response is a violation of the right to inspect and copy under the Public Records Act. Most recently, the

Washington State Court of Appeals, III ruled that “[a]n award of costs, including attorney fees, is mandatory for the failure to respond to a public record request.” *Zink v. City of Mesa*, 256 P. 3d 384, 396 (Wash. Ct. App. 2011). Then the Court of Appeals, Division III, issued two separate opinions, in quick succession, both coming to the same conclusion that a violation of an agency’s mandatory duty to respond is a violation of the Public Records Act in which statutory penalties and attorney’s fees must be awarded. “Failure to respond within five days is a violation of the PDA triggering statutory sanctions.” *Wood v. Lowe*, 10 P. 3d 494, 497 (Wash. Ct. App. 2000) (citing *Smith v. Okanogan County*, 994 P. 2d 857, 864 (Wash. Ct. App. 2000)); accord *Smith v. Okanogan County*, 994 P. 2d 857, 864 (Wash. Ct. App. 2000) (holding because the County’s response failed “to comply with the statute” the response “violated the Act”).

Lewis County argues that RCW 42.56.520(1) is permissive and permits an agency to determine whether it will respond or not to a Public Records Act request. In this appeal, Lewis County argues that Mr. Cortland received a response to his Public Records Act requests by a non-agency that is not subject to the Public Records Act. Lewis County states as a matter of undisputed fact:

[T]he Lewis County Superior Court promptly responded to each request and provided the responsive records. CP at 317; see also *id.* at 62-179

(showing the full responses); *id.* at 180-84 (admitting the receipt of the responses). The responses said they were provided under GR 31.1. *Id.* at 317. This is because the Lewis County Superior Court believed the law library to be a judicial agency and its records to be judicial records. *See, e.g., id.* at 63.

Respondent's Resp. Br. at 2-3.

The record is absent in both this Court of Appeals and the trial court of any evidence that Lewis County responded to Mr. Cortland's Public Records Act requests at issue in this appeal. This is substantiated by Respondent's Response Brief in this appeal where Lewis County unequivocally states as a matter of fact that the "Lewis County Superior Court promptly responded to each request and provided the responsive records" without identifying Lewis County's participation in responding to Mr. Cortland's Public Records Act request at issue in this appeal.

Respondent's Resp. Br. at 2-3.

2. Mr. Cortland is the prevailing party in this appeal because only the Lewis County Superior Court responded to Mr. Cortland's Public Records Act requests and the Lewis County Superior Court does not have the authority to act upon the subject of the Public Records Act

In response to Mr. Cortland's argument that the Lewis County Superior Court does not have authority to act upon the subject of the Public Records Act, Lewis County argues the plain language of the statute and case law authorizes the Lewis County Superior Court to respond to Public Records Act requests on behalf of Lewis County.

Lewis County's argument fails because there is no substantiation and support in either the plain language of the statute, or in case law that a non-agency/third party can respond to Public Records Act request on behalf of a statutory agency.

A. The plain language of the statute does not permit a non-agency/third party to respond to Public Records Act requests on behalf of a statutory agency

Mr. Cortland agrees with Lewis County's argument that the question of whether the Lewis County Superior Court can provide records to satisfy the requirements of the Public Records Act is "directly answered in the statute itself" and the case law construing the plain language of the Public Records Act. Respondent's Resp. Br. at 12.

Lewis County in its appellate brief does analyze the plain language of the statute itself. Instead, Lewis County gives passing reference to the Public Records Act without any analysis. Respondent's Resp. Br. at 12 (citing RCW 42.56.520(1)(a) and RCW 42.56.550(1)).

The plain language of the statute creates a mandatory statutory duty for agencies, and only statutorily defined agencies, to respond to Public Records Act requests. RCW 42.56.010(1) (defining agencies under the Public Records Act). There are several parts of Chapter 42.56 RCW which creates a statutory mandate only for statutory agencies to respond to Public Records Act requests. "Each agency, in accordance with published rules,

shall make available for public inspection and copying all public records.” RCW 42.56.070(1). “[A]gencies shall, upon request for identifiable public records, make them promptly available to any person.” RCW 42.56.080(2). “Responses to requests for public records shall be made promptly by agencies.” RCW 42.56.520(1). This duty to disclose records in response to a Public Records Act is a “positive duty” that is a mandatory statutory requirement of agencies. RCW 42.56.510.

When reading the plain language of the statute Washington courts construe statutes “to effect their purpose and unlikely, absurd or strained consequences should be avoided.” *State v. Fjermestad*, 114 Wn.2d 828, 835 (Wash. 1990) (citing *State v. Stannard*, 109 Wn.2d 29, 36 (1987)). Washington courts avoid readings of statutes which lead to absurd results “because it will not be presumed that the legislature intended absurd results.” *Tingey v. Haisch*, 152 P. 3d 1020, 1026 (Wash. 2007) (internal quotation marks omitted); *State v. JP*, 69 P. 3d 318, 320 (Wash. 2003) (internal quotation marks omitted).

1. The plain language of RCW 42.56.520(1) does not support Lewis County’s argument that a non-agency/third party can respond on behalf of a stator agency

Here, in this appeal, Lewis County argues the plain language of RCW 42.56.520(1) states that non-agencies can satisfy the requirements of

the Public Records Act by “providing the record” in place of a statutory agency, such as Lewis County. Respondent’s Resp. Br. at 12 (citing RCW 42.56.520(1)(a)). Lewis County substantiates its position by citing *Benton County v. Zink*, a Division III, Washington State Court of Appeals case. Respondent’s Resp. Br. at 12 (citing *Benton County v. Zink*, 361 P. 3d 801 (Wash. Ct. App. 2015)). However, Lewis County perverts the plain language of the Public Records Act and the holding in *Benton County v. Zink* to make its argument that a non-agency/third party can satisfy the Public Records Act’s mandatory statutory requirements of agencies.¹

First, Lewis County’s selective quotation of the plain language of RCW 42.56.520(1) perverts the plain language of the statute. Again, Lewis County argues the plain language of RCW 42.56.520(1)(a) is satisfied by non-agencies “providing the record.” Respondent’s Resp. Br. at 12. This is a selective quotation of the statute, quoting only the dependent clause of the sentence and not the entire sentence itself, perverting the meaning of the plain language, resulting in a material misrepresentation to this Court of

¹ In pertinent part, the mandatory statutory duties of an agency when responding to a Public Records Act request are: “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records.” RCW 42.56.070(1). “[A]gencies shall, upon request for identifiable public records, make them promptly available to any person.” RCW 42.56.080(2). “Responses to requests for public records shall be made promptly by agencies.” RCW 42.56.520(1).

Appeals and to Mr. Cortland. The dependent clause² that Lewis County cites in RCW 42.56.520(1)(a) cannot stand by itself as a meaningful proposition without the context given in RCW 42.56.520(1). That is because the dependent clause that Lewis County cites relies upon the independent clause of RCW 42.56.520(1) to gain its meaning of who or what provides the records to satisfy the Public Records Act. In fact, RCW 42.56.520(1)(a) is part of an enumerated list, separated by semicolons, where start of the sentence appears in RCW 42.56.520(1) with a colon designating the start of the list. The independent clause existing in RCW 42.56.520(1) mandates through the word shall that “[w]ithin five business days of receiving a public record request, an agency. . . must respond in one of the ways provided in this subsection (1):”. RCW 42.56.520(1). The enumerated list, RCW 42.56-520(1)(a)-(e), lists each of the possible way for an agency respond, but an agency has the mandatory statutory duty to “must respond in one of the ways provided in this subsection” within five business days. RCW 42.56.520(1). Because the plain language of the statute makes RCW 42.56.520(1)(a) dependent upon RCW 42.56.520(1), the idea of providing the record cannot be divorced from who provides the record. The plain language of the statute clearly identifies that since the

² In contrast, an independent clause can express a complete thought (and can be a standalone sentence).

requests were directed to the Lewis County Law Library Board that Lewis County as a statutory agency was responsible for the response and any responsive records pursuant to its mandatory statutory burdens. *See* RCW 42.56.070(1); RCW 42.56.080(2); RCW 42.56.520(1).

2. The plain language of RCW 42.56.550(1) does not support Lewis County's argument that a non-agency/third party can respond on behalf of a statutory agency

The plain language of the RCW 42.56.550(1) does not support Lewis County's argument that a non-agency/third party can respond on behalf of a statutory agency as defined by RCW 42.56.010(1).

The plain language of RCW 42.56.550(1) reads as follows:

Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

RCW 42.56.550(1).

The title of RCW 42.56.550 is "Judicial review of agency actions." RCW 42.56.550. There are two sentences in the plain language of RCW 42.56.550(1). The first sentence in this statute identifies the procedure for a motion to show cause for a person who was denied access to records under

the Public Records Act. The second and final sentence in the plain language of RCW 42.56.550(1) identifies the burden of proof in a hearing when a requestor claims there is a denial of access to records under the Public Records Act. Nowhere in the plain language of either of these two sentences does it talk about the procedure for responding to Public Records Act requests. Nowhere in the plain language of either these two sentences does it talk about the authority for non-agencies or third parties to participate in responding to Public Records Act requests.

This Court of Appeals should disregard Lewis County's argument regarding plain language of RCW 42.56.550(1). Lewis County failed to identify where in the plain language it is expressed that non-agencies can respond to Public Records Act requests on behalf of statutory agencies. As demonstrated above, there is nothing in the plain language of the statute that supports Lewis County's interpretation. This is nothing more than an unsubstantiated and bald-faced attempt by Lewis County to pervert and mislead this Court of Appeals.

B. Case law does not support Lewis County's argument that a non-agency/third party can respond on behalf of a statutory agency

The case law that Lewis County cites does not stand for the proposition that Lewis County asserting to this Court of Appeals. Therefore, Lewis County's argument fails that case law supports the

premise that non-agency/third parties can respond to Public Records Act requests on behalf of statutory agencies as defined by RCW 42.56.010(1).

Lewis County cites the case *Benton County v. Zink* to support the proposition that non-agencies can satisfy the Public Records Act by performing an agency's mandatory statutory duties prescribed in the Public Records Act. *Benton County v. Zink*, 361 P. 3d 801, 807-08 (Wash. Ct. App. 2015). Specifically, Lewis County argues “[a]n agency may satisfy a PRA request through the acts of a third party” which is not a statutorily defined agency as defined in RCW 42.56.010(1). Respondent’s Resp. Br. at 12.

Lewis County is misguided in its belief the case *Benton County v. Zink* holds that a third party (a non-agency) can satisfy the Public Records Act. Lewis County came to a conclusion that is misguided and unfounded, without offering any proof, that the *Benton County v. Zink* case supports that proposition that third parties (non-agencies) can satisfy the Public Records Act. *Benton County v. Zink*, stands for the proposition that an agency may charge for incidental costs, such as copying, for the agency producing the record to the requestor. The final sentence in the opinion sums it up “The PRA allows Benton County to charge Ms. Zink the actual costs it incurs for” an outside vendor to create a paper copy of the electronic records. *Benton County v. Zink*, 361 P. 3d 801, 807-08 (Wash. Ct. App.

2015). The *Zink* court never once identifies that the outside vendor making the paper copies would be acting as a statutory agency in responding to the request. The *Zink* court never analyzed whether the statutory agency's response requirement could be satisfied by a non-agency only making photocopies as a service incidental to the response and production of documents. It important to note, the *Benton County v. Zink* ruling is absent of any mention of RCW 42.56.520, RCW 42.56.070, and RCW 42.56.080.

Lewis County's argument fails because there is no support in the plain language of the opinion for Lewis County's assertion to this Court of Appeals that non-agencies/third parties are statutorily authorized to respond on behalf of agencies.

3. Mr. Cortland is the prevailing party in this lawsuit because Lewis County failed to argue that Lewis County performed an adequate search and also failed to argue "beyond material doubt" that Lewis County performed an adequate search

As a matter of law, Lewis County has failed to meet its legal burden to prove "beyond a material doubt" that it as a statutory agency pursuant to RCW 42.56.010(1), performed an adequate search pursuant to binding precedent from the Washington State Supreme Court to fulfill its burdens under the Public Records Act. There is a violation of the Public Records Act because Lewis County does not argue that it performed an adequate search and does not argue it met its mandatory burden of proof "beyond

material doubt” to establish there was an adequate search. With a holding of a violation of the Public Records Act this Court of Appeals must remand this case back down to the trial court with instructions for Lewis County to first perform an adequate search under the Public Records Act on all requests at issue in this appeal, next for the trial court to determine a statutory penalty, all costs, and reasonable attorney’s fees for Mr. Cortland as a result of Lewis County’s violation of the Public Records Act.

“[T]he agency bears the burden, beyond material doubt, of showing its search was adequate.” *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 128 (Wash. 2011). The Washington State Supreme Court used the legal standard of “beyond material doubt” that is used repeatedly in federal Freedom of Information Act (“FOIA”) to determine the adequacy of an agency’s search. *See e.g. Debrew v. Atwood*, 792 F. 3d 118, 122 (D.C. Cir. 2015) (stating “the agency must show beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents”); *Ancient Coin Collectors v. US Dept. of State*, 641 F. 3d 504, 514 (D.C. Cir. 2011); *Morley v. CIA*, 508 F. 3d 1108, 1114 (D.C. Cir. 2007); *Valencia-Lucena v. US Coast Guard*, 180 F. 3d 321, 325 (D.C. Cir. 1999).

A. Mr. Cortland is the prevailing party in this appeal because Lewis County does not argue that Lewis County performed an adequate search

First, Lewis County does not argue either in this Court of Appeals or in the trial court that Lewis County performed a search under the Public Records Act for documents responsive to Mr. Cortland's Public Records Act requests that are at issue in this Appeal. Respondent's Resp. Br. at 14-16; CP 293-94. Lewis County argues the Lewis County Superior Court performed a search. Lewis County provided declarations from the Lewis County Court Administrator Susie Parker identifying the search Ms. Parker performed on behalf of the Lewis County Superior Court. CP 297-98 (identifying Ms. Parker searched for the Lewis County Superior Court).

As stated above, well-established caselaw mandate that statutory agencies under both the Public Records Act and the Freedom of Information Act have the burden of proof to show the statutory agency's search for records is adequate. *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 128 (Wash. 2011) (holding "the agency bears the burden, beyond material doubt, of showing its search was adequate"); *accord Debrew v. Atwood*, 792 F. 3d 118, 122 (D.C. Cir. 2015) (holding "the agency must show beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents").

The record is absent of Lewis County ever making the argument either in this Court of Appeals or in the trial court that Lewis County performed an adequate search for records pursuant to the Public Records Act.

In fact, the only argument and evidence offered by Lewis County to the trial court about the adequacy of the search was that the non-statutory agency the Lewis County Superior Court performed a search which could fulfill search burden under the Public Records Act. CP 293-94; Respondent’s Resp. Br. at 14-16.

12 3. *The factual adequacy of the search and response is, ultimately, undisputed.*
13
14 Turning to the issues for which the Court set this hearing, Lewis County has
15 provided evidence that the Lewis County Superior Court fielded Mr. Cortland’s request,
16 searched in reasonable locations to find responsive records, and produced those
17 records to Mr. Cortland. Answer at Exs. 1-11; Attachments 1 and 2 (Decls. of Susie
18 Parker and Matt Trent). Mr. Cortland admits receiving the responses. Dec. of Brian
19 Cortland (Jan. 4, 2018). Mr. Cortland has not articulated any locations in which he
20 believes further responsive records should reasonably have been sought. Nor has he
21

22 ² Solely to avoid any waiver from this recitation of the Court’s ruling, Lewis County notes
23 that it respectfully disagreed with this ruling for at least two reasons: (1) the law library (and its
24 board) are historically judicial entities, and (2) in practical effect, the Court’s ruling found the
25 PRA to be violated because of a violation of the law library board statutes—because if the
26 Lewis County Superior Court were supposed to have been running the law library, its records
thereof would have been judicial records not subject to the PRA. These arguments are the
subject of an appeal; Lewis County is not attempting to relitigate them in this brief.

But there is not a recognized transitive property of equality³ regarding the adequacy of the search in neither the Public Records Act nor the Freedom of Information Act. In other words, Lewis County cannot transfer the Lewis County Superior Court’s search under GR 31.1 to fit Lewis County’s legal burden of Lewis County performing a search under the Public Records Act. Lewis County as a statutory agency under the Public Records Act, Lewis County is mandated by law to perform its own search. *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 128 (Wash. 2011) (holding “**the agency bears the burden, beyond material doubt, of showing its search was adequate**”); *accord Debrew v. Atwood*, 792 F. 3d 118, 122 (D.C. Cir. 2015) (holding “**the agency must show beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents**”).

The issue before the trial court and now before this Court of Appeals is whether Lewis County, as a statutory agency of the Public Records Act performed an adequate search, not whether any non-agencies performed a search.

³ In mathematics, equality is a relationship between two quantities or, more generally two mathematical expressions, asserting that the quantities have the same value, or that the expressions represent the same mathematical object. *See e.g. National Council of Res. Iran v. Dept. of State*, 373 F. 3d 152, 156-57 (D.C. Cir. 2004).

Lewis County failed to perform an adequate search because it failed to even argue that Lewis County performed an adequate search under Public Records Act in neither the trial court nor this Court of Appeals. Pursuant to well-established case law a failure to perform an adequate search precludes an adequate response causing a violation of the Public Records Act's right to inspect and copy. *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 128 (Wash. 2011) (stating "[t]he failure to perform an adequate search precludes an adequate response and production. The PRA 'treats a failure to properly respond as a denial'" (quoting *Soter v. Cowles Publ'g Co.*, 174 P.3d 60, 78 (2007))). Lewis County violated the Public Records Act when it failed to argue that Lewis County performed an adequate search. This appeal must be remanded back down to the trial court with instructions that Lewis County to perform an adequate search under the Public Records Act. Then once the trial court has determined an adequate search has been performed, by proof beyond material doubt, then the trial court will have a hearing and decide the statutory penalty, costs, and attorney's fees because Mr. Cortland is now the prevailing party.

B. Lewis County does not argue proof beyond material doubt as to the adequacy of Lewis County's search

Lewis County is silent in its Response Brief to this Court of Appeals of how it fulfilled its mandatory burden of proof beyond material doubt as to the adequacy of Lewis County's search.

As repeatedly identified by Mr. Cortland in both the trial court and now this Court of Appeals, Lewis County, and Lewis County alone bears the burden of proof beyond material doubt that Lewis County's search was adequate. *Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane*, 261 P. 3d 119, 128 (Wash. 2011) (holding "the agency bears the burden, beyond material doubt, of showing its search was adequate"); *accord Debrew v. Atwood*, 792 F. 3d 118, 122 (D.C. Cir. 2015) (holding "the agency must show beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents").

The record is absent in both the trial court and this Court of Appeals of Lewis County ever arguing the legal standard of proof beyond material doubt.

Because Lewis County does not argue by proof beyond reasonable doubt, as a matter of law Lewis County could not have performed an adequate search. A failure to perform an adequate search precludes an

adequate response. Without an adequate response, Mr. Cortland was denied the right to inspect and copy records under the Public Records Act.

4. Mr. Cortland is the prevailing party in this lawsuit because Lewis County Superior Court's actions are null and void under the doctrine of ultra vires acts

The Lewis County Superior Court has no authority to respond to Public Records Act requests under the Public Records Act. Lewis County makes the misguided argument that Washington State Court General Rule GR 31 and GR 31.1.

Lewis County does not explain how a procedural court provides legal authority for the Lewis County Superior Court to respond to Public Records Act requests. This is nothing more than a naked assertion that is not backed by statute or case law.

“Bald assertions and conclusory allegations will not support the holding of a hearing” because Lewis County “must state with particularity facts which, if proven, would entitle [it] to relief.” *Matter of Personal Restraint of Rice*, 118 Wn.2d 876, 886 (1992); accord *Rocafort v. IBM Corp.*, 334 F. 3d 115, 122 (1st Cir. 2003) (stating “a party has a duty to incorporate all relevant arguments in the papers that directly address a pending motion” and this duty “includes explaining arguments squarely and distinctly”).

Lewis County does not apply the facts of this case to the procedural court rules of GR 31 and GR 31.1 legally authorize the Lewis County Superior Court to respond to Public Records Act requests. This is an absurd reading of the statute, which if adopted by this Court of Appeals will only lead to confusion and abuse of the Public Records Act. It is absurd that a non-agency that is not subject to the Public Records Act could unilaterally respond and fulfill the duties of a statutory agency that is required to respond and perform an adequate search for records. This is the definition of an ultra vires act.

Ultra vires acts are unauthorized and not recognizable under the Public Records Act. Unauthorized acts are void and are of no legal effect. *See Campbell v. State, Department of Social and Health Services*, 83 P. 3d 999, 1008 (Wash. 2004) (stating there was “no authority to expand the definition of developmental disability beyond what the legislature has permitted”); *Erection Co. v. Labor & Industries*, 121 Wn.2d 513, 519 (1993) (stating “[a]n agency may exercise only those powers granted to it by the Legislature”); *South Tacoma Way, LLC v. State*, 233 P. 3d 871, 874 (Wash. 2010) (stating ultra vires acts are “void on the basis that no power to act existed, even where proper procedural requirements are followed”).

Because courts have repeatedly ruled that judiciary, including the Lewis County Superior Court, do not have powers under the Public Records

Act granted to it by the Washington State Legislature, any act that the Lewis County Superior Court makes in regards to Public Records Act requests is null and void. *City of Federal Way v. Koenig*, 217 P. 3d 1172, 1172 (Wash. 2009) (construing the Public Records Act as the “judiciary is not included in the PRA's definition of ‘agency’”).

The Public Records Act response by the Lewis County Superior is null and void under the doctrine of ultra vires acts.

In its Response Brief, Lewis County entertains that the acts by the Lewis County Superior Court may be ultra vires. Respondent’s Resp. Br. at 14-15. Lewis County then says that ultra vires acts may be authorized by court rules GR 31 and GR 31.1. “So, Lewis County could enlist the Superior Court to help search even if the Superior Court lacked any PRA authority.” Respondent’s Resp. Br. at 14-15.

It is undisputed that there is no legal authority in the plain language of the Public Records Act which authorizes the Lewis County Superior Court to respond to Public Records Act requests. Under the doctrine of ultra vires acts, if the act does not have any legal authority, the act is null and void. As a matter of law, the Lewis County Superior Court’s acts to respond to Mr. Cortland’s Public Records Act requests are null and void because the Lewis County Superior Court did not have any legal authority in which to act.

Any action the Lewis County Superior Court took under the Public Records Act is null and void because there is no authority that allowed the Lewis County Superior Court to act under the Public Records Act in responding to the Public Records Act requests at issue in this appeal.

5. Conclusion: Mr. Cortland is the prevailing party in this appeal

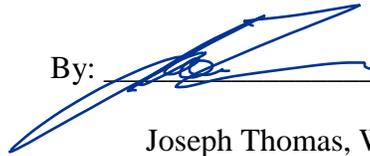
Mr. Cortland is the prevailing party in this lawsuit because of the above enumerated legal arguments. Because each of the above enumerated legal arguments are grounds in and of itself to find a violation of the Public Records Act and to overturn the trial court's ruling, this Court of Appeals need only to find in Mr. Cortland's favor for one of the legal arguments listed in this brief. This brief argues from multiple different legal theories how Lewis County violated the Public Records Act and denied Mr. Cortland the right to copy and inspect records under the Public Records Act.

With a holding of a violation of the Public Records Act this Court of Appeals must remand this case back down to the trial court with instructions for Lewis County to first perform an adequate search under the Public Records Act on all requests at issue in this appeal, next for the trial court to determine a statutory penalty, all costs, and reasonable attorney's fees for Mr. Cortland as a result of Lewis County's violation of the Public Records Act.

Mr. Cortland asks this Court of Appeals to reverse the trial court and hold Lewis County violated the Public Records Act.

Respectfully submitted this 30 day of October 2018.

By: _____

A handwritten signature in blue ink, appearing to be 'J. Thomas', is written over a horizontal line.

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Certificate of Service

I declare under penalty of perjury under the laws of the State of Washington that on the date specified below, I caused to be served a copy of the following documents via email through the Court of Appeals electronic portal:

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Mr. Eric Eisenberg
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LAW OFFICE OF JOSEPH THOMAS

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