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Court of Appeals
Division II
State of Washington
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NO. 53289-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

BRIAN GREEN, Respondent

v.

PIERCE COUNTY, a municipal corporation, Petitioner

PIERCE COUNTY'S ANSWER TO PIERCE COUNTY CORRECTIONS GUILD'S AMICUS CURIAE BRIEF

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I. INTRODUCTION

Pierce County Corrections Guild ("Guild") files an amicus curiae brief supporting Pierce County's appeal and joining it in asking this Court to "reverse the Thurston County Superior Court's ruling that Green is a member of the news media and find that Green has not made a sufficient showing to qualify as a member of the news media under RCW 5.68.010," as well hold in the alternative the trial court erred by "denying the County's ability to engage in further discovery ...." Guild Br. 19-20. As to the latter issue, however, the Guild misunderstands the County's position when it asserts that the "Guild presents this [discovery issue] only as an alternative argument and does not join in Pierce County's *concession* that discovery *is necessary*." *Id.* at 15 (emphasis added).

To ensure that the purpose of its appellate discovery argument is not misunderstood by the Court as well, the County out of an abundance of caution provides the following Answer limited to clarifying the nature of its *alternative* ground for relief.[1]

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[1] Though Green's Answer to Amicus Guild's brief raises no new issue not previously addressed by the appellate briefing, it should be noted that for the first time and without any cited factual basis Green now speculates that the "reason for the Washington Legislature making it a mandatory duty for agencies to produce the documents to the news media is for the news media to *then disseminate it to the public*." Green Answer to Guild Amicus Br. 1, 4 (emphasis added). This baseless statement is of course absurd and directly contrary to the clear record that the statute's purpose "is all about officer safety," Senate Bill Report, E2SHB 1317, 61st Legislature, 2010 Reg. Sess; CP 288-291; AB 3-5, and that the legislature knew public dissemination of such photographs and telephone

II. ANALYSIS

In its Opening Brief the County listed as its first "Assignment of Error" the trial court's order holding that the County was liable under the PRA for having enforced RCW 42.56.250(8)'s protection of law enforcement worker photographs and birthdates. *See* AB 2. The relief the County requested for that error was to have "that Order … reversed and this suit *dismissed*." *Id*. (emphasis added). *See also id*. at 50 (requesting the Court "*dismiss with prejudice* the instant PRA suit that improperly seeks a de facto judicial repeal of that statute.")(emphasis added). The County's second "Assignment of Error" concerned the trial court having abused its discretion by "denying the County's Motion to Compel Discovery." *Id*. As to that second issue, the County explained "the denial of meaningful discovery … created *yet further grounds for reversal* of that order." AB 50. The County however did not argue, as it had concerning the first assignment of

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numbers "endanger individuals and families." *See* CP 290-91; *see also Wash. Pub. Employees Ass'n v. Wash. State Ctr. for Childhood Deafness*, 194 Wn.2d 484, 494, 450 P.3d 601 (2019) ("disclosing birth dates with corresponding employee names may allow PRA requesters or others to obtain residential addresses and to potentially access financial information, retirement accounts, health care records or other employee records.") The exception to the statutory protection clearly was not so law enforcement worker photographs and birthdates could be published and endanger police and their families anyway. Instead, the record is clear the Legislature created the "news media" exception because it was "easier for the newspaper industry to purchase records than for employees to defend requests in court systems," and because "after the Brame case" involving an officer's suicide after murdering his wife "newspaper staff was able to match up how criminal justice employees were treated" in domestic violence cases by using "specifically the name and date-of-birth that really are the two necessary identifiers for these databases." CP 290-91.

error, that denial of discovery alone warranted *dismissal* as well as reversal. Indeed, as the County later explained under the heading "DENIAL OF DISCOVERY *REMAINS REVERSABLE ERROR*": "*If* somehow the trial court's adoption of Green's unlimited definition of the 'news media' exception is affirmed, the denial of the County's Motion to Compel has been shown prejudicial to its ability to fully defend itself and thus was an abuse of discretion." Reply at 23, 25.

As shown above and by its extensive briefing, the County has not made and does not make a "concession that discovery is necessary" for this case to be dismissed with prejudice. The *alternative* argument that the trial court abused its discretion by denying discovery regarding Green's claim of being "news media" would become relevant only if somehow it was ruled that law enforcement agencies have the burden to prove the negative – i.e. that requestors seeking records protected under RCW 42.56.250(8) are *not* "news media" – and that the existing record somehow was insufficient to do so. However, it is not expected the Court will need to address this alternative issue since the County has demonstrated the merits of its

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first assignment of error by showing that holding the County liable for enforcing RCW 42.56.250(8) should be "reversed and this suit *dismissed*."

DATED this 27th day of February, 2020.

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CERTIFICATE OF SERVICE

On February 27, 2020, I hereby certify that I electronically filed the foregoing PIERCE COUNTY'S ANSWER TO PIERCE COUNTY CORRECTIONS GUILD'S AMICUS CURIAE BRIEF with the Clerk of the Court, with the Clerk of the Court, which will send notification of such filing to the following:

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Comments:

Pierce County's Answer to Pierce County Corrections Guild's Amicus Curiae Brief

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