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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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CITY OF TACOMA

Appellant,

v.

ARTHUR BANKS, ET. AL.,

Respondent.

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OPENING BRIEF

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## **I. STATEMENT OF THE CASE**

Plaintiffs filed a request for public records under the Public Records Act (PRA) on September 2, 2015. The request sought documents concerning equipment often referred to as a “Stingray”, which is utilized by the Tacoma Police Department (TPD). CP 16-17. A Stingray is a cell site simulator, which allows the police, after obtaining a warrant, to “ping” the location of a felony suspect’s cellular device. Although the plaintiffs have alleged at various times that the equipment is capable of other functions, such as obtaining text messages and email (CP 2 ¶ 1.5), there is no evidence that Tacoma’s equipment can perform such functions and, in fact, it would be unlawful for the City of Tacoma to do such functions under the warrants it obtains. Indeed, all of the evidence is that TPD’s equipment does not record or retain any data, cannot intercept or view any communications by any cellular device, or perform any function other than providing the geographical location of the target cellular device identified in the warrant.

The reason that it is important to make these clarifications at the outset is that this case has been hampered by misinformation, by rhetoric, and by political argument about the desirability of utilizing

philosophical arguments here; the case is about the City's ability to locate records responsive to the plaintiffs' PRA request. Nevertheless, an explanation about what the equipment is for and how it is used illustrates the types of records that actually exist and why the City proceeded as it did in searching for records responsive to the plaintiffs' request.

If the police need to locate a suspect or victim by that person's cellular device, a detective obtains a warrant signed by the Superior Court for what is called a pen, trap, and trace.<sup>1</sup> CP 1495-96. Pen, trap, and trace refers to a phone company's register of all incoming and outgoing phone calls. CP 1392. A detective takes an affidavit of probable cause, an application for warrant and order, and an order to seal to a superior court judge for review and signature. CP 1595-96. Once signed, the detective gives the order to a member of the Tech Unit at TPD. The Tech Unit is a very small group within TPD comprised of two or three detectives at any given time. CP 1509. A member of the Tech Unit transmits the order to the proper

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<sup>1</sup> The statute refers to the process as "Pen register, trap and trace device." RCW 9.73.260. However, throughout this litigation, the detectives and others have used the shorthand reference "pen, trap and trace." To be consistent, this brief will also refer to the process as "pen, trap and trace."

phone company using the TPD Ricoh printer/scanner. The detective or Tech Unit member then files the original order with the Superior Court, under seal, as required by RCW 9.73.260(4)(d); CP 1599-1600. The police department does not keep a copy of the warrant; the only copy is the original which is maintained by the Court. CP 1376; 1496; 1600. And, the Ricoh printer/scanner has a security feature that prevents any copies from being stored on it. CP 1642-47.

The order requires the phone company to assist the police in the location of the cellular device. CP 1363-64; 1496. Depending upon which phone company is assisting, the company will either give the police GPS coordinates or provide the location of the cell tower that is nearest to the cellular device being sought. *Id.* This pen, trap, and trace procedure has been authorized and utilized in Washington State for decades. See RCW 9.73.260; see also 18 U.S.C. §3122.

Generally, the information received from the phone company through the pen, trap and trace order is sufficient for the police to determine the location of the cellular device. CP 1392; 1496. However, on occasion, the information received from the pen, trap and trace is not precise enough to know the exact location of

the cellular device and provides only a general geographic area. CP 1392-93. In such an instance, if a more precise location is needed, the police will use the cell site simulator, or Stingray, as a “finishing tool” that is able to hone in and provide a more exact location. CP 1362; 1496-97. Thus, the cell site simulator equipment is used only a handful of times each year when the pen, trap and trace procedure is inadequate. The equipment is operated only by the two or three members of the Tech Unit. CP 1367-68; 1392.

The warrant obtained by the police for the pen, trap and trace includes authorization for the use of the cell site simulator. CP 1497; 1594. No additional warrant is necessary. The equipment is not used without a warrant (except in exigent circumstances when a warrant may be obtained immediately afterwards). Indeed, the equipment is useless without a warrant because the equipment requires the assistance of the phone companies and the phone companies will only assist if they are presented with an order from the Court. CP 1496.

After receiving the Court’s order and providing pen, trap and trace assistance to TPD, the phone company sends a bill to the police department for its services. The Tech Unit at TPD maintains a billing log of all pen, trap and trace orders so that when the phone

company bills arrive, they can be directed to the proper case-file or agency. CP 1499. Because the billing log includes all pen, trap and trace orders, it also includes those instances where the cell site simulator was used. However, the purpose of the log is for billing and accounting of pen, trap and trace so the information regarding cell site simulator usage on the billing log is imprecise and not completely reliable for the purpose of determining cell site simulator usage. CP 1368; 1499. But, it is the only log that potentially lists the uses of the cell site simulator. CP 1368; 1499-1500. See also, CP 1649 (monthly activity reports of Tech Unit do not include mention of or references to use of cell site simulator).

The plaintiffs sent their request for records about the cell site simulator to the City on September 2, 2015. Upon receipt of the plaintiffs' request for records about the cell site simulator, the City followed its standard procedures for fulfilling PRA requests. The Public Records Coordinator, Lisa Anderson, logged the request into the City's database and gave it a number, PDR 15-9481. CP 1331; 1463. Ms. Anderson then forwarded the request to the department(s) most likely to have responsive records. In this case, Ms. Anderson forwarded the request to the TPD Legal Advisor, Michael Smith,

whose responsibilities handling include public records requests at TPD. CP 558-59; 560-61.

These plaintiffs' request was just one of many requests the City had received concerning Stingray documents. Thus, many of the documents requested by the plaintiffs in this case had already been gathered during the process of responding to previous requests for Stingray records. CP 1374. In responding to this request, Mr. Smith reviewed the plaintiffs' request and determined whether the plaintiffs' request was broader, narrower, or identical to previous requests the City had received. CP 1332-33. Mr. Smith then began contacting people and asking them to search for and collect records responsive to the plaintiffs' request. Mr. Smith contacted the members of the TPD Tech Unit as well as the Tech Unit's supervisory staff, Asst. Chief Kathy McAlpine, and Lt. Christopher Travis, Capt. Fred Scruggs, and Capt. Shawn Stringer. Mr. Smith also contacted the Office of the Chief of Police, TPD Finance, TPD Training, and the Purchasing Department. CP 573- 83.

Mr. Smith advised the Clerk's Office how long he thought he would need in order to produce responsive records. The City sent an acknowledgement of the request to the plaintiffs and provided an estimate of when the request would be fulfilled. CP 1463. Mr. Smith

made sure that he “closed the loop” with each person, confirming that they had provided all the records they possessed. CP 576. He also continued to reach out to other individuals as information was relayed that might indicate additional people had documents. Id.

While documents were being collected and provided, Mr. Smith conferred with the plaintiffs’ attorney to confirm the City’s understanding of the plaintiffs’ request. CP 1117; 1333. Lisa Anderson also had ongoing communications with the plaintiffs’ attorney about the request. CP 1464.

The City provided responsive documents comprised of 560 pages to the plaintiffs in two installments on October 28, 2015 and December 18, 2015. Along with the responsive records, the City produced a privilege log that identified the redactions that had been applied to the responsive records.

The plaintiffs filed their lawsuit on August 19, 2016, alleging that the City violated the PRA. During discovery, the plaintiffs sent interrogatories and requests for production to the City asking for copies of all documents provided to every other requester who had sought Stingray related records. This way the plaintiffs were able to compare the records they received with the records that had been provided to previous requesters. There were some

dissimilarities mostly due to the fact that some of the records provided to other requesters had been deleted by the time that these plaintiffs made their requests. In addition, the plaintiffs obtained records from various outside sources and alleged that the City must have wrongfully withheld those records because they were not among the records provided to them by the City of Tacoma.

The parties filed cross motions for summary judgment. The Superior Court found that the City had violated the PRA in not providing certain records that the plaintiffs had obtained from other sources or through discovery in this case.<sup>2</sup> The Superior Court assessed penalties in the amount of \$182,340 and awarded attorney fees in the amount of \$109,885. The City appeals both of these awards.

## **II. ARGUMENT**

### **A. Standard of Review and Standards on Summary Judgment**

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<sup>2</sup> The plaintiffs also contended that the redactions made by the City were not authorized by the exemptions claimed by the City. The Superior Court granted summary judgment to the City on this aspect of the case so the City is not appealing that part of the case and it will not be discussed here. The plaintiffs have cross-appealed and the redactions will be addressed in response to that cross-appeal.

Agency actions under the PRA are subject to de novo review. RCW 42.56.550(3); Neighborhood Alliance of Spokane County v. Spokane County, 172 Wn.2d 702, 715, 261 P.3d 119, (2011). In the context of a PRA claim, on summary judgment the defendant agency must prove that it “adequately responded to record requests.” Block v. City of Gold Bar, 189 Wn. App. 262, 270, 355 P.3d 266 (2015). An agency has an obligation to conduct an “adequate” search in response to a request for public records. Neighborhood Alliance, 172 Wn.2d at 714-15. To establish that its search was adequate in a motion for summary judgment, “the agency may rely on reasonably detailed, nonconclusory affidavits submitted in good faith.” Block, at 271. The “focus of the inquiry is not whether responsive documents do in fact exist, but whether the search itself was adequate.” Neighborhood Alliance, at 719-20. Once “the agency has made a prima facie showing it has conducted an adequate search, the requester must rebut that showing, and must do so by more than mere speculation.” Neigh. Alliance, 172 Wn.2d at 741.

**B. The trial court erred in finding that the City did not conduct an adequate search.**

In Washington, the adequacy of a search is determined according to the standards used in the Federal Freedom of Information Act (FOIA). Block, at 270-71 (citing Neighborhood Alliance, 172 Wn.2d at 719). See also, Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 251, 884 P.2d 592 (1994).

The court has further instructed that:

[t]he adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents. What will be considered reasonable will depend on the facts of each case. When examining the circumstances of a case, then, the issue of whether the search was reasonably calculated and therefore adequate is separate from whether additional responsive documents exist but are not found.

Additionally, agencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. The search should not be limited to one or more places if there are additional sources for the information requested. Indeed, 'the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.' **This is not to say, of course, that an agency must search every possible place a record may conceivably be stored, but only those places where it is reasonably likely to be found.**

Neighborhood Alliance, 172 Wn.2d at 719-20 (quoting Oglesby v. U.S. Dep't of Army, 287 U.S. App. D.C. 126, 920 F.2d 57, 68 (D.C. Cir. 1990) (emphasis added) (internal citations omitted)).

“A reasonable search need neither be exhaustive nor successful.” Kozol v. Dep’t of Corr., 192 Wn. App. 1, 9, 366 P.3d 933, review denied, 185 Wn.2d 1034 (2016). To the extent that an agency simply misses responsive documents when responding to a request, the courts have held that the agency’s “search need not be perfect, only adequate.” Block, 189 Wn. App. at 276 (quoting Neighborhood Alliance, 172 Wn.2d at 720). See also, Forbes v. City of Gold Bar, 171 Wn. App. 857, 288 P.3d 384 (2012), review denied, 177 Wn.2d 1002(2013) (The “focus of the judicial inquiry into a reasonable-search requirement is the agency’s search process not the result of that process.”). That a requester later obtains a responsive document either from the agency or from a third party does not create a genuine issue of material fact for trial. Block, at 276.

In Neighborhood Alliance, the court held that the agency did not do an adequate search because the only place the agency searched was the one place where a complete record could not be found. That is, an employee’s new computer, and that employee had at least some idea that searching only her new computer would prove unfruitful. Thus, the agency’s search “consisted of the only place a complete electronic record could not be found.” Neighborhood

Alliance, 172 Wn.2d at 722. Under those circumstances, that was not a reasonable search. The agency had not made a “sincere and adequate search for records.” See, Fisher Broad. Seattle TV v. City of Seattle, 180 Wn.2d 515, 522, 326 P.3d 688 (2014). The agency had looked only one place and it was a place unlikely to contain responsive documents. That is not the same as in our case.

Here, the City provided non-conclusory and reasonably detailed affidavits, along with substantial amounts of deposition testimony, concerning the search process undertaken by the City in responding to these plaintiffs requests. That evidence included testimony from Mike Smith that he has worked on hundreds of PRA requests and has a standard procedure he follows in order to locate responsive records. CP 1374. Mr. Smith searched his entire Outlook email and all folders including inbox, sent, deleted, and junk. He used the terms cell site simulator and Stingray. CP 1374. He reviewed his PST folder in Outlook where he kept emails collected for prior Stingray related requests. And searched his hard drive as well. Id. Mr. Smith was also in charge of delivering the request to all others at TPD that might have responsive records. He went to the members of the Tech Unit and personally gave them a copy of the request and asked them to search for responsive documents. CP

1375. One of the Tech Unit members was Detective Krause. Det. Krause was the person most familiar with the equipment. He searched his computer. CP 1393. He used the search terms Harris, cell site simulator, and Stingray. Id. He also searched by extension and file tree. He searched his entire email account. When he was done, he provided all records to Mike Smith. CP 1393; 1501.

Mr. Smith also contacted numerous other TPD personnel. CP 573-74. Having responded to numerous prior request for cell site simulator documents, he was familiar with what records existed, knew the persons most likely to have records, but also followed up with each person to make sure that any recently created documents were included. CP 1374.

The City searched every place that responsive documents were reasonably likely to be stored. Under Washington law, the City's search clearly met the adequate and reasonable standard. Nevertheless, the trial court determined that the City's search was inadequate. However, the trial court did not evaluate the City's search process and did not identify any part of the City's process that was deficient. Rather, the trial court determined that because several documents were missed, the City's search was necessarily inadequate. But, that is exactly what the Neighborhood Alliance

court instructed is the wrong approach. That a requester later obtains a responsive document either from the agency or from a third party does not create a genuine issue of material fact for trial. Block, 189 Wn. App. at 276 (citing Neigh. Alliance, 172 Wn.2d at 720). The focus is on the search process, not the results of the search. Thus, the trial court erred when it concluded that the City had not conducted a reasonable search. The evidence establishes that that the City's search was reasonably calculated to locate all responsive documents and the City asks this court to hold that the City conducted a reasonable search for records responsive to the plaintiffs' request.

**C. The trial court erred in finding that the City violated the PRA by not providing a blank template for a pen, trap, and trace warrant application when the plaintiff's request did not reasonably identify the blank template as a document sought by the plaintiffs.**

During his deposition, Det. Terry Krause testified that he was the person at TPD primarily responsible for the cell site simulator. CP 1495. He testified that detectives and agencies would ask him for assistance in locating a suspect through the suspect's cellular device. Because a warrant was required, Mr. Krause sometimes provided detectives and other agencies with a template

for a warrant application for a pen, trap and trace which they could fill out and present to the judge. CP 704-722. In other words, the template is a blank form. When collecting documents for the plaintiffs' request, Mr. Krause did not provide a copy of the blank template because he did not believe the plaintiffs' request called for the blank form. CP 1496-97. Following Mr. Krause's deposition, defense counsel provided a copy of the blank form to the plaintiffs' attorney. At summary judgment, the trial court ruled that the City should have provided the blank form, and that the City chose not to provide it because the City made a subjective value judgment about the importance of the form as opposed to not providing it because the City did not believe it was called for by the plaintiffs' request.

A request under the PRA must identify with reasonable clarity those documents that are desired. Wright v. Dep't of Soc. & Health Servs., 176 Wn. App. 585, 593, 309 P.3d 662, (2013), review denied, 179 Wn.2d 1021 (2014)(quoting Hangartner v. City of Seattle, 151 Wn.2d 439, 90 P.3d 26 (2004)). "An identifiable public record is one for which the requestor has given a reasonable description enabling the government employee to locate the requested record." Beal v. City of Seattle, 150 Wn. App. 865, 872, 209 P.3d 872 (2009). See also, Levy v. Snohomish County, 167 Wn.

App. 94, 98, 272 P.3d 874 (2012). “The PRA does not ‘require public agencies to be mind readers.’” Levy, at 98 (quoting Bonamy v. City of Seattle, 92 Wn. App. 403, 409, 960 P.2d 447 (1998)). Although a record requester is are not required to provide the exact name of the record he or she seeks, the request must allow the agency to be able to identify the specific record sought. Fisher Broadcasting-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515, 522, 326 P.3d 688 (2014).

For example, in Wright, the requester sought from DSHS her entire DSHS file and later amended the request to seek “any and all documents relating to Amber Wright” that related to a 2005 investigation of a CPS referral when she was a child. Id. at 594. DSHS provided records to Ms. Wright but Ms. Wright claimed that the department violated the PRA by not producing the Department’s Child Sexual and Physical Abuse Investigation Protocols (investigation protocols) and its Preservice Training for Prospective Foster Parents and Adoptive Parents PRIDE manual used by the Department. The trial court found a violation of the PRA but the appellate court reversed. The appellate court held that Ms. Wright did not specifically ask for these documents. The court stated that her request did not identify these documents with “reasonable

clarity” and that “on the contrary, its language limited her request to a broad range of materials specifically related to the 2005 investigation of a CPS referral when she was a child.” *Id.* at 594-95.

Similarly, in our case, the plaintiffs did not expressly ask for any blank forms or a warrant template. Plaintiffs argue that they did not need to specify it because the plaintiffs’ request number 1 asked for “**all records regarding TPD’s acquisition, use, or lease** of Cell Site Simulators, including but not limited to, communications, invoices, purchase orders, contracts, loan agreements, grant applications, evaluation agreements, and delivery receipts.” CP 16 (emphasis added). However, the blank form does not reflect any actual “use” of the cell site simulator, so the City had no reason to interpret this request as seeking the blank form.

Moreover, to the extent that the plaintiffs rely on the phrase “all records,” both the legislature and the courts have deemed such language is insufficient to identify the records sought. See RCW 42.56.080; *Hangartner*, 151 Wn.2d 439, 90 P.3d 26 (2004); *Bonamy*, 92 Wn. App. 403 (1998). Requests for all documents “relating to” or “regarding” a particular subject are inherently overbroad and difficult to respond to because “life, like law, is a seamless web and all documents relate to all others in some remote

fashion.” Massachusetts Dep’t of Public Welfare v. United States Dep’t of Health & Human Services, 727 F. Supp. 35, 36 n. 2 (D. Mass. 1989). The agency should not be left to perform a subjective analysis as to the records requested. National security Counselors v. Central Intelligence Agency, 960 F. Supp. 2d 101, 158, (D.D.C. 2013). The Freedom of Information Act was not intended to commandeer agency employees into research assistants. *Id.* at 160, n. 28.

Plaintiffs also argued that the blank form contained the words “cell site simulator” so the blank template does not fall within the legislature’s prohibition of requests for “all records”. However, the plaintiffs’ request was not for every document that mentions “cell site simulator”; they asked for all records regarding the *use* and *acquisition* of the cell site simulator. A blank template is not responsive to this qualifier and the City had no reason to believe that the plaintiffs were seeking a blank template.

Plaintiffs also argue that the blank form is responsive the plaintiffs’ request number 10, which asks for “all **applications submitted** to state or federal courts for warrants, orders, or other authorizations for use of Cell Site Simulators in criminal investigations, as well as any warrants, orders, authorizations,

denials of warrants, denials of orders, denials of authorizations, and returns or warrants associated with those applications.” CP 17 (emphasis added). Again, this request seeks warrant applications that were “submitted” and other completed documents that were submitted. The City’s reasonable interpretation of this request was that the plaintiffs were seeking the actual “applications submitted” as stated in the request, not a blank template that can used in the application process.

At the hearing on penalties, the City pointed out to the Court that the City never assumes that requesters want blank forms unless they are specifically requested. For example, when the City receives a request for documents regarding a capital improvement project, the City provides the actual documents used for that project but does not provide blank forms for invoices, blank templates for loan agreements, blank templates for grant applications, blank templates for emails, or any other of the many forms or templates used by the City in relation to that project. CP 1479.

The Superior Court interpreted this argument by the City as the City making a subjective determination about the value of the blank template and the Court apparently believed the City was saying it chose not to produce it because the City thought the

document was not important. CP 1653; 1655. However, that was not the City's argument. The City was not making any determination as to the significance or value of the template to this particular requester; rather, the City did not provide the blank template because the template was not responsive based on the wording of the plaintiffs' request. The City cited the examples of other blank documents to emphasize that the City's interpretation was reasonable and was consistent with a common sense approach.

Because of the trial court's misunderstanding, the trial court not only found a violation of the PRA but also found that the City deliberately withheld the template. The Court stated that the City's response concerning the blank template "was not misguided or mistaken but appeared to be deliberate as the City decided what it will produce citing to no exemption." CP 1655. But, the City deliberately withheld the blank form to the same extent it deliberately withholds all non-responsive documents. The only decision the City made as to the blank template was to determine that it was reasonably identified as a document sought by the plaintiffs. And the City did not cite an exemption because no exemption is necessary or even applicable to non-responsive documents. The trial court erred in finding that the blank form was

responsive and erred in determining without any evidence that the City knew it was responsive and deliberately withheld it based on a subjective determination as to its value.

**D. The trial court erred in finding that City violated the PRA by not producing emails that had already been deleted from the employee's email account at the time of the plaintiffs' request.**

It is well-established that an agency cannot be liable for producing a record which it does not have. Bldg. Indus. Ass'n of Wash v. McCarthy, 152 Wn. App. 720, 733, 218 P.3d 196 (2009). See also, West v. Dep't of Natural Res., 163 Wn. App. 235, 258 P.3d 78 (2012) (no duty to provide documents and not a violation of the PRA where agency had inadvertently destroyed records before the plaintiff made his request for the records).

For example, in Bldg. Indus. Ass'n of Wash. v. McCarthy, 152 Wn. App. 720, the requester contended that the County Auditor, McCarthy, violated the PRA because she had failed to produce several emails. The requester had knowledge of the emails from an outside source. McCarthy responded that the emails were "information only" emails and she "more probably than not" deleted them the same month that she received them." McCarthy, at 727. The emails "then would have been kept on a computer backup until

later overwritten after a set retention period.” Id. at 737. The Court held that there had not been a violation of the PRA as to the emails. The Court observed that the only PRA provision that actually regulates destruction of records states that records should not be destroyed or erased when a public records request for those records is pending. Id. at 740. The McCarthy court found that the records were not destroyed while the plaintiff’s request was pending because the auditor’s affidavit stated that she probably deleted them soon after receiving them. Thus, the emails did not exist at the time of the plaintiff’s request and there could be no violation for not producing the non-existent records. In addition, the court did not direct that McCarthy should have searched the computer backups for copies.

In our case, the email has been referred to as Exhibit 5 (CP 673-675) is an email dated February 28, 2014 to Mike Smith from the FBI. The purpose of the email was to provide Mr. Smith with a form letter from the FBI reminding TPD of its obligations under the non-disclosure agreement and under federal law. The form letter states that the FBI is aware that the City has received a public records request and reminds the City that it may not disclose technical and

confidential information about the cell site simulator.<sup>3</sup> Mr. Smith considered this correspondence as transitory and as having no retention value. It was a “for your information” email that was a reminder of information already known. Mr. Smith deleted the email. Because the email was no longer on Mr. Smith’s computer at the time of these plaintiffs’ request, Mr. Smith could not produce it. CP 1117. Plaintiffs have not offered any evidence contrary to Mr. Smith’s testimony.

Similarly the emails that were referred to in the summary judgment briefing as Exhibits 6-9, and are found at CP 677-700, are emails that have been deleted and no longer exist on Mr. Smith’s computer. CP 1117. The emails were for the purpose of transmitting to the FBI copies of records requests that the City had received. The City was obligated to provide the FBI with notice when such

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<sup>3</sup> For example, “General Information-External” emails need not be retained. They are considered “Records with Minimal Retention Value.” CP 1375. The applicable records retention section can be accessed at:

[https://www.sos.wa.gov/\\_assets/archives/recordsmanagement/local-government-common-records-retention-schedule-core-v.4.0-\(may-2017\).pdf](https://www.sos.wa.gov/_assets/archives/recordsmanagement/local-government-common-records-retention-schedule-core-v.4.0-(may-2017).pdf).

requests were received, as outlined in the email referred to as exhibit 5 at CP 673-675.

The plaintiffs received copies of these emails during discovery when they requested and received copies of all other cell site simulator requests and all of the documents produced in response to those requests. Thus, the emails existed at the time of the prior requests but had been deleted by the time of these plaintiffs' request. Because it appears that the emails had been deleted, they were not located during the search and could not be produced.

It is true that the City was able to produce copies of the deleted emails in discovery because the deleted emails still existed in a computer system that contains all prior PRA requests and the documents produced in response to those requests. When responding to the plaintiffs' PRA request, the City did not review all of the previous requests it had received. The City receives 2,500 requests each year, and produces millions of documents in response to those requests. CP 1463. It would be an impossible task to search not only all current sources of information, but also all prior requests. The City does not have the ability to search thousands of prior requests for documents that were appropriately deleted or even

inadvertently lost. Such a search is not reasonable. In addition, requiring the City to do such a search significantly enlarges the retention schedules promulgated by the Secretary of State. The City would need to retain its PRA searches for much longer than the retention schedule mandates, particularly because some requests seek vast amounts of records and take years to complete.

The City requests this court hold that the City was not required to produce emails that had been deleted and that there was no violation of the PRA with respect to the emails.

**E. The trial court erred in finding that the City's search was inadequate because it failed to uncover the minutes from two Citizen Review Panel meetings. (Ex. 11-13)**

The trial court erred in finding the City's search was not adequate because it did locate the minutes from two Citizen Review Panel meetings (CP 619-628), which the plaintiffs obtained from other, unidentified sources. CP 646; 1477-78.

The Citizens Review Panel was created by the City Council to review policy matters relating to the police department and to provide and public awareness to the community on police matters. CP 1112. There are no City employees on the Panel but it is administered through the City Manager's Office. The Citizen Review Panel discussed the cell site simulator with representative

from TPD on two occasions and the minutes from those meetings mention the cell site simulator.

Plaintiffs do not recall where they obtained the minutes but they do recall that they obtained the minutes from a source outside the City. CP 1258, 1477; 1567. It is likely they obtained them by doing an internet search. CP 1478. Or, it is possible that one of the plaintiffs, Whitney Brady, already possessed or acquired the minutes because he participated in the meeting of October 6, 2014. CP 622.

However, the City did not locate the minutes or provide the minutes to the plaintiffs in response to their request. Although the minutes were responsive to the request, the minutes were not initially identified or located as responsive records because the minutes were not created or maintained by TPD. The minutes were not located in a place that was reasonably likely to contain records about the cell site simulator. See, Kozol, 192 Wn. App. at 8. The minutes were not maintained on Tacoma Police department computers or files; the minutes were maintained by the City' Manger's Office. CP 583. Therefore, a search of police department computers and drives would not have revealed the minutes, and the only way to obtain the minutes would have been to reach out to City

Manager's Office so that they could search their computers for documents related to the cell site simulator. And, there would be no reason to suspect that the City Manager's Office would have documents related to the cell site simulator. The acquisition and use of the cell site simulator was carried out solely by the police department. Mr. Smith contacted other departments outside of TPD such as finance and purchasing, but he had no reason to think that the City Manager's Office would have documents related to a piece of equipment infrequently employed by the police department.

Therefore, the City requests that his court find that the City's search for documents was reasonable and that there was no violation of the PRA in not finding documents that resided at the City Manager's Office.

**F. The trial court erred in finding the plaintiffs were denied access to the minutes because the minutes were on the City's website.**

The City also contends that the trial court erred in finding a violation of the PRA as to the Citizen Review Panel minutes because the City did not actually deny the plaintiffs the ability to access the minutes given that the minutes were publicly available on the City's website.

The PRA “requires state and local agencies to ‘make available for public inspection and copying all public records, unless the record falls within the specific exemptions of [the PRA]’”. Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 431, 327 P.3d 600 (2013). A requester may seek penalties if the requester has “**been denied** an opportunity to inspect or copy a public record” that is not subject to an exemption. RCW 42.56.550(1)(emphasis added). The purpose of the PRA is to increase governmental transparency and accountability by making public records accessible to Washington’s citizens. John Doe v. Wash. State Patrol, 185 Wn.2d 363, 371, 374 P.3d 63 (2016).

In this case, the plaintiffs were never denied the ability to inspect or copy the Citizen Review Panel minutes because the minutes had been posted on the City’s website following the meeting. CP 1472. The minutes had already been made publicly accessible to them at the time of their request. *Id.* Thus, under the plain language of the statute, the plaintiffs’ were not denied access.

“When statutory language is plain and unambiguous, the statute’s meaning must be derived from the wording of the statute itself.” Hangartner v. City of Seattle, 151 Wn.2d 439, 452, 90 P.3d

26 (2004). According to Webster's Dictionary, "access" is defined

as:

- 1.a. permission, liberty, or ability to enter, approach, or pass to and from a place or to approach or communicate with a person or thing;
- b. freedom or ability to obtain or make use of something
- c. a way or means of entering or approaching.

Merriam-Webster at

<https://www.merriamwebster.com/dictionary/access>.

Given that the City placed the meeting minutes on its public website, under the plain language of the statute it cannot be said that the City denied access to the minutes. The City had given permission and provided the ability to inspect and copy the minutes. Publicly posting the minutes on the website also fulfills the PRA's purpose increasing governmental transparency and accountability. The trial court found that the City failed to notify the plaintiffs that the minutes could be found on the website, and that is true. However, the plain language of the statute does not require the City to become the research assistant for requesters and find for them the documents that the City has already made publicly available. At a minimum, the City asks this court to find that even if there was a violation of the PRA as to the Citizen Review Panel meeting minutes, publishing

and maintaining documents on the City's website is a mitigating factor that weighs heavily in favor of no penalty. Thus, the City asks this court to hold that there should be penalty concerning the Citizen Review Panel minutes.

**G. The trial court erred in finding that the City should have provided a copy of the billing spreadsheet that included non-responsive data.**

As indicated above, the Tech Unit maintained a billing spreadsheet that listed all the pen, trap and trace orders so that the Tech Unit could keep track of the phone company charges and allocate those charges to the proper case or the proper agency. CP 1624. This document is referred to as Exhibit 4 and is found at CP 1260-61. The billing spreadsheet was a living document on the Tech Unit computer drive and data was constantly being added to and altered by the two or three Tech Unit detectives. CP 1626. One column of the spreadsheet also had a place where an indication could be made that the cell site simulator had been used. Some detectives used the word "capture" to indicate that the cell site simulator had been used, although the testimony in this case was that "capture" not always indicate cell site simulator usage. CP 1469.

When the City began receiving requests for records concerning the cell site simulator, the City produced copies of the

billing spreadsheet because there were indications on the spreadsheet of when the cell simulator had been used. However, most of the information on the spreadsheet did not pertain to the cell site simulator and was thus not responsive to a request for cell site simulator records. Requesters who received the spreadsheet understandably but erroneously believed that each entry related to the cell site simulator. CP 1117. In fact, the plaintiffs made that mistake in this case when they alleged in the complaint that the cell site simulator had been used 307 times. CP 3. The actual number of times the equipment had been used was just a fraction of that number. Even TPD personnel made that error during one of the Citizen Review Panel meetings. CP 1505-06.

Therefore, in order to be of fullest assistance to the plaintiffs, and prevent this misinterpretation while still providing all responsive documentation to these plaintiffs, Mike Smith called the plaintiffs' attorney, Jamilla Johnson. CP 1117. Mr. Smith discussed the issue with Ms. Johnson and explained that he understood the plaintiffs were seeking only instances where the cell site simulator was used and that he was therefore producing a version of the spreadsheet that included only the cell site simulator instances and not all pen trap and trace. Ms. Johnson was agreeable to this

approach. Id. Having obtained the plaintiffs' attorney's consent, Mr. Smith proceeded to produce the spreadsheet in that manner, showing only entries that pertained to the cell site simulator.

By the time of the summary judgment motions, the plaintiffs had new attorneys. Those attorneys argued for the first time at summary judgment that the spreadsheet did not contain all instances in which the cell site simulator had been used and that they had not agreed to the version of the spreadsheet that contained only the instances where the cell site simulator had been used. In addition, the plaintiffs argued that all instances of pen, trap and trace orders were also responsive to their request. The plaintiffs' request clearly does not call for documents related to the use of pen, trap and trace. And, the plaintiffs have never denied that their previous attorney clarified the records request so that it included only uses of the cell site simulator. In addition, the affidavits provided by the detectives established that the 2015 spreadsheet contained all instances where the cell site simulator was used during that year. CP 1469.

Nevertheless the trial court found that eliminating the non-responsive information from the spreadsheet was a violation of the PRA. It appears the court failed to distinguish between responsive and non-responsive documents because the court stated that the City

should have cited an exemption for the non-responsive documentation. But under the PRA, exemptions are only necessary when the agency is declining to produce responsive records. There is no requirement under the PRA to disclose non-responsive records and there is no exemption for non-responsive records. Non-responsive records are simply not relevant under the PRA. Thus the trial court erred in finding a violation because the plaintiffs had agreed to the production of the document they received, the document they received contained all responsive data, and the only information that had been removed was non-responsive and misleading information which the plaintiffs agreed they did not want.

The City request that this court hold that there was no violation of the PRA as to the billing spreadsheet.

**H. The trial court erred in finding a violation of the PRA as to the Harris Company Invoice of May 21, 2013, referred to in the summary judgment motions as Exhibit 15, because the City conducted a reasonable search.**

In response to the plaintiffs' request for records about the cell site simulator, the City produced many invoices. However, the City's production did not include the invoice dated May 21, 2013. The plaintiffs obtained this invoice from an unidentified outside

source. CP 646-47. It is also unknown the date that the plaintiffs obtained the invoice but they had it at the time they filed their lawsuit as it is mentioned in the complaint. CP 8 ¶ 4.19. The City provided numerous invoices to these plaintiffs but this one was apparently not among the invoices provided. In the defendant's search for records responsive to these plaintiffs' request, this document was not located and it appears that this document is no longer in the possession of the City of Tacoma.

How this invoice was inadvertently removed or deleted is unknown. Certainly documents do sometimes get lost or misplaced or inadvertently deleted. However, that is insufficient to establish a violation of the PRA. The standard is whether the City conducted a reasonable search. Here, the City conducted a reasonable search and it is clear that even the most exhausting of searches will not turn up a document that no longer exists. "The fact that the record eventually was found does not establish that the agency's search was not adequate." Kozol, at 8 (citing Neighborhood Alliance, at 719) See, e.g., Kleven v. City of Des Moines, 111 Wn. App. 284, 294, 44 P.3d 887 (2002)(no violation of the public disclosure act because the agency had "made available all that it could find"). The trial court erred in finding a violation.

**I. The trial court erred in calculating attorney fees by not reducing the plaintiffs' fees for unsuccessful claims, duplicated effort and other unproductive time.**

Attorney fees in a PRA action are determined by the lodestar method in which the court multiplies a reasonable attorney rate by a reasonable number of hours worked. Cedar Grove Composting, Inc. v. Marysville, 188 Wn. App. 695, 729-30, 354 P.3d 249 (2015). The court also limits the lodestar to hours reasonably expended and discounts hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time. O'Neill v. City of Shoreline, 183 Wn. App. 15, 25, 332 P.3d 1099 (2014) (citing Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193 (1983)). See also, Cedar Grove, 188 Wn. App. 695 (Appellate court affirmed trial court's reduction of hours awarded by 40% because plaintiff not successful on all claims). In PRA litigation, a party may recover attorney fees only for work on successful issues. Sargent v. Seattle Police Dep't., 167 Wn. App. 1, 26, 260 P.3d 1006 (2011) (citing Sanders v. State, 169 Wn.2d 827, 868, 240 P.3d 120 (2010)), rev'd *in part* on other grounds, 179 Wn.2d 376, 314 P.3d 1093 (2013). Thus, a party may recover fees on only some of its claims, and the award must reflect a segregation of the time spent on the varying claims. O'Neill, at 25.

In this case, the trial court did not reduce the plaintiffs' attorneys bills for unsuccessful claims. This case, and the summary judgment motions that decided it, concerned two distinct topics: 1) the redactions of technical information protected by the non-disclosure agreement and the specific intelligence exemption of the PRA (which will be the subject of the plaintiffs' cross-appeal) and 2) the documents the plaintiffs contend that the City failed to produce. The plaintiffs did not prevail on the redactions issues. Thus the trial court should have reduced the plaintiffs hours to reflect an apportionment of hours spent on successful claims versus unsuccessful claims.

In addition, the trial court did reduced the billing to account for duplicated effort. Multiple attorneys requested hourly fees for the same activity. This constituted duplicated effort, especially since this is a PRA case which is a non-complex case resolved by motion rather than trial

The trial court also should have disallowed time spent on non-productive matters. The City considers the time spent on the plaintiffs' motion to seal as such time. The motion to seal was an effort to protect the plaintiffs and their expert from any possible liability for disclosing documents in violation of federal regulations.

The City is unaware of where the plaintiffs and their expert obtained these non-public documents. It appears that they may have obtained from the internet, but it is certain that they were not provided by the City of Tacoma. The City should not be charged the costs of protecting these plaintiffs from any liability they might be subject to for acquiring and publishing these documents.

Other time that was unproductive in terms of necessary work include the hours spent on the plaintiffs' motion for a continuance. The continuance was at the request of the plaintiffs and was not necessary or beneficial for the defendant. The plaintiffs needed the continuance, in part, because they had a change of attorneys. Given that the continuance was at the behest of the plaintiffs, the defendants should not be required to pay for the hours charged for that motion.

Because the trial court failed to properly and critically evaluate the plaintiffs' attorney fees, the City requests that this court remand this issue to the trial court for a redetermination of fees.

**J. The trial court erred in applying the *Yousoufian* factors in determining the appropriate penalties.**

- 1. The *Yousoufian* factors guide the court in determining whether any penalty is appropriate and what the amount of any penalty should be.**

If there is a violation of the PRA, the next question is whether or not that violation entitles the requestor to penalties. West. v. Dept' of Natural Res., 163 Wn. App. 235, 244, 258 P.3d 78 (2011). Whether or not to assess a penalty, and the amount of any penalty, is within the discretion of the trial court. Yousoufian v. Office of King County Exec., 168 Wn.2d 444, 458, 229 P.3d 735 (2010) (hereafter Yousoufian 2010). The purpose of the penalty provision is to "discourage improper denial of access to public records and [encourage] adherence to the goals and procedures dictated by the statute." Yousoufian 2010, at 459.

In Yousoufian 2010, our Supreme Court outlined a multifactor analysis of seven mitigating factors and nine aggravating factors to be considered by a court in imposing a penalty under the PRA. The Court acknowledged that the factors may overlap, are offered only as guidance, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations. Yousoufian 2010, 168 Wn.2d at 468.

The mitigating factors that may serve to decrease a penalty are 1) a lack of clarity in the PRA request; 2) the agency's prompt response or legitimate follow-up inquiry for clarification; 3) the agency's good faith, honest, timely, and strict compliance with all

PRA procedural requirements and exceptions; 4) proper training and supervision of the agency's personnel; 5) the reasonableness of any explanation for noncompliance by the agency; 6) the helpfulness of the agency to the requestor, and 7) the existence of agency system to track and retrieve public records.

The aggravating factors that may support an agency's penalty are 1) a delayed response by the agency, especially in circumstances making time of the essence; 2) lack of strict compliance by the agency with all the PRA procedural requirements and exceptions; 3) lack of proper training and supervision of the agency's personnel; 4) unreasonableness of any explanation for noncompliance by the agency; 5) negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA by the agency; 6) agency dishonesty; 7) the public importance of the issues to which the request is related, where the importance was foreseeable to the agency; and 9) a penalty amount necessary to deter future misconduct by the agency considering the size of the agency and the facts of the case. *Id.* at 467-68.

More recently, the Yousoufian factors have been consolidated into four principal factors for determining an appropriate daily penalty: (1) the existence or absence of a public

agency's bad faith; (2) the economic loss to the party requesting the documents; (3) the public importance of the underlying issues to which the request relates, and whether “the significance of the issue to which the request is related was foreseeable to the agency”; and (4) the degree to which the penalty is an “adequate incentive to induce further compliance.” West v. Thurston County, 168 Wn. App. 162, 189, 275 P.3d 1200 (2012) (quoting, Yousoufian 2010, at 458).

**2. The trial court erred in assessing significant penalties when there was no evidence of bad faith.**

“Whether an agency withheld records in bad faith is the principal factor in determining the amount of a penalty.” Neighborhood Alliance of Spokane County v. Spokane County, 172 Wn.2d 702, 717-18, 261 P.3d 119, 2011 (2011) (citing Yousoufian2010, at 460). In addition to good or bad faith, the agency's overall culpability is the focus of the penalty determination. Neighborhood Alliance, at 718. 467-68. An agency that made a mistake in processing a request “should be sanctioned less severely than an agency that intentionally withheld known records and then lied in its response to avoid embarrassment.” Id.

“In the PRA context, bad faith incorporates a higher level of culpability than simple or casual negligence.” Faulkner v. Dep’t of Corr., 183 Wn. App. 93, 103, 332 P.3d 1136, 1141 (2014). Generally, in order to establish bad faith, the requester must demonstrate a wanton or willful act or omission by the agency. Id. “Examples of bad faith would include instances where the agency refused to disclose information it knew it had a duty to disclose in an intentional effort to conceal government wrongdoing and/or to harm members of the public.” Faulkner, at 104 (quoting Yousoufian v. Office of Ron Sims, 137 Wn. App. 69,80, 151 P.3d 243 (2007)).

In this case, there is no evidence of bad faith or of culpable intent. There is no evidence that the City intentionally withheld documents it knew it had a duty to disclose. On the contrary, all the evidence is that the City spent many hours, many hours in an attempt to locate and provide every responsive record. Indeed, the plaintiffs conceded that the City did not intentionally withhold any documents, except perhaps the blank form that TPD personnel complete when obtaining a warrant for pen, trap and trace.

**3. The trial court erred in finding that the City’s PRA process showed a lack of training and supervision.**

The trial court stated that the City's failure to retain Exhibit 5 (an email that has no retention value under the Records Retention Act) "is indicative of a local of proper training and/or supervision as absent an exemption strict compliance with the PRA is required. At a minimum this document should been placed on the City's website for retention purposes." CP 1654. However, an agency does not post emails on its website for retention purposes and the City could not do so even if it wanted to given the millions of emails received each year. Moreover, the City is not required to retain an email that has no retention value, or retain an email beyond its retention period, even if that email was once produced in response to a records request. The storing and archiving of both paper and electronic data according to the Retention Act consumes a significant amount of public dollars as it is. Expanding it without legal justification is inappropriate. Thus, the Court's statement that deleting an email without retention value is evidence of a lack of training and supervision is untenable.

The Court made the same observation with regard to Exhibits 6-9 and Exhibit 15, which were the emails that were deleted and an invoice that was missed or no longer exists. As with the trial court's determination that the City's search was inadequate because

documents were not located, the trial court determined that because errors were made the training and supervision must be inadequate. However, the trial court did not identify a single way in which the training and supervision was inadequate. On the contrary, the undisputed evidence before the court was that the City's training and supervision regarding the PRA is excellent.

For example, the PRA Coordinator, Ms. Anderson, attends the twice yearly training put on by Washington Association of Public Records Officers (WAPRO). CP 1465. Every week Ms. Anderson meets with the City Attorney, the Deputy City Attorney who advises on the PRA; the City Clerk; and the City's Records Management Supervisor to discuss pending requests and pertinent PRA issues. Id.

Ms. Anderson also conducts quarterly trainings with the designated PRA coordinators and sub-coordinators for each of the 17 departments within the City. She also provides updates to the coordinators through email advising of any process changes. CP 1465.

The City Attorney's Office also conducts tri-annual meetings on the PRA. These meetings are generally 90 minutes in length and are attended by all attorneys for the City as well as the

City staff most responsible for handling requests under the PRA. CP 1465-66.

And, as stated above, all City employees are trained in both the Public Records Act and the Records Retention Act. CP 1379;1385;1588. The PRA coordinator for TPD, Deputy City Attorney Michael Smith, testified to his many years of experience with the PRA both with the City of Tacoma and with King County. CP 570-72; 1327-30. Thus, the evidence was that there is not only significant training but also direct supervision of the PRA process by multiple experienced attorneys. There is no evidence to support the trial court's finding that the City's PRA training and supervision was inadequate.

**4. The trial court erred in finding a lack of compliance with PRA procedural requirements.**

An aggravating factor under the Yousoufian analysis is the lack of strict compliance by the agency with all the PRA procedural requirements and exceptions, and a mitigating factor if the compliance with such requirements. Yousoufian v. Office of King County Exec., 168 Wn.2d 444, 467, 229 P.3d 735 (2010). Here, the trial court stated that there was a "lack of compliance with PRA procedural requirements" but the court did not identify any such

procedural requirements. CP 1657. However, the evidence is that the City strictly complied with the procedural requirements.

The evidence established that the City provided the proper five day acknowledgement notice, provided a reasonable estimate of when the request would be fulfilled, provided a privilege log explaining all redactions, conversed with the requesters on multiple occasions to understand their request, published its procedures as required by statute, and promptly provided all documents the City was able to locate. The fact that the court determined later that the City should have produced additional or different documents is not at issue in considering compliance with procedural requirements. The trial court erred in finding that the City did not comply with the procedural requirements of the PRA.

**5. The trial court erred in finding that significant penalties were warranted to incentivize the City's compliance.**

The final factor looks at the extent to which a penalty is necessary to elicit the agency's compliance with the PRA. Here, there was no intentional misconduct so there is no basis for assessing a penalty to prevent future misconduct. The factor also includes a review of the agency's processes and the City's compliance with its

own processes. The evidence establishes that the City's process, training, and oversight are excellent.

As the many affidavits and depositions transcripts in this case establish, the City has a robust program for complying with the PRA. That is not to say that the process is error-free because, of course, the process is carried out by humans and human error cannot be totally eradicated from any system. But such unintentional human error does not require or benefit from the imposition of a penalty. All of the evidence is that the City strives diligently to comply with every aspect of the PRA and that the City has an excellent PRA program. Thus, there is no evidence that a penalty is necessary to incentivize the City into further complying with the PRA.

### **III. CONCLUSION**

The City appeals the trial court's finding that the City violated the Public Records Act in responding to the plaintiffs' request for records. The evidence before the trial court, and before this court, establishes that the City conducted a diligent and thorough search of all places reasonably likely to contain responsive records. The City did not provide emails had already been deleted and which the plaintiffs acquired from another source, likely from

previous requesters that had received them from the City. Under the PRA, the City is not required to produce deleted emails.

The City also did not provide an invoice because of an oversight or because the invoice had been lost by the time of the plaintiffs' request. Under Washington law, failure to locate a document is not a violation of the PRA where the search was adequate. The City did not produce a blank form because the blank form was not requested and the City had no reason to think the requesters wanted a blank form.

The City produced a billing spreadsheet with non-responsive data omitted because the full spreadsheet was confusing to those outside the Tech Unit and because the plaintiffs' attorney agreed to the modified billing spreadsheet. And finally, the City did not produce the minutes from two Citizen Review Panel meetings because it was not reasonably believed that the City Manager's office would have responsive documents. Moreover, the plaintiffs were not denied access to these documents because they had been made publicly available on the City's website before the plaintiffs made their request. Thus there was no violation of the PRA. However, even if the Court determines that there was a violation, this Court should hold that publicly placing documents on the

agency's website is a mitigating factor that weighs heavily in favor of a minimal penalty.

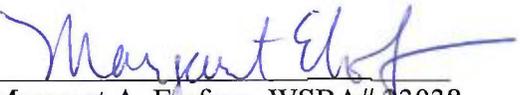
The City also appeals the trial court analysis of the Yousoufian factors in establishing penalties. The trial court's assessment of aggravating factors has no support in the evidence.

The City also requests that this court remand the issue of attorney fees to the superior court because the superior erred in not adjusting the plaintiffs' attorneys' fees for unsuccessful claims, or for duplicative effort, and other unproductive time.

Dated this 19th day of November, 2018.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2018, I filed, through my staff, the foregoing with the Clerk of the court for the Court of Appeals, Division II, for the State of Washington via electronic filing.

A copy of the same is being filed and emailed to:

1. COURT OF APPEALS, DIVISION II
2. John B. Midgley  
ACLU  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
[jmidgley@aclu-w.org](mailto:jmidgley@aclu-w.org)
3. Jennifer Campbell  
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EXECUTED this 19<sup>th</sup> day of November, 2018, at Tacoma, WA.

  
MARGARET ELOFSON

# CITY OF TACOMA

November 19, 2018 - 4:28 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52072-9  
**Appellate Court Case Title:** City of Tacoma, Appellant v Arthur C. Banks,et al, Respondents  
**Superior Court Case Number:** 16-2-05416-7

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**Note: The Filing Id is 20181119162739D2846849**