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

BRIAN GREEN, Respondent

v.

PIERCE COUNTY, a municipal corporation, Petitioner

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**PIERCE COUNTY'S REPLY BRIEF**

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## I. INTRODUCTION

Respondent Brian Green asserts it is a “smear” to note he is a “prior inmate,” yet he concedes to the fact of both his “imprisonment” after being “arrested and charged” and that this imprisonment *is the reason* his Public Records Act (“PRA”) request sought *his own* correctional deputies’ photographs and birthdates. RB 3, 8-9, 37.<sup>1</sup> He also does not contest the fact: 1) he “intend[s] to ... convey[]” his correctional deputies’ photographs and phone numbers “to a broad segment of the public,” CP 107; 2) such disclosure endangers these public servants and their families, AB 3-5; and 3) it was because of *such dangers* RCW 42.56.250(8) was enacted to prevent *such requestors* from obtaining *such records*. *Id.*

As to the law, Green does not dispute that those photographs and birthdates of criminal justice personnel are protected by RCW 42.56.250(8) unless the “news media” exception to that protection is met. *See* RB 7-8, 41; *see also Wash. Pub. Employees Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss*, 194 Wn.2d 484, 503, 450 P.3d 601 (2019) (“DSSH correctly regarded RCW 42.56.250[8] as applicable” to “employees working at the” Juvenile Rehabilitation Administration which served

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<sup>1</sup> Ignoring that his status as a “prior inmate” *is relevant* both to his retaliatory – rather than “bona fide” – purpose, as well as to his being the type of requestor the Legislature was most concerned about obtaining such records, AB 8, 42-45; CP 302, Green oddly claims his status is irrelevant instead as to RCW 42.56.250(8)’s exclusion of “in ... custody” requestors from being “news media.” RB 9. However, the County’s appeal does *not argue* that exception as one of the *many* reasons he is not “news media.” *See* AB 19-24.

“high-risk youth who are committed to ... custody by county juvenile courts”). Likewise, despite the County’s extensive briefing, he does not show that *at the time of presenting* his PRA request and before filing suit he ever made an affirmative showing to the County that *he* met the statutory exception. AB 2 (“Issue” 1), 7-10 (“Statement of Facts”), 19-22 & 34-37 (“Argument”).<sup>2</sup> Indeed, he ignores precedent holding such failure of proof *bars such suits* since the conclusion a PRA request comes within an exemption does not become retroactively invalid if circumstances justifying an exception are disclosed *later in litigation*. See AB 19-22, 34-38.

Finally, Green does not dispute that his interpretation of RCW 42.56-.250(8)’s exception would: 1) *sub silentio* repeal that statute; 2) eviscerate its protection of criminal justice personnel by deeming *every requestor with a social media account – i.e.* 80% of the population – “news media;” 3) give widespread access to statutorily “protected” personnel records; and 4) also unworkably extend to everyone with a social media account RCW 5.68.010’s statutory shield against Court compelled disclosure. See AB 9 n. 9, 29, 38; RB 12-13, 17. It is thus undisputed his argument would make

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<sup>2</sup> The closest Green comes even to acknowledging the issue is his “counterstatement[’s]” erroneous assertion that prior to suit his correspondence supposedly “explained that he believed *he* was news media because he had a YouTube Channel called Libertys Champion and he provided a brief description of it.” RB 4 (emphasis added). In fact, as the County earlier documented, his correspondence is *of record* and confirms he made neither such a claim about himself nor the required showing. See AB 7-10, 20-22, 36-37.

protection of such records and compelled disclosure of certain needed evidence the “exception,” while making publication of such protected records and disregard of disclosure the “rule.”

## II. ARGUMENT

### A. REVIEW IS DE NOVO AND GREEN HAS BURDEN OF PROOF

Green repeatedly refers to the trial court’s supposed “findings of fact,” *see e.g.* RB 5-6, 11, 28-30, 32, and argues “[u]nchallenged findings of fact are verities on appeal.” RB 7. However, “[b]ecause this case was decided on summary judgment, *any findings of fact are superfluous and subject to the de novo standard of review.*” *See Thongchoom v. Graco Children's Products, Inc.*, 117 Wn. App. 299, 309, 71 P.3d 214 (2003) (citing *Hill v. Cox*, 110 Wn.App. 394, 403, 41 P.3d 495, *review denied*, 147 Wn.2d 1024 (2002)(emphasis added). *See also RCW 42.56.550(3)*(“*Judicial review of all agency actions taken under RCW 42.56.030 through 42.56.520 shall be de novo.*”); *Sherman v. Kissinger*, 146 Wn.App. 855, 864 n. 4, 195 P.3d 539 (2008)(“Because our review of summary judgment is de novo, the court's findings of fact and conclusions of law are superfluous and are not considered on appeal.”)(citing *Concerned Coupeville Citizens v. Coupeville*, 62 Wn.App. 408, 413, 814 P.2d 243 (1991).

Similarly, Green also erroneously asserts it “is Pierce County’s burden to prove” he “is *not* news media” and falls outside the *exception* to RCW

42.56.250(8)'s protections. RB 41-42 (emphasis added). In so arguing, he ignores cited authority holding where – as here – it is undisputed that records are otherwise statutorily protected, the “burden *shifts* to the party *seeking disclosure* to establish” that an exception to the rule applies. *See Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington*, 177 Wn.2d 467, 487, 300 P.3d 799 (2013)(citing *Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 567–68, 618 P.2d 76 (1980)) (emphasis added); *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 433, 327 P.3d 600 (2013), *as amended on denial of reh'g* (2014) (same). Further, RCW 42.56.250(8)'s exception is available only to “news media, *as defined in RCW 5.68.010(5)*” (emphasis added), and the “burden of showing that [RCW 5.68.010's] privilege applies *in any given situation* rests *entirely* upon the entity asserting the privilege.”<sup>3</sup> *See Republic of Kazakhstan v. Does 1-100*, 192 Wn.App. 773, 781, 368 P.3d 524 (2016) (citing *Guillen*

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<sup>3</sup> Green argues he has no burden to prove he meets RCW 5.68.010(5)(b)'s definition of “news media” because he “is not asserting the media shield statute as a testimonial privilege” but asserts it “in order for Appellant Pierce County to produce the documents to him.” RB 42. This ignores: 1) the above established rule that it is requestors' burden to prove they meet *an exception* to a PRA exemption, *see supra.* at 4; 2) his own recognition that, in analyzing RCW 5.68.010(5) as an exception to RCW 42.56.250(8), “the Court must be mindful of the Legislature's intent in *both* provisions;” RB 13 (emphasis added); 3) the Legislature is presumed to have known the burden of proof for evidentiary privileges when it incorporated it into the PRA, *see e.g. Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 811, 123 P.3d 88 (2005)(“We presume that the legislature knows the existing state of the case law in the areas in which it legislates”)(citing *Price v. Kitsap Transit*, 125 Wn.2d 456, 463, 886 P.2d 556 (1994)), and 4) there cannot be *two* bodies of law reflecting *two* rules for interpreting the *same* RCW 5.68.010(5).

*v. Pierce Cnty*, 144 Wn.2d 696, 716, 31 P.3d 628 (2001), *rev'd in part on other grounds*, 537 U.S. 129 (2003)(emphasis added).

Because he seeks records otherwise protected by RCW 42.56.250(8) by claiming he allegedly meets its exception for “news media,” Green bears the burden of establishing that this statutory exception applies to him.<sup>4</sup>

B. “NEWS MEDIA” EXCEPTION IS TO BE STRICTLY CONSTRUED

Green acknowledges “the cardinal rule in statutory interpretation is [] ‘to discern and implement the legislature’s intent.’” RB 12 (*quoting Lowy v. PeaceHealth*, 174 Wn.2d 769, 280 P.3d 1078 (2012)).<sup>5</sup> Nevertheless, he does not dispute his “broad” interpretation of RCW 42.56.250(8)’s exception – that allows widespread access to the statutorily protected birthdates and official photographs of criminal justice personnel – makes next to meaningless the Legislature’s intent to protect those records and to prevent

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<sup>4</sup> Green oddly claims there was a “mutual agreement in the trial court ‘that the outcome of this case turns on whether Green qualifies as ‘news media’ under RCW 5.68.010(5)’” because the County did not object either to the trial court’s statement of the issues *in its decision* nor to its limitations on “What I want to hear from you” in oral argument. RB 7-8 (*citing* CP 420 and VRP 4). Apart from the failure to explain any significance this would have to the issues in this appeal, the trial court order’s description of the issues and how it wished to limit oral argument are irrelevant to this *de novo* review. *See e.g. Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994)(in *de novo* review the appellate court stands in the same position as the trial court); *State v. Sunich*, 76 Wn. App. 202, 884 P.2d 1 (1994)(*citing State v. Kuhn*, 74 Wn. App. 787, 790, 875 P.2d 1225 (1994)), *review denied*, 127 Wn.2d 1017, 904 P.2d 299 (1995))(review of a determination of a statute’s meaning is *de novo*).

<sup>5</sup> Without explanation, Green cites to RCW 42.56.030’s statement that in the “event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.” RB 13 (emphasis added). Apart from there being no conflict, since the controlling statute RCW 42.56.250(8) is a PRA “provision[.]” and not an “other act,” it cannot be in “conflict” with the PRA and thus unquestionably “govern[s]” this case.

putting those criminal justice officials and their families at risk. Likewise, he acknowledges that in analyzing the use of RCW 5.68.010(5)'s definition of "news media" as an exception to RCW 42.56.250(8)'s protection, "the Court must be mindful of the Legislature's intent in both provisions" because it raises "whether the Legislature intended for people such as Respondent" also to be shielded from subpoenas under RCW 5.68.010 because they have a social media account. RB 12-13. Thus, under his "broad" interpretation, the three categories of "news media" in RCW 5.68.010(5) either would: 1) result in *two separate* bodies of law reflecting *two rules* for constructing *the same* RCW 5.68.010(5) depending on its use as a PRA exemption or as an evidentiary privilege, or 2) apply his "broad" reading to *both uses* and undermine *as well* the Court's subpoena power by extending the Shield law to all social media accounts.

Instead, an analysis of *both* uses of RCW 5.68.010(5) reveals the *same* strict construction is appropriate. The use of "news media" as an exception to the PRA's general rule protecting records must be *strictly construed* because "exceptions to the general terms of the statute to which they are appended ... should be *strictly construed* with any doubt to be resolved *in favor of the general provisions*, rather than the exceptions." *See State v. Wright*, 84 Wn.2d 645, 652, 529 P.2d 453 (1974); *see also Wash. State Leg. v. Lowry*, 131 Wn.2d 309, 327, 931 P.2d 885 (1997). Otherwise,

“such a reading would require us to construe the statute's limited proviso exception so broadly that it swallows the general rule entirely.” *Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 264, 413 P.3d 549 (2018) (proposed statutory “reading is absurd and renders the entire statute practically meaningless; we therefore avoid it.”) So too: “Legislative grants of testimonial privilege conflict with the inherent power of the courts to compel the production of relevant evidence and are, therefore, *strictly construed.*” See *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 717, 985 P.2d 262 (1999), as amended (Sept. 8, 1999)(citing *State v. Latta*, 92 Wn.2d 812, 819, 601 P.2d 520 (1979)(emphasis added); *Phipps v. Sasser*, 74 Wn.2d 439, 444, 445 P.2d 624 (1968); *Cook v. King County*, 9 Wn. App. 50, 52, 510 P.2d 659 (1973)). Thus “because the journalist's privilege, or any other privilege for that matter, limits the testimony that might be obtained in a court of law or similar proceedings, the privilege should be narrowly interpreted.” Jason A. Martin & Anthony L. Fargo, *Rebooting Shield Laws: Updating Journalist's Privilege to Reflect the Realities of Digital Newsgathering*, 24 U. Fla. J.L. & Pub. Pol'y 47, 66 (2013).

Green nowhere explains how the Legislature could have intended his absurd reading that makes RCW 42.56.250(8)'s protections for these criminal justice personnel records and the availability of subpoena power *an*

*exception* rather than *the rule*. Further, as shown below, the rationales offered to support his overbroad readings are similarly invalid.

1. RCW 5.68.010(5)'s Use of the Words "Any" and "Or" Does Not Place Social Media Account into "News Media" Exception

Contrary to the above precedent, Green argues the "Legislature intended a broad meaning of the word [sic] news media" because it "used the word 'any' six times in the definition of [the three categories of] news media in RCW 5.68.010(5) ...." RB 14-18. Though "any" is an indisputably broad word, it is merely a modifier that has no meaning apart from the word it modifies. Thus, in and of itself, the word "any" is not a description of "anything" because the word "any" is constrained by the specific word it modifies. In the above statute, the term "any" merely modifies the list of entities that can be deemed "news media." *See* RCW 5.68.010(5). The relevant question therefore instead is whether Green falls within "any" of the types of entities the Legislature deemed would be "news media" under RCW 5.68.010(5). Indeed, though Green himself six times cites the interpretive canon *noscitur a sociis*, *see* RB 16, 24, he ignores that its proper application is an additional ground for rejecting his argument.

*Noscitur a sociis* is the principle that "a single word in a statute should not be read in isolation," and thus the "meaning of words may be indicated or controlled by those with which they are associated." *In re Marriage of Tahat*, 182 Wn.App. 655, 671, 334 P.3d 1131 (2014). This is because the

"coupling of words denotes an intention that *they should be understood in the same general sense.*" See *In re Marriage of McLean*, 132 Wn.2d 301, 316, 937 P.2d 602 (1997) (emphasis added). Further, where there are "specific words following general ones" – such as here where the list of specific types of qualifying "news media" follow the general term "any" – the closely related maxim of *ejusdem generis* "restricts application of the general term to things that are similar to those enumerated." 2A Singer & Singer, *Statutes and Statutory Construction*, § 47.17 at 362-70 (7th ed. 2007)(emphasis added). Otherwise all the words in the statute would not be given effect because, by giving general words "their full and natural meaning, they would include the objects designated by the specific words, making the latter superfluous." See *id.*, § 47.17

For this reason, our Supreme Court rejected a similar claim that the "legislature intended" language listing "'any other fee or charge of whatever nature or description' to be understood in an unrestricted sense," because otherwise it "would have no need to specifically mention 'franchise fee'" as well. *Burns v. City of Seattle*, 161 Wn.2d 129, 150, 164 P.3d 475 (2007). See also e.g. *In re Estate of Jones*, 152 Wn.2d 1, 11, 93 P.3d 147 (2004)(because "when general terms are in a sequence with specific terms, the general term is restricted to items similar to the specific terms," a statutory power to remove a representative "for *any* other cause" applied

“only if the conduct is *similar to the other grounds listed in the statute*”) (emphasis added); *Matter of Estate of Rathbone*, 190 Wn.2d 332, 343, 412 P.3d 1283 (2018)(language referencing “any other cause or reason which to the court appears necessary’ is not a catchall clause giving the court carte blanche”)(emphasis added). Accordingly, unless Green qualifies as one of the *three specific categories* of “news media” listed in the definition, the general modifier “any” does nothing to fit him into one of those specific categories of “news media” that meets the statutory exception.

Green similarly asserts that because the statute used the word “or” in listing the types of entities that are “news media,” it somehow was intended to “create alternatives to create a *very broad definition* of news media.” RB 18-19 (emphasis added). No precedent, canon of statutory construction, rule of grammar or logical rationale is cited to support this claim. Indeed, though the word “or” certainly acknowledges the existence of alternatives, the face of the statute shows those alternatives are *limited to the finite list* given in RCW 5.68.010(5). Thus, far from showing an intent “to create a very broad definition of news media,” in the context of the purpose and language of the statute, the word “or” reflects the intent to *limit* the definition of “news media” to the specific categories it lists.

## 2. No Precedent Interprets “News Media” Exception Broadly

Green next argues *Republic of Kazakhstan* “construed RCW 5.68.010-

(1)(a) very broadly and rejected the request to construe it narrowly.” RB 19-20. However, “RCW 5.68.010(1)(a)” is the provision addressing *compelled disclosure* of the *identity* of a confidential “source” of information. See 192 Wn. App. at 786. It is not the provision at issue which instead is the *significantly different* RCW 5.68.010(5)(a)-(c) that lists qualifying “news media” entities that RCW 42.56.250(8) adopted in order to define its exception. Because *Kazakhstan* neither interpreted nor applied RCW 5.68.010(5)(a)-(c)’s definition of “news media,” it offers no support for a broad interpretation of that separate provision – much less its application as RCW 42.56.250(8)’s exception.

### 3. First Amendment Does Not Require A Broad Exception

Though Green has pursued no claim under the First Amendment, *see* CP 3, he lastly argues that if the “news media” exception to RCW 42.56-.250(8) is not given his broad interpretation it “would infringe upon the First Amendment’s protections of the Freedom of the Press.” RB 20-23. Without citing any supporting precedent, he more specifically argues the First Amendment supposedly “has applied to all who have made mass communications” and therefore any narrower statutory definition of “news media” than including all social media accounts somehow would “remove protections guaranteed by the First Amendment.” RB 23. No authority has been cited that holds all social media accounts are “press” with special

access to records that are unavailable to everyone else.

In any case, as a matter of law the requirements necessary to claim the “news media” exception under RCW 42.56.250(8) simply *do not* “remove protections guaranteed by the First Amendment.” *Even as to entities* which legitimately constitute “news media” under the statute, “the First Amendment *does not guarantee* the press a constitutional right of special access to information not available to the public generally” nor “a testimonial privilege that other citizens do not enjoy.” *See Branzburg v. Hayes*, 408 U.S. 665, 684, 690 (1972)(emphasis added). *See e.g. also Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978)(media has no “First Amendment right to government information” because “[t]here is no constitutional right to have access to particular government information”); *Univ. of Pennsylvania v. E.E.O.C.*, 493 U.S. 182, 201 (1990)(no First Amendment privilege from producing subpoenaed records because it “does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability.”)(quoting *Branzburg, id.* at 682); *State v. Rinaldo*, 102 Wn.2d 749, 752, 689 P.2d 392 (1984)(federal courts have found no absolute First Amendment privilege for reporters); *King Cty. Dep't of Adult & Juvenile Det. v. Parmelee*, 162 Wn.App. 337, 358, 254 P.3d 927 (2011)(“no basis” to claim “the First Amendment compels .... governments—to supply information.”)(quoting *KQED, Inc., id.*).

### C. GREEN MISAPPLIES RCW 42.56.250(8)'s NARROW EXCEPTION

As the County previously noted, AB 20-21, the record shows Green at the time of his PRA request claimed *only* that the “*Libertys Champion*” social media account met “the definition of RCW 5.68.010(5).” AB 21; CP 27. Nevertheless, the subsequent complaint names *only* “Brian Green” – not a social media account “*Libertys Champion*” -- as its *sole* Plaintiff. See CP 3 (Complaint).<sup>6</sup> As a matter of law Green cannot sue on the claim that a non-party met an exception to RCW 42.56.250(8)'s protection.<sup>7</sup> See e.g., *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn. 2d 107, 138, 744 P.2d 1032 (1987), amended, 109 Wn.2d 107 (1988) (“doctrine of standing prohibits a litigant from raising another's legal rights”)(citing *Allen v. Wright*, 468 U.S. 737, 750–51 (1984)); *Jevne v. Pass, LLC*, 3 Wn. App.2d 561, 567-68, 416 P.3d 1257 (2018)(Plaintiff had no standing to assert rights of third party unincorporated association).

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<sup>6</sup> The social media account could not be included as a plaintiff because no supposed claim on its behalf could be pursued since it is not a “juridical being” that can bring suit or be sued. See *Price, supra.* (“an entity ... must be a *juridical* being”)(emphasis added). See also *Roth v. Drainage Imp. Dist. No. 5 of Clark Co.*, 64 Wn.2d 586, 590, 392 P.2d 1012 (1964)(drainage district could not be sued in its individual capacity because it had no separate existence outside of the local county”); *Nolan v. Snohomish Co.*, 59 Wn.App. 876, 883, 802 P.2d 792 (1990), *rev. denied*, 116 Wn.2d 1020, 811 P.2d 219 (1991) (because “the county itself is the only legal entity capable of suing and being sued” so “a county council is not a legal entity separate and apart from the county itself”); *Foothills Dev. Co. v. Clark Cy. Bd. Of Cy. Comm'rs*, 46 Wn.App. 369, 377, 730 P.2d 1369 (1986) (board of county commissioners properly dismissed since it “is not a separate entity that has the capacity to be sued”); RCW 19.80.040 (“No person or persons carrying on, conducting, or transacting business under any trade name shall be entitled to maintain any suit in any of the courts of this state until such person or persons have properly completed the registration as provided in RCW 19.80.010”); AB 24-25, 32-33, 45-46.

<sup>7</sup> Though Green claims the County did not “challeng[e] standing in the trial court,” RB 34 n. 17, the record proves otherwise. See e.g. CP 43 (complaint asserts the affirmative defense: “Plaintiff lacks capacity to sue, either individually or in a representative capacity”); CP 425-26 (Trial Court noted “Defendant argues ... Liberty’s [sic] Champion *is not a party to this suit and did not make the public records request in question*” but that “Green made the request and is the Plaintiff”)(emphasis added).

Additionally, as shown below, even had *Green's suit* not already been barred by his failure at the time of his request even to claim – much less show – *he* met RCW 5.68.010(5)(b)'s “news media” definition, *see supra*. at 1-2; AB 2, 7-10, 19-22, 34-37 – he also fails to do so now on appeal. Specifically, as shown below: 1) the social media account at issue is not an “entity” as defined in RCW 5.68.010(5)(a) and therefore Green cannot be its “employee," "agent," or "independent contractor;” and 2) even a person employed by such an “entity” must be “engaged in *bona fide* news gathering” and seek the records at issue “while serving in that capacity” but - as a prior inmate seeking records of his correctional officers so as to maliciously disclose them – Green was not so engaged.<sup>8</sup>

1. Social Media Account is Not RCW 5.60.010(5)(a) News Entity

Green correctly notes that both parties agree “the statute cannot be read in isolation and the statutory canon of *noscitur a sociis* is applicable here.” RB 16. Nevertheless, he then not only reads the statute in isolation but fails to show how the rules of construction demonstrate he met the statutory exception at issue and ignores that they refute his interpretation and its absurd result. *Compare* RB 16, 24-25, 31 *with* AB 26-34.

a. No Showing Social Media Account is “Entity” Under Statute

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<sup>8</sup> Green does not alternatively claim, nor could he, that *he* himself was one of the “news media” *entities* listed in RCW 5.68.010(5)(a). *Compare* AB 38-42 *with* RB 34-37.

Green does not dispute that the social media account “Libertys Champion” must qualify as a “news media” *entity* for it to come within the RCW 5.68.010(5)(a) exception to RCW 42.56.250(8)’s protection. Instead, he adopts the position that “nothing” in the statute’s list of specific privileged entities “suggests or requires a specific *corporate* form” because the entities listed “may exist in many different forms – it may be a corporation or it may be run by an individual without corporate registration out of his or her basement.” RB 15 (emphasis added). However, because the social media account is *neither* a corporation *nor* an individual, this observation does nothing to show the account is the type of “entity” the statute requires. Since an “entity” must have “a *legal* identity *apart* from its members,” *see* Black’s Law Dictionary, 553 (7th Ed. 1999) (emphasis added), his assertion that “Green is Libertys Champion,” RB 34, is a tacit admission the account is *not* itself an “entity.” *See also* Price, *id.* (“an entity ... must be a *juridical* being”)(emphasis added).

Second, the goal in statutory interpretation is to effectuate the legislature's intent, *see Burns, supra.*, and it “will not interpret a statute in a manner that leads to an absurd result.” *Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 260 (2004). Nevertheless, it is uncontested Green’s interpretation of “entity” would absurdly allow the *very type of requestor* for whom the statute was intended to protect against, to obtain and use *the records it*

*specifically protected*, in the manner the statute *intended to prevent*. AB 1-8. It also is uncontested Green's reading would *sub silentio* repeal the statute by eviscerating protection of criminal justice workers' photographs and birthdates by rendering nearly every requestor with a social media account – i.e. 80% of the population – into “news media.” AB 9 n.7.

Third, "remarks of [author], a prime sponsor and drafter of the bill, are appropriately considered to determine the purpose of revisions to the language of the proposed act." *In re Marriage of Kovacs*, 121 Wn.2d 795, 807-08, 854 P.2d 629 (1993). *See also Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976)("statement of one of the legislation's sponsors...deserves to be accorded substantial weight in interpreting the statute")(citing *National Woodwork Mfrs. Assn. v. NLRB*, 386 U.S. 612, 640 (1967), *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-395 (1951)). Yet, Green ignores the "primary author" of RCW 5.68-.010(5) explained its definition of "entity" only included "bloggers *to the extent* that they are *an entity*" because the Legislature needed a "workable definition so you wouldn't provide a privilege to virtually *anybody in the state who has a MySpace account*" and thus a person must "*incorporate yourself, then you're an entity ....*" Columbia Journalism Review, "A New Shields Law in Washington State," 5/4/2007, [https://archives.cjr.org/behind\\_the\\_news/a\\_new\\_shield\\_law\\_in\\_washington.php](https://archives.cjr.org/behind_the_news/a_new_shield_law_in_washington.php) (emphasis added).

Indeed, he further noted no legislator wanted "ordinary people in their pajamas to be able to claim journalistic" privileges. Susan Walsh, "What Legal Protections Do Reporters Have?" [www.knkx.org/post/unpacking-government-what-legal-protections-do-reporters-have](http://www.knkx.org/post/unpacking-government-what-legal-protections-do-reporters-have) (2017).

Finally, the meaning of a statute also is determined by "viewing the words of a particular provision in the context of ... related statutory provisions, and the statutory scheme as a whole." *Burns*, 161 W.2d at 140 (*citing Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). However, Green offers no analysis disputing that for law enforcement workers to protect their photographs and birthdates they must bring a separate action under RCW 42.56.540 by serving notice on the requestor.<sup>9</sup> See *Burt v. Washington State Dep't of Corr.*, 168 Wn.2d 828, 837, 231 P.3d 191 (2010)(inmate requestor "should have been joined as a party and given notice and an opportunity to respond in writing to the request for the injunction" by employees); WAC 44-14-04003(12) ("requestor has an interest in any legal action to prevent the disclosure of the records he or she requested," and "[i]f an injunctive action is filed, the

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<sup>9</sup> Instead, Green asserts this is "patently untrue" because the County "is involved currently in a lawsuit where the Pierce County Prosecuting Attorney's Association successfully served Respondent Brian Green under RCW 42.56.540 to seek court protection from a production of records." RB 40 n. 19 (emphasis added). However, his observation is meaningless because the PRA request at issue there and here were made *only* under Green's name and *not* by a social media account. CP 6-7; RB 44-45 ("Green made the Public Records Act request *with his individual and proper name*" and thus did "*not* make this Public Records Act request with a trade name ...." (emphasis added).

third party or agency should name the requestor as a party or, at a minimum, must inform the requestor of the action to allow the requestor to intervene.") If a requestor *could be* a mere social media account as claimed here, such a requestor could never be a joined party since legal existence is mandatory for service. *See discussion and citations supra. at 13 n. 6.*

Because the account is not *any* kind of "entity," it cannot be one of the limited types of entities listed in RCW 5.68.010(5)(a). *See Schroeder v. Meridian Imp. Club*, 36 Wn.2d 925, 930, 221 P.2d 544 (1950) ("unincorporated association" of individuals "is not ordinarily a legal entity distinct from its component individuals"); *see also discussion AB 22-23, 24-25.*

b. Account Not Shown in "Regular Business of News Gathering"

Green also does not dispute that application of the doctrines of *nosci-tur a sociis* and *esjusedem generis* to the language of RCW 5.68.010(5)(a) shows the specific entities listed in that statute must be in the "regular business of news gathering," *compare AB 28-31 with RB 30-31, 34, 37-38*, and that the social media account in question is *not* a "business." *See CP 121; see also Meresse v. Stelma*, 100 Wn. App. 857, 867, 999 P.2d 1267 (2000)(under those maxims "the meaning of items in a list is ascertained by 'refer[ing] to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope.")(quoting *Moore v. California State Bd. of Accountancy*, 2 Cal.4th 999, 831 P.2d 798, 805

(1992)). Nevertheless, he continues to claim the social media account somehow still *is* “in the ‘regular business of news gathering and disseminating news.’” RB 34.

He does so by ignoring the County’s contrary analysis of that language, *see* AB 28-31, and claiming it “would be absurd for the Washington Legislature to couple the terms ‘regular’ and ‘business’ to mean some sort of for-profit activity” because: 1) the social media account has non-paying subscribers; 2) Webster’s Dictionary states “business” can also mean “role, function”; and 3) two states’ shield laws use the word “livelihood” to define privileged reporters and journalists but Washington’s does not. RB 31, 34, 38. None of these assertions support his claim the term “business” as used in RCW 5.68.010(5) does not really mean “business.”

First, the number of non-paying subscribers to a social media account provides no linguistic or logical help in defining the meaning of “business.” Second, Webster’s *primary* definition of “business” instead is: “a *usually commercial or mercantile* activity engaged in *as a means of livelihood*: TRADE, LINE,” “a *commercial or sometimes an industrial* enterprise,” and “dealings or transactions *especially of an economic nature* ....” *See* <https://www.merriam-webster.com/dictionary/business>. A court does not construe a word to have a different meaning “when its primary meaning, in common usage, is not” the meaning being advocated. *See e.g.*

*Queen City Farms, Inc. v. Cent. Nat. Ins. Co. of Omaha*, 126 Wn.2d 50, 81, 882 P.2d 703 (1994), as amended (Sept. 29, 1994), as clarified on denial of reconsideration (Mar. 22, 1995) (*quoting Anderson & Middleton Lumber Co. v. Lumbermen's Mut. Cas. Co.*, 53 Wn.2d 404, 408-09, 333 P.2d 938 (1959)). If legislators intended to use business' *secondary* meaning of "role" or "function," they would have used one of those words instead.

Third, that drafters of two shield statutes from other states chose to use the word "livelihood" (to define protected "journalists" and "reporters"), does not indicate our state's shield statute's use of the word "business" (to define the *separate term* "news media ... entity") meant something different than its *primary* dictionary meaning. Indeed, *the first* synonym given by Webster's Thesaurus for "livelihood" *is* "business." See <https://www.merriam-webster.com/thesaurus/livelihood>. See also *Black's Law Dictionary*, 192 (7<sup>th</sup> Ed. 1999) (defining "business" as: "A *commercial enterprise* carried on *for profit*; a particular occupation or employment *habitually engaged in for livelihood or gain*") (emphasis added). The fact other shield statutes use a synonym for "business" *confirms* the County's interpretation here. It further shows that Shield Laws elsewhere also have – in the words of RCW 5.68.010(5)'s author—a narrow "workable definition so you wouldn't provide a privilege to virtually anybody in the state who has a MySpace account." Requiring those seeking such a powerful privilege to

be in in the “regular *business* of gathering and disseminating news” helps not just lessen its impact on the *judicial system*’s search for truth, but prevents its misuse by those – like Green – who would irresponsibly use the PRA to maliciously harm law enforcement workers and their families.

Thus, this social media account fails the “news media” exception not just because it is a non-entity, but also because it is not in the “regular *business* of news gathering and disseminating news or information.”

2. No Showing Green was “News Media” under RCW 5.68.010(5)(b)

a. Green not Entity’s Employee, Agent or Independent Contractor

Green does not acknowledge, much less refute, that – “[b]ecause no ‘entity’ under RCW 5.68.010(5)(a) is present” – he “was not an ‘employee,’ ‘agent,’ or ‘independent contractor’ of such an ‘entity.’” *Compare* AB 42-43 *with* RB 34-35. Indeed, his response that *he “is* Libertys Champion,” *id.*, confirms he is not – and could not be – *also* its employee, agent or independent contractor. For this reason alone, he is not “news media.”

b. No Showing PRA Request Was “Bona Fide News Gathering”<sup>10</sup>

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<sup>10</sup> Green claims it is a “new argument” to note he failed to show this PRA request as “bona fide news gathering” since he claims “[a]t the trial court, ... Pierce County argued” only that he “was not engaged in ‘bona fide newsgathering’ for ... requests that are not at issue at this lawsuit.” RB 35. Instead, the undisputed record shows that at the trial court the County expressly argued: “*The request at issue in this lawsuit and Green's request directed at defense counsel relate to his own personal matters, and both requests beg the question how any use of the requested information, and specifically publication of the requested information on his YouTube channel regarding the criminal justice workers working on the days of his incarceration ... , could relate to bona fide news gathering as required by RCW 5.68.010.*” See CP 302 n. 6 (emphasis added).

Green does not deny he used the PRA and court motions to retaliate against law enforcement personnel for his personal grievances both before and after the subject request,<sup>11</sup> or that *at the time of the subject request* he failed his burden to show he was *bona fide* news gathering. Indeed, he admits he “made his Public Records Act seeking [sic] documents regarding his [own alleged] unlawful imprisonment,” RB 37 (emphasis added), and does not dispute: 1) his request targeted *his* correctional officer’s protected photographs and birthdates; 2) he intends to disclose them to a wide range of the public; 3) doing so will endanger those law enforcement workers and their families; and 4) RCW 42.56.250 was enacted to prevent precisely such disclosures by just such requestors. Though he now states “[i]t is a *bona fide news story to report on unlawful arrests*,” RB 37 (emphasis added), he has never explained how targeting protected photographs and birthdates of *his correctional officers* (who *did not* arrest him) so they can be widely disseminated to their harm somehow constitutes “*bona fide news gathering*.” CP 302 n. 6.<sup>12</sup>

Green also neither attempts to define “*bona fide*” nor contests that it means: “1. Made in *good faith*; without fraud or deceit. 2. *Sincere*;

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<sup>11</sup> See e.g. AB 1 n. 1, 13 n. 13, 44 n. 24; 6/10/19, 7/3/19, 10/15/19, 11/14/19, 11/15/19, 12/11/19, 12/26/19, 1/7/20 Green COA Motions/Replies; 1/6/20 McDaniel Dec., ex. “A”; Nicholson Dec., ex. “A;” CP 443-45.

<sup>12</sup> In fact, the end credits of Green’s grievance filled social media postings confirm they are for “*entertainment/educational* uses only.” [www.youtube.com/watch?v=d1xDovJlgk0](https://www.youtube.com/watch?v=d1xDovJlgk0)

*genuine.*” *Black’s Law Dictionary, id.* (emphasis added). Thus he does not show his PRA request here was made in a *good faith, sincere and genuine* effort to *gather news* rather than to continue his pattern and practice of misusing the PRA to retaliate against law enforcement workers with whom he has contact. So too, he does not address caselaw holding that publishing self-aggrandizing or promotion materials, or distorted video stories involving his personal life does not rise to the level of *bona fide news gathering*. Compare AB 43-44 (and citations therein) with RB 35-37.

Thus, for this reason also, Green again fails to meet his burden to show *he* came within the exception/privilege of RCW 5.68.010(5)(b).

C. DENIAL OF DISCOVERY REMAINS REVERSABLE ERROR

Because the trial court adopted Greens’ universalist definition of “news media,” it held “additional discovery or development of the record is not necessary to resolve this matter.” CP 432, 435. Though Green argues discovery rulings are within the trial court’s discretion, RB 42, as a matter of law discretion is abused if it “relies on unsupported facts or applies the wrong legal standard,” or if the court adopts a view “that no reasonable person would take.” *See Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wn. 2d 647, 654, 71 P.3d 638 (2003)(quoting *State v. Lewis*, 115 Wn.2d 294, 298–99, 797 P.2d 1141 (1990)). Because, as shown above, the trial court relied on the wrong

legal standard for defining “news media,” the resulting denial of discovery on that issue was an abuse of discretion. Green cannot refuse discovery on whether he meets the definition of “news media” and later claim a burden of proof was not met – especially when it was *his* burden.

Further, it cannot be claimed “Green *is* Libertys Champion” and that such somehow shows he -- or it -- is “news media,” when he has *prevented the County from discovering* whether Green really owns that social media account. Further, if he does own the account and it generates revenue, Green cannot sue about its alleged rights until he has properly registered its trade name with the State. AB 45-47; RCW 19.80.040. Though he responds that the account “is not a business ... because it does not seek a profit,” RB 44, he cannot do so while also resisting discovery on the issue.

Finally, whether Green seeks the birthdate and photograph of his law enforcement workers for commercial purposes also is relevant to whether he is barred by RCW 42.56.070 from making that request, and thus discovery on that issue was appropriate. *See* CP 89, 107-15. Again, Green cannot both claim he does not intend such prohibited use and at the same time obstruct discovery testing that claim. RB 47-48. Conducting discovery to test the accuracy of assertions on relevant issues is the purpose of discovery and a right under the Civil Rules. *See City of Lakewood v. Koenig*, 160 Wn.App. 883, 890, 250 P.2d 113 (2011)(“we hold under

PRA, that an agency is entitled to obtain discovery under civil rules"). Green also cannot have obstructed discovery on the issue and now claim the County somehow "waived" it by not "investigating" it in some other unspecified way. RB 45-46. Finally, Green cannot claim the issue is a "brand new defense" when it was expressly asserted in the answer, CP 43, and argued in Response to Plaintiff's Opening Brief. *See* CP 314 n. 18.

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. *See e.g. Clarke v. State Attorney General's Office*, 133 Wn.App. 767, 777, 138 P.3d 144 (2006) (court that denies discovery "abuses its discretion when it bases its decision on unreasonable or untenable grounds")(quoting *Brand v. Dep't of Labor & Indus.*, 139 Wn.2d 659, 665, 989 P.2d 1111 (1999)).

### III. CONCLUSION

For the above reasons, Pierce County requests the trial court's decision be reversed and Green's complaint be dismissed with prejudice.

DATED this 19th day of February, 2020.

MARY E. ROBNETT  
Prosecuting Attorney  
s/ DANIEL R. HAMILTON  
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CERTIFICATE OF SERVICE

On February 19, 2020, I hereby certify that I electronically filed the foregoing PIERCE COUNTY'S REPLY 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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