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NO. 52987-4-II

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

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PETER J. MCDANIELS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

Beginning in 2014 the Department of Corrections (DOC) began transitioning management of its food service program from DOC's Division of Prisons to Correctional Industries (CI), another division of DOC. CP 93. As part of this transition, DOC began using in its institutions more foods that were produced by CI. CP 94. Some inmates were unhappy about this transition as they believed they were getting less nutritious and less tasty food than before, and that DOC was paying more for this food. Some inmates also apparently believed that CI was not part of DOC and that there was a contract between DOC and CI for CI to provide food products to DOC institutions; Plaintiff/Appellant McDaniels (McDaniels), a Washington State inmate, was one such inmate.

In March 2017 McDaniels made a Public Records Act (PRA) request to DOC for:

. . . any and all contracts and other agreements and other documentation that dictates what the SCCC kitchen must serve to inmates for their three daily meals (including holidays and brunches) and what the SCCC kitchen can and cannot serve when altering, adding to, and subtracting from all of the numerous menu/diets offered in policy (i.e. dictating all written menus). I am only looking for contracts, agreements, and documentation. I am not requesting policies that I have access to already in the law library; and I am not looking for the menus unless they are specifically mentioned in the contract, agreement, and documentation as attachments thereto.

*See* CP 108-09. This request was given PRU number 46351 by DOC.  
CP 110.

In August 2017 McDaniels sent a kiosk message to the Stafford  
Creek Corrections Center Superintendent stating:

Supr. Gilbert, you have a right and a duty to petition your  
government to have CI food services removed from this  
facility. For more than double the price, we are receiving  
poorer quality food. RCW 39 outlines the means for you to  
start your research.

*See* CP 56. Superintendent Gilbert responded through her assistant Michelle  
Johnson:

This is a contract set up through Headquarters - MJ Supt.  
office.

*See* CP 57. McDaniels promptly replied to the Superintendent:

Thank you for your 8-22-17 response about the food contract  
set up by DOC HQ. Please provide me with the contract #,  
the contract manager's name and mailing information for  
him/her. Thank you. McDaniels, Peter J.

*See* CP 57. Nearly a month and a half later the Superintendent responded:

I am unsure of this, you would need to contact Headquarters  
for this information. M Johnson supt office

*See* CP 59. Based on the Superintendent's August 22, 2017 kiosk message,  
McDaniels made another PRA request to DOC in September 2017  
requesting "the entire contract that the Superintendent's office is referring  
to". CP 120. DOC gave this request PRU number 49186. CP 116.

DOC promptly responded to McDaniels' requests in PRU-46351 and PRU-49186 and ultimately advised him that DOC had no documents responsive to these requests. CP 114 and 130. DOC's responses were entirely accurate as DOC has never had a contract with CI to provide foods to any DOC institution for the simple reason that CI is part of DOC. CP 94-95. Supt. Gilbert's apparent speculation about a contract between DOC and CI was simply incorrect. CP 96.

After full briefing and oral argument, the trial court concluded that DOC did not violate the PRA in responding to McDaniels' PRA requests. CP 236-37. McDaniels appeals arguing that the trial court erred in finding no PRA violation because the Department of Enterprise Services (DES) contract 06006, also known as the "food umbrella contract", was responsive to his requests and DOC had an obligation to obtain this contract and provide it to him. McDaniels concedes in his opening brief that he requested this contract from DES under the PRA and was provided a copy by DES. McDaniels arguments are meritless as he has failed to establish that contract 06006 was responsive to his PRA requests, that DOC had this contract, or that DOC had an obligation under the PRA to obtain this document from DES and produce it to him. This Court should therefore affirm the trial court's dismissal of McDaniels' PRA complaint.

## **II. COUNTERSTATEMENT OF THE ISSUES**

A. Whether DES contract 06006 was responsive to McDaniels' PRA requests in PRU-46351 or PRU-49186 and, if so, whether DOC had an obligation under the PRA to obtain and produce it to McDaniels in response to these requests.

B. Whether this Court may provide McDaniels any relief under PRU-52132 which was still open when McDaniels filed his complaint and which was not argued or proved by McDaniels in the trial court or decided by the trial court.

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

### **A. Facts**

1. Brad Simpson is an Assistant Food Services Administrator with CI, a division of DOC and has worked for the Department since 1991, previously serving as a cook, a Food Service Manger 3, a Food Program Consultant, a Food Service Manager 4, a Meat Plant Production Manager, a CI Business Developer, and a Food Services Administrator. CP 92-99.

2. In his current position, Mr. Simpson supports the Food Services Administrator for all food service operations within CI, including menu development, Department of Health protocols, and policy development, ensuring DOC goals are met for nutrition and food quality while creating new products, developing pricing strategies, and cost

controls. His position is also committed to maintaining and expanding inmate training opportunities to develop workers' marketable skills, instill and promote a positive work ethic, and reduce the tax burden of corrections. *Id.*

3. The Department presently has twelve prison facilities in the state, all of which must provide food service for its inmates. Historically, each Department facility controlled its own food service, including its food service budget, and the food service employees at all facilities were under the authority of the Department's Division of Prisons. Because each facility had complete control over its own food service, there were often times significant differences between facilities with respect to the cost, quality, and nutritional value of the meals served to inmates. *Id.*

4. The Department began transitioning management of its food service program to CI from the Division of Prisons in 2014, with the goal of aligning food preparation with meal demands, controlling costs, ensuring greater consistency of food quality and nutritional value, and expanding the opportunities for inmates to learn job skills in the food industry that they could use when released from custody. The expansion into food service created vertical integration with CI's food factory production and increased overall efficiencies. The CI Food Group is the combined team created from CI's food manufacturing operations and food service facilities. In order to

achieve the desired consistency and quality in the Department's food service, CI has utilized CI-produced foods accompanied by non-CI-produced products, employed centralized purchasing, and has created statewide standardized 4-week cycle menus for all the Department's facilities. *Id.*

5. The Department's standardized 28-day revolving menus are carefully developed by CI to provide meals that are both acceptable to the inmate population and nutritionally adequate. The Department's menus contain three meals for each day in the 28-day cycle; breakfast, lunch, and dinner. The Department's menus are reviewed and approved by the Department's Dietician before being implemented to ensure that they meet or exceed the nutritional requirements for the Department's inmate population. It has always been the expectation that all Department facilities follow the standardized menus which alone determine what food items are to be provided to the inmates in Department facilities. The Department has standardized menus for mainline meals, which are the overwhelming majority of the meals served to inmates, as well as standardized menus for the various medical and religious diets the Department provides. *Id.*

6. Presently, CI manages food service at five of the twelve Department facilities in Washington State. These five facilities are: the Airway Heights Corrections Center, the Coyote Ridge Corrections Center,

the Monroe Correctional Complex, the Washington Corrections Center, and the Washington State Penitentiary. All the food service employees at these five facilities work for CI under the Reentry & Correctional Industries Division, not the Division of Prisons. Food service in the remaining seven Department facilities is managed by food service employees who work directly for the Division of Prisons, not CI. The Stafford Creek Corrections Center (SCCC) is one of the Department facilities whose food service is managed and implemented entirely by Division of Prisons employees. All Department facilities are expected to fully comply with the Department's standardized menus regardless of whether the food service at the facility is run by CI employees or employees of the Division of Prisons. *Id.*

7. The Department has also attempted to standardize, to the extent possible, the procurement of food items needed to comply with the Department's various menus. CI has established food factories at the Airway Heights Corrections Center and the Coyote Ridge Corrections Center which produce a substantial amount of the food items needed to meet the nutritional requirements of the Department's standardized menus. All facilities are expected to purchase the food products needed to comply with the Department's menus from CI's food factories. Because CI's food factories do not produce or sell all the food items needed to comply with the Department's various menus, Department facilities must purchase the items

not sold by CI from a source other than CI. The food items CI does not produce or sell that are needed to fulfill the Department's menus include fresh fruit and vegetables, dairy products, and various other food items. CI does not have, and has never had, any contract with the Department or any Department facility concerning the sale of CI food products to a Department facility. Having such a contract is not necessary as CI and Department facilities are part of the Department which has no reason to contract with itself. *Id.*

8. CI and Department facilities purchase food items needed to fulfill the Department's various menus from food vendors who have entered into a master contract or master contracts with the Department of Enterprise Services (DES). It is my understanding that DES negotiates and administers master contracts to allow state agencies, local governments, tribes, and particular non-profit organizations to obtain goods and services at a reduced cost by leveraging the power of buying goods and services in large quantities. Under DES master contract No. 06006, which is also referred to as the "umbrella food contract", CI purchases some of the food products needed to make the prepared foods that CI sells to Department facilities. Department facilities also purchase under DES contract No. 06006 those food items that are needed to fulfill the Department's menus that CI does not sell. The primary vendor to the Department under DES contract

No. 06006 is Food Services of America (FSA). Together, CI and the Department's facilities purchased millions of dollars' worth of food items from FSA in calendar year 2017 under DES contract No. 06006. *Id.*

9. CI is not presently a vendor under DES contract No. 06006 and has not been since September 2015. When CI was a vendor under contract No. 06006, it was only for a limited selection of food items, including frozen meats and convenience foods, such as pre-made meals. Even when CI was vendor under contract No. 06006, it did not sell any of its food products to Department facilities under this contract. The Department has never sold any of the food products it makes to Department facilities under any contract, including DES Contract No. 06006. DES Contract No. 06006 does not determine what foods are provided to Department inmates under the Department's various menus and never has. *Id.*

10. There are many food service employees in CI and in the Department's facilities who are authorized to purchase needed food items from vendors under DES Contract No. 06006. These purchases are done on-line by accessing the particular vendor's website. These sites show what food products the vendor has for sale and the prices for the products. The website contains all the products available through that vendor, however, the items specifically identified to meet the Department's menus have been

provided to CI and the Department's Food Services and are the only products that have been approved for use. None of the various vendors' websites provide access to the contract the vendor has with DES and there is no reason for any Department employee who is ordering food items to see such contract or have access to such contract. While Department employees regularly purchase food items under DES Contract No. 06006, Department employees do not see, consider, or use this contract when ordering food items from vendors under the contract. While Mr. Simpson has personally seen a portion of DES Contract No. 06006, he is unaware of any other current CI employee who either has a copy of this contract or has seen it. Mr. Simpson is under the assumption that the Department's Contract and Legal Affairs Unit has a copy of CI's expired contract with DES to provide specified food products under Contract No. 06006. *Id.*

11. Mr. Simpson reviewed inmate McDaniels' August 24, 2017 kiosk message to SCCC Superintendent Margaret Gilbert and her 8/22/17 response thereto. In his kiosk message inmate McDaniels states: "Supr. Gilbert, you have a right and a duty to petition your government to have CI food services removed from this facility. For more than double the price, we are receiving poorer quality food. RCW 39 outlines the means for you to start your research". Superintendent Gilbert's response to inmate McDaniels' message states: "This is a contract set up through Headquarters-

MJ Supt office”. Mr. Simpson is unaware of where Superintendent Gilbert got the information for her response to inmate McDaniels but it was incorrect. As indicated above, there is no contract between CI and any Department facility, including SCCC, concerning the purchase of CI food products, and there is no other contract that applies to Department facilities purchasing and serving CI food products. Even though inmate McDaniels’ kiosk message appears to only be concerned with SCCC buying and serving CI food products, there is also no contract between the Department or CI and any other entity concerning Department facilities buying food items from vendors under DES Contract No. 06006. *Id.*

12. Mr. Simpson also reviewed SCCC Superintendent Gilbert’s level 2 response to grievance no. 15594766 filed by an inmate at SCCC who was complaining about the lack of variety in the box lunches he and other inmates at SCCC were receiving. The level 2 response indicates that the “umbrella” food contract, DES Contract No. 06006, forced SCCC food service to purchase the box lunches at issue and that this contract prohibited SCCC from buying box lunches from anyone other than CI. This grievance response was inaccurate as Department facilities, including SCCC did not purchase food products from CI under any contract, including DES contract No. 06006. The grievance response was correct in its statement that SCCC was required to purchase CI box lunches, however, this was purely a

function of internal Department management decisions, not a function of any contract. *Id.*

13. Mr. Simpson also reviewed the declaration of CI employee Bryan King signed on June 27, 2016 in inmate McDaniels' case in Grays Harbor County Superior Court in which Mr. King states: "CI is involved in the State Food Program Contract, supplying various foods to DOC". To the extent this general statement suggests that CI was providing food items to Department institutions under DES contract No. 06006 it is not accurate. CI never sold its food products to Department institutions under DES contract No. 06006. Moreover, CI was not a vendor under DES contract No. 06006 in June 2016. While CI and the Department's facilities were involved in DES contract No. 06006 in June 2016 and continue to be involved with this contract; that involvement was and is limited to purchasing foods items from the vendors under this contract, none of which are CI or any other Department Division or facility. *Id.*

14. Mr. Simpson also reviewed inmate McDaniels' request for records under the Public Records Act in PRU-46351. In this request inmate McDaniels requests the contracts, agreements, or other documents that dictate what food items must be served to inmates at SCCC, and what food items can and cannot be served when deviating from the Department's menus. Inmate McDaniels specifically states in his request that he is not

seeking the Department's menus or policies. The records inmate McDaniels requested do not exist because the only documents that determine what is fed to inmates at SCCC are the Department's standardized menus which are established by CI and the Department's Dietician. DES contract No. 06006 is not responsive to this request because it does not concern what food items are fed to inmates at SCCC or what food items can be substituted for the food items specified in the Department's various menus. *Id.*

15. Mr. Simpson reviewed inmate McDaniels' request for records in PRU-49186. In this request inmate McDaniels requests the entire contract the SCCC Superintendent was referring to in her August 22, 2017 kiosk message to inmate McDaniels which is described in paragraph 11 above. It is unknown what contract the Superintendent was referring to and Mr. Simpson is unaware how anyone would know what contract she was referring to without asking her. In light of inmate McDaniels' August 14, 2017 kiosk message, the Superintendent may have thought that there was a contract between CI and SCCC that governed SCCC's purchase of food products from CI, but, as indicated above, that is incorrect. If the Superintendent thought that SCCC's purchase of food products from CI was required or allowed by DES contract No. 06006, that would also be incorrect, especially since CI was no longer a vendor under this contract after September 2015. The Department does not have any documents

responsive to this request because there are no contracts concerning SCCC's purchase of CI food products from CI. *Id.*

16. Mr. Simpson reviewed inmate McDaniels' request for records in PRU-52132. In this request he appears to ask for DES Contract No. 06006 or any portions thereof that the Department has, and for several other records. As I indicated above, CI does not participate or use this contract as a vendor. However, because CI was a minor vendor under this contract prior to 2016, the Department's Contracts and Legal Affairs Unit would have CI's contract with DES. *Id.*

17. Donna Williams is currently employed by the Washington Department of Corrections as a Communications Consultant 3 in the Public Records Unit at DOC Headquarters in Tumwater, Washington. She has been employed by the DOC for over three years and have been in the Public Records Unit for over two years. CP 104-05.

18. In March 2017 Ms. Williams was assigned PRU-46351 which was a Public Records Act (PRA) request submitted by DOC inmate Peter McDaniels, DOC #995036. As the Communications Consultant assigned to a PRA request, Ms. Williams' job is to review the request, respond to the requestor as required by the PRA and DOC policy, locate all responsive records, determine if any responsive records are exempt under the PRA, provide the requestor with all responsive non-exempt records, and

provide the requestor with a log of exemptions if any responsive documents or parts thereof are being withheld as exempt. *Id.*

19. In PRU-46351, Mr. McDaniels requested all contracts, agreements, and other documentation that dictate what the Stafford Creek Corrections Center (SCCC) kitchen must serve to inmates for their three daily meals, and what food the SCCC kitchen can and cannot substitute in the various menus and diets the SCCC kitchen offers. Mr. McDaniels specifically stated in his request that he did not want DOC's various menus or DOC policies. *Id.*

20. Although Mr. McDaniels' request was somewhat unclear, Ms. Williams determined that if any responsive documents existed, they would be either at SCCC, in DOC Correctional Industries, DOC Policy Unit, DOC Health Services, or in DOC's Contracts Unit. Ms. Williams sent these entities a workflow request advising them what records Mr. McDaniels was seeking and asking them to provide me all responsive records. Ms. Williams contacted SCCC because the SCCC kitchen was mentioned in Mr. McDaniels' request. Ms. Williams contacted Correctional Industries because Correctional Industries is in charge of food service in DOC. She contacted the Contracts Unit of DOC because Mr. McDaniels requested contracts and agreements and the Contracts and Legal Affairs

Unit maintains all DOC contracts. Ms. Willimas contacted Policy and Health Services as they could also have had responsive records. *Id.*

21. The Contracts and Policy units of DOC advised Ms. Williams that they had no responsive records. SCCC, Health Services, and Correctional Industries provided Ms. Williams with records they thought might be responsive, but she determined that they were not responsive to Mr. McDaniels' PRA request. Ms. Williams advised Mr. McDaniels by letter dated May 18, 2017, that DOC did not have any records responsive to his PRA request and closed DOC's file on this request. *Id.*

22. Dallas Wortham is currently employed by the Washington Department of Corrections as a Communications Consultant 3 in the Public Records Unit at DOC Headquarters in Tumwater, Washington. He has been employed by the DOC for over four years and has been in the Public Records Unit for over four years. CP 116-18.

23. In September 2017, DOC received a Public Records Act request from DOC inmate Peter McDaniels, DOC #995036, in which Mr. McDaniels requested the entire contract that former Stafford Creek Corrections Center Superintendent Margaret Gilbert was referring to in her August 22, 2017 email message to Mr. McDaniels which stated "This is a contract set up through Headquarters". This request was assigned to DOC Communications Consultant Kailey Tschimperle and was assigned number

PRU-49186. The job of Communications Consultants in DOC's Public Records Unit is to review requests assigned to them, respond to the requestor as required by the PRA and DOC policy, locate all responsive records, determine if any responsive records are exempt under the PRA, provide the requestor with all responsive non-exempt records, and provide the requestor with a log of exemptions if any responsive documents or parts thereof are being withheld as exempt. *Id.*

24. Communications Consultant Tschimperle acknowledged receipt of Mr. McDaniels' PRA request by letter dated September 15, 2017. Ms. Tschimperle promptly contacted SCCC for responsive documents and was advised that SCCC did not have any responsive documents. Ms. Tschimperle also contracted the DOC Contracts and Legal Affairs Unit and was provided four food-related contracts totaling 63 pages. Mr. McDaniels was offered these documents and received them after paying for them. After receiving these records Mr. McDaniels wrote DOC and asserted that the records he received were not responsive to his request and requested a refund of the money he paid for them. At about this time the request was re-assigned to Mr. Wortham. *Id.*

25. On December 12, 2017, Mr. Wortham responded to Mr. McDaniels' letter in which he claimed that the records DOC provided were not responsive and advised him that a full refund would be issued for the

records he claimed were unresponsive. He also advised Mr. McDaniels that DOC was interpreting his request as a request for the contract between DOC and Correctional Industries to provide food services at SCCC. Mr. Wortham arrived at this interpretation from reading the August 14, 2017 kiosk message that Mr. McDaniels sent to SCCC Superintendent Gilbert which prompted her August 22, 2017 response which is described in paragraph no. 2 above. Mr. McDaniels August 14, 2017 email to Superintendent Gilbert stated:

Supr. Gilbert, you have a right and a duty to petition your government to have CI foods removed from this facility. For more than double the price, we are receiving poorer quality food. RCW 39 outlines the means for you to start your research.

*Id.*

26. On December 21, 2017, Mr Wortham received a letter from Mr. McDaniels dated December 18, 2017, in which he disputed the interpretation of his request, advised Mr. Wortham that CI employee Brian King had mentioned an “umbrella food contract”, and suggested that the umbrella food contract could be responsive to his PRA request. *Id.*

27. After receiving Mr. McDaniels’ December 18, 2017 letter, Mr. Wortham contacted the DOC Contracts and Legal Affairs Unit of DOC and Correctional Industries for responsive documents and was advised by both of them that they had no responsive documents. After receiving several

more letters from Mr. McDaniels, Mr. Wortham advised him by letter dated March 20, 2018 that another search for records was conducted, that no responsive records were found, that DES may have the contract he was seeking, and that this request, PRU– 49186, was closed. *Id.*

28. Haley Beach is an Assistant Attorney General for the State of Washington. Ms. Beach represented the Defendants in a federal case, Asher Becker v. Carney, et al., United States District Court Case No. 3:16-cv-05315-RBL-JRC. Ms. Beach sent a letter and enclosures to the Plaintiff, Asher Becker, on July 31, 2017. The enclosures included DES documents concerning DES Contract No. 06006. Ms. Beach indicated in her July 31, 2017 letter that the umbrella food contract documents were obtained directly from the website of the Department of Enterprise Services. CP 84.

#### **B. Procedural History**

Pursuant to Thurston County Local Civil Rule 16(c)(1)(E) the trial court conducted a scheduling conference on August 10, 2018 which was attended by all parties. CP 245-46. This conference resulted in the trial court entering a PRA Scheduling Order setting forth the issues to be briefed and decided, and setting a briefing schedule. CP \_\_\_\_\_ (scheduling order). Under this Order the parties were to brief and the court was first to decide only whether DOC violated the PRA by silently withholding responsive

documents. McDaniels presented evidence and arguments only on PRU-46351 and PRU-49186. CP 18-71 and 162-201. A hearing on whether DOC violated the PRA was scheduled for December 14, 2018. The court held the hearing on December 14, 2018, ruled that McDaniels had failed to establish that DOC violated the PRA, and dismissed McDaniels' action. CP 207, 236-37. McDaniels filed a timely notice of appeal. CP 226.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

Where the record in a PRA case consists only of affidavits, memoranda of law, and other documentary evidence, an appellate court reviews an agency's actions under the PRA de novo. *Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App. 711, 719-20, 328 P.3d 905 (2014).

##### **B. DOC Properly Responded to PRU-46351 and PRU-49186**

In the trial court McDaniels argued and provided evidence only on PRU-46351 and PRU-49186. CP 18-71 and 162-201. Curiously, McDaniels does not quote the precise language of his PRA requests in PRU-46351 or PRU-49186 even once in his 33-page brief. This was likely no accident as McDaniels' requests were vague and did not explicitly or implicitly encompass DES contract No. 06006 or any other record in DOC's possession. Plaintiff's PRA request in PRU-46351 stated:

My public disclosure request is for any and all contracts and other agreements and other documentation that dictates what the SCCC kitchen must serve to inmates for their three daily meals (including holidays and brunches) and what the SCCC kitchen can and cannot serve when altering, adding to, and subtracting from all of the numerous menu/diets offered in policy (i.e. dictating all written menus). I am only looking for contracts, agreements, and documentation. I am not requesting policies that I have access to already in the law library; and I am not looking for the menus unless they are specifically mentioned in the contract, agreement, and documentation as attachments thereto.

*See* CP 108-09.

Plaintiff's PRA request in PRU-49186 stated:

I was sent a kiosk message from the mailbox "Superintendent-SO1" on 8/22/2017 that read, "This is a contract set up through Headquarters. - MJ Supt. Office". Please provide me with the entire contract that the superintendent's office is referring to.

*See* CP 120.

DOC established conclusively that it did not have contracts, agreements, or other documentation responsive to PRU-46351 and PRU-49186 and thoroughly explained why that was so. CP 92-99 (Simpson declaration), 104-05, 116-18. DOC CI employee Brad Simpson provided comprehensive testimony concerning DOC's food policies and practices, including testimony that DOC does not have or use DES contract 06006 when ordering food items, and that DOC employees order directly from vendors who have contracted with DES to sell items to government entities,

such as DOC, under DES contract 06006. McDaniels presented no evidence to refute Mr. Simpson's thorough explanation of how DOC's food service operates or his testimony that DOC did not have documents responsive to McDaniels' PRA requests, including DES contract 06006. The trial court did not err in concluding that McDaniels failed to establish a violation of the PRA on these requests.

McDaniels now argues that even if Mr. Simpson's unrefuted testimony is accurate, it does not matter because Superintendent Gilbert may have been referring to DES contract 06006 when she wrote the August 22, 2017 kiosk message to McDaniels, therefore DOC was obligated to produce this contract to McDaniels. This argument suffers several obvious and fatal flaws.

First, it is pure speculation that Supt. Gilbert was referring to DES contract 06006 in her August 22, 2017 kiosk message to McDaniels. Supt. Gilbert's subsequent kiosk message makes clear that she did not know what contract she was referring to in her August 22, 2017 kiosk message because she responded to McDaniels' request for clarification by advising McDaniels that she was "unsure of this" and advising him that he "would need to contact Headquarters for this information". CP 59. Simple logic suggests that if Supt. Gilbert was "unsure" of what contract she was referring to in a prior kiosk message, DOC could not know what contract

she was referring to. Second, DOC has established conclusively that DES contract 06006 plays no role in formulating DOC's menus or in determining which CI foods DOC used to feed inmates at SCCC. CP 92-99. Lastly, even if Supt. Gilbert was referring to DES contract 06006 in her kiosk message to McDaniels, her incorrect understanding of how the SCCC food service operated did not, as a matter of law, transform a DES contract into a DOC record that must be procured and produced by DOC. "The Public Records Act 'does not require . . . an agency to go outside its own records and resources to try to identify or locate the record requested.'" *Koenig v. Pierce County*, 151 Wn. App. 221, 232-33, 211 P.3d 423 (2009) (alteration in original) (quoting *Limstrom v. Ladenburg*, 136 Wn.2d 595, 604 n.3, 963 P.2d 869 (1998)).

McDaniels cobbles together various bits and pieces of hearsay statements from DOC staff, incorrect statements by DOC staff, and his own strained logic to argue that DES contract 06006 is responsive to his requests in PRU-46351 and PRU-49186, but his argument fails. A typical example of McDaniels' failure of proof and logic is his reliance on Exhibit M to his opening brief in the trial court, CP 55. McDaniels argues that this exhibit proves that DOC has and uses DES contract 06006:

The defense is going to try and convince the Court that they don't actually use the contract itself in paper format; however, that argument fails because the contract is on an

agency wide intranet for all state institutions to use, and it is updated frequently. See: (Index #23, Opening Brief, Exhibit Merits M).

McDaniels' Opening Brief, at 6.

If true, this would arguably be evidence supporting McDaniels' claims. But it is not true. Exhibit M is a letter to McDaniels from DES employee Harold Goldes concerning McDaniels' PRA request for DES contract 06006. CP 55. This letter says nothing about an "intranet", nothing about contract 06006 being on such intranet, and nothing about DOC having access to such intranet. The only relevance Exhibit M has to this case is that it shows clearly that McDaniels had access to DES contract 06006 from DES, and that McDaniels has been barking up the wrong tree in his attempt to get this contract from DOC.

Another example of McDaniels' distortion of the record is his claim that DOC provided him documents responsive to PRU-46351 long after it had closed this request:

On November 6, 2018, 537 days after PRS Williams closed PRU-46351, the defendant Dep't of Corrections provided me with documents responsive to PRU-46351. This was not all of the responsive documents, but it marks the first and last installment.

*See* McDaniels' Opening Brief at 3.

McDaniels does not cite to the record to support these alleged facts because he cannot. There is no evidence in the record to support his claim

of a belated DOC response to PRU-46351. Another example, perhaps the most egregious example of McDaniels' distortion of the facts, is his statement in his brief concerning a document he asserts is connected to DES contract 06006 which proves DOC's connection to and use of this contract:

I am providing one document abstracted from the umbrella food contract 06006. See: (New Exhibit R9.11-5.[9]). This page is called, "CI FOODS 4-WEEK MODIFIED DIET ORDER GUIDE - EFFECTIVE MARCH 1, 2016." It is an exhibit in my federal case. The foods on this guide are taken directly from the contract 06006. Somebody working for the defendant DOC (Under Information And Belief) created this ordering guide. The defense has provided no proof that someone other than the Dep't of Corrections prepares these ordering guides for DOC employees. Clearly, the defendant uses the contract 06006 as a proprietary function of government business.

McDaniels' Opening Brief at 7-8.

McDaniels' description of this document, entitled "CI Foods 4-Week Modified Diet Order Guide - Effective March 1, 2016" is a fraud upon the Court. This document is a DOC Correctional Industries document which was produced to McDaniels' former cell-mate, Asher Becker, by DOC as a result of Becker's request in PDU-41109 which is stamped on the bottom of this document.<sup>1</sup> This document, which was created by DOC

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<sup>1</sup> This Court has already ruled that McDaniels may not submit any additional evidence on appeal. As such, this exhibit may not be considered in this appeal. Nevertheless, DOC believes it is appropriate for the Court to consider this exhibit for the limited purpose for which it is cited by DOC. DOC welcomes McDaniels' response to DOC's arguments regarding this exhibit.

Correctional Industries and is put out monthly, is used by DOC institutions to order food products manufactured by Correctional Industries and other manufacturers which are ordered, received, and distributed to DOC institutions by Correctional Industries. There is not one shred of evidence connecting this document to DES contract 06006 and McDaniels' attempt to pull the wool over this Court's eyes with this document must be rejected.

The primary flaw in McDaniels requests in PRU-46351 and PRU-49186 is that McDaniels failed to make requests for "identifiable" records. RCW 42.56.080 ("A public records request must be for identifiable records"); *see also Hangartner v. City of Seattle*, 151 Wn.2d 439, 447, 90 P.3d 26 (2004) (requester must identify records with reasonable clarity to allow the agency to locate them). McDaniels vague and convoluted requests are the antithesis of requests for identifiable records. Nevertheless, the record shows DOC made a good faith effort to try to determine what records McDaniels was seeking. Ultimately, DOC correctly concluded that it did not have records responsive to McDaniels' requests and advised McDaniels as such. However, even if McDaniels had specifically asked DOC for DES contract 06006, the end result in PRU-46351 and PRU-49186 would have been the same for the simple reason that DOC did not have or use this DES contract. CP 92-99.

McDaniels appears to concede that DOC neither had nor was a party to DES contract 06006, but argues that DOC was legally obligated to obtain it from DES and provide it to him. McDaniels is incorrect. McDaniels relies on *Cedar Grove Composting, Inc. v. Marysville*, 188 Wn. App. 695, 354 P.3d 249 (2015) to support his argument that DOC was required to obtain DES contract 06006 from DES and provide it to him. But *Cedar Grove* only concerned records in the possession of a non-governmental third party. The test used in *Cedar Grove* simply does not apply when the alleged third-party possessing the records sought is an agency fully subject to the PRA.

*West v. Thurston County*, 168 Wn. App. 162, 275 P.3d 1200 (2012), a case cited in *Cedar Grove*, supports the trial court's dismissal of McDaniels action. *West* involved two public agencies, Thurston County and the Washington Counties Risk Pool "a public agency created by interlocal agreement". *West*, 168 Wn. App. at 167. The requestor in *West* requested invoices from Thurston County for legal work done in a Thurston County civil case. *West*. Thurston County provided the invoices it possessed but did not provide invoices held by the Risk Pool which had never been sent to or used by Thurston County. *Id.* This Court held that Thurston County was not required by the PRA to provide the requestor invoices that were held and used only by the Risk Pool and not prepared, owned, used, or retained by Thurston County. *Id.*

In determining that Thurston County had not used the invoices held by the Risk Pool, the trial court ruled:

Thurston County did not receive invoices for defense services over their \$250,000 deduct[i]ble. Additionally, there is no evidence that Thurston County reviewed, evaluated, referred to or otherwise considered defense invoices over their \$250,000 deduct[i]ble in their decision-making process regarding their defense in *Broyles* or for any other purpose. There is no showing that the defense invoices for services over Thurston County's \$250,000 deduct[i]ble had a nexus with Thurston County's decision-making process.

*West*, 168 Wn. App. at 185-86.

The Court of Appeals agreed with the trial court's reasoning and conclusion:

In our view, the superior court properly applied *Concerned Ratepayers* in its "use" analysis. Accordingly, we hold that the County did not "use" the invoices that exceeded its deductible. Former RCW 42.56.010(2).

*Id.*

*West* supports that DES contract 06006 is not a public record retained, prepared, owned, or used by DOC.

This Court recently upheld the dismissal of a PRA action against an agency because another government agency provided the requested records to the requestor. *Cortland v. Lewis County*, Court of Appeals No. 52066-4-II, 2020 WL 902555 (February 25, 2020) (unpublished) (copy attached for benefit of Appellant). In *Cortland* this Court ratified the

common sense principle that when an agency other than the agency to which a PRA request is directed fully responds to a PRA request, the requestor has no viable cause of action against the agency because the requestor has not been denied the requested records. *Id.* Although *Cortland* is not precisely on all fours with this case because DOC did not forward McDaniels' requests to DES for response, the rationale underlying *Cortland* applies equally to this case because McDaniels could always have gotten DES contract 06006 directly from DES and he admits that he in fact did get this contract from DES. CP 55 *and see* McDaniels' Opening Brief at 4. Lastly, McDaniels has failed to explain how DOC could force DES, a co-equal state agency, to provide DOC a copy of DES contract to DOC for provision to McDaniels. DOC had no obligation to obtain DES contract 06006 from DES and did not violate the PRA by failing to do so.

McDaniels has failed to demonstrate that DOC failed to produce responsive records in PRU-46351 and PRU-49186 and this Court should affirm the dismissal of McDaniels' PRA claims.

**C. PRU-52132 is not Properly Before this Court**

McDaniels argues that PRU-52132 is properly before this Court and that it provides a basis to overturn the trial court's dismissal of his PRA action. McDaniels is incorrect. The PRA scheduling order entered by the trial court required McDaniels to submit briefing on all his

claims. CP \_\_\_\_\_ (scheduling order). McDaniels failed to submit evidence on PRU-52132. It is well established that an appellate court will normally not review a claim of error which was not raised in the trial court. RAP 2.5(a); *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). This rule exists to give the trial court an opportunity to correct errors and to give the opposing parties an opportunity to respond. *Id.* McDaniels makes no argument to support allowing him to claim error in DOC's response to PRU-52132 when he made no attempt in the trial court to demonstrate a violation of the PRA on this request. Also, this Court has no basis on which to find a violation on this request as the record below contains no evidence concerning PRU-52132.

## V. CONCLUSION

The trial court ruled that McDaniels' PRA requests were vague and that DOC's responses thereto did not violate the PRA:

That being said, it appears to me that the language that Mr. McDaniels used to make requests for certain documents was not clear. It was not clear in that he didn't say, I am requesting Contract No. 06006 as of this date or something specific like that. Rather, his requests describe what he believed the contract did, and that explanatory language made it very difficult, if it not impossible, for the Department to identify any contract that would be responsive to his request.

....

Be that as it may, before the Court today is not whether the Department of Corrections was incorrect or confusing in response to communications or grievances. The only question before the Court is whether the Department of Corrections silently withheld documents in response to the public records requests at issue before the Court, and the Court finds, based upon all of the record before it in this case, that there is no violation for silently withholding documents.

*See* Verbatim Report of Proceedings, pp. 33-34.

The trial court was correct and its order dismissing McDaniels' action should be affirmed.

RESPECTFULLY SUBMITTED this 28th day of February, 2020.

ROBERT W. FERGUSON  
Attorney General

s/ Douglas W. Carr

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**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the foregoing BRIEF OF RESPONDENT with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

PETER J. MCDANIELS, DOC #995036  
STAFFORD CREEK CORRECTIONS CENTER  
191 CONSTANTINE WAY  
ABERDEEN WA 98520

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 28th day of February 2020, at Olympia,  
Washington.

s/ Clinton Gauthier  
CLINTON GAUTHIER  
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# **APPENDIX A**

February 25, 2020

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

BRIAN CORTLAND,

Appellant,

v.

LEWIS COUNTY, a Municipal Corporation,

Respondent.

No. 52066-4-II

UNPUBLISHED OPINION

CRUSER, J. — Brian Cortland appeals the trial court’s order on the merits concluding that Lewis County (the County) did not violate the Public Records Act (PRA), ch. 42.56 RCW. Cortland argues first that the trial court erred when it failed to make a finding of fact regarding which entity responded to his PRA request, and to the extent the trial court credited the County with the response submitted by the superior court, it erred. Cortland next contends that since the Lewis County Superior Court did not have authority to respond to his request under the PRA because it is a judicial entity, he effectively received no response, and thus, the County violated the PRA. Finally, under this same reasoning, he asserts that because the superior court performed the search rather than the County, the search was per se inadequate, and the County failed to meet its burden of proof establishing the adequacy of the search.

The County responds that Cortland has no cause of action under the PRA because he makes no claim that he was denied access to records he was entitled to copy and inspect. In addition, the County maintains it did not violate the PRA when the superior court searched for and produced responsive records on its behalf. Finally, the County argues that the thoroughness of the superior court's search was uncontested and the burden of proof as to the adequacy of the search was met on the evidence submitted to the trial court.

We affirm the trial court. The County had no duty to go beyond its own records to produce records in response to Cortland's request addressed to a nonexistent agency. Accordingly, the County properly denied Cortland's request when it directed Cortland to resubmit his inquiry to the superior court, the sole entity responsible for administering the law library. Furthermore, the County had no duty to go beyond its own records in conducting a search, and Cortland provides no evidence that the County held responsive records that it would have uncovered had it completed a more thorough search. Finally, because Cortland does not challenge the trial court's finding of fact that he received "timely responses and records to each request," he has no cause of action under the PRA. Clerk's Papers (CP) at 317.

#### FACTS

Between August 2, 2016 and September 13, 2016, Cortland filed numerous PRA requests addressed exclusively to the Lewis County Law Library Board. But in early 2010, the Lewis County Law Library Board of Trustees ("board") disbanded and the Lewis County Superior Court assumed all of the board's duties. Records pertaining to the law library have been maintained by Susie Parker, the Superior Court Administrator and Public Records Officer for the superior court, ever since.

Cortland had previously submitted requests, also addressed to the Lewis County Law Library Board on December 9, 2015. The lawsuit pertaining to the PRA requests from December 9, 2015 is the subject of a separate appeal, No. 51987-9-II, pending before us.

As it pertains to this appeal, Cortland sent his first PRA request addressed to the “Lewis County Law Library Board” to Lisa Conzatti on August 2, 2016 because he could not find a contact person for the law library board, and Conzatti was listed as a contact for the Lewis County Law and Justice Council. Conzatti responded on August 3, stating that “[a]lthough the Law Library is located near the Clerk’s Office,” it is not “the Clerk’s responsibility” and directed him to contact Parker, the superior court administrator, for assistance in his request. *Id.* at 5 (alteration in original). Cortland followed these instructions, and he forwarded the August 2 PRA request, as well as all subsequent requests, directly to Parker.

Cortland received responses for each of his requests. Glenn Carter, Lewis County Chief Civil Deputy Prosecuting Attorney, responded to every request submitted by Cortland to the nonexistent board, stating that he received the request from the superior court, which administers the law library in lieu of the board. Carter clarified that he responded to Cortland’s request on behalf of the court “in its capacity of having assumed the functions of the Law Library Board,” and he reaffirmed that requests are governed by GR 31.1. CP at 63, 79, 84, 99, 148, 156, 159, 167.

Parker directed the search for responsive documents and enlisted the assistance of the Information Services Department to procure electronic records. She also reviewed the physical records in the court’s possession.

Cortland filed a lawsuit naming the County as the defendant on July 27, 2017 (Thurston County Cause No. 17-2-04278-34). This suit was filed shortly after the same judge ruled in his favor with respect to the December 9, 2015 PRA request.

Cortland's lawsuit pertaining to the August and September PRA requests alleged that the County violated the PRA because it did not respond or produce records. It appears that the parties filed cross motions for summary judgment, and the County prevailed initially. Cortland filed a motion for reconsideration, which the court granted, and it set a hearing on the merits to determine claims related to adequacy of the County's search for records.

Following a hearing on the merits, the trial court found that Cortland received timely responses and records and that the production of records via the superior court satisfied the County's duties under the PRA. The court, referencing the other PRA case related to the December 9, 2015 request, concluded that because it held that "the Lewis County Superior Court could not escape the PRA obligations of the Lewis County Law Library Board, which the Court rules was a nonjudicial agency subject to the PRA," in the prior suit "[b]y the same token . . . the Superior Court's response to a PRA request here was effective in satisfying those obligations." *Id.* at 318. The trial court further concluded that because Cortland did not raise an argument regarding the thoroughness of the search, and the search was "reasonably calculated to uncover the relevant documents," that "Lewis County carried its burden to show an adequate search." *Id.* at 319. Accordingly, the trial court ruled that Cortland's claims failed on the merits.

Cortland appeals, challenging the trial court's order on the merits.

## DISCUSSION

### I. LEGAL PRINCIPLES

“The PRA is a strongly worded mandate for broad disclosure of public records.” *Neigh. All. of Spokane County v. Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011). The PRA “stands for the proposition that, ‘full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.’” *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (*PAWS II*) (quoting former RCW 42.17.010(11) (1975)). And when evaluating a claim within the framework of the PRA, a court must “take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550(3).

RCW 42.56.070(1) directs government agencies to disclose public records upon request unless a specific exemption in the PRA applies or some other statute applies that exempts or prohibits disclosure of specific information or records. *Ameriquist Mortg. Co. v. Office of Att’y Gen. of Wash.*, 177 Wn.2d 467, 485-86, 300 P.3d 799 (2013). Consistent with the PRA’s purpose, RCW 42.56.030 expressly requires that the PRA be “liberally construed and its exemptions narrowly construed . . . to assure that the public interest will be fully protected.”

Agency actions under the PRA are reviewed de novo. *Neigh. All.*, 172 Wn.2d at 715 (citing RCW 42.56.550(3)). A PRA case may be decided based on affidavits alone. *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 153-54, 240 P.3d 1149 (2010).

## II. THE COUNTY'S RESPONSE

Cortland argues that the trial court erred because it failed to make an explicit finding of fact regarding which entity responded to his PRA request. He contends that the evidence shows that the Lewis County Superior Court was the only entity that responded to his request. And because he received a response from only the superior court, he argues that he received no response at all given that the superior court is not an agency within the scope of the PRA. Thus, he argues that the County violated its duty to respond under RCW 42.56.520.

We disagree with Cortland and hold that the County responded to Cortland's request as required under RCW 42.56.520 by denying the request and directing him to resubmit his request to the superior court, which was the entity that held the records he was requesting. The County had no further duty to provide records beyond its denial of the request because the request was addressed to an entity that no longer existed and whose functions had been entirely subsumed by the superior court.

RCW 42.56.520(1) provides that upon receiving a request, an agency must respond within five days by either providing records, denying the request, or acknowledging the request and providing an estimate for the time it will take to respond. *Rufin v. City of Seattle*, 199 Wn. App. 348, 359, 398 P.3d 1237 (2017), *review denied*, 189 Wn.2d 1034 (2018). Failure to so respond within five days of receiving a request violates the PRA. *Id.*

The county clerk informed Cortland on August 3, one day after he submitted his request, that “[a]lthough the Law Library is located near the Clerk’s Office, it isn’t the Clerk’s responsibility. Please contact Susie Parker, Superior Court Administrator . . . for assistance with your request.” CP at 5. Thus, the County promptly responded under RCW 42.56.520(1)(e) by

denying Cortland's request, explaining that he submitted his request to the wrong entity, and directing him to the proper individual who would address his request and who eventually did provide complete and timely responses.

“The [PRA] ‘does not require . . . an agency to go outside its own records and resources to try to identify or locate the record requested.’” *Koenig v. Pierce County*, 151 Wn. App. 221, 232-33, 211 P.3d 423 (2009) (second alteration in original) (quoting *Limstrom v. Ladenburg*, 136 Wn.2d 595, 604 n.3, 963 P.2d 869 (1998) (plurality opinion)). A public record must also be “‘prepared, owned, used, or retained’” by an agency in order to compel disclosure of the record under the PRA. *Nissen v. Pierce County*, 183 Wn.2d 863, 879, 357 P.3d 45 (2015) (quoting RCW 42.56.010(3)).

Here, nearly all of Cortland's requests were for records that only the superior court possessed because either the request sought documents pertaining to the law library's administration after the board disbanded or the request specifically sought information related to the court's decision to take over the board. The superior court also appears to have maintained the records that predate the board's dissolution. Thus, to produce documents in response to Cortland's request, the County would have been required to go outside its own records and obtain documents “‘prepared, owned, used, or retained’” by only the superior court. RCW 42.56.010(3). And as Cortland correctly notes throughout his brief, the superior court is not an agency within the PRA. Rather it is “unquestionably part of the judiciary, which is not subject to the [PRA].” Br. of Appellant at 11 (citing *Spokane & E. Lawyer v. Tompkins*, 136 Wn. App. 616, 622, 150 P.3d 158 (2007)).

Cortland's PRA requests were all directed to "the Lewis County Law Library Board" and not to the County. But the board ceased functioning in 2010, as Cortland was well aware given his earlier PRA request from December 2015. Cortland fails to explain why the County was required to produce documents when the superior court was administering the law library, especially given that his requests sought information specifically pertaining to the board's dissolution and the court's administration of the law library following the dissolution. Cortland also provides no explanation regarding why the documents must be produced by an agency under the PRA, as opposed to a judicial entity pursuant to GR 31.1, beyond his own designation of the request under the PRA.<sup>1</sup>

When the County denied Cortland's request and directed Cortland to resubmit his request to the superior court, it acted in accord with the spirit of the PRA and helped ensure that Cortland had full access to the records he sought. *See PAWS II*, 125 Wn.2d at 251. Cortland does not challenge the trial court's finding that he received complete and timely responses to all of his requests, nor does he assert that Lewis County possessed additional responsive records that he was denied because he was forced to redirect his request to the superior court. Cortland's only contention is that the complete and timely response he received was not provided by the correct agency. The PRA does not appear to provide a remedy under such circumstances. *See RCW 42.56.550(1)*.

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<sup>1</sup> GR 31.1 expressly precludes imposition of any attorney fees, costs, or civil penalties from being awarded under the rule, unlike the PRA that mandates a penalty for an agency's denial of certain rights under the Act. *Compare* GR 31.1(e) *with* RCW 42.56.550(4).

Accordingly, we hold that the County did not have a duty to produce records and satisfied its obligations under the PRA when it denied Cortland's request and directed him to submit his request to the entity that succeeded the board and to which his specific requests pertained.

### III. ADEQUACY OF THE SEARCH

Cortland also claims that the search for records conducted by the superior court was per se inadequate because only the County could have conducted an adequate search. He further contends that the County did not meet its burden of establishing that it conducted an adequate search "beyond material doubt," as required under *Neighborhood Alliance*, 172 Wn.2d at 721, because the County did not present any evidence that its search was adequate. Br. of Appellant at 21. We disagree.

The PRA requests at issue were addressed to a nonexistent law library board that had been taken over by the superior court and sought records pertaining to the board's dissolution, as well as to the law library's administration following dissolution. Thus, there is no evidence that the County had, or should have had, responsive records and "there is 'no agency action to review under the Act' where the agency did not deny the requestor an opportunity to inspect or copy a public record, because the public record he sought 'did not exist.'" *Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 740, 218 P.3d 196 (2009) (quoting *Sperr v. City of Spokane*, 123 Wn. App. 132, 137, 96 P.3d 1012 (2004)). In addition, Lewis County had no duty to search beyond its own records when responding to a PRA request, and therefore had no duty to obtain any responsive documents held by the superior court. See *Koenig*, 151 Wn. App. at 232-33.

Cortland relies on *Neighborhood Alliance* to support his assertion that the agency has the burden of establishing the adequacy of its search and that the County has failed to satisfy this

burden because there is no evidence that it conducted an adequate search. But Cortland fails to point to any evidence that would indicate the County possessed documents responsive to his request, which distinguishes this case from *Neighborhood Alliance*. 172 Wn.2d at 722-23.

In *Neighborhood Alliance*, our Supreme Court imposed a duty on agencies to conduct a reasonable search. *Id.* at 720-21. Whether an agency's search is reasonable will "depend on the facts of each case," but the search must be "reasonably calculated to uncover all relevant documents." *Id.* at 720. There was at least some basis for the court to assume, in *Neighborhood Alliance*, that the record existed and would have been discovered by the agency if only the agency had engaged in a search "reasonably calculated" to uncover the document. *Id.* Spokane County's Building and Planning Department was suspected of unfair hiring practices and a seating chart that substantiated the suspicion was anonymously submitted to the Neighborhood Alliance, which then submitted a PRA request to the county. *Id.* at 709-10. The computer from which the seating chart was printed was replaced shortly after a newspaper article questioned the propriety of the Building and Planning Department's decision to hire the commissioner's son. *Id.* at 711 n.2.

In response to Spokane County's claim that it did not have Neighborhood Alliance's requested record, our Supreme Court held that "the focus of the inquiry is not whether responsive documents do in fact exist, but whether the search itself was adequate." *Id.* at 719-20. Because the county searched only the new computer and did not provide any explanation regarding why it neglected to search the old computer or any other places likely to contain the record, the court held that the county's search was inadequate. *Id.* at 722-23. Thus, "[w]hen an agency denies a public records request on the grounds that no responsive records exist, its response should show at least

some evidence that it sincerely attempted to be helpful.” *Fisher Broad.-Seattle TV LLC v. City of Seattle*, 180 Wn.2d 515, 522, 326 P.3d 688 (2014) (citing *Neigh. All.*, 172 Wn.2d at 722).

Under the circumstances in this case, however, it was reasonable for the County to conclude that it held no responsive documents given that Cortland’s PRA requests specifically sought information only the superior court possessed. There is nothing in the record to suggest that the County withheld responsive documents because it neglected to conduct a sufficiently thorough search, as was the case in *Neighborhood Alliance*. 172 Wn.2d at 722-23. The County’s response to Cortland’s request is in accord with the express mandate of the PRA, which calls “for broad disclosure of public records.” *Id.* at 714. When the County directed Cortland to resubmit his request to the entity most likely to uncover responsive documents and that did provide Cortland with complete and timely responses, the County preserved the Act’s underlying purpose. Cortland’s unsupported assertion that the County did not conduct an adequate search, in light of his failure to even suggest that he received anything less than a complete and timely response, contravenes the spirit of the PRA and fails on the merits. Accordingly, we hold that the trial court did not err.

#### IV. NO PRA CAUSE OF ACTION

Cortland fails to demonstrate that he has a cognizable claim under the PRA because he was not denied the right to inspect or copy any public records. This is so regardless of which agency responded to his request. RCW 42.56.550 provides a private right of action by which requesters may challenge violations of the Act. *Belenski v. Jefferson County*, 186 Wn.2d 452, 457, 378 P.3d 176 (2016). This statute provides in pertinent part that

[u]pon 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 plain meaning of RCW 42.56.550(1) demonstrates that Cortland had no viable basis to sue the County under the facts of this case. “Statutory interpretation starts with the plain meaning of the language; the plain meaning controls if it is unambiguous.” *Nissen*, 183 Wn.2d at 881. The plain meaning of RCW 42.56.550(1) is unambiguous; a cause of action exists only where an individual has been denied the right to copy and inspect records under the PRA.

But Cortland does not argue that he was denied a right to copy and inspect records after he was directed to submit his requests to the superior court or that the documents produced by the superior court were anything less than completely responsive. He argues only that the County violated the PRA because a different government agency responded and produced all of the records that he requested.

Moreover, the legislature has specifically directed courts, when reviewing agency actions under the PRA, to bear in mind “the policy of this chapter that free and open examination of public records is in the public interest.” RCW 42.56.550(3). Cortland had access to all the records he sought and makes no claim otherwise beyond the fact that the responsive documents came in under the wrong letterhead. There was no obstruction of his ability to freely and openly examine public records.

In addition, Cortland's argument that the superior court had no authority to respond to his request, thereby rendering the response it did provide void, is not supported by the authority he cites. Cortland relies on *City of Federal Way v. Koenig*, 167 Wn.2d 341, 346, 217 P.3d 1172 (2009), and *Spokane & Eastern Lawyer*, 136 Wn. App. at 622, to argue that because the judiciary is not subject to the PRA, it would be a violation of the doctrine of stare decisis to hold that the superior court is permitted to respond to his request. But these cases do not stand for the proposition that a judicial entity is forbidden from, or has no authority to, produce records in response to a request where it elects to do so. *See, e.g., City of Federal Way*, 167 Wn.2d at 346; *see also Spokane & E. Lawyer*, 136 Wn. App. at 622. Thus, they do not assist Cortland.

Because Cortland makes no argument that he was denied a requested record here, he has no cause of action. *See Hobbs v. State*, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014).

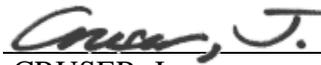
#### CONCLUSION

We hold that the County owed no duty to produce records in response to a PRA request addressed to a nonexistent entity that had been taken over by a judicial administrative entity. Given the nature of Cortland's requests, the County did not have a duty to search beyond its own records to respond to Cortland's requests, and therefore it was reasonable for the County to conclude that it did not possess responsive records. In addition, Cortland does not challenge the trial court's

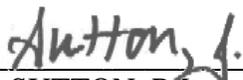
No. 52066-4-II

finding that he received complete and timely responses to all of his requests from the superior court, and so he has no cause of action under the PRA. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
CRUSER, J.

We concur:

  
\_\_\_\_\_  
SUTTON, P.J.

  
\_\_\_\_\_  
GLASGOW, J.

**CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE**

**February 28, 2020 - 3:01 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 52987-4  
**Appellate Court Case Title:** Peter J. McDaniels, Appellant v. Department of Corrections, Respondent  
**Superior Court Case Number:** 18-2-02634-0

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