

**FILED
Court of Appeals
Division II
State of Washington
2/24/2020 8:00 AM**

No. 53990-0

**In the Court of Appeals
of the State of Washington.
Division II**

**ARTHUR WEST,
appellant,**

Vs.

**OFFICE OF THE GOVERNOR
respondent.**

**Review of decisions entered by
the Honorable Judge Skinder of the
Thurston County Superior Court**

**APPELLANT'S
OPENING BRIEF**

Arthur West
120 State Ave. NE # 1497
Olympia, Washington, 98501

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III. SUMMARY OF ARGUMENT

This is a case involving public records of the Office of the Governor relating to emergency powers and homelessness.

Defendants have claimed that a search performed by “Deputy General Counsel for the Office of the Governor” was adequate, based largely upon the testimony of this selfsame Counsel, despite the fact that it did not reveal or produce 2 additional Emails to a known Email string . (See CP 129-130).

These 2 Emails were later produced to the plaintiff by the Attorney General in response to an identical request (See CP 141-144).

However, under the explicit terms of Article III of the State Constitution and RCW 43.10.040¹ and RCW 43.10.0672², only the Attorney General can act as counsel for the Governor.

¹See RCW 43.10.040, Representation of boards, commissions and agencies. The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county.

²See RCW 43.10.067 Employment of attorneys by others restricted. No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general, except where it is provided by law to be the duty of the judge of any court or the prosecuting attorney of any county to employ or appoint such persons... (Cited in Goldmark v. McKenna)

As such, any Declaration from an individual unlawfully exercising this office is suspect, and should have been stricken from this proceeding, especially since that individual failed to discover records possessed by and sent to him from the Solicitor General, who Mr. Wonhoff was supposed to be working for in the first place.

As the Supreme Court and the federal judiciary have recognized, in cases involving disclosure of public records the agency bears the burden of showing its search was adequate and that all places likely to contain responsive materials were searched.

To do so, the agency...

should establish that all places likely to contain responsive materials were searched. *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011), citing *Valencia-Lucena*, 180 F.3d at 325.

The defendants in this case cannot meet this burden because they, apparently, did not have a lawfully employed state official conduct a search of the only repository of records of advice lawfully provided to the Governor in conformity with Article III, section 21 of the Constitution of the State of Washington³.

As the Supreme Court underscored in the *Neighborhood*

³See Article III, section 21: Attorney General, Duties and Salary. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law..

Alliance decision...

...(A)gencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. Valencia-Lucena v. U.S. Coast Guard, 336 U.S. App. D.C. 386, 180 F.3d 321, 326 (1999). The search should not be limited to one or more places if there are additional sources for the information requested. Valencia-Lucena, 180 F.3d at 326.

Indeed,

“the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” Oglesby v. U.S. Dep’t of Army, 287 U.S. App. D.C. 126, 920 F.2d 57, 68 (1990).

The governor’s “Deputy General Counsel” and (former) records officer, not being lawfully employed under Article III, did not contact the Attorney General and Search the records of advice lawfully provided to the Governor to which he was a party to.

This was a place that was reasonably likely to contain records which would have been, and was, searched by lawfully employed counsel of the Attorney General’s office when they produced them to West.

As the federal Court ruled in Defenders of Wildlife

...(I)t would strain credulity to find that the Secretary's Office did not know that the Office of the Inspector General and the Solicitor's Office would be likely repositories of responsive

records. Thus, the Office of the Secretary should have referred plaintiffs' request to the Solicitor's Office and the Office of the Inspector General because those offices were likely to have additional responsive documents...In short, defendants' search was not sufficiently thorough because they failed to refer plaintiffs' request to the Office of Inspector General and the Solicitor's Office. *Defenders of Wildlife v. Secretary of Interior*, 314 F.Supp.2d 1 (2004)

The defendants in this present case should not be allowed to strain credulity by veiling nondisclosure of responsive records behind a “search” performed by an individual not lawfully authorized to act as counsel for a state officer, a search which also failed to conform with the authority of the Governor under Article III, section 5 that:

“The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices,...”

In addition, while the desire to conceal the actual status of Mr. Wonhoff is understandable the Court erred in failing to require the disclosure of this information as a necessary prerequisite to the identification and examination of the OOG's witness and a determination as to whether he was properly supervised as required by law.

The Court also erred in failing to strike the declarations of Mr. Wonhoff and in improperly conducting the Reasonable Search and Penalty analyses when it was impossible to establish whether the OOG's Star Witness was lawfully employed as general counsel to the Governor, a necessary consideration in weighing the credibility of his testimony, the adequacy of his supervision, and the reasonableness of any search he conducted.

IV. ASSIGNMENTS OF ERROR

- 1.** The Court erred in finding that the the Office of the Governor conducted a reasonable search when it, (ostensibly employing Mr. Wonhoff as General Counsel and Public Records Officer,) failed to reasonably search for or produce email from their lawful counsel, Solicitor General Noah Purcell, to ex officio "counsel" Taylor Wonhoff, which formed part of a known email string that was "used" by the agency in setting homelessness policy.....
- 2.** The Court erred in entering a protective Order that suppressed disclosure of the basic and material issue of whether Taylor "Tip Wonhoff, the OOG's General Counsel, Public Records Officer and Star Witness was lawfully employed as an Assistant Attorney General as required by the express terms of RCW 43.10.040 and RCW 43.10.67.....
- 3.** The Court erred in conducting the Yousoufian penalty and Reasonable Search analyses in the absence of material evidence as to the legal status and relation to the Office of the Attorney General of their Public Records Officer, General Counsel, and Star Witness, and in failing to recognize that the Attorney General is the Governor's counsel, not entirely separate from the Governor
- 4.** The Court erred in findings of fact 3, 5 and 6 that "It inadvertently

failed to search for records...” “That the Office did not have the march 4, 2016, email in its records at he time of the request” and that “The Office of the Governor also conducted an adequate search for all responsive records and did not locate this email.....

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Court err in finding that the the Office of the Governor conducted a reasonable search when it, (ostensibly employing Mr. Wonhoff as General Counsel and Public Records Officer,) failed to reasonably search for or produce email from their lawful counsel, Solicitor General Noah Purce, to ex officio “counsel” Taylor Wonhoff, which formed part of a known email string that was “used” by the agency in setting homelessness policy? Yes.....

2. Did the Court err in entering a protective Order that suppressed disclosure of the basic and material issue of whether Taylor “Tip Wonhoff, the OOG’s General Counsel, Public Records Officer and Star Witness was lawfully employed as an Assistant Attorney General as required by the express terms of RCW 43.10.040 and RCW 43.10.67? Yes.....

3. Did the Court err in conducting the Yousoufian penalty and Reasonable Search analyses in the absence of material evidence as to the legal status and relation to the Office of the Attorney General of their Public Records Officer, General Counsel, and Star Witness and in failing to recognize that the Attorney General is the Governor’s counsel, not entirely separate from the Governor ? Yes...

4. Did the Court err in findings of fact 3, 5 and 6⁴ that “It inadvertently failed to search for records...” “That the Office did not have the march 4, 2016, email in its records at he time of the request” and that “The Office of the Governor also conducted an adequate search for all responsive records and did not locate this email? Yes.....

V. STATEMENT OF THE CASE

⁴ Please see Appendix I for the text of the Findings set forth verbatim, incorporated herein by reference

On December 24, 2019, plaintiff submitted the first of several requests under the Public Records Act to the Office of the Governor. (CP at 5). The request sought the following records

1. Any requests for a declaration of emergency or the use of the governor's powers to address homelessness, 2015 to present.
2. Any responses thereto or communications involving such requests. (CP at 5)

On January 8th, 2019, the agency provided a small group of records and closed the request.(CP at 5)

On January 15 plaintiff West commenced this suit. (CP at 4-9)

On January 24, 2019 the Office of the Governor produced a large number of further responsive records. (CP at 129, section 3.3)

However, the defendants completely failed to produce relevant responsive records including a communication with the Solicitor General, either in response to the plaintiff's records request or in the discovery process. (CP at 129-30 , sections 3.3-3.7)

These records, which were sent by the Solicitor General to Mr. Wonhoff, the official at the Office of the Governor performing the PRA search, form part of the very same redacted email string that is the subject of in camera review in this case, an Email string

that was produced (in part) bearing the same subject notation; **“Governor’s Authority to Proclaim a State of Emergency”**. (CP at 141-144)

These additional records, which were discovered by a reasonable search conducted by the office of the Attorney General in response to a separate request to that office. were only obtained by plaintiff on the 25th of April. (CP at 141-144)

On February 8, 2019 the Court held a Status conference. (See Transcript of February 8, 2019)

On May 10, 2019 the Court held a scheduling hearing on the OOG’s Motion to Dismiss and West’s Motion to Amend. (See Transcript of May 10, 2019)

On June 21, 2019, the Court held a hearing on West’s Motion to compel and the OOG’s Motion for a Protective Order. (See Transcript of June 21, 2019, CP 337-338) An Order was entered over West’s objections barring discovery of whether Mr Wonhoff was lawfully employed as counsel for the Governor.

On June 28, 2019, a hearing on the merits was held. The Court found a violation in regard to the records produced January 24, but found the redacted records to be exempt, and the Solicitor

General Email to have not been reasonably obtainable by the OOG.

A penalty of \$16 was awarded (See Transcript of June 28, 2019)

On July 25 West filed a Declaration that stated:

Attached to this declaration is a true and correct copy of a July 23 letter from the office of the Attorney General. This correspondence establishes that to the extent Mr. Wonhoff acts as Deputy General Counsel to Governor Inslee, he does not do so lawfully in the capacity of an Assistant Attorney General as required by in Article III section 21 of the Constitution of the State of Washington, RCW 43.10.040 or RCW 43.10.067. Under these circumstances, it would appear that the Protective Order entered by the Court in this case has had the effect of suppressing disclosure of facts demonstrating unlawful conduct by a public official and a violation of State law. (CP at 339-341)

On July 26, 2019, the Court held a brief hearing on presentation of the Order of the 28th.(See Transcript of July 26, 2019, CP 350-359)

A timely notice of appeal was filed on August 13, 2019 (CP 349)

STANDARD OF REVIEW

Appellate review under the Public Records Act is de novo.

Discretionary determinations are reviewable for abuse of discretion. Substantial evidence governs factual determinations.

ORDERS ON APPEAL

Appellant seeks review of the Orders of the Court of June 21, 2019, (CP 337-338) and the final Order of the Court of July 16, (CP 350-359)

VI. ARGUMENT

1. The Court erred in finding that the the Office of the Governor conducted a reasonable search when it, (ostensibly employing Mr. Wonhoff as General Counsel and Public Records Officer,) failed to reasonably search for or produce email from their lawful counsel, Solicitor General Noah Purcell, to ex officio “counsel” Taylor Wonhoff, which formed part of a known email string that was “used” by the agency in setting homelessness policy.....

This is a case involving public records of the Office of the Governor relating to emergency powers and homelessness.

Defendants have claimed that a search performed by “Deputy General Counsel for the Office of the Governor” Taylor Wonhoff was adequate, based largely upon the testimony of this selfsame Counsel, despite the fact that the search did not reveal or produce 2 additional Emails to a known Email string . (CP at 141-144)

These 2 Emails were later produced to the plaintiff by the

Attorney General in response to an identical request (CP at 129-30 , sections 3.3-3.7).

However, under the explicit terms of Article III of the State Constitution and RCW 43.10.040⁵ and RCW 43.10.0672⁶, only the Attorney General can act as counsel for State officers.

As such, any declaration from an individual unlawfully exercising this office is suspect, and should have been stricken from this proceeding, especially since that individual failed to discover records possessed by and sent to him from the Solicitor General, who Mr. Wonhoff was supposed to be working for in the first place.

As the Supreme Court and the federal judiciary have recognized, in cases involving disclosure of public records the agency bears the burden of showing its search was adequate and that all places likely to contain responsive materials were searched.

⁵See RCW 43.10.040, Representation of boards, commissions and agencies. The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county.

⁶See RCW 43.10.067 Employment of attorneys by others restricted. No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general, except where it is provided by law to be the duty of the judge of any court or the prosecuting attorney of any county to employ or appoint such persons... (Cited in Goldmark v. McKenna)

To do so, the agency...

should establish that all places likely to contain responsive materials were searched. *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011), citing *Valencia-Lucena*, 180 F.3d at 325.

The defendants in this case cannot meet this burden because they, apparently, did not have a lawfully employed state official conduct a search of the only repository of records of advice lawfully provided to the Governor in conformity with Article III, section 21 of the Constitution of the State of Washington⁷.

As the Supreme Court underscored in the *Neighborhood Alliance* decision...

...(A)gencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. *Valencia-Lucena v. U.S. Coast Guard*, 336 U.S. App. D.C. 386, 180 F.3d 321, 326 (1999). The search should not be limited to one or more places if there are additional sources for the information requested. *Valencia-Lucena*, 180 F.3d at 326.

Indeed,

“the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby v. U.S. Dep’t of Army*, 287 U.S. App. D.C. 126, 920 F.2d 57, 68 (1990).

⁷See Article III, section 21: Attorney General, Duties and Salary. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law..

The governor's "Deputy General Counsel" and (former) records officer, not being lawfully employed under Article III, did not contact the Attorney General and Search the records of advice lawfully provided to the Governor to which he was a party to.

This was a place that was reasonably likely to contain records which would have been, and was, searched by lawfully employed counsel of the Attorney General's office when they produced them to West.

As the federal Court ruled in *Defenders of Wildlife*

...(I)t would strain credulity to find that the Secretary's Office did not know that the Office of the Inspector General and the Solicitor's Office would be likely repositories of responsive records. Thus, the Office of the Secretary should have referred plaintiffs' request to the Solicitor's Office and the Office of the Inspector General because those offices were likely to have additional responsive documents...In short, defendants' search was not sufficiently thorough because they failed to refer plaintiffs' request to the Office of Inspector General and the Solicitor's Office. *Defenders of Wildlife v. Secretary of Interior*, 314 F.Supp.2d 1 (2004)

The defendants in this present case should not be allowed to strain credulity by veiling nondisclosure of responsive records behind a "search" performed by an individual not lawfully

authorized to act as counsel for a state officer, a search which also failed to conform with the authority of the Governor under Article III, section 5 that:

“The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices...”

Rather than being entirely separate offices the offices of the Governor and the Attorney General are linked by the requirement that the Attorney General is the attorney and the only lawful attorney for the Office of the Governor. The Court erred in failing to recognize this material circumstance.

2. The Court erred in entering a protective Order that suppressed disclosure of the basic and material issue of whether Taylor “Tip Wonhoff, the OOG’s General Counsel, Public Records Officer and Star Witness was lawfully employed as an Assistant Attorney General as required by the express terms of RCW 43.10.040 and RCW 43.10.67.....

As West argued at the June 21 hearing:

Mr. Wonhoff, as part of his declaration, it's signed "counsel to the governor." It talks about his duties. It's certainly relevant to the issue of whether or not the Governor should contact the Attorney General, whether Mr. Wonhoff is an Attorney General. The question of whether Mr. Wonhoff is a member of the Attorney General's Office can be answered with a "yes" or "no" answer, one syllable. That's the main, core question that I'm asking.

It's not that complicated. It's entirely relevant to the question of whether or not the Governor's Office should have contacted the Attorney General's Office. If the Attorney General is providing advice and Mr. Wonhoff is acting as the public records officer, whether or not he's an Attorney General is entirely relevant. Transcript of June 21, 2019 Page 11, Lines 1-10

Even Ms. Van Rootjen admitted, on June 21st, 2019: "in his response to the motion for protective order, he says, "I'm asking one question: Is their chief witness lawfully employed." Transcript of June 21, 2019 Page 8, Lines 8-10

The Court's suppression of this information was error in that, as Mason Ladd has noted in an insightful Law Review Article⁸

The relationship between a witness and a party, such as employer and employee, debtor and creditor, kinship, common membership in organizations showing close association and affiliation of views, and even improper relations, tends in varying degrees to show the character of the testimony." (Numerous citation omitted)

Further,

The test as to whether a matter is collateral or not is: Could the fact, as to which error is predicated, have been shown in evidence for any purpose independent of the contradiction? *Warren v. Hynes*, 4 Wn.2d 128, 102 P.2d 691; *State v. Sandros*, 186 Wn. 438, 58 P.2d 362.

In *State v. Winters* 344 P.2d 526, 54 Wash. 2D 707, (Wash.

⁸ *Some Observations on Credibility Impeachment of Witnesses*, Mason Ladd, Cornell Law Review, Volume 52, Issue 2, Article 3, Winter, 1967

1959), the Supreme Court found representations as to employment status to be material, holding:

Dotson testified that he had told appellant that he worked for West Coast Fish Company and had authority to take the tuna. This testimony was not collateral because it was part of the state's case to prove the unlawfulness of the taking in that Dotson had not been employed by the company.

Five main lines of attack upon the credibility of a witness have been recognized. McCormick, *Evidence* § 33, at 72 (3d ed. 1984). The five are: bias, sensory-mental defects, prior inconsistent statements, contradiction, and untruth-ful character, which includes opinion, reputation, and prior conviction evidence.

The Court erred in entering the Protection Order and in failing to Grant West's Motion to compel to the extent that it suppressed the material evidence of Mr. Wonhoff's employment as either an Assistant Attorney General or an ex officio extra-statutory "counsel" in violation of the express terms of state law and Constitutional provisions. This was material to the facts of the case as well as his veracity, and it was an abuse of discretion to suppress it.

In so doing the Court undermined the intent of the people in

adopting the PRA that:

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. RCW 42.565.030

Obviously, both the Court and Ms. Van Roojen firmly believe that public servants the right to decide what is good for the people to know and what is not good for them to know, and they have no need to be informed as to whether their public servants and their counsel⁹, are acting lawfully.

3. The Court erred in conducting the Yousoufian penalty and Reasonable Search analyses in the absence of material evidence as to the legal status and relation to the Office of the Attorney General of their Public Records Officer, General Counsel, and Star Witness, and in failing to recognize that the Attorney General is the Governor's counsel, not entirely separate from the Governor.....

The Supreme Court and the federal judiciary have repeatedly recognized that in cases involving disclosure of public records the agency bears the burden of showing its search was adequate and that all places likely to contain responsive materials were searched.

⁹ with the enactment of RCW 42.56.904, "[t]he Legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditures of public resources on private legal counsel or private consultants." 2007 Final Legislative Report, at 175

To do so, the agency:

should establish that all places likely to contain responsive materials were searched. *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011), citing *Valencia-Lucena*, 180 F.3d at 325.

The defendants in this case cannot meet this burden because they, apparently, did not have a lawfully employed state official conduct a search of the only repository of records of advice lawfully provided to the Governor in conformity with Article III, section 21 of the Constitution of the State of Washington¹⁰.

As the Supreme Court underscored in the *Neighborhood Alliance* decision...

...(A)gencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. *Valencia-Lucena v. U.S. Coast Guard*, 336 U.S. App. D.C. 386, 180 F.3d 321, 326 (1999). The search should not be limited to one or more places if there are additional sources for the information requested. *Valencia-Lucena*, 180 F.3d at 326.

Indeed,

“the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby v. U.S. Dep’t of Army*, 287 U.S. App. D.C. 126,

¹⁰See Article III, section 21: Attorney General, Duties and Salary. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law..

920 F.2d 57, 68 (1990).

The Governor's "Deputy General Counsel" and (former) records officer, not being lawfully employed as an Assistant Attorney General under Article III, did not contact the Attorney General and Search the records of advice lawfully provided to the Governor, which he was a party to.

This was a place that was reasonably likely to contain records which would have been, and was, searched by lawfully employed counsel of the Attorney General's office when they produced them to West.

As the federal Court ruled in *Defenders of Wildlife*

...(I)t would strain credulity to find that the Secretary's Office did not know that the Office of the Inspector General and the Solicitor's Office would be likely repositories of responsive records. Thus, the Office of the Secretary should have referred plaintiffs' request to the Solicitor's Office and the Office of the Inspector General because those offices were likely to have additional responsive documents...In short, defendants' search was not sufficiently thorough because they failed to refer plaintiffs' request to the Office of Inspector General and the Solicitor's Office. *Defenders of Wildlife v. Secretary of Interior*, 314 F.Supp.2d 1 (2004)

The defendants in this present case should not be allowed to strain credulity by veiling nondisclosure of responsive records

behind a “search” performed by an individual not lawfully authorized to act as counsel for a state officer, a search which also failed to conform with the authority of the Governor under Article III, section 5 that:

“The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices,…”

In regard to the Yousoufian factors, the Courts have broad discretion. However, in both the PRA penalty process and the exclusion of evidence, an abuse of discretion will be found when its exercise of that discretion is manifestly unreasonable or based on untenable grounds. *Davis v. Globe Mach. Mfg. Co.*, 102 Wn.2d 68, 77, 684 P.2d 692 (1984)

By failing to consider this material information in the context of the guidelines set forth in *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 467-68, 229 P.3d 735 (2010) and in Reasonable Search analyses required under *Neighborhood Alliance*, the Court acted in a and circumstances, manifestly unreasonable manner based on untenable grounds. committing reversible error and abusing its discretion, because:

The judge, even when he is free, is still not

wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. *Cogle v. Snow*, 56 Wn. App. 499 (1990), quoting from Cardozo, *The Nature of the Judicial Process*, 141 (1921)

While vested with broad discretion, the Honorable Judge Skinder should not be seen to be free to innovate at his pleasure like some judicial knight-errant roaming through the halls of justice in pursuit of his own ideals of beauty or goodness, irrespective of the mundane concerns expressed in Title 43 RCW or Article III of the Constitution.

4. The Court erred in findings of fact 3, 5 and 6 that “It inadvertently failed to search for records...” “That the Office did not have the march 4, 2016, email in its records at he time of the request” and that “The Office of the Governor also conducted an adequate search for all responsive records and did not locate this email.....

Plaintiff assigns error to Findings of Fact 3, 5 and 6, on that they were manifestly incorrect and not based upon substantial or competent evidence of any lawful public servant whose credibility was assessed by the trial court. *Rainier View Court Homeowners Ass'n, Inc. v. Zenker*, 157 Wn.App. 710, 719, 238 P.3d 1217 (2010).

CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, appellant respectfully requests that this Court reverse the Trial Court's rulings in every respect other than the 1 finding of a violation it found, and remand this matter back to the Superior Court with instructions to find that the Respondent committed a violation of the PRA by failing to disclose the Purcell Email, and that it violated its discretion in entering a protection order and in failing to consider the employment status of the respondent's star witness, and to issue such further relief in the form of costs and penalties as may be appropriate.

Respectfully submitted this 24th day of February, 2020.

s/Arthur West
ARTHUR WEST

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2018, I caused to be served a true and correct copy of the preceding document on the party listed

below at their address of record via Email:

Cassie VanRootjen, Attorney for Respondent Office of the
Governor.

s/Arthur West
ARTHUR WEST

FILED
Court of Appeals
Division II
State of Washington
2/25/2020 3:02 PM

No. 53990-0

**In the Court of Appeals
of the State of Washington.
Division II**

**ARTHUR WEST,
appellant,**

Vs.

**OFFICE OF THE GOVERNOR
respondent.**

**APPELLANT'S
APPENDIX**

Arthur West
120 State Ave. NE # 1497
Olympia, Washington, 98501

20. Defendant's Supplemental PRA Response and Response to Motion to Strike;
21. Response to Plaintiff's Motion to Compel;
22. Plaintiff's Reply to Motion for a Protective Order;
23. Reply to Motion for Protective Order;
24. Order Granting Defendant's Motion for a Protective Order and Denying Plaintiff's Motion to Compel; and
25. Plaintiff's Statement re Costs.

I. FINDINGS OF FACT

The Court being fully advised finds as follows:

1. Mr. West submitted a public record request to the Office of the Governor, which was received by the Office on December 24, 2018, and sought the following: "1. Any records of requests for a declaration of emergency or the use of the governor's emergency powers to address homelessness, 2015 to present. 2. Any responses thereto, or communications concerning such requests."

2. The Office of the Governor responded in a timely fashion. The request was received by the Office on December 24, 2018, and records responsive to the first part of Mr. West's request were provided on January 8, 2019. The Office acknowledged the request and promptly provided records responsive to the first part of Mr. West's request. The reasonableness of the Office is especially true considering that the request was submitted and responded to during the holidays.

3. Based on the Office's concession, it inadvertently failed to search for or provide records responsive to the second part of Mr. West's request. As soon as the Office became aware that it overlooked the second part of Mr. West's request on January 15, 2019, it promptly provided all of those records as well. The Office worked to correct its initial error quickly and efficiently once the unfiled lawsuit was served upon them on January 15, 2019, particularly in light of the fact that this oversight was discovered and cured over the holidays. The records were

1 provided in a timely manner after it discovered the error on January 15, 2019, and provided
2 records on January 22, 2019.

3 4. The records submitted for in camera review identified as 000001-000006 for
4 “West, 2018-176” were reviewed and the redactions made are appropriate because the material
5 is covered by the attorney-client privilege. It is difficult for the Court to imagine a set of records
6 that are more properly covered by attorney-client privilege.

7 5. Mr. West obtained a March 4, 2016, Noah Purcell email that was part of the string
8 of emails referenced in paragraph 4 above from a different public record request to the Attorney
9 General’s Office. This email was not provided by the Office of the Governor in response to
10 Mr. West’s public records request. The Office did not have the March 4, 2016, Noah Purcell
11 email in its records at the time of Mr. West’s request.

12 6. The Office of the Governor also conducted an adequate search for all responsive
13 records and did not locate this email.

14 7. As related to the “*Trueblood* records” attached to Mr. West’s Exhibit II to
15 Plaintiff’s Motion for Penalties which Mr. West reports he received from the Attorney General’s
16 Office in response to a public record request, but were not provided in response to his request to
17 the Office. Upon review of these records, they do not relate to a request for a declaration of
18 emergency or use of the Governor’s emergency powers regarding homelessness. Therefore they
19 do not fit within Mr. West’s request for records here.

20 8. Based on the Office’s acknowledgment that it initially failed to provide records
21 responsive to the second part of Mr. West’s request on January 8, 2019, when it closed out the
22 request, this is the appropriate date to start calculating penalties. Because the remaining
23 responsive records were provided on January 22, 2019, this is the appropriate end date for
24 penalties. This is a total of 14 days. The Court finds that this period of 14 days is the most
25 appropriate period to use in assessing penalties in this case.

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Appellant's Appendix to Brief

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